DECISION AND FINDINGS
IN THE CONSISTENCY APPEAL
OF
CHEVRON U.S.A. INC.
FROM AN OBJECTION BY THE
CALIFORNIA COASTAL COMMISSION
OCTOBER 29, 1990

SYNOPSIS OF DECISION

After a successful bid in Lease Sale 80, Chevron U.S.A. Inc. (Chevron), with its partner Champlin Petroleum Company, acquired a full working interest in Lease OCS-P-0525 (Lease 0525). Amber Resources Company now owns Champlin's interest. Lease 0525 is located offshore in the Santa Barbara Channel, twelve miles south of the City of Santa Barbara and fifteen miles west of the City of Ventura. Chevron is the designated operator of the lease.

Chevron applied to the U.S. Environmental Protection Agency (EPA) for an individual National Pollutant Discharge Elimination System (NPDES) permit to discharge drill muds, cuttings and other associated discharges from Lease 0525. EPA issued an individual NPDES permit to Chevron subject to consistency concurrence by the California Coastal Commission (Commission). Chevron next submitted its proposed Plan of Exploration (POE) to the Minerals Management Service (MMS) of the Department of the Interior (Interior). The POE proposed drilling up to five exploratory oil and gas wells to evaluate the commercial hydrocarbon potential.

The Commission objected to Chevron's consistency certifications for the proposed POE and the individual NPDES permit. The Commission found the proposed POE inconsistent with the California Coastal Management Program (CCMP) policies on air quality and cumulative impacts. Although the Commission found the individual NPDES permit consistent with the CCMP policies, it objected because the permit was "inextricably linked" to the proposed POE.

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 Chevron's proposed activity to proceed, unless the Secretary of Commerce (or his designee) finds that the objected-to activity may be Federally approved because it is consistent with the objectives or purposes of the CZMA (Ground I) or otherwise necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

Chevron filed a Notice of Appeal, Statement in Support of an Override, and exhibits with the Secretary pursuant to sections 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. Chevron requested an override of

the objection on both Ground I and Ground II. In its Notice of Appeal, Chevron also raised the threshold issue of whether the Commission could object to the individual NPDES permit on the ground that it is "inextricably linked" to the objected-to POE.

During the course of the appeal, Chevron and the Commission raised five other threshold issues. Those issues are 1) standard of review, 2) authority to consider validity of the underlying state objection, 3) timeliness of Chevron's appeal, 4) authority of a state to review OCS air emissions and 5) incorporation of air emission standards into a state's Federally approved coastal management program.

For the first threshold issue, it was determined that the objection to the consistency certification for the individual NPDES permit was not valid because the objection failed to describe how the proposed activity was inconsistent with the policies of the CCMP as required by 15 C.F.R. § 930.64(b) and § 930.79(c). The findings on the other threshold issues are:

1. Standard of review -- The standard of review issue also covers burden of proof, deference and weight accorded to comments submitted in the appeal.

    a. Burden of Proof -- Chevron or any appellant has the burden of submitting evidence in support of its appeal and the burden of persuasion.

    b. Standard of review -- The appeal procedure is not an "appeal" in the judicial sense because it does not review the correctness of the underlying rationale of a state's objection. Rather, it is a de novo determination based on the CZMA and its implementing regulations. Therefore, the decisionmaker in the appeal will determine independently, based on all the relevant information submitted during the appeal procedure, whether the proposed activity satisfies the requirements of the grounds for overriding an objection.

    c. Deference -- The concept is inappropriate in the consistency appeal process because the decisionmaker is not reviewing the correctness of the underlying state objection. Rather, the decisionmaker considers de novo all relevant information submitted during the course of an appeal.

    d. Weight accorded to comments submitted in an appeal -- While all information and materials received in an appeal are incorporated into the administrative record, such information is considered only as it is relevant to the statutory and regulatory criteria for deciding consistency appeals.

2. Authority to consider validity of the underlying state objection -- The decisionmaker in CZMA appeals will follow the longstanding policy of presuming the substantive validity of a state's objection; that is whether the state correctly interpreted and applied its coastal management program in the consistency review process. Questions concerning substantive validity are deferred to a more appropriate forum to resolve whether a state was actually correct in its interpretation and application of its coastal management program. The decisionmaker may consider the procedural validity of the objection -- whether the state has complied with the Federal procedural requirements for making an objection -- because NOAA is responsible for the proper implementation of the consistency provisions of the CZMA and its implementing regulations.

3. Timeliness of Chevron's appeal -- The thirty day appeal period commences when the permit applicant receives notice of the objection accompanied by final findings stating how each proposed activity is inconsistent with specific elements of the state's coastal management program; identifying alternatives, if they exist, that would make the proposed activity consistent with the state's program; and notifying the applicant of the right to appeal. Chevron filed its Notice of Appeal within thirty days of such a formal notice from the Commission, and thus is timely. Within those thirty days, Chevron requested an extension of time to file its supporting information and data, and the Under Secretary granted that extension. Therefore, Chevron's filing of the supporting information and data is timely.

4. Authority of state to review OCS air emissions -- A state does not act ultra vires its authority under the CZMA in reviewing OCS air emissions for impacts on the land or water uses of its coastal zone. The Outer Continental Shelf Lands Act and the CZMA can be construed harmoniously, giving effect to the provisions of each.

5. Incorporation of air emissions standards into state's Federally approved coastal management program -- Because the applicable regulation states that air emissions standards must be incorporated by reference or otherwise, it is not necessary for a state to submit an actual copy of its air quality regulations to NOAA. Rather, a state may make reference to such standards in its coastal management program which is submitted to NOAA for review and approval.

The findings made on Grounds I and II are:

Ground I

1. Chevron's proposed project furthers exploration, development and production of offshore oil and gas resources, thus furthering one of the objectives or purposes of the CZMA.

2. While the proposed project will contribute to ozone that will impact nonattainment areas in the coastal zone of California, it will not cause adverse effects on the natural resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest.

3. Chevron's proposed project will not violate the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

4. There are several reasonable alternatives available to Chevron that would permit its proposed project to be carried out in a manner consistent with the California Coastal Management Program. Chevron may obtain offsets or procure a drilling rig with a Caterpillar engine.

Ground II

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

Conclusion

Because Chevron's proposed project does not meet the requirements of either Ground I or Ground II, Federal agencies may not issue permits for the project as proposed.

Factual Background

On December 1, 1984, the Department of the Interior (Interior) awarded Chevron U.S.A. Inc. (Chevron) and its partner Champlin Petroleum Company Lease OCS-P-0525 (Lease 0525) after a successful bid in Lease Sale 80. Chevron's Statement in Support of an Override for Plan of Exploration, August 11, 1988, at ii, 1 (Ch. State.). Although Amber Resources Company now owns Champlin's interest, Chevron is the lease operator. Id. at 1, 9. Lease 0525 is located offshore in the Santa Barbara Channel, twelve miles south of the City of Santa Barbara and fifteen miles west of the City of Ventura. Adopted Findings on Consistency Certification, June 9, 1988, at 1 (Adopted Findings). See Figure 1. The primary lease expires in November, 1989. Letter from J. Lisle Reed, Regional Director, Pacific OCS Region, Minerals Management Service to Katherine Pease, Assistant General Counsel, NOAA, October 25, 1988, enclosure at 5 (MMS Letter/Enclosure).

The California Coastal Commission (Commission)[1] objected to Lease Sale 80 in its entirety. The Commission recommended deferral of further leasing in Santa Barbara Channel, in particular, until additional analysis was completed to determine the cumulative impacts of offshore operations on vessel traffic safety, commercial fishing activities, air and water quality and other coastal resources and to determine the most environmentally protective method of oil transportation. Adopted Findings at 7. Due to the decision in Secretary of the Interior v. California, 464 U.S. 312 (1984), which held that Federal oil and gas lease sales on the outer continental shelf (OCS) are not subject to state consistency review under section 307 of the Coastal Zone Management Act (CZMA), the lease sale proceeded despite the Commission's objection.

Chevron applied to the U.S. Environmental Protection Agency (EPA) for an individual National Pollutant Discharge Elimination System (NPDES) permit governing all types of discharges from exploratory activities on Lease 0525. Adopted Findings at 26. On April 4, 1988, EPA notified Chevron of the issuance of Permit No. CA-0110796 subject to the consistency concurrence by the Commission.

Chevron prepared and submitted a proposed Plan of Exploration (POE) to the Minerals Management Service (MMS) of the Department of the Interior (Interior). MMS declared the proposed POE "officially submitted" on March 1, 1988, and approved the POE on March 31, 1988. MMS Letter/Enclosure at 1. On March 7, 1988, the Commission received the consistency certification for the proposed POE, and on April 4, 1988, it received the consistency certification for the individual NPDES permit. Ch. State. at ii.

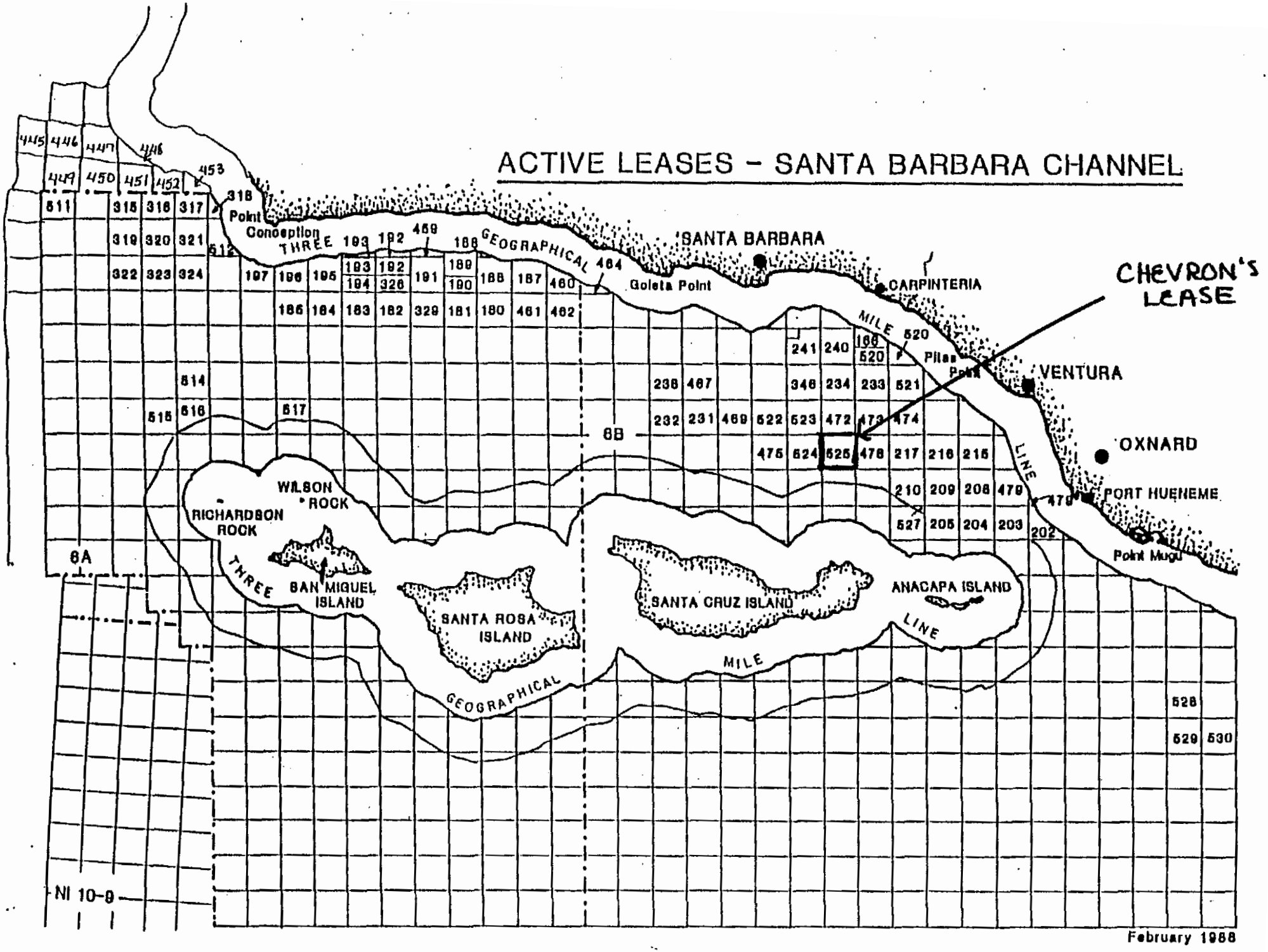

ACTIVE LEASES - SANTA BARBARA CHANNEL
CHEVRON'S LEASE
Point Conception
THREE GEOGRAPHICAL MILE LINE
SANTA BARBARA
Goleta Point
CARPINTERIA
Pitas Point
VENTURA
OXNARD
PORT HUENEME
Point Mugu
68
6A
WILSON ROCK
RICHARDSON ROCK
SAN MIGUEL ISLAND
SANTA ROSA ISLAND
SANTA CRUZ ISLAND
ANACAPA ISLAND
NI 10-9
February 1988

FIGURE 1

The POE proposes drilling up to five exploratory oil and gas wells to evaluate the commercial hydrocarbon potential. The wells would be drilled from a drilling vessel. The drilling depths would be approximately 9000 feet for two wells and 15,000 feet for three wells in water depths of 485 to 823 feet. Chevron estimates a drilling duration, including testing, evaluation and abandonment of 75-135 days per well. Id. at 9; Adopted Findings at 1, 6.

On June 9, 1988, the Commission objected to Chevron's consistency certifications for the proposed POE and the individual NPDES permit. Ch. State. at 2. The Commission found the proposed POE inconsistent with the California Coastal Management Program (CCMP) policies on air quality and cumulative impacts. Adopted Findings at 2. Concerning the individual NPDES permit, the Commission found it to be consistent with the CCMP policies based on the provisions of the permit. The Commission, however, objected to the individual NPDES permit because it was "inextricably linked" to the proposed POE already objected to by the Commission. Id. at 32.

Section 307(c)(3) of the CZMA provides that Federal licenses or permits required for Chevron's proposed activities may not be granted until either the Commission concurs in the consistency of such activities with its Federally-approved coastal zone management program, or the Secretary of Commerce (Secretary) finds that the proposed activities are consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security.

Appeal to the Secretary of Commerce

On July 1, 1988, Chevron filed a Notice of Appeal with the Secretary pursuant to subsections 307(c)(3)(A) and (B) of the CZMA, 16 U.S.C. § 1456(c)(3)(A) and (B). Chevron requested that the Secretary find its proposed POE and individual NPDES permit consistent with the objectives or purposes of the CZMA (Ground I) or otherwise necessary in the interest of national security (Ground II). Chevron also requested additional time to file supporting information and data pursuant to 15 C.F.R. § 930.125(c). Additionally, Chevron requested a threshold determination as to whether "the Commission's action on the [NPDES] permit constitutes a valid consistency objection under applicable federal regulations ...." Letter from Richard J. Harris, General Manager, Land Department, Western Region, Chevron U.S.A. Inc. to Honorable C. William Verity, July 1, 1988.

The parties to the appeal are Chevron U.S.A. Inc. and the California Coastal Commission. By memorandum dated May 19, 1989, the Secretary delegated to the Deputy Secretary the authority to decide this appeal.

Chevron filed supporting statements and exhibits on August 11, 1988. By letter dated August 19, 1988, the Under Secretary for Oceans and Atmosphere (Under Secretary) ruled[2] the Commission's objection to Chevron's consistency certification for its individual NPDES permit invalid because the objection failed to include a statement of "how the proposed activity is inconsistent with specific elements of the [state's] management program" as required by 15 C.F.R. § 930.64(b) and § 930.79(c). Letter from William E. Evans, Under Secretary for Oceans and Atmosphere, Department of Commerce to Richard J. Harris, Chevron U.S.A. Inc.; Carolyn Small, California Coastal Commission, August 19, 1988 (Party Letter). Because the Under Secretary found that the Commission's objection to the individual NPDES permit is not valid, I will consider only Chevron's proposed POE under the criteria established by the Department of Commerce's (Department) implementing regulations.

The Commission filed a response brief on October 13, 1988. The County of Santa Barbara Board of Supervisors and the Air Pollution Control District (SBCAPCD), non-parties in this appeal, requested that a public hearing be held. The Commission supported the request while Chevron opposed it. The Under Secretary denied the request.[3] Both Chevron and the Commission filed reply briefs on January 4, 1989. On January 6, 1989, the Commission notified the Under Secretary that Chevron had filed a new study, Analysis of the Offset Acquisition Process and Offset Market in Santa Barbara County, California (AER*X Report), with its reply brief. The Commission requested an additional briefing period to submit its response to the study.[4] Chevron opposed the request and stated that "the AER*X report is not new information, but rather it is existing information digested in a form which allowed Chevron to obtain access to it." Letter from Richard J. Harris, Chevron U.S.A. Inc. to William E. Evans, Under Secretary for Oceans and Atmosphere, January 9, 1989. The Under Secretary reopened the record for the limited purpose of receiving comments on the AER*X Report. The Under Secretary invited the Commission, the SBCAPCD, the Minerals Management Service, Interior and EPA to submit comments. Chevron and the Commission also were provided the opportunity to respond to those comments. Letter from William E. Evans, Under Secretary for Oceans and Atmosphere, to J. Lisle Reed, Pacific Regional Director, Minerals Management Service; James E. Cason, Acting Assistant Secretary, Department of the Interior; James M. Ryerson, County of Santa Barbara Air Pollution Control District; Carolyn Small, California Coastal Commission; Jennifer Joy Wilson, Assistant Administrator for External Affairs, EPA, February 8, 1989.

The Department published a notice of appeal and request for comments in the Federal Register (53 Fed. Reg. 34571 (Sept. 7, 1988)). On October 15, 16, 17, 1988, the Department published a legal notice requesting comments in the Santa Barbara News -

Press, a newspaper of general circulation in Santa Barbara County. The Department received three public comments, two opposing the proposed project and one supporting it.

The Department solicited comments on whether the proposed POE was consistent with the objectives or purposes of the CZMA from the Departments of the Interior, the Treasury, Transportation and from the National Marine Fisheries Service, the Minerals Management Service, U.S. Coast Guard, U.S. Fish and Wildlife Service, Federal Energy Regulatory Commission, and U.S. Environmental Protection Agency. The letters to the Departments of Defense, Energy, State and the National Security Council also requested comments regarding the national security implications of the proposed project. All requested agencies responded except the Department of Energy. All comments and information received by the Department during the course of the appeal have been included in the administrative record.

Threshold Issues

During the course of this appeal, Chevron and the Commission raised a number of threshold issues. Those issues are A) standard of review, B) authority to consider validity of an objection, C) timeliness of Chevron's submission of supporting information, D) authority of a state to review OCS emissions and E) incorporation of air emission standards. I address each issue below.

A. Standard of Review

I use this category to address several related issues including burden of proof, standard of review, deference and weight accorded to comments submitted in the appeal.

The Commission states that Chevron "carries the burden of demonstrating, by clear and convincing evidence, that the appeal standards are satisfied." Response Brief of the California Coastal Commission, October 13, 1988, at 6-7 (CCC Resp. Br.). Chevron counters that the standard of review "does not place any burden on either the applicant or the state agency ...." Chevron Reply Brief, January 4, 1989, at 7 (Ch. Reply Br.) As observed in the Korea Drilling Decision,

> [t]he regulations governing consistency appeals do not discuss "burden of proof." They merely state that the Secretary shall find that a proposed activity satisfies either of the two statutory grounds "when the information submitted supports this conclusion." 15 C.F.R. § 930.130(a).
>
> The term "burden of proof" encompasses the burden of producing evidence and the burden of persuasion.

> Except as otherwise provided by statute, the moving party before an administrative tribunal generally bears both burdens.
>
> Decision and Findings in the Consistency Appeal of the Korea Drilling Company, Ltd., January 19, 1989, at 22 (Korea Drilling Decision).

Thus, Chevron has the burden of submitting evidence in support of its appeal. Chevron has met this burden by submitting briefs and exhibits in support of its position that its proposed activity is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. Whether Chevron has met the burden of persuasion will be determined as I consider the merits of the appeal.

Further considering the standard of review, Chevron concludes that the only applicable standard of evidence in a consistency appeal would be "substantial evidence." Ch. Reply Br. at 7. The term "consistency appeal" is somewhat of a misnomer. Unlike other appeal procedures, the consistency appeals process is not a review of the correctness of the underlying rationale of a state's objection. See discussion infra. As a result, I decline to adopt the standard of "substantial evidence" which is the accepted standard for a review of an agency's factual findings.[5] See Universal Camera Corp. v. NLRB, 340 U.S. 474 (1951). Rather, the appeals process is a de novo determination based on the statutory standards of the CZMA and its implementing regulations. Therefore, the decisionmaker in CZMA consistency appeals shall independently determine, based on all the information submitted during the procedure, whether the proposed activity is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security.

The Commission asserts that "deference must be accorded to the Commission's decision ... [and that] its findings are a part of the evidence which must be considered ...." CCC Resp. Br. at 6-7. Chevron points out that the concept of deference is "applied during judicial review of an agency decision when that agency is considered the expert in the subject matter." Ch. Reply Br. at 8. See also Chevron, U.S.A. Inc. v. NRDC, Inc., 467 U.S. 837, 842-45 (1984).

As Chevron correctly observes, a Secretarial override is not a review of whether the Commission properly interpreted the California Coastal Act; rather it is a consideration of whether the proposed activity meets the statutory and regulatory criteria for an override established in the CZMA. Ch. Reply Br. at 8. Thus, the concept of deference is inappropriate in the appeal proceeding as it applies to submissions by the parties.[6] In its discussion on burden of proof, Chevron states that the Secretary is authorized to consider all information submitted

during the course of an appeal. Id. at 7. While all information and materials received in an appeal are incorporated into the administrative record, they are considered only as they are relevant to the statutory and regulatory criteria for deciding consistency appeals. See Decision and Findings in the Consistency Appeal of Long Island Lighting Company, February 26, 1988, at 4, n.4. Thus, the findings of the Commission to the extent that they are relevant are considered during the deliberation of the appeal.

The Commission expresses concern about certain comments by several Federal agencies alleging arbitrariness regarding the Commission's past and future actions on Lease Sale 80 tracts. CCC Reply Br. at 3-5. As stated above, only those comments that are relevant to the appeals criteria are considered.

B. Authority to Consider Validity of an Objection

The Commission questions the authority of the Under Secretary to find that the objection to the individual NPDES permit was invalid. The Commission states that the CZMA directly addresses the Secretary's authority vis a vis a state's objection. According to the Commission, that authority is limited to an override based on one of the two statutory grounds. CCC Resp. Br. at 7-8.

Over the years, various Secretaries of Commerce, as a matter of policy, have refused to determine the "substantive" validity of the underlying state objection in the appeals process -- that is, whether the state has correctly interpreted and applied the provisions of its Federally-approved coastal management program in determining whether a proposed activity was inconsistent with the state's coastal management program. By giving a state's objection an irrebuttable presumption of substantive correctness and refusing to consider the merits of appellant's claim that the state was not correct in objecting, the Secretary presumes the substantive validity of a state's objection and leaves it to a more appropriate forum to resolve whether the state was actually correct. This policy is in accord with discussions on the issue during the promulgation of the consistency regulations.

In the proposed regulations, NOAA said that "[t]he State agency's finding of inconsistency with the State's program is presumed to be correct and is not an issue on appeal." 41 Fed. Reg. 42883 (Sept. 28, 1976). NOAA favored this approach because it viewed the appeals process similar to variance procedures which do not question the validity of the underlying statute or regulation. Id. NOAA reasoned that the section 312, continuing performance evaluation, would address the manner in which states carried out their consistency responsibilities. 42 Fed. Reg. 43586, 43595 (Aug. 29, 1977). When NOAA adopted the final consistency regulations in 1978, it again rejected the suggestion that the

scope of the Secretary's review be broadened to include inquiry into the validity of a state's objection. 43 Fed. Reg. 10516 (Mar. 13, 1978).

The fact that the Secretary presumes the substantive validity of the underlying objection does not suggest that the Secretary should not consider whether the state has complied with the procedural requirements for making an objection as established by the CZMA and its implementing regulations. This approach is justified as NOAA is responsible for the proper implementation of the consistency regulations. Thus, if the Secretary learns that a state has not filed a timely objection, and, therefore its concurrence should be presumed, he can point this out in the decision and such finding could be relied on by an appellant in obtaining a Federal permit.

The Under Secretary determined that the Commission's objection to Chevron's individual NPDES permit did not conform to Federal consistency procedural regulations because the Commission found that the individual NPDES permit was consistent with the CCMP. As the Under Secretary stated in the Party Letter:

> [i]t objected, however, on the ground that the NPDES permit was "inextricably linked" to the POE. To constitute a valid objection, sections 930.64(b) and 930.79(c) require that the objection include a statement of "how the proposed activity is inconsistent with specific elements of the [state's] management program." I find that the Commission's objection to Chevron's consistency certification for its proposed individual NPDES permit, in light of the Commission's specific finding that the permit is indeed consistent with its management program, is not a valid objection within the meaning of the CZMA and its implementing regulations.

I affirm that ruling.

C. Timeliness of Chevron's Submission of Supporting Information

In the August 19, 1988, letter to the parties, the Under Secretary considered the question of "what constitutes 'receipt of a State agency objection' for purposes of commencement of the thirty-day period specified in 15 C.F.R. § 903.125(a) for filing a notice of appeal?" The Under Secretary concluded that:

> [c]learly, sections 930.64(b) and 930.79(c) [15 C.F.R.] contemplate that a "State agency objection" set forth the required information and statement of appeal rights and be communicated formally to the applicant. Notice, whether written or verbal, that the state agency decision maker (here the Commission) objects, with draft

> findings subject to agency staff editorial or other revisions before becoming final findings, is insufficient to commence the 30-day appeal period. To hold otherwise would not be fair to an applicant, while to so hold, would not prejudice a state agency. Notification of the right to appeal and a final specific statement of how each proposed activity is inconsistent with specific elements of the State's coastal management program and what alternatives, if any, the agency considers would be consistent, may well be needed by an applicant to decide whether the filing of an appeal and its incumbent expense would be its best course of action. Fundamental fairness to an applicant requires that a state fully comply with the requirements of sections 930.64(b) and 930.79(c) before the 30-day appeal period commences.
>
> Party Letter at 2.

The Under Secretary then found that Chevron received the Commission's objection letter on June 27, 1988 -- thus commencing the thirty-day time period. Id. The Commission disagrees with the Under Secretary's interpretation of the Federal consistency regulations. It argues that June 9, 1988, the date of the Commission's vote to object, triggers the thirty-day appeal period. CCC Resp. Br. at 9.

For the reasons discussed in the Under Secretary's August 19, 1988, letter, I decline to adopt the Commission's interpretation. While the phrase "receipt of a State agency objection" is not defined in the regulations nor discussed in the preambles of the notices of proposed or final regulations, the Under Secretary's interpretation is reasonable. Deference should be accorded to the interpretation of the agency charged with administering a statute. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971); see also Udall v. Tallman, 380 U.S. 1, 16 (1965).

The Commission next challenges the timeliness of the submission of Chevron's supporting information and data which Chevron filed on August 11, 1988. In two previous letters dated July 1, 1988 and July 25, 1988, Chevron had requested an extension of time to file this information pursuant to 15 C.F.R. § 930.125(c). Letter from Richard J. Harris, Chevron U.S.A. Inc. to Honorable C. William Verity, Secretary of Commerce, July 1, 1988; Letter from Richard J. Harris, Chevron U.S.A. Inc. to Honorable C. William Verity, Secretary of Commerce, July 25, 1988. Section 930.125(c) provides, in part, that "[t]he Secretary may approve a reasonable request for an extension of time to submit supporting information so long as the request is filed with the Secretary within the 30-day [appeal] period."

The Commission states that because the Under Secretary did not grant the extension until August 19, 1988, the time had already passed for Chevron's submissions. CCC Reply Br. at 9. This position is not supported by the plain language of 15 C.F.R. § 930.125(c). That regulation does not subject the Secretary to any deadline for granting or denying an extension request. Rather, it requires the appellant to make the request within the thirty-day time period. Chevron has done so, and based on the extension of time granted by the Under Secretary, Chevron's submissions are timely. Party Letter at 3.

D. Authority of State to Review OCS Air Emissions

The question has been raised in this appeal of whether the Commission has the authority under the CZMA to review for consistency air emissions from a proposed OCS project if those air emissions affect the land or water uses of the state's coastal zone. The answer is yes --- a state may conduct such a review and object to the consistency certification of such a project if the air emissions are inconsistent with the air quality standards of its Federally-approved coastal management program. I explain the rationale for my conclusion below by examining the Clean Air Act, the CZMA, and the Outer Continental Shelf Lands Act.

The Clean Air Act (CAA) authorizes a coordinated Federal-state scheme for the regulation of air pollution. The Administrator of the Environmental Protection Agency promulgates national ambient air quality standards (NAAQS) for certain pollutants to protect health and welfare. CAA Sections 108 and 109, 42 U.S.C. § 7408 and § 7409. Each state is required to adopt a state implementation plan (SIP) for its air quality control regions to meet the NAAQS. After the EPA Administrator approves a SIP, it has the dual character of state law and enforceable federal regulation. Baughman v. Bradford Coal Co., Inc., 592 F.2d 215, 216 (3d Cir. 1979), cert. denied, 441 U.S. 961 (1979).

Section 116 of the CAA preserves to the states the authority to adopt more stringent standards than Federal standards:

> [e]xcept as otherwise provided in [sections not applicable here] nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or

> limitation which is less stringent than the standard or limitation under such plan or section.
>
> 42 U.S.C. § 7416.

Thus, the CAA allows state and local governments to adopt standards in their SIP's which are more stringent than those established by EPA in its NAAQS. If EPA has not acted, state and local governments may set their own emission levels and air quality standards.

Recognizing the regulatory structure established by the CAA, section 307(f) of the CZMA, 16 U.S.C. § 1456(f), provides:

> [n]othwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by ... the Clean Air Act, as amended, or (2) established by the Federal Government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be ... the air pollution control requirements applicable to such program. (emphasis added).

Interpreting section 307((f), NOAA, the agency responsible for implementing the CZMA, promulgated regulations at 15 C.F.R. § 923.45 which state:

> (c) Requirements. (1) States must incorporate into their program, by reference or otherwise, requirements established pursuant to ... the Clean Air Act (CAA), as amended.
>
> (2) If more stringent standards are developed by a State or locality pursuant to the ... CAA, and where such standards can be enforced under State authorities, they must be incorporated, by reference or otherwise, into the State's management program. (emphasis added).[8]

The Outer Continental Shelf Lands Act (OCSLA) establishes a system for regulating the exploration and exploitation of the oil and gas reserves underlying the subsoil and seabed of the OCS. In setting out its OCS policy, Congress stated in section 3 of OCSLA:

> the rights and responsibilities of all States, and where appropriate, local governments, to preserve and protect their marine, human and coastal environments through such means as regulation of land, air, and water uses, of safety and related development and activity should be considered and recognized .... (emphasis added).

> Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, Title II, § 202, 92 Stat. 634, 635, 43 U.S.C. § 1332(5).

Under OCSLA section 5(a)(8), 43 U.S.C. § 1334(a)(8) (which was added by the 1978 Amendments to the Act, P.L. 95-372), the Secretary of the Interior may prescribe regulations necessary:

> for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 USC 7401 et seq.), to the extent that activities authorized under this subchapter significantly affect the air quality of any State. (emphasis added).

The OCSLA also explicitly recognizes the application of the CZMA Federal consistency provisions to OCS projects. The 1978 Amendments to OCSLA added section 11(c)(2), 43 U.S.C. § 1340(c)(2), which covers exploration of OCS lease tracts:

> [t]he Secretary [of the Interior] shall not grant any license or permit for any activity described in detail in an exploration plan and affecting any land use or water use in the coastal zone of a State with a coastal zone management program approved pursuant to section 1455 of Title 16, unless the State concurs or is conclusively presumed to concur with the consistency certification accompanying such a plan pursuant to section 1456(c)(3)(B)(i) or (ii) of Title 16, or the Secretary of Commerce makes the finding authorized by section 1456(c)(3)(B)(iii) of Title 16.[9]

Moreover, section 608 of the 1978 Amendments to OCSLA, 43 U.S.C. § 1866, provides:

> (a) Except as otherwise expressly provided in this chapter, nothing in this chapter shall be construed to amend, modify, or repeal any provision of the Coastal Zone Management Act of 1972 ....

Under the scheme created by the 1978 Amendments, Interior is authorized to promulgate regulations for OCS emissions assuring compliance with EPA-set NAAQS under the CAA where such emissions "significantly affect" the air quality of any state. In addition, Interior may not approve exploration or development plans that affect land or water uses of the coastal zone absent state concurrence with its coastal management program unless the Secretary of Commerce overrides the state objection. Assuming that OCS air emissions do affect the land or water uses of a state coastal area, the issue raised by these provisions is whether, notwithstanding the Secretary of the Interior's authority to regulate OCS air emissions, states have the

authority to impose state air quality standards on OCS projects impacting onshore air quality via the consistency provisions of the CZMA.

This is an issue which has not been addressed in any judicial decision. I will analyze this issue by first considering preemption and then reviewing principles of statutory construction.

The first query is whether states are preempted from regulating OCS emissions through the application of Federal consistency by section 5(a)(8) of the OCSLA and the Supremacy Clause of the U.S. Constitution.

The Supremacy Clause provides, in part, that the laws of the United States made pursuant to the Constitution shall be the supreme law of the land. U.S. Const. art. VI, cl. 2. Accordingly, under the doctrine of preemption, Federal law will supersede state law to the extent that state law conflicts with Federal statutes. Maryland v. Louisiana, 451 U.S. 725, 747 (1981). Congress also may preempt state law by declaring either implicitly or explicitly that states may not act in an area of Federal regulation. Even when Congress has not completely foreclosed state action in a particular field, state regulation is void to the extent that it actually conflicts with the Federal law. Ray v. Atlantic Richfield Co., 435 U.S. 151, 158 (1978). This conflict can arise where state law stands as an obstacle to the full accomplishment of the Federal objective. Id. (citing Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

In the 1978 Amendments to the OCSLA, Congress did not intend to preempt state consistency review authority over OCS emissions under the CZMA. While section 5(a)(8) gives Interior the authority to promulgate air emission regulations for OCS activities, this provision is circumscribed by the other provisions of the Amendments. Section 3 of the OCSLA acknowledges state authority to regulate air quality to protect the state coastal environment. In addition, sections 11 and 25 incorporate almost verbatim the consistency review provisions for OCS exploration and development activities found in section 307(c)(3)(B) of the CZMA which empowers states to review any activity detailed in an OCS exploration, production or development plan which affects land or water uses in the coastal zone for consistency with a state coastal management program. There is no exception for air emissions or any other impacts OCS activities might have on the coastal zone. Further, section 307(f) of the CZMA requires the incorporation of CAA standards into state coastal management programs. If a state or coastal locality has adopted more stringent air quality or emission standards, these also must be included in the program.[10] Finally, and most importantly, section 608 of the OCSLA 1978

Amendments explicitly preserves all provisions of the CZMA, including Federal consistency.

This statutory scheme created by the 1978 Amendments is unmistakable in its effect in retaining state consistency review authority under the CZMA. Because OCS activities must be consistent with the state coastal management program (which at a minimum includes EPA-set NAAQS and other national air quality and emission standards) before Interior may approve the activities under sections 11 and 25 of the OCSLA, consistency review by a state for the impact of the proposed OCS projects on onshore air quality (and consequently the land and water uses of the coastal zone) is a critical part of the OCSLA statutory scheme. If Congress had intended to exempt OCS air emissions from state consistency power, it could have included a specific exception in the text of the 1978 OCSLA Amendments. Instead, Congress provided a CZMA savings clause. Consistency review by a state thus would not thwart the full execution of Congressional purpose in promulgating the OCSLA to make the resources of the OCS "available for expeditious and orderly development, subject to environmental safeguards." OCSLA Section 3(3), 43 U.S.C. § 1332(3).[11]

While no court has construed the interplay between OCSLA section 5(a)(8) and the CZMA consistency provisions, one case, California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979), considered air emissions from OCS activities. In Kleppe, Exxon Corporation sought to develop the Santa Ynez Unit located on the OCS approximately 3.2 miles from the Santa Barbara County shore. EPA claimed that a floating offshore storage and treatment facility would require an air quality permit under the CAA. Interior and Exxon disagreed. Agreeing with Interior and Exxon, the Ninth Circuit noted the comprehensive scheme for regulation of the OCS and the explicit provision for air emission regulation in section 5(a)(8) of the 1978 Amendments and found no further support for EPA to regulate OCS air quality. Id. at 1198.

Kleppe addressed the relationship between the OCSLA and the CAA and concluded that because the OCSLA contained specific provisions granting the Secretary of the Interior the authority to set standards for emissions on the OCS, EPA was precluded from exercising concurrent jurisdiction. Although Kleppe acknowledges a paramount role for Interior in the establishment of air quality standards for OCS emissions vis a vis EPA, it was neither a preemption nor a consistency decision, and, therefore did not address the relationship between section 307(c)(3)(B) of the CZMA and OCSLA section 5(a)(8).

Unlike EPA's regulatory authority under the CAA, the provisions of the CZMA are expressly protected by section 608 of the OCSLA Amendments. The legislative history specifically addresses the relationship between consistency under the CZMA and the 1978

Amendments. "The Committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. 1451 et seq.), certain OCS activities including lease sales and approval of development and production plans must comply with 'consistency' requirements as to coastal zone management plans approved by the Secretary of Commerce. Except for specific changes made by Titles IV and V of the 1977 Amendments [not relevant here], nothing in this Act is intended to amend, modify or repeal any provision of the Coastal Zone Management Act. Specifically, nothing is intended to alter procedures under that Act for consistency once a state has an approved Coastal Zone Management Plan." H. REP. NO. 590, 95th Cong., 1st Sess. ___, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1559, n.52. Congress also intended concurrent state and Federal authority over OCS activities, as illustrated by the policies of section 3 of the OCSLA and the decision in California v. Watt, 520 F. Supp. 1359, 1376 (C.D. Cal. 1981), rev'd on other grounds, 464 U.S. 312 (1984) ("Congress did contemplate concurrent authority of the state and federal agencies over the coordination of OCS activities").

In addition, as discussed supra, both state consistency authority and the duties imposed on Interior under the OCSLA are compatible. Moreover, the Secretary of Commerce has the ultimate authority to override a state consistency objection on air quality grounds if he finds it necessary to do so in the national interest or for national security reasons. Accordingly, Kleppe may be viewed as persuasive of Interior's authority to set standards for OCS air emissions, but it is not controlling on the issue of whether a state may consider the effects of these emissions in its consistency review.

Some have relied upon CZMA section 307(e)(2) to support the proposition that a state does not have the authority to review for consistency air emissions from OCS sources. The plain language of that section states that nothing in the CZMA should be construed as "superceding, modifying or repealing existing laws applicable to the various Federal agencies." 16 U.S.C. § 1456(e). However, section 307(e) cannot be read in isolation, because if one accepts this rigid reading of this provision, the entire consistency process would be vitiated.

Sections 307(c) and 307(e) were part of the original CZMA passed in 1972. The purpose of the Act was to assist states in developing coastal management programs to exercise full state authority over the coastal zone. CZMA Section 302(i), 16 U.S.C. § 1452(i). The legislative history of the CZMA shows that Congress intended to have the consistency provisions play a crucial role in motivating the states to develop coastal management programs. S. REP. NO. 277, 94th Cong., 2d Sess. 9, reprinted in 1976 U.S. CODE CONG. & ADMIN. NEWS 1768, 1776. Therefore, it would be illogical to conclude that Congress

granted states the important and unique authority to review Federal activities for impacts on state coastal zones in section 307(c), only to withdraw that power two subsections later.

Relying upon the principle of statutory construction that different portions of the same statute should be read consistently with each other to avoid conflict, United States v. Stauffer Chem. Co., 684 F.2d 1174, 1186 (6th Cir. 1982), aff'd, 464 U.S. 165 (1984), the only reasonable reading of section 307(e) is that it does not affect the substantive burden on Federal agencies to comply with state coastal zone programs absent a clear conflict with another mandatory duty imposed by statute on that Federal agency. The interpretation of section 307(e) adopted by NOAA, is consistent with this reading of the provision:

> [t]he duty [consistency] the Act imposes upon Federal agencies is not set aside by virtue of section 307(e). The Act was intended to cause substantive changes in Federal agency decision making within the context of the discretionary powers residing with such agencies. Accordingly, when read together, sections 307(c)(1) and (c)(2) and 307(e) require Federal agencies, whenever legally permissible, to consider State management programs as supplemental requirements to be adhered to in addition to existing agency mandate.
>
> 15 C.F.R. § 930.32(a).

Under this interpretation, while Federal agencies retain ultimate authority to administer the various applicable Federal statutes, they must exercise that authority in a manner consistent with the CZMA. Therefore, state consistency review exercised under the CZMA is not automatically preempted by other Federal law.

In summary, it is clear that Congress did not intend to preempt state consistency review of OCS activities for effects on the land or water uses of the coastal zone by OCSLA section 5(a)(8) and CZMA section 307(e). Congress specifically reserved state consistency authority when it amended the OCSLA in 1978. Sections 11 and 25 restrict Interior's approval of exploration and development activities absent consistency with a state coastal management program (or an override by the Secretary of Commerce), and section 608 of the 1978 Amendments clearly protects this authority. Section 307(f) of the CZMA specifically requires states to incorporate CAA requirements into coastal management programs, including the more stringent state and local requirements authorized by the CAA. Section 307(c)(3)(B) of the CZMA requires that any activity described in detail in an exploration or development plan must be consistent with a state coastal management program; there is no exemption for air impacts. The Kleppe case, while persuasive of Interior's

authority to regulate OCS air emissions, is not dispositive because it did not address CZMA Federal consistency or the express savings provision in the OCSLA for the CZMA. Nor does CZMA section 307(e)(2) affect this allocation of power, because the section must be interpreted in light of the entire CZMA statutory scheme, and can only be reasonably read as preserving state consistency review authority unless a Federal agency cannot adhere to the standards in a state program due to an irreconcilable conflict with another mandatory statutory duty.

Because Congress evinced no intent to exempt OCS emissions from consistency review, the inquiry then becomes whether the OCSLA creates an irreconcilable conflict with the CZMA consistency provisions.

In order to accept the position that states are precluded from applying consistency authority under the CZMA to air quality impacts under the OCSLA, one would have to argue that the 1978 Amendments to the OCSLA, as a later enactment of Congress, somehow repeals or modifies the terms of the CZMA. Because repeals by implication are disfavored, the only justification for such a repeal is when the earlier and later statutes are irreconcilable. Georgia v. Pennsylvania Railroad Co., 324 U.S. 439, 456-57 (1945). The U.S. Supreme Court has recognized that when two statues are capable of coexistence, it is clearly the duty of the courts to regard each as effective absent clearly expressed legislative intent to the contrary. Morton v. Mancari, 417 U.S. 535, 549, 551 (1974) (citing United States v. Bordon Co., 308 U.S. 188, 199 (1939)).

Under OCSLA section 5(a)(8), the Secretary of the Interior may regulate air emissions as necessary to comply with NAAQS "to the extent that activities authorized under this subchapter significantly affect" state air quality. 43 U.S.C. § 1334(a)(8). (emphasis added). This contrasts with the states' reviewing threshold under the CZMA -- consistency review of OCS activities "affecting any land use or water use in the coastal zone." CZMA Section 307(c)(3)(B), 16 U.S.C. § 1456(c)(3)(B). When an OCS activity affects land or water uses of the coastal zone, states are authorized to require consistency for the activity with their coastal management programs. States are not limited to reviewing only those activities that significantly affect the coastal zone.[12]

Congress appears to have attempted to resolve this potential conflict with respect to air emissions when it amended the OCSLA, since, as the conferees to the 1978 Amendments indicated,

> when a determination is made that offshore operations may have or are having a significant effect on the air quality of an adjacent onshore area, and may prevent or are preventing the attainment or maintenance of the

> ambient air quality standards of such area, regulations are to be promulgated to assure that offshore operations conducted pursuant to this act do not prevent the attainment or maintenance of those standards.
>
> The conferees agreed that if an approved state implementation plan has ambient air quality standards which are more stringent than the national ambient air quality standards, the Secretary of the Interior shall, with appropriate regulations, assure that offshore operations conducted pursuant to this act do not prevent the attainment or maintenance of those state standards, if the air quality of the State is significantly affected by such offshore operations. These State standards and any national standards would not, however, apply to the quality of air over the OCS itself, or to OCS activities located in other parts of the country.
>
> The conferees' intent was that the regulations promulgated by the Secretary not generally require that the air mass above the OCS itself be brought into compliance with national or state ambient air quality standards but that regulations might be appropriate for the air above or near an artificial installation or other device (platform), so that emissions from such source is [sic] controlled to prevent a significant effect on the air quality of an adjacent onshore area. (emphasis added).
>
> CONF. REP. NO. 1474, 95th Cong., 2d Sess. 85, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1674, 1684.

It is clear, then, that Congress intended OCS activities not to prevent the attainment or maintenance of air quality standards more stringent than the NAAQS by requiring the Secretary of Interior to promulgate regulations assuring this. However, the Secretary is not required to regulate such emissions if they do not "significantly affect" onshore air quality even though they may contribute to the prevention of attainment or maintenance of state standards.

Thus the term "significantly affect" becomes a key consideration for the Secretary of Interior. Pursuant to section 5(a)(8) of the OCSLA, Interior promulgated regulations at 30 C.F.R. § 250.45 construing "significantly affecting" for certain inert pollutants. The regulation provides that if a facility is not otherwise exempted from the regulation, its emissions are deemed significant if they result in onshore ambient air concentrations above specified amounts of sulfur dioxide, nitrogen dioxide, total suspended particulates and carbon monoxide. 30 C.F.R. § 250.45(e).

It is inappropriate for me to question whether the significance levels established by this regulation ensure the attainment or maintenance of state standards. I presume that the Secretary of the Interior has followed the guidance of the conferees to promulgate OCS air emissions regulations which do not interfere with the ability of a state to adhere with its more stringent air quality standards for "significant" OCS emissions. Should a state believe that Interior has not taken onshore air quality sufficiently into account when it promulgated these regulations, the appropriate forum for resolution of this issue is the Federal judicial system. I note, in passing, that California has availed itself of this option by challenging the regulations. See California v. Secretary of the Interior, No. 81-3234 (C.D. Cal. July 1, 1981).[15]

Assuming that the regulations incorporated the guidance of the conferees, a state would be unlikely to object on air emission grounds to a proposed project if that project met Interior's air emissions regulations. While a state reviews proposed OCS activities pursuant to the CZMA against state standards, not Interior's air quality regulations, that fact is not critical to my analysis of this threshold issue. Rather, if the statutory scheme of the OCSLA is being carried out as envisioned, there should be few problems when a state conducts a consistency review. There may be other cases where prevailing wind patterns carry air emissions away from coastal areas. In such cases, a state's consistency review would result in concurrence because there would be no impact on the land or water uses of the coastal zone from the emissions. Under either interpretation, the provisions of the OCSLA and the CZMA can stand together without conflict.

Under my analysis, it appears that OCSLA section 5(a)(8) and the CZMA consistency provisions can be read to give effect to the provisions of both statutes. My interpretation is bolstered by the fact that the Department of the Interior likewise believed that the two statutes could be construed harmoniously as indicated by the statement in the preamble to Interior's air quality regulations:

> [b]esides the authority to review and comment on exploration plans and development and production plans, a state with an approved coastal zone management plan has the opportunity to consider onshore air impacts as a part of its consistency review of OCS plans.
>
> 44 Fed. Reg. 27451 (May 10, 1979).

Therefore, I conclude that the OCSLA does not modify the Federal consistency provisions of the CZMA.

At this juncture, I am sure that the Commission would redirect my attention to the fact that Interior has not promulgated a regulation establishing a significance level for ozone. CCC Resp. Br. at 21; CCC Reply Br. at 25. In such a case, the permit applicant would only have to consider the air quality standards of a state's coastal management program (which may include local government standards) when determining the impact of the proposed project on onshore air quality. Of course, the state/local standard would apply only to the onshore impact to the extent that the onshore impact prevented attainment or maintenance of the state standard. Again, I see no conflict with the provisions of the OCSLA because the Secretary of the Interior has not promulgated a regulation for this reactive pollutant.

Based on my analysis of the plain language of the statutes, their legislative histories and agency and judicial interpretations, I conclude that a state does not act ultra vires its authority under the CZMA in reviewing OCS air emissions for impacts on the land or water uses of the coastal zone.

E. Incorporation of Air Emissions Standards

The final threshold issue to resolve is whether a state must submit its air quality standards to NOAA for review and approval before they become mandatory enforceable policies of the Federally-approved coastal management program. Only mandatory enforceable policies can be used to determine the consistency of a proposed activity. See 15 C.F.R. § 930.58(a)(4). California has not submitted its specific air quality standards to NOAA for approval and incorporation into the CCMP. However, the State of California Coastal Management Program and Final Environmental Impact Statement, August, 1977, discusses the air quality elements of the CCMP. In California, the responsibility to implement the requirements of the CAA is vested in the California Air Resources Board and its local air pollution control districts. California Coastal Act, section 30414. In the program document, NOAA stated

> we do acknowledge that those air quality standards established by the [California Air Resources] Board pursuant to the Clean Air Act are incorporated per se in the California Coastal Management program .... This incorporation complied with the statutory mandate of Section 307(f) that, notwithstanding any other provision of the CZMA, the primary pollution control mechanism in the coastal zone are the air ... quality control requirements established by State or local governments under the Clean Air Act .... Even if these standards are more stringent than Federal standards, they must be a part of the State's coastal zone management program .... The CZMA does not provide NOAA with any discretion to

> require a State to impose less stringent pollution standards than it already imposes.
>
> State of California Coastal Management Program and Final Environmental Impact Statement, August, 1977, at J-11.

Section 30253(3) of the California Coastal Act provides, in part, that "[n]ew development shall... [b]e consistent with the requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development."

As discussed supra, the CZMA provides that the air quality standards established pursuant to the CAA shall be incorporated into the state's coastal management program. CZMA section 307(f), 16 U.S.C. § 1456(f). An examination of the regulatory history of the program approval regulations promulgated by NOAA reveals how NOAA has interpreted this provision of section 307(f). In the Notice of Final Rulemaking, the proposed regulations tracked, with minor editorial changes, the language of the statute. See Section 920.3, 38 Fed. Reg. 33045 (Nov. 29, 1973). The next Notice of Final Rulemaking expanded substantially the text of the regulation. Now numbered § 923.44, the regulation provided in part that "[d]ocumentation by the official or officials responsible for State implementation of air and water pollution control activities that those requirements have been incorporated into the body of the coastal zone management program should accompany submission of the management program." 40 Fed. Reg. 1693 (Jan. 9, 1975) (emphasis added). The next revision to this regulation appeared in the interim final rule which discussed "incorporation." Section 923.44(c) states in part that

> [w]ith respect to the document submitted for approval, it is sufficient that the program state that the requirements of the ... CAA are the minimum ... air pollution control requirements applicable to the management program and are incorporated by reference .... Where more stringent requirements are incorporated, these should be explicitly referenced as such in the management program. Whether or not the additional requirements per se must be included in the body of the management program document, as an appendix or as a separate reference will depend on the nature and detail of these requirements. States should consult with OCZM [now Office of Ocean and Coastal Resource Management (OCRM)] on this matter.
>
> 43 Fed. Reg. 8411 (Mar. 1, 1978).

The final regulation on this issue, § 923.45, provides:

> (1)[s]tates must incorporate into their program, by reference or otherwise, requirements established pursuant to ... the Clean Air Act (CAA) as amended.
>
> (2)If more stringent standards are developed; by a State or locality pursuant to the ... CAA ... they must be incorporated, by reference or otherwise, into the State's management program. (Emphasis added).
>
> 44 Fed. Reg. 18606 (Mar. 28, 1979).

This review indicates that a state need not submit its air quality standards to NOAA if the state makes a reference to such standards in its coastal management program which is submitted to NOAA for review and approval. The term "incorporation by reference" is the method of making one document of any kind become part of another separate document by referring to the former in the latter, and declaring that the former shall be taken and considered as a part of the latter the same as if it were fully set out therein. Black's Law Dictionary 690 (5th ed. 1979). By contrast, if one document is copied at length in the other, it is actual incorporation. Id. Thus, it is not necessary for a state to submit an actual copy of its air quality regulations to NOAA for review and approval to become part of the state's Federally-approved coastal management program.

The suggestion that states consult with OCRM about the format of incorporation of more stringent air quality standards mentioned in the 1978 Interim Final Rule was not included in the Final Regulations. I note that when OCRM communicated with California on incorporation of more stringent air quality standards, it rendered conflicting views.[14]

Because section 30253 of the California Coastal Act references state and local air quality regulations, I find that such standards constitute the mandatory enforceable policies for the purposes of Federal consistency review pursuant to CZMA section 307.

Grounds for Reviewing an Appeal

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). Chevron 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 objection to a proposed project is that the activity is consistent with the objectives or purposes of the CZMA. To make this finding, the activity must satisfy all four elements specified in 15 C.F.R. § 930.121.

1. First Element

To satisfy the first of the four elements, the Secretary must find that "[t]he activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the [CZMA]." 15 C.F.R. § 930.121(a).

As stated in previous CZMA consistency decisions, the CZMA identifies a number of objectives and purposes including

- preservation, protection and where possible restoration or enhancement of the resources of the coastal zone (Sections 302(a), (b), (c), (d), (e), (f), (g) and (i) and 303(1));

- development of the resources of the coastal zone (Sections 302(a), (b), and (i) and 303(1)); and

- encouragement and assistance to the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources. (Sections 302(h) and (i) and 303(2)).

In addition, the CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency through the provisions of financial assistance to state and local governments (Section 302(j)).

As also noted in previous CZMA consistency decisions, OCS exploration, development, and production activities and their effects on land and water uses of the coastal zone are included within the objectives and purposes of the CZMA. Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources. Thus, as stated in previous decisions, this element "normally" will be found to be satisfied on appeal. Findings and Decision in the Matter of the Appeal by Exxon Company, U.S.A., February 18, 1984, at 7 (Exxon SYU Decision); Decision and Findings in the Consistency Appeal of Union Oil Company of California, November 9, 1984, at 8 (Union Oil Decision); Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, December 23, 1985, at

4 (Gulf Oil Decision); Decision and Findings in the Consistency Appeal of Texaco, Inc., May 19, 1989, at 5 (Texaco Decision).

The Commission requests that the Secretary reconsider the position taken in past consistency decisions that OCS exploration and development activities will normally satisfy element one. The Commission asserts the Chevron's proposed project does not further oil and gas development because the environmental degradation caused by the project will have to be addressed when the Commission reviews future oil and gas proposals. The Commission predicts that such future proposals will be more difficult to approve. Thus, the Commission argues, Chevron's proposed POE does not further the objectives of oil and gas development. CCC Resp. Br. at 53.

The Commission also posits that the objectives and purposes of the CZMA are not the individual uses or interests identified in section 302 and 303 of the CZMA, but the greater goals of the Act such as sound coastal management. Accordingly, the goals of the CZMA are the conduct of activities in a manner consistent with sound coastal zone management. Id.; Brief of the California Coastal Commission in Response to Comments, January 3, 1989, at 40 (CCC Reply Br.).

After careful consideration, I decline the Commission's invitation to reinterpret element one. The Commission's focus on the environmental impacts of Chevron's proposed activity is more appropriate under element two infra. See Texaco Decision at 6. The Commission appears to be urging an expansion of the regulatory criteria for this element. While the Commission states that the proposed activity should be measured against the greater goals of the CZMA, this view does not conform to the regulatory requirement established in 15 C.F.R. § 930.121(a). That subsection only requires 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).

Exploration, development and production of offshore oil and gas resources and their effects on the resources of the coastal zone are among the objectives of the CZMA. Because the record demonstrates that Chevron's proposed activity falls within and further the objectives of Sections 302 and 303 of the CZMA, I find that Chevron's proposed POE satisfies the first element of Ground I.

2. Second Element

To satisfy the second element of Ground I, the Secretary must find that "[w]hen performed separately or when its cumulative effects are considered, [the activity] 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).

The second element requires that the Secretary identify: 1) the adverse effects of the objected-to activity on the natural resources of the coastal zone from the activity itself, ignoring other activities affecting the coastal zone; 2) the cumulative adverse impact on the natural resources of the coastal zone from 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. The Secretary then must determine whether the adverse effects on the natural resources of the coastal zone are substantial enough to outweigh the proposed activity's contribution to the national interest.

Adverse effects on the natural resources of the coastal zone may result from the normal conduct of an activity either by itself or in combination with other activities affecting the coastal zone. Adverse effects also may result from unplanned or accidental events such as a tanker collision or a blowout.

The Commission considered a number of potential adverse impacts including impacts on marine resources, negative effects on commercial fishing, air quality and water quality, vessel traffic safety concerns and geologic hazards. It also considered the risk and impact of oil spills. I will concentrate my discussion primarily on the major area of concern that resulted in the Commission's objection to Chevron's proposed activity -- air quality. I will, however, consider all adverse effects on the natural resources of the coastal zone in balancing the adverse effects against the proposed project's contribution to the national interest.

Adverse Effects from Routine Conduct

1) Marine Resources

Chevron's Environmental Report discussed potential impacts from routine operations on the marine resources and habitat in the vicinity of Lease 0525. In general, the drilling operation should cause some birds, fish and mammals to avoid the immediate area. This impact should be short-termed and such changes probably would not be detectable from natural variations. The Environmental Report considered impacts on pelagic and benthic environments, breeding habitats, migratory routes, and endangered or threatened species. Environmental Report at 4-11. The pelagic environment will experience minor, temporary impacts. Drilling muds will reduce light available to phytoplankton, which, in turn, reduces photosynthesis and primary productivity in a small part of the area. Toxics from drilling muds would have little impact on pelagic and planktonic organisms.

Overall, no long-term impacts are expected on this environment. Id. at 4-10. Benthic environments such as infaunal and epifaunal biota will be dislocated or eliminated by scraping and burial during anchor laying operations and by anchor-chain drag. Drilling cuttings will bury those infaunal organisms incapable of burrowing through the cuttings mound. Impacts should be slight, and repopulation rapid. Impacts to hard bottom areas have been minimized by siting wells outside of these areas. Id. at 4-10-4-11.

Pinnipeds and seabirds would be most impacted at rookery or haulout areas by noise or human disturbance. The drill sites and transportation routes are many miles from seabird and pinniped breeding and resting areas, thus no impacts are expected from normal operations. Id. at 4-13. There is no evidence that drill rig structures disturb cetaceans. The gray whale is exposed to natural and manmade objects and noises and frequently travels in shipping lanes where noise levels are high. Normal activities are not expected to cause any threat to whales or their migratory patterns. Id. at 4-13-4-14. No impacts are expected on endangered or threatened species. Id. at 4-14.

During its review, the Commission discussed both the habitat of Lease 0525 and the expected impacts from exploratory drilling. The Commission noted that Lease 0525 had not been surveyed with the resolution necessary to characterize the hard bottom habitat. It relied upon surveys of adjoining Leases 0523 and 0524 which included approximately 1800 feet of the eastern edge of 0525. It then drew the following assumptions -- the features can support gorgonians, cup corals, solitary coral, branching colonial coral, basket stars, brittle stars, erect sponges and sea anemone. Adopted Findings at 41. Hard bottom features extend into the middle of Lease 0525 from the east and west. Such features are relatively rare in deep water and are more sensitive to disturbances. Id. at 40.

The potential impacts to benthic habitats result from drilling ship anchors, anchor chains, disturbance of the drilling and disposal of muds and cuttings. Id. The California Department of Fish and Game expressed concern that, based on its interpretation of the anchor placement pattern, anchor chains would drag across hard bottom habitat and biota at well sites #3 and #4. Id. at 38. Chevron moved one well site to avoid impacts to hard bottom habitat and has provided the Commission with an anchoring pattern for well site #1. Chevron also has agreed to submit the anchor plans for well sites #3 and #4 to the Commission's executive director prior to drilling those wells. Id. at 41. The Commission concluded that the distances between wells and hard bottom features appear adequate to protect hard bottom habitat from damage by burial. The Commission noted that evidence of shifting sediments on Lease 0525 made it less likely that habitat would be negatively affected by increased sediment loading. The

Commission, though, still had concerns about the possible chronic effects of toxic mud components. Id.

Concerning gray whale migration, the Commission observed that gray whales are likely to pass the drilling site. It also cited evidence that gray whales will alter migration paths to avoid the sounds of a drillship. The Commission concluded that this type of alteration is so far from shore that it is unlikely to affect adversely the whale population. Id. at 42.

Commenting on Chevron's appeal, the U.S. Fish and Wildlife Service (FWS) focused on hardbottom habitat. It observed "[t]he Service considers hard-bottom areas to be habitat areas of potential high value to fish and wildlife resources. These habitats are relatively scarce on an (sic) regional basis." To avoid such habitat, the FWS urged moving well locations, repositioning anchors, and/or modifying discharge plans. The FWS added that it understood that Chevron's well sites would be 1000 feet from suspected exposed rocky out-crops and that Chevron would develop anchor plans. Letter from Steve Robinson, Acting Director, U.S. Fish and Wildlife Service to Katherine A. Pease, Assistant General Counsel, NOAA, November 1, 1988.

Based on the steps taken to protect the hard bottom habitat and the apparent lack of any adverse impacts on other marine resources, I find that the routine conduct of Chevron's proposed project will not create a significant adverse impact on marine resources.

2) Commercial Fishing

Lease 0525 is located in California Department of Fish and Game's fish blocks 666 and 685. This area is utilized by rockfish, flatfish, shrimp, prawn trawlers, purse seine and gill net fishermen. Block 666 coupled with nearby block 667 and 668 have historically produced a significant portion of the thresher shark catch. Adopted Findings at 37-38.

When the Minerals Management Service conducted an environmental assessment of Chevron's proposed POE, it identified the following potential impacts from the proposed drilling on commercial fishing in or near Lease 0525:

- creation of temporary obstruction (drilling vessel and anchor pattern) that precludes use of space by hook and line fishermen, set gill net and drift gill net fishermen;[16]

- associated vessel traffic temporarily interfering with commercial fishing operations;

- damage to or destruction of commercial fishing gear; and

- discharge of drilling muds and cuttings.

Id. at 37.

Chevron took steps to deal with the potential adverse impacts of its proposed project on the commercial fishing sector. It agreed to site wells to avoid hard bottom features. See discussion supra. Chevron representatives met with commercial fisheries representatives. As a result of that meeting, Chevron agreed to the following mitigation measures:

- establishment of a compensation fund for damages as an alternative to contracting for a standby boat during peak drift gillnet fishing periods;

- observation of designated oil service vessel traffic corridors;

- notification of fishermen of precise anchor locations; and

- investigation of feasibility of consolidating hazard information for commercial fishermen.

Id. at 38.

In addition, Chevron will place radar reflectors and lights at each buoy to enable trawlers to navigate around the drilling vessel and its anchor mooring lines and buoys. Environmental Report at 2-21. Reviewing Chevron's proposed activity, the National Marine Fisheries Services (NMFS) stated:

> [NMFS Southwest Regional] Director Fullerton stated that "[t]he information presented in the Environmental Report (ER) adequately describes the commercial fisheries in Lease Tract 0525 and effects of oil exploration on these resources. Our assessment of these documents indicates that commercial fisheries will not be significantly affected by oil exploration in this area. However, we feel it is imperative that conflicts between fishermen and oil exploration plans be minimized."
>
> Memorandum from James W. Brennan, Assistant Administrator for Fisheries, NMFS to Katherine A. Pease, GCOS, NOAA, November 4, 1988.

The NMFS' comment then noted Chevron's coordination efforts with the local commercial fishing industry representatives and

Chevron's agreement to specific mitigation measures. The NMFS concluded that "if the mitigation measures outlined by both Chevron and MMS are adopted, the marine resources issues of concern to NMFS will be satisfactorily resolved." Id.

The Commission points out that Chevron's proposed project will temporarily displace commercial fishing efforts. CCC Resp. Br. at 33. While certain activities associated with offshore oil and gas exploration such as supply boat traffic and anchor placement may cause minor, temporary displacement of some commercial fishing activities, the record for this appeal does not indicate that the displacement or disruption would be significant. Chevron's Plan of Exploration reveals that only one well will be drilled at a time and "[t]he wells would not be drilled one after another without interruption, because results of the first well would probably necessitate a period of geological reinterpretation before resumption of drilling." Exploration Plan OCS Lease P-0525, January, 1988, at 1 (Ch. POE). Because only one well will be drilled at a time, the physical area to be precluded will not be great. Due to the temporary nature of exploratory drilling, the operations at each well site including drilling, evaluation and abandonment will total 75 to 135 days. These factors, as well as the mitigation measures listed above and agreed to by Chevron, lead me to find that routine conduct of Chevron's proposed project will not cause any significant adverse effects on commercial fishing in the coastal zone.[17]

3) Geologic Hazards

The Commission determined that Chevron had identified and described all geologic hazards. The extreme southeastern portion of Lease 0525 is an area of unstable sea floor. The Oak Ridge fault is approximately two miles north of the lease, and three parallel reverse faults cross the lease east to west. Adopted Findings at 45. The Commission cautions that evidence of slope failure on the lease indicates that failure at other locations is possible. CCC Resp. Br. at 35.

Chevron is not proposing to drill a well in the unstable area, and it will employ state-of-the-art drilling practices. These two factors caused the Commission to conclude that geologic hazards had been adequately mitigated. Adopted Findings at 45. During the course of this appeal, the Commission observed that while state-of-the-art drilling practices should adequately address geologic hazards, exploration would not be risk-free. CCC Resp. Br. at 35.

Because Chevron will use state-of-the-art drilling practices and will not drill in the unstable portion of Lease 0525, I find that Chevron's proposed project will not cause significant adverse effects on the resources of the coastal zone due to geologic hazards.

4) Ocean Discharges

Pursuant to its individual NPDES permit, Chevron projects the following discharges into the ocean:

- drilling muds would average 1330 gallons per day with a total discharge of 6,150 barrels for deep wells;
- cuttings would be 1780 - 2560 barrels per well; and
- cement would be 24 - 80 barrels per well.

Adopted Findings at 26.

The California Department of Fish and Game observed that some drilling fluids can be "acutely and chronically toxic to pelagic and benthic organisms." It urged that drilling fluids be tested for toxicity prior to discharge. Id. at 29. On the other hand, MMS' environmental assessment found that during routine discharge of muds and cuttings, no significant impact to water quality would result from either toxics or suspended particulate material. Examining the well sites, MMS stated that well site #1 was 2400 feet from the nearest patchy rock outcrops, and no burial of organisms is expected. Well site #4 is 550 feet northeast from a cluster of individual sea floor features. Again, MMS predicted no burial, for muds and cuttings are expected to settle northwest or east southeast of the site. Even if these features were buried, MMS stated that such features represent only 1-2 percent of the total sea floor outcrop area present on the lease. Id. at 30.

The California State Water Resources Control Board (SWRCB) indicated that the discharges would have no direct impacts on state waters. It stated that the small amount of discharges from the project would not contribute significantly to environmental degradation. The SWRCB recommended monitoring to assess the impact on fauna of the rocky substrate and toxicity testing of muds and cuttings prior to discharge. Id. at 31.

EPA conditioned Chevron's individual NPDES permit to include bioassay tests on final drilling muds to determine compliance with toxicity criteria and prohibition on floating solids and foam and on discharge of halogenated phenol compounds, restrictions on surfactant, dispersant and detergents and daily observations for visible sheen on the surface of receiving waters. Id. at 28.

Based on the SWRCB's determination of no direct impacts on state waters as well as EPA-imposed conditions through the NPDES process, I find that the routine conduct of Chevron's proposed

activity will not have a significant adverse impact on the resources of the coastal zone as a result of ocean discharges.

5) Air Quality

The Commission objected to Chevron's proposed project due to the adverse impact on the air quality of the coastal zone in the Santa Barbara County - Ventura County area which are nonattainment areas for certain air pollutants. Based on the air modeling studies conducted by Chevron, the Commission concluded that due to meteorological conditions, pollutants from the drilling site would come onshore in both counties and would contribute to degradation of air quality and may cause or contribute to violations of air quality standards. Id. at 9. Further, the Commission found that diurnal wind reversals between offshore and onshore winds cause pollutants from Santa Barbara Channel to persist for a long period in the coastal area. Id. at 10. Because the modeling indicated onshore impacts, the Commission determined that Chevron must provide best available control technology (BACT) and offsets for residual oxides of nitrogen (NO_x) and reactive organic compounds (ROC) emissions from the drillship, crew, and supply boats. While Chevron will provide BACT, it declined to offset the residual NO_x and ROC emissions. Id. at 23.

EPA has designated the south coast of Santa Barbara County and Ventura County as nonattainment areas for national ambient air quality standard (NAAQS)[18] for ozone. Letter from Jennifer Joy Wilson, Assistant Administrator for External Affairs, U.S. Environmental Protection Agency to Honorable William E. Evans, Under Secretary for Oceans and Atmosphere, November 22, 1988, enclosure at 1 (EPA Letter/Enclosure). The air quality problem in Ventura County is so severe that it is unlikely to reach attainment in this century. CCC Resp. Br. at 11. In October, 1988, EPA disapproved California's State Implementation Plan (SIP) to attain the NAAQS for ozone.[19] CCC Reply Br. at 8.

Santa Barbara County, as well, has measured exceedances of more than twice NAAQS for ozone in recent years. CCC Resp. Br. at 11. Between the time period from January 1986 through November 1988, the southern part of Santa Barbara County has experienced eight violations of the Federal air quality standard for ozone and 77 exceedances of the state ozone level. For the entire County, there were thirteen Federal violations and 119 state violations. Supplemental Brief in Response to Comments Submitted by the Minerals Management Service, Pacific Region, California Coastal Commission, March 20, 1989 at 2, n.2.

The County failed to meet the December 31, 1987, deadline established by the Clean Air Act to attain NAAQS.[20] As a result, EPA has directed the County to submit an air quality attainment plan (AQAP) for incorporation into the SIP. Statement of Santa

Barbara County Air Pollution Control District, November 14, 1988, at 4 (SBCAPCD St.). EPA has instructed the County to account in its plan for contributions of ozone and its precursors from the surrounding areas which would include effects of OCS emissions. Id. at 17-18.

Ozone is not directly emitted. Rather, it is formed by a chemical reaction of NO_x and ROC in sunlight. Id. at 4. The formation of ozone depends on relative concentrations of NO, NO_2 and hydrocarbons. The mix of these pollutants, in turn, depends on types and quantities of emissions, meteorology, topography and carryover pollutants from the previous day. Ch. Reply Br. at 30. Ozone problems are not the result of any particular "single emission source, but [are] the combined effect of numerous emissions sources, any of which if viewed alone may contribute 'essentially zero' to the problem." CCC Resp. Br., Exhibit 3 at 6 (Letter from James D. Boyd, Executive Director, California Air Resources Board to Peter Douglas, Executive Director, California Coastal Commission, April 26, 1988).

At certain concentration levels, ozone irritates the respiratory system and causes coughing, wheezing, chest tightness and headaches. It can aggravate asthma, bronchitis and emphysema. Even at fairly low levels, chronic exposure may reduce resistance to infection, alter blood chemistry or chromosome structure. It also can destroy vegetation and reduce crop yield. SBCAPCD St. at 11. The health-based Federal standard for ozone is 12 parts per hundred million (pphm). Under the Clean Air Act, a state may adopt a more stringent standard. California has done so by establishing a standard of 10 pphm. Adopted Findings at 9.

Chevron's proposed project is located in the South Central Coast Air Basin. The proposed project will emit both inert pollutants and reactive pollutants. The sources of the emissions are diesel engines generating electric power on the drilling vessel, diesel engines on crew and supply boats and the flaring of natural gas during well testing. The major inert pollutants generated include NO_x, ROC, hydrocarbons (HC), particulate matter (PM), carbon monoxide (CO) and oxides of sulfur (SO_x). The emissions would also contribute to ozone. Adopted Findings at 11. If Chevron drills two exploratory wells per year, the annual emissions rate for the drillship site, without mitigation, would be twenty-six to fifty tons of NO_x, seven to thirteen tons of CO, one ton of HC, three to six tons of SO_2 and three to five tons of PM. In addition, crew and supply boats would contribute 31.4 tons of NO_x per well. Id.

Chevron agreed to a number of measures to mitigate emissions. To reduce crew and supply boat emissions, it will use turbocharging, 4% injection timing retard and intercooling or show the ability to meet fuel efficiency of 8.4 g/hphr at 85% load for crew boats and at 65% load for supply boats. To lessen

SO_x emissions, Chevron will use a hydrogen sulfide (H_2S) scrubber on the drillship if gas containing H_2S is flared. It also will use low sulfur diesel fuel (less than 0.5% sulfur by weight). Id.; Ch. State. at 26. In addition, the Department of the Interior included stipulations on leases from Sale 80. Stipulation No. 17, "Protection of Air Quality," as interpreted by MMS requires Chevron to:

> • apply control technology for NO_x identified by MMS Regional Manager or other control measures that result in equivalent emissions limitations;
>
> • evaluate impacts of air emissions from project on onshore air quality using inert and photochemical modeling; and
>
> • provide further mitigation if Regional Manager determines emissions, individually or cumulatively, will prevent onshore areas from attainment or maintenance of NAAQS or will cause or contribute to an exceedance of an applicable national prevention of significant deterioration increment.
>
> Ch. State. at 24.

Chevron performed air quality impact modeling as required by Stipulation 17. The modeling assumed a 40% NO_x reduction due to agreed-upon mitigation. Chevron conducted modeling based on a one drillship scenario, which only considered emissions from activities on Lease 0525, and a two drillship scenario which assumed concurrent drilling on a nonadjacent lease. I consider the results of the two drillship scenario in the cumulative impacts discussion infra. The one drillship modeling for inert pollutants supported the conclusion that the concentrations would not cause an exceedance of any standard. For photochemical pollutants (ozone), the project would increase incremental concentrations less than 1 part per billion (ppb). Based on the results of the modeling, Chevron concluded that its proposed project's contribution to the ozone level would be insignificant. Adopted Findings at 12-13. The Minerals Management Service's Environmental Assessment also concluded that the proposed project created no quantifiable air quality impacts. Ch. State. at 22.

Before I can assess the significance, if any, of the proposed project's impact on onshore air quality, I must consider the modeling technique used by Chevron. As part of an agreement for leaseholders from Lease Sales 73 and 80, MMS required project-specific photochemical modeling as outlined in a modeling protocol developed by the California Air Resources Board (CARB) and MMS. Ch. State., Exhibit 7 at V-1 (Minerals Management Service Finding of No Significant Impact and Environmental

Assessment)(FONSI/EA). As recommended by the protocol, the modeling used PARIS. Ch. State at 27. PARIS is an air quality model that examines meteorological flow fields associated with ozone episodes.[21] While acknowledging that PARIS is not perfect and that there are uncertainties, Chevron observes that photochemical modeling is the best available means "to at least attempt to identify what the potential ozone concentrations attributable to an offshore project will be and what the potential onshore impacts, if any, on the air quality standard will be." Ch. Reply Br. at 30, 39.

Systems Applications, Inc., the technical consultants who conducted Chevron's modeling, stated in a 1987 draft report:

> [a]thought comprehensive efforts were made in the past few years to evaluate the performance of these models [trajectory (TRACE, et al.), grid (AIRSHED), and hybrid (PARIS) models] by various concerned parties, many technical questions still remain regarding the application of these models to the Santa Barbara area.
>
> As a result of the ... unique features occurring simultaneously in the Santa Barbara area, modeling reactive plumes is particularly difficult.
>
> To our knowledge, a comprehensive and systematic exploration of these topics has not been carried out for model application to the OCS sources.
>
> Adopted Findings at 21.

All air agencies reviewing Chevron's proposed project indicated concerns about the use of photochemical modeling for a single source. Some expressed additional concerns. I summarize their comments. EPA stated that it "does not accept the applicant's use of the modeling results .... EPA does not believe that source-specific conclusions can be drawn from the Airshed modeling. In general, Airshed modeling is used for analysis of broad strategy evaluations. It is impossible to validate the model on a source-specific application, due to the complex interaction of the source-specific emissions with other pollutants in the atmosphere in the formation of ozone. EPA does not currently endorse any source-specific ozone models due to these technical limitations." EPA Enclosure at 2.

The Santa Barbara County Air Pollution Control District concluded that the techniques used would likely lead to underestimating the impacts resulting from the project. Like EPA, it stated that photochemical modeling for assessing impacts from a single source was inappropriate. SBCAPCD also expressed concerns about built-in assumptions and the overall formulation of the modelling. Specifically, the SBCAPCD noted that:

- modeling artificially spreads emissions from "point" sources across very large cellular areas which dilute ozone impacts;[22]

- study ignores normal wind patterns;

- meteorological scenario modeled is a select case covering an isolated time period and specific conditions; and

- by assuming average emissions scenario (i.e., emissions average over 135 day period and not reflective of the most intensive phase of the operations), study ignores peak activities when emissions are 1.5 times higher than the average.

SBCAPCD St. at 9-11.

The Ventura County Air Pollution Control District (VCAPCD) echoed many of the concerns of the SBCAPCD. The VCAPCD stated that it found "that the interpretation of the model results is invalid." It also found that "insufficient model evaluation information is included to assess the applicability of the AIRSHED model to this project. Aside from modeling concerns ... [the] worst case emission rates for the project were not estimated properly." Other concerns include:

- modeling under-predicts ozone;

- average values used in the photochemical model unrealistic since emissions are highly variable throughout the drilling period;

- methodology used to estimate emissions from the drilling rig is inappropriate, and the model input emission rates for the drilling vessel should be about twice the emissions rates used;

- better documentation is needed to evaluate properly the model input emission rates for other emissions sources;

- annual emission estimates for the drilling vessel should be approximately 40% greater than the estimate; and

- methodology used for annual emissions for other sources incorrectly underestimates emissions.

CCC Resp. Br., Exhibit 5 at 2, 4-5 (Letter from Richard H. Baldwin, Air Pollution Control Officer, Ventura

County to Mr. Delaplaine, California Coastal Commission, May 18, 1988).

The VCAPCD added that by using hand interpolating surface measurements, "the spatial extent of violations of standards is much larger than the area predicted by the model to be in violation. Using measured ozone data, the increment of ozone increase for areas actually exceeding standards is likely to be higher than shown .... The area of actual ozone exceedances is much larger that predicted by the model." Id. at 3-4.

Like the other air agencies, the California Air Resources Board questioned the appropriateness of photochemical modeling to address the air quality impact from a single source. Adopted Findings at 19. In addition, CARB observes:

> • calculation of emissions from crew and supply boats and from flaring is incorrect because the calculation was based on an average during the entire exploratory operation;
>
> • there is insufficient information to verify emission factors and rates for sources other than the main diesel engines on the drilling vessel; and
>
> • photochemical modeling results are presented for every third hour rather than hourly spatial plots.
>
> CCC Resp. Br., Exhibit 3 at 3-5.

CARB notes that Chevron followed the agreed upon modeling protocol with the exception of interpretation of the significance level. Id. at 5. See discussion infra.

In response to the criticisms of the modeling, Chevron replies:

> • emissions calculations did reflect peak drillship emissions during an anticipated drilling period of 90 days;
>
> • model does not artificially spread emissions from point sources and does take plume into account; and
>
> • modeling days selected were the worst set of days based on analysis of available data, and CARB agreed to the days used.
>
> Ch. Reply Br. at 43, 46, 49.

Bearing in mind the inherent problems of photochemical modeling from a single source, I now consider the significance of the predicted emissions on the coastal zone. MMS held that

mitigation of an OCS project is unnecessary until that project contributes 5 ppb to a Federal standard exceedance of 12 pphm of ozone. Adopted Findings at 13. Because the photochemical modeling indicated that Chevron's proposed project would contribute less than 1 ppb or less than 1% of the Federal standard, MMS concluded that the contribution to ozone levels would be insignificant. MMS Letter/Enclosure at 7. This significance standard was not established by regulation. See discussion supra.

Chevron states that its project is very small. Relying on the SBCAPCD's draft emissions inventory for AQAP Modeling Region (Santa Barbara, Ventura, Offshore) for a base year, Chevron calculated that 14,053 tons of NO_x would be emitted a year. Of that figure, 2735 tons or 11% came from OCS activities (including oil and gas platforms, tankers and fishing boats). Using maximum emissions rates, Chevron determined that its proposed project would contribute only 1.2%. Ch. Reply Br. at 52. Chevron also points out the temporary nature of its activity which could be as short as three months or less if only one exploratory well is drilled. Id. at 53.

On the other hand, each air agency reviewing Chevron's proposed project concluded that the project would exacerbate onshore ozone violations. Several questioned MMS' premise of a 5 ppb significance level. I turn first to the concerns expressed by EPA and quote extensively from its comments about onshore air quality impacts.

> EPA continues to be concerned about the onshore air quality impacts of emissions originating in the OCS off of California. At the present time, Ventura and Santa Barbara Counties have severe air quality problems and are "nonattainment" areas because they fail to meet certain NAAQS. The State and local air agencies must address offshore emissions because of their effect on air quality and health onshore .... We are concerned about the NO_x emissions in particular because preliminary indications are that high ozone levels are heavily influenced by NO_x emissions in the Basin. Very significant NO_x reductions will be needed to attain standards.
>
> We have raised our concerns about OCS emissions repeatedly for more than five years. The technical air quality analyses in many Environmental Impact Statements (EISs) for oil and gas development in the Santa Barbara Channel have shown the strong likelihood of adverse onshore impacts. EPA has concurred with these analyses.
>
> ...

> Because of several technical and policy issues, EPA does not concur with the conclusion that there will not be "significant" impacts.
>
> ...
>
> EPA does not accept the premise that an increase in pollution in an ozone nonattainment area is "insignificant." Any emission increases in the area will contribute to violations of the NAAQS.
>
> ...
>
> EPA has not defined and does not accept a significance level for ozone. In arguing that the impacts are insignificant, the analysis attempts to draw an analogy between modeled ozone concentrations and significance levels for inert pollutants in Appendix S to 40 CFR Part 51. From this analogy, a significant impact level for ozone of 1.2 ppb is proposed.
>
> The proposed analogy between inert pollutant significance levels and ozone is inappropriate. Ozone is not directly emitted, but rather forms through a series of chemical reactions in the atmosphere. The relationship between ozone and ozone precursor emissions is non-linear, in contrast to relatively inert species. Areas which suffer severe ozone problems do not have a single source which contributes overwhelmingly to the problem; a combination of many sources leads to high ozone levels. Because of this non-linear relationship between ozone precursors and ozone levels, and the inadequacy of current air quality plans for the affected areas, it is clear that the emission increases that this project would cause are significant.
>
> EPA Enclosure at 1-2.

EPA has also commented in the past that just because an activity is less than two years duration should not exempt it from consideration. CCC Resp. Br. at 13, n.6.

The SBCAPCD concurred with EPA's conclusion that any contribution to the existing ozone problem is significant. SBCAPCD St. at 6, 12. The VCAPCD concluded that emissions from Chevron's proposed project would enter the County and exacerbate the existing ozone nonattainment problem. CCC Resp. Br., Exhibit 5 at 2.

The CARB observed that the Lease Sale 80 air quality stipulation requires controls regardless of emission levels. It also stated that it does not concur with the statement in the modeling protocol that "incremental ozone impacts above 5 ppb contributing

to predicted ozone concentrations greater than 12 pphm will be considered significant and will require mitigation." The CARB stressed that any quantifiable increase in ambient levels which are already above the standard should be mitigated. Id. at Exhibit 3 at 4. The CARB observed that the proposed project would contribute to existing violations of the national ozone standard and prevent the affected onshore areas from attaining the standard. Adopted Findings at 15. It also noted that "a drilling vessel emits a greater amount of ozone precursors than almost any other single onshore emission source." CCC Resp. Br., Exhibit 3 at 3.

The Commission, as well, feels that any new contribution of pollutants to nonattainment areas which are required to reduce pollutant levels, is a serious matter. It states that MMS' 5 ppb threshold permits aggravation of existing violations by giving no consideration to the baseline emissions. Because Chevron's proposed project will emit pollutants that will affect the ozone levels in the coastal zone, the Commission concluded that the air quality impacts of the proposed project are significant. Id. at 12, 15, 22.

Taking all of the above into account, I conclude that the proposed project will emit ozone precursors which will impact ozone nonattainment areas in the coastal zone. While a number of groups are working together to develop an improved technique for determining the extent OCS sources contribute to onshore ozone problems,[23] that project is not completed. Thus, I am left to weigh the state of the current photochemical modeling. I am compelled to defer to the numerous concerns of the air agencies concerning the problems with this technique. I accept their conclusions that the emissions are likely to be underpredicted. Based on this premise, it is likely that the conribution of Chevron's proposed project to the ozone level will be more than 1 ppb. Even if the emissions level is less than 1 ppb as predicted by the modeling, I find that the proposed project will have an adverse impact on the air quality in a portion of the coastal zone which is a nonattainment area for ozone.

Adverse Effects from Unplanned Events

1) Vessel Traffic Safety

The Santa Barbara Channel serves as a major thoroughfare for inbound and outbound commercial vessel traffic generated by the ports of Long Beach, Port Hueneme and Los Angeles. Vessel traffic associated with these three ports comprises more than 95% of the commercial vessel traffic in the Channel. Vessel traffic in the Channel averages one ship per hour -- twelve northbound and twelve southbound trips per day. In addition to this vessel traffic are crew and supply boat trips and recreational and fishing boats. Approximately 95% of commercial vessels

transiting the Channel use the Santa Barbara Channel Vessel Traffic Separation Scheme (VTSS).[24] Environmental Report at 3-18.

Well site #2 on Lease 0525 is located approximately one nautical mile north of the northbound lane of the VTSS and approximately three-quarters of a nautical mile north of the buffer zone of this lane. That well site is the closest to the VTSS. Id. at 3-19.

The Commission observed that in the area of Chevron's proposed project visibility is often restricted to two miles or less due to fog or haze. This restriction occurs more than 20% of the time between July and October. In October, it occurs 27.1% of the time. The Commission also stated that any temporary structure near the VTSS lanes represents a hazard to navigation. Adopted Findings at 44.

Chevron proposed safety measures including:

- drill rig to maintain 24-hour visual and radar watch;
- radio to be manned 24 hours a day;
- drill rig to be equipped with a minimum two-mile fog horn and fifteen mile lights;
- aircraft warning lights to be located on the derrick; and
- destruction avoidance lights to be lit 24 hours a day.

Id.

Chevron plans to store any oil produced during well testing in the test barge. It will flare the gas. The test barge will only make one trip to shore and will use the established VTSS lanes. Environmental Report at 2-19.

The Commission, during its review of the proposed project, concluded that the proposed POE would not be a substantial hazard to vessel traffic.

The United States Coast Guard reviewed Chevron's proposed POE. It commented that with respect to vessel traffic safety it perceived no problems. It added that "[a]ll facilities will have safety equipment considered necessary by the Coast Guard, and the Coast Guard does not find any significant risk to shipping from a drill vessel or a platform on this tract." Letter from Gregory S. Dole, Acting Assistant Secretary for Policy and International Affairs, Department of Transportation to Katherine A. Pease,

Assistant General Counsel, NOAA, October 20, 1988 (Transportation Letter).

While the risk of a vessel collision exists during exploratory activities, that risk is reduced by Chevron's safety measures listed above. The United States Coast Guard, the Federal agency responsible for vessel traffic safety, found no significant risk to shipping from a drill vessel or platform on Lease 0525. These factors, coupled with the temporary nature of the exploratory activities, cause me to find that Chevron's proposed POE will not have a significant adverse effect on vessel traffic safety.

2) Oil Spills

Chevron considered the adverse impacts of oil spills in the Eastern Santa Barbara Channel in its Environmental Report. The report recognized that "[m]any physical, chemical, and biological conditions affect the degree of impact, such as the type and quantity of oil spilled, the location and time of a spill, oceanographic and meteorological conditions, habitats contacted by the oil, and cleanup activities." Environmental Report at 4-22. I summarize those impacts.

Phytoplankton - Can cause inhibition of photosynthesis and a corresponding decrease in available organic carbon levels although some strains did not show effects after contact with crude oil. Because phytoplankton are at the bottom of the marine food chain, effects on these organisms may affect other organisms. No significant long-term effect on regional plankton is expected due to widespread distribution and great reproductive potential.

Zooplankton - Show reduced feeding rate. Larval components likely to be adversely affected.

Macro algae (including kelp) - Possible effects include discoloration, inhibited growth, or reduced reproductive capacity. Kelp beds in the area could be affected. Because kelp colonies have an annual cycle of reduction and rapid regrowth and the cleansing effect of wave action, impacts should be gone within a year or less.

Macroinvertebrates - Possible reduction in reproductive potential and reduction in assimilation or intake of food.

Benthic Populations - Impacts are difficult to predict. Some are adversely affected while others are well-adapted to increased levels of hydrocarbons.

Sandy Beaches - Oil would adversely affect the biota. Because of the lack of infaunal organisms and rapid turnover rate, impacts are likely to be insignificant and recovery to pre-spill conditions likely to occur within one to two years.

Rocky Intertidal Habitats - Coating of epibiota and the substrate results in conditions not conducive to immediate repopulation. There would be a smothering of some sessile rocky intertidal organisms. Impacts could be widespread although recovery to pre-spill conditions is expected within three years. This habitat is common on the Channel Islands, forming a majority of the coastline.

Intertidal/Estuarine Areas - Distances from Lease 0525 should allow diversionary measures to minimize impacts. Such areas include Goleta Slough, El Estero Slough, Mugu Lagoon and the Santa Clara and Ventura River mouths.

Marine Birds - Will suffer from physical effects of coating which result in loss of insulation and death due to exposure. Toxic elements can appear later in eggs, resulting in mortality of offspring. Food gathering and migratory patterns may also be affected. Pelagic diving birds such as loons and grebes are very susceptible since they float low in the water and dive for food. The species of greatest concern is the endangered brown pelican which breeds on Anacapa Island and forages in the eastern Channel. Bird mortality is probably the most obvious biological impact.

Fishes - Are susceptible at all stages of development. Rapid recovery is likely due to widespread geographic distribution and large reproductive potentials of most species. As a result, short-term impact of low to moderate significance is expected.

Marine Mammals - Pinnipeds would suffer from physical effects of coating resulting in loss of insulation and subsequent death from exposure. Coating could also affect respiratory surfaces and block blowholes in cetaceans. An oil spill could cause migratory pattern changes and stress or mortality due to ingestion of oil.

Id. at 4-22-4-29.

The Environmental Report examined the potential for an oil spill. Operational accidents could result in small spillage of less than ten barrels of fuel or lubricating oil. Such small spills can be controlled rapidly with onboard containment and

clean-up equipment. No significant impact on the marine environment would be posed by such spillage. Id. at 4-18.

A major oil spill could occur as the result of a blowout or the collision of a oil tanker with the drilling rig. According to the Environmental Report, a blowout from an exploratory well is unlikely to occur. Examining the oil and gas blowout statistics from the Gulf of Mexico OCS,[25] the Environmental Report noted that during the period 1971-1978, a total of 2249 exploratory wells were drilled. Seventeen blowouts resulted. The only hydrocarbon released was gas, and all seventeen blowouts were contained without any release of oil into the marine environment. Id.

Several factors contribute to the paucity of blowouts including safeguards incorporated into drilling, casing and mud programs. Should an accident occur when a well is open, sea floor blowout preventers close the hole. Finally, only a low proportion of exploration wells actually discover significant oil resources. Id. at 4-20.

The Commission agrees that the risk of a blowout of an exploratory well is low. It adds, though, that should a blowout occur, the resultant spill would be large and environmental damage would be extensive. The Commission observed that during the period 1969 - December 31, 1987, seventy-four spills from exploratory operations on the Pacific OCS had occurred. Most were very small. Adopted Findings at 34.

The Environmental Report relied upon a Bureau of Land Management (BLM) oil spill analysis model to predict trajectories and the probability of an oil spill reaching a certain area.[26] Based on that model, the probability of an oil spill from Lease 0525 reaching Santa Barbara County is 20.5%; Ventura County 17%; Santa Cruz 23%; and Anacapa 17.5%. The season for which each of the trajectories is most probable is winter for Santa Barbara County, spring or summer for Ventura County, spring for Santa Cruz Island, and summer for Anacapa Island. Id. at 34; Environmental Report at 4-20.

If an oil spill occurred on Lease 0525, of particular concern would be the breeding colonies of the endangered California brown pelicans on West Anacapa Island and Scorpion Rock near Santa Cruz Island. Anacapa is the only stable breeding colony of brown pelicans in the United States. An oil spill would have significant effects on the reproductive capabilities or potential which already is low. Further, the fledging rates are lower in Southern California than elsewhere. Oil on breast feathers can contaminate eggs. Juveniles appear particularly susceptible to oiling because they spend most of the time resting on the water and seem not to avoid oil. Adopted Findings at 39-40.

California brown pelicans are almost entirely dependent on the northern anchovy. An oil spill could affect localized abundance of anchovy and potentially affect the survival rate of a whole year class. A large number of California brown pelicans forage in the Santa Barbara Channel during late summer and fall. Approximately 25% of the subspecies population passes through the area during that time. Thus, a major spill at that time could result in significant mortality. Id. at 40.

Seabird breeding and foraging sites, pinniped breeding and pupping areas, and the intertidal and subtidal habitats of the Northern Channel Islands could also be affected by an oil spill. The northern fur seal colony on San Miguel Island would be very vulnerable if oiled because of the cold ocean waters. Id.

Wetlands at the Santa Ynez River Mouth, Goleta Slough, Carpinteria Slough would be particularly vulnerable as they are increasingly degraded, contain endangered species and are low energy systems that would take years to recover. Id.

Because the possibility exists of an oil spill, the Commission focused attention on measures to contain and clean up oil spills. Should a major oil spill occur on Lease 0525, current clean up technology is incapable of keeping all oil off the shoreline if the spill is moving toward shore. Id. at 33. Oil recovery is greatly reduced if seas are moderate or rough. The U.S. Coast Guard Pacific Strike Team and representatives from the Eleventh Coast Guard District state that offshore cleanup operations are generally ineffective and hazardous when waves are greater than six feet. Data from EPA OTTMSETT oil spill equipment testing facility show that oil spill recovery efficiencies are greatly reduced when seas exceed two feet. The seas in the Eastern Santa Barbara Channel exceed two feet 45% of the time. Oil recovery can be attempted if visibility is greater than one nautical mile; waves are less than six feet; and winds are less than twenty-one knots. In the Eastern Santa Barbara Channel, visibility is greater than one nautical mile 95% of the time; waves are less than six feet 93% of the time; and winds are twenty-one knots or less 77% of the time. Leaving aside visibility, optimal conditions for use of equipment could exist 55% of the time on an annual average and 44% of the time in the worst case month. Id.

Chevron developed a number of measures designed to contain and clean up oil spills. Chevron will keep the following oil spill containment and clean up equipment at the site of offshore drilling operations:

- 1500 foot of oil spill containment boom capable of open ocean use;

- oil recovery device (skimmer) capable of open ocean use;

- oil storage capacity to handle skimmer throughout until oil spill cooperative can arrive from shore with additional equipment;

- boat located at site of drilling operation or within 15-60 minutes of site equipped with a second boat capable of assisting deployment of boom; and

- sorbent material capable of absorbing fifteen barrels of crude oil.

Id. at 35

Chevron also agreed to provide sufficient oil storage capacity adequate to handle the amount of oil the on-site skimmer could collect. It will provide two 1200 gallon Kepner Sea Containers and fifteen barrels of storage in the oil separator. Id.

Clean Seas Oil Spill Cooperative is likewise available to assist in the case of a spill. The Cooperative is composed of many oil companies who have pooled financial resources and personnel to respond to oil spills. Its role is to provide assistance for spills that would exceed Chevron's onsite capability and for initial response to large spills.[27] Id. Besides oil response vessels, the Cooperative has eight onshore vans with shoreline protection equipment as well as equipment at its Carpinteria storage yard. Id.

Chevron expects to discover relatively light crude on Lease 0525. It has agreed to provide the oil dispersant currently considered the most effective at this time. Id. at 36.

The Commission observed that oil spill clean up is limited by potentially heavy seas, high winds, uncertainties in projecting trajectories and limited effectiveness of dispersants. It found, though, that the measures proposed by Chevron in combination with Clean Sea Oil Spill Cooperative represent the best clean up capabilities currently available. Id.

Commenting on the issue of oil spills, the Department of Transportation replied "Coast Guard headquarters staff and personnel from the Eleventh Coast Guard District have reviewed the exploration plans presented by Chevron with respect to ... oil spill prevention, and oil spill cleanup. They perceive no problems in these areas." Transportation Letter.

Based on the record before me, I find that the risk of a major oil spill from an exploratory well on Lease 0525 to be slight. While the likelihood of a spill of a few barrels is greater, the effects of such a spill would be minor. Chevron will use state-of-the-art technology and has taken all feasible steps for

containment and cleanup should a spill occur. I conclude that it is unlikely that there will be any significant adverse impacts on the natural resources of the coastal zone caused by an oil spill from Chevron's proposed project.

Cumulative Adverse Effects

The Commission expressed concern that Chevron's proposed project raised the same cumulative impacts issues as those highlighted by the Commission in Lease Sale 80. In Lease Sale 80, the Commission recommended that additional leasing in the Santa Barbara Channel be delayed pending further cumulative impact studies and the identification of onshore infrastructure needs. Adopted Findings at 2.

The Commission identified cumulative adverse impacts on commercial fishing efforts, vessel traffic safety, water quality and onshore air quality. It also discussed the cumulative risk of an oil spill, and the fact that additional offshore platforms have adverse effects on visual and recreational amenities and the predominately rural character of the Santa Barbara Channel coastline. Id. at 54.

The Gulf Oil Decision discussed the standard to construe "cumulative effects." There, the Secretary construed "cumulative effects" to mean "the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected-to activity is likely to contribute to adverse effects on the natural resources of the coastal zone." Gulf Oil Decision at 8. I will use that standard in this appeal.

Chevron's proposed exploration is properly characterized as "temporary." Because of the temporary nature of exploratory drilling (75 to 135 days per well), effects that would not be present after the time that drilling is completed and the drillship removed, such as risk of oil spills or vessel collision, would not cumulate with future activities, but only with similar efforts scheduled to be occurring during the drilling period. See Gulf Oil Decision at 8.

For the purpose of this appeal, I have selected the following geographical area to consider for the cumulative impact analysis -- the northern border is delineated by tracts 241/240/166; the eastern border is delineated by tracts 166/520/521/474/217; the southern border is delineated by tracts 475/524/525/478/217; and the western border is delineated by tracts 469/475. See Figure 2.

Within this area are a number of existing production platforms including Union A (0241), Union B (0241), Union C (0241),

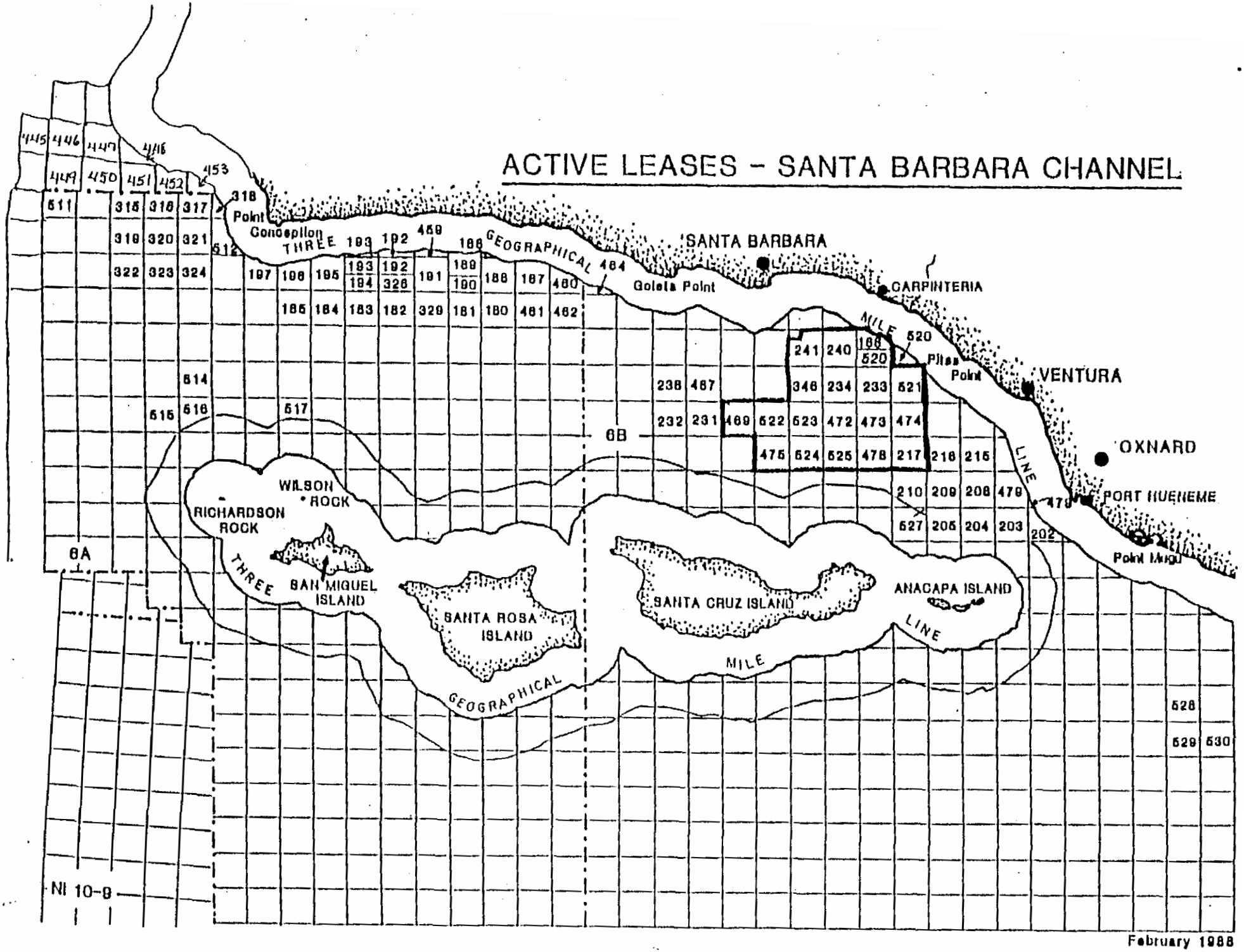

ACTIVE LEASES - SANTA BARBARA CHANNEL
SANTA BARBARA
CARPINTERIA
VENTURA
OXNARD
PORT HUENEME
Point Mugu
Point Conception
Gaviota Point
Pitas Point
THREE GEOGRAPHICAL MILE LINE
6A
6B
WILSON ROCK
RICHARDSON ROCK
SAN MIGUEL ISLAND
SANTA ROSA ISLAND
SANTA CRUZ ISLAND
ANACAPA ISLAND
NI 10-8
February 1988

FIGURE 2

Hillhouse (0240), Henry (0240), Hogan (0166), Habitat (0234), and Grace (0217). See Figure 3. All of these platforms except Grace are producing without developmental drilling. While Grace is in production with development drilling, that drilling should end in 1990. MMS FONSI/EA at V-3.

In addition, the Commission has concurred with consistency certifications for POE's on tracts 0478 (Chevron), 0473 (Chevron), 0472 (Champlin), 0469 (Arco) and 0475 (Arco). Adopted Findings at 59; Conoco Adopted Finding on Consistency Certification, June 9, 1988, at 52 (Conoco Adopted Findings).

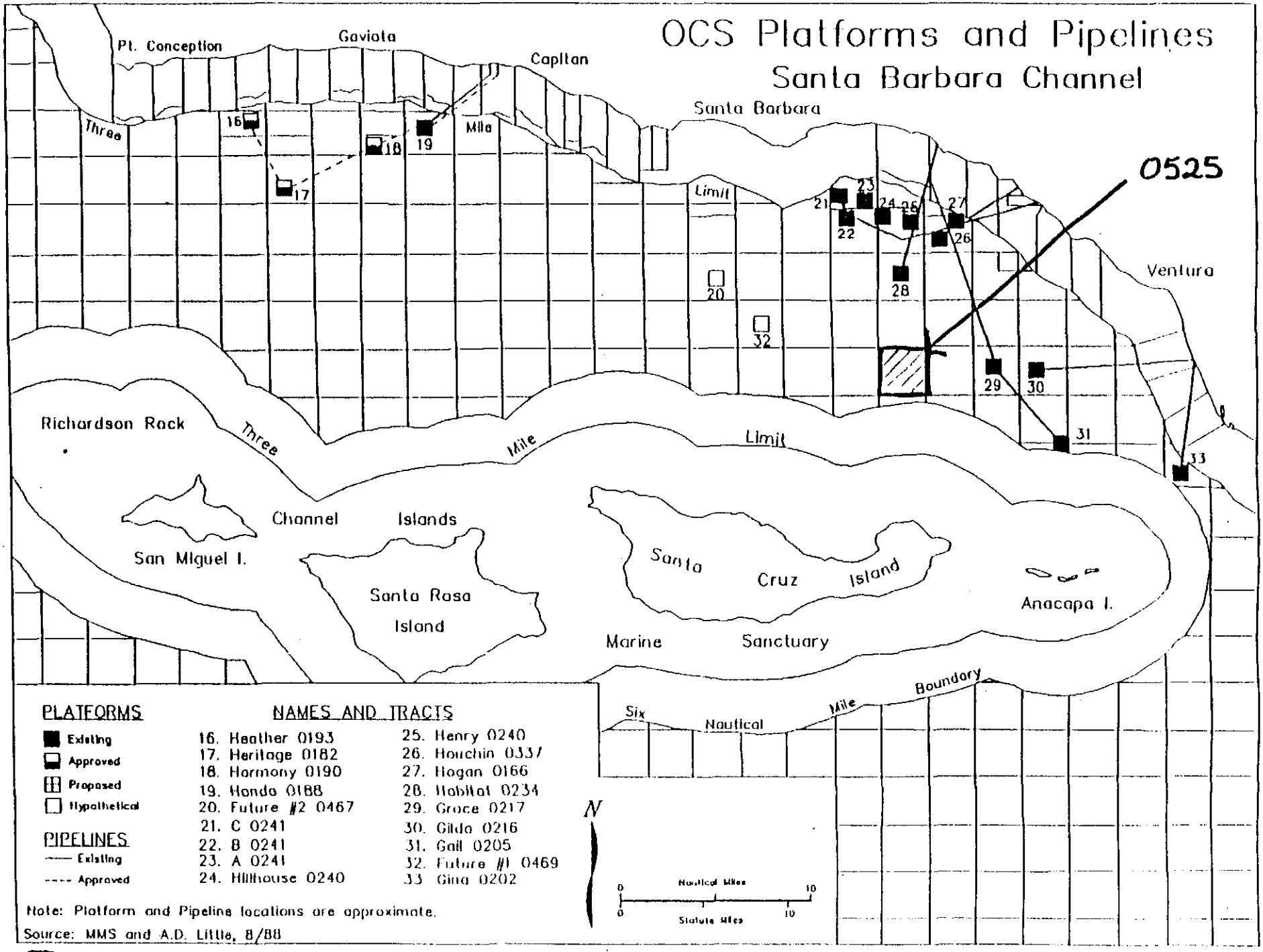
ARCO has drilled two wells on P-0469 and has plans to drill additional wells on that tract, although ARCO does not believe those wells would be drilled simultaneously with Conoco's which appears to have a similar schedule as Chevron. According to the Commission, Texaco intends to conduct exploration of leases P-0523 and P-0524. Conoco Adopted Findings at 52. When considering cumulative impacts, MMS concluded that the exploration activities proposed by Conoco on lease 0522 presented the only possible overlap with Chevron's proposed exploration. MMS Letter/Enclosure at 8.

Chevron states that the unavailability of drillships makes concurrent drilling unlikely. Ch. State. at 34. It added that only one drilling rig is operating in the Santa Barbara Channel and offshore Santa Maria Basin at this time. According to MMS, Chevron notes that for all of 1988, there was only an average of one rig per month operating. Ch. Reply Br. at 55.

At this time, it is impossible to determine whether any of this drilling will occur contemporaneously with that proposed for Lease 0525, although it appears that Conoco's proposed activities will follow a similar schedule as Chevron's based on the timing of the submission of the POEs to MMS. Even if Chevron's drilling occurs during the same time period as that of Conoco's, due to the temporary nature of Chevron's proposed project, it is not likely to contribute significantly to possible adverse effects from oil and gas development activities occurring in this area with the exception of impacts on air quality onshore. Likewise, while there is a potential for a number of exploratory wells to be drilled in this area, those exploratory activities will not necessarily occur at the same time as Chevron's proposed project.

The Lease Sale 80 EIS considered potential adverse impacts as well as cumulative impacts of exploration and development for the entire Lease Sale. I summarize those impacts.

> Water Quality - In the immediate area of oil exploration and development, water quality would be degraded. The degradation would be very low at the point where routine discharges enter ocean. Impacts on water quality from



California Coastal Commission

Figure 3

oil spills would be moderate in the subarea where the spill occurred.

Ocean Dumping - Impacts to dump sites would be very low unless bottom disturbing activities occur in a hazardous waste site area, in which case high or very high impacts could occur.

Air Quality - There would be insignificant increases in onshore concentrations of nitrogen oxides, sulfur dioxide, carbon monoxide and total suspended particulates. There could be a relatively small increase in ozone concentrations. This would be a moderate impact (significant, localized air quality degradation within a nonattainment area).

Intertidal Benthos - A loss of a few individuals would occur along a narrow area next to pipelines. There would be moderate, localized impacts to intertidal communities in the narrow path of pipelines to be constructed.

Subtidal Benthos - Impacts would be low; an insignificant interference with ecological relationships lasting less than a year. Localized, high impacts could result from drilling on rocky outcrops.

Fish Resources - Very low impacts are expected.

Marine Mammals - In the event of an oil spill, some mortality is possible to pinnipeds and small cetaceans with recovery to the affected population requiring less that two years in most cases. Northern fur seals would likely experience high mortality.

Seabirds - Low impact.

Endangered and Threatened Species - Low impacts for brown pelicans and non-nesting birds along the coast. A small increase to mortality rate of gray whales may result from noise-induced changes in habitat utilization.

Estuaries and Wetlands, Areas of Special Concern, Marine Sanctuaries - Impacts not estimated to occur.

Commercial Fisheries - Low economic loss to fishermen (less than 10%) but no effect on secondary employment.

Marine Vessel Traffic - Additional vessel traffic will result in low impacts. Some vessel conflicts may occur but would be minor in nature and infrequent. Vessel

> accidents should be low in the Santa Barbara Channel if current Coast Guard policy is followed.
>
> Military Uses - Impacts are expected to be high. Stipulations should mitigate the impacts.
>
> Lease Sale 80 EIS at 2-47-2-50.

1) Oil Spills

The EIS for Lease Sale 80 also considered the risk of oil spills. The model[28] used attempts to predict what is likely to occur over the lifetime of the Lease Sale proposal -- thus, it would consider both the exploratory as well as the development and production stages. The EIS acknowledges that actual environmental risk may be higher or lower than predicted. The EIS used two situations to predict the likelihood of an oil spill(s). One considered the mostly likely development of the proposed lease offering area, and the other focused on total lease offering development. Each was subdivided into discrete geographic areas. The Santa Barbara Channel was one of these areas, and I will use the analysis for the Santa Barbara Channel under the most likely development scenario.

For the Santa Barbara Channel, the EIS predicts a 25% probability of one or more large spills (1,000 bbls or more) and a 12% probability for one or more very large spills (10,000 bbls or more). The analysis states:

> [t]he individual land segments bordering on the Channel (including the northern side of the Channel Islands) show no significant risk of an oil spill contact, as a result of the Proposal. The probabilities of one or more large oil spills occurring and contacting land segments within 30 days range from 0-4 percent. The target results show the Channel Islands Marine Sanctuary, and Anacapa and Santa Barbara Islands showing no significant risk of a large spill from the Proposal, as the probabilities of one or more large spills occurring and contacting them are 14, 1 and 1 percent, respectively. Thus the Proposal represents virtually no additional risk of a large or very large oil spill to the Santa Barbara Channel area.
>
> Id. at 4-22.

Considering the most likely case cumulative effect for the overall most likely development scenario, the EIS concluded that

> [e]xisting Federal and state leases are very likely to result in one or more large oil spills (the probabilities are 99+ percent and 96 percent,

> respectively) over the life of the Proposal .... The probabilities that spills may occur from import (foreign and Alaskan) tankering without the proposal enacted are very likely (97 percent) for large spills and likely (84 percent) for very large spills .... With the Proposal enacted these risks are reduced slightly due to the displacement of Alaska crude oil by oil from the Proposal going to California refineries. The risk from crude oil imports of one or more spills is still likely and very likely, as the probabilities of one or more spills are 97 percent (large spills) and 82 percent (very large spills) ... over the expected life of the Proposal. The Proposal would therefore represent 7 percent of the total risk of oil spills from offshore activities and crude oil imported into the region.
>
> Id. at 4-22-4-23.

The EIS' cumulative oil spill analysis is for the entire lease sale area. Even considering the more limited Santa Barbara Channel analysis (an area much greater than that I have determined appropriate to consider for purposes of this appeal), the EIS concludes that the Lease Sale proposal "represents virtually no additional risk of a large or very large oil spill to the Santa Barbara Channel area." Id. at 4-22. Chevron's proposed activity would impact a much smaller area, thus the potential adverse cumulative impacts would be substantially less. Chevron's Environmental Report[29] noted an incremental increase in the possibility of a blowout from a probability of 0.0075 (single well) to 0.0150 if two wells are drilled concurrently in the vicinity. The report characterized the increase as "negligible." Environmental Report at 5-5. The fact that Chevron's proposed activity is temporary and short-termed also lessens its potential cumulative adverse impact.

Although there is a probability of one or more oil spills occurring in the Santa Barbara Channel from Lease Sale 80 activities, I find that Chevron's proposed project will not add significantly to the cumulative adverse effects on coastal zone resources.

2) Water Quality

Chevron's Environmental Report stated that discharges into the marine environmental will increase due to similar, concurrent activities in the vicinity of Lease 0525. The discharges will be short-term and intermittent. Drilling muds are expected to have short-term, minor effects on ocean water quality near the drilling vessel. The closest distance between Chevron's and an adjacent leaseholder's (Conoco on Lease 0522) proposed wells is approximately 5.5 miles. Because of this distance, mud discharge plumes are not expected to overlap. The Environmental Report

predicts no significant degradation of ocean water quality as a result of the cuttings discharges. Environmental Report at 5-2-5-3.

The Commission concluded that the evidence was inconclusive about whether the discharges would cumulatively result in significant degradation of the marine biological resources. Further, Chevron's exploratory drilling is a short-term project located eight miles from state waters. Thus, the discharges are not likely to affect significantly the coastal zone. Adopted Findings at 32. Still, the Commission remains concerned about chronic sublethal effects from ocean disposal of muds and cuttings. Barium is the major toxic additive to these muds. The Commission is convinced that adverse impacts may result through bioaccumulation. Id. at 49.

The Minerals Management Service[30] also found that the cumulative water quality impacts would not be significant. It observed that the distances between well sites as well as the unlikelihood that drilling discharges from the exploratory projects would be released simultaneously minimize the likelihood of additive effects. MMS Letter/Enclosure at 8-9.

Because of the short-term nature of Chevron's proposed activity as well as the unlikelihood that the discharges will cumulatively impact the natural resources of the coastal zone, I find that the proposed activity will not add significantly to the cumulative adverse impact on the water quality of the coastal zone.

3) Commercial Fishing

The Environmental Report acknowledges that concurrent drilling activities on another lease in the vicinity of Lease 0525 would preclude a similar area from commercial fishing activities. According to the Report, the exclusion of such areas would not significantly impact the amount of fish available nor preclude a significant area for fishing activities. Environmental Report at 5-3.

The Commission counters that when cumulative development in the Santa Barbara Channel is taken into consideration, the "overall preclusion impact on commercial fishing is clearly adverse and significant." CCC Resp. Br. at 33-34.

Considering only the adjacent lease to Lease 0525, MMS concluded that "the two projects do not both preclude substantial area in important trawl fishing grounds, [thus] the overall cumulative impacts from these two projects will not be significant." MMS Letter/Enclosure at 9. MMS stated that Lease 0525 was not located in the primary drift gill net fishery area so cumulative impacts on that fishery would be insignificant. Id.

The record indicates that there will be some interference with commercial fishing. Due to the small geographic area precluded as a result of the location of the drilling rig, the short drilling period and the temporary nature of the drilling as well as the limited exploration and development likely to occur during the same time as Chevron's proposed project, I find that Chevron's proposed project will not contribute significantly to the cumulative adverse effects on the commercial fishing industry.

4) Air Quality

Chevron's air modeling considered a two drillship scenario assuming simultaneous operations of drillships on nonadjacent leases (Conoco's Lease 0522 and Chevron's Lease 0525) in the same general area. For inert pollutants, the analysis revealed results "approximately equal to the worst-case concentrations due to single drillship emissions evaluated at the closest points onshore." Adopted Findings at 12. The results of the photochemical modeling were that "the largest incremental ozone increase contributing to an existing violation of 12.40 pphm due to the drillships' emissions was 0.106 pphm." Id. at 13.

MMS' Environmental Assessment considered cumulative impacts on air quality and concluded that for inert pollutants, all concentrations were within Interior's significance levels and estimated to be within state and Federal ambient air quality except for CO. The proposed project could exacerbate existing eight-hour CO standard violation in Santa Barbara County, but the contribution would be less than 0.1% of the background contribution. FONSI/EA at IV-19. MMS considered the cumulative ozone impacts to be small and insignificant. Id. at IV-20.

The Santa Barbara County Air Pollution Control District stated that the proposed project, in conjunction with Conoco's proposed project on Lease 0522, would contribute incrementally to concentrations of ozone. It noted that such contributions in nonattainment areas are significant. SBCAPCD St. at 12. The CARB observed that Chevron's proposed project's contribution to ozone represented a quantifiable addition to existing violations and would prevent onshore areas from attaining their air quality standards. Adopted Findings at 14. Interpreting the results from the two drillship scenario, the Commission concluded that Chevron's proposed activity would result in several episodes of quantifiable contribution of ozone in Ventura County and would increase ozone along the Santa Barbara shoreline. CCC Resp. Br. at 28.

Based on my review of the record, I conclude that Chevron's proposed project adds to the cumulative impact on onshore air quality in the coastal zone. While recognizing the temporary

nature of the proposed project, I find that during the time the project would be conducted in conjunction with other activities in the general vicinity, it will make a contribution to ozone that will impact nonattainment areas in the coastal zone.

5) Other

The Commission believes that physical disturbance from construction activities and noise will stress the marine environment. The cumulative effects of the noise on gray whales is also a concern. However, despite OCS development, the gray whale population is increasing. Adopted Findings at 52.

The Environmental Report stated that concurrent exploratory activities will have no impact on kelp harvesting and mariculture. Such activities are not expected to affect adversely any environmentally sensitive areas. No significant cumulative adverse impacts are expected on the pelagic or benthic communities, but incremental amounts of sedimentation from muds and cuttings may impact benthic communities in the immediate area of the well locations. Environmental Report at 5-4.

The Minerals Management Service stated that cumulative impacts on marine resources would be insignificant due to the temporary nature of the proposed activity and the fact that hard substrate features will be avoided. MMS Letter/Enclosure at 9.

While the Commission cites adverse cumulative impacts on visual and recreational amenities and the predominately rural character of the Santa Barbara County coastline, it does not discuss what those impacts would be. To the extent that the impacts result from oil spills, I find that significant adverse impacts are not likely to occur. With regard to the cumulative visual impact from one additional drilling rig, I note the temporary and short term nature of the drilling rig. Thus, I find that Chevron's proposed activity does not add significantly to the cumulative adverse visual impact. The Environmental Report stated that significant cumulative adverse impacts on pleasure boating, sports fishing or recreation are unlikely as these activities occur mainly on the nearshore coastal areas. Environmental Report at 5-3. I concur.

Contribution to the National Interest

In the Korea Drilling Decision, the Secretary explained how the contribution to the national interest would be considered in CZMA consistency appeals. That decision stated that

> [t]he national interests to be balanced in Element Two are limited to those recognized in or defined by the objectives or purposes of the Act [CZMA]. In other words, while a proposed activity may further (or impede)

> a national interest beyond the scope of the national interests recognized in or defined by the objectives or purposes of the Act, such a national interest may not be considered in the balancing.
>
> Korea Drilling Decision at 16.

I follow that standard in this appeal.

With respect to the proposed project's contribution to the national interest, Chevron stated that the CZMA, in part, recognizes further, expeditious development of OCS oil and gas to achieve greater energy self-sufficiency. Achievement of greater energy self-sufficiency, in turn, will reduce dependence on foreign oil, make resources available to meet the nation's energy needs as soon as possible, assure national security and achieve national economic goals. Ch. State. at 17. Chevron asserts that exploration of reserves of more than 100 million barrels of oil and 200 billion cubic feet of gas will contribute to the national interest. Id. at 20.

The Commission states that the contribution of Chevron's proposed project to the national interest is minimal at best because the recoverable resources on Lease 0525 will contribute only a very small fraction of the nation's recoverable reserves. In 1986, the California OCS contributed less than 1% to the Nation's oil production. Chevron's contribution from Lease 0525 would only be a small fraction of this 1%. CCC Resp. Br. at 36, 39-40.

Chevron responds that since 1985, domestic production has fallen nearly one million barrels of oil a day. Imports have risen approximately 1.7 million barrels a day to 5.3 million barrels a day or 40% of the total domestic supply. Because Chevron believes this trend will continue, it feels that it is even more compelling to explore for new domestic sources of oil and gas. Ch. Reply Br. at 13.

Concerning the size of the reserves on Lease 0525, Chevron points out that as of the end of 1986, 41,710 fields had been discovered in the United States. Of that number, only 223 or 1/2 of 1% contained reserves of 100 million barrels or more of oil at the time of discovery. Id. at 14.

The Commission reiterated that one project with the potential reserves like Chevron's is "simply inconsequential in the overall domestic energy picture." According to the Commission, the domestic oil industry is dynamic -- influenced by many factors such as the price of oil. Any impact of Chevron's project on domestic energy resources would be extremely limited and transitory. CCC Reply Br. at 18. The Commission argues that

with oil imports at almost 40% and current, low prices, it is doubtful that exploration or development of a single tract would perceptibly affect import or domestic production levels. Id. The Commission feels that the current oil price will enable the nation to preserve domestic resources and to take long term steps against disruption in supply. Thus, the importance of Chevron's proposed project is diminished. Further, the argument that all exploration and development projects should go forward now ignores long term energy needs. Id. at 19.

Finally, the Commission states that should Chevron's proposed project be allowed without further mitigation of air emissions impacts, additional onshore regulations will be needed to offset the air emissions from Chevron's proposed project. This regulation could affect onshore oil facilities including those necessary to support offshore drilling. Id. at 20.

The Department sought the views of a number of Federal agencies concerning the national interest in Chevron's proposed project. I summarize their relevant comments below:

> The Department of the Treasury observed that significant benefits accrue to the national interest from the development of domestic energy resources including supplementing oil reserves which can be used if imports are disrupted. Recognizing "the long lead time required for oil production to come on stream following exploration (5-10 years)," the Department stated that if approved, the reserves from Lease 0525 would not provide additional U.S. oil supplies until the 1990's when oil prices are predicted to be higher than those today. Treasury concluded that in order "to maintain our national energy production, it is important to have a continued stream of economically viable exploration and development projects so that new oil production from these projects will be available to replace declining activity from older exhausted wells." Letter from Michael R. Darby, Assistant Secretary for Economic Policy to William E. Evans, Administrator, NOAA, October 13, 1988 (Treasury Letter).
>
> The Department of Transportation stated while the level of future hydrocarbon production from Lease 0525 is unknown at this time, any substantial production would contribute to U.S. energy needs and reduce dependence on imported oil from potentially unreliable foreign sources. Because the transportation section is a major user of oil, the Department of Transportation is "especially sensitive to the need for a stable, assured supply of crude oil." Transportation Letter.

> The Federal Energy Regulatory Commission (FERC) stated that "as a general policy, the Commission staff supports development of domestic energy sources." While recognizing that currently there is an excess supply of natural gas, the FERC stated that "as these supplies are produced and depleted, new supplies will be needed. Development of the Federal Outer Continental Shelf leases would assist in providing these new supplies." The FERC also noted the direct benefit of the proposed project in the area of energy security. Letter from Kevin P. Madden, Director, Office of Pipeline and Producer Regulation to Katherine A. Pease, Assistant General Counsel, NOAA, November 9, 1988.
>
> The Mineral Management Service of the Department of the Interior commented that Congress, through the Outer Continental Shelf Lands Act, has established a national policy of exploration and development of OCS oil and gas resources. Such development will help to achieve greater energy self sufficiency. The MMS stated that exploration on Lease 0525 which is "within the Anacapa Unit will add significantly to our knowledge of the extent and producibility of the oil and gas reserves known to exist at this location." It added that it "required the drilling of a well in the Unit to satisfy Suspension of Production requirements .... Chevron proposed to drill a well on OCS-P 0525, as that location has the best potential for further delineation of the reservoir." MMS Letter/Enclosure at 5.

While the predicted reserves on Lease 0525 are not as great as some projects such as Exxon's Santa Ynez Unit, they are not insubstantial. I therefore find that Chevron's proposed project will further the national interest in attaining energy self-sufficiency by ascertaining information concerning the oil and gas reserves actually available for production.

Balancing

In the discussion above, I found that Chevron's proposed project, when considered alone, will have an insignificant adverse effect on marine resources, commercial fishing and water quality. It will not cause significant adverse effects on the resources of the coastal zone due to geologic hazards or vessel traffic safety problems. I also have determined that when I consider Chevron's proposed activities in conjunction with other activities being conducted in the general vicinity, Chevron's activities will contribute slightly to the cumulative adverse effects on marine resources, commercial fishing, water quality or vessel traffic safety problems. Most of these potential adverse impacts from Chevron's proposed project are temporary and will cease when exploration is completed.

I have found that the possibility of an oil spill from Chevron's proposed project is low and poses little threat to the marine resources in the area. I also have found that Chevron's proposed activities add slightly to the potential risk of an oil spill when considering other exploration and development activities occurring in the general vicinity of Lease 0525.

Concerning adverse impacts on air quality of the coastal zone, I have determined that Chevron's proposed project, when performed separately or in conjunction with the other activities in the general vicinity, will have an adverse impact. While the temporary nature of a proposed project generally weighs in favor of lessening adverse impacts on the resources of the coastal zone, the proposed project will emit ozone precursors while in operation and will impact adversely the air quality of the coastal zone.

I have found that Chevron's proposed project will further the national interest in attaining energy self-sufficiency by ascertaining information concerning the oil and gas reserves actually available for production. I conclude that the proposed project will not cause adverse effects on the natural resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh the proposed project's contribution to the national interest. Therefore, I find that Chevron's project satisfies the second element of Ground I.

3. Third Element

To satisfy the third element of Ground I, the Secretary must find that "[t]he activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended." 15 C.F.R. § 930.121(c). The requirements of the Clean Air Act and the Federal Water Pollution Control Act (Clean Water Act) are incorporated in all State coastal programs approved under the CZMA. CZMA section 307(f).

Clean Air Act

As discussed supra, the Administrator of EPA prescribes national ambient air quality standards (NAAQS) for air pollutants to protect public health and welfare. See CAA Sections 108 and 109, 42 U.S.C. § 7408 and § 7409. The CAA requires each state to prepare and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state. CAA Section 110, 42 U.S.C. § 7410.

Upon reviewing Chevron's proposed project, the Commission found that the activities described in the proposed POE would contribute to degradation of air quality in the coastal zone in areas classified as nonattainment for ozone. The Counties of

Santa Barbara and Ventura have exceeded both state and Federal ozone standards in recent years. Adopted Findings at 9, 23.

Under the Outer Continental Shelf Lands Act the Secretary of the Interior is responsible for regulating air emissions from activities on the OCS. The United States Court of Appeals for the Ninth Circuit determined the scope of that authority vis a vis regulation by EPA in California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979). The Ninth Circuit held that the Secretary of the Interior was responsible for establishing and enforcing emission levels for OCS activities significantly affecting the air quality of any state. Interior must set these emission standards at levels permitting state and local governments to attain the air quality standards of the CAA. 604 F.2d at 1196. See also discussion supra.

The Commission urges that I not rely on the precedent established in previous consistency appeals that compliance with Interior's air quality regulations constitutes compliance with the requirements of the Clean Air Act. Rather, the Commission states I should make an independent determination as to whether Chevron's proposed activity meets the requirements of the CAA. CCC Reply Br. at 26. I decline to do so.

The OCSLA, as interpreted by the Ninth Circuit, leaves no doubt in my mind that the Secretary of the Interior has the authority and the responsibility to establish, by regulation, and enforce air emissions standards for OCS activities. Those regulations must assure compliance with the NAAQS for activities "significantly affect[ing] the air quality of any State." 43 U.S.C. § 1334(a)(8).

The Commission argues that such an approach is not appropriate "because of the inadequacies in DOI's regulatory approach." CCC Reply Br. at 27. I do not have the expertise to judge whether Interior's regulatory approach meets its statutory requirements. Nor do I think that the consistency appeals process is the appropriate forum for this issue. As noted earlier in this opinion, if a state questions the basis for such regulations, the appropriate forum is the Federal court system. Therefore, for the purposes for this appeal, I presume that Interior's regulations will ensure compliance with the NAAQS of the CAA.

Since the activities described in the proposed POE must comply with Interior's emissions standards, I find that those activities will not violate the requirements of the Clean Air Act.

Federal Water Pollution Control Act (Clean Water Act)

Sections 301(a) and 403 of the Clean Water Act (CWA), 33 U.S.C. § 1311(a) and § 1342, provide that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge

Elimination System (NPDES) permit issued by the Environmental Protection Agency.

On April 4, 1988, EPA issued Chevron an individual NPDES permit to discharge drilling muds, cuttings, washwater, well completion and treatment fluids, deck drainage, sanitary wastes, domestic wastes, distillation unit blowdown, non-contact cooling water, excess cement, blow-out preventer control fluid and fire control systems test water. Adopted Findings at 26.

After reviewing Chevron's proposed project, the California State Water Resources Control Board (SWRCB), an agency with primary responsibility for water quality, stated that "[i]t appears, based on the information we have reviewed, that there would be no direct impacts on California state waters ...." Id. at 30. The Commission found, under the conditions of the individual NPDES permit, the proposed project consistent with its coastal management program with respect to discharge of drilling wastes. Id. at 32.

Commenting on this issue, EPA stated that "[t]he proposed activities of the Appellant [Chevron] will not violate the requirements of the Clean Water Act unless the Appellant violates the terms of the National Pollution Discharge Elimination System (NPDES) permit which EPA has issued." EPA Letter at 2.

Because Chevron cannot conduct its proposed exploratory drilling without meeting the terms and conditions of EPA's individual NPDES permit, and thus meet the standards of the Clean Water Act, I find that Chevron's proposed project will not violate the requirements of the Clean Water Act.

4. Fourth Element

To satisfy the fourth element of Ground I, the Secretary must find that "[t]here is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the [State coastal] management program." 15 C.F.R. § 930.121(d).

As stated in previous appeals, this element is decided by evaluating the alternative(s) proposed by the state in the consistency objection. See Decision and Findings in the Consistency Appeal of Long Island Lighting Company, February 26, 1988, at 16. Whether an alternative will be "reasonable" depends upon its feasibility and the balancing of advantages of the alternative against its costs. Gulf Oil Decision at 22.

After finding Chevron's proposed project inconsistent with the CCMP, the Commission determined that two alternatives existed that would allow Chevron's proposed project to be conducted in a manner consistent with the CCMP. Those alternatives are offsets

of NO_x and ROC emissions or other emissions reductions. Adopted Findings at 58.

Emission Offsets

"Emission offsets" refer to a reduction of emissions elsewhere in the same air basin. This mechanism permits new or modified sources of air pollution to locate in areas exceeding air quality standards. A company can create offsets internally or obtain offsets from other sources. Analysis of the Offset Acquisition Process and Offset Market in Santa Barbara County, California (AER*X Report), December 19, 1988, at 6. The amount of emissions to be offset is based on residual emissions remaining after BACT is applied. SBCAPCD St. at 8.

Chevron asserts that the alternatives are unreasonable. Considering first the alternative of offsets, Chevron argues that "any available offsets are so difficult, time consuming and costly to secure that they cannot be considered to be reasonably available for purposes of Chevron's project." Ch. Reply Br. at 77. Chevron documents its position by referring to the AER*X Report.

The purpose of the AER*X Report is to "describe and evaluate the process of acquiring emissions offsets in Santa Barbara County, California, by using the actual experiences of industry." AER*X Report at 4. The Report, however, attempts no specific qualification of available offsets in Santa Barbara County. Chevron's Response to the Supplemental Brief of the California Coastal Commission and the Response of the County of Santa Barbara Air Pollution Control District to AER*X Report, March 17, 1989, at 10 (Ch. Resp. Br.). AER*X gathered the majority of the data through telephone interviews with selected industry members. AER*X paraphrased and summarized the responses and omitted details to ensure confidentiality. Interviewers verified the responses. AER*X Report at 5. Chevron stated the report's conclusions as:

> • [o]ffsets are extremely difficult, if not impossible, to secure in Santa Barbara County and will likely be impossible to acquire in the future;
>
> • options to create offsets are very limited and the development of Santa Barbara County's new AQAP may cause available offset opportunities to be lost;
>
> • offset acquisition process is multi-step, time consuming, expensive and uncertain;
>
> • offset search and approval process can take up to four years; and

> • the current range of offset leasing costs is estimated between $10,000 and $20,000 per ton per year for NO_x offsets and between $5,000 and $10,000 per ton per year for ROC offsets with prices predicted to escalate in the near future.
>
> Ch. Reply Br. at 78-79.

Chevron states that it will take several years to complete the offset process. This includes locating, negotiating and contracting for offsets and securing approval of SBCAPCD for the offset package. Id. at 76-77, 80. Assuming that two wells are drilled per year and that it will be required to obtain a minimum of 150 tons of NO_x each year for approximately two and one half years, Chevron estimates the cost of the NO_x offsets to be $5,625,000.[31] Chevron adds that other costs would be incurred such as SBCAPCD fees, source testing fees and costs of identifying and securing the use of offsets. Id. at 80-81.

Both the Commission and SBCAPCD suggest that the costs of offsets may not be as high as estimated by Chevron. First, the Commission notes that "no effort has been made by the applicant to identify actual offset sources, and actual offset costs." Supplement Brief of the California Coastal Commission, March 2, 1989, at 22 (CCC Supp. Br.). Chevron acknowledges that it did not conduct an "actual" offset search. Ch. Resp. Br. at 21. Next, the Commission quotes from the AER*X Report which stated that:

> [m]ost of the offsets transactions discussed in the interviews were actual 'trades' where no money was exchanged. For example, offsets were traded for offsets, were traded for land rights, etc. A considerable number of offsets were also created through reductions 'internal' to the companies that needed them, therefore, no-trades were necessary.
>
> CCC Supp. Br. at 23, quoting AER*X Report at 18-19.

The SBCAPCD, relying on several AER*X reports, states that the price range for leasing NO_x offsets may be more stable then the December, 1988, AER*X Report indicates. In a 1987 report, AER*X estimated the range from $2,500 to $15,000, which, at least at the upper range, is not dissimilar to the more recent projection. Response of the County of Santa Barbara Air Pollution Control District to AER*X Report, March 2, 1989, at 22-23 (SBCAPCD Resp. Br.)

To lessen Chevron's estimated costs to acquire offsets, the Commission suggests that Chevron obtain only the offsets necessary for one or two wells (as Chevron may not drill all five exploratory wells), so long as Chevron commits to secure

necessary offsets before conducting further drilling. CCC Supp. Br. at 24, n.20.

Beyond the direct monetary cost of offsets, Chevron also cites time delays. The time delays relate to two separate aspects of the offset process -- acquisition of the offset and subsequent approval by the SBCAPCD. Concerning the first stage, the Commission observes that the "acquisition of offsets inevitably involves research and negotiation."[32] CCC Supp. Br. at 18. The length of this phase, of course, is dependent upon the availability of offsets which will be discussed shortly. The SBCAPCD addresses the second phase of this process.

The SBCAPCD acknowledges that the first few offset contracts were subject to a fair amount of negotiations, but, since then, the process has been streamlined by the fact that a set of standard conditions[33] has been developed which are "almost routinely accepted by the District." SBCAPCD Resp. Br. at 8.

Once an applicant has secured offsets, the SBCAPCD follows specific guidelines and must approve or disapprove the proposal within a specified time. Under California law, the SBCAPCD must determine whether the application is complete within thirty days of submission. Once the application is deemed complete, the SBCAPCD must make a decision on the application within 180 days. It is possible that the source for which offsets are required can begin operation prior to formal issuance of a permit if certain criteria are met. Id. at 10-11.

While Chevron does not state that offsets are unavailable, it does indicate that availability may be so limited as to make such an alternative unreasonable or infeasible. Ch. Reply Br. at 77. It asserted that at least one source identified by SBCAPCD during the course of this appeal was used for reduction of hydrocarbon emissions, not NO_x emissions.[34] Id. at 79. Based on its experience and the AER*X Report, Chevron concludes that SBCAPCD emission source inventory over-estimates the amount of surplus emission reductions available. Ch. Resp. Br. at 20. Chevron also indicates that the development of the County's new AQAP will affect the availability of offsets opportunities. Id. at 12.

The response of SBCAPCD discusses at some length availability of NO_x offsets. SBCAPCD first notes the availability of an emissions inventory listing all known sources of emissions in the County. It adds that it is willing to identify possible offset sources for a proposed project as well. SBCAPCD Resp. Br. at 17. It states that since 1986 in the South County it has approved offset transactions totalling over 1500 tons per year of NO_x and over 800 tons per year of ROC from thirty offset sources located at twelve separate facilities. Id. at 18. It adds that some offsets are the subject of short term leases covering the construction period of a project or its peak emission year.

Once those phases have passed, the offsets will be available to others. Id. at 19.

SBCAPCD and the Commission examine the impact of the adoption of the new AQAP, a planning process mandated for all Federally-designated nonattainment areas. SBCAPCD states that the proposed control measures have been reviewed by a technical committee to ensure feasibility. Id. at 11-12. The Commission states that the pending AQAP may operate as an incentive to sell offsets by making holders of potential offsets more willing to sell them in anticipation of new mandatory requirements. CCC Supp. Br. at 16, n.13; 24.

Analyzing the AER*X Report, SBCAPCD makes two general conclusions about the offset process -- types of sources providing offsets are more varied than the report suggests, and the report has ignored many untapped sources of offsets. Concerning the first point, SBCAPCD concluded, in part, that:

> ° most offsets for oil and gas development in the County come from existing oil and gas facilities;
>
> ° most offsets are internal and not purchased by the applicant; and
>
> ° many offsets come from sources other than internal combustion engines.
>
> SBCAPCD Resp. Br. at 5.

For its second conclusion, the SBCAPCD lists some categories providing offset opportunities:

> ° early implementation of AQAP measures;
>
> ° implementation of higher levels of control than required under the AQAP;
>
> ° implementation of the "further study" measures listed in the AQAP;
>
> ° emission controls on facilities exempt from local and state air quality regulations; and
>
> ° control of many mobile source emissions
>
> Id. at 21.

SBCAPCD also states that it has accepted offsets from neighboring counties to mitigate impacts within Santa Barbara County, and it "sees no reason why offsets [sic] near the Santa Barbara-Ventura county line cannot be obtained for the ... Chevron project." Id.

In conclusion, SBCAPCD, after reviewing five of the most significant projects permitted in the last three years in the County, states that a substantial amount of NO_x and ROC offsets have been acquired by the projects from a variety of sources. Id. at 4-5.

The Commission, Chevron and SBCAPCD urge me to consider the temporary nature of the proposed project and the methodology of the AER*X Report as I determine whether offsets constitute a reasonably available alternative. Chevron states that its project is temporary and will produce "insignificant, if any, environmental effects." It states that the offset requirement would be difficult, costly and produce no demonstrative environmental benefit. Ch. Reply Br. at 81.

The Commission counters that the temporary nature of Chevron's proposed project should not exempt it from mitigating adverse air quality impacts. The Commission points out EPA requires that OCS air emissions must be addressed by onshore areas. Further, EPA has indicated that temporary activities occurring on a continuous basis for an extended time must also be addressed by the County. CCC Reply Br. at 36, n.23. The Commission then speculates that it may be easier to acquire offsets that are needed only for a limited time. Offset holders may be reluctant to provide offsets for long term projects because the holders may wish to utilize the offsets themselves at a later date. For Chevron's proposed project, the offset will be restricted for limited amount of time, then available for other purposes later. Id. at 21, 24.

Both SBCAPCD and the Commission challenge the validity of the AER*X Report. The Commission states that the sampling was extremely limited, involving potentially as few as three companies. The report identified neither the companies nor the projects. CCC Reply Br. at 34. SBCAPCD adds that the methodology employed was extremely imprecise using vaguely worded questions and calling for speculation in some cases. SBCAPCD Resp. Br. at 1. EPA, as well, questions certain aspects of the AER*X Report such as the impact of the pending AQAP.[35]

As acknowledged by AER*X and Chevron, the AER*X Report was not intended to be an empirical study. Rather, the Report was designed to elicit opinions and experiences of recent participants in the offset process. Ch. Resp. Br. at 10. To solicit candid responses, AER*X provided confidentiality. Id., Exhibit 1 at 2 (Letter from John Palmisano and Janet Hayward Friday, AER*X to Kit Armstrong, Chevron U.S.A. Inc. and Theresa Hooks, March 15, 1989). While a study based on such a design may not provide the same degree of reliability as other types of studies, the AER*X Report contains useful information for the purposes of this appeal and will be accorded the weight appropriate for a study of this nature.

Based on the record before me, I find that the alternative of acquiring offsets is a reasonable and available alternative. As discussed in the Korea Drilling Decision, "[i]f the State describes one or more consistent alternatives in its objection, the burden shifts to the appellant. In order to prevail on Element Four, the appellant must then demonstrate that the alternative(s) is unreasonable or unavailable." Korea Drilling Decision at 23.

Chevron, while alleging that this alternative is unreasonable, has not met the burden of demonstrating that such offsets are unavailable or are so costly as to render them unreasonable. Chevron, by its own admission, did not attempt to locate and secure offsets for its proposed project. Ch. Resp. Br. at 21. Thus, it cannot state with certainty what the cost of such offsets might be. Chevron, instead, relied upon the AER*X Report. A fair reading of that report indicates that offsets are available though the exact price is uncertain. Using the price listed as the highest known asking price, $15,000 per ton of NO_x, Chevron estimated a direct cost of $5,625,000 for all five exploratory wells. As indicated in the above discussion, the price may be less if trades are involved, offsets for fewer wells are acquired or if internal offsets from other Chevron facilities are utilized.[36] However, even if the direct cost of the offsets is the figure calculated by Chevron, I do not find that unreasonable when balanced both against the potential revenues from the oil and gas reserves on Lease 0525 which Chevron estimates to be over 100 million barrels of oil and over 200 billion cubic feet of gas and against prevention of further degradation of the onshore air quality.

In making this finding, I find persuasive the comments from EPA. EPA states that:

> the acquisition of offsets in the Santa Barbara area is a complex process; much of this complexity results from the severity of onshore air quality problems. However, we continue to believe it is reasonable to require offsets for development activities on the Outer Continental Shelf as a means of protecting air quality. [37]
>
> ...
>
> EPA believes that the acquisition of offsets, though admittedly difficulty, remains a reasonable requirement. Three main factors support the importance of requiring offsets.
>
> A. Serious Air Pollution
>
> . . .

> Stringent controls are needed to make progress toward attainment. If the air pollution were not so significant, we would not be as concerned about these appeals.
>
> B. Shifting the Burden of Offsetting OCS Emissions
>
> . . .
>
> Without offsets, the burden of mitigating OCS emission increases would be shifted to the onshore communities ... If these (and other) OCS emission increases are not adequately mitigated, it would further delay attainment of the ambient standards that are meant to protect public health.
>
> . . .
>
> C. Offsets are Being Obtained
>
> [M]any projects have been permitted in Santa Barbara, both in the oil and gas industry and other sectors, with offsets being provided.
>
> EPA Resp. at 1,3-4.

While an unspecified amount of time will be required to locate and secure the offsets, that factor does not render this alternative unreasonable as the length of time involved is dictated to a major extent by the degree of effort exerted by Chevron. Nor is the permitting process described by SBCAPCD unreasonably burdensome or lengthy once a completed application is submitted. Certainly, the feasibility of the offset process is demonstrated by the fact that a number of proposed projects have obtained offsets in Santa Barbara County in recent years. See discussion supra.

Because the record before me manifests some confusion concerning the ratio of the offset necessary, I use this opportunity to clarify. The offset ratio for OCS emissions is 1:1. Further, the SBCAPCD rules in effect at the time the Commission reviewed Chevron's proposed project are the ones that affect the availability of offsets. See SBCAPCD Resp. Br. at 6-7.

Other Emission Reductions

In its Adopted Findings, the Commission stated that another alternative that would render Chevron's proposed project consistent with the CCMP was to "reduce impacts to avoid adverse [air quality] effects on the coastal zone." Adopted Findings at

58. The meaning of this alternative became clearer during the course of the appeal as the Commission and SBCAPCD discussed a drillship using a cleaner engine or reductions in emissions from the engine on the drillship Chevron proposes to use. Chevron asserts that the Commission did not satisfy the Federal regulations implementing the CZMA by describing alternative measures in its objection. Ch. Reply Br. at 82-83.

Because a similar issue arose in both the Korea Drilling Decision and the Texaco Decision, I rely on those decisions. In the Korea Drilling appeal, the Commission did not describe an alternative in its objection, but did offer a rather general statement concerning an alternative during the appeals process. In the Texaco appeal, the Commission offered a generally worded alternative -- drill in a different location -- in its objection, but did not expand on the specifics of this alternative during the appeal. In the Korea Drilling Decision, the Secretary stated:

> [b]ecause the Commission may not have been fully apprised of its responsibility with respect to describing consistent alternatives in its objection or the necessity of showing good cause for a later description upon appeal, in order not to prejudice the interests of the Commission, I have examined its briefs to determine whether it has described any reasonable and available alternatives.
>
> Korea Drilling Decision at 24.

After examining the record, the Secretary found that the alternative was "not specific enough to describe an alternative that would permit the proposed activity to be conducted in a manner consistent with the CCMP." Id. The decisionmaker in the Texaco appeal reached a similar conclusion. See Texaco Decision at 36. The case before me is not similarly flawed. While the alternative stated in the Adopted Findings was not specific enough, that defect was cured during the course of this appeal.

Expanding upon the alternative identified in its objection, the Commission states that a drillship with a Caterpillar engine would reduce emissions. It also suggests retrofitting as a method to reduce emissions. CCC Resp. Br. at 51. Besides endorsing these suggestions, SBCAPCD adds that a reduction in drilling activity to one well per year in conjunction with innovative control technology for the drilling rig engine could reduce emission. SBCAPCD St. at 21. SBCAPCD acknowledges that such control technology, such as 5° engine timing retard or application of an engine injection kit, has not been verified. Id.

Chevron addresses these suggestions and indicates that they are not available. Chevron requires a rig capable of drilling in water over 450 feet deep. Based on a list of exploratory drill rigs worldwide compiled by Ventura County APCD, Chevron determined that only three such rigs with Caterpillar engines were in the United States. Each was committed in the Gulf of Mexico. The remainder were scattered throughout the Mediterranean, North Sea, Asia and Australia. While not specifying the expense, Chevron stated that the cost of bringing such a rig around the world would be prohibitive. Ch. Reply Br. at 84-85. Chevron does not indicate whether any of these rigs were available. Without determining availability of such rigs and citing the cost of contracting for and transporting one of the rigs as compared to the cost of the drillship Chevron proposes to use, I find that Chevron did not meet its burden of demonstrating that this alternative is unreasonable or unavailable.

Concerning further modifications to the existing drillship engine, Chevron notes that any new engine modifications would require additional studies and approval by several agencies. It adds "[t]o date, the only identification of proven technology to reduce NO_x emissions from EMD diesel engines, such as the one on the type of drillship Chevron proposes to use, is the 4° injection timing retard which MMS specifies and requires as BACT." Id. at 86. I concur with Chevron that further modifications are not a reasonable alternative due to the lack of verification of effectiveness and the time required to study and seek multi-agency approval before using such modifications.

Although not addressed by Chevron, I find that SBCAPCD's suggestion of reduced drilling activity is unreasonable because that suggestion is coupled with the new, unproven control technology discussed in the proceeding paragraph.

Conclusion

I find that several reasonable alternatives exist that would allow Chevron's proposed project to be conducted in a manner consistent with the CCMP. Chevron may obtain offsets or procure a drilling rig with a Caterpillar engine.

Conclusion for Ground I

Based on the findings made above, I find that Chevron has not satisfied all of the elements of Ground I. Therefore, Chevron's proposed project is not consistent with the objectives of the CZMA.

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

The second statutory ground (Ground II) for override of a state objection to a proposed project is to find that the activity is "necessary in the interest of national security." To make this finding, the Secretary must determine that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122. (emphasis added). Additionally, the Secretary must seek and accord considerable weight to the views of the Department of Defense and other Federal agencies in determining the national security interests involved in the project, although the Secretary is not bound by such views. Id.

Chevron asserts that its proposed project contributes to the national defense and the national security. It states that the "relationship between domestic energy production and the national security has been long recognized." Ch. State at 53. It cites a variety of sources to justify this conclusion such as the record of 1979 Presidential investigation ("the national security threat arising from growing reliance on imported oil"), the legislative history of the OCSLA ("Reliance on foreign oil may ... risk our ultimate national security") and the specified purposes of the 1978 OCSLA Amendments ("establish policies and procedures for managing the oil and natural gas resources of the Outer Continental Shelf ... to ... assure national security, reduce dependence on foreign sources...."). Id. at 54-55.

Based on its estimates of the recoverable reserves on Lease 0525 (more than 100 million barrels of crude oil and over 200 billion cubic feet of gas), Chevron argues that national security interest would be substantially impaired if its project is not allowed to go forward. This assertion is primarily based on the need to increase domestic petroleum production, thereby lessening reliance on imported oil. Such dependence on imported oil makes the United States vulnerable should a disruption occur. Such disruption could occur due to political instability in the Persian Gulf and North African regions. See Ch. State at 59-62.

The Commission views the import situation differently. It states that the low price of foreign oil at this time "enable[s] [the] nation to 'stockpile' oil for future use, and to ensure that the strategic petroleum reserve remains at a high level ... The availability of imports in fact enables domestic sources to be preserved and permits long-term precautions against disruptions in supply." It adds that the "national security does not depend on the availability of every barrel of domestic oil, and even more indisputable that it does not depend on, and would be injured by, a policy calling for development of every barrel now." CCC Resp. Br. at 55, 57-58. While not conceding that Chevron's estimate of the reserves on Lease 0525 is correct, the Commission observes that Chevron's proposed project would add a minuscule amount to domestic oil recoveries. It states that the total California OCS production comprised about 0.98% of the

Nation's total recoveries in 1986. Id. at 55-56. The Commission further adds that it has approved in recent years significant, new OCS development which permits exploration and production on the California OCS, thus ensuring a continuing supply of oil and gas. Id. at 56.

The Commission concludes that "the national security is simply not so substantially dependent on exploration or development of this parcel that it would be significantly affected by the failure of Chevron's activities to go forward ...." CCC Reply Br. at 43-44.

The Under Secretary solicited the views of several Federal agencies concerning the national security interest of Chevron's proposed project. Specifically, the Under Secretary asked those agencies to "identify any national defense or other national security objectives directly supported by Chevron's Plan of Exploration. Also, please indicate which of the identified national defense or other national security interests would be significantly impaired if Chevron's activity were not allowed to go forward as proposed." Letters from William E. Evans, Under Secretary to Honorable Colin L. Powell, Assistant to the President for National Security; Honorable John S. Herrington, Secretary of Energy; Honorable George P. Shultz, Secretary of State; and Honorable Frank C. Carlucci, Secretary of Defense, September 21, 1988. I summarize below the comments received concerning the national security issue:

> The Department of State indicated that "[n]ew indigenous hydrocarbon production continues to be essential to national energy security ... Development of the 100 million barrels of oil and 200 billion cubic feet of natural gas ... would make a significant contribution to limiting U.S. dependence on imported energy." It concluded that "timely development of Lease OCS-P 0525 would contribute to national security."
>
> Letter from John P. Ferriter, Deputy Assistant Secretary for International Energy and Resources Policy, Department of State to William E. Evans, Under Secretary, November 16, 1988.
>
> The National Security Council stated that "increased indigenous production of hydrocarbons is essential to improving the national security of the United States ... In our view, Chevron's proposed project would directly support essential national security objectives."
>
> Memorandum from Paul Schott Stevens, Executive Secretary, National Security Council to Donald A. Danner, Chief of Staff, Department of Commerce, October 4, 1988.

> The Department of the Treasury observed that "we do see significant benefits to the national interest and to national security from exploration and development of domestic energy resources ... This increased economic activity also contributes to our national security ... by providing for a trained, technical work force. Such projects also provide additional oil reserves that can be used, along with the Strategic Petroleum Reserve, in the event of a supply disruption abroad."
>
> Treasury Letter.
>
> The Department of Defense commented that "domestic exploration and identification of potential reserves is [sic] an essential element in U.S. Defense energy security. DoD access to crude oil is of particular concern since the drawdown of the Naval Reserves at Elk Hills, California, continue [sic] to lower crude oil reserves directly available to DoD in the event of an emergency under current statutes." Defense continued that "[t]his is a long-term problem since DoD will be as dependent upon secure sources of liquid hydrocarbons in the year 2010 as it is today. Not only will many current weapon systems that use liquid petroleum fuel be still in the DoD inventory, but many systems currently under development will be dependent on this type of fuel as well." Defense concluded that "Chevron's exploration will not immediately provide DoD with added sources of crude oil. However, exploration and delineation of oil fields can reduce by 50 percent the lead-time needed to get these fields into production in the event of a national or world crisis."
>
> Letter from William H. Parker, III, P.E., Acting Assistant Secretary of Defense, Production and Logistics to Honorable William E. Evans, Under Secretary for Oceans and Atmosphere, November 15, 1988.

Both Chevron and the Commission recognize that this appeal standard is very stringent and very difficult to meet. CCC Resp. Br. at 58; Ch. Reply Br. at 88. Chevron urges the Secretary to interpret more broadly the national security test. Chevron is concerned about two factors that, based on previous consistency decisions, appear to be decisive when the Secretary considers Ground II -- size of the potential reserves and weight given to the Department of Defense's comments. Ch. State. at 63.

Chevron observes that the size of the oil field to be developed "may directly correlate to its national security value." Id. This conclusion is drawn from the fact that in the Exxon SYU Decision, the Secretary concluded that "the production of the SYU

oil and gas reserves directly supports the national defense objectives described by the Department of Defense [military readiness and warfighting sustainability]." Exxon SYU Decision at 26. The reserves in SYU are estimated at 300-400 million barrels of oil and 600-700 billion cubic feet of gas. Conversely, the Secretary has found that reserves of approximately 31 million barrels of oil did not meet the criteria for an override based on Ground II. See Union Oil Decision at 24-25. Chevron argues that SYU should not be used as the threshold for sustaining an appeal because very few fields are that large. Instead, Chevron emphasizes that many smaller fields must be developed on a continuous basis to replenish the Nation's oil reserves. Ch. State. at 63-64.

Chevron also asserts that the Secretary does not appear to give "considerable weight" to the views of other Federal agencies concerning national security interests "if the Department of Defense specifically does not identify a significant impairment to national defense or security interests if the project does not go forward as proposed." Id. at 63. Chevron correctly observes that the Department's implementing regulations do not mandate that the Secretary give greater weight to the views of the Department of Defense or to national defense objective than to other national security objectives or views of other Federal agencies. Id. at 66.

The standard for meeting the criteria of Ground II is clearly stated in 15 C.F.R. § 930.122 -- significant impairment to a national defense or other national security interest if the particular project is not allowed to go forward as proposed. The Secretary must make an independent determination based on the record developed in the appeal. The letters to Federal agencies concerning Ground II requested specific information concerning Chevron's POE. General statements that a national security interest will be significantly impaired without more specific information to support these assertions do not meet the regulatory criteria. The Secretary will give considerable weight to the comments of any Federal agency that delineates how a national security or defense interest will be significantly impaired.

Concerning the size of the reserves, I note that this factor will have varying degrees of importance. While it was important in the finding for Exxon SYU, it may be of much less importance depending on the facts in each individual case.

Conclusion for Ground II

The regulation establishing the criteria for an override based on Ground II sets up a very difficult test. Neither Chevron nor any Federal agency commenting on Ground II has specifically explained

how the national security interest of energy self-sufficiency or a national defense interest will be significantly impaired if Chevron's POE for Lease 0525 is not allowed to proceed as proposed. Given that I have found that there are reasonable alternatives available (Ground I, element 4), nothing in the record reflects that if such alternatives were employed, there would be any impairment of a national security interest. Based on the record before me, I find that the requirements for Ground II have not been met.

Conclusion

Because I have found that Chevron's proposed project does not satisfy either of the two grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the Commission, Federal agencies may not issue permits for the project as proposed.

Thomas J. Murphy

Deputy Secretary of Commerce

FOOTNOTES

1 The Commission is California's Federally approved coastal zone management agency under sections 306 and 307 of the Coastal Zone Management Act and 15 C.F.R. Parts 923 and 930 of the Department of Commerce's implementing regulations.

2 The Secretary has delegated to the Under Secretary the authority to conduct appeals under section 307 of CZMA and to make procedural rulings in such appeals. See Department Organization Order 10-15, issued January 15, 1988.

3 The Under Secretary noted that "[t]he request came at the end of the appeals process which provided substantial opportunity for public comment." He also observed that it would be unlikely that a public hearing "would provide additional information relevant to the criteria that the Secretary must consider in these appeals ...." Letter from William E. Evans, Under Secretary for Oceans and Atmosphere to Carolyn Small, California Coastal Commission; Toru Miyoshi, Chairman, Board of Directors, Air Pollution Control District; David M. Yager, Chairman, Board of Supervisors, County of Santa Barbara; Richard J. Harris, Chevron U.S.A. Inc., January 9, 1989.

4 The County Counsel, the Air Pollution Control District and the Resource Management Department, of Santa Barbara County, requested extensions of time to respond to the new information submitted in Chevron's reply brief.

5 While the proposed consistency regulations provided that "the applicant shall have the burden of proving by a preponderance of the evidence that the proposed activity is either consistent with the purposes of the Act or is necessary in the interest of national security, or both," this requirement was deleted in later versions of the regulations. See 41 Fed. Reg. 42889 (Sept. 28, 1976) (section 921.6(k)).

6 I do note, however, that 15 C.F.R. § 930.122 provides that the Secretary will give "considerable weight" to the views of the Department of Defense and other interested Federal agencies during the review of national security issues.

7 The legislative history of the CZMA includes the following description of the purpose of section 307(f):

> [a]nother amendment is also necessary to make clear the relationship of the Coastal Zone Management Act and other environmental protection acts, specifically the Federal Water Pollution Control Act and the Clean Air Act. It is essential to avoid ambiguity on the question whether the Coastal Zone Management Act can, in any way, be interpreted

as superseding or otherwise affecting requirements established pursuant to the Federal Air and Water pollution control acts.

In both the Clean Air Act and the Federal Water Pollution Control Act authority is granted for effluent and emission controls and land use regulations necessary to control air and water pollution. These measures must be adhered to and enforced. Taken together, the amendments that we offer would achieve this [sic] results.

118 CONG. REC. 14,182 (1972) (statement of Sen. Boggs), reprinted in LEGISLATIVE HISTORY OF THE COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED IN 1974 AND 1976, at 279-80 (1976) (LEGISLATIVE HISTORY).

8 In an explanatory comment, NOAA listed the most important CAA requirements, categorized into uniform, nationwide requirements established by the EPA and nonuniform requirements applicable to a specific state or region. This second category "based on the nature of air quality problems that exist or are forecast in coastal areas, in locations where emission sources may affect air quality in coastal areas, and in other areas of the State," includes SIPs, new source review, more stringent emissions or air quality standards, prevention of significant deterioration, and attainment and maintenance of NAAQS and other attainment or maintenance measures such as transportation control measures.

15 C.F.R. § 923.45(b).

9 The language of section 25(h)(1)(B), 43 U.S.C. § 1351 (h)(1)(B), also added by the 1978 Amendments, covers OCS development and production plans, and parallels the consistency requirement for exploration plans.

10 See NOAA regulation 15 C.F.R. § 923.45(c)(2) and 118 CONG. REC. 14,183 (1972) (statement of Sen. Baker), reprinted in LEGISLATIVE HISTORY at 282 ("[T]he answer to the question put by the Senator from Alaska as to whether a local jurisdiction, State or local agency might require standards in excess of those spelled out in the act, is yes; it is clearly provided for under the Federal Water Pollution Control Act and the Federal Clean Air Act. This amendment would provide that such more stringent standards or requirements would be made part of the coastal zone management program ... [L]ocal authorities could require standards in excess of Federal criteria.").

11 Congress' general concern with OCS development and its potential deleterious environmental effects on state coastal zones is reflected in the CZMA legislative history. See, e.g., LEGISLATIVE HISTORY at 578, 746. It was in this spirit

that section 307(c)(3)(B) was added "to strengthen the States' ability to cope with OCS impacts." S. REP. NO. 277, 94th Cong., 1st Sess. 19 (1975), reprinted in LEGISLATIVE HISTORY at 745.

12 CZMA implementing regulations do not define the term "affecting the land use or water use of the coastal zone."

13 The suit alleges that the regulations violate the National Environmental Policy Act, section 176(c) of the CAA, section 203 of the OCSLA and the Administrative Procedure Act. Specifically, the state questions the determinations made by Interior concerning distance from shore, mitigation requirements and the definition of "significant effect." No direct CZMA issues are raised in the state's complaint or the Federal government's answer. Plaintiff-Intervenors have raised the CZMA in their complaint. There has been no briefing on substantive issues in this case, and the state is likely to move for a dismissal once new OCS air emission regulations are final.

The case had been stayed pending a negotiated rulemaking between the state, relevant local governments, Interior, EPA, the Department of Energy and other relevant Federal agencies. In December, 1988, the negotiated rulemaking ended without a set of agreed upon rules. In January, 1989, Interior published proposed rules revising 30 C.F.R. § 250.57. Those proposed rules are under revision, and it is uncertain when those rules will become final.

14 For example, in 1985, the Director of OCRM stated that "Exxon also is concerned that the Ventura County Air Quality Management Plan (VCAQMP) should not be incorporated into the CCMP as a criteria for OCS consistency review because air emissions from OCS oil and gas facilities are regulated exclusively by the Federal government. However, according to § 307(f) of the CZMA and implementing regulations at 15 C.F.R. § 923.45(c) which require that states incorporate, by reference or otherwise, the air quality control requirements established by a state or locality under the Clear Air Act, the VCAQMP standards are part of the CCMP." Letter from Peter L. Tweedt, Director, Office of Ocean and Coastal Resource Management (OCRM), NOAA to Michael Fischer, Executive Director, California Coastal Commission, March 1, 1985. In contrast, the following year the Director of OCRM stated "we must review and approve the Ventura County Air Quality Standards (pursuant to 15 C.F.R. 923.45) prior to incorporating them by reference into the CCMP ... so that we can review them in [sic] compliance with the Clean Air Act." Letter from Mark Stanga for Peter L. Tweedt, Director, OCRM to Peter M. Douglas, Executive Director, California Coastal COmmission, September 18, 1986. The Director of OCRM, several

weeks later, stated "we need a copy of the VCAQMP, which was referenced on pages 62, 114, and 158 of the Ventura County LCP." Letter from Peter L. Tweedt, Director, OCRM, NOAA to Peter M. Douglas, Executive Director, California Coastal Commission, October 7, 1986.

15 The decline in kelp harvest has been attributed to long-term oceanographic trends (such as reduced availability of nutrients) and El Nino conditions which physically damaged the plants. Environmental Report at 3-26.

16 MMS did conclude that Chevron's proposed POE would not significantly impact the thresher shark fishery because Lease 0525 is on the eastern periphery of the drift net corridor. Adopted Findings at 37.

17 I do not address the potential adverse effects on sports fishing from routine conduct. Both private and party boats sports fish in the Santa Barbara Channel. The catch consists of kelp bass, sand bass, bonito and various rockfish. Sports fishing within Lease 0525 appears unlikely due to the proximity of the lease to the northbound lane of the Vessel Traffic Separation Scheme and the deep water depths. Environmental Report 3-25.

18 NAAQS define levels of air quality which the Administrator of EPA determines are necessary, with an adequate margin of safety, to protect public health. 40 C.F.R. § 50.2(b).

19 Due to the nonattainment in Ventura County there is a moratorium on construction of sources emitting over 100 tons per year of volatile organic compounds (VOC) and modifications which would result in increases of forty tons or more of VOC emissions. CCC Reply Br. at 8.

20 If air quality is further degraded in coastal areas by OCS emissions, new development can be prohibited or severely restricted (as air quality increments or offsets would be used up) and local businesses would have to retrofit facilities with more stringent air emission controls. If a state fails to attain an NAAQS, EPA will withhold grant monies for publicly-owned sewage treatment plants and the Department of Transportation can withhold Federal highway funds. CAA Section 176 (A) and (B), 42 U.S.C. § 7506(A) and (B). In addition, emissions could result in decreased visibility, with losses in tourism and problems with navigational safety, and harm to fish, wildlife and plants in the coastal zone.

21 As explained by Chevron,

> [t]he PARIS model used by Chevron predicts ozone levels for every hour for every grid in the model domain. (Performance evaluation of the model is done by a rigorous comparison of the actual ozone values measured at each monitoring station on the days being modeled to those predicted in those locations by the model). In order to see whether Chevron's future source would cause an impact onshore, Chevron's modeling (done in accordance with the ARB-approved protocol) did a run with the base case emissions inventory plus the projected emissions from the source(s) being analyzed, to see if any of the impacts from the project emissions would cause or contribute to an onshore exceedance. The purpose of doing incremental runs was to account for potential bias and concerns about over/under prediction by the model.
>
> Ch. Reply Br. at 41.

22 The SBCAPCD preferred the SANBOX study which is a major meteorological study for the Santa Barbara Channel area. That study concludes that emissions released within low level winds over Santa Barbara Channel always impact parts of the coastal zone and inland regions of Santa Barbara and Ventura Counties. There is little dispersion of emissions plumes as they travel over water within sea breezes. SBCAPCD St. at 10. Chevron counters that the SANBOX study has severe technical limitations and is out of date. Ch. Reply Br. at 49, n.53.

23 The CARB, the Air Pollution Control Districts of Santa Barbara County, Ventura County and San Luis Obispo County, MMS, Western Oil and Gas Association (now Western States Petroleum Association) and EPA Region 9 are participating in the South Central Comprehensive Aerometric Monitoring Program. The program hopes to develop better data and improved analytical techniques for characterizing the ozone problem along California's South Central Coast. If successful, the improved data and techniques will permit more defensible determinations of whether and to what extent OCS sources contribute to onshore ozone problems. Ch. Reply Br. at 22-23.

24 The Santa Barbara VTSS is an internationally sanctioned set of traffic lanes designed to prevent vessel collisions in the heavily traveled route from Long Beach to the Point Conception area. The VTSS consists of one-mile wide north and southbound lanes which are separated by a two-mile separation zone. Environmental Report at 3-19.

25 The Environmental Report relied on Gulf of Mexico figures because a greater number of exploratory wells had been drilled in that area. Environmental Report at 4-18.

26 The BLM model assumes that spills are permitted to drift for thirty days. Environmental Report at 4-20.

27 Mr. Clean I, a large oil spill response vessel, is located in the Santa Barbara Harbor within two hours of Lease 0525. It is equipped with oil skimmers, oil containment boom and approximately 1400 barrel-oil storage capacity. A skimmer and Mr. Clean III are located at Platform Harvest about four to five hours away. In addition, Clean Coastal Waters has a four engine DC-4 aircraft on constant standby to apply chemical dispersants. It is located in Mesa, Arizona and can be in Santa Barbara in four hours.

28 The model incorporates a number of variables such as historical oil spill accident rates (from production platform, pipelines and tankers), transportation factors, seasonally averaged oceanic surface currents and seasonal wind transition probabilities, and geologic formations. It does not account explicitly for cleanup possibilities, evaporation, spreading and sinking. EIS at 4-3-4-17.

29 The cumulative analysis in the Environmental Report addressed impacts associated with exploratory drilling activities by Conoco on Lease 0522 which is located approximately three miles northwest of Lease 0525. Environmental Report at 5-1.

30 In its EA, the Minerals Management Service determined that only the proposed exploration on Conoco's Lease 0522 "could produce impacts which could overlap in space and time" with Chevron's proposed project. Therefore, its cumulative impacts analysis is based on simultaneous drilling of wells on the two leases. MMS Letter/Enclosure at 8.

31 Chevron uses the cost of $15,000 per ton of NO_x offset per year. Ch. Reply Br. at 80. The AER*X Report identified $15,000 as the "highest known asking price" for leasing a ton of NO_x in 1987. AER*X Report at 23.

32 SBCAPCD asserts that an applicant can move quickly through this stage, "<u>if the applicant so desires</u>." (emphasis in the original). It cites the Exxon Santa Ynez Unit project to support its assertion. According to SBCAPCD, once it reached a tentative agreement concerning mitigation, Exxon executed several offset contracts quickly. It only took four months from the initial step of buying offsets to final County permitting action. SBCAPCD Resp. Br. at 10.

33 AER*X disputes SBCAPCD's statement regarding standard contract conditions. AER*X states that each offset transaction is different, requiring enforceable offset conditions to be developed on a case-by-case basis. Further, the standard conditions do not, according to AER*X, assist in

quantification, measurement, or certification of available quantities of offsets -- the most time consuming aspect of the offset process. Ch. Resp. Br., Exhibit 1 at 5.

34 SBCAPCD disagrees and states that offsets were accepted as part of an interpollutant trade to offset NO_x emissions although the low reactivity of those offsets makes them less valuable as an offset for ozone. SBCAPCD Resp. Br. at 22.

35 In particular, EPA questions AER*X's conclusion that offsets will not be available from certain categories of emissions sources because of the pending AQAP. Some sources have only been recommended for study and will continue to be potential offset sources for many years. EPA Resp. at 4.

36 Chevron directs my attention to the fact that "even offset transactions within the same company have many of the same significant cost considerations (e.g. capital costs to install equipment to create the offset; costs associated with lost opportunities to use those offsets elsewhere; costs associated with company staff and SBCAPCD staff time) as transactions with third parties." Ch. Resp. Br. at 22. I acknowledge that internal offsets are not "cost-free."

37 Earlier in the appeal, EPA had commented that "[p]roviding offsets is a reasonable alternative that minimizes the risk of unacceptable air quality degradation." EPA Letter at 3.