DECISION AND FINDINGS
IN THE CONSISTENCY APPEAL
OF
UNION EXPLORATION PARTNERS, LTD
WITH TEXACO INC.
FROM AN OBJECTION BY THE
STATE OF FLORIDA

January 7, 1993

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Synopsis of Decision

On February 1, 1984, Union Exploration Partners, LTD. (Union) with Texaco Inc., after a successful bid in Outer Continental Shelf (OCS) Lease Sale 79, acquired in equal one-half shares two oil and gas leases (OCS-G 6491 and 6492) in the Gulf of Mexico. Texaco subsequently assigned one-half interest in its lease shares to Nippon Southern U.S. Oil Company, LTD. Texaco and Nippon each now own a 25 percent interest in the lease blocks. The leases commonly referred to as Pulley Ridge Area Blocks 629 and 630, are located south of 26° north latitude approximately 170 miles southwest of Tampa Bay, Florida, 135 miles southwest of Fort Myers, Florida and about 44 miles northwest of the Dry Tortugas, Florida in the Eastern Gulf of Mexico OCS Planning Area.

Union submitted its proposed Plan of Exploration (POE) for the leases for approval to the Minerals Management Service (MMS) of the Department of Interior (DOI) together with a certification that the proposed POE was consistent with Florida's Federally-approved Coastal Management Program (CMP). Union proposes to drill up to three exploratory wells to evaluate the hydrocarbon potential of Blocks 629 and 630. The MMS approved Union's proposed POE subject to review by the State of Florida (State) of Union's consistency certification. The State subsequently objected to Union's consistency certification on the grounds that the area south of 26° north latitude is a unique ecosystem and frontier area which supports a varied economy in south Florida and that the data submitted by Union in support of its POE did not adequately evaluate the environmental and socioeconomic effects of the POE and subsequently demonstrate that the POE is consistent with various provisions of Florida's CMP which mandate the preservation and protection of the natural resources of the area.

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

Union filed a Notice of Appeal, Statement in Support of an Override, and exhibits with the Secretary pursuant to section 307(c)(3)(A) and (B) of the CZMA, 16 U.S.C. § 1456(c)(3)(A) and (B) and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. Union appealed pursuant to Ground

I and II. Additionally, several threshold issues were raised during the course of the appeal. Union contended that the State failed to properly follow the Federal regulatory requirements for formulation of a consistency objection on the grounds of insufficient information and that therefore the State's objection is defective. Further, Union argued that the State's objection was tainted by its alleged anti-drilling bias and that the State should not be allowed to block the exploration for mineral resources in the eastern Gulf of Mexico, in light of the numerous concessions made by Union and the Federal Government to address the State's concerns. The State raised the additional issue of burden of proof and contended that Union, as the appellant, bears the burden of demonstrating by clear and convincing evidence that the grounds for an override are met.

Upon consideration of the information submitted by Union, the State, and interested Federal agencies as well as other information in the administrative record of the appeal, I made a number of findings. With regard to the threshold issues, I found that the State's objection was not defective and that the State's alleged bias regarding oil and gas activities and the concessions made by Union and other federal agencies to the State were irrelevant to the grounds upon which I must base my decision in this appeal. Further, I found that my decision must be based upon a preponderance of the evidence in the record of decision.

My findings on Ground I and II are:

Ground I

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

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

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

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

Ground II

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

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

DECISION

I. Factual Background

On February 1, 1984, Union Exploration Partners, LTD. (Union) with Texaco Inc., after a successful bid in Outer Continental Shelf (OCS) Lease Sale 79 acquired in equal one-half shares two oil and gas leases (OCS-G 6491 and 6492) in the Gulf of Mexico.[1] Union's Statement in Support of a Secretarial Override (Union's Brief) at 2. The leases, commonly referred to as Pulley Ridge Area Blocks 629 and 630, are located south 26° north latitude approximately 170 miles southwest of Tampa Bay, Florida, 135 miles southwest of Fort Myers, Florida and about 44 miles northwest of the Dry Tortugas, Florida in the Eastern Gulf of Mexico OCS Planning Area. See Figure I; Letter from J. Rogers Pearcy, Regional Director, Minerals Management Service, U.S. Department of the Interior to Katherine Pease, Assistant General Counsel, for the National Oceanic and Atmospheric Administration (NOAA), dated April 28, 1989 (Pearcy Letter). The leases were due to expire on December 22, 1992. Letter from J. M. Hughes, Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior to Dr. William E. Evans, then Under Secretary of Commerce for Oceans and Atmosphere, U.S. Department of Commerce, dated June 12, 1989. (MMS Letter/Enclosure). Union submitted its proposed Plan of Exploration (POE) to the Minerals Management Service (MMS) of the Department of the Interior (Interior) for approval on February 18, 1988. By letter dated April 8, 1988, MMS determined that Union's POE and accompanying Environmental Report (ER) were complete. Union's Statement in Support of Secretarial Override, Exhibit #3. (Union's Exhibit). As part of that application, Union certified that its POE was consistent with Florida's Coastal Management Program (CMP). Pearcy Letter. Over the next several months Union made several amendments and modifications to the POE in response to MMS concerns. On June 3, 1988, MMS approved Union's POE and accompanying ER subject to the State of Florida's review of Union's consistency certification. MMS Letter/Enclosure.

Union proposes to drill up to three exploratory wells to evaluate the hydrocarbon potential of Blocks 629 and 630. Union's Exhibit #7. Union proposes to drill one location first and, based upon the results of that drilling, make a decision regarding drilling at two additional locations. Id. The proposed drilling is scheduled to take a maximum of 150 days for each well, or a total of 450 days for the three proposed wells. Id. Union proposes to drill the locations as straight holes utilizing a jack-up rig designed to drill into up to 30 feet of water. Id. Pursuant to

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[1] Texaco subsequently assigned one-half interest in its lease shares to Nippon Southern U.S. Oil Company, LTD. Texaco and Nippon each now own a 25% interest in the lease blocks. Union's Statement in Support of Secretarial Override (Union's Brief) at 2.

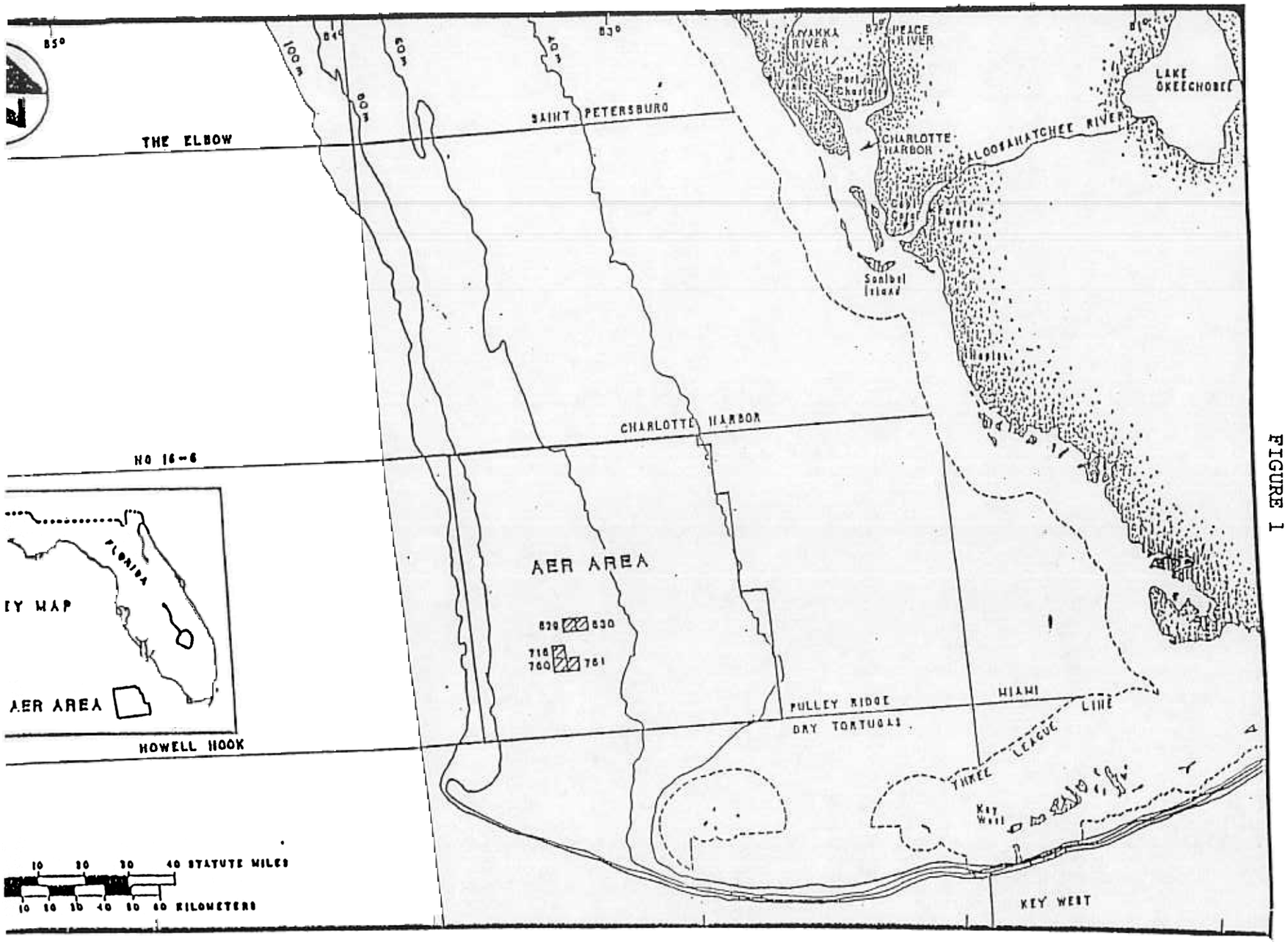

FIGURE 1

FIGURE 2.1. GEOGRAPHIC LOCATION OF PULLEY RIDGE AREA BLOCKS 820, 830, 716, 760, AND 761 (ADAPTED FROM: USDOI, MMS,

MMS regulations the rig would be equipped with appropriate safety and pollution prevention features. Id. Union would support the drilling operation with various support facilities in Fort Myers, Florida. Id. Union's Exhibit #2. On April 14, 1988, the Florida Department of Environmental Regulation (FDER)[2] on behalf of the State of Florida began its review of Union's consistency certification. Union's POE was the first plan proposing activities south of 26° north latitude to undergo consistency review by FDER. MMS Letter/Enclosure. On August 16, 1988, pursuant to 15 C.F.R. § 930.79(a) the FDER notified MMS that it could neither concur nor object to Union's consistency certification. The FDER indicated that it needed the results of two studies by two task forces jointly created by the State of Florida and the Department of the Interior to complete its review. Additionally, FDER requested specific information regarding the use of Fort Myers as the base for storing on-shore oil spill containment and clean up equipment. State's Response Brief Exhibit (State's Exhibit) #10. On September 8, 1988, Union supplied the State with the specific information requested with regards to the onshore support facility. Union Exhibit #11. On November 22, 1988, the FDER objected to Union's consistency certification for the proposed POE. State's Exhibit #4.

The State objected to Union's proposed POE on the grounds that the area south of 26° north latitude is a unique ecosystem and frontier area consisting of mangroves, seagrasses and marshes and offshore coral reefs found nowhere else in the world which supports a varied economy in south Florida, and that the biological, oceanographic, and socioeconomic information and data submitted by Union in support of its POE did not adequately evaluate the environmental and socioeconomic effects of activities under the POE and subsequently demonstrate that the proposed POE is consistent with various provisions of Florida's CMP which mandate the preservation and protection of the above noted resources.[3]

The State specifically asserted that the information did not adequately evaluate the effects of a potential oil spill from the activities under the POE on the unique ecosystem.[4] Accordingly,

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[2] The Florida Department of Environmental Regulation (FDER) serves as Florida's lead coastal zone management agency pursuant to section 306(c)(5) of the Coastal Zone Management Act of 1972, as amended, (CZMA) or (the Act), 16 U.S.C. §§ 1451 et seq., and 15 C.F.R. § 923.47.

[3] FDER specifically contends that Union's proposed POE is inconsistent with the following provisions of Florida's Coastal Management Program: Chapters 403.21(1), (2), (5), & (6); 403.062; 403.161; 376.021(1), (2), (3) and (5); 376.041; 376.051; 288.03 (3) and (4); 288.34(1)(b), Florida Statutes. Union's Statement in Support of a Secretarial Override Exhibit (Union's Exhibit) #4.

[4] The State originally contended in its objection letter that, at minimum, the results of several studies, including the reports of two task forces jointly created by the Governor of Florida and the Secretary of the Interior to review the effects of oil and gas activities in the area south of 26° north latitude, must be reviewed before a specific evaluation of the environmental and socioeconomic effects of Union's proposed POE can adequately be undertaken. During the course of this appeal the joint State/ Department of Interior task

the State found Union's POE inconsistent with its CMP. In addition to explaining the basis of its objection, the State also notified Union of its right to appeal the State's decision to the Department of Commerce (Department) as provided under section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA or the Act) and 15 C.F.R. Part 930, Subpart H. Id. Pursuant to section 307(c)(3)(B) of the CZMA and 15 C.F.R. § 930.131, the State's consistency objection precludes MMS from issuing the permits necessary to conduct the activities under Union's POE unless the Secretary of Commerce (Secretary) overrides the State's objection by finding that the activity is either consistent with the objectives or purposes of the CZMA or otherwise necessary in the interests of national security.

II. Appeal to the Secretary

On December 21, 1988, in accordance with section 307(c)(3)(B) of the CZMA and 15 C.F.R. Part 930, Subpart H, counsel for Union filed with the Department of Commerce a Notice of Appeal from the State's objection to Union's consistency certification for the proposed POE. Letter from Brendan M. Dixon, Assistant Counsel, Unocal Corporation to Honorable C. William Verity, then Secretary of Commerce, dated December 21, 1988. Union's Notice of Appeal requested a 30-day extension from issuance of the briefing schedule to submit its full supporting statement, data and other information. That request was granted. Letter from then Under Secretary of Commerce for Oceans and Atmosphere, William E. Evans to Brendan M. Dixon, Esquire, Unocal Corporation, dated March 9, 1989.

Union timely filed a brief in support of its appeal with the Department of Commerce on April 19, 1989. On May 11, 1989, the Under Secretary of Commerce for Oceans and Atmosphere, granted the State's request for an extension of time to respond to Union's brief. Letter from William E. Evans, then Under Secretary of Commerce for Oceans and Atmosphere, to Deborah Hardin Wagner, Esquire, May 24, 1989. The State's brief was timely filed with the Department on July 6, 1989.

When Union perfected the appeal by filing a brief and supporting information and data pursuant to 15 C.F.R. § 930.125, public notices were published in the Federal Register, 54 Fed. Reg. 12,942 (1989), (request for comments), and in two local newspapers. (The Key West Citizen, May 3, 10 and 17, 1989; Fort Myers News Press, Apr. 29, 30 and May 1, 1989). Several public comments were received and have been incorporated, as part of the record in this appeal. Those comments have been considered only in so far as they are relevant to the statutory grounds for deciding consistency appeals. On April 28, 1989, the Department

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force studies were completed and admitted into the record of this appeal.

solicited the views of nine Federal agencies,[5] and the National Security Council (NSC) regarding the four regulatory criteria that Union's proposed POE must meet for it to be found consistent with the directives and purposes of the CZMA. These criteria are set forth at 15 C.F.R. § 930.121. All of the agencies responded with comments. The NSC did not respond. Additionally, comments were received from the South Atlantic Fishery Management Council. Letter from Elaine W. Knight, Chairman to Mr. Robert A. Mosbacher, then Secretary of Commerce dated July 17, 1989.

On May 24, 1989, pursuant to 15 C.F.R. § 930.129 the State of Florida requested that a public hearing be held regarding the issues raised in this appeal and in the companion appeal of Mobil Exploring and Producing Company (Mobil).[6] Neither Union nor Mobil formally responded to that request. On June 2, 1989, Timothy R.E. Keeney, then General Counsel for NOAA, pursuant to authority previously delegated from the Secretary of Commerce, granted the State's request. Letter from Timothy R.E. Keeney, then General Counsel to Brendan M. Dixon, Esquire, June 2, 1989. A Notice of Public Hearing was published in a local newspaper, (The Key West Citizen, Sept. 19 and 26, 1989) and a joint public hearing was held on September 29, 1989, in Key West, Florida, addressing the issues raised in both appeals. Petitions, resolutions, and oral and written testimony were received from Union, Mobil, Congressman Dante B. Fascell, former Governor Martinez, the local public officials, the public and various interest groups. The record closed for public comments on October 15, 1989. On October 12 and 13, 1989 Union, filed supplemental information to its appeal. Letter from Brendan M. Dixon, Esquire, to Kirsten Erickson, Attorney-Adviser, NOAA, Oct. 13, 1989; Craig Wyman, Esquire, to Kirsten Erickson and Susan Auer, Attorney-Advisers, NOAA, Oct. 12, 1989. Additionally, at the request of the State two recently completed joint task force reports prepared by the State of Florida and the U.S. Department of the Interior, Minerals Management Service entitled, "Oil Spill Risk Assessment Task Force Report" and "Southwest Florida OCS Drilling Impact Assessment Task Force Report" were admitted into the record. See footnote #4, supra. Further, by telephone conference call on November 20, 1989, Mobil, Union and the State mutually agreed that the Secretary should delay the establishment of a final briefing schedule until after release of the report from the President's Outer Continental Shelf Leasing and

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[5] These agencies were the Department of State, the Environmental Protection Agency, the Department of the Interior including the Fish and Wildlife Service and the Minerals Management Service, the National Marine Fisheries Service, the Coast Guard, the Department of Transportation, the Department of Defense, the Department of Energy, the Department of Treasury, and the Federal Energy Regulatory Commission.

[6] Mobil Exploration & Producing U.S., Inc. has filed a notice of appeal from the FDER's objection to its proposed POE for lease OCS-G6520 or Pulley Ridge Block 799. MMS Letter/Enclosure. Pulley Ridge Blocks 629 and 630 are approximately 19 miles northeast of Pulley Ridge Block 799. Id.

Development Task Force[7] (Task Force) so that it could be included in the record for this appeal. The parties also agreed that if the Task Force report was not released by the end of January 1990, the issue of establishing a final briefing schedule in the absence of the Task Force report would be revisited. Letters from Gray Castle, then Deputy Under Secretary of Commerce for Oceans and Atmosphere, to Deborah Tucker and Craig Wyman, Esquire, dated April 6, 1990.

In the interim, the State requested that the Secretary admit into the record the report by the National Research Council for the task force entitled, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" National Research Council Report (NRC Report). Union did not object to that request and the report was admitted into the record. Id.

On April 6, 1990, because the report of the Presidential task force had not yet been released and there was no indication that the report would be released in the near future, the Secretary established a final briefing schedule over the State's objection. Id. Letter from Gregory C. Smith, Assistant General Counsel, Office of the Governor of Florida, to William E. Evans, then Under Secretary of Commerce for Oceans and Atmosphere, March 15, 1990. On May 21, 1990, the State requested a stay of that briefing schedule on the grounds that in the near future the President might release the report of the Presidential task force and render a decision banning oil and gas drilling and exploration in the area surrounding Union's proposed POE. Letter from William A. Buzzett, Assistant General Counsel, Office of the Governor to Dr. John A. Knauss, Under Secretary of Commerce for Oceans and Atmosphere, May 21, 1990. On May 22, 1990, Union formally opposed that stay. Letter from Craig Wyman, Esquire, to Dr. John A. Knauss, Under Secretary of Commerce for Oceans and Atmosphere, May 22, 1990. The General Counsel denied that request by letters to the parties on June 7, 1990. Letters from Thomas A. Campbell, General Counsel, NOAA (by James W. Brennan, Deputy General Counsel, NOAA,) to Craig Wyman, Esquire and

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[7] On February 9, 1989, in his budget address to Congress, President Bush announced the establishment of a cabinet level Task Force to review environmental concerns in three proposed Outer Continental Shelf (OCS) oil and gas lease sales that were scheduled for fiscal year 1990. Those sales were Sale 91, Northern California, Sale 95, Southern California, and Sale 116 Part II, eastern Gulf of Mexico. The leases which are the subject of this appeal are located within the area of Sale 116, Part II. Members of the Task Force included: the Secretary of Interior; the Secretary of Energy; the Administrator of the National Oceanic and Atmospheric Administration; the Director of the Office of Management and Budget; and the Administrator of the Environmental Protection Agency. Additionally, the President requested that the National Resource Council provide the Task Force with a technical review of information pertaining to environmental concerns and petroleum resources in the described areas. 54 Fed. Reg. 33150-33165 (1989).

William A. Buzzett, Esquire, June 7, 1990.[8] Both parties' final briefs and supplemental final briefs were timely filed on May 25, 1990, and June 8, 1990, respectively.

On June 26, 1990, the President, in response to the recommendations of the task force, imposed a moratorium on oil and gas leasing and development in Lease Sale Area 116, Part II, off the coast of Florida. In response to the Presidential moratorium, the issuance of a stay of the decision in this appeal was again considered but rejected. Letter from Margo E. Jackson, Assistant General Counsel, NOAA, to David Maloney, Esquire, Office of the Governor and Brendan M. Dixon, Esquire Union Corporation, September 10, 1990.

Threshold Issues

Union raises three threshold issues in its opening brief. First, Union contends that the State failed to follow properly the federal regulatory requirements for formulation of a consistency objection on the grounds of insufficient information and that, therefore, the State's objection is defective. Second, Union submits that the State's objection is tainted by Florida's announced position against marine drilling in South Florida under any circumstances. Third, Union argues that the State should not be allowed to block the exploration for mineral resources in the eastern Gulf of Mexico, in light of the numerous concessions made by Union and the Federal government to address the State's concerns. Additionally, prior to evaluating the grounds for Union's appeal, I will address Union's burden of proof. Each of these issues is addressed below.

A. Compliance with the CZMA and Its Regulations

Commerce regulations at 15 C.F.R. § 930, Subpart E--"Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities" set forth the procedural 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.

Union first argues that the State's objection fails to comply with the requirements of 15 C.F.R. §§ 930.64(d) and 930.79(c). Section 930.79(c) of 15 C.F.R. incorporates by reference the general requirements of § 930.64(d) and specifically provides that a state may object to federal license or permit activities

[8] The denial stated that the State could request reconsideration in the event the President's decision or the Presidential Task Force Report was released prior to the decision in this appeal. Although the President announced his decision on June 26, 1990, regarding oil and gas activities in the subject area, the Report has never been publicly released.

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. Union contends that it supplied all the specific information requested by the State to perform its consistency review and that the State cannot now object to Union's proposed POE based on insufficient information because the State never specifically requested the information which it now requests on appeal in violation of the procedural requirements of 15 C.F.R §§ 930.64(d) and 930.79(c).

The State contends that Union has mischaracterized its objection. State's Response Brief at 7. In August of 1989 the State did request from Union specific information regarding the onshore support facility for Union's proposed POE which the State deemed necessary to make a consistency determination. Union subsequently complied and provided the State with the requested information. State's Exhibit #10; Union's Exhibit #11. However, the State's subsequent November, 1989, objection was not based on the grounds that it was unable to make a consistency determination due to a lack of information. Rather, the State's objection is based on its review of the existing biological, ecological, oceanographic, and socioeconomic information and its determination that, based upon this information, Union's proposed POE is inconsistent with the State's coastal management program. Although the State discussed in its objection letter several proposed and ongoing studies that may yield the information which the State views as necessary to find Union's proposed POE consistent with its CMP, the lack of these studies did not prevent the State from making a consistency determination based on the information it had. Consequently, the dictates of 15 C.F.R. §§ 930.64(d) and 930.79(c) which are directed at providing the State with a means to object if it is unable to make a consistency determination due to an applicant's failure to provide available information are not applicable.[9] Decision and Findings of the Secretary of Commerce in the Consistency Appeal of Long Island Lighting Company from an objection by the New York Department of State, February 26, 1988, at 5. Accordingly, the State was under no obligation to request that Union provide it with the noted studies prior to issuing its objection.[10]

B. **Bias**

Union next argues that in evaluating the State's objection that I must consider an alleged marked anti-drilling bias that serves as a precursor to the State's concerns. As discussed in previous

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[9] These regulations also foster the resolution of disputes and decrease the necessity of appeals by assuring that all parties have access to the available information they need to resolve disputes. See 43 Fed. Reg. 10514 (1978).

[10] Union makes a number of other arguments contending that the State's objection did not adhere to the requirements of the regulations. Those arguments are based upon Union's mischaracterization of the State's objection. In light of my previous ruling on this issue I do not address those arguments.

decisions, I do not consider whether a state complied with the State law requirements of its CMP in issuing its objection. See, e.g., Decision and Findings of the Secretary of Commerce in the Consistency Appeal of the Korea Drilling Company, Ltd. (Korea Drilling Decision), January 19, 1989, at 3. Rather, as previously stated, my review is limited to determining whether a state in issuing its objection complied with the CZMA and Commerce's implementing regulations and whether an override of the State's objection is warranted because a proposed project "is consistent with the objectives or purposes of the CZMA" or "necessary in the interest of national security" based upon the criteria defined at 15 C.F.R. §§ 930.121 and 930.122. See, e.g., Decision and Findings of the Secretary of Commerce in the Consistency Appeal of Shickrey Anton (Anton Decision), May 21, 1991, at 3. Consequently, whether the State is biased against oil and gas activities in the Gulf of Mexico and along the south Florida coast in general, is not a determinative factor in my decision in this appeal. The criteria for an override with regard to this project are provided for solely in the CZMA and its implementing regulations.

C. Accommodations

Union finally contends that the State has received extensive accommodations from Congress, the Department of the Interior, and the oil industry to address its concerns about oil and gas activities in south Florida in the form of moratoria on oil and gas drilling, production of environmental studies and the voluntary re-routing of oil tanker traffic to avoid sensitive environmental areas off the south Florida coast. Again, whether or not Congress, the Department of the Interior, and the oil industry have made accommodations to address the State's concerns regarding oil and gas activities is irrelevant to the criteria upon which I must base my decision in this appeal.

D. Standard of Proof

The State contends that Union's burden of proof is to demonstrate "by clear and convincing evidence" that the grounds for an override of the State's consistency objection are met.[11] I have not previously defined the degree of evidence necessary for an appellant to meet its burden of proof. Prior to resolving this issue it is important to distinguish the term standard of proof from the terms scope of and standard of review. As in judicial proceedings, these concepts as applied in administrative law are separate matters. Jaffe, Administrative Law: Burden of Proof and Scope of Review, 79 Harv. L. Rev. 914 (1966). Standard of proof refers to the "measure of belief which legally must exist

[11] Union does not contest that it bears the burden of proof on appeal. Further, the Secretary has previously held that the Appellant bears the burden of proof on the appeal. See Korea Drilling Decision, at 22.

in the mind of the trier of fact in order to sustain a finding." Whitney v. Securities and Exchange Commission, 604 F.2d 784 (D.C. Cir. 1979). The scope of review marks the limits of a reviewing body's "authority to set aside factual findings and review is customarily limited to ascertaining whether there is enough evidence to support the findings." Id.

I addressed this issue with regards to consistency appeals, in the appeal of Chevron, U.S.A. Inc., from an objection by the California Coastal Commission. See Decision and Findings of the Secretary of Commerce in the Consistency Appeal of Chevron, U.S.A. Inc., (Chevron Decision), October 29, 1990. In that decision I noted that the standard of proof in a consistency appeal must be distinguished from the standard of review or scope of review which will be applied to my decision by a reviewing court. Id. at 5. I noted that "the term consistency appeal is somewhat of a misnomer." Id. I stated that unlike other appeal procedures, the consistency appeals process is not a review of the correctness of the underlying rationale of a state's objection or an administrative agency's initial decision but rather the consistency appeals process is this agency's first look at the evidence presented by the parties with regards to whether the grounds for secretarial override of a state objection have been met. Id. Consequently, in deciding a consistency appeal I sit not as a reviewing body but rather as the initial administrative finder of fact and law. Accordingly, in deciding Chevron, I declined to apply the substantial evidence test which is the standard or scope of review applied by a reviewing court to an agency's factual findings. Id. Rather, in the Chevron Decision I held that the decision maker in CZMA consistency appeals shall independently determine, based on all the information submitted during the process, whether the Appellant has met its burden of establishing the grounds for Secretarial override of the state's objection. In that decision, however, I did not define the degree of evidence which the Appellant must produce in order to meet that burden.[12]

The traditional standard of proof in a civil or administrative proceeding is the preponderance of the evidence. Swartz, Administrative Law § 7.9 (2d ed. 1984); Koch, Administrative Law and Practice § 6.45 (1985). Courts have felt at liberty to impose the stricter "clear and convincing" standard in cases involving allegations of fraud or some other quasi-wrong doing by a defendant, see e.g., Collins Security Corporation v. Securities and Exchange Commission, 562 F.2d at 820 (D.C. Cir. 1977) or cases involving the protection of particularly important private interests such as personal liberties and security, see e.g.,

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[12] The only guidance on this issue provided in the regulations is that, "[i]n reviewing an appeal, the Secretary shall find that a proposed Federal license or permit activity . . . is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion". 15 C.F.R. § 930.130. (Emphasis added.)

Woodby v. Immigration and Naturalization Service, 385 U.S. 276 (1966) (deportation); Chaunt v. United States, 364 U.S. 350, 353 (1960) (denaturalization). See Addington v. Texas, 441 U.S. 418 (1979) (involving commitment to a mental hospital); 9 Wigmore, Evidence § 2498 (3rd ed. 1940) (adultery, lost wills, illegitimacy). In light of the fact that consistency appeals do not address the review of fraudulent activities by a defendant or the protection of particularly important individual liberty interests, I find no reason to depart from the traditional preponderance of evidence standard of proof and I shall apply that standard in this appeal.

III. Grounds for Overriding a State's Objection

The Department's implementing regulations at 15 C.F.R. § 930.120 provide that the Secretary may find "that a Federal license or permit activity, including those described in detail in an OCS plan . . . which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act [Ground I], or is necessary in the interest of national security [Ground II]." See also 15 C.F.R. § 930.130(a). Union 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 a state's objection to a proposed project is that the activity is consistent with the objectives or purposes of the Act. To so find, I must determine that the proposed activity satisfies all four of the elements specified in 15 C.F.R. § 930.121.

1. First Element

The first of the four elements is that "[t]he activity furthers one or more of the competing national objectives or purposes contained in sections 302 or 303 of the CZMA." 15 C.F.R. § 930.121(a). 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.

The State, however, requests that I reconsider this position. The State contends that oil and gas activities, rather than being a per se objective of the CZMA, are an objective of the CZMA only if they are performed in a manner protective of the natural resources of the coastal zone. This same argument was addressed

and rejected in the Chevron Decision. Id. In that decision the then Deputy Secretary of Commerce held that an analysis of the environmental effects of an appellant's proposed activity is more appropriately considered under Element II and that Element I requires no such analysis. The Deputy Secretary explained that to hold otherwise would unduly expand the regulatory criteria for Element I and held that Element I requires only that "[t]he activity further one or more of the competing national objectives or purposes contained in section 302 or 303 of the Act." (Emphasis added).[13] Exploration, development, and production of offshore oil and gas resources are among the competing objectives of the CZMA. The record demonstrates that Union's proposed activity furthers these objectives. Consequently, I find that Union's proposed POE satisfies the first element of Ground I.

2. Second Element

The second element is that the proposed activity, when performed separately, or when its cumulative effects are considered, will not "cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest." 15 C.F.R. § 930.121(b).

To find this element satisfied, I must identity: 1) the adverse effects of the objected-to activity on the natural resources of the coastal zone, 2) the cumulative adverse impact on the natural resources of the coastal zone of the objected-to activity being performed in combination with other activities affecting the coastal zone, and 3) the proposed activity's contribution to the national interest. I must then determine whether the adverse effects on the natural resources of the coastal zone are substantial enough to outweigh the activity's contribution to the national interest. Decision and Findings of the Secretary of Commerce in the Consistency Appeal of Texaco, Inc. (Texaco Decision), May 19, 1989, at 6. Further, normally I weigh both the adverse effects that may result from the normal conduct of the activity either by itself or in combination with other activities affecting the coastal zone and the adverse effects that result from unplanned or accidental events arising from the activity such as a vessel collision or an oil spill.

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

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[13] It should be noted that the CZMA was recently reauthorized and these sections, among others, were amended. Coastal Zone Act Reauthorization amendments of 1990, Pub. L. No. 508, §§ 6203, 104 Stat. 138-299 (1990). My decision in this appeal and with regards to this element does not address the requirements of the amended CZMA.

Union notes that its leases are located on Pulley Ridge Blocks 629 and 630, off the southwest coast of Florida, in the area south of 26° north latitude. Union does not dispute that parts of this area, including the Florida Keys and the Everglades, consist of a rich, varied, and unique marine environment and habitat which includes mangroves, coral reefs and seagrasses, and which are protected by approximately 16 national and State wildlife refuges. Union's Final Brief at 24. Nor does Union dispute that many of these unique habitats are within the Florida coastal zone.[14] However, Union asserts that there are no true coral reefs within 48 miles of Pulley Ridge Blocks 629 and 630; no mangrove communities within approximately 86 miles; and no seagrass beds within approximately 52 miles of the blocks.[15] See Figure 2. Consequently, Union argues that the potential effects of Union's proposed exploratory drilling should not include effects on these resources. However, as my discussion of this element indicates, infra, these resources could suffer adverse effects if an accidental oil spill occurs from Union's proposed exploratory drilling. Accordingly, the effects of such a spill on these resources are relevant to an evaluation of the potential adverse effects of Union's proposed activity.

Union also contends that the State misrepresents the relevant activity to be evaluated under this element. The State argues that in addition to evaluating the adverse effects associated with exploration, the adverse effects associated with the entire development and production process must be evaluated. In opposition to the State, Union argues that the only activity currently before the Secretary for review is Union's proposed exploratory drilling. I find that the record before me is insufficient to review any development or production plans associated with Union's proposed exploratory drilling project. First, there is no specific information in the record regarding Union's proposed development and production at the drilling site. Second, a detailed analysis of development activities is dependant upon information concerning the amount and location of the resource to be developed. This information generally can not be generated until after the completion of exploratory drilling. MMS Letter/Enclosure at 14-15; NRC Report at 42. Consequently, I find that in evaluating the potential adverse effects of Union's proposed project, the relevant activity for review is Union's proposed exploratory drilling activity.

Finally, as discussed, the State contends, and Union does not dispute, the area adjacent to Florida's southwest coastline south of 26° north latitude is a unique ecosystem consisting of

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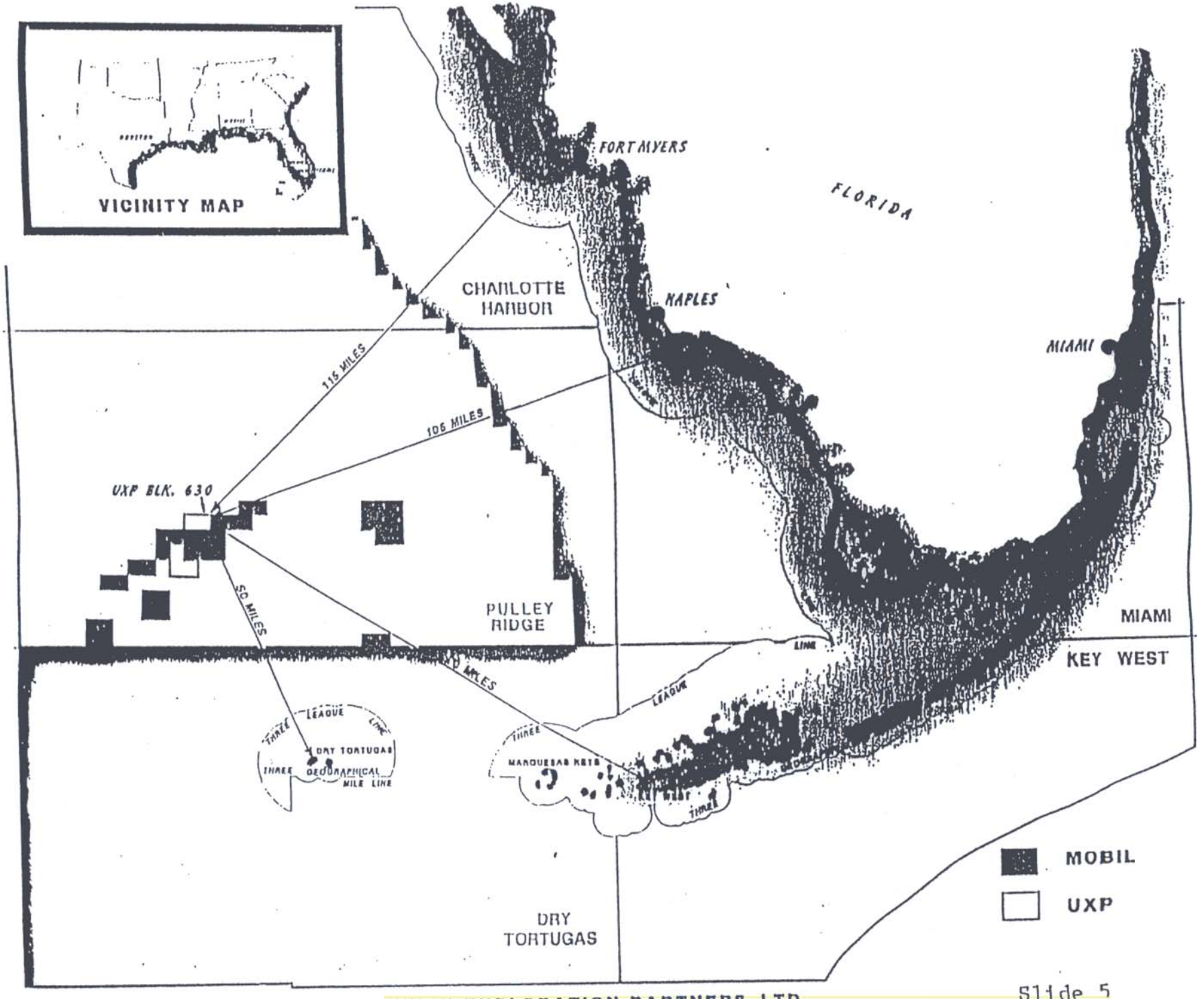
[14] Florida's coastal zone on the Gulf side extends to nine nautical miles.

[15] My review of the evidence presented by the State indicates that these figures are approximately the correct mileage.

FIGURE 2



UNION EXPLORATION PARTNERS, LTD.

Slide 5

mangroves, seagrasses, marshes, coral reefs and live bottom habitat. The State identifies the adverse effects of Union's proposed POE as the potential detrimental effects on the ecosystem resulting from an accidental oil spill during Union's proposed exploratory drilling, the direct physical impact on benthic habitat at the proposed drill sites during the routine operation of the activity due to the deposition of drilling muds, and the corresponding destruction of the critical fisheries habitat associated with this unique ecosystem resulting from both routine deposition of drilling muds and accidental oil spills. In opposition, Union contends that its proposed activities will not adversely effect the natural resources of the coastal zone, either as a result of an oil spill or through the normal operation of the activity.

The debate regarding the potential adverse effects of oil and gas activities on the unique natural resources in the area south of 26° north latitude off the coast of southwest Florida has a lengthy history which antedates this appeal. Consequently, prior to reviewing the parties' arguments regarding this issue I will review that history.

The leases which are the subject of this appeal were first offered for lease by the Department of the Interior in Lease Sale 79 in 1984. The State, among others, was a vigorous opponent of that sale. In response to that opposition Congress enacted a moratorium on drilling in waters between 25°-26° north latitude until MMS collected three years of biological data. (MMS Report). Union Exhibit F, Appendix B; State's Exhibit P. Further, in response to the moratorium, MMS issued a notice of suspension stipulating that no applications for exploratory drilling permits in the area would be approved prior to the completion of the required environmental studies. Id. During the interim period, and based upon a proposal by the State, Union agreed to produce two reports known as an Area Environmental Report (AER) and a Site Specific Environmental Report (SER) in hopes of addressing the State's concerns regarding the potential adverse effects of its proposed exploratory drilling. These reports were subsequently submitted as part of Union's POE. Union Exhibit F; Appendix B. In April, 1987 the final version of the MMS report was released.[16] Id. Upon issuance of this

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[16] A listing of the MMS studies in the report include:

1. Southeast Florida Shelf Regional Biological Communities Survey, Year 3 Final Report. (Vol. I: Executive Summary; Vol. II: Technical Report; and Vol. III: Appendices.)

2. Southeast Florida Shelf Benthic communities Study, Year 3. Annual Report. (Vol. I: Executive Summary; Vol. II: Technical Discussion; and Vol. III: Appendices.)

3. Southwest Florida Shelf Ecosystems Study. (Vol. I: Executive Summary and Vol. II: Data Synthesis Report.)

4. Gulf of Mexico Physical Oceanography Program Final Report: Year 4. (Vol. I: Executive

report, MMS lifted its suspension notice and began to accept applications for exploratory drilling permits in the lease sale area of which Union's was the first.

To evaluate the MMS Report, Robert Martinez, then Governor of the State of Florida, assembled a group of 30 marine scientists from Florida and throughout the southeastern United States. Based upon the conclusions of that panel, and in spite of the information provided in the AER and SER produced by Union, the State continued to object to further leasing in the area and any proposed drilling.

In March, 1988, recognizing the sensitive nature of the natural resources off the southwest Florida coast, the Secretary of the Interior agreed to delay leasing of the area south of 26° north latitude and east of 86° west latitude in the proposed Eastern Gulf of Mexico Sale 116 until May 1989. State's Exhibit L. Lease Sale Area 116, Part II, includes the sites of the two leases in this appeal. Additionally, recognizing that several plans of exploration, including Union's, were pending in this area, and in response to the State's continued concerns about the potential adverse effects of oil and gas drilling in this area, Interior and the State entered into a cooperative agreement under the provisions of section 1345(e) of the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., (1985). Pursuant to that agreement a task force of scientific advisors was established to provide the Secretary and Governor, with among other things "an estimate of the risk to and effects on the environmental resources of the South Florida area" and "to estimate the likelihood of an oil spill during exploration activities". Id. As a result of that effort, the "Southwest Florida OCS Drilling Impact Assessment Task Force Report" (Drilling Impact Report) and the "Oil Spill Risk Assessment Task Force Report" (Oil Spill Report) were released in the fall of 1989.[17]

In his February 9, 1989, budget address to Congress, President Bush announced the postponement of three OCS lease sales, including Lease Sale Area 116, Part II, for the eastern Gulf of Mexico and the establishment of a cabinet level task force to review environmental concerns with regard to those lease sale areas, 54 Fed. Reg. 154 (1989). Additionally, the President requested that the National Research Council (NRC) provide the task force with a review of the "adequacy of the scientific and technical information base for decision making for the three OCS

Summary and Vol. II: Technical Report.)

5. Physical Oceanography Study of Florida's Atlantic Coast Region -- Florida Atlantic Coast Transport Study (FACTS). (Vol. I: Executive Summary; Vol. II: Technical Report; and Vol. III: Appendices.) Not all of these were included in the record for my review.

[17] As previously discussed, supra, these reports are now a part of the record in this appeal.

lease areas." Id. In the interim Congress again enacted a moratorium on drilling in the area which expired in September, 1990. On June 26, 1990, after receiving the report of the Task Force on Leasing and Development, and based upon the recommendations of that task force, the President announced a series of decisions including his support for a moratorium on oil and gas leasing and development in Lease Sale Area 116, Part II, until after the year 2000.[18]

Additionally, for fiscal year 1990, Congress provided for a leasing moratorium, a 1-year drilling ban, and restrictions on geological and geophysical activities in the area south of 26° north latitude in the eastern Gulf of Mexico.[19] For fiscal years 1991 and 1992, Congress provided for moratoria as established in the President's moratorium statement of June 26, 1990, and on pre-leasing and leasing activities in the eastern Gulf of Mexico for Lease Sale Areas 137 and 151.[20]

Adverse Effects from Accidental Events -- Oil Spills

The NRC Report, the Drilling Impact Report, and the Oil Spill Risk Assessment Task Force Report are the most recent and comprehensive evaluations of the available technical and scientific information and data regarding the long standing issue of the environmental risks associated with oil and gas drilling on the OCS in the area south of 26° north latitude off the southwest coast of Florida. Specifically, the NRC was charged with assessing the "adequacy of the available scientific and technical information on estimated hydrocarbon resources and potential environmental effects of oil and gas activities" in several lease sale areas, including Lease Sale Area 116 Part II, and to determine whether the available information was sufficient to make leasing decisions in these areas. NRC Report at 1, 3.[21] The Drilling Impact Assessment Task Force (Drilling Impact Report) was charged with analyzing the potential effects of OCS exploratory drilling, including the effects of oil spills on the coastal and marine resources off Southwest Florida. Drilling Impact Report at 2-3.

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[18] See "Statement by the President" and "Fact sheet" (Attachment A).

[19] Department of the Interior and Related Agencies Appropriations Act, Pub. L. 101-121, § 110, 103 Stat. 720 (1989).

[20] Department of the Interior Appropriations Act, Pub. L. 101-512, §§ 110 and 112, 104 Stat. 1915 (1990); Department of the Interior Appropriations Act, Pub. L. 102-154, §§ 109 and 111, 105 Stat. 990 (1991).

[21] The National Research Council's (NRC) review was not limited to the effects of exploratory drilling but rather reviewed all phases of oil and gas development and production. The National Research Council however separately addressed the adequacy of information necessary to make leasing decisions and the adequacy information necessary to make development and production decisions. I find that the NRC's recommendations and decisions regarding the adequacy of information necessary to make leasing decisions are relevant to the decision in this appeal regarding the adequacy of information necessary to make exploration decisions. I will limit my review to the NRC's findings regarding oil and gas leasing activities.

CRUDE OIL SPILL

	Aurand Kendall	Muller	Henderson	Hoehn	Goeke	Nelson	Avent	Consensus of Task Force
Seagrass	3C	2B	2B	2B	3C	2B	3B	2C
Mangroves	3B	2B	2B	2B	3B	2B	3B	2B
Coral Reef	3D	1C	2D	2C	3D	1B	3D	1D*
Inner Shelf Live Bottom	3D	3B	2D	3D	3D	2D	4C	3C
Benthic & Pelagic Fishery Species	4B	2B	3B	2B	4B	2B	3D	3/2B**
Protected Species	3D	1B	2B	2C	3C	2B	2C	2C
Air Quality	4A	4A	4A	4A	4A	4A	4A	4A
Water Quality	3A	3A	2A	3A	4A	3A	3B	3A

* This ranking was not a consensus but a compromise.

** The members could not reach a consensus on this risk rating.

FIGURE 3

SECTION II
ENVIRONMENTAL RISK ASSESSMENT SUMMARY

To provide policy makers with an assessment of the environmental risks associated with exploratory drilling, Task Force members carried out their analyses in the form of a qualitative risk assessment. By so doing, they hoped to clarify and explain for policy makers the environmental risks associated with exploratory drilling on the Southwest Florida Shelf. This technique serves to categorize hazards by the expected frequency of effects and the seriousness of the consequences.

The expected frequency of an effect on a resource was gauged on a scale of A (high) to E (low). The definitions used by members to assess the frequency of an environmental effect were as follows:

A - An environmental effect of this frequency rating is one that would be certain to occur.

B - An environmental effect of this frequency rating is one that would occur often.

C - An environmental effect of this frequency rating is one that occurs occasionally.

D - An environmental effect of this frequency rating is one that occurs infrequently.

E - An environmental effect of this frequency rating is one that occurs rarely.

The expected severity of an effect on a resource was gauged on a scale of 1 (high) to 4 (low). The definitions used by members to assess the severity of an environmental effect were as follows:

1 - An effect that results in changes for periods greater than 10 years at the community level of organization.

2 - A significant interference with ecological relationships. This usually involves the mortality or a biological alteration of a noticeable segment of the population, community, or assemblage. Recovery is probable.

3 - A short-term interference with ecological relationships where a few species may sustain low losses. Recovery would be accomplished in the short term.

4 - Loss of a few individuals but no interference with ecological relationships. Recovery would be rapid.

The following summarizes the reports'[22] identification of the significant natural resources off the south Florida coast, the known impacts of oil and gas on those resources, and the information deficiencies regarding the impacts of oil and gas on those resources.

Mangroves

Mangroves provide critical habitat as nursery areas for the majority of species important to Florida's fisheries. Additionally, mangroves protect shorelines against erosion caused by winds, tides and waves. Oil has an immediate effect on mangroves resulting in adult tree mortality, defoliation, root mortality, and leaf and seedling deformation. Mangroves appear to be affected by oil through direct toxicity, suffocation by clogging the lenticels of the above ground root system, and continuous residual oiling due to oil deposited in sediments. Existing studies indicate that considerable damage to mangroves occurs at low concentrations of oil.[23]

Corals

The coral reefs found seaward of the Florida Keys and around the Dry Tortugas represent the only shallow water tropical coral reef ecosystem found on the North American coast and constitute a unique American resource providing fish and lobster habitats, storm protection and recreational use areas. There is a vast range of potential impacts to coral reefs from oiling ranging from physical smothering to subtle behavioral and reproductive changes. Among the impacts which have been documented are reduced reproductive success, reduced growth rate, reduced colonization capacity, and inhibited or inappropriate feeding and behavioral responses. A diverse literature suggests that coral reef recovery from the negative effects of contact with oil can take decades. The NRC Report specifically states that an analysis of the results of a study documenting the impacts of an accidental oil spill on a Panamanian reef is critical to understanding the potential impacts of oil and gas activities in the coral reefs of southwest Florida. NRC Report at 46. This analysis has yet to be completed. Although sponges and algae constitute critical components of the coral reef system, little or no information is known about the effects of oil on these species.

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[22] Figure 3 summarizes the Drilling Impact Assessment Task Force's findings.

[23] The MMS notes that "if a spill were to contact coastal wetlands losses of marsh vegetation, mangroves and other biologically productive habitats could be severe and may be relatively long term." MMS Letter/Enclosure at 12.

Birds

Coastal and marine birds which spend a significant amount of time on the sea surface (shore birds, cormorants, loons, tropic birds and phalaropes) are vulnerable to oil. The known impacts of oil to birds includes toxicity, hypothermia, shock or drowning, and reduced reproduction. Direct contact with oil can usually be fatal.

Information on the distribution of non-breeding and prey species in the area of the southwest Florida coast is generally fragmentary or inadequate. Additionally, little information regarding population dynamics is available to predict recovery time. Information regarding impacts and distribution, abundance and ecological relationships of pelagic, nearshore, coastal and estuarine species is inadequate. The NRC Report specifically notes that the lack of this information is especially significant with regards to swimming species such as cormorants, loons, grebes and diving ducks which are the most vulnerable to oil floating in the nearshore waters. NRC Report at 47.

Marine Mammals and Reptiles

The marine mammals of chief concern in this area are the West Indian Manatee, and various species of dolphins and whales. The marine reptiles of chief concern are sea turtles. Marine mammal and reptile seasonality is poorly understood in the southwestern Florida area and the NRC Report concludes that knowledge regarding the at-sea-distribution of sea turtles and marine mammals is very poor for south Florida. NRC Report at 47-48. The known negative effects of oil on marine mammals and reptiles include eye irritation, death from respiratory disorders, and problems associated with food reduction and contamination and ingestion of oil. Oil can affect a sea turtle's orbital salt glands and upset its physiological processes. The NRC Report finds that in light of the insufficient information regarding the distribution of marine mammals and reptiles in the south Florida Key area, the potential adverse effects of oil and gas on marine mammals and reptiles can not be adequately assessed. Id.

Fisheries

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

into marine organisms, and sublethal effects that interrupt homing and other behaviors used to locate prey, avoid predators, locate mates, and provide sexual stimuli. Additionally, the loss of inshore seagrass and mangrove habitats due to contact with oil, will negatively affect fisheries since both these areas serve as nurseries to a variety of fish.[24]

In light of the aforementioned known effects and the noted information deficiencies, the NRC Report generally concludes that the effects of oil and gas activities on the nearshore, estuarine and coastal habitats of southwest Florida and the creatures which frequent these habitats have not yet been adequately evaluated and characterized. NRC Report at 5. The NRC Report specifically notes that the current state of knowledge regarding the impacts of oil and gas activities on the natural resources off the southwest Florida coast is generally deficient because no experimental studies regarding the effects of oil and gas activities on the various defined resources have been conducted. Id. Consequently, the NRC Report concludes that the available scientific and technical data is insufficient to adequately evaluate the effects of oil and gas activities on the natural resources and accordingly is insufficient in the absence of further studies to make an informed leasing decision. Id.

In response to the findings of the Drilling Impact Study and the NRC Report, Union offers several arguments. Union first contends that the information deficiencies detailed in the NRC Report have been remedied and that the currently available scientific and technical data indicates that the adverse effects of its proposed activities will be minimal. Union's Final Brief at 32.

In support of its position Union offers the results of the six year MMS Southwest Florida Shelf Ecosystem Study (MMS Study), discussed supra, and the information it submitted with its POE. First, with regards to the impacts of an oil spill on the natural resources selected for the MMS study, the study concludes that the potential impacts "would be widespread, and the severity of impacts would generally be high to medium in nature." MMS Study at 57. Figure 4 summarizes the findings of the study. Second, in evaluating the results of the study, the review panel established by Governor Martinez found that the study had accumulated a massive amount of valuable information which significantly contributed to the knowledge of the region. Primarily as a result of the study's design and objectives however, the panel concluded that it did not provide the type of

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[24] The South Atlantic Fishery Management Council (SAFMC) is charged with developing and monitoring management plans for fisheries from the territorial waters of South and North Carolina, Georgia and Florida's east coast to the 200 mile limit. Based on the potential degradation to and loss of habitat to fisheries which SAFMC has determined will result from Union's proposed activities SAFMC requested that I not override the State's objection. Letter from Elaine W. Knight, Chairman to Robert Mosbacher, then Secretary of Commerce dated July 17, 1989.

FIGURE 4

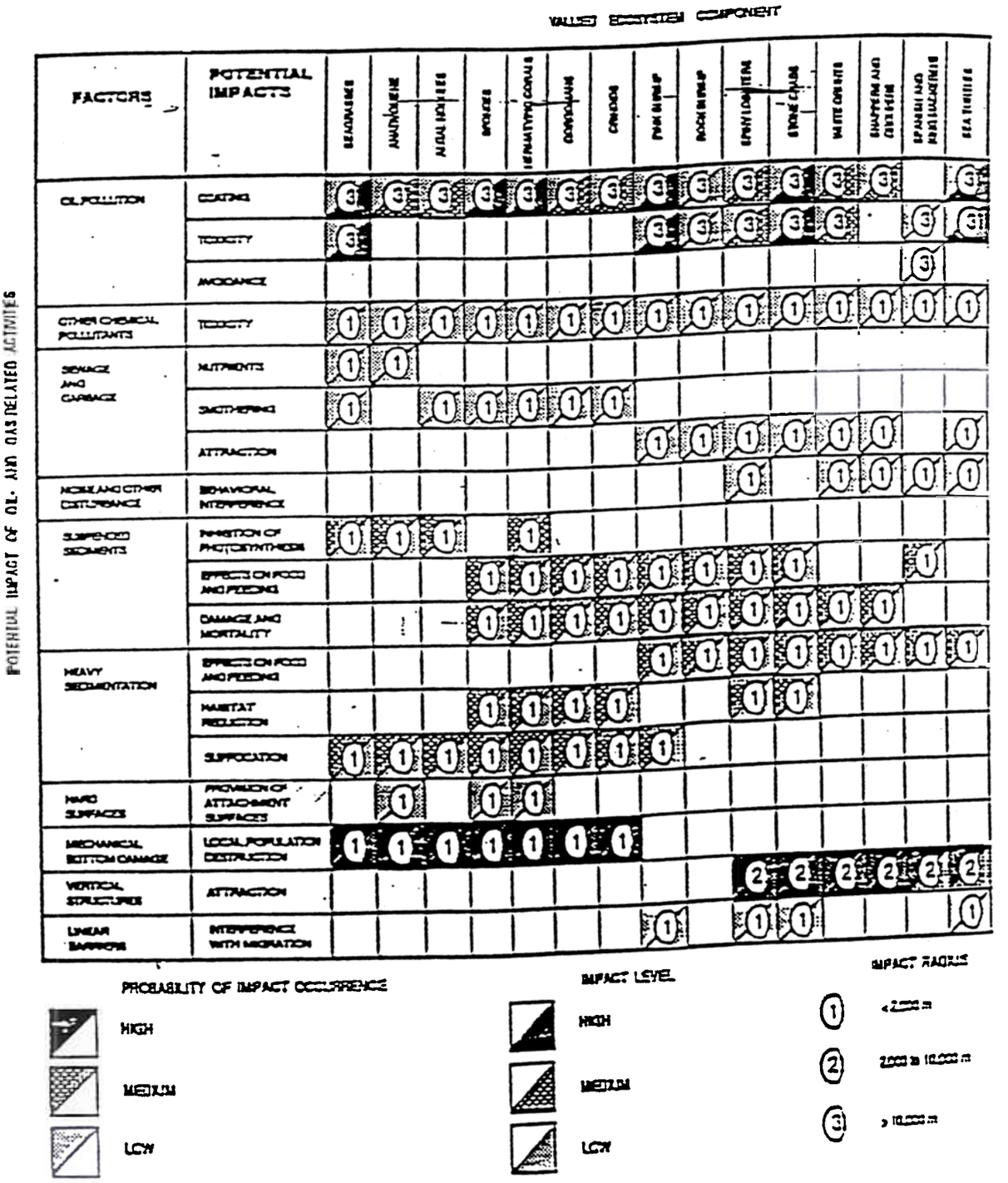

Figure 3-2 Matrix summary of potential impacts of oil- and gas-related activities on valued ecosystem components.

information needed to evaluate the potential impact of oil and gas activities on the significant natural resources of concern in the instant appeal. State's Exhibit P at 25. Specifically, the panel noted that the study did not attempt to evaluate the effects of oil and gas on nearshore and intertidal marine communities as valued components of the ecosystem to be evaluated. States' Exhibit at 22. In particular, the reviewers noted that the omission of mangroves as a component in the impact analysis, "was an obvious and major inadequacy in those investigations." Id. Additionally, echoing the NRC report, the panel noted that there was a general lack of information regarding the toxicity of hydrocarbons and oiling to the various species and that in order to evaluate those effects basic experimental studies need to be completed. Id.

The MMS study itself states that its assessments regarding the potential impacts of oil and gas activities are "generic", and that specific information regarding impacts with regards to the area surrounding the subject leases must be derived from the MMS environmental impact statement for Sale 116.[26] MMS Study at 47. In light of the report's above-noted deficiencies, particularly its lack of information regarding the effects of oil and gas on onshore and estuarine communities, I find that the report does not resolve the informational deficiencies or requirements noted by the NRC Report.

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

First, with regard to the potential adverse effects of oil and gas activities, the SER adds little or no information to the generic findings outlined in the AER. Second, to the extent impacts to natural resources are discussed, the AER, the SER and the Trajectory Analysis confirm the negative effects of hydrocarbons on many of the resources discussed in the NRC report. State's Exhibit 2A at 30-31; State's Exhibit 2F, at 88, 173, 177; State's Exhibit 26, at 95, 98-99. In fact the AER states that, "oil reaching estuary, marsh, or mangrove habitats typical of the coast inshore of the AER would have the most serious effects . . . oil spills could produce mortalities among vertebrate, invertebrate, and plant species found in these areas." State's Exhibit 2F, at 177. Thus, the SER, AER, the Trajectory Analysis, and the MMS study fail to address the information deficiencies noted by the NRC Report.

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[26] The MMS environmental impact statement for Lease Sale 116 updates and amends the EIS for Lease Sale 79. MMS Letter/Enclosure at 6.

Next, Union argues that the Drilling Impact Study provides the site specific information called for in the NRC Report and that the findings of the Drilling Impact Study indicate that Union's proposed activity will not adversely effect the natural resources off the southwest Florida coast. Union's Final Brief at 29-33. First, the Drilling Impact Study and the NRC study were contemporary studies and the Drilling Impact Study, like the NRC report, was primarily a review of the general literature and knowledge available at the time regarding the effects of oil and gas activities on coastal resources. The Drilling Impact Study did not provide the results of any experiments regarding the effects of oil and gas activities as called for in the NRC report. Nor did it provide any new information regarding the effects of oil and gas activities on inshore and coastal habitats. Rather, as discussed, supra, the study arrived at many of the same conclusions as the NRC report regarding known hydrocarbon effects on various natural resources and noted similar information deficiencies regarding the effects of oil and gas activities as the NRC report.

In the alternative, Union argues that the information necessary to evaluate the environmental effects of its proposed drilling can only be acquired during exploration. Union's Final Brief at 27-28. As noted in the NRC Report only a "small percentage of exploratory wells ever lead to commercial production" and therefore "it is unreasonable to expect that detailed site-specific risk assessments for development and production phases be conducted prior to leasing and exploration." NRC Report at 42. The report notes that additional studies are often completed at the time of exploration to investigate factors that might influence the magnitude of impacts. Consequently, the report states, "an important question at the pre-lease phase of assessment is whether there is enough basic information on the environment to conduct these site-specific investigations" during exploration. Id. at 45. However, with respect to this lease area, the report concludes that the ecological information available is inadequate to design the site-specific studies referenced by Union and which are necessary to adequately evaluate the magnitude of the impact on the natural resources in the event of an oil spill during Union's proposed exploratory drilling. Id. Union presents no evidence to contradict this finding. Consequently, I am not persuaded by Union's argument.

Based upon the record before me, I find that although the available technical and scientific data regarding the effects of oil and gas activities off the southwest Florida coast is deficient, particularly with regard to effects on intertidal and coastal zone communities, to the extent effects are known, the data demonstrates that the natural resources of the southwest Florida coastal zone could be significantly adversely affected by contact with spilled crude oil. Additionally, I find that the information submitted by Union has neither remedied any of these

informational deficiencies nor contradicted any of the findings of the NRC Report or the Drilling Impact Report regarding the known adverse effects of crude oil on the above discussed natural resources.

Probability of an Oil Spill During Exploration

Union asserts that the potential adverse impacts on the identified 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. Union 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, Union's oil spill containment plan will adequately address the effects of a spill. Based upon the precedent of the Gulf Oil Decision, Union argues that since the risk of a spill is negligible, the weight I assign to any adverse effects associated with that spill must also be negligible. See Decisions and Findings in the Consistency Appeal of Gulf Oil Corporation (Gulf Oil Decision), December 23, 1985, at 15.

Union's own AER concludes that "the possibility of a major oil spill resulting from exploratory drilling does exist". AER at 171. The joint DOI/State Task Force Oil Spill Report states that the risk of a blowout occurring in the Gulf of Mexico is 0.64 percent. Oil Spill Report at 4. Union contends that the risk of a blowout occurring is 0.013 percent. Union Exhibit 6. In general, the OCS drilling record and the regional geological data for the area in question support Union's contention that the risk of an oil spill occurring as a result of a blowout during exploratory drilling is low. MMS Letter/Enclosure at 11. The statistical record regarding oil and gas drilling on the OCS demonstrates that of 7,853 exploratory wells drilled in OCS waters during the years 1947 through 1987 not one barrel of crude oil or condensate has spilled as a result of a blowout during exploratory drilling operations. Union's Exhibit 2G, at 39. The statistical record also demonstrates that an oil spill during exploratory drilling would most likely be the result of a rig-service-related event, and would involve diesel fuel and not crude oil. Id. The largest diesel spill on record involved 1,500 barrels. Of the 72 reported incidents, 61 involved spills of 50 barrels or less. Id.

Further, the regional geological data indicates that Union's proposed exploratory drilling operations will encounter very low bottomhole pressures. Previous wells drilled in the offshore and onshore south Florida basin have repeatedly encountered very low bottomhole pressures and the stratigraphy in the Pulley Ridge area is predicted to conform closely to these surrounding areas. See Statement of Jack W. Schmack; Hearing Transcript, at 62-64; Union's Statement in Support of a Secretarial Override, April 19,

1989, at 33-35. Low bottomhole pressures, in turn, reduce the chances of blow-out occurring during exploratory drilling. Id.

With regard to spills caused by human error Union contends that the lease holder and the drilling contractor will exercise dual supervision of well control operations which will reduce the risk of "human error" spills. Union's Final Brief at 51. The record does not reveal whether this joint supervision is effective in reducing errors. The joint DOI/State Task Force established to provide an oil spill risk assessment found that "the events leading to a spill larger than 50 barrels seemed to occur somewhere within the Gulf of Mexico roughly about once or twice a year". Oil Spill Report at 11. (Emphasis in original).

Previous consistency appeal decisions have held that because some risk of a spill during oil and gas operations always exists, attention must focus on measures to contain and clean up oil spills; e.g., Texaco Decision at 15. In the unlikely event of a spill, Union contends that its oil spill response plan is more than sufficient to address the effects of any such spill. Union contends that its plan satisfies all of the MMS requirements and that in an effort to satisfy the State's concern, Union has updated and amended its plan several times. See Union Exhibits 9, 21 A, E. Union states that pursuant to its plan:

> Union will utilize and operate blowout preventer systems in strict compliance with MMS requirements.
>
> All drilling rig discharges and emissions will be in strict compliance with MMS and EPA regulations.
>
> Rig personnel will be thoroughly trained, and all drilling equipment will be regularly inspected.
>
> Union representatives will be at the drill site, and at the Fort Myers shore base, on a 24-hour basis.
>
> A comprehensive Gulf-Wide Oil Spill Contingency Plan for the proposed activity has been approved by the MMS.
>
> Union's Plan contains necessary assurances of full response capability, including minimum response times to address any spill emergency.

Union's Final Brief at 49.

Union adds that it has planned for minimum spill response times by utilizing both onsite and onshore containment and cleanup equipment which will be supplemented by additional equipment stockpiles throughout the Gulf region. Additionally, Union contends that its minimum response times fully address the minimum landfall contact times for spills in the area of Union's

drill site predicted by the oil spill trajectory model specifically created for Union by Continental Shelf Association, (CSA model)[27] and the Oil Spill Risk Assessment Analysis Model[28] (OSRA model) defined by the Oil Spill Risk Assessment Task Force in their report.

The State does not contend that Union's containment plan is deficient in terms of its basic plan of operation. However, the State asserts that the state of knowledge regarding the physical oceanography of the area south of 26° north latitude is insufficient to define adequately oil spill trajectories and probable contact times with the natural resources of concern. Accordingly, the State asserts that Union's containment plan is inadequate, because the current data base does not support the response times and the scope of the response effort defined in Union's containment plan. Final Brief of the State at 12-14.

The physical oceanography of the area south of 26° north latitude is dominated by wind-driven and eddy-related currents on the shelf (depths of 100 meters or less) and by the Loop Current in the deeper waters. Oil Spill Report at 14. The long shore currents travel generally in the same direction as the wind except that the eddy motions are usually more energetic than the wind-driven currents. Id. The onshore-offshore component of wind-driven motion is difficult to predict (and measure) without extremely detailed measurements of the wind. Id.

The dominant feature in the deep water is the Loop Current. Id. The Loop Current "enters the Gulf of Mexico from the Caribbean Sea through the Yucatan Straits, flows northward in the east central Gulf and curves clockwise, exiting the Gulf through the Straits of Florida." Id.; See Figure 4; NRC Report at 26. The location of the Loop Current fluctuates from "tens of miles offshore to the edge of the shelf break." Id. Knowledge of the movement and effects of the Loop Current and the wind driven and eddy-related currents in this area is fundamental to predicting the movement and circulation of material into the ocean, and accordingly, oil spill trajectories. NRC Report at 19.

As previously discussed, supra, President Bush requested that the NRC review the adequacy of the scientific and technical information base for decision making regarding oil and gas activities in Lease Sale Area 116, Part II. As part of that review the NRC reviewed the state of knowledge regarding the

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[27] The Oil Spill Risk Assessment Task Report (Oil Spill Report) evaluated the CSA model and declined to use it. The report found that it "neglects representations of dominant cases and contained several inconsistencies." Oil Spill Report at 13.

[28] The OSRA model is a modified version of the model traditionally used by DOI/MMS to perform spill trajectory analysis.

noted unique features of the physical oceanography of the Gulf of Mexico.

In general the NRC found that few oceanographic studies have been completed for this region and that the data base for southwestern Florida is relatively incomplete. NRC Report at 4, 18. In particular the NRC noted that several basic oceanographic processes for the Gulf of Mexico have not been sufficiently studied and that the present numerical modeling work for the area is marginal. Id. at 4, 38. Accordingly, the NRC found that the current information base is inadequate to accurately predict the movement of the noted currents in the Gulf, and consequently, the severity of the long term chronic effects of an oil spill. Id. at 38. The Drilling Impact Task Force Report echoed these informational needs stating that, "improved knowledge of oceanographic convergence zones or fronts, cross-shelf transport mechanisms, and Loop current variability would aid predictions when and where spilled oil and marine organisms would interact." Drilling Task Force Impact Report (DIATF) at 73.

In spite of a generally inadequate information base, the NRC report found that the physical oceanographic information and the modeling results from the OSRA model provide reasonable first order estimates that due to the boundary Loop Current oil spills associated with "OCS activities would have a high probability of interacting with sections of the Florida Coast" and "many spills will do so in a very short time". NRC Report at 3-4, 29. The NRC report noted that the model's "computed times for landfall of an oil spill were obtained from wind driven flows only" and that this area would also be subject to eddy-driven flows. Id. at 27-28. The NRC report further states that where spills are influenced by both wind-driven flows and eddy-driven flows the effects of the currents would be cumulative.[29] Id. at 29. More importantly, the NRC Report concluded that in the absence of further study, it is difficult if not impossible to determine the range of error for results of the OSRA model. Id. at 4. The NRC Report states that, "the uncertainties of oil spill trajectories could be narrowed with more focused studies of the physical oceanography of the region." Id. at 3. The report further notes that, "[t]hese studies are within the current capabilities and state of knowledge and could be accomplished within a few years after initiation." Id.

Based upon the findings of the NRC, I find that the predictive value of both the CSA and OSRA models relied upon by Union to

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[29] Although not available for the NRC's review, the final Oil Spill Risk Assessment report does include a limited analysis of spill trajectories with both wind and eddy-driven flows. The results of the trajectories indicate that: In general, the plots show a range of differences up to a percentage or two for within 3 days; less than 10% within 10 days; and a maximum of about 10-15% for the 30 day period. Also, in general, the "with currents" simulation shows more contacts, probably due to increased representation of variability". Oil Spill Assessment Report at p. 29. These results however, are based on only three years of data.

predict the movement of spills in order to direct the scope and focus of its response efforts, and to support the adequacy of the response times defined in its response plan is at best marginal. Further, Union has failed to offer any evidence to contradict the conclusions and findings of the NRC Report regarding the general lack of baseline data, pertaining to oceanographic processes in the area south of 26° north latitude, necessary to evaluate oil spill trajectories and probable contact times with the natural resources of concern.

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

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

Cumulative Adverse Effects

In reviewing the cumulative adverse effects of an activity I review "the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to the coastal zone in which the objected-to activity is likely to contribute to the adverse effects on the natural resources of the coastal zone." Gulf Oil Decision at 8. The only other proposed oil and gas activities in the vicinity of Union's proposed POE are four POE's proposed by Mobil. MMS Letter/Enclosure. Mobil proposes to drill four exploratory wells on Pulley Ridge Block 799. Pulley Ridge Block 799 is located about 19 miles southwest of Union's proposed POE. Id. The State of Florida has also objected to Mobil's proposed POE. Mobil has appealed this decision to the Secretary. This appeal is currently pending. Consequently, I am unable to find that Mobil's proposed exploratory activity constitutes a present or reasonably foreseeable future activity in the area of Union's proposed activities. Additionally, I have previously held that I will only consider the cumulative effects of temporary or short term activities, such as the drilling of an exploratory well over a 60 day period, the effects of which would not be present after that time period, if that temporary activity is scheduled to occur at the same time the activity before me for review is to occur. Gulf Oil Decision at 8. There is nothing in the record to indicate that Union's proposed activity, even if it could reasonably be expected to occur, would at that time cumulate with

the adverse effects from Mobil's activities. Accordingly, I do not consider Mobil's proposed activities in my review of cumulative impacts. I find that there are no cumulative impacts to be reviewed.

Evaluation of Adverse Effects

In the Gulf Oil Decision, the Secretary held that in order to weigh the adverse effects associated with an accidental event, the expected effects of the event (in this case crude oil contact with the natural resources of concern) must be multiplied by the chance of that event occurring. Union contends that since the risk of a blowout during exploratory drilling operations (the "accident" which could cause the greatest release of oil and thus the greatest potential harm) is negligible, the weight I assign to any adverse effects associated with this event must also be negligible.

I cannot accept Union's contention. While the risks of an oil spill occurring in the present case are similar to the risks of occurrence in the Gulf Oil Decision, the risks of a spill adversely impacting valuable value natural resources is much higher in this case. It is true that the statistical evidence in both cases indicates that the risk of an oil spill occurring as a result of a blowout is very small with the risk of smaller spills from other accidents being somewhat higher. However, in the Gulf Oil Decision, much more was known regarding spill trajectories. The Oil Spill Risk Analysis in that case, which was uncontradicted, indicated that if a spill occurred the oil would be carried away from the resources of concern. For example, the risk of impact on the southern sea otter, the natural resource most at issue in the Gulf Oil Decision, was extremely small since in the event of a spill the prevailing currents would carry the spill away from the sea otter range. Gulf Oil Decision at 14. Thus, in the Gulf Oil Decision, the Secretary, based upon the record before him, found that the risk of an oil spill occurring was low and that the possibility of a spill threatening or contacting the natural resources of concern was even lower. Accordingly, in the Gulf Oil Decision, the Secretary, based upon the record before him, was able to weigh the adverse effects associated with the accidental event and due to the low risk of impact find them to be negligible.

In the present case, the risk of oil impact to the coastal resources at issue, the seagrass, mangroves, coral reef, living bottom and other components of the Florida mangrove coral reef ecosystem, is higher than the risk of impact to the California coastal zone resources discussed in Gulf's POE. I cannot assign a precise number to the risk Florida's coastal zone natural resources would face from the drilling because the baseline data regarding the oceanographic processes south of 26° north latitude is insufficient to adequately evaluate oil spill trajectories and

probable contact times with the resources. However, the NRC report, the available physical oceanographic information, and the results from the OSRA model suggest that exploratory drilling south of 26° north latitude has a high probability of adversely impacting such resources. While the risk associated with Union's proposed exploratory drilling (i.e., the risk of the occurrence of a blow-out) would only be a component part of that probability, and thus not have a high probability by itself, Union does not have evidence sufficient to convince me that the risk of impact to seagrass, mangroves, live bottom, and particularly the coral reef, from Union's proposed POE is insignificant. This lack of evidence forces me to err on the side of protecting the resources by assuming a high enough risk factor to cover the unknowns. Accordingly, I determine that Union's proposed exploratory drilling presents a significant risk.

Regarding valuation of the resources, President Bush, on June 26, 1990, identified Lease Sale Area 116, Part II, off southwest Florida as a unique resource system. [Attachment A]. The President noted that it contains our nation's only mangrove coral reef ecosystem. Id. Also, on November 16, 1990, he further recognized the high value of resources surrounding the Florida Keys by signing into law the Florida Keys National Marine Sanctuary Act, Public Law No. 101-965.[30] That Act designated the Florida Keys National Marine Sanctuary, running the entire length of the Florida Reef Tract, as an area of the marine environment which is both unique and of special national significance due to its extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values, thus affording it special protections. The closest boundary point of the Sanctuary to the proposed drilling sites is approximately 40 miles away.

The President's assessment of the valuation of the resources is reflected in the comments of the U.S. Environmental Protection Agency (EPA) which noted that Union's proposed project is located in an "extremely sensitive area" with "sensitive mangrove and seagrass environments, fisheries and coral reef communities."[31] Letter from R. Augustus Edwards, Acting Assistant Administrator

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

[31] The Environmental Protection Agency did not specifically address the effects of exploration activities.

for External Affairs, Environmental Protection Agency to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, June 13, 1989.

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

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

Contribution to the National Interest

Union contends that its proposed exploratory drilling activity significantly contributes to the national interest through the expeditious exploration and development of OCS oil and gas reserves and the subsequent achievement of greater energy self-sufficiency. Union asserts that the proposed lease areas are likely to contain more than 123 million barrels of recoverable oil and over 157 billion cubic feet of gas. Union's Brief at 21.

The State asserts that the estimated oil and gas reserves are much smaller than Union's estimates and that prior to exploration the quantity of recoverable oil and gas cannot be determined. Consequently, the State contends that Union's proposed drilling activity can at best minimally contribute to the national interest of oil and gas development. The State further argues that in light of the numerous state and federal parks and wildlife reserves designated off the south Florida shelf area there is a corresponding national interest in preserving the area from oil and gas activity and restricting development. See Figure 5.

As previously held, the national interests to be considered under this element are limited to those recognized or defined by the objectives and purposes of the CZMA. Korea Drilling Decision at 16. Additionally, as previously held, there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy 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 Oil Decision), November 9, 1984, at 15.

FIGURE 5

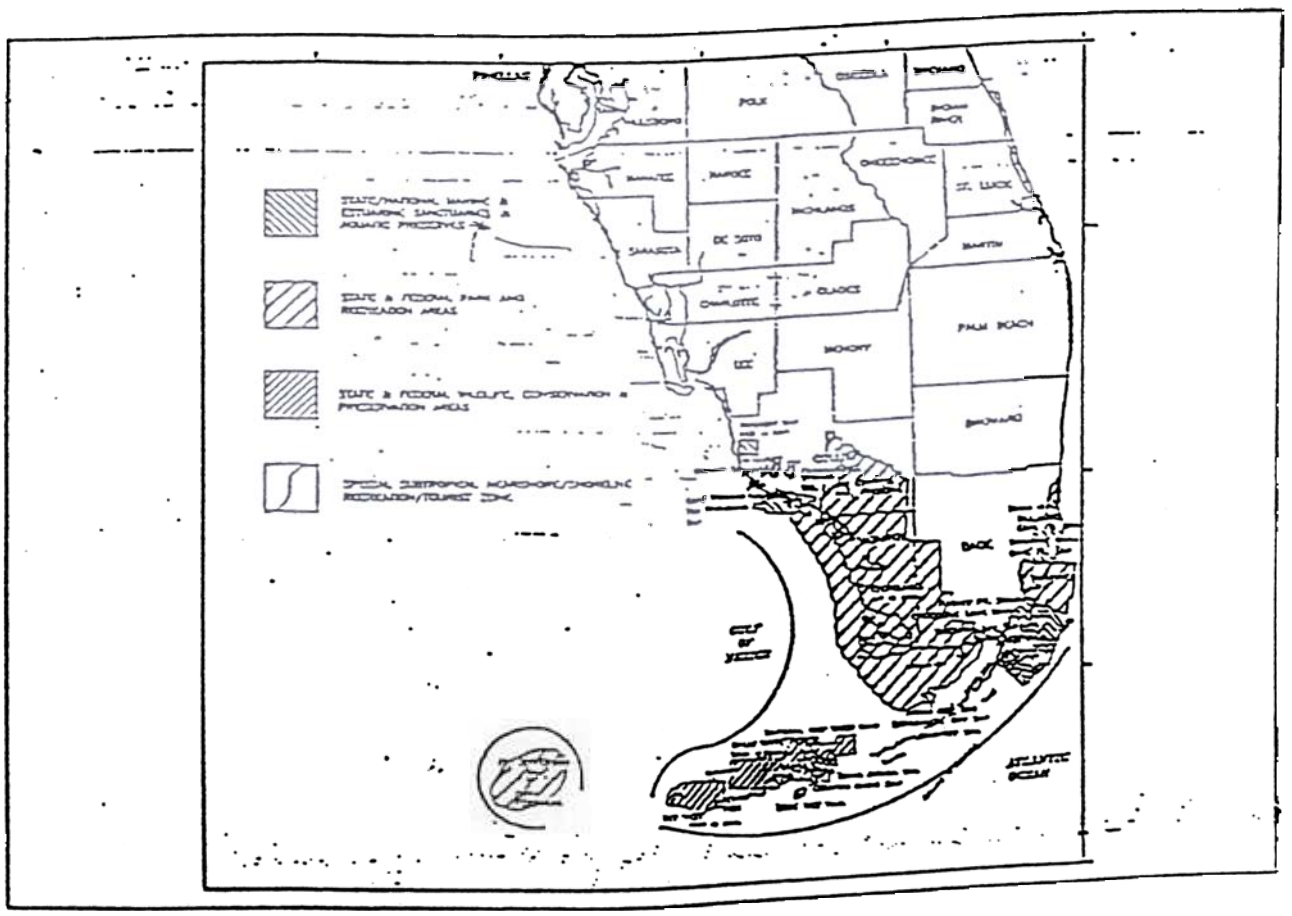

Figure III-2. National/State Parks and Wildlife Refuges.

Note: The boundaries of the Florida Keys National Marine Sanctuary are not included on this map.

Furthering the national interest in energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and, as previously held, it furthers the national interest for purposes of this element. See Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A. (Exxon SYU Decision), February 18, 1984, at 11. As the State notes, however, the issue of how much oil and gas will actually be produced through drilling at the two sites is uncertain. Union presented various estimates of the recoverable oil and gas reserves at the proposed drilling sites ranging from an initial MMS estimate of 90 million barrels of oil to a revised estimate of between 0.3 and 1.1 billion barrels of oil in the entire area south of 26° north latitude.[32]

When queried regarding Union's proposed POE contribution to the national interest, the Department of Transportation stated that hydrocarbon production generally contributes to the nation's energy needs. Letter from Patrick V. Murphy, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation to Katherine A. Pease, Assistant General Counsel, NOAA, June 23, 1989. Also, the Secretary of Energy not surprisingly recognized that it is in the national interest to explore for OCS oil and gas reserves. Letter from James D. Watkins, Admiral, U.S. Navy (Retired) to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, June 12, 1989.

Recognizing that prior to exploration the amount of oil and gas reserves is uncertain, previous Secretaries have found that exploratory drilling furthers "the national interest in attaining energy self-sufficiency by ascertaining information concerning the oil and gas reserves available for production." See Texaco Decision, at 30-31; Amoco Decision, at 45. Accordingly, based on these prior decisions and on the record before me, I find that Union's proposed exploratory drilling in general furthers the national interest of fostering national energy self-sufficiency.

Balancing

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

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

the State's objection will not be set aside unless the national interest benefits of the proposed project outweigh[33] the proposed POE's adverse effects on the natural resources of Florida's coastal zone.

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

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

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

For example, the Department of Transportation stated that hydrocarbon production generally contributes to the nation's energy needs, "[h]owever, we do not believe that exploration of these leases at this time is necessary in the national interest, in the event of the questions that have been raised by the State of Florida" regarding the risks and containment of a discharge in the event of an oil spill. The Department further recommended that the findings of the President's Task Force be reviewed before I issue my decision in this appeal. Letter from Patrick V. Murphy, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation to Katherine A. Pease, Assistant General Counsel, NOAA, June 23, 1989.

While several of the agencies noted that oil and gas exploration serves the national interest without commenting on the environmental impacts of Union's proposed POE, none indicated

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

that exploration should occur at the expense of the unique resources at issue here.

Even the Department of Energy in pointing out that it is in the national interest to explore the OCS for oil and gas reserves, added that "[i]t is essential to explore those areas in an environmentally sound and orderly, but expeditious manner." Letter from James D. Watkins, Admiral, U.S. Navy (Retired) to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, June 12, 1989.

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

I too must now conduct a balancing. I find that at this time the national interest benefits of Union's proposed POE do not outweigh the proposed POE's adverse effects on the coastal zone.[34] Accordingly, I find that Union's proposed POE does not satisfy the second element if Ground I.

3. Third Element

The third element of Ground I is that "[t]he 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 section 307(f) of the CZMA.

Clean Air Act

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

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

The State asserts that Union's onshore support facility for the proposed POE is located in the Everglades area. The State further contends that although the onshore support facilities will be limited during exploratory drilling,[35] the dimensions of this onshore support facility will increase two-fold during production and that Union has not demonstrated that this larger onshore support facility for oil and gas development will comply with the federal and state air emission standards, defined under the CAA for the air mass located over the State.

As discussed, supra, the activity which is the subject of this appeal is Union's proposed POE and the contours of the onshore support facility as defined in the POE, not the as yet undefined and unapproved production plan for oil and gas development and the dimensions of its accompanying support facility. Consequently, at this time Union need not demonstrate that the onshore support facility for the potential, and as yet, undefined development plan meets the Federal and State air emission standards under the CAA for the air mass located over the State.

The State next contends that Union's proposed drilling activities at Pulley Ridge Blocks 629 and 630 under the Outer Continental Shelf and Lands Act (OCSLA) constitute activities that "significantly affect the air quality of [the] State" and that Union has not demonstrated that the emissions from this proposed activity will comply with the NAAQS developed under the CAA as required pursuant to the OCSLA. See OCSLA, 43 U.S.C. § 1334(a)(8). In responding to this concern the State urges that I not follow the previously established precedent in consistency appeals which dictates that an activity's compliance with Interior regulations regarding air quality on the Outer Continental Shelf (OCS), as determined by Interior constitutes compliance with the CAA. The State urges that I not defer to Interior's judgement on the issue but rather that I make an independent determination as to whether Union's proposed activity meets the requirements of the CAA.

I recently addressed this same argument in the Chevron Decision. In that decision, I noted that pursuant to the OCSLA, Interior must establish regulations to govern air emissions for activities on the OCS and that those regulations must assure compliance with NAAQS for activities that "significantly affect the air quality of any State." 43 U.S.C. § 1334(a)(8). Further, I noted that the OCSLA provides the Secretary of the Interior with the exclusive authority and responsibility to establish, by regulation, and enforce air emissions for activities on the OCS. Consequently, in the Chevron Decision I held that I did not have the authority to make an independent determination as to whether the proposed activity in that appeal met the requirements of the CAA. Rather, I presumed that Interior's regulations ensured compliance with the NAAQS of the CAA. Interior's determination of an activity's compliance with its regulations constitutes compliance with the CAA. The State offers no new evidence to

[35] The State does not argue that the onshore support facility as defined in the POE fails to meet the air emissions standards under the Clean Air Act (CAA).

suggest that my position is incorrect. Accordingly, since the activities described in Union's proposed POE must comply with Interior's emission standards in order to proceed, I find that those activities will not violate the CAA.

Federal Water Pollution Control Act (Clean Water Act)

Sections 301(a) and 402 of the Clean Water Act (CWA), 33 U.S.C. §§ 1311(a) and 1342, provide that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA.

Discharges from activities in the area of Pulley Ridge Blocks 629 and 630 are subject to a general NPDES Permit for the Gulf of Mexico (GMG 28000) and to the terms of a Memorandum of Understanding between the EPA and the State of Florida. Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA to Honorable John A. Knauss, Under Secretary of Commerce for Oceans and Atmosphere, September 1, 1989, (Sanderson Letter). On August 4, 1986, in accordance with Part II, E.I. of the general permit, Union submitted notification to EPA Region IV of its intent to be covered under the general permit. Letter from Brendan M. Dixon, Assistant Counsel, Unocal Corporation, to R. Augustus Edwards, Acting Assistant Administrator for External Affairs, EPA, dated July 24, 1989. On September 1, 1989, the EPA found Union eligible to discharge pursuant to its proposed POE under the general permit.[36]

The State argues again that I evaluate Union's compliance with the CWA based not on the proposed exploration activity before me for review but rather on an as-yet-undefined oil and gas development activity pursuant to an as yet unapproved production plan. For the reasons previously addressed, supra at 27, I decline to do so.

Because Union can not conduct its proposed exploratory drilling without meeting the terms and conditions of the general permit, and accordingly meeting the requirements of the CWA, I find that Union's activity will not violate the CWA.

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

4. Fourth Element

The fourth element of Ground I is 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). The State contends that a reasonable alternative to Union's POE is for Union to defer its proposed exploratory

[36] An initial decision by the Environmental Protection Agency (EPA) denying Union the ability to discharge under the general permit was the result of a mistake on the EPA's part regarding the leases which are the subject of this appeal. Sanderson Letter.

drilling until the completion of several pending and proposed studies regarding the environmental effects of such drilling.

Union argues that the State is identifying this alternative for the first time on appeal and accordingly has failed to comply with the requirements of 15 C.F.R. §§ 930.64(b) and 930.79(c). Those regulations provide that a State must first identify an alternative in its objection letter before that alternative may be raised on appeal. Union contends that the State failed to identify the deferral alternative in its objection letter and accordingly is precluded from raising the alternative on appeal.

In the Korea Drilling Decision, the Secretary held that a state generally does not have the right to describe an alternative for the first time on appeal. See Korea Drilling Decision at 24. However, in that same decision the Secretary held that this requirement is satisfied if the record reasonably discloses an alternative that might be consistent with the State's CMP and it appears reasonable and available.[37] The State contends that the entire thrust of its objection is that drilling in the area of Pulley Ridge Area Block 629 and 630 should be deferred until these studies are completed and the "oil industry is able to demonstrate, on the basis of these or other studies, or through the development of greater safeguards, that drilling activity can occur without undue impacts either directly or from an oil spill." State's Response Brief at 48. I find that the State's proposed alternative on appeal is clearly disclosed in the record. Accordingly, the State is not precluded from identifying this alternative on appeal.

Based on the Korea Drilling Decision, the State next argues that having identified a reasonable alternative the burden shifts to Union to demonstrate that the State's proposed alternative is unreasonable and unavailable. The State contends that Union has failed to meet this burden. In the Korea Drilling Decision, however, the Secretary stated the burden of proving unreasonableness would shift to the Appellant only if the State indicates that its proposed alternative would permit the proposed activity to be conducted in a manner consistent with the State's CMP. Id. The Secretary further noted in that decision, that the burden of identifying an alternative as consistent with the State's CMP is properly on the State because determining State consistency is the State's responsibility and within its control. Id. at 23. The purpose behind requiring the State to initially identify its proposed alternative as consistent or probably

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[37] Additionally, in the Korea Drilling Decision the Secretary indicated that there may "be instances where good cause exists as to why a State could not have described a consistent alternative at the time it objected." (Emphasis added). See Korea Drilling Decision, at 24; Exxon SYU Decision.

consistent[38] with its CMP is to present the applicant, following a State's objection, with three realistic options: to either adopt the alternative, abandon the project, or file an appeal. Id. There would be no incentive to pursue the first option of adopting the alternative if it was not consistent with the State's CMP.

In this appeal I find that the State has failed to demonstrate, either in the record or on appeal, that its proposed alternative would allow Union's proposed activity to be conducted in a manner consistent with the State's CMP.

As discussed, the State's proposed alternative is for Union to defer its proposed drilling until after the completion of several studies which were proposed and pending at the time of the State's objection, and throughout the course of this appeal.[39] These studies evaluate or seek to evaluate the environmental effects of oil and gas operations on the OCS off the coast of Florida. However, whether the completion of these studies represents an alternative which would allow Union's proposed activity to be conducted in a manner consistent with the State's CMP is at best speculation. Based upon my review of the record I find that there is at best only a possibility that the studies will demonstrate that Union's proposed POE complies with Florida's CMP. Consequently, I find that the State has failed to meet its burden of identifying an alternative to Union's proposed POE which could permit the activity to be conducted in a manner consistent with the State's CMP.

Accordingly, I find that there is no reasonable alternative to Union's proposed POE which would permit the activity to be conducted in a manner consistent with the State's CMP, and that accordingly, Union's proposed POE satisfies the fourth element of Ground I.

Conclusion for Ground I

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

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[38] The Secretary noted that in some instances "a State will only be able to indicate the probable consistency or lack thereof; pending a final formal determination when the Appellant formally submits the alternative to it. "Korea Drilling Decision, at 24; See Exxon SYU Decision. (Emphasis added).

[39] Initially, the State advocated that the POE be deferred until the completion of the joint Florida/DOI task force studies. As indicated these studies are now complete. However, the State now advocates deferral until the completion of studies recommended by the NRC.

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

The second statutory ground for an override of a State's objection to a proposed activity is that the activity is necessary in the interest of national security. To make this determination I must find that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122 (Emphasis added). Id.

Union 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. Union contends that in light of dwindling oil and gas reserves, new discoveries of oil and gas reserves are needed and exploration is necessary to make those discoveries. Additionally, Union contends that there are few large oil and gas reserves to be found and that the country must now focus on developing the maximum number of medium to smaller size fields. Consequently, Union asserts that the projected size of potential oil and gas reserves should not be determinative of whether the development of these fields will contribute to the national defense and national security.

It has previously been held that the size of oil and gas reserves is not determinative of whether the requirements of this ground are met. Chevron Decision at 71. Additionally, the degree of importance that should be assigned to the size of oil and gas reserves in deciding whether interests are significantly impaired depends on the facts of the case. Id. To aid in determining the national security interests involved in a proposed activity, the Secretary is required to seek the views of the Department of Defense and other interested federal agencies. 15 C.F.R. § 930.122. While the views of these agencies are not binding on the Secretary, they must be given considerable weight in the Secretary's determination of Ground II. Id.

Accordingly, in order to decide this ground the Under Secretary of Commerce for Oceans and Atmosphere solicited comments from various Federal agencies. Specifically, the Under Secretary of Commerce for Oceans and Atmosphere asked those agencies to "identify any national defense or other national security objectives directly supported by [Union's] Plan of Exploration, and to also, indicate which of the identified national defense or other national security interests would be significantly impaired if [Union's] activity were not allowed to go forward as proposed." Letter from William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere to Hon. James A. Baker III, Secretary of State; and Hon. Richard B. Cheney, Secretary of Defense, April 28, 1989.

The Department of Defense responded by stating that:

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

Letter from Jack Katzon, Assistant Secretary of Defense to Hon. William E Evans, Under Secretary of Commerce for Oceans and Atmosphere, June 27, 1989.

The Department of State asserted that:

> New indigenous hydrocarbon production continues to be essential to our nation's energy security. U.S. production and exploration has declined since 1985 as a result of cheaper foreign oil. In our view these trends increase the urgency of taking advantage of economically viable opportunities for new domestic production depending on imported oil.

Letter form John P. Ferriter, Deputy Assistant Secretary for Energy, Resources and Food Policy, to William E. Evans, July 1, 1989.

The Department further noted that reducing U.S. reliance on foreign oil could also reduce the budget deficit.

The Department of Energy stated that:

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

Letter from Retired Admiral James D. Watkins, U.S. Navy, to Hon. William E. Evans, Under Secretary of Commerce for Oceans and Atmosphere, June 12, 1989.

Although the comments of the various federal agencies clearly link Union's proposed POE with furthering the national defense and security interest in lessening this Nation's dependence on foreign oil and the enhancement of our domestic supply, none of the comments suggest that these interests would be "significantly impaired" if Union's proposed POE is not allowed to proceed in its present form. Amoco Decision at 58. These general conclusionary comments fail to meet the standard for the criteria

of Ground II. Additionally, I find that Union's general assertions also fail to meet this standard.

Conclusion on Ground II

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

Conclusion

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

Barbara H. Franklin
Secretary of Commerce

ATTACHMENT A

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE Tuesday, June 26, 1990

STATEMENT BY THE PRESIDENT

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

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

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

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

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

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

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

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 26, 1990

FACT SHEET

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

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

Decisions by the President on Three Pending Sales

Decision for California Sales

- Cancel all sales scheduled for 1990, 1991 and 1992 offshore California, including Sale 91 off the coast of northern California and Sale 95 off the coast of southern California.

- Conduct additional oceanographic and socioeconomic studies as recommended by the National Academy of Sciences in a review conducted for the interagency Task Force on Leasing and Development of the OCS (the Task Force). These studies should take 3 to 4 years.

- Exclude more than 99 percent of the tracts (including all of the Sale 91 area and all of the Sale 95 area south of the Santa Barbara Channel) off California from consideration for any lease sale until after the year 2000. The Interior Department has identified 87 tracts off the coast of southern California within the Sale 95 area that have high resource potential. These tracts are located in the Santa Maria Basin and Santa Barbara Channel, where oil and gas production is currently underway. They comprise approximately 0.7 percent of all of the tracts off California, or 0.67 percent of the 74 million total acres off California that could be leased and 1.63 percent of the 30.5 million acres in the Southern California Planning Area. These tracts will not be available for leasing consideration until [illegible] of the additional

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

Decision for Florida

- Cancel Sale 116, Part II, and exclude the area from consideration for any lease sale until after the year 2000. Any development after the year 2000 would be pursued only if it appears viable based on the guiding principles outlined below and the results of additional studies.

- Conduct additional oceanographic, ecological and socioeconomic studies as recommended by the National Academy of Sciences in its review. These studies should be completed within 5 to 6 years.

- Begin cancellation of existing leases off Florida and initiate discussions with the State of Florida for its participation in a joint federal-state buy-back of the leases.

Guiding Principles

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

(1) Adequate Information and Analysis -- Adequate scientific and technical information regarding the resource potential of each area considered for leasing and the environmental, social and economic effects of oil and gas activity must be available and subjected to rigorous scrutiny before decisions are made. No new leasing should take place without such information and analysis.

(2) Environmental Sensitivity -- Certain areas off our coasts represent unique natural resources. In those areas even the small risks posed by oil and gas development may be too great. In other areas where science and experience and new recovery technologies show development may be safe, development will be considered.

(3) Resource Potential -- Priority for development should be given to those areas with the greatest resource potential. Given the inexact nature of resource estimation, particularly offshore, priority should be given to those areas where earlier development has proven the existance of economically recoverable reserves.

(4) Energy Requirements -- The requirements of our nation's economy for energy and the overall costs and

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

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

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

Other Actions by the President

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

Sale 119 and Monterey Bay Sanctuary

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

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

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

Sale 96 in North Atlantic

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

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

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

OCS Development off Washington and Oregon

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

General OCS Decisions

The President also decided that:

- Air quality controls for oil and gas development offshore California should be substantially the same as those applied onshore.

- Immediate steps should be taken to improve the ability of industry and the federal government to respond to oil spills offshore, regardless of their source.

- Federal agencies should develop a plan to reduce the possibility of oil spills offshore from whatever source, including and especially from tanker traffic. This plan should include moving tanker routes further away from sensitive areas near the Florida Keys and the Everglades.

Restructuring the OCS Program

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

- targeted more carefully toward areas with truly promising resource potential;

- buttressed by information adequate to ensure that oil and gas development proceeds in an environmentally sound manner; and

- sensitive to the concerns and needs of local areas affected by offshore development.

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

- Improve the information needed to make decisions on OCS development by conducting the studies identified by the National Academy of Sciences and studies to explore new technologies for alleviating the risks of oil spills from OCS platforms and new oil and gas drilling technologies, such as subsea completion technology.

- Target proposed sale areas in future OCS five-year plans to give highest priority to areas with high resource potential and low environmental risk. This will result in offering much smaller and more carefully selected blocks of tracts.

- Prepare a legislative initiative that will provide coastal communities directly affected by OCS development with a greater share of the financial benefits of new development and with a larger voice in decision-making. Currently, states receive 100 percent of revenues from leases within three miles of shore. Revenues from leases between three and six miles of shore are divided 73 percent to the federal government and 27 percent to the states. Revenues from leases six miles or further offshore go 100 percent to the federal government. Coastal communities directly affected by development are not presently guaranteed any of these revenues.

Background on Sales

Sale 91

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

Sale 95

The Sale 95 area contains approximately 6.7 million acres and lies offshore southern California from the northern border of San Luis Obispo County to the United States/Mexico border. It is within the Southern California Planning Area, which extends from the northern border of San Luis Obispo County to the United States/Mexico border. Oil and gas production is currently taking place in the Southern California Planning Area in the Santa Maria Basin, the Santa Barbara Channel and offshore Long Beach. There are 135 active federal leases in the area, producing approximately 90,000 barrels of crude oil and 93 million cubic feet of natural gas daily from 17 producing platforms in federal

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

Sale 116, Part II

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

Background on the OCS Task Force

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

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

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

The Task Force found that:

- The southwest Florida shelf comprises subtidal and nearshore habitats that are unique within the U.S. continental margin and provide refuge to a number of rare and endangered species;
- The incremental risks of an oil spill associated with the Sale 91 area off northern California are greater than those associated with the other two sales.
- Information concerning the onshore socioeconomic effects of oil and gas development is particularly lacking for Sale 116, Part II off Florida and Sale 91.
- Additional studies in response to the report of the National Academy of Sciences are needed before the Secretary of the Interior makes leasing decisions in any of the three areas.

Background on the OCS Program

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

- make OCS resources available to meet the nation's energy needs;
- protect human, marine and coastal environments;
- ensure that states and local governments have timely access to information and opportunities to participate in OCS program planning and decision-making; and
- obtain for the federal government a fair and equitable return on resources while preserving and maintaining free enterprise competition.