

DECISION AND FINDINGS
IN THE
CONSISTENCY APPEAL OF
UNION OIL COMPANY OF CALIFORNIA
TO AN
OBJECTION FROM THE CALIFORNIA COASTAL COMMISSION
November 9, 1984

SYNOPSIS OF DECISION

Union Oil Company of California (Appellant) submitted an amended Exploration Plan to the Minerals Management Service of the Department of the Interior and to the California Coastal Commission (Commission) seeking permission to drill two exploratory wells on OCS lease P-0203 which lies partially within the boundaries of the Santa Barbara Channel Islands National Marine Sanctuary (Sanctuary) and which is transversed by the northbound shipping lane of the Santa Barbara Channel Vessel Traffic Separation Scheme.

The Commission, California's Federally approved coastal zone management agency, objected to the Appellant's consistency certification for the amended Exploration Plan on the ground that the proposed exploratory drilling was inconsistent with the California Coastal Management Program (CCMP) because it would subject the endangered California brown pelican and its habitat on or near Anacapa Island within the Sanctuary to risk of injury from oil spills occurring during the exploratory drilling and would pose a hazard to vessel traffic safety in the Santa Barbara Channel.

Under Subparagraphs A and B of Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (CZMA) (16 U.S.C. § 1456(c)(3)(A) and (B)), and 15 CFR 930 of the Department of Commerce's implementing regulations, the Commission's objection to the Appellant's amended Exploration Plan precludes all Federal agencies from issuing any permit or license necessary for the exploratory drilling to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it "is consistent with the objectives of the [CZMA]" (Ground I) or is "otherwise necessary in the interest of national security" (Ground II) (Section 307(c)(3)(B) of the CZMA). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

On December 12, 1983, pursuant to Subparagraphs A and B of Section 307(c)(3) of the CZMA and Subpart H of 15 CFR Part 930, the Department of Commerce's regulations governing the Secretary's review of the objected-to activity, the Appellant filed a Notice of Appeal with the Secretary of Commerce. The Secretary, upon consideration of the information submitted by the Appellant, the Commission, Federal agencies and interested persons as well as other information in the administrative record of the appeal, made the following findings pursuant to 15 CFR 930.121 and 930.122:

GROUND I

(a) Exploratory drilling on OCS P-0203 would contribute to the national interest of attaining energy self-sufficiency and thereby furthers one or more of the competing national

objectives or purposes contained in Sections 302 or 303 of the CZMA. (pp. 7-8.)

(b) The adverse effects of the project on the natural resources of the coastal zone are not substantial enough to outweigh its contribution to the national interest. (pp. 8-20.)

(c) The project will not violate any requirements of the Clean Air Act or Clean Water Act. (pp. 21-22.)

(d) There are no reasonable alternatives available to the Appellant which would permit the project to be carried out in a manner consistent with the CCMP. (pp. 22-23.)

Ground II

The Appellant has not met the requirements of Ground II to demonstrate that its proposed exploratory drilling of two wells directly supports national defense or security interests and that such interests will be significantly impaired if the drilling cannot go forward as proposed. (pp. 23-25.)

The Secretary has found that the Appellant's appeal has met the requirements of Ground I set forth in 15 CFR 930.121, and, therefore, that the Appellant's proposed drilling of two exploratory wells on OCS P-0203, although inconsistent with the CCMP, is consistent with the objectives of the CZMA and may be permitted by Federal agencies. (pp. 23, 25.)

Factual Background

Appellant's Exploration Plan

On May 13, 1982, Union Oil Company of California (Appellant), as sole lessee and operator of Outer Continental Shelf (OCS) lease P-0203 offshore Southern California, submitted its final Exploration Plan (Plan), Environmental Report, and Safety and Oil Spill Contingency Plans to the Minerals Management Service (MMS) of the Department of the Interior (Interior) requesting approval to drill up to two exploratory wells on OCS P-0203 to evaluate potential sources of hydrocarbon resources which the Appellant estimates to contain 31 million barrels of crude oil. Administrative Record, Appellant's Supporting Statement 1-2, 7, 9, 18; Appellant's Environmental Report 6 [all references hereinafter are to the Administrative Record]. Lease OCS P-0203, which was acquired by the Appellant in 1968, is located at the eastern end of Santa Barbara Channel approximately 10 miles west of Point Mugu and 9.5 miles south of the City of Ventura, California. The lease partially lies within both the Channel Islands National Marine Sanctuary (Sanctuary), which was established in 1980 and which extends 6 nautical miles seaward around the Channel Islands National Park (Park), and the northbound lane of the Vessel Traffic Separation Scheme (VTSS) established by the U.S. Coast Guard for ships travelling north through the Santa Barbara Channel. Appellant's Environmental Report 6, 77-79, 83-84. Each side of the northbound lane is bordered by a 500 meter-wide "buffer zone."

The Appellant initially proposed drilling both exploratory wells during the period from November, 1982, through mid-January, 1983, from the same surface location on OCS P-0203 using a semi-submersible drilling vessel anchored approximately 1.4 nautical miles inside the seaward boundary of the Sanctuary and 4.8 nautical miles northeast of Anacapa Island, one of the islands that make up the Park. Appellant's Environmental Report 83-84. The proposed location for the exploratory drilling operations was 504 feet from the southern boundary of the northbound shipping lane within the adjacent buffer zone. Appellant's Exploration Plan 1; MMS, Environmental Assessment 1. See Figure 1.

Anacapa Island and nearby Scorpion Rock are the only regular breeding colonies in the United States of the California brown pelican, listed as an endangered species by the U.S. Fish and Wildlife Service (FWS). Appellant's Supporting Statement at Exhibit D, MMS Environmental Assessment, app. 1, FWS Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 7. Similarly, the State of California lists the California brown pelican as an endangered species under California law. California has designated Anacapa Island as an Ecological Reserve, and the surrounding State waters as an Area of

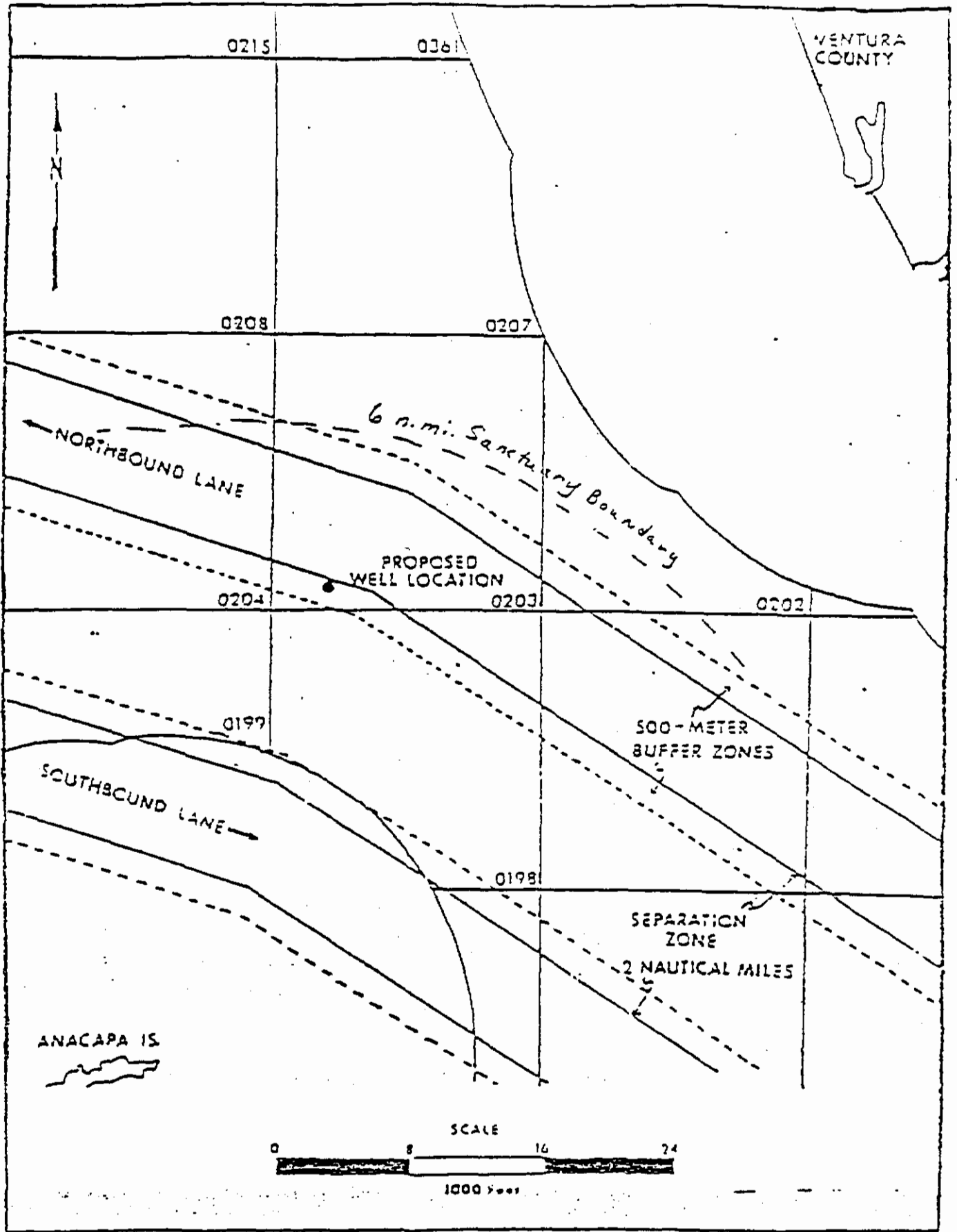


FIGURE 1

Special Biological Significance under State law. California Coastal Commission's Findings 3,5 (Nov. 17, 1982) [hereinafter Commission's Findings]; and Revised Findings on Consistency Certification 3,6 (Nov. 15, 1983) [hereinafter Commission's Revised Findings].

On May 17, 1982, MMS determined the Plan and accompanying documents to be officially submitted, and forwarded them, along with the Appellant's certification that the activities described in the Plan comply and would be conducted in a manner consistent with the California Coastal Management Plan (CCMP), to the California Coastal Commission (Commission) for review under Section 307(c)(3)(B) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. § 1456(c)(3)(B). Appellant's Supporting Statement 9. On November 17, 1982, the Commission, as the Federally-approved coastal zone management agency for the State of California under Sections 306 and 307 of the CZMA and 15 CFR Parts 923 and 930 of the implementing regulations of the Department of Commerce (Commerce), objected to the Appellant's consistency certification for the activities described in the Appellant's Plan for OCS P-0203. Commission's Findings 2.

The Commission determined that the Appellant's Plan did not comply with, and, therefore, was inconsistent with the policies of the Federally-approved CCMP. The Commission based its objection on its determination that the Appellant's exploratory drilling activities failed to meet the enforceable policy requirements of the California Coastal Act [Section 30000 et seq. of the California Public Resources Code] [hereinafter CCA] relating to commercial fishing, navigational safety, and protection of natural resources of the Channel Islands area, particularly the California brown pelican. Id.

The Commission's objection to the navigational safety of the Appellant's exploratory drilling was based on the drilling vessel's proximity to the VTSS, specifically its location within the buffer zone and one-half mile from the "dog leg," or bend, in the VTSS. The Commission requires that structures be located a minimum of 3 miles from the "dog leg" to ensure the safety of vessel traffic through the VTSS, and determined that the Appellant's project would be inconsistent with Section 30262 of the CCA which requires that such structures not be sited where a substantial hazard to vessel traffic might result. Further, the Commission concluded that the adverse effects on navigational safety would not be adequately mitigated by the Appellant's proposal to conduct a vessel traffic safety study similar to the one approved by the Commission in connection with exploration by Chevron, U.S.A., Inc. of nearby OCS lease P-0205, located 4 miles from the same "dog leg" turn. Id. at 11, 14.

The Commission also determined that the Appellant's proposed exploration activities are located in and would adversely

affect environmentally sensitive habitat and marine areas and species of special biological or economic significance, protected by Sections 30230 and 30240(a) of the CCA. Id. In particular, the Commission determined that oil spills are the greatest threat to the endangered California brown pelican population on Anacapa Island, and that this population is vulnerable to damage from oil spills throughout the year. Id. at 7, 9.

Additionally, the Commission determined that the risk of oil spills posed by the Appellant's project, resulting from either a well blowout or a collision between the exploratory drilling rig, or its service vessels, and a vessel transiting the VTSS could not be satisfactorily mitigated to meet the provision of Section 30232 of the CCA which requires effective oil spill containment and cleanup facilities and procedures. The Commission concluded that the Appellant's Oil Spill Contingency Plan was incomplete because it lacked information on oil spill trajectories and methods and procedures for use of chemical dispersants. Id. at 9-11.

The Appellant appealed the Commission's objection to the Secretary of Commerce (Secretary) on December 17, 1982, under Subparagraphs A and B of Section 307(c)(3) of the CZMA. Commerce published a public notice of the appeal in the Federal Register (47 Fed. Reg. 58335 (1982)). Subsequent to the filing of the appeal, the staff of the Commission and the Appellant engaged in numerous discussions throughout the first nine months of 1983, mediated by representatives of the National Oceanic and Atmospheric Administration (NOAA), in an attempt to resolve the conflicts which led to the Commission's objection. Appellant's Supporting Statement 2; Commission's Response to Appeal 1-2. On October 31, 1983, at the Appellant's request, the Secretary dismissed the appeal to enable the Appellant to submit an amended Exploration Plan (hereinafter amended Plan) to the Commission for its consistency review. 48 Fed. Reg. 51949 (1983).

Appellant's Amended Exploration Plan

By letter dated September 22, 1983, the Appellant submitted its amended Plan for OCS P-0203 to the MMS and requested that it be forwarded to the Commission for consistency review. Letter from J.S. Attebery, District Land Manager, Union Oil Company of California, to William Grant, Acting Regional Manager, Pacific OCS Region, MMS (Sept. 22, 1983). As part of the amended Plan, the Appellant revised its Oil Spill Contingency Plan to provide for the use of chemical dispersants in addition to mechanical measures to contain oil spills, and to establish a process by which decisions regarding the use of chemical dispersants may be made quickly. After the discussions referenced above, the Appellant, in an effort to provide the maximum feasible mitigation for its project, proposed in its amended Plan:

1. To seek to develop the field proposed to be confirmed by its exploratory drilling only from a platform located outside the boundary of the Sanctuary;
2. To conduct a vessel traffic safety study similar to the study conducted in 1983 by the California Maritime Academy in conjunction with exploratory drilling by Chevron U.S.A., Inc. on OCS P-0205 in the buffer zone of the northbound VTSS lane;
3. To equip its drillship with any additional safety features recommended as a result of the vessel traffic safety study on OCS P-0205;
4. To conduct its drilling operations "in the shortest feasible time," which the Appellant estimates to involve a total time of exposure to oil bearing formations of twenty-two days for the initial drilling, and eighteen days if a redrill is necessary; and
5. To conduct a study of the marine life in the water column in the vicinity of its drilling location that might be affected by disposal of drilling muds and cuttings from its exploratory operations, and to adopt whatever measures are suggested by the study to mitigate adverse effects, including land disposal if the Commission so requires.

Appellant's Supporting Statement at Exhibit G, Transcript of November 15, 1983 Hearing 9, 14-24; Appellant's Supporting Statement 2, 14-17; Letter from J.S. Attebery to William Grant, supra.

On November 15, 1983, the Commission again objected to the Appellant's certification that its proposed exploration of OCS P-0203 would be consistent with the policies of the CCMP. Commission's Revised Findings 1-2. The Commission found that although the amended Plan mitigates adverse effects to the maximum extent feasible, the Appellant's mitigation measures are inadequate to reduce the risk of harm to the California brown pelican and to the safety of vessel traffic to a level acceptable to the Commission under Section 30260 of the CCA.^{1/} The Commission concluded that no oil exploration

1/ Section 30260 of the CCA provides:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

activity on the proposed drilling site could be adequately mitigated and that the public welfare or interest in protecting coastal resources such as the California brown pelican outweighs the public interest in energy development served by Appellant's project. Id. at 23-27.

Under Subparagraphs A and B of Section 307(c)(3) of the CZMA and 15 CFR 930.131, the Commission's consistency objection precludes all Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity as described in the amended Plan to proceed, unless the Secretary determines that the activity may be Federally-approved because the activity is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security.

Appeal to the Secretary of Commerce

On December 12, 1983, the Appellant filed with the Secretary a Notice of Appeal together with supporting information requesting that the Secretary find that the activities described in Appellant's amended Plan are consistent with the objectives or purposes of the CZMA or are otherwise necessary in the interest of national security. The Secretary has reserved the authority to decide such appeals. Department Organization Order 25-5A, Section 3.01(w).

Following receipt of Appellant's appeal and supporting information, Commerce published a public notice of the appeal in the Federal Register (48 Fed. Reg. 56818 (1983)) and in a local newspaper in Santa Barbara, California. A public hearing was held in Santa Barbara, California, on February 7, 1984. Comments on whether, how, and to what extent the activities proposed in Appellant's amended Plan would contribute to the national interest including the national security interest were requested and received from the Departments of Defense, State, the Interior, Treasury, Labor, Transportation and Energy, and the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration. Additional comments and information have been received from the Appellant, the Commission (including the record of Appellant's proceedings before it), the Environmental Protection Agency and the Department of the Interior. All comments and information received by Commerce during the course of the appeal have been included in the Administrative Record.

I find that this appeal is properly under consideration and that the parties - the Appellant and the Commission - have complied with Commerce's regulations governing the conduct of this appeal (Subparts E and H of 15 CFR Part 930).

Grounds for Sustaining an Appeal

Subparagraphs A and B of Section 307(c)(3) of the CZMA provide that Federal licenses or permits for activities described in an OCS exploration or development plan may not be granted until either the State concurs in the consistency of such activities with its Federally-approved coastal zone management program (its concurrence may be conclusively presumed in certain circumstances), or I find, "after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state," that each activity described in detail in such plan is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. Appellant has pleaded both grounds. Appellant's Supporting Statement 3-4.

The regulations interpreting these two statutory grounds for allowing Federal approval despite a State's consistency objection are found at 15 CFR 930.121 ("consistent with the objectives or purposes of the Act") and 930.122 ("necessary in the interest of national security"), and are set forth in full below:

The term "consistent with the objectives or purposes of the [CZM] Act" describes a Federal license or permit activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because it satisfies the following four requirements:

(a) The activity furthers one or more of the competing national objectives or purposes contained in sections 302 and 303 of the Act,

(b) When performed separately or when its cumulative effects are considered it will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available (e.g., location[,] design, etc.) which would permit the activity to be conducted in a manner consistent with the management program.

15 CFR 930.121.

The term "necessary in the interest of national security" describes a Federal license or permit

activity, or a Federal assistance activity which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

15 CFR 930.122.

The regulations governing my consideration of an appeal provide:

[T]he Secretary shall find that a proposed Federal license or permit activity ... is consistent with the objectives or purposes of the [CZMA], or is necessary in the interest of national security, when the information submitted supports this conclusion.

15 CFR 930.130.

Ground I: Consistent with the Objectives of the CZMA

The first statutory ground (Ground I) for sustaining an appeal is to find that the activity "is consistent with the objectives of [the CZMA]." To make this finding, I must determine that the activity satisfies all four of the elements specified in 15 CFR 930.121.

First Element

To satisfy the first of the four elements, I must find that:

The activity furthers one or more of the competing national objectives or purposes contained in Sections 302 or 303 of the [CZMA].

15 CFR 930.121(a).

Sections 302 and 303 of the CZMA identify a number of objectives and purposes which may be generally stated as follows:

1. To preserve, protect and where possible to restore or enhance the resources of the coastal zone (Section 302(a),(b),(c),(d),(e),(f),(g), and (i); and Section 303(1));
2. To develop the resources of the coastal zone (Section 302(a),(b) and (i); and Section 303(1)); and

3. To encourage and assist 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, in recognition by the Congress that State action is the "key" to more effective protection and use of the resources of the coastal zone (Section 302(h) and (i); and Section 303(2)).

As I have stated in an earlier appeal, OCS exploration, development and production activities are included within the objectives and purposes of the CZMA. Further, because Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources, this element will "normally" be found to be satisfied on appeal. Decision of the Secretary of Commerce in the Matter of the Appeal by Exxon Company, U.S.A., to a Consistency Objection by the California Coastal Commission (Feb. 18, 1984); 49 Fed. Reg. 8274 (March 6, 1984).

Appellant's amended Plan involves the search for oil from an area offshore California. As stated above, the exploration, development and production of offshore oil and gas resources and a consideration of the effects of such activities on the resources of the coastal zone are among the objectives of the CZMA when such activities require Federal permits. Because the record shows that Appellant's amended Plan falls within and furthers one or more of the broad objectives of Sections 302 and 303 of the CZMA, I find that the Appellant's project satisfies the first element of Ground I.

Second Element

To satisfy the second element of Ground I, I must find that:

When 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 CFR 930.121(b).

This element requires that I weigh the adverse effects of the objected-to activity on the natural resources of the coastal zone against its contribution to the national interest.

Adverse Effects

The two major adverse effects identified in the Administrative Record are those associated with the risk of an oil spill occurring during the proposed exploratory drilling and the risk of an oil spill from a vessel in the Santa Barbara Channel colliding with a drilling rig temporarily located in the buffer zone of

the VTSS.^{2/}

The Commission found that the Appellant's proposed exploratory drilling would adversely affect the endangered California brown pelican and its habitat on and near Anacapa Island by subjecting the species and its breeding and feeding grounds to the risk of harm from oil spills that could occur during exploratory drilling operations. Commission's Revised Findings 7-16. In support of this finding, the Commission cited studies demonstrating the special vulnerability of pelicans to harm from oil because pelicans will dive through oil slicks when feeding and are not as likely as other seabirds to avoid oil. According to the Commission, such studies indicate that pelicans encountering oil while feeding or bathing will bring oil back to the nesting colony. Oil is lethal to pelican eggs, and young pelicans coming into contact with oil are particularly susceptible to injury and death. Commission's Revised Findings 8. The Commission also cited the views of the FWS, the National Marine Fisheries Service (NMFS), the National Park Service (NPS) and the California Department of Fish and Game (DFG) in support of its finding that Appellant's drilling would adversely affect the endangered brown pelicans, and disputed the Appellant's claim that the Biological Opinion issued by the FWS pursuant to Section 7 of the Endangered Species Act (16 U.S.C. § 1536) and related to oil and gas activities on OCS P-0203 endorsed the Appellant's amended Plan (Appellant's Supporting Statement 25). Commission's Response 26-29.

The FWS commented that "the proposed exploratory wells provide the potential for an oil spill in environmentally sensitive habitats," and stated that the oil spill trajectory analysis performed by the Appellant was based on data applicable to its production Platform "Gina" located closer to the mainland than Appellant's proposed drilling site. The FWS suggests that the "Gina" data may not be relevant to Appellant's proposed drilling site because Platform "Gina"

^{2/} The Commission has found that the Appellant's project will not conflict with commercial fisheries (Commission's Revised Findings 16); will meet State air quality standards (*Id.* at 21); and will comply with State policies regarding the disposal of drill muds and cuttings (*Id.* at 13, 27). The other adverse effects identified by the Commission (e.g., the potential adverse effects on an environmentally sensitive habitat) are associated with the risk of a major oil spill or the hazard to vessel traffic safety and are considered in connection with these potential adverse effects.

is in an area that has "reduced tidal circulation." ^{3/}
 The FWS concludes that "if Union Oil Company is willing to provide additional environmental protection to the sensitive marine habitats, it is possible some action can be taken," and suggests, *inter alia*, that an auxiliary supply vessel with additional oil spill containment equipment be anchored near the drilling rig. Commission's Response at Exhibit D, Attachment D, Letter from Field Supervisor, FWS, to Deputy Manager, Pacific OCS Region, MMS (June 9, 1982).

In its Biological Opinion, the FWS stated:

It is difficult to predict from oil spill probabilities what the effects of oil activities might be on Anacapa. The only known incident of significant numbers of pelicans being oiled was after a spill from the Navy vessel Manatee in August 1973. Concentrations of light tar washed up on beaches from San Clemente south into Mexico. Twenty to 25 juvenile pelicans were found oiled. In contrast, no pelicans were reported oiled as a result of the January 1969, Santa Barbara blowout. Judging only from location of the spills, the results should have been reversed, but timing was determinant in these cases. The San Clemente spills occurred in the late summer, when large numbers of pelicans were dispersed throughout the area; the Santa Barbara spill occurred in the winter, just following a severe storm, when relatively few pelicans were in the area and fewer still would have been far from shelter. While the breeding grounds and feeding areas surrounding Anacapa Island are extremely vulnerable locations, the San Clemente spill indicates that large amounts of oil anywhere within the pelicans' range could cause significant damage at the wrong time of year.

^{3/} The Appellant explained its procedure for determining the expected speed and movement of an oil spill during its proposed exploratory drilling operations as follows:

In the vector addition analysis, data on mean monthly wind speed and direction for each month of the year were obtained from "A Climatology and Oceanographic Analysis of the California Pacific Outer Continental Shelf Region." Mean surface current speed and direction was taken from a "Climatic Study of the Near Coastal Zone, West Coast of the United States." Wind speed and direction for the Santa Ana winds were obtained from the Environmental Impact Report/Environmental Assessment for Union's Platforms Gilda and Gina prepared by Dames and Moore in October 1980. Appellant's Supporting Statement at Exhibit B, vol. 1, Oil Spill Contingency Plan, app. B, Oil Spill Risk Analysis B-12.

We recommend that [MMS] require the lessee to assign a high priority and prescribe specific measures for the protection of Anacapa Island in all Oil Spill Contingency Plans submitted to [MMS] for exploration or development/production within the above listed tracts, and for activities that might result in substantially increased tanker traffic over the identified transportation routes. Appellant's Supporting Statement at Exhibit D, MMS Environmental Assessment, app. 1, FWS, Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 8.

The NMFS stated that it was concerned about exploratory drilling within the boundaries of the Sanctuary because of the proximity of the drilling site to East Anacapa Island, which is protected as a State Ecological Preserve and Area of Special Biological Significance under State law. NMFS recommended that "when exploring and developing an existing lease, to the extent possible, all work be conducted from outside sanctuary boundaries." Commission's Response at Exhibit D, Attachment C, Letter from Acting Regional Director, NMFS, to Deputy Manager, Pacific OCS Region, MMS (June 4, 1982).

The NPS also stated that it would be safer to conduct exploratory operations from outside Sanctuary boundaries, in order to protect the resources of the Sanctuary and the Park. The NPS expressed its concern that an oil spill might affect Anacapa Island, which it noted "remains the only viable nesting area for the California brown pelican within the United States." Id., Attachment C, Letter from Superintendent, Park, to Deputy Manager, Pacific OCS Region, MMS (June 9, 1982).

The DFG cited as its main concern the location of the proposed exploratory wells in proximity to the VTSS, creating a higher than usual risk of collision resulting in a major oil spill close to Anacapa Island. The DFG recommended the deletion of all lease tracts within six nautical miles of the Channel Islands, in order to provide a buffer zone between oil and gas exploration and development areas and areas containing valuable and delicate natural resources. Id., Attachment F, Letter from Director, DFG, to Commission (June 16, 1982).

The Commission further found that drilling the exploratory wells from a location within the southern buffer zone of the northbound traffic lane of the VTSS would create an unacceptably high risk to the safety of vessel traffic in the Santa Barbara Channel, primarily because of the proximity of the drilling rig to the "dog leg" turn of the VTSS. Commission's Revised Findings 18-21. The Commission cited the unanalysed data collected during the course of a study conducted by the California Maritime Academy in support of its assertion that locating a drilling rig in the buffer zone of the Santa Barbara Channel VTSS would increase vessel hazards. Commission's

Revised Findings 19-20.

In response, the Appellant argues that the risk of an oil spill from its exploratory operations is extremely low, and that it has proposed adequate measures to mitigate the effects of an oil spill should one occur. Appellant's Supporting Statement 37-40. In support of its position, the Appellant notes that since 1970 more than four billion barrels of oil have been produced from the OCS and that only 791 barrels have been lost as a result of well blowouts. The Appellant also states that no significant oil spill has occurred on the United States OCS from an exploratory drilling operation. Id. 37-38. The Appellant relies upon the oil spill risk analysis performed by the MMS in connection with its application for an exploration permit, based upon drilling data from the Gulf of Mexico for the period 1971-78. According to the analysis by the MMS, no oil spills occurred although seventeen gas blowouts resulted from 2,249 wells drilled during this period. MMS computed the probability of a blowout during the drilling of an exploratory well on the United States OCS at 0.0075. Appellant's Supporting Statement 38-39; Appellant's Exhibit K, MMS Oil Spill Risk Assessment 2-3; and Appellant's Exhibit B, vol. 1, Oil Spill Contingency Plan B-8.

The Appellant also maintains that the Biological Opinion issued by the FWS covering OCS P-0203 concludes that exploration activities may go forward provided that specific measures for protecting the California brown pelican and Anacapa Island are required by the MMS. Appellant's Supporting Statement 25.

In response to the Commission's finding that Appellant's exploratory drilling would create a high risk of harm to vessels transiting the Santa Barbara Channel, the Appellant denies that such a risk exists and states that the U.S. Coast Guard, the Federal agency responsible for vessel traffic safety, has approved its proposed exploratory drilling site. Appellant's Supporting Statement 10, 43-44.

I have considered the information submitted by the parties regarding the risk of an oil spill, including the potential adverse effects of a major oil spill on the pelicans and other seabirds, as well as the comments of the resource agencies responsible for the preservation of the California brown pelican and other living resources of the area. I note that although the FWS, NMFS and the NPS all express concern about the effects of oil and gas activities on OCS P-0203 on such resources, none takes the position that the degree of risk from such activities should preclude any exploratory drilling. Commission's Response at Exhibit D, Attachments C, D and E; and Appellant's Supporting Statement at Exhibit D, app. 1, FWS Biological Opinion Regarding Oil and Gas Exploration and Certain Development Activities in Southern California 7-8.

Regarding the comment by the FWS that the "Gina" data may not be relevant to the Appellant's proposed drilling site, it is apparent that the data taken from the "Gina" assessment related only to the speed and direction of Santa Ana winds - data which is applicable to both the site of Platform "Gina" and the site of the Appellant's proposed exploratory drilling, less than four nautical miles away (see discussion, supra, p. 10 and n. 3). While I have little doubt that a major oil spill resulting from Appellant's exploratory activities on OCS P-0203 would threaten injury to the endangered California brown pelican and to its breeding, nesting and feeding grounds, I am persuaded by the information in the record of this appeal (particularly, the oil spill risk analysis submitted by the Appellant and the MMS) that the risk of an oil spill occurring during the Appellant's proposed exploratory drilling is very low, and, therefore, that the risk of injury to the endangered brown pelican and its habitat and to the other natural resources of the coastal zone is also very low, even without considering the mitigation measures to be employed by the Appellant in the unlikely event of an oil spill.

The Commission does not itself offer evidence to dispute the data contained in the oil spill risk analysis provided by the Appellant and the MMS, but argues: (1) that the analysis fails to consider the risk of an oil spill occurring as a result of a collision between the Appellant's exploratory drilling rig and a vessel transiting the VTSS, and (2) that any degree of risk of harm to the endangered California brown pelican and its habitat from the Appellant's proposed project is unacceptable. Commission's Response 19-29. I will consider the Commission's first argument in connection with the issue of vessel traffic safety, and its second when I weigh the adverse effects of Appellant's proposed exploratory drilling against its contribution to the national interest.

The degree of risk of a vessel transiting the Santa Barbara Channel colliding with a drilling rig temporarily located in the buffer zone of the Santa Barbara Channel VTSS was considered by the California Maritime Academy in connection with exploration activities conducted by Chevron U.S.A., Inc. on OCS P-0205 during the period from March 1 to May 14, 1983. Chevron's exploration activities were conducted in an area near the location of Appellant's proposed exploratory drilling on OCS P-0203 where the level of vessel traffic would be about the same. The study concludes in pertinent part:

4. A five hundred meter (500m) buffer zone adjacent to Traffic Lanes has been recommended by various sources. Based on the results of this study, under certain conditions drilling ships can be temporarily placed in this 500 meter buffer zone for exploratory drilling.

... Obviously, the longer the drillship remains in the buffer zone, the greater the danger of collision with approaching traffic. No place in navigable waters is fail-safe permanently from being struck by another vessel, but for relatively short periods of time this risk should be acceptable.

California Maritime Academy, Santa Barbara
Channel Vessel Traffic Study 44 (Feb. 1984).

The results of this study were not available to the Commission or its staff before the Commission objected to the Appellant's amended Plan on November 15, 1983. The conclusions reached by the California Maritime Academy do not support the findings of the Commission that locating Appellant's drilling rig in the buffer zone of the northbound traffic lane of the VTSS would create an unacceptably high level of risk to vessel traffic safety. Commission's Revised Findings 18-21.

Further, testimony by the U.S. Coast Guard before the Commission regarding the level of risk caused by locating Appellant's drilling rig in the buffer zone supports the Appellant's claim that its drilling operations may be carried out in a manner which will not interfere with vessel traffic in the VTSS. Appellant's Supporting Statement at Exhibit G, Transcript of November 15, 1983 Hearing 28-36.

As stated above, the record indicates that the U.S. Coast Guard has approved the Appellant's proposed drilling location in the buffer zone of the VTSS. Commission's Revised Findings 20; Appellant's Supporting Statement 10, 43-44. Further, Appellant proposes to conduct its drilling operations "in the shortest feasible time." Appellant's Supporting Statement 16. Therefore, considering the Appellant's proposed period of drilling, the U.S. Coast Guard's approval of the Appellant's drilling location and the California Maritime Academy's conclusion that the risk to vessel safety from locating a drilling rig in the buffer zone of the VTSS is acceptable "for relatively short periods of time," I find that the Appellant's proposed drilling activities will not have a significant adverse effect on vessel traffic safety in the VTSS. Relatedly, I find the risk of an oil spill as a result of a collision between Appellant's drilling rig located in the buffer zone and a vessel transiting the VTSS to be very low.

Regarding the cumulative adverse effects of the Appellant's proposed exploratory drilling, I note that the regulations implementing the designation of the Sanctuary prohibit the exploration, development and production of oil and gas resources on OCS tracts within the six nautical mile buffer zone around the islands of the Sanctuary that were leased

on or after March 30, 1982, the effective date of the regulations. The regulations permit such hydrocarbon exploration and development activities on the five tracts that were leased before this date, subject to the control of Federal and State agencies concerned with oil and gas exploration and development on the OCS. 47 Fed. Reg. 18588 (1982). Although the Commission has previously allowed oil and gas exploration activities to be conducted on two tracts located within or near the boundaries of the Sanctuary, no exploration activities are currently in progress within the Sanctuary. Commission's Revised Findings 4. Therefore, because no oil and gas exploration or development activities may be carried out on all but five OCS lease tracts within the boundaries of the Sanctuary, and no such activities are currently in progress, I find that Appellant's proposed exploratory drilling will not cumulatively cause adverse effects on the natural resources of the coastal zone.

Contribution to the National Interest

Commerce regulations indicate that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by Federal agencies. 15 CFR Part 923, 44 Fed. Reg. 18608 (1979). Commerce sought the views of certain Federal agencies concerning the national interest in the Appellant's proposed exploratory drilling on OCS P-0203. The views expressed by Federal agencies regarding the national interest in this project are summarized below:

The Department of the Treasury commented that "although the benefits of an individual project are difficult to quantify, the effects even though small are favorable." The Department also believes that the Appellant's exploratory activities add to our knowledge of the national petroleum reserve base. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (March 14, 1984).

The Department of Energy stated that the Appellant's exploratory activities are in the national interest because such oil and gas activities help reduce our dependence on foreign oil. The Department noted that even maintaining the current ratio of imported to domestic oil will require that new domestic reserves be identified at an increasing rate. Letter from William A. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (March 20, 1984).

The Department of Labor commented that although the Appellant's project would serve the national interest by creating jobs, "the magnitude of this particular development is not large enough to affect substantially our national economic situation." Letter from Daniel K. Benjamin, Acting

Assistant Secretary for Policy, to John V. Byrne, Administrator, NOAA (Apr. 6, 1984).

The Department of Transportation commented that there would be no conflict between the Appellant's exploratory drilling at its proposed site and the national interest in navigation safety. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (March 20, 1984).

Interior stated that the Appellant's exploration activities are necessary to develop the oil and gas reserves of the Hueneme Field, and that development of these reserves serves the national interest in achieving a greater degree of energy self-sufficiency. The Department also noted the expenditures resulting from development associated with the Appellant's exploration plan, which it estimated to be more than \$96 million. Revenues would accrue to the Federal and State governments; employment opportunities during the construction and development stages of the project would be created; and the United States balance of trade would be improved. Letter from William Clark, Secretary of the Interior, to John V. Byrne, Administrator, NOAA (May 9, 1984).

The Appellant maintains that its exploratory drilling on OCS P-0203 serves the national interest expressed in both the QZMA and the Outer Continental Shelf Lands Act Amendments of 1978 in attaining energy self-sufficiency, thereby reducing dependence on foreign oil. Appellant's Supporting Statement 31-34. The Appellant estimates that the field to be delineated by its proposed exploratory drilling contains at least 31 million barrels of recoverable oil, worth approximately \$930 million, assuming an average price of \$30 per barrel over the life of the field. The Appellant also asserts that its exploratory drilling is a necessary step in bringing the field into production, and will lead to the creation of jobs during the drilling and development phases of the project, and to the payment of royalties and taxes to the Federal Government. Id. The Commission agrees that OCS oil and gas exploration and development contributes to the national interest by reducing dependence on foreign oil sources, favorably affecting the balance of payments and creating jobs. Therefore, based on the information in the record, I find that Appellant's exploration of the field known to exist on OCS P-0203 contributes to the national interest in attaining energy self-sufficiency.

But the Commission argues that there also is a "substantial national interest in environmental protection and the continued viability of the endangered brown pelican." Commission's Response 17-18. I agree with the Commission that there is an important national interest in protecting the endangered California brown pelican and its habitat on or near Anacapa Island, and this national interest is served by the actions of the State of California in designating the area as an

Ecological Preserve and an Area of Special Biological Significance, and by the Federal Government in classifying the California brown pelican as endangered under the Endangered Species Act, in creating the Channel Islands National Park and in establishing a national marine sanctuary around the Santa Barbara Channel Islands, including Anacapa Island, pursuant to Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.

Weighing

Having identified both the potential adverse effects on the natural resources of the coastal zone which may be caused by Appellant's drilling operations and the national interest served by such a project, I am required to decide whether the project's adverse effects are substantial enough to outweigh its contribution to the national interest (15 CFR 930.121(b)). The Administrative Record indicates that the only serious adverse effects that could be caused by the Appellant's exploratory drilling are those associated with the risk of a major oil spill from the proposed exploratory drilling activities or from a passing ship colliding with the drilling rig. To reiterate, I have already found the risk of an oil spill from Appellant's proposed drilling operations and the related risk of injury to the endangered brown pelican and its habitat to be very low (supra, p. 13), and that the risk of an oil spill from a passing ship colliding with a drilling rig located in the buffer zone of the VTSS for a relatively short period of time is also very low (supra, p. 14). I also have found that the Appellant's project contributes, at least modestly, to the national interest by delineating a field estimated to contain approximately 31 million barrels of recoverable oil (supra, p. 16), and I have recognized that there is a national interest in protecting the endangered brown pelican and its habitat (supra, p. 16). Before weighing these matters, I must consider whether, as argued by the Commission, any degree of risk of harm to the pelican and its habitat, however low, is unacceptable and perforce outweighs any contribution, however large, Appellant's project might make to the national interest.

To analyze whether any risk of harm to the pelican and its habitat is acceptable, I have considered this Department's actions when it designated the Sanctuary, as well as the Commission's views at the time of Sanctuary designation. Providing protection for the endangered brown pelican, other seabirds and their habitat was one of the major reasons cited by this Department for establishing the Sanctuary. Final Environmental Impact Statement on the Proposed Channel Islands Marine Sanctuary (FEIS), Sections E.2.b. and F.2.; and Article 3 of the Sanctuary Designation Document (45 Fed. Reg. 65203 (1980)). To ensure that the living resources of the Sanctuary were not threatened because of the expanding

oil and gas exploration and development activities in nearby areas of the Santa Barbara Channel, a buffer zone of six nautical miles around the Santa Barbara Channel Islands was established. FEIS, Section F.2.1.; and Article 2 of the Sanctuary Designation Document (45 Fed. Reg. 65203 (1980)). Within the buffer zone, no hydrocarbon exploration and development activities on OCS tracts leased after the effective date of the applicable regulations are permitted, although such activities on tracts leased before the effective date of the applicable regulations are allowed, subject to any conditions imposed by Federal and State agencies, including the Department of the Interior and the Commission, the latter acting pursuant to its consistency review authority under the CZMA.^{4/}

Although it is evident that the purpose of restricting hydrocarbon activities is to protect the "sensitive living resources" of the Sanctuary, it is also clear that no absolute ban on exploration and development activities on preexisting leases was intended. FEIS, Section F.2. c. 1. Decisions to permit such activities on preexisting leases were left to Federal and State agencies "for case by case determination, evaluating all information available." FEIS, Section G at G-27. As explained in the FEIS:

The proposed regulations on hydrocarbon exploration and development strike a balance between imposing economic costs and achieving environmental protection. The proposed regulations protect the sanctuary resources from possible major expansion of oil and gas development, but permit development of the tracts in which the oil and gas industry has already invested. FEIS at Section G at G-38.

^{4/} The regulations at 15 CFR 935.6 governing "hydrocarbon operations" within the Sanctuary provide, inter alia:

(a) Hydrocarbon exploration, development and production pursuant to any lease executed prior to the effective date of these regulations and the laying of any pipeline is allowed subject to paragraph 935.6(b) and to all prohibitions, restrictions and conditions imposed by applicable regulations, permits, licenses or other authorizations and consistency reviews including those issued by the Department of the Interior, the Coast Guard, the Corps of Engineers, the Environmental Protection Agency and under the California Coastal Management Program and its implementing regulations.

(c) Hydrocarbon exploration, development and production activities pursuant to leases executed on or after the effective date of these regulations are prohibited.

[The regulations governing hydrocarbon activities became effective March 30, 1982 (47 Fed. Reg. 18588 (1982)).]

Although the Commission argues in this appeal that no degree of risk of harm to the pelican is acceptable, and, therefore, opposes any exploratory activity on Appellant's preexisting lease, the Commission recommended at the time the Sanctuary was established that hydrocarbon activities be permitted on existing leases subject to the following criteria:

1. The lease operator must have first explored the adjacent leased area outside the buffer zone, with results indicating the likelihood of an oil or gas field extending within the buffer zone;
2. The purpose of the exploration within the buffer zone must be to determine the extent of the field and how much of the resources may feasibly be produced from a platform outside the six nautical mile limit;
3. No oil and gas development and production activities would be permitted within the buffer zone; and
4. Production of petroleum resources within the buffer zone would take place only from facilities located outside the boundary which employ slant drilling. FEIS, Section G at G-26-27; Commission's Revised Findings 3-4.

The Commission stated that it would apply these criteria in reviewing OCS exploration plans for consistency with the CCMP. Letter from Michael L. Fischer, Executive Director, Commission, to JoAnn Chandler, Director, Sanctuary Programs Office, NOAA (Feb. 1, 1980). Although the Commission's recommendations regarding permitting exploration activities on preexisting leases were not accepted by NOAA when the Sanctuary was designated, the Appellant argues and it would appear that its proposed exploration on OCS P-0203 meets all of the limiting conditions initially proposed by the Commission. Appellant's Supporting Statement 21-22.

I am required by 15 CFR 930.121(b) to weigh the adverse effects on the natural resources of the coastal zone against the contribution of the proposed activity to the national interest. While the potential adverse effects associated with the low risk of harm to the endangered brown pelicans that would be presented by the Appellant's proposed project must be included in my weighing, the existence of a low risk of harm to an endangered species does not mean, as the Commission argues, that the adverse effects automatically outweigh any contribution to the national interest.

The Commission determined that the mitigation measures proposed by the Appellant in its amended Plan concerning oil spill containment, cleanup and response procedures, as well as the Appellant's agreement to dispose of drill muds and cuttings on land if required by the Commission, represent the maximum mitigation feasible according to Section 30260 of the CCA (supra, p. 4). Commission's Revised Findings 26-27. Further, the U.S. Coast Guard and the MMS have approved the Appellant's Oil Spill Contingency Plan and described it as state-of-the-art in terms of mechanical equipment and chemical dispersants proposed to be used and its containment and clean-up response strategies based on varying weather and sea conditions. Appellant's Supporting Statement 42. In addition, the contingency plan proposed by the Appellant contains site-specific oil spill trajectory data indicating a very low probability that an oil spill from OCS P-0203 would contact Anacapa Island during the months of November, December and January, the period during which the Appellant would conduct its exploratory drilling. Appellant's Supporting Statement 40-41; and Appellant's Exhibit B at vol. 1, Oil Spill Contingency Plan B-11-43. The record in this appeal indicates that, although adult pelicans are present in the area of Anacapa Island throughout the year, the number of pelicans in the area would be lowest during this period, that nesting would not be in progress and that pelican fledglings would not be present. Appellant's Supporting Statement 24-25.

Therefore, based on the information in the record, I find that the Appellant's project is consistent with the national interest in protecting the California brown pelican and its habitat because of the low level of risk of an oil spill or risk of injury to the pelicans and their feeding, nesting and breeding grounds occurring during the Appellant's exploratory drilling operations; the Appellant's commitment not to construct development platforms within Sanctuary boundaries; and the mitigation measures proposed by the Appellant, in addition to the Appellant's agreement to conduct its exploratory drilling during the months of November, December and January, when the pelican population is lowest. Finally, when I weigh the low level of risk of an oil spill and the low level of risk of injury to the brown pelicans and their habitat and to other natural coastal resources from the Appellant's project against its contribution to the national interest in attaining energy self-sufficiency, I find that the Appellant's exploratory drilling on OCS P-0203, as proposed in its amended Plan, will not cause adverse effects on the resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

Third Element

To satisfy the third element of Ground I, I must find that:

The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended.

15 CFR 930.121(c).

The requirements of the Clean Air Act and the Federal Water Pollution Control Act are incorporated in all State coastal programs approved under the CZMA. Section 307(f) of the CZMA.

The Clean Water Act

The Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., as amended (the Clean Water Act), provides that the discharge of pollutants is unlawful except in accordance with a National Pollution Discharge Elimination System (NPDES) permit issued by the Administrator of the Environmental Protection Agency (EPA). Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342.

The general NPDES permit covering discharges from oil and gas facilities operating on OCS P-0203, including the disposal of drill muds and cuttings, expired on June 30, 1984. The EPA is developing a new general NPDES permit incorporating effluent limitations reflecting the Best Available Technology Economically Achievable which, according to the EPA, should be at least as stringent as the earlier permit. The EPA has stated that the Appellant's operations will comply with the Clean Water Act, provided that the terms and conditions of the new general NPDES permit are met. Letter from William D. Ruckelshaus, Administrator, EPA, to John V. Byrne, Administrator, NOAA (April 24, 1984).

The Commission has found that Appellant's agreement to dispose of drill muds and cuttings as required by the Commission represents the maximum feasible mitigation under State law, and, therefore, with regard to the disposal of drill muds and cuttings, that the proposed project is consistent with Section 30260 of the CCA. Commission's Revised Findings 12-13, 27.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting the terms and conditions of the new NPDES permit, I find that the Appellant's proposed activity will not violate the requirements of the Clean Water Act.

The Clean Air Act

The Clean Air Act, 42 U.S.C. §7401 et seq., directs the Administrator of the EPA to prescribe national ambient air quality standards for air pollutants to protect the public health and welfare. Both the EPA and Interior have commented that Appellant's project will be conducted in compliance with the Clean Air Act. Letter from William D. Ruckelshaus to

John V. Byrne, supra; and letter from Garrey E. Carruthers, Assistant Secretary for Land and Minerals Management, Interior, to John V. Byrne, Administrator, NOAA (May 1, 1984). The Commission found that Appellant's project satisfies Section 30253(3) of the CCA, which requires that such development projects be consistent with the standards of the State Air Resources Board, and Section 307(F) of the CZMA. Commission's Revised Findings 21.

Because the Appellant cannot conduct its proposed exploratory drilling without meeting all relevant standards of the Clean Air Act, I find that the Appellant's proposed activity will not violate any requirement of the Clean Air Act.

Fourth Element

To satisfy the fourth element of Ground I, I must find that:

There 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 zone] management program.

15 CFR 930.121(d).

Although the Commission maintains in its Response that it lacks "adequate information to be able to demonstrate that an appropriate [drilling] site outside the shipping lanes and Marine Sanctuary can be found" (Commission's Response 32), the Commission found in support of its consistency objection to Appellant's project that:

[T]here is no feasible way in which Union could site or design its project to avoid impacts on the environmentally sensitive habitat areas[; and]

Alternative locations to drill the two wells require slant drilling at an angle considered unsafe, or at a location within the sea lane presenting an even greater potential risk of collisions between drillship and other vessels. Drilling any further from the oil field being delineated would not yield the data Union needs to determine whether sufficient oil and gas reserves exist to justify installation of a platform. For these reasons, the Commission finds that alternative locations are infeasible and less desirable.

Commission's Revised Findings 14, 23.

Based on the record in this appeal, and particularly in reliance upon the findings of the Commission, I find that there are no reasonable, available alternatives to Appellant's proposed project that would permit the Appellant to conduct

the project consistently with the CCMP.

Conclusion for Ground I

On the basis of the findings I have made above, I find further that the Appellant has satisfied the four elements of Ground I, and, therefore, that the Appellant's proposed project, although inconsistent with the CCMP, is nevertheless consistent with the objectives of the CZMA.

Ground II: National Security

The second statutory ground (Ground II) for sustaining an appeal requires that I find that the activity is "necessary in the interest of national security." To make this finding, I 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," and I 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 a project, although I am not bound by such views. 15 CFR 930.122.

Although the Appellant asserts that its project is "necessary in the interest of national security," it has declined to present evidence supporting this ground of its appeal, stating that it is "factually ill-equipped to argue the point, and defer[red] to the advice of the relevant [Federal] agencies." Appellant's Supporting Statement 4.

The Commission argues that the Appellant has not provided any evidence demonstrating that the Commission's objection preventing the Appellant's exploratory drilling "significantly impairs" the national defense or other national security interest or that the proposed project "directly supports" a national defense or security interest. The Commission maintains that a finding in this appeal that any exploratory drilling on the OCS is in the national security interest would be tantamount to an automatic Federal veto over a State's consistency objection to an exploration plan pursuant to Section 307(c)(3) of the CZMA. Commission's Response 6-9.

The views of the Departments of Defense, Energy, the Interior, Labor, State, Transportation and Treasury were solicited concerning the national security interest served by the Appellant's exploratory drilling, and are summarized below:

The Department of Defense commented that the Appellant's proposed project "may contribute to reducing [U.S.] dependence on foreign petroleum sources." Letter from Caspar W. Weinberger, Secretary of Defense, to John V. Byrne, Administrator, NOAA (March 27, 1984).

The Department of Energy stated that exploration for new

domestic sources of oil is necessary to reduce dependence on foreign sources, and found Appellant's project in the national defense and security interest. Letter from William A. Vaughan, Assistant Secretary, Fossil Energy, to John V. Byrne, Administrator, NOAA (March 20, 1984).

Interior commented that the Appellant's exploration project would increase domestic production which is "easier to defend than oil from foreign sources," would lower the United States' oil allocation to the International Energy Agency, and would lessen the need to draw down the Strategic Petroleum Reserve during an oil disruption. Interior believes that failure to develop Appellant's reserves would result in a significant impairment of the national defense and security interest. Letter from William Clark, Secretary of the Interior, to John V. Byrne, Administrator, NOAA (May 9, 1984).

The Department of Transportation stated that increased domestic production would enhance national security by reducing dependence on foreign oil. Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, to John V. Byrne, Administrator, NOAA (March 20, 1984).

The Department of the Treasury commented that exploration and subsequent development of domestic energy sources serves the national security interest by reducing dependence on foreign energy. Letter from Manuel H. Johnson, Assistant Secretary for Economic Policy, to John V. Byrne, Administrator, NOAA (March 14, 1984).

The Appellant has stated that its project is in the national security interest because it reduces dependence on foreign sources of oil. Appellant's Supporting Statement 31-34. But the Appellant has not explained how the national security interest served by attaining energy self-sufficiency would be "significantly impaired" if its project is not permitted to go forward as proposed. Interior commented that failure to develop the Appellant's oil reserves of approximately 31 million barrels would "significantly impair" the national security interest, but the Department of Defense, the agency principally concerned with national security, and none of the other Federal agencies submitting comments identified any national security interest directly supported by Appellant's exploratory drilling that would suffer significant impairment if the project could not be carried out as proposed.

Conclusion for Ground II

Although I have found in an earlier consistency appeal that the development of proven oil and gas reserves in the Santa Ynez Unit (SYU) on the order of 300-400 million barrels of oil and 600-700 billion standard cubic feet of gas is in the national security interest (supra, p. 8), I decline to find that exploratory drilling to delineate a known field estimated to contain only one-tenth as much oil as the SYU directly

supports national defense or security objectives, and that such interests will be significantly impaired if the drilling cannot go forward as proposed, when no such interests have been identified by the Department of Defense. Therefore, based on the evidence in the record, I find that the requirements of Ground II for sustaining the appeal have not been met.

Conclusion

Because I have found that the Appellant has satisfied the first of the two grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the Commission, the Appellant's project, as described in its amended Plan and subject to all the conditions and limitations proposed by the Appellant, may be permitted by Federal agencies.

Malcolm Baldrige
Secretary of Commerce

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