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DECISION AND FINDINGS  
IN THE  
PLAN OF EXPLORATION  
CONSISTENCY APPEAL OF  
MOBIL OIL EXPLORATION & PRODUCING SOUTHEAST, INC.  
FROM AN OBJECTION BY THE  
STATE OF NORTH CAROLINA  
SEPTEMBER 2, 1994

DECISION

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## Executive Summary

### Introduction

Mobil Oil Exploration & Producing Southeast, Inc. (Mobil) has requested the Secretary of Commerce to override the State of North Carolina's (State's) objection to Mobil's proposed Plan of Exploration (POE) of the outer continental shelf (OCS) offshore North Carolina. Mobil proposes to drill an exploratory well in OCS Manteo Area Block 467 in order to evaluate its hydrocarbon potential. As explained in more detail below, the Secretary declines to override North Carolina's objection.

Mobil has also filed a separate appeal from the State's prior objection to its proposed discharge activities at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal. In that companion decision, the Secretary also declines to override North Carolina's objection to Mobil's proposed drilling discharges at the drill site. Accordingly, North Carolina's objection under the CZMA prevents any Federal agency from granting necessary permits or licenses for Mobil's proposed discharge of drilling wastes or Mobil's proposed Plan of Exploration.

Mobil's appeal arises under the Coastal Zone Management Act (CZMA), an act administered by the National Oceanic and Atmospheric Administration (NOAA), an agency within the Department of Commerce. Section 307 of the CZMA provides that persons submitting an OCS POE to the Secretary of the Interior which affects any land or water use or natural resource of the coastal zone, shall certify that activities described in detail in the POE are consistent with the enforceable policies of a state's coastal management program.

Mobil has submitted its POE for Manteo Area block 467 to the Minerals Management Service of the Department of the Interior. Because North Carolina has objected to the project, Federal agencies may not issue any permit or license necessary for Mobil's POE to proceed, unless the Secretary of Commerce finds that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

### Background

About 39 miles off North Carolina's coast lies OCS Lease A-0236, also known as Manteo Area Block 467, for which Mobil is the operator. Mobil proposes to drill one exploratory well in search of natural gas at this site and conduct support activities primarily out of Morehead City, North Carolina. Mobil's proposed drilling site is located near "The Point," a biologically unique area defined by the convergence of the Gulf Stream, slope, and

shelf waters, containing significant natural resources. Moreover, fish resources found near The Point are harvested by North Carolina fishermen. Mobil submitted its proposed POE for Manteo Area Block 467 to the Minerals Management Service of the Department of the Interior (DOI), and certified that the activities described in detail in the POE were consistent with North Carolina's coastal management program.

On November 19, 1990, the State objected to Mobil's proposed POE on the basis of a lack of necessary site-specific data and information. See 15 C.F.R. § 930.64(d). Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity. The State identified informational concerns relating to coastal resources and uses potentially affected by Mobil's proposed activity.

Under § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. § 1456(C)(3)(B), and the implementing regulations, the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that each activity described in detail in Mobil's POE is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).

In accordance with CZMA § 307(c)(3)(B) and 15 C.F.R. Part 930, Subpart H, Mobil filed with the Secretary an appeal from the State's objection to Mobil's consistency certification for the proposed POE. Mobil appealed pursuant to Ground I and Ground II. Additionally, three threshold issues were raised during the course of the appeal.

#### Threshold Issues

Upon consideration of the information submitted by Mobil, the State, the public, and several Federal agencies, the Secretary made the following findings on the threshold issues:

##### A. Compliance with the CZMA and Its Regulations

Mobil contended that the State failed to properly follow the statutory and regulatory requirements for formulation of a consistency objection on the grounds of insufficient information and that therefore the State's objection is defective. Upon examination of the record of this appeal, the Secretary found that the State had complied with the CZMA and its implementing regulations in objecting to Mobil's proposed POE.

B. Re

The State requested that the Secretary dismiss Mobil's Ground I claims for good cause, arguing that Mobil failed to provide data and information necessary to the Ground I test. The Secretary declined to dismiss Mobil's Ground I claims for good cause. The Secretary found that in this case if there is insufficient data and information in the record to make the findings necessary for an override, rather than dismiss part of the appeal as the State has requested, the Secretary will issue a decision which will reflect an inability to make these findings.

C. Ad

The parties raised an issue as to the adequacy of information. The State argued that Mobil has failed to provide adequate information to assess the impacts of its proposed activity, let alone prove that the grounds for an override have been met. Mobil asserted that there is adequate information on the effects of the proposed POE, and that any effects are minor. The Secretary found that in examining the information in the record of the appeal, the Secretary will necessarily determine the adequacy of information.

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Ground I: Consistent with the Objectives or Purposes of the CZMA

To find that the proposed activity satisfies Ground I, the Secretary must determine that the project satisfies all four of the elements specified in the regulations implementing the CZMA (15 C.F.R. § 930.121). If the project fails to satisfy any one of the four elements, it is not consistent with the objectives or purposes of the CZMA and federal licenses or permits may not be granted. The four elements of Ground I are:

1. The proposed activity pr  
competing national objective  
CZMA.
2. The proposed activity's  
adverse effects on the coast  
contribution to the national
3. The proposed activity wi  
of the Clean Water Act or th

4. There is no reasonable alternative available that would allow Mobil to explore Manteo Area Block 467 in a manner consistent with the State's coastal management program.

The Secretary made the following findings with regard to Ground I:

1. Mobil's proposed POE furthers one or more of the objectives or purposes of the CZMA because the CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency. Mobil's exploration for offshore gas resources serves the objective of energy self-sufficiency.
2. The information in the record is inadequate to determine whether the national interest benefits of Mobil's proposed POE outweigh the proposed activity's adverse effects on the State's coastal resources and uses.
3. Mobil's proposed POE will not violate the Clean Air Act as amended, or the Federal Water Pollution Control Act, as amended.
4. There is no reasonable alternative available to Mobil that would allow its proposed POE to be carried out in a manner consistent with the State's coastal management program.

Ground II: Necessary in the Interest of National Security

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

Conclusion

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

## LIST OF ABBREVIATIONS AND DEFINED TERMS

CAA - Clean Air Act  
CMP - Coastal Management Program  
COE - Corps of Engineers  
CSA - Continental Shelf Associates, Inc.  
CWA - Clean Water Act  
CZMA - Coastal Zone Management Act  
DEM - Division of Environmental Management  
DER - Draft Environmental Report  
DOD - Department of Defense  
EA - Environmental Assessment  
EPA - Environmental Protection Agency  
ESRP - Environmental Sciences Review Panel  
DOE - Department of Energy  
DOI - Department of the Interior  
FER - Final Environmental Report  
FWS - Fish and Wildlife Service  
MMS - Minerals Management Service  
MOEPSI - Mobil Exploration & Producing Southeast, Inc.  
NAAQS - National Ambient Air Quality Standards  
NCDMF - North Carolina Division of Marine Fisheries  
NMFS - National Marine Fisheries Service  
NOAA - National Oceanic and Atmospheric Administration  
NPDES - National Pollutant Discharge Elimination System  
NRC - National Research Council  
NSC - National Security Council  
OCRM - Office of Ocean and Coastal Resource Management  
OCS - Outer Continental Shelf  
OOC - Offshore Operators Committee  
POE - Plan of Exploration  
SAFMC - South Atlantic Fishery Management Council  
State - State of North Carolina

## DECISION

### I. FACTUAL BACKGROUND

In Federal waters, about 39 miles off North Carolina's coast, lies Outer Continental Shelf (OCS) Lease OCS A-0236, also known as Manteo Area Block 467. See Figure 1. This area was leased in September 1981 by Mobil<sup>1</sup> and its partners<sup>2</sup> in OCS Lease Sale 56. Mobil is the operator of the lease. Mobil's Statement in Support of a Secretarial Override (Mobil's Initial Brief), at 2. The lease block lies at the crest of a buried reef complex which runs in a general north-south direction along the edge of the Mid-Atlantic OCS.<sup>3</sup> Mobil's Initial Brief at 13.

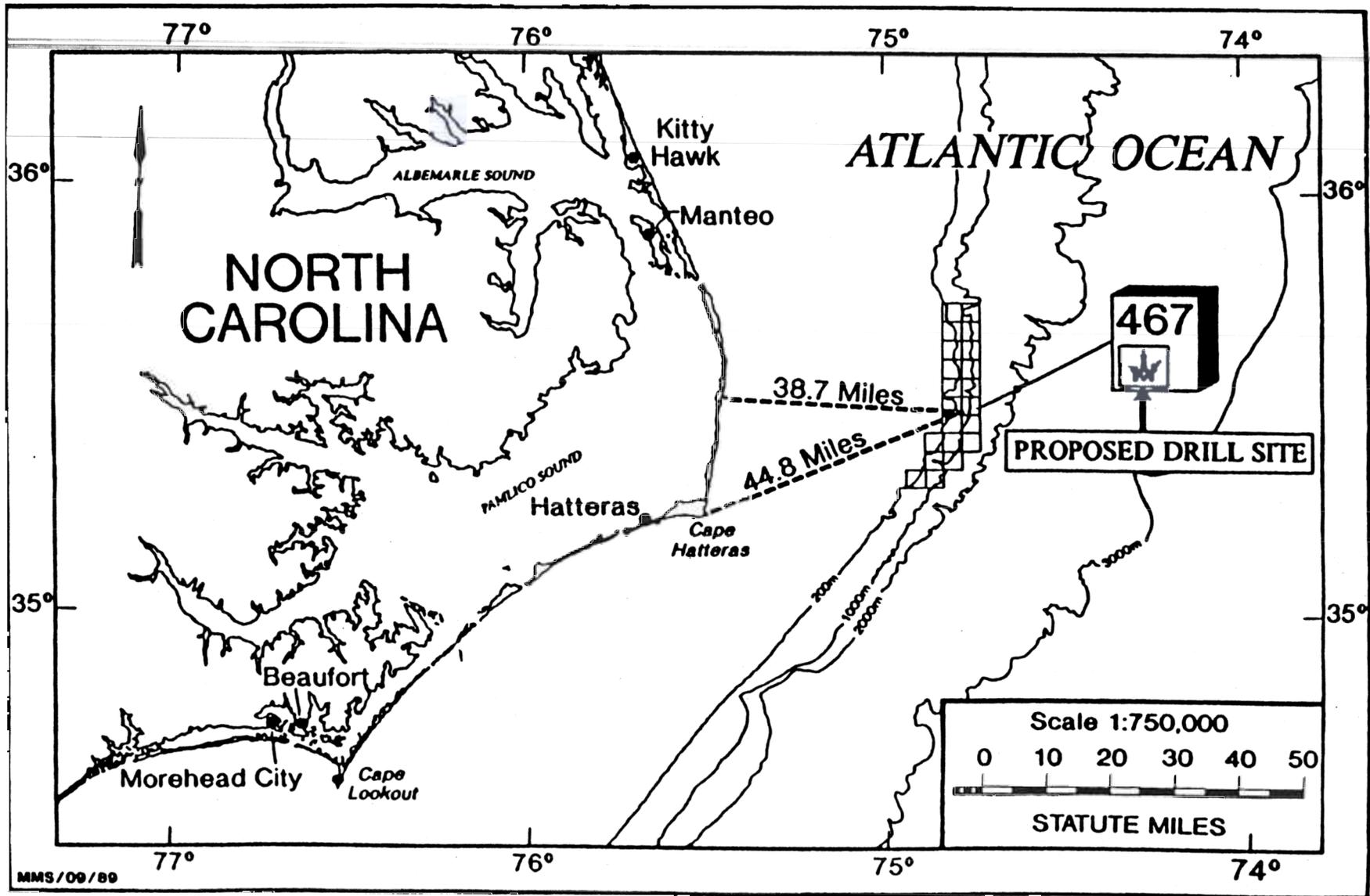
The activity at issue in this case is Mobil's proposed one-well Plan of Exploration (POE) of Manteo Area Block 467. On August 20, 1990, Mobil submitted its POE for Manteo Area Block 467 to the Minerals Management Service of the Department of the Interior (DOI), and certified that the activities described in detail in the POE were consistent with North Carolina's Coastal Management Program (CMP). Mobil proposes to drill one exploratory well in a water depth of 2,690 feet and estimates the drilling schedule to be approximately 114 days, sometime between May and October. See Mobil's Initial Brief at 14. Mobil will support the drilling operation with a facility in Morehead City, North Carolina.

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<sup>1</sup> Mobil Oil Exploration & Producing Southeast, Inc., a subsidiary of Mobil Exploration & Producing U.S. Inc., is the proposed operator. For the purposes of description in this decision, both entities will be referred to as "Mobil."

<sup>2</sup> The administrative record for this appeal indicates that Mobil's partners in the Manteo Area Block 467 project are the Marathon Oil Company and the Amerada Hess Corporation. See Manteo Unit Operating Agreement, Exhibit B.

<sup>3</sup> The Minerals Management Service (MMS) estimates that there is a 90 percent chance that no hydrocarbons will be discovered in the area of which Block 467 is a part. If a discovery is made, however, the discovery is likely to be gas rather than oil, based on geochemical analyses of previous wells drilled on the Atlantic OCS. Final Environmental Report on Proposed Exploratory Drilling Offshore North Carolina, MMS, August 1990, (FER), at III-5. The potential size of a discovery could be more than five trillion cubic feet of natural gas. Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, June 4, 1991. If such a discovery is made, the MMS estimates that approximately 103 wells would be required to recover this amount of gas. FER at IV-13.



Source: Adapted from MORP32, 1989

Figure 1. Location of the proposed drill site

Mobil's Initial Brief at 15. The proposed drilling site is located, however, near an area known as "The Point."

The Point is an area characterized by unique physical and biological qualities. Physically, The Point is a mobile, transitional ocean area defined by the convergence of the Gulf Stream, continental slope, and shelf waters. The Point is not a fixed location, rather its position fluctuates with changes in the location of the western boundary of the Gulf Stream. Water mass convergences at The Point concentrate nutrients, plankton and floating materials near the sea surface, resulting in weedlines. Biologically, The Point is highly productive and ecologically unique area essential to the State's coastal zone. Fish resources found near The Point such as yellowfin, bluefin, blackfin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are harvested by North Carolina fishermen. Scientists view the area as one of anomalously high biomass for the continental slope.<sup>4</sup> In addition to the significant fishery resources and the unusually abundant benthic community, marine bird populations are extensive, and turtles, whales and dolphins have regularly been observed at the site. Id. Many species of turtles, birds and mammals that frequent The Point are endangered and vulnerable to adverse environmental effects. The National Marine Fisheries Service (NMFS) has identified the area as extremely important to NMFS and NOAA trust resources. Memorandum from William W. Fox, Jr., Director, NMFS, to Jackson, Assistant General Counsel for Ocean Services, dated 10/19/91, incorporating prior NMFS comments on Mobil's to March activities subject to a National Pollutant Discharge April Discharge System (NPDES) permit (NMFS Comments).

On November 19, 1990, the State of North Carolina (State) objected to Mobil's proposed POE on the basis of a lack of necessary site-specific data and information.<sup>5</sup> See 15 C.F.R. § 930.64(d). Specifically, the State contends that there is insufficient information to make a consistency determination on the impacts arising from Mobil's activity. State Objection Letter. The State also renewed its request that Mobil complete a

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<sup>4</sup> Testimony of Dr. Alan Hulbert before the Committee on Interior and Insular Affairs (Mobil NPDES Exhibit 28). Mobil refers to this testimony in its Final Brief at 25. See note 14, infra.

<sup>5</sup> See Letter from Roger N. Schecter, Director, Division of Coastal Management, to William C. Whittemore, Senior Counsel, Mobil, November 19, 1990 (State Objection Letter).

four-part fisheries study.<sup>6</sup> *Id.* The State claims that the information is necessary to determine the biological importance of the proposed drill site area to the State's fisheries, the importance of the area to birds and marine mammals, and the economic importance of the proposed drill site area to the State's fishermen. *Id.* In addition to explaining the basis of its objection the State notified Mobil of its right to appeal the State's decision to the Department of Commerce (Department) as provided under § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. § 1456(C)(3)(B), and the implementing regulations, 15 C.F.R. Part 930, Subpart H.

Pursuant to CZMA § 307(c)(3)(B) and 15 C.F.R. § 930.131, the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that each activity described in detail in Mobil's POE, notwithstanding the State's objection, is either consistent with the objectives or purposes of the CZMA (Ground I), or otherwise necessary in the interests of national security (Ground II).<sup>7</sup>

## II. APPEAL TO THE SECRETARY OF COMMERCE

On December 3, 1990, in accordance with CZMA § 307(c)(3)(B) and 15 C.F.R. Part 930, Subpart H, Mobil filed with this Department a notice of appeal from the State's objection to Mobil's consistency certification for the proposed POE.<sup>8</sup> Mobil's notice of appeal requested an extension of time to submit its full

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<sup>6</sup> The first portion of the proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project. The second portion of the State's proposal is to gather additional information centered on the Sargassum community known to occur in the area of the proposed activity. The third portion of the proposed study is to measure the effects of drilling waste deposition on bottom organisms. The fourth section of the State's proposal is documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point.

<sup>7</sup> There are references in the record to the Deputy Secretary as the decisionmaker in this case because on May 19, 1989, then Secretary of Commerce Robert Mosbacher recused himself from issuing decisions in appeals involving oil and gas issues and delegated that authority to the Deputy Secretary. I have not recused myself from issuing this decision.

<sup>8</sup> Letter from William C. Whittemore, Senior Counsel, Mobil, to Hon. Robert A. Mosbacher, Secretary of Commerce, December 3, 1990 (notice of appeal).

supporting statement, data and other information. By letter of January 8, 1991, the Department set an initial briefing schedule for the parties.<sup>9</sup> Mobil perfected its appeal by filing a brief with supporting information and data on February 16, 1991. The State filed an initial brief with the Department on May 21, 1992.

Mobil has also filed a separate appeal from the State's prior objection to its proposed discharge activities at the drill site. A Secretarial decision in that appeal is being issued concurrently with the decision in this appeal.<sup>10</sup>

The administrative record of this appeal also contains comments submitted by the public and Federal agencies. By way of notices in the Federal Register and local newspapers,<sup>11</sup> the Department requested public comments on issues raised in this appeal. Public comments were received and incorporated as part of the

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<sup>9</sup> Letters from Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, to William C. Whittemore, Senior Counsel, Mobil, and Roger N. Schecter, Director North Carolina Division of Coastal Management, January 8, 1991.

<sup>10</sup> Since Mobil's NPDES permit appeal and POE appeal for the Manteo Area Block 467 drill site have not been consolidated, they contain distinct administrative records upon which I will base my decisions in the two appeals. However, much of the information concerning Mobil's activities is common to the records of the two appeals. To avoid unnecessary duplication and repetition, all of the arguments, facts and documents filed by the State in the related NPDES permit consistency appeal have been incorporated by the State into its initial brief by reference. North Carolina's Response to the Secretary's Briefing Request and to Mobil's Statement of Reasons and Brief, (State's Initial Brief), at 17. Mobil has also incorporated by reference into its briefing on this appeal, certain Mobil exhibits filed in its NPDES appeal. Mobil's Initial Brief at 3, n.4. Further, some Federal agencies have included their comments for the NPDES appeal in their comments for this appeal. I will include the NPDES acronym when referring to exhibits, comments and briefs in the NPDES appeal which have been incorporated into the record of this appeal. Finally, I note that much of the discussion of issues is similar in the decision documents for these two appeals.

<sup>11</sup> See 56 Fed. Reg. 12185 (March 22, 1991), 56 Fed. Reg. 14289 (April 8, 1991), and notices in the Carteret County News Times (March 29, April 3, 5, 1991) and the Virginian Pilot (April 1, 2, 3, 1991).

record of this appeal.<sup>12</sup> Oral and written comments were received from Mobil, the State, local public officials, the public and various interest groups. On May 5, 1991, the record closed for public comments. The Department also solicited the views of fourteen Federal agencies,<sup>13</sup> and the National Security Council (NSC) regarding the two grounds for a Secretarial override of the State's objection. With the exception of the Department of State and the Fish and Wildlife Service, all of the agencies and the NSC responded with comments.

As with other aspects of this appeal, the final briefing schedule and the closure of the administrative record were the subject of discussion between Mobil and the State. The parties concurrently filed their final briefs on August 15, 1991.<sup>14</sup> The administrative record of the appeal was reopened on April 29, 1992, to accept a report from the Environmental Sciences Review Panel (ESRP),<sup>15</sup> entitled Report to the Secretary of the Interior from

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<sup>12</sup> On January 29, 1991, pursuant to 15 C.F.R. § 930.129, the State requested that the Secretary hold a public hearing concerning the issues raised in Mobil's appeal. Letter from Robin W. Smith, North Carolina Assistant Attorney General, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, January 29, 1991. The Department, however, declined to hold a public hearing as requested by the State. See Letter from Thomas A. Campbell, General Counsel, NOAA, to Robin W. Smith, North Carolina Assistant Attorney General, March 6, 1991.

<sup>13</sup> Comments were solicited from the Department of Defense, Department of the Treasury, Department of State, Department of Transportation, Department of Energy, Department of the Interior, Fish and Wildlife Service, National Park Service, Minerals Management Service, Environmental Protection Agency, Federal Energy Regulatory Commission, National Marine Fisheries Service, Army Corps of Engineers and the Coast Guard.

<sup>14</sup> Mobil's Final Statement in Support of a Secretarial Override, August 14, 1991 (Mobil's Final Brief); North Carolina's Response to the Secretary's Final Briefing Request, August 14, 1991 (State's Final Brief).

<sup>15</sup> The ESRP was created under § 6003 of the Oil Pollution Act of 1990, 33 U.S.C. § 2753, to assess whether the available physical oceanographic, ecological and socioeconomic information relating to the North Carolina OCS was adequate to enable the Secretary of the Interior to carry out his responsibilities under the Outer Continental Shelf Lands Act. The Deputy Under Secretary determined that while the purpose of the ESRP report differs from the purpose of this appeal, its findings may be relevant to the issues raised in this appeal. Letters from Gray

the North Carolina Environmental Sciences Review Panel as Mandated by the Oil Pollution Act of 1990, January 22, 1990 (ESRP Report). Finally, Mobil and the State were provided an opportunity to file responses to any issues raised by the ESRP Report.

Although all materials received have been included in the record, I have considered them only as they are within my scope of review. I will now examine threshold issues raised in the appeal prior to my determination of whether the grounds for a Secretarial override have been satisfied.<sup>16</sup>

### III. THRESHOLD ISSUES

#### A. Compliance with the CZMA and Its Regulations

Commerce regulations at 15 C.F.R. Part 930, Subpart E - "Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities" set forth the rules which specifically govern the review of OCS activities by state reviewing agencies for consistency with state-approved coastal management programs pursuant to the CZMA. These regulations incorporate by reference general consistency review requirements found in other subparts of 15 C.F.R. Part 930.

Mobil argues that the State's objection fails to comply with the requirements of 15 C.F.R. §§ 930.64(d) and 930.79(c). 15 C.F.R. § 930.79(c) incorporates by reference the general requirements of § 930.64(d) and specifically provides that a state may object to Federal license or permit activities described in detail in an applicant's POE based on the applicant's failure to provide information defined in the regulations, if the State submits to the applicant a written request which describes the nature of the information requested and the necessity of having this information for making a consistency determination. Mobil contends that it supplied all the necessary information for the State to perform its consistency review, and that the State never

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Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, to William C. Whittemore, Senior Counsel, Mobil, and Roger N. Schecter, Director, North Carolina Division of Coastal Management, May 23, 1991.

<sup>16</sup> Both Mobil and the State have raised the issue of bias. Mobil asserts that the State's consistency position is tainted. See Mobil's Initial Brief at 8-10. The State asserts that the MMS has an energy production bias. See State's Initial Brief at 58, State's Final Brief at 6. I will accord, however, what I determine to be the appropriate weight to comments received in this appeal.

requested from Mobil in writing the particular POE information which the State now requests on appeal in violation of the procedural requirements of 15 C.F.R. § 930.64(d) and § 930.79(c). See Mobil's Initial Brief at 4.

The record of this appeal indicates, however, that the State did request from Mobil specific information regarding the drilling operation which the State deemed necessary to make a consistency determination. See State Objection Letter and correspondence cited therein. The State's requests for a four-part fisheries study from Mobil were made in writing to Mobil, and in fact, are the basis for the State's prior objection to Mobil's proposed drilling discharge activities which are a part of its overall exploration efforts at the Manteo site. Id. Moreover, Mobil has been well aware of the State's fisheries concerns even before the State objected to its POE consistency certification. Based on the State's informational concerns on the four-part fisheries study, alone, I find that the State has complied with the requirement of 15 C.F.R. § 930.64(d) that it make its concerns known to Mobil. After examining the State's objection, I have therefore determined that the State has complied with the requirements of the CZMA and its implementing regulations for properly lodging an objection.<sup>17</sup> See CZMA § 307(c)(3)(B); 15 C.F.R. §§ 930.64(a), (d); 930.79(c).

#### **B. Request for a Dismissal**

The State has requested that I dismiss Mobil's Ground I claims for good cause. See 15 C.F.R. § 930.128. The State argues: "Good cause exists in that [Mobil] has failed to provide the Secretary with the data and information necessary to allow him to make reasonable decisions for all of the elements and issues raised under Ground I." State's Initial Brief at viii-ix (emphasis in original, footnotes omitted). The regulations at 15 C.F.R. § 930.128 provide a non-inclusive list of good causes that are grounds for dismissal. Based upon a review of the record of this appeal, I decline to dismiss Mobil's Ground I claims for good cause. As I will discuss in the section on burden of proof, in this case if I determine that there is insufficient data and information in the record for me to make the findings necessary for an override, rather than dismiss part of the appeal as the State has requested, I will issue a decision which will reflect my inability to make these findings.

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<sup>17</sup> See Decision and Findings in the Consistency Appeal of Shickrey Anton, (Anton Decision), May 21, 1991, at 3; Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990, at 5.

### C. Adequacy of Information

The parties have raised an issue as to the adequacy of information in this appeal. As stated above, the State argues that Mobil has failed to provide the necessary information and data for me to decide the elements of Ground I. State's Initial Brief at viii-ix. On the other hand, Mobil asserts that there is adequate information on the effects of the proposed POE, and that any effects are minor. See Mobil's Initial Brief at 15-16, 20, 29, 36.

Aside from the requirements imposed on the State for properly lodging an objection, the Appellant bears the burden of proof and the burden of persuasion. See Anton Decision at 4; Chevron Decision at 4-5. As stated in the Anton Decision:

The regulations provide that the Secretary shall find that a proposed activity satisfies either of the two statutory grounds "when the information submitted supports this conclusion." 15 C.F.R. § 930.130(a) (emphasis added). Thus, without sufficient evidence the Secretary will decide in favor of the State.

Anton Decision at 4 (emphasis in original). Therefore, for me to find for Mobil I must make the findings specified in the regulations at 15 C.F.R. §§ 930.121 or 930.122. An absence of adequate information in the record inures to the State's benefit because such an absence would prevent me from making the required findings.<sup>18</sup>

I will make my decision based on the evidence in the record before me. The record contains much non-site-specific information as well as information collected for other purposes, raising the issue of the predictive value of this information as applied to this case. C.f. National Research Council, "Drilling Discharges in the Marine Environment" (1983) (NRC 1983 Report) at 6. I note this statement of the National Research Council (NRC):

Marine ecosystems on the OCS clearly vary in their sensitivities to anthropogenic stress, and caution is therefore advisable in extrapolating observations from one region to another. On the other hand, to dismiss

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<sup>18</sup> The State objection in the Decision and Findings in the Consistency Appeal of Long Island Lighting Company, (LILCO Decision), February 26, 1988, was based on lack of information. In that case, the Secretary found that the record contained sufficient information, in particular comments from Federal agencies, for him to make a finding that the Appellant's project would have no adverse effects on the natural resources of the state's coastal zone. See LILCO Decision at 12-13.

all research results not obtained directly from the environment analyzed may amount to ignoring valuable data.

NRC 1983 Report at 137. In evaluating the information in the record, I will necessarily determine the adequacy of the information for determining whether Mobil has satisfied the two grounds for a Secretarial override,<sup>19</sup> recognizing that some information and conclusions contained in the record may not be directly applicable to the facts of this case. The two parameters for adequacy which I will use are completeness of information and scientific quality of information.

In its 1989 report, the NRC recognized that the quantity and types of ecological information needed generally varied with the stage of the overall project, with less site-specific needed for leasing decisions, more site-specific information needed for exploration decisions, and still more information needed for a decision to develop and produce hydrocarbon resources. See National Research Council, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" (1989) (NRC 1989 Report) at 42-43; Mobil's Final Brief at 26-27. Moreover, the NRC generally identified the information necessary for leasing, exploration, development and production decisions. See NRC 1989 Report at 43. I agree with the conclusions of the NRC on this point.<sup>20</sup> Therefore, I find that for me to adequately identify the impacts of the proposed project, the record should disclose, at a minimum, a characterization of the environment, an identification of the biological resources at risk, and an identification of basic ecological relationships. See NRC 1989 Report at 5.

The NRC provides further guidance, which I adopt in this case, as to the nature of the information necessary to make an informed decision. This necessary information would include (1) a characterization of major habitat types; (2) a catalog of representative species (or major species groups) present in the lease area; and (3) seasonal patterns of distribution and

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<sup>19</sup> The Secretarial override process is a separate and independent decision-making function from the State's consistency review process. See Anton Decision at 3; Chevron Decision at 5. Since the State's consistency review and the Secretarial override process are based on different evaluative criteria, the adequacy of information for these two determinations may differ. In addition, the administrative records for these two determinations may differ.

<sup>20</sup> Mobil also agrees that the 1989 National Research Council Report provides important guidance. See Mobil's Initial Brief at 30.

abundance. NRC 1989 Report at 43. Furthermore, in addition to this information which the NRC states is generally necessary to make an informed leasing decision, the record should generally disclose (1) basic ecological information (e.g., habitat, feeding behavior and reproduction); (2) basic information on factors determining vulnerability of various species; and (3) information on the potential effects of various agents of impact. NRC 1989 Report at 43.

The adequacy of information will also depend on the likelihood<sup>21</sup> of an impact as well as on the potential extent or severity of an impact. C.f. Chevron Decision at 44; Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SRU Decision), November 14, 1984, at 15; NRC 1989 Report at 54, 59-60. As stated by the NRC, where unique habitats or endangered and rare species exist, more extensive characterization of the sensitivity of biota to OCS activities, recovery rates, and identification of mitigating measures may be required before leasing. NRC 1989 Report at 43. Generally, less information is necessary where the likelihood or the extent of impacts may be low, and more information is necessary where the likelihood or the extent of impacts may be high.<sup>22</sup>

#### IV. GROUND'S FOR OVERRIDING A STATE OBJECTION

Pursuant to CZMA § 307(c)(3)(B) and 15 C.F.R. § 930.131, Federal licenses or permits required for activities described in detail in Mobil's POE may be granted despite the State's consistency objection if I find that each activity described in detail in Mobil's POE is (1) consistent with the objectives or purposes of

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<sup>21</sup> The North Carolina Environmental Sciences Review Panel states:

Risk assessment clearly and appropriately requires application of probability theory to permit proper evaluation of proposed OCS activities, but the use of probability in determining standards of completeness of environmental information gathering should be largely limited to exclusion of exceedingly improbable events from extensive evaluation.

ESRP Report at 81.

<sup>22</sup> Since I have determined that the proposed drill site area contains unique habitats and endangered and rare species, there must be more extensive characterization of the sensitivity of biota to Mobil's OCS-related activities, because the possible extent of adverse impacts will be higher. See NRC 1989 Report at 5.

the CZMA (Ground I), or (2) is necessary in the interest of national security (Ground II). See also 15 C.F.R. § 930.130(a). The Appellant has pleaded both grounds. The Department's regulations interpreting these two statutory grounds are found at 15 C.F.R. § 930.121 and § 930.122.

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

The first statutory ground (Ground I) for overriding the State's objection to the proposed project is that the activity is consistent with the objectives or purposes of the CZMA. To make a finding on this ground I must determine that the proposed activity satisfies all four of the elements specified in 15 C.F.R. § 930.121.

1. Element 1: Activity Furthers One or More Objectives of the CZMA

To satisfy Element 1 of Ground I, I must find that the activity furthers one or more of the competing national objectives or purposes contained in the CZMA. 15 C.F.R. § 930.121(a). I find that the proposed project fosters one or more of the objectives of the CZMA, and therefore Element 1 is satisfied.

Congress has broadly defined the national interest in coastal zone management to include both the protection and development of coastal resources. Consequently, as stated in previous decisions, this Element normally will be satisfied on appeal. Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990, at 14.

OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. See, e.g., Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989, at 7; Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989, at 5. The Department of Energy (DOE) states that the project lies in "one of the most promising natural gas prospects on the OCS."<sup>23</sup> The Department of the Interior (DOI) states that development of the Manteo Area Block 467 could benefit the natural gas market of the

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<sup>23</sup> Letter from Robert H. Gentile, Assistant Secretary, Fossil Energy, Department of Energy, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, April 30, 1991, adopting Mr. Gentile's December 19, 1990, correspondence to Mr. Castle on Mobil's Manteo Block 467 NPDES appeal (DOE Comments).

southeastern United States.<sup>24</sup> Based upon a review of the record, I find that Mobil's exploration for natural gas resources at this site furthers one or more of the competing national objectives or purposes contained in §§ 302 or 303 of the CZMA.

2. Element 2: The Activity's Individual and Cumulative Adverse Effects on the Coastal Zone are Outweighed by Its Contribution to the National Interest

In order for the Appellant to meet this Element, I must find that the disputed activity, when performed separately or when its cumulative effects are considered, does not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest. 15 C.F.R. § 930.121(b). To perform the required balancing, I must first adequately identify the proposed project's adverse effects on the natural resources or land and water uses of the coastal zone and its contribution to the national interest. See Texaco Decision at 6. As stated above, if the information in the record is inadequate, such that I cannot adequately identify the adverse effects or the contribution to the national interest, I will be unable to perform the weighing, and therefore unable to find for Mobil on this Element. See Anton Decision at 5, n.8.

I conclude that the information in the record is insufficient for me to adequately identify the adverse coastal zone effects of the activity. Accordingly, I am unable to find for Mobil on Element 2 of Ground I.

a. Adverse Effects on Coastal Resources and Uses

In evaluating the adverse effects of the project on the resources of the coastal zone,<sup>25</sup> I must consider the adverse effects of the project by itself and in combination with other past, present, or reasonably foreseeable activities affecting the

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<sup>24</sup> Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, Department of the Interior, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, June 4, 1991 (DOI Comments).

<sup>25</sup> The proposed exploration would occur about 39 miles from the State's coast, well outside of the State's coastal zone. Distance, alone, however, is not predictive of possible effects. The State's coastal resources are not confined to State waters, nor are potential effects confined to Federal waters.

coastal zone.<sup>26</sup> Other activities include accidents or improper conduct of an activity. See Chevron Decision at 24; Korea Drilling Decision at 10. In particular, I find that Mobil's proposed drilling discharge activities are reasonably foreseeable and will be relevant to my consideration of cumulative effects in this case.<sup>27</sup> I note, however, that since the consistency of NPDES permit activities is an issue distinct from the consistency of plan of exploration activities,<sup>28</sup> Mobil has filed a separate appeal to the State's objection to its proposed NPDES permit activities.

#### Probability of an Oil Spill During Exploration

Mobil asserts that the potential adverse impacts on the uses and natural resources of the coastal zone as a result of its proposed exploratory drilling must be evaluated based upon the risk of an accidental oil spill occurring during exploration. Mobil contends that the chance of an accidental oil spill occurring during exploratory drilling is extremely small and that in the event of such a spill Mobil's oil spill containment plan will adequately address the effects of a spill.

In general the OCS drilling record supports Mobil's contention that the risk of an oil spill occurring as a result of a blow-out during exploratory drilling is low. MMS Environmental Assessment of Exploration Plan for Manteo Area Block 467 (EA), Exhibit F. The statistical record also indicates that an oil spill during exploratory drilling would most likely be the result of a rig-service-related event, and would involve diesel fuel and not crude oil. See Mobil's POE, vol. 3 at 2-1; FER at IV-13. Further, the geological data indicates that Mobil's proposed exploratory drilling operations will likely encounter natural gas, if any hydrocarbons are found. FER at III-5.

I have previously held that because some risk of a spill during oil and gas operations always exists, oil spill contingency plans

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<sup>26</sup> See Chevron Decision at 24; Texaco Decision at 6; Gulf Oil Decision at 8. Given that the probability of a hydrocarbon discovery is estimated by the MMS to be less than ten percent, I find that development and production of such reserves is not reasonably foreseeable. In this case I will consider the cumulative effects of activities occurring during the drilling period. See Texaco Decision at 24.

<sup>27</sup> See the accompanying decision in Mobil's NPDES permit appeal for a fuller discussion of Mobil's drilling discharge activities.

<sup>28</sup> See Texaco Decision at 4; Chevron Decision at 7; Korea Drilling Decision at 14.

are important. See Texaco Decision at 15. The MMS believes that Mobil's oil spill contingency plan meets or exceeds all MMS and Coast Guard guidelines. Letter from Bruce G. Weetman, Regional Director, Minerals Management Service, to Roger Eckert, Attorney-Adviser, NOAA, June 4, 1991 (MMS Comments) at 20. In particular, Mobil states that it will, among other things:

position spill response and clean-up equipment at the drillship, at the Morehead City shore base and in the Oregon Inlet area;

operate blowout preventer systems in compliance with MMS requirements;

minimize operational spills of diesel fuel at the drill site or support vessel refueling docks by strict adherence to MMS and Coast Guard regulations; and

assure full response capability, including minimum response times, to address any spill emergency.

See Mobil's Initial Brief at 44, 52-53. The MMS would also place additional restrictions on Mobil's proposed exploration of Block 467. See MMS Comments at 13-15.

The ESRP concluded that available information on the physical oceanography of the area is generally adequate to estimate encounter probabilities for spills that may occur during the exploration/delineation phase. ESRP Report at 28. The ESRP based this conclusion, however, on the "assumptions that an oil spill during this phase will likely occur only at the drill site platform and that the errors for the [MMS Oil Spill Risk Assessment] calculation (as performed for the Mantle site) are well enough understood to make these estimates." Id. The ESRP then discussed site-specific informational deficiencies relevant to the oil spill predictions. Id. The ESRP also concluded that information is adequate for estimating the risks involved in a service vessel accident either at the drill site or near the coast. Id.

Given that I found the probability of an oil spill to be low, and recognizing the elements of Mobil's oil spill contingency plan as well as the conclusions of the ESRP, I now find that the information in the administrative record on potential impacts of an oil spill is adequate for the purposes of this appeal. I also find that the predictive value of models relied upon by Mobil to predict the movement of spills in order to direct the scope and focus of its response efforts, is adequate.

#### Effects on Biological Resources

In this section I will examine the risk of individual and

cumulative adverse effects from the proposed activity on the affected biological resources and uses of those resources.<sup>29</sup>

### Fish Resources

One of the East Coast's most important commercial and recreational fisheries is located in the waters overlying the proposed drill site.<sup>30</sup> FER at III-83. The proposed drill site area serves as an important migratory pathway and feeding habitat for pelagic fishes. Yellowfin, bluefin, blackfin, and bigeye tuna, white and blue marlin, sailfish, swordfish, wahoo, and dolphin are caught there by North Carolina fishermen.<sup>31</sup> In addition, many target and prey species are believed to spawn near the western boundary of the Gulf Stream. Thus, the proposed drill site, even though it is located outside of the State's coastal zone, is situated such that an important food source for North Carolinians would be exposed to Mobil's proposed wastes.<sup>32</sup>

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<sup>29</sup> The State has asserted that Mobil has underestimated the biological importance of The Point. NMFS has characterized the natural resources found in Block 467 as unique. Letter from Andreas Mager, Jr., Assistant Regional Director, Habitat Conservation Division, National Marine Fisheries Service, to Minerals Management Service, Department of the Interior, December 13, 1989 (NMFS Letter). NMFS also states that the biological significance and later potential for adverse impacts is severely underestimated. Id. In general, the ESRP has stated that there needs to be a study of the ecological relationship between The Point's unusual biological resources and its physical properties. See ESRP Report at 36-37, 47.

<sup>30</sup> The first portion of the State's proposed study is an investigation of larval and juvenile abundance and distribution in the vicinity of the Mobil project.

<sup>31</sup> The Secretary's Exxon SRU Decision at 7-10 interpreted Element 2 to include adverse effects on coastal uses. In that case, Exxon's proposed OCS POE affected a thresher shark fishery important to California fishermen.

<sup>32</sup> In addition to citing coastal uses of The Point, the State argues that the area serves as spawning habitat for species that are important to North Carolina fisheries, including both prey and target species (menhaden, spot, croaker and flounder) that migrate into North Carolina's coastal waters. Memorandum from Bill Hogarth, Director, North Carolina Division of Marine Fisheries, to Roger Schecter, Director, North Carolina Division of Coastal Management, May 21, 1990, at 2, Attachment 6 to State Objection Letter.

Mobil states that the species composition found at the drill site area is representative of the overall areal population, and that the species found were generally similar to those observed in previous collections conducted during the spring and fall months off the South Atlantic Bight and in the eastern Gulf of Mexico. See Mobil's Final Brief at 32-33. Upon reviewing the record, I find that while the species composition may not be unique, there is an unusual abundance of fish resources found near the drill site area, and that the area serves as an important migratory pathway, feeding habitat and spawning ground for several commercially significant species.

As to the possible effects on fishery resources, MMS states:

[I]mpacts on fish resources may result from the effects of [the] discharge of muds and cuttings [and] treated sanitary and domestic waste.... Individuals may be subject to sublethal effects before dispersion and dilution of drilling mud [and] other waste discharges.

FER at IV-216 (emphasis added). In essence, the fishery resources, upon which the State's commercial and recreational fishing industries depend, may be exposed to and potentially affected by Mobil's wastes, with individual fish possibly subjected to "sublethal effects."<sup>33</sup>

MMS concludes that the expected impacts of the proposed discharges on commercial and recreational fishing would be low-level and temporary in nature. MMS NPDES Comments at 21. The record lacks information, however, on the marketability of fish which may have been exposed to Mobil's wastes and subjected to sublethal effects.<sup>34</sup>

MMS also concludes that under its "worst case" analysis of maximum level of impacts on fish resources, the anticipated effects would be minor and indistinguishable from natural background variability. The worst case analysis, however, has limited usefulness to my analysis for four reasons. First, as stated above, resources may be affected by Mobil's wastes before dispersion. Second, the analysis does not fully examine ecological effects. Third, the conclusions on natural

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<sup>33</sup> See FER at IV-213 - 219 for a discussion of potential effects on the State's fisheries resources.

<sup>34</sup> See infra at 27 for a discussion of other potential socioeconomic effects.

variability may be flawed.<sup>35</sup> Fourth, the analysis does not fully account for cumulative impacts.

In commenting on this appeal, the National Marine Fisheries Service (NMFS) identified informational concerns regarding fisheries studies and stated that additional studies and information were needed. NMFS Comments. In comments on the DOI's Draft Environmental Report (DER)<sup>36</sup> on Proposed Exploratory Drilling offshore North Carolina, NMFS stated:

The DER does not adequately address fishery issues. Discussions on effects of spills or accidents on eggs, larvae, and food organisms; recreational and commercial fishing activities; potential alterations of migratory patterns of important pelagic fishes; occurrence of latent fisheries resources; habitats; and fisheries operations in the project area are inadequate.

NMFS Letter. NMFS states that "many of the finfish that inhabit the site as eggs and larvae are not discussed. More information on distribution, life history aspects, and fisheries, should be provided on tunas, dolphin, wahoo, and marlins." Id. The NMFS comments continue:

The uniqueness of the Cape Hatteras area as a faunal mixing zone is not adequately addressed. The drill site is located near [an area] known for its value to migrating pelagic fishes. The area also is a critical feed site for tunas.

Id. NMFS also states that the "[e]cology, life history, and habitat requirements of epipelagic fishes are not well known. Accordingly there is insufficient basis for most of the assumptions made in the DER regarding potential impacts." Id.

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<sup>35</sup> The ESRP states that the DOI decision documents are flawed in their discussion of the significance of natural variability. See ESRP Report at 45-46. The ESRP states:

Purging from the decision documents the unjustified argument that variable ecological resources and variable driving forces do not deserve the same level of protection from environmental impacts as more invariant parameters is needed to render the interpretations and conclusions adequately defensible.

ESRP Report at 46.

<sup>36</sup> Given that NMFS' comments on this appeal were forwarded after the completion of the FER, one inference that can be drawn is that its prior concerns with the DER remain unresolved.

Likewise, the South Atlantic Fishery Management Council informed NOAA that it agrees that there is a lack of adequate, site-specific biological and oceanographic data and information and acceptable analysis of existing information to proceed with exploratory drilling. Letter from Roy O. Williams, Chairman, South Atlantic Fishery Management Council, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, May 13, 1991.

Upon reviewing the information in the record of this appeal, I find that I am unable to adequately assess the risk of adverse impacts to fish resources. Consequently, I am unable to adequately identify the adverse effects on fish resources. While I previously found that Mobil's studies adequately predict a rapid dispersion of wastes near the surface, I was unable to find that Mobil's wastes will have a low toxicity. Furthermore, the State's fisheries may be subjected to sublethal effects before dispersion and dilution of Mobil's wastes. Finally, I find that the fish resources at the proposed drill site are sufficiently rich, and their ecology sufficiently important, to require additional site-specific information.

#### Benthic Communities:

Benthic communities include, among other things, both infaunal and epifaunal organisms. Densities of infauna and epifauna near the Mobil drill site have been found to be unusually high.<sup>37</sup> The North Carolina Division of Marine Fisheries has stated that Block 467 has the highest benthic infauna population of any deep water site on the east coast. The State argues:

The benthic assemblages found near the drill site are unique on the western North Atlantic slope. While the species diversity is low, the benthic infauna exhibit extremely high biomass and species abundances. The concentrations of demersal fishes are larger than usual for this water depth.

Summary and Assessment of Ad Hoc Live Bottom Committee (State NPDES Exhibit 23) at 4. Commercially harvested demersal fishes prey on infaunal organisms.<sup>38</sup> See FER at III-82, III-101-104,

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<sup>37</sup> The third portion of the State's proposed four-part fisheries study is to measure the effects of drilling waste deposition on bottom organisms.

<sup>38</sup> Mobil's sweeping statement in its Initial Brief that "there is absolutely no indication that any coastal fishes or other coastal wildlife resources utilize the benthic habitat, benthic food sources, or benthic-derived energy in any form" is belied by statements in the FER and the EA. Compare Mobil's

180-183. Upon reviewing the record, I find that the benthic community near the drill site is unusual for its high biomass and productivity. Moreover, I find that benthic communities are directly linked to the food web supporting the State's fisheries.

Potential damage to benthic and infaunal communities may be physical and/or chemical.<sup>39</sup> NRC 1983 Report at 5. Factors influencing damage to benthic communities include the type and quantity of drilling discharges, the hydrographic conditions at the time of discharge, and the height above the bottom of the discharges. FER at IV-61. The effects also depend on how quickly the benthic community recovers, not only in total density and biomass, but also in the composition and structure of the community. NRC 1983 Report at 135. Benthic communities may also be damaged from the placing and removal of drillship mooring anchors. See MMS NPDES Comments at 37-38.

I will evaluate the benthic impact of Mobil's discharges as well as the emplacement and removal of drillship mooring anchors on the benthic environment. Mobil's drilling plans include both near-surface and seafloor discharges. Based upon a review of the information in the administrative record, I find that there is a low likelihood that the near-surface discharges will have a measurable adverse impact on benthic communities given the water depth and the current movements. Mobil's drilling plans, however, also include seafloor discharges and anchor placement. Mobil has performed simulation modeling of the deposition of seafloor discharges, for which I found in the decision for Mobil's NPDES appeal at this site that the seafloor discharges will be distributed in the immediate vicinity of the drill site.

MMS comments that the only expected negative effect of the proposed discharges would be from the deposition of drilling muds and cuttings directly on the seafloor during the drilling of the initial portion of the well. MMS NPDES Comments at 17. In its FER, MMS states that the major effect of the release of drilling muds and cuttings directly to the seafloor will be to bury and kill local benthic organisms. See FER at IV-211; Appendix E of the EA at E-4. Upon reviewing the record, I find that the major short term effect of the deposition of seafloor drilling

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Initial Brief at 45 with FER at III-82, III-101-104, 180-183.

<sup>39</sup> Upon reviewing existing information on the fates and effects of drilling fluids and cuttings on the OCS, the NRC states that "[t]he postdepositional fates of drilling fluids and the recovery of altered communities are the processes for which data are most limited and predictions most tenuous." NRC 1983 Report at 136. The NRC advises caution in extrapolating observations of adverse effects from one region to another. See Id. at 137.

discharges will be to bury and kill benthic organisms in the immediate vicinity of the drill site. I also find, however, that possible sublethal impacts include altered burrowing behavior, chemosensory responses, alterations in embryological or larval development, depressed feeding, decreased food assimilation and growth efficiency, and altered respiration and nitrogen excretion rates.<sup>40</sup> Thus, I find that in the immediate vicinity of Mobil's drill site, Mobil's proposed wastes may either destroy or poison a food source for part of the State's demersal fishery resources.<sup>41</sup>

As to the period of the diminishment in value of these natural resources, since I am unable to conclude that the benthic community would be accustomed to burial of the magnitude envisioned in the modeling studies, I decline to accept Mobil's argument that the area will become rapidly repopulated. Rather, as indicated in the FER, I find that recovery of these deep sea fauna could take several years and the recolonizing community may be significantly different from the pre-drilling one.<sup>42</sup> FER at IV-212.

MMS has also stated that the emplacement and removal of drillship mooring anchors will cause localized destruction of benthic organisms. MMS NPDES Comments at 38. I agree with MMS' conclusion, however, upon review of the record, I find that the possible extent of this damage should be minimal.

Finally, NMFS and the ESRP have raised informational concerns on the possible impacts of Mobil's proposed waste discharges on the ecology of the benthic community. NMFS comments that the relationship between the high benthic infauna population and the proposed action should be addressed. See NMFS Letter. The ESRP

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<sup>40</sup> See Bowler and Petrazzuolo, Draft Ocean Discharge Criteria Evaluation, NPDES Permit No. NC0052523, (January 29, 1990) (Mobil NPDES Exhibit 27), at 10-6. Mobil refers to this report in its Final Brief at 23, n.18.

<sup>41</sup> In discussing the effects of Mobil's proposed wastes on benthic communities, Mobil discounts the effects on the food supply by stating: "The primary drilling fluid to be discharged at the sea floor is simply prehydrated bentonite clay (see Appendix I-1). Bentonite clay is a naturally-occurring material that is used in cosmetics and as a food additive." Mobil's POE, vol. 1 at B17-21.

<sup>42</sup> The ESRP has indicated that the question of the recovery rate of the benthic community from the effects of Mobil's proposed wastes is unanswered. See ESRP Report at 48-49. The NRC states that recovery rates from complete annihilation can be many years on the continental slope. NRC 1983 Report at 136.

states that a survey of the seafloor in the vicinity of the Manteo Unit should be completed prior to initiation of exploratory drilling, and that "the limited knowledge of the geographical extent of the unusual benthic community around the Manteo drill site is inadequate to describe what fraction of this system would be at risk during deposition of muds and cuttings." ESRP Report at 39. The ESRP states that this benthic survey should identify the geographic extent and degree of uniqueness of the unusual benthic community. ESRP Report at 45. I agree with NMFS and the ESRP. I find that while the record identifies certain adverse effects, I am unable to adequately assess other ecological impacts of Mobil's proposed action on the benthic communities.

In summary, I found that the benthic communities are directly linked to the food web supporting the State's fisheries. While I found that the effects of Mobil's near surface discharges on the benthic environment will be minimal, I found that Mobil's seafloor discharges are likely to damage or destroy benthic communities in the immediate vicinity of Mobil's proposed drill site. I also found that the recovery period for this richly populated area could be several years. Finally, I found that there is presently inadequate information for me to adequately assess other ecological impacts on the benthic communities.

#### Plankton and Near Surface Resources:

The near surface environment includes a Sargassum community as well as planktonic and nektonic organisms.<sup>43</sup> The Sargassum communities provide habitat, food and protection to juvenile finfish and endangered sea turtles, and are closely connected to the State's fisheries. Tuna and dolphin feed on juvenile fish, crabs, and shrimp which occur in the Sargassum community.<sup>44</sup> Phytoplankton and zooplankton constitute a major portion of the

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<sup>43</sup> See FER III-65 - III-70 for a summary of information collected on the Sargassum community known to occur in the area of the proposed activity. The second part of the State's proposed four-part fisheries study is to gather additional information centered on the Sargassum community. The State has designed the study to investigate the abundance and size of Sargassum rafts near Block 467 and summarize information on the Sargassum community as a source of food for various fish species.

<sup>44</sup> Mobil's Final Ocean Discharge Criteria Evaluation Report (Mobil NPDES Exhibit 19), December 8, 1989, at 36. Mobil refers to this exhibit in its Final Brief at 31.

food base for pelagic food webs.<sup>45</sup> In addition, most fish have planktonic eggs and larvae. Mobil NPDES Exhibit 19 at 28.

Mobil claims that any impacts on Sargassum communities and other near surface resources will be negligible. See Mobil's Initial Brief at 45-48. Mobil claims that due to the rapid dispersion of the discharges and the naturally short regeneration times of planktonic species, there will be minimal short term impacts. Mobil's Initial Brief at 48-49.

Plankton and near surface organisms could be affected by Mobil's drilling discharges and hydrocarbon releases. See Mobil's Initial Brief, Attachment One; FER at IV-207. If plankton come in contact with drilling discharges, the photosynthetic production of phytoplankton could be reduced due to increased turbidity of the water; filter feeding and respiratory functions could be harmed by contact with particulates; and there may be lethal or sublethal effects. Id. These effects would vary depending on the currents. The FER concludes, however, that:

While it is not known with certainty whether the availability of phytoplankton as a food source for zooplankton grazers eventually affects the abundance or productivity of major fisheries, drilling discharges are not expected to result in measurable impacts on populations of phytoplankton or on the marine food web.

FER at IV-207; see also EA at 51. MMS also states that its "worst case" analysis looked at the possibility of the proposed discharges contacting the "sensitive" Sargassum communities. MMS NPDES Comments at 51. MMS concluded that there would be no anticipated measurable effects on the Sargassum or associated organisms, including fish, species fed on by fish, and marine turtles. MMS NPDES Comments at 51. MMS also states that any effects on fish eggs and larvae would be minimized due to the proposed shunting of the discharges 25 feet below the sea surface. MMS NPDES Comments at 20.

In addition to expressing the view that there is inadequate information on the ecology of the drill site, NMFS states that "the DER fails to address adequately the concentration of marine fauna along thermal and salinity fronts and the potential consequence of oil spills and other toxic releases along these fronts." NMFS Letter.

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<sup>45</sup> Bowler and Petrazzuolo, Draft Ocean Discharge Criteria Evaluation, NPDES Permit No. NC0052523, January 29, 1990, (Mobil NPDES Exhibit 27), at 6-1. Mobil refers to this exhibit in its Final Brief at 23, n.18.

The ESRP states that ecological information on the functioning of the Sargassum community is inadequate. See ESRP Report at 35-38. In addition, the ESRP states that what is needed is an "enhanced understanding of the processes that control the function and production of this Sargassum system." ESRP Report at 38.

Based upon a review of the information contained in the record, I find that for the purposes of this appeal, there is inadequate information on the effects of the proposed activity on near-surface and planktonic resources. While I accept the conclusions that the near surface discharges will be rapidly dispersed, given the potential ecological importance of the Sargassum community to the State's fisheries, and the presence of sensitive larval forms of the State's fisheries, I find that the potential for significant impacts is great enough to merit further study before an informed decision can be made.

#### Marine Mammals:

There are several species of cetaceans and pinnipeds which can be found in the waters off North Carolina, and which can be grouped into regularly occurring species, migratory species, and rare or unknown-occurrence species.<sup>46</sup> See Mobil NPDES Exhibit 27 at 6-24. As with many of the State's coastal resources, the range of marine mammals may include both State and Federal waters. Several species are endangered or threatened or recognized as species of undetermined status by the State and intra-scientific community. Mobil NPDES Exhibit 27 at 6-25. The record contains biological summaries for species of marine mammals that frequent this area. See FER at III-192 - III-222.

The following possible adverse effects have been disclosed in the record. Underwater noise generated by drilling activities could affect cetaceans. FER at IV-220, 225. Vessel and aircraft traffic could produce startle reactions in cetaceans. FER at IV-222. Certain wastes may produce sublethal effects on cetaceans. See FER at IV-223-224. Turbidity could affect the sight and echolocation capabilities of some marine mammals if they swim within the discharge plume. Prey species of cetaceans could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64. The FER also points out, however, that only predators in a weakened physical state would experience any effects if they were unable to move to a nearby area where prey is obtainable. FER at IV-64.

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<sup>46</sup> In its NPDES objection letter (included as an attachment to the State's POE objection letter) the State indicated that it wanted information on use of the site by marine mammals, specifically identifying numbers of individuals, numbers of species, and activities by species at the site.

In spite of the evidence suggesting possible harassment of, and injury to, marine mammals, Federal agencies offered few other comments on the proposed project's effects on marine mammals. In particular, NMFS, the Federal agency with jurisdiction over certain marine mammals, provided few specific comments on the need for information on marine mammals. MMS concluded that the level of impacts on marine mammals is considered to be very low. FER at IV-224, 227.

After reviewing the information in the record on the effects of the proposed project on marine mammals, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible injury to the endangered and threatened marine mammal population, I note that while the extent of the harm could be high to the marine mammals' diminished numbers, the likelihood of damage will be low due to the rapid dilution of near-surface wastes and the temporary nature of the drilling activity. I find that any harassment of marine mammals is likely to be temporary. In making these findings I note that NMFS has expressed few specific concerns as to the effects of the proposed project on marine mammals.

#### Sea Turtles:

Five species of endangered or threatened sea turtles are found within the coastal and offshore marine habitats of North Carolina.<sup>47</sup> See FER at III-222 - 237. The endangered species are the Kemp's ridley (Lepidochelys kempii), hawksbill (Eretmochelys imbricata), and leatherback turtle (Dermochelys coriacea). The green turtle (Chelonia mydas) and loggerhead turtle (Caretta caretta) are classified as threatened. FER at III-222.

Potential impacts to sea turtles include underwater noises, vessel and aircraft traffic, drilling discharges and hydrocarbon releases. See FER at IV-229-231. Juvenile green and loggerhead turtles, and possibly those of other species, could be exposed to Mobil's wastes. See EA at E-8. In addition, prey species of sea turtles could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

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<sup>47</sup> In its NPDES objection letter (included as an attachment to the State's POE objection letter) the State indicated that it wanted information on use of the site by sea turtles. Specifically, the State wants information on numbers of individuals, numbers of species, and activities by species at the site.

Mobil argues, however, that the proposed activity is expected to have few impacts on turtles in the area. Mobil states that the drilling would not alter natural currents and would not disrupt the Sargassum mats which provide habitat to juvenile turtles.<sup>48</sup> Mobil states that sea turtles can easily avoid ships and that the turtles will be protected by NPDES permit conditions, including subsurface shunting of discharges. Id.

MMS states that due to the primarily inshore distribution of marine turtles during the proposed drilling period, the impacts of the proposed project are likely to be minimal. See FER at IV-231. Planktonic prey species such as jellyfish are unlikely to be displaced by the discharges. FER at IV-230. A temporary increase in water turbidity could, however, affect a turtle's ability to detect prey. Id. MMS based its conclusions principally on the limited areal extent and duration of the discharge plume. See EA at E-8.

Other Federal agencies offered few other comments on the proposed project's effects on sea turtles. In particular, NMFS, the Federal agency with jurisdiction over endangered sea turtles, provided few specific comments on the need for information on sea turtles.

The ESRP concludes that the ecological information on the Sargassum community as habitat for juvenile sea turtles is inadequate for all phases of oil and gas resource exploitation. See ESRP Report at 8, 37, 48. The ESRP states that "knowledge of the spatial and temporal abundance of hatchling sea turtles in the Sargassum community of the western wall of the Gulf Stream is inadequate to evaluate the risks of oil and gas activities on these endangered and threatened species." ESRP Report at 37.

After reviewing the information in the record on the effects of the proposed project on sea turtles, however, I find that the information is sufficient for the purposes of this appeal and that the individual and cumulative effects of the proposed project will be minimal. In assessing the risk of possible damage to the endangered and threatened sea turtle population, I note that while the extent of the harm could be high to the turtles' diminished numbers, the likelihood of damage will be low because of the rapid dispersal of near surface discharges and the primarily inshore distribution of sea turtles during the drilling period. In making these findings I also note that NMFS has expressed no specific concerns as to the effects of the proposed project on endangered or threatened sea turtles.

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<sup>48</sup> Mobil's Comments and Responses to Issues of Concern for Draft NPDES Permit for Manteo Block 467 Exploratory Well Discharges (Mobil NPDES Exhibit 18), May 1990, at 51. Mobil refers to this exhibit in its Final Brief at 31.

## Birds:

The Manteo area is used as a feeding ground by many resident and migratory species of seabirds which also frequent the State's coastal zone. The waters along the western edge of the Gulf Stream off Cape Hatteras are an important feeding area for several species. MMS indicates that the birds identified in the FER constitute an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. See FER III-238. Some of the species are either endangered or threatened. The cahow (endangered) may be found on the North Carolina OCS. Mobil NPDES Exhibit 27 at 6-28. Coastal endangered and threatened species that may be present in the project area include the peregrine falcon (endangered), bald eagle (endangered), piping plover (threatened), and the roseate tern (threatened). Mobil NPDES Exhibit 27 at 6-28.

The Fish and Wildlife Service (FWS) has stated that it is concerned about the potential indirect impacts of exploratory drilling on seabirds. Memorandum from Regional Director, FWS, Atlanta, to MMS Regional Director, Atlantic OCS Region, December 22, 1989, (Attachment Four to Mobil NPDES Exhibit 18). Of particular concern to the FWS is that the only known concentration of the rare black-capped petrel (Pterodroma hasitata) at sea occurs specifically in and around the drilling site, with numbers peaking in May, August, and late December through early January. Id. The FWS also stated that black-capped petrel specimens have had high levels of mercury relative to other seabird species collected within the lease sale area. Id. The FWS recommended the establishment of a monitoring program.

In its FER, MMS identified the following possible adverse effects on birds. Birds could experience startle reactions from aircraft noise and vessel traffic. FER at IV-233. Specifically, since the bald eagle and piping plover are known to nest during the period proposed for exploration, aircraft noise between the drill site and the Michael J. Smith Field in Beaufort could cause adults to abandon the nest. FER at IV-234. MMS concluded, however, that this possible effect is unlikely given that, on the average, there will only be two aircraft flights per day. Id. MMS also states that there is no evidence that the helicopter flights will impinge on critical feeding areas. Id. As to possible effects from drilling muds and cuttings, MMS concluded that direct contact with, or contamination by, muds and cuttings are not considered likely for the Bermuda petrel, roseate tern, or other endangered species. Id. However, prey species of marine birds could be displaced and the prey-locating ability of predators could be diminished by the presence of mud particles in the water column. FER at IV-64.

Based on the evidence in the record, I find that for the purposes of this appeal there is adequate information on the possible effects of Mobil's proposed activity on birds, an important ecological, economic, and aesthetic resource within North Carolina's coastal zone. In considering the risk of potential impacts upon birds, I find that the individual and cumulative impacts of Mobil's proposed activity on birds will be minimal. In particular, I note that while the impacts on endangered or threatened species could be great given their diminished numbers, the likelihood of impacts will be small given the nature and duration of possible impacts.

### Air Quality

Activities associated with Mobil's proposed exploration of Manteo Area Block 467 will emit air pollutants. See FER at IV-205. Upon reviewing the information in the record, however, I find that the information is adequate for me to conclude that there will not be any significant impacts (including cumulative impacts) on the State's air quality.

### Water Quality

Mobil's proposed drilling discharges will affect water quality near the drill site. Mobil asserts, however, that its discharges will have no impact on the water quality of the State's coastal zone. Mobil's Initial Brief at 49. In its briefing for Mobil's NPDES permit appeal for the Manteo drill site the State disputed Mobil's claims on water quality. The State asserts in this appeal that Mobil's water quality study leaves many unanswered questions. State's Initial Brief at 67.

MMS states that the effect of drilling discharges on offshore water quality has been the subject of numerous field monitoring programs. MMS NPDES Comments at 13. MMS states that the expected effects of drilling effluent on water quality are short-term, minor, and that water quality parameters are anticipated to return to background concentrations within a few hundred meters of the point of discharge. MMS NPDES Comments at 15. MMS predicts that there will be no impact on water quality of the State's coastal zone. Other agencies offered few specific comments on the proposed project's effects on water quality.

Upon reviewing the information in the record, I find that the information is adequate for me to conclude that there will be no significant impacts on the State's water quality, given the location of the drill site and the dynamic current regime.

### Socioeconomic Effects

Having previously considered the effects of the proposed POE on the resources of the coastal zone which in turn affect the

coastal uses,<sup>49</sup> in this section I will focus on other possible adverse effects of the proposed POE on uses of the State's coastal zone.<sup>50</sup> Important economic activities in the State's coastal zone include agriculture, tourism, recreation, forestry, and commercial fishing. FER at III-313-315.

The primary coastal use at issue in this case is the commercial and recreational fishing industry.<sup>51</sup> The proposed exploration area contains important concentrations of epipelagic, bluewater fish and The Point is one of the most productive offshore fishing grounds along the east coast. See FER at III-83. Over the year, The Point is the most frequently and intensively fished area by the Oregon Inlet charter boats, private recreational and commercial bluewater fleet. The area's reputation for large blue marlin has prompted several local billfish tournaments. The fishing industry may be affected by space use conflicts, both from drillship activities and increased vessel traffic.<sup>52</sup> The drillship will be in place for approximately 114 days between May and October. This time period coincides with much of the fishing season. FER at IV-217. During this time period there could be as many as 100-125 boats engaged in fishing near The Point and the drill site.<sup>53</sup>

In commenting on this appeal, Federal agencies differed in their assessment of the potential effects on the fishing industry. MMS

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<sup>49</sup> Natural resource damage valuation is based in part on the value of the uses of those resources. See, e.g., Oil Pollution Act § 1006(d), 16 U.S.C. § 1432(6).

<sup>50</sup> The MMS states that North Carolinians living in eastern North Carolina in general have "fewer job opportunities, greater unemployment, higher levels of dependency, and lower incomes than North Carolinians living elsewhere in the State." FER at III-297. I will consider these project comments when assessing the extent to which Mobil's proposed project furthers the national interest in economic development.

<sup>51</sup> The fourth part of the State's proposed study would be documentation of the commercial and recreational fishing in the vicinity of the drill site and The Point. This part of the study would be accomplished by surveying commercial and recreational fishermen on specific days upon returning to various ports in North Carolina. The information obtained, along with some field data, would be used to document the importance of the area as a fishery.

<sup>52</sup> See also discussion, supra at 16.

<sup>53</sup> Testimony of John Bayless, Oregon Inlet Sportfishing Guides Association (State NPDES Exhibit 26-A).

concludes that impacts on the fishing industry are expected to be low. FER at IV-219. MMS stated that interference from the placement of drillship anchors would be minimized by the placement of surface buoys and a notice to mariners. MMS NPDES Comments at 38. MMS also concluded in its FER that interference from support vessel traffic would be minimal. See FER at IV-242-243.

I agree that the space use impacts will be temporary in that they are scheduled to last for about 114 days. There is unrefuted evidence that the fishing industry seasonally concentrates near the drill site, however, indicating that there will be a high likelihood of impacts. I find, however, that the potential extent of those space use impacts will be minor given that Mobil plans to drill only one exploratory well. In evaluating the information in the record, I therefore find that the information is adequate for me to conclude that the space use impacts upon the fishing industry will be minor.

The ESRP concludes that, in general, socioeconomic is the most neglected area in the primary documents dealing with exploratory drilling at the Manteo site. See ESRP Report at 58. The ESRP made a number of general comments on the inadequacy of existing socioeconomic information. See ESRP Report at 59-60. Furthermore, the ESRP recommends that a base case characterization analysis, community studies, studies on aesthetic and perceptual issues, studies on infrastructure, and a socioeconomic monitoring study should be initiated as soon as possible, especially since these studies were not done at the leasing phase. See ESRP Report at 61-63.

Upon reviewing the information in the record of this appeal, I am unable to adequately identify the extent of the individual and cumulative adverse socioeconomic effects resulting from Mobil's proposed POE. Given that this is a frontier area and an area of rich natural resources upon which the State heavily depends, socioeconomic impacts must be more fully addressed.

#### Conclusion on Adverse Effects

I have evaluated the information in the record on adverse effects of Mobil's proposed POE on the natural resources and uses of the State's coastal zone. I found that the exploration will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the exploration will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed POE, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed POE.

I note that the NRC stated in its 1989 report that "[t]he basic information needed to make a leasing decision anywhere includes a characterization of the environment, identification of the biological resources at risk, and a basic understanding of ecological relationships." NRC 1989 Report at 5. Even at this post-leasing stage, I find that Mobil has not adequately documented the biological resources or ecological relationships at risk. While the overall likelihood of impacts may be low, to say that the models of a worst case scenario obviate the need to understand any ecological relationships between the State's fisheries and the Sargassum or benthic communities is too facile an explanation for me to accept, given that the potential extent of impacts may be high.

Furthermore, the 1989 NRC report indicates that where unique habitats and endangered and rare species exist, more extensive characterization of the sensitivity of biota to OCS-related activities, characterization of recovery rates, and identification of mitigating measures is needed. NRC 1989 Report at 5. I am persuaded that the biological resources of the drill site area are sufficiently rich and unique to merit further investigation. I am also persuaded that the fisheries located at the site are an important part of the State's coastal zone, and that there may be potential risks of contamination of sensitive fish larvae. I find that Mobil has not adequately accounted for the effects of reasonably foreseeable effects resulting from increased currents or adverse weather conditions. I am persuaded that the ecological relationship of the benthic environment to the State's fisheries must be further assessed in order to adequately evaluate the risk of impact of Mobil's proposed activities. Finally, I find that Mobil has not adequately assessed the risk of its impacts on the socioeconomic uses of the State's coastal zone.

**b. Contribution to the National Interest**

The national interests to be balanced in Element 2 are limited to those recognized in or defined by the objectives or purposes of the CZMA. See Korea Drilling Decision at 16. Since our national interests are not static, however, the Secretary has noted that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by the Federal agencies. See Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Decision), November 9, 1984, at 15. These sources of information can assist the Secretary in determining the current national interest in a proposed project.

**I find that Mobil's proposed one-well OCS exploration would make a minor contribution to the national interest.**

Energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and the Secretary has previously held that it furthers the national interest under this Element. See Exxon SRU Decision at 11. Moreover, the record of this appeal indicates that energy self-sufficiency through natural gas production continues to be in the national interest.<sup>54</sup> Of those Federal agencies that commented on the issue of the national interest in the Appellant's proposed activity, most expressed support for domestic energy projects. The DOI states that "[a]n important discovery, such as the Manteo Prospect may represent, is an essential component in maintaining self-sufficiency in clean burning, environmentally safe natural gas." DOI Comments. In § 6003 of the Oil Pollution Act of 1990, however, Congress found that the Outer Banks is an area of "exceptional environmental fragility and beauty" and that there are concerns about the adequacy of the scientific and technical information underlying oil and gas exploration decisions in this area. See 33 U.S.C. § 2753(b). Based upon a review of the record, I find that there is a national interest in the informed exploration for natural gas resources at this site, such that potential risks have been fully evaluated.

In order to perform the required balancing for Element 2, I must also identify the extent of the national interest contribution of Mobil's one-well drilling proposal. In this case I will consider the potential size and likelihood of natural gas recovery as well as the degree to which the proposal is based on informed decision-making, such that potential risks have been fully evaluated.<sup>55</sup> As evidenced by comments from MMS and the DOI, exploration could result in the recovery of five trillion cubic feet of natural gas.<sup>56</sup> I find that there is a potential for a

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<sup>54</sup> A report on the national energy strategy states, however, that energy self-sufficiency is an unachievable goal, and that the only achievable national energy strategy goal is one of mitigation of economic damage potential arising from violent fluctuations in either the supply or price of oil. See National Energy Strategy - Executive Summary, (State Exhibit 63), February 1991, at 6. Mobil also discounts the policy of energy self-sufficiency by stating that "so long as normal trade relations exists, it hardly matters whether the import level [of oil] is 10 percent, 40 percent, or 60 percent." Advertisement entitled "Unnatural History" placed by Mobil in the Wall Street Journal, November 9, 1989, (State Exhibit 63).

<sup>55</sup> The parameters influencing contribution to the national interest will depend on the facts of each case.

<sup>56</sup> MMS geologists characterize the five trillion cubic feet estimate as optimistic. FER at II-6.

large discovery.<sup>57</sup> The State requests that I consider the lack of in-place infrastructure when taking into consideration the probability that natural gas can be recovered at the site. State's Final Brief at 16-17. Given that I have found that if natural gas is discovered it will probably be in a large amount, I find that the size of the discovery will outweigh the costs of bringing the natural gas to market. As to the likelihood of a natural gas discovery, in its comments on this appeal, MMS has stated:

Without a discharge permit, even drilling a single exploratory well on the Manteo Prospect, with estimates of hydrocarbon resources as great as 1 billion barrels of oil equivalent in the form of 5 trillion cubic feet (tcf) of natural gas, would have to be questioned given that the chance of encountering hydrocarbons is only 10 percent or less. (Emphasis added.)

MMS NPDES Comments at 8. Accordingly, there is a 90 percent chance that no hydrocarbons will be found, a small likelihood of discovery.

Informed exploration is in the national interest, however, even if there is no discovery of hydrocarbons.<sup>58</sup> In this case, pursuant to § 6003 of the Oil Pollution Act in which Congress noted the importance of informed decision-making in this area, the ESRP concluded that adequate information is lacking for even an informed leasing decision, let alone an informed decision to explore. I therefore find that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP.

Above, I found that the potential size of the discovery is large. However, there is a 90 percent chance that no hydrocarbons will be discovered at the site and that Mobil's drilling proposal contributes less to the national interest because it contains informational deficiencies as identified by the ESRP. Based upon a review of the record, I find that Mobil's proposed one-well OCS

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<sup>57</sup> While the estimated potential hydrocarbon reserve would be found under approximately 21 lease blocks, Mobil's POE covers only one well in one lease block. See Mobil's Initial Brief at 19; Mobil's POE, vol. 1 at A1-4, A1-9. The MMS states that production of five trillion cubic feet of natural gas would involve the drilling of approximately 103 wells. FER at IV-13.

<sup>58</sup> Whether or not gas will be discovered, the exploration itself furthers the national interest by ascertaining information on available hydrocarbon reserves. See Texaco Decision at 30-31; Amoco Decision at 45.

exploration would make a minor contribution to the national interest.

**c. Balancing**

I have evaluated the information in the record on adverse effects of Mobil's proposed POE on the natural resources and uses of the State's coastal zone. I found that the exploration will have adverse effects on the resources and uses of the State's coastal zone. In particular, I found that the exploration will affect the benthic environment, which is linked to the State's fisheries. Moreover, based on a review of the record, I have identified informational concerns sufficient that I am unable to adequately assess the risk of impacts of Mobil's proposed POE, and so, I am unable to adequately identify the individual and cumulative adverse effects of Mobil's proposed POE.

I have evaluated the information in the record on the contribution of the proposed activity to the national interest. I found that the proposed one-well exploration plan would make a minor contribution to the national interest.

Because I cannot adequately identify the extent of the individual and cumulative adverse effects of the proposed activity, I am unable to perform the required balancing of the adverse effects against the contribution to the national interest. Consequently, I cannot find that the national interest benefits of Mobil's proposed POE outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

**3. Element 3: Activity Will Not Violate The Clean Water Act or the Clean Air Act**

To satisfy Element 3 of Ground I, I must find that "the activity will not violate any of the requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended." 15 C.F.R. § 930.121(c). The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated into all State coastal programs approved under the CZMA § 307(f). I conclude that the activity meets the requirements of the Clean Water Act and the Clean Air Act, and therefore satisfies Element 3 of Ground I.

**a. Clean Water Act**

Sections 301(a) and 402 of the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. §§ 1311(a) and 1342, provide that the discharge of pollutants is unlawful except in accordance with an NPDES permit issued by the EPA. Mobil submitted its application for an NPDES permit to the EPA on August 18, 1989.

It is important to note, here, that the scope of the appeal is identified by the scope of the activities described in detail in Mobil's POE, as well as their individual and cumulative effects on the uses and natural resources of the State's coastal zone. While Mobil's NPDES permit activity is not described in detail in its POE (and is the subject of another appeal to the Secretary of Commerce), the effects of that proposed activity are properly considered within the scope of this appeal as well.

EPA must prescribe appropriate terms and conditions in an NPDES permit for discharges associated with OCS activities. In its comments on this appeal, EPA repeated the comments it made in Mobil's NPDES permit appeal for the Manteo drill site:

Compliance with all conditions of the NPDES permit, if consistency is resolved and the permit issued, would meet the requirements of the Clean Water Act applicable to point source discharges. Therefore, assuming that Mobil will not discharge until they have obtained a permit, the project will not be in violation of the Clean Water Act, as amended.

EPA Comments. EPA has confirmed in its comments in earlier override appeals that an OCS facility operated in compliance with an NPDES permit would satisfy the requirements of the CWA. See, e.g., Korea Drilling Decision at 10. Conversely, a project not operating in compliance with the terms of an NPDES permit would not meet the requirements of the CWA applicable to point source discharges.

In spite of Mobil's statements to the contrary,<sup>59</sup> Mobil cannot lawfully conduct its proposed activity without meeting the terms and conditions of an NPDES permit, thus meeting the standards of the Clean Water Act. Therefore, I find that Mobil's proposed activity will not violate the requirements of the Clean Water Act.

#### **b. Clean Air Act**

Sections 108 and 109 of the Clean Air Act, as amended (CAA), 42 U.S.C. §§ 7408 and 7409, direct the EPA to prescribe national ambient air quality standards (NAAQS) for air pollutants to protect the public health and welfare. Pursuant to CAA § 110, 42 U.S.C. § 7410, each state in turn is required to develop and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state.

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<sup>59</sup> Mobil has stated that the proposed cadmium and mercury limits would present serious compliance problems, and that these limits cannot be consistently achieved. See Mobil Exhibit 18 at 58.

Mobil states that due to the distance of the drill site from the nearest land, the onshore effects of drilling emissions are negligible, and that emissions from both the onshore and offshore facilities are estimated in accordance with EPA standards and guidelines.<sup>60</sup> Mobil's Initial Brief at 56. The State has commented that since Clean Air Act issues have not been previously raised by the State, the Secretary's attention should be focussed on whether Mobil's proposed POE will not violate the Clean Water Act. State's Initial Brief at 81. In its comments on this appeal, EPA states that "[b]ased on the available information, the activities associated with the proposed exploratory drilling do not indicate that there would be a violation of the Clean Air Act."<sup>61</sup> Based upon a review of the record, I find that Mobil's proposed POE will not violate the CAA.

4. Element 4: No Reasonable, Consistent Alternatives Available

To meet the requirements of Element 4 of Ground I, I must find that "[t]here is no reasonable alternative available (e.g., location, design, etc.) which would permit the activity to be conducted in a manner consistent with the [state's coastal] management program." 15 C.F.R. § 930.121(d). For state objections based on 15 C.F.R. § 930.64(b), the fourth Element of Ground I is usually decided by evaluating the alternative(s) proposed by a state in the consistency objection. See Chevron Decision at 58; LILCO Decision at 16. In this case, however, the State's objection to Mobil's proposed POE is based on a lack of information necessary to determine the consistency of the activity. See 15 C.F.R. §§ 930.64(d), 930.79(c).

I find that there is no reasonable, available alternative to Mobil's proposed POE which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

In terms of alternatives, § 930.64(d) imposes different requirements upon a state than does § 930.64(b)(2). Under § 930.64(d) "the objection must describe the nature of the information requested and the necessity of having such informa-

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<sup>60</sup> 30 C.F.R. § 250.33(a). Total estimated emissions from both the onshore and offshore facilities fall below the calculated regulatory exemption levels set forth in 30 C.F.R. § 250.45. Mobil's POE, vol. 1 at B19-1 - B19-6.

<sup>61</sup> Letter from Richard E. Sanderson, Director, Office of Federal Activities, Environmental Protection Agency, to Hon. Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, July 11, 1991 (EPA Comments).

tion to determine the consistency of the activity with the management program." Unlike § 930.64(b)(2), § 930.64(d) does not require a state to describe in its objection "alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program." If a state lacks information necessary to assess a proposed activity, it would likely lack information necessary to assess possible alternatives to an activity.

Nevertheless, in this case the State indicated in its objection letter that the only alternative available is for Mobil to "provide the information needs identified necessary to adequately assess consistency with the NCCMP." State Objection Letter. The State identified informational deficiencies in addition to those identified in the State's NPDES objection letter. The State continued: "Should Mobil provide the required information, including relevant information needs identified by the Outer Banks Protection Act Review Panel, the State will then be in a position to review the proposed activity to determine whether it may be conducted in a manner consistent with North Carolina's Coastal Management Program." State Objection Letter. Since the information is allegedly necessary to a consistency determination, however, the State cannot determine the probable consistency of the activity prior to the submission of the information by Mobil. I find that the State's suggested alternative of providing the information identified by the State is not a reasonable alternative available which would permit the activity to be conducted in a manner consistent with the State's coastal management program because there is no indication by the State of the probable consistency of Mobil's proposed activity upon submission of the additional information. See also Chevron Decision at 51.

In reviewing the record of this appeal, I have identified two possible alternatives that may be reasonable and available. First, in its briefing for the appeal the State argues that a no-discharge NPDES permit is a reasonable alternative that could allow exploratory drilling to go forward while additional information is gathered through monitoring studies. State's Initial Brief at 86. In Mobil's NPDES appeal for this project, the State asserted, however, that the consistency of this alternative would depend on identification of a suitable disposal site. State's Initial NPDES Brief at 39. In this appeal the State offers no further assurances of the probable consistency of this alternative. See State's Initial Brief at 86-89. The bargaining proposal therefore fails to qualify as an alternative because the State does not indicate whether bargaining would probably be consistent with the State's CMP since the proposal's consistency is dependent upon identification of a suitable

disposal site.<sup>62</sup> Second, the State makes a reference in its initial NPDES brief to possible relocation of Mobil's drilling site. State's Initial NPDES Brief at 39. The State claims, however, that "without additional information on the biological resources located in other potential discharge areas, acceptable alternative sites cannot presently be properly evaluated." State's Initial NPDES Brief at 39. The possible relocation of Mobil's drilling site fails to qualify as an alternative for two reasons. First, the description is too general in nature since the State did not identify the location of an alternative site. See Texaco Decision at 36; Korea Drilling Decision at 24. Second, the State does not indicate whether an alternative site would probably allow Mobil to conduct drilling discharges consistent with the State's CMP.

The record for this appeal discloses no reasonable, available alternatives. If such alternatives existed, the State would likely offer them even though not required to do so for objections made pursuant to 15 C.F.R § 930.64(d). Element 4 requires that alternatives be consistent with state CMPs, and a state is in the best position to evaluate the consistency of a possible alternative. Therefore, based on the record before me, I find that there is no reasonable, available alternative to Mobil's proposed POE which would permit Mobil to conduct the activity in a manner consistent with the State's coastal management program.

#### Conclusion for Ground I

Based on the findings above, I find that Mobil has not satisfied Element 2 of Ground I. Therefore, the activities described in detail in Mobil's proposed POE are not consistent with the objectives or purposes of the CZMA.

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

**I conclude that the proposed activity is not necessary in the interest of national security.**

The second statutory ground for an override of a state's objection to a proposed activity is based on a finding that an activity is necessary in the interest of national security. To make this determination I must find that "a national defense or other national security interest would be significantly impaired

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<sup>62</sup> The barging alternative would also not address the State's separately-identified concerns regarding Mobil's proposed oil spill contingency plan.

if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122.

Mobil asserts that decreased reliance on oil imports contributes to the national defense and national security and that exploration is a necessary step in the development of new domestic reserves. Additionally, Mobil contends that there are few large oil and gas reserves to be found,<sup>63</sup> and that the size of the potential natural gas reserve in this area would make its exploration important for national security reasons. Mobil's Final Brief at 57.

In order to decide this ground, I will give considerable weight to the views of the Department of Defense (DOD) and other Federal agencies. 15 C.F.R. § 930.122. In soliciting the views of several Federal agencies, the Deputy Under Secretary asked those agencies to identify any national defense or other national security objectives directly supported by Mobil's proposed POE, and to indicate which of the identified national defense or other national security interests would be significantly impaired if Mobil's activity were not allowed to go forward as proposed.

The DOD responded by stating that it saw no direct linkage under Ground II between Mobil's POE and any immediate national security needs.<sup>64</sup> The DOD did recognize, however, long-term national security benefits to be gained from the development of domestic energy sources. *Id.* I interpret DOD's comments to mean that in the opinion of DOD, national security interests would not be significantly impaired if the project were not allowed to go forward as proposed.

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<sup>63</sup> I agree with Mobil that our nation's security interests are not static. See Mobil's Initial Brief at 88. Note, however, that our nation's concern for energy independence from foreign sources of oil has been longstanding, as exemplified by President Nixon's announcement on November 7, 1973, of "Project Independence." See 9 Compilation of Presidential Documents 1309 (1973), cited in State of Alaska v. Andrus, 580 F.2d 465, 467 n.1 (D.C. Cir.), vacated in part sub nom, Western Oil & Gas Assoc. v. State of Alaska, 439 U.S. 922 (1978). Moreover, the Secretary has previously held that the size of oil and gas reserves is not determinative of whether the requirements of this ground are met. The degree of importance the Secretary assigns the size of oil and gas reserves in deciding whether interests are significantly impaired depends on the facts of the case. Chevron Decision at 71.

<sup>64</sup> Letter from F.S. Sterns, Deputy Assistant Secretary, Department of the Navy, to Margo E. Jackson, Assistant General Counsel for Ocean Services, NOAA, June 27, 1991, responding on behalf of the Secretary of Defense.

Other Federal agencies also support the general proposition that OCS exploration contributes to national security interests. The DOE stated that "[p]roducible oil and gas reserves in the Atlantic Outer Continental Shelf (OCS) can help this country replace imports, thereby meeting both energy and economic security and national defense goals. However, when environmentally benign exploitation such as that proposed by Mobil is blocked, this option is lost." DOE Comments. The DOE continues:

Neither our domestic nor foreign policy should be subject to the availability of imported oil especially when the opportunity exists to develop domestic natural gas resources that can replace important [sic] oil. Consequently, we believe that this project is necessary in the interest of national security.

Id. The NSC stated that it is in the national security interest to increase domestic oil production where such production is economic and consistent with environmental procedures.<sup>65</sup> The Department of the Treasury recognizes significant benefits to national security from domestic energy resources.<sup>66</sup> The DOI states that there is a direct relationship between national security and the success of the Federal program to develop offshore energy resources. DOI Comments. I find that none of these comments specifically address how these interests would be "significantly impaired" if Mobil's proposed POE is not allowed to proceed "as proposed."

MMS commented, however, that

Denial of a Department of Commerce override of the State's consistency determination could well, in the extant case, deprive this Nation of a secure and environmentally sound source of as much as 5 tcf of natural gas from the Manteo Prospect. This amount of gas is the energy equivalent of approximately 1 billion bbl of crude oil and represents a major step in the direction of domestic energy security. As the recent events in the Persian Gulf clearly indicate, this Nation's domestic energy security, or rather the

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<sup>65</sup> Memorandum from William F. Sittmann, Executive Secretary, National Security Council, to Thomas Collamore, Chief of Staff and Assistant Secretary, Department of Commerce, April 3, 1991.

<sup>66</sup> Letter from Maynard S. Comiez, Director, Office of Policy Analysis, Department of the Treasury, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, April 8, 1991.

present lack thereof, significantly compromises national defense and national security.

MMS Comments at 42. I decline to give much weight to MMS' comment on significant impairment, however, because its comment appears to be based on speculation that denial of Mobil's POE could well foreclose any possibility of future oil and gas exploration of the Manteo Prospect. Denial of Mobil's proposed one-well exploration plan for Manteo Area Block 467 would not preclude the submission of other plans of exploration for the Manteo Prospect, an area which includes approximately 21 lease blocks.

#### Conclusion for Ground II

I find that the comments of the Federal agencies fail to persuade me that a national defense or other national security interest would be significantly impaired if Mobil were not permitted to explore Manteo Area Block 467 as proposed. Therefore, based on the record before me, I now find that the requirements for Ground II have not been met.

#### V. CONCLUSION AND SECRETARIAL DECISION

I have found that Mobil's Proposed POE is neither consistent with the objectives of the CZMA nor necessary in the interests of national security. Accordingly, I decline to override North Carolina's objection to Mobil's proposed POE.

  
for Ronald H. Brown  
Secretary of Commerce

September 2, 1994