

DECISION AND FINDINGS
IN THE
CONSISTENCY APPEAL OF MOBIL EXPLORATION & PRODUCING U.S. INC.
FROM AN OBJECTION BY THE
STATE OF FLORIDA

June 20, 1995

(MOBIL PENSACOLA DECISION)

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EXECUTIVE SUMMARY

Mobil Oil Exploration & Producing Southeast Inc. successfully bid in Outer Continental Shelf (OCS) Gulf of Mexico Lease Sale 116 to obtain oil and gas lease numbers OCS-G 10401, 10402, 10406, 10407, 10411, and 10412. Mobil Exploration & Producing U.S. Inc., as agent for Mobil Oil Exploration & Producing Southeast Inc. is the operator of the lease. The lease area, described as Pensacola Area Blocks 845, 846, 889, 890, 933, and 934 (Pensacola Blocks), is located in the northeast Gulf of Mexico OCS, approximately 10-20 miles from Pensacola, Florida, and approximately 64 miles south-southeast of Theodore, Alabama, the location of Mobil's onshore base.

On September 29, 1989, Mobil submitted a proposed Plan of Exploration (POE) for Blocks 845, 846, 889, 890, 933, and 934, together with a certification that the proposed POE was consistent with Florida's federally approved Coastal Management Program (CMP), to the Minerals Management Service (MMS) of the Department of the Interior. Mobil proposed to drill six exploratory wells, one on each of the six lease blocks, to evaluate the hydrocarbon potential of the Pensacola Area Blocks. The MMS approved Mobil's POE subject to the State of Florida's (State or Florida) review of Mobil's consistency certification. Florida, after requesting and receiving additional information from Mobil regarding certain aspects of its POE, concurred with Mobil's consistency certification on April 17, 1990.

On September 6, 1991, Mobil submitted to the MMS a proposed Supplemental Plan of Exploration (SPOE) for the Pensacola Blocks, together with a certification that the proposed SPOE was consistent with Florida's federally approved CMP. In the SPOE, Mobil proposed to drill one additional exploratory well on Pensacola Block 889. The well site is located approximately 74 miles from Theodore, Alabama, and 13.5 miles from Pensacola, Florida. The MMS approved Mobil's SPOE subject to Florida's review of Mobil's consistency certification.

On April 6, 1992, Florida objected to Mobil's consistency certification for the proposed SPOE. Florida found that the proposed project was inconsistent with the State's policies of protecting its marine and coastal resources.

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

On April 29, 1992, Mobil filed a Notice of Appeal with the Secretary pursuant to section 307(c)(3)(B) and the Department of Commerce's implementing regulations at 15 C.F.R. Part 930, Subpart H. Mobil appealed pursuant to Ground I and Ground II. Additionally, the parties raised three threshold issues during the course of the appeal.

Upon consideration of the information submitted by Mobil, Florida, and interested federal agencies in the administrative record of this appeal, the Secretary made the following findings regarding the threshold issues and Ground I and Ground II.

Threshold Issues

A. Compliance with the CZMA and Its Implementing Regulations

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

B. Adequacy of Information

The parties raised an issue as to the adequacy of information. The State argued that there is insufficient information to determine the impacts of Mobil's proposed SPOE on the State's coastal zone. Mobil asserted that there is adequate information on the effects of the proposed SPOE, and that any effects are minor. The Secretary found that in examining the information in the record of the appeal, the Secretary will necessarily determine the adequacy of information.

C. Scope of the Activity

Mobil argues that the State incorrectly referenced and objected to the six exploratory wells proposed under Mobil's POE. Florida asserts that it was required to examine Mobil's SPOE in its entirety in order to make a determination as to whether the SPOE is consistent with Florida's CMP. The Secretary found that activity for his review is the one additional exploratory well Mobil proposed in its SPOE.

D. Conclusions Regarding Threshold Issues

The Secretary determined that threshold issues raised by

Mobil and the State of Florida did not preclude him from considering the merits of this case.

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

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

1. The proposed activity promotes one or more of the competing national objectives or purposes contained in the CZMA.
2. The national interest contribution of Mobil's SPOE outweighs its adverse coastal effects.
3. The proposed activity will not violate any requirements of the Clean Water Act or the Clean Air Act.
4. There is no reasonable alternative available that would allow Mobil to conduct the exploratory activities proposed in its SPOE in a manner consistent with the State's coastal management program.

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

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

Ground II: Necessary in the Interest of National Security

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

Conclusion

Because Mobil's proposed SPOE meets the requirements of Ground I, the project may proceed as proposed.

LIST OF ABBREVIATIONS AND DEFINED TERMS

	Area-Wide Environmental Assessment
	Clean Air Act
	Coastal Management Program
CZARA -	Coastal Zone Act Reauthorization Amendments of 1990
CZMA -	Coastal Zone Management Act
	Clean Water Act (Federal Water Pollution Control Act)
EPA -	Environmental Protection Agency
	Department of Defense
	Department of Energy
	Department of the Interior
EIS -	Environmental Impact Statement
ER	Environmental Report
FDER -	Florida Department of Environmental Regulation
FWS -	Fish and Wildlife Service
MMS -	Minerals Management Service
NAAQS -	National Ambient Air Quality Standard
NMFS -	National Marine Fisheries Service
NOAA -	National Oceanic and Atmospheric Administration
NPDES -	National Pollutant Discharge Elimination System
NRC -	National Research Council
OCS -	Outer Continental Shelf
POE -	Plan of Exploration
SEA -	Site-Specific Environmental Assessment
SPOE -	Supplemental Plan of Exploration
State -	State of Florida

DECISION

I. FACTUAL BACKGROUND

In November, 1988, Mobil Oil Exploration & Producing Southeast Inc. successfully bid in Outer Continental Shelf (OCS) Gulf of Mexico Lease Sale 116 to obtain oil and gas lease numbers OCS-G 10401, 10402, 10406, 10407, 10411, and 10412. Mobil Exploration & Producing U.S. Inc., as agent for Mobil Oil Exploration & Producing Southeast Inc. is the operator of the lease.¹ The lease area, described as Pensacola Area Blocks 845, 846, 889, 890, 933, and 934 (Pensacola Blocks), is located in the northeast Gulf of Mexico OCS, approximately 10-20 miles from Pensacola, Florida, and approximately 64 miles south-southeast of Theodore, Alabama, the location of Mobil's onshore operating base. The leases were effective as of February 1, 1989 and are due to expire on February 1, 1995.²

On September 29, 1989, Mobil submitted a proposed Plan of Exploration (POE) for Blocks 845, 846, 889, 890, 933, and 934 (Mobil's Exhibit 2), together with a certification that the proposed POE is consistent with both Alabama and Florida's federally approved Coastal Management Programs (CMP), (Mobil's Exhibit 2(I)), to the Minerals Management Service (MMS) of the Department of the Interior (DOI). Mobil proposed to drill six exploratory wells, one on each of the six lease blocks, to evaluate the hydrocarbon potential of the Pensacola Blocks. Mobil's Statement at 2; Mobil's Exhibit 2. The MMS approved Mobil's POE subject to review by the State of Florida (State or Florida).

On November 9, 1989, Mobil received correspondence prepared by the State to the MMS requesting additional information on Mobil's proposed activities for purposes of evaluating its consistency certification.³ Mobil's Statement at 2. On November 29, 1989,

¹ Mobil's Statement in Support of Secretarial Override (Mobil's Statement) at 1. For the purposes of this decision, both entities will be referred to as "Mobil".

² Mobil's initial Plan of Exploration at 1 (Mobil's Exhibit 2). The closest point of land along the Florida shoreline is nine (9) miles from the Pensacola Blocks. Id.

³ Letter from Deborah L. Tucker, Government Analyst, Office of the Governor, to Mr. Kent Stauffer, MMS, dated November 8, 1989 (Mobil's Exhibit 3).

Mobil supplied the additional information requested by Florida.⁴ After receiving the requested information, Florida concurred with Mobil's consistency certification on April 17, 1990.⁵

On September 6, 1991, Mobil submitted to the MMS a proposed Supplemental Plan of Exploration (SPOE) for the Pensacola Blocks (Mobil's Exhibit 6), together with a certification that the proposed SPOE was consistent with Florida's federally approved CMP (Mobil's Exhibit 6(F)). In the SPOE, Mobil proposed to drill one additional exploratory well on Block 889. Mobil proposed drilling this well site first. The remaining six wells proposed in Mobil's POE will be drilled in a sequence that would depend on the data results from previously drilled wells, on a schedule of approximately 200 days per well. Mobil's Statement at 7. The well will be drilled using a three-leg jackup drilling unit designed to drill in up to 300 feet of water. During drilling, Mobil will maintain an onshore support facility at Theodore, Alabama. Id.

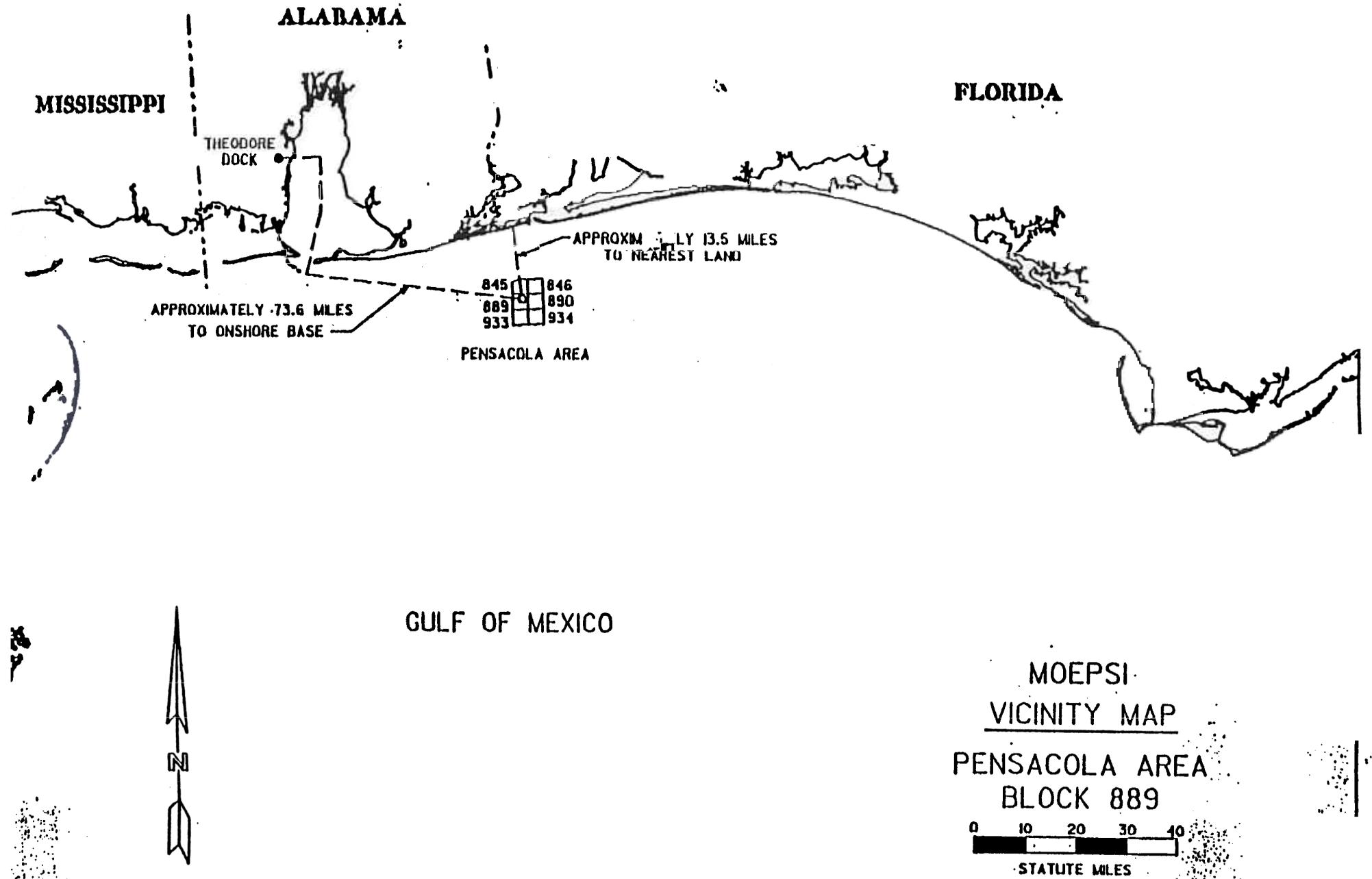
The well site proposed in Mobil's SPOE is located approximately 74 miles from Theodore, Alabama, and 13.5 miles from the Florida coast, off Pensacola, Florida. Mobil's Statement at 3; See Figure 1. The coastal zone at issue contains seagrasses, marshes and oyster beds that contain nurseries and provide habitats, rookeries and nesting areas for economically important species. Commercial fishing and recreation are the primary coastal uses. Commercial fisheries include Atlantic croaker, seatrouts and bluefish. Various types of shellfish also occur including blue crab, oyster and shrimps.

On April 6, 1992, Florida objected to Mobil's consistency certification for the proposed SPOE.⁶ Florida found that the proposed project was inconsistent with the State's policies of protecting its marine and coastal resources. Florida's objections are based on the grounds that the proposed activity is inconsistent with the provisions of Chapters 253, 258, 370, 376, and 403 of the Florida statutes. Florida's Objection Letter, Florida's Exhibit A, at 2.

⁴ Letter from Mr. D.C. Forbes, Environmental and Regulatory Affairs Manager, to Deborah Tucker, Governmental Analyst, dated November 29, 1989 (Mobil's Exhibit 4).

⁵ Letter from Estus D. Whitfield, Director, Office of Environmental Affairs, to Mr. Kent Stauffer, MMS (Mobil's Exhibit 5), dated April 17, 1990.

⁶ Letter from Carol Browner, Secretary, Florida Department of Environmental Regulation (FDER), to Mr. Kent Stauffer, MMS, April 6, 1992 (Florida's Objection Letter).



(Figure 1)

Pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. § 1456(c)(3)(B) and 15 C.F.R. § 930.81, the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for Mobil's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that the objected-to activity is either 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 override the State's objection.

II. APPEAL TO THE SECRETARY OF COMMERCE

On April 29, 1992, in accordance with section 307(c)(3)(B) of the CZMA and 15 C.F.R. Part 930, Subpart H, Mobil filed a Notice of Appeal with the Secretary.⁷ In its appeal, Mobil requests that the Secretary find Mobil's proposed SPOE consistent with the objectives of the CZMA or otherwise necessary in the interest of national security.⁸

Upon Mobil's perfection of its appeal by filing its Statement and supporting data pursuant to 15 C.F.R. § 930.125, a notice of the appeal and request for comments was published in the Federal Register on September 11, 1992 (57 Fed. Reg. 41728) and in three local newspapers (the Tallahassee Democrat, October 6, 7, 8, 1992; the Pensacola News Journal, October 5, 6, 7, 1992; and The Mobile Press Register, October 6, 7, 8, 1992). One public comment was received and has been incorporated as part of the record for this appeal.⁹

On September 28, 1992, the Under Secretary for NOAA solicited the

⁷ Letter from Leslie J. Burton, Mobil, to the Secretary of Commerce, dated April 29, 1992.

⁸ Mobil's Notice of Appeal also requested, pursuant to 15 C.F.R. § 930.125(c), an extension of time to submit its full supporting statement, data and other information. That request was granted. Letter from Margo E. Jackson, Assistant General Counsel for Ocean Services, NOAA, to Ms. Leslie J. Burton, Mobil, dated May 27, 1992.

⁹ The public comment was received and considered to the extent it is relevant to the statutory grounds for deciding consistency appeals. Letter from Richard D. Redford, Florida OCS Issues Chair, Sierra Club National Marine Committee, to Mary O'Donnell, General Counsel-Oceans, NOAA, November 30, 1992. The public comment, however, did not specifically address the grounds for an override.

views of Federal agencies,¹⁰ and the National Security Council regarding this appeal. Comments were received from the National Security Council and all the Federal agencies except the National Park Service and Department of State.

Both Mobil and Florida timely submitted final briefs dated February 26, 1993, and February 27, 1993, respectively.

I will now examine threshold issues raised in the appeal prior to my determination of whether the grounds for a Secretarial override have been satisfied.

III. THRESHOLD ISSUES

A. Compliance with the CZMA and its Implementing Regulations

Review of OCS activities by state reviewing agencies for consistency with state-approved coastal zone management programs is governed by 15 C.F.R. Part 930, Subpart E. These regulations incorporate by reference general consistency review requirements found in other subparts of 15 C.F.R. Part 930. Pursuant to these regulations, there are two grounds by which a state may object to a proposed activity: (1) that the proposed activity is inconsistent with the state's CMP (15 C.F.R. § 930.64(b)); or (2) that the applicant has failed to supply sufficient information for the state to determine the consistency of the proposed activity (15 C.F.R. 930.64(d)).

The regulations at 15 C.F.R. § 930.64(b), provide that "[s]tate agency objections must describe . . . how the proposed activity is inconsistent with specific elements of the management program." See 15 C.F.R. § 930.79(c). In addition, the CZMA requires consistency with enforceable policies. See CZMA § 307(c)(3)(B). Therefore, a state must clearly base its objection on enforceable provisions of its federally approved CMP. See also Decision and Findings in the Consistency Appeal of Amoco Production Company (Amoco Decision), July 20, 1990, at 6.

¹⁰ These agencies were the National Marine Fisheries Service of the Department of Commerce (NMFS), the Environmental Protection Agency, the Department of the Interior (the Fish and Wildlife Service (FWS), the MMS and the National Park Service), the Department of the Army, the Department of the Treasury, the United States Coast Guard, the Department of Transportation, the Federal Energy Regulatory Commission, the Department of Energy, the Department of State, and the Department of Defense. Comments received were considered to the extent they were relevant to the statutory grounds for deciding consistency appeals.

Section 930.79(c) specifies that a state's objection to an OCS activity "must provide a separate discussion for each objection in accordance with the directives within 15 C.F.R. §§ 930.64(b) and (d). Section 930.64(d) provides:

A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § [930.58]. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

Mobil asserts that Florida's objection is based on insufficient information and that, as such, Florida failed to comply with the requirements of 15 C.F.R. §§ 930.64(d) and 930.79(c). Mobil relies on language in Florida's objection which states "a primary reason for the State's objection is there is not at this time sufficient data and information to support a concurrence." Florida's Objection Letter at 6-7; Mobil's Statement at 9. Mobil contends that "Florida evidently made a deliberate decision not to request information from Mobil, thereby violating CZMA procedural requirements." Mobil's Statement at 10.

Florida argues that 15 C.F.R. §§ 930.64(d) and 930.79(c) do not apply in this case because, notwithstanding that certain scientific studies "have not yet been concluded to provide the information which the State needs to determine the consistency of Mobil's proposed activities", the lack of this "information did not prevent Florida from making a consistency determination based on the information it had." Final Brief of the State of Florida (Florida's Final Brief), dated February 27, 1993. Florida specified that the exploratory activities proposed by Mobil are "inconsistent with the provisions of Chapters 253, 258, 370, 376, and 403, Florida Statutes". *Id.*, Florida's Objection Letter at 2.

The Secretary has addressed this threshold issue in the context of two prior decisions involving objections by Florida to proposed exploratory activities.¹¹ I agree with Florida's characterization of its objection to Mobil's SPOE. Florida's objection letter is based on its review of existing biological,

¹¹ See Decision and Findings in the Consistency Appeal of Union Exploration Partners, Ltd., (Unocal Pulley Ridge Decision), January 7, 1993; and Decision and Findings in the Consistency Appeal of Mobil Exploration & Producing U.S. Inc., (Mobil Pulley Ridge Decision), January 7, 1993.

ecological; oceanographic, and socioeconomic information and it determined based on that information that Mobil's proposed SPOE is inconsistent with enforceable policies of Florida's CMP. Although Florida's objection letter discusses several proposed and ongoing studies that may yield information Florida views as necessary to find Mobil's proposed SPOE consistent with its CMP, the lack of these studies did not prevent Florida from making a consistency determination based on available information. Florida's Objection Letter states:

Specifically, we find that the exploratory activities proposed by Mobil are inconsistent with the provisions of Chapters 253, 258, 370, 376, and 403, Florida statutes. Specific sections of these statutes are discussed as follows.

In its objection letter, Florida proceeded to explain how Mobil's proposed activity is inconsistent with these specific statutory provisions. Florida described that the Department of Environmental Regulation (DER) is charged with preventing pollution of waters of the State and the protection of the State's wetlands. Florida argues that the "possibility of an oil spill, the release of other wastes, and the long-term impacts to the State's coastal and marine biological resources which would result from this exploration conflict with these statutory provisions." Florida's Objection Letter at 2.¹² I find, therefore, that Florida based its objection to Mobil's proposed SPOE on specific enforceable policies of its CMP.

Consequently, I find that the requirements of 15 C.F.R. § 930.64(d) are not applicable because they are directed at providing the State with a means to object if it is unable to make a consistency determination due to an applicant's failure to provide necessary information. Because Florida's objection was based on its determination, in accordance with 15 C.F.R. § 930.64(b), that Mobil's proposed activity is inconsistent with enforceable policies of Florida's CMP, Florida was not obligated to request Mobil to provide it with additional information prior to issuing its objection.

Therefore, I find that Florida's objection complied with requirements of the CZMA and its implementing regulations. See CZMA § 307(c)(3)(B); 15 C.F.R. §§ 930.64(a), (b); 930.79(c).¹³

¹² Florida specifically cites sections 403.021(1), (2), (5) and (6); 403.061; 403.062; 403.161; 403.918; and 403.919.

¹³ Mobil also argues that I should dismiss Florida's objection because of Florida's reliance on its position against marine drilling within 100 miles of the coastal zone which is

B. Adequacy of Information

Aside from the requirements imposed on the State for properly lodging an objection, the Appellant bears the burden of proof and the burden of persuasion. See Decision and Findings in the Consistency Appeal of Shickery Anton (Anton Decision), May 21, 1991, at 4; Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990, at 4-5. As stated in the Anton Decision:

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

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

I will make my decision based on the evidence in the record before me. In evaluating the information in the record, I will necessarily determine the adequacy of the information for determining whether Mobil has satisfied the two grounds for

"not an enforceable component of Florida's CZM program" and "is in direct violation of CZMA requirements for approved state CZM programs." Mobil's Final Statement in Support of a Secretarial Override (Mobil's Final Brief), dated February 26, 1993, at 4.

Florida argues that its 100 mile buffer policy is not a Florida statute but merely a means to implement statutory mandates and does not form the basis of its consistency objection. Florida's Response Brief at 14.

However, my review of Florida's objection is limited to my finding that Florida complied with the CZMA and its implementing regulations in lodging its objection. I need not consider issues raised by Florida's statements regarding its 100-mile buffer policy. See also Unocal Pulley Ridge Decision, Mobil Pulley Ridge Decision, and Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc. (Chevron Destin Dome Decision), January 8, 1993.

Secretarial override,¹⁴ recognizing that some information contained in the record may not be directly applicable to the facts of this case.

Although Mobil and Florida disagree as to the sufficiency of existing information on the impacts of Mobil's proposed SPOE, both Mobil and Florida point to the findings of the National Research Council Report, "The Adequacy of Environmental Information for Outer Continental Shelf Oil and Gas Decisions: Florida and California" (1989), Florida's Exhibit J (NRC 1989 Report), to support their arguments describing the amount and type of information necessary to determine the impacts of Mobil's activities. Mobil's Statement at 28-29, Excerpt from 1989 NRC Report (Mobil's Exhibit 16); Florida's Response Brief at 47-52; Florida's Final Brief at 6.

In its 1989 Report, the NRC recognized that the quantity and types of ecological information needed generally varied with the stage of the overall project, with less site-specific information needed for leasing decisions, more site-specific information needed for exploration decisions, and still more information needed for a decision to develop and produce hydrocarbon resources. See NRC 1989 Report at 42-43. See also Chevron Destin Dome Decision at 11. Further, the NRC generally identified the information necessary for leasing, exploration, development and production decisions. NRC 1989 Report at 43. I agree with the conclusions of the NRC on this point. Therefore, I find that for me to adequately identify the impacts of Mobil's proposed project, the record should disclose at a minimum, a characterization of the environment, an identification of the biological resources at risk, and an identification of basic

¹⁴ Although Florida complied with the CZMA and its implementing regulations in lodging its objection to Mobil's proposed SPOE, in its objection letter and briefs Florida argues that there is insufficient information to determine the impacts of Mobil's activities. Florida's Response Brief at 47-52, Florida's Final Brief at 5-13. Florida asserts that "information critical to the assessment of Mobil's activities, as well as, ultimately needed for the Secretary to perform the necessary balance under Ground I, Element 2 is clearly lacking." Florida's Final Brief at 5. Such information concerns the "broader environmental and ecological context in which [Mobil's] operation will be conducted and affects created." Id. The Secretarial override process, however, is a separate and independent decision-making function from the State's consistency review process. See Anton Decision at 3; Chevron Decision at 5. Since the State's consistency review and the Secretarial override process are based on different evaluative criteria, the adequacy of information for these two determinations may differ.

ecological relationships. See NRC 1989 Report at 5.

The NRC 1989 Report distinguishes between leasing, exploration, development and production.

For exploration, more site-specific information is needed, including (4) basic ecological information . . . (5) basic information on factors determining vulnerability of various species; and (6) the potential effects of various agents of impact (e.g., spilled oil, noise and disturbance, and other discharges) . . . For development and production . . . more detailed site-specific environmental analysis generally should be performed than at the prelease stage.

NRC 1989 Report at 43-44. The amount of information necessary to assess the potential impacts of an exploratory activity is less than that necessary for development and production. Thus, less information is necessary to evaluate whether Mobil's activities will have an adverse impact on the resources or uses of Florida's coastal zone.

The NRC provides further guidance, which I adopt in this case, as to the nature of the information necessary to make an informed decision. This necessary information would include (1) a characterization of major habitat types; (2) a catalog of representative species (or major species groups) present in the lease area; and (3) seasonal patterns of distribution and abundance. NRC 1989 Report at 43.

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

C. Scope of the Activity

Mobil argues that "the fundamental scope of Florida's consistency objection deserves further examination" because in its objection letter, Florida erroneously referenced the six exploratory wells proposed under Mobil's original POE. Mobil argues that "to the extent that Florida has objected to Mobil's [SPOE], it has objected to the seventh well proposed by the Plan." Mobil's

Final Brief at 5.

Florida argues it was required to examine Mobil's SPOE "in its entirety" in order to make a consistency determination. Florida's Final Brief at 4. Florida contends that Mobil's argument was first raised based on an MMS comment and that MMS "mischaracterized Florida's objection as a retraction and a repetitive consistency review" of Mobil's initial POE. *Id.* at 3.

Having determined that Florida's objection was properly lodged, however, my inquiry shifts to examining the activity at issue. Mobil's and Florida's arguments are relevant to my determination of the scope of the activity at issue, and the scope of my inquiry.

Florida concurred with Mobil's original POE to drill six exploratory wells located on the Pensacola Blocks.¹⁵ The Department of Commerce's regulations at 15 C.F.R. § 930.80(a) provide:

If the State agency issues a concurrence . . . with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time the Federal applications are actually filed for the Federal licenses and permits to which such concurrence applies.

Therefore, once Florida concurred with Mobil's consistency certification for the original POE, Mobil was able to obtain the necessary permits from MMS to conduct the drilling of the six exploratory wells without any further requirements regarding the State under the CZMA. Consequently, I find that the activity before me is the additional well Mobil proposed in its SPOE.

In its SPOE, Mobil proposes to drill one additional exploratory well on Pensacola Block 889. Therefore, my analysis is limited to determining whether the drilling of this one additional exploratory well "is consistent with the objectives or purposes of the CZMA" or "necessary in the interest of national security" as set forth in 15 C.F.R. §§ 930.121 and 930.122.

While the activity at issue is the one additional well Mobil proposes to drill in its SPOE, my examination of the coastal effects of that activity will necessarily consist of an examination of cumulative coastal effects. As discussed later, in examining the cumulative effects of Mobil's SPOE, I consider the effects of the six wells proposed in Mobil's POE.

¹⁵ Mobil's Exhibit 5.

IV. GROUNDS FOR OVERRIDING A STATE OBJECTION

Pursuant to CZMA § 307(c)(3)(B) and 15 C.F.R. § 930.131, Federal licenses or permits required for activities described in detail in Mobil's SPOE may be granted despite the State's consistency objection if the Secretary finds that each activity described in detail in Mobil's SPOE is (1) consistent with the objectives or purposes of the CZMA (Ground I), or (2) necessary in the interest of national security (Ground II). See also 15 C.F.R. § 930.130(a). Mobil has pleaded both grounds in its appeal. 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 for overriding a state's objection to a proposed project is that the activity is consistent with the objectives or purposes of the CZMA. To make such a finding, the Secretary must determine that the activity satisfies each of the four elements specified in 15 C.F.R. § 930.121.

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

I find that the proposed project furthers one or more of the objectives of the CZMA, and therefore, Element One is satisfied.

The first of four elements is satisfied if the Secretary finds 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).

The CZMA recognizes a national objective in achieving a greater degree of energy self-sufficiency through the provisions of Federal financial assistance to meet state and local governmental needs resulting from new or expanded energy activities (section 302(j)), and that orderly processes for siting of inter alia, major energy facilities should be given priority consideration (section 303(d)(2)).

Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources. Previous consistency appeals involving oil and gas have found that OCS exploration, development and production activities in the coastal zone are encompassed by the

objectives and purposes of the CZMA.¹⁶

As in previous decisions, Florida requests that I reconsider the "near-automatic" finding that oil and gas activities satisfy the first element. Florida argues that oil and gas activities are an objective of the CZMA "if performed in a manner which protects the resources of the coastal zone." Florida's Final Brief at 16-17. Florida points to the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) to bolster its argument that not all oil and gas activities further one of the competing national objectives or purposes in [sections 302 and 303]. Id.

Florida's argument, that the first element is satisfied only by examining whether an oil and gas activity is performed in a manner protective of the environment, has been addressed in a number of appeals decisions.¹⁷ In these decisions, the Secretary has consistently determined that "[a]n assessment of the impacts of such proposed activities is appropriately considered under element two infra." Amoco Decision at 16. As in the prior decisions, I find that the coastal impacts of Mobil's proposed activity should be considered under the second element of Ground I.

OCS exploration, development and production activities can further the objectives and purposes of the CZMA. See, e.g., Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989, at 7. The language added by CZARA does not alter this determination.¹⁸ Based upon review of the record, I find that Mobil's exploration for natural gas resources at Pensacola Block 889 furthers one or more of the competing national objectives or purposes contained in §§ 302 or 303 of the CZMA.

¹⁶ See Unocal Pulley Ridge Decision at 11; Mobil Pulley Ridge Decision at 12; Chevron Destin Dome Decision at 7; Amoco Decision at 16; and Decision and Findings in the Consistency Appeal of Texaco, Inc. (Texaco Decision), May 19, 1989, at 6.

¹⁷ See Chevron Destin Dome Decision at 7-8; Mobil Pulley Ridge Decision at 12-13; Unocal Pulley Ridge Decision at 9-10; Amoco Decision at 15-16; and Texaco Decision at 5-6. I note that three of these decisions were issued after passage of CZARA.

¹⁸ Congress reaffirmed its concern for protection of coastal resources in the 1990 CZMA reauthorization when it added the word "compatible" before "economic development" in section 303(2), and "reasonable coastal-dependent economic growth" in section 303(3). These concerns are addressed in my Element Two analysis.

2. Element Two: The Activity's Individual and Cumulative Adverse Effects on the Coastal Zone Do Not Outweigh Its Contribution to the National Interest

I conclude that the national interest contribution of Mobil's SPOE outweighs its adverse coastal effects.

In order for Mobil to meet Element Two, I must find that the disputed activity, when performed separately or when its cumulative effects are considered, does not cause adverse effects on the coastal zone substantial enough to outweigh its contribution to the national interest. See 15 C.F.R. § 930.121(b). To perform the required balancing, I must first adequately identify the proposed project's adverse effects on the natural resources or land and water uses of the coastal zone and its contribution to the national interest. See Texaco Decision at 6.

a. Adverse Effects on Coastal Resources and Uses

In evaluating the adverse effects of the project on the resources and uses of the coastal zone, I must consider the adverse effects of the project by itself and in combination with other past, present, or reasonably foreseeable activities affecting the coastal zone. Other activities include accidents or improper conduct of an activity. See Chevron Decision at 24; Korea Drilling Decision at 10.

I find that the information contained in the administrative record is adequate to evaluate the coastal impacts of Mobil's exploratory drilling activities proposed in its SPOE.

Notwithstanding Florida's consistency objection under 15 C.F.R. § 930.64(b), Florida argues that there is not enough scientific information available to adequately assess the impact of Mobil's proposed SPOE.¹⁹ See Florida's Response Brief at 47-52. Florida

¹⁹ Florida relies on the NRC's conclusion in its 1989 Report that "currently available information is not adequate to make a leasing decision". NRC 1989 Report; Florida's Response Brief at 48. Florida also argues that "[e]ven with the deficiencies noted in the NRC report, the area off southwest Florida has been studied in more detail than the area off northwest Florida where Mobil's exploratory drilling is proposed." The NRC 1989 Report studied Lease Sale 116, Part 2, off southwestern Florida.

Mobil points out, however, that "Florida's purported reliance on

points to the Mobil Pulley Ridge Decision, in which the Secretary relied on the NRC 1989 Report in declining to override the State's objection to a proposed exploratory well off southwest Florida.²⁰ Florida asserts that, "[b]ecause the information provided by Mobil in support of its POE contains very little new research and the environmental assessments developed by the MMS summarize existing information, neither resolve [the informational deficiencies identified by the NRC 1989 Report]." Florida's Final Brief at 13.

the NRC Report . . . is belied by the fact that the report was . . . 'widely available by November 1989, prior to [Florida's] original concurrence with Mobil's six well proposal dated April 17, 1990." Mobil's Final Brief at 18, citing MMS Comments, Enclosure 1 at p.3. Mobil also points out that Florida was not concerned that drilling discharges from Mobil's activities under its POE would harm coastal resources. In comparing the discharge from Mobil's POE with dredged materials proposed to be discharged at the Pensacola Offshore Ocean Dredged Material Disposal Site (ODMDS), located on Pensacola Lease Block 846, Florida stated:

We do agree, however, that by comparison Mobil's proposed exploration would generate far less material from wellsite locations which are south of the [ODMDS]. According to the DIFID model results, fine grained material is not expected to be transported into state waters from the ODMDS. Therefore, we do not expect drilling discharges to behave differently.

Mobil's Statement at 25; Interoffice Memorandum, Florida DER, (Mobil's Exhibit 15), dated April 2, 1990.

My examination of Mobil's activity proposed in its SPOE is de novo based upon the information in the administrative record. As such, I will accord what I determine to be appropriate weight to the information in the administrative record. This information includes information available before Florida's initial concurrence with Mobil's POE through the close of the administrative record for this appeal, and Florida's earlier position regarding Mobil's proposed POE.

²⁰ In the Mobil Pulley Ridge Decision, the Secretary relied in part on the NRC 1989 Report which identified specific deficiencies in the information on potential environmental impacts from leasing, development and production for southwestern, Florida (Lease Sale 116, Part 2). The Secretary concluded that the deficiencies were not remedied by the site-specific studies provided by the MMS or Mobil for the proposed activity, including the SER and AER for that lease area. Mobil Pulley Ridge Decision at 21-24.

As stated earlier in this decision, I have adopted the findings of the NRC 1989 Report regarding the amount and type of information necessary to analyze various phases of OCS activity.²¹ However, I find that the Mobil Pulley Ridge case is factually distinguishable from, and not directly applicable to this case.²²

In its Final Brief, Florida also references recent reports issued by the NRC that were made available since filing its Response

²¹ As evidenced by the information in the administrative record for this appeal, the likelihood of coastal impacts from Mobil's proposed exploratory drilling appears to be low. Therefore, consistent with the NRC 1989 Report, less information is necessary to review the impacts of the exploratory drilling proposed in Mobil's SPOE. See Element Two discussion, infra.

²² In the Mobil Pulley Ridge Decision, Mobil had proposed to drill four exploratory wells south of 26 degrees north latitude, off the southwest Florida coast, fifty-nine miles northwest of the Dry Tortugas. This area is subject to different environmental conditions and contains significantly different coastal resources at risk than in this case. The area adjacent to Florida's southwest coastline contain mangroves, live bottom habitat and "the only shallow-water . . . tropical coral reef ecosystem found on the North American coast." Mobil Pulley Ridge Decision at 15, 19. The NRC 1989 Report states the "[t]he southwest Florida shelf comprises subtidal and nearshore habitats that are unique within the U.S. continental margin." NRC Report at 53. As noted by the Secretary in the Mobil Pulley Ridge Decision, due to the unique ecosystem adjacent to Florida's coastline south of 26 degrees north latitude, years of debate over the potential impacts of oil and gas activities on those unique resources culminated in President Bush announcing to cancel Sale 116, Part II and exclude the area from consideration for any lease sale until after the year 2000. In his announcement, the President stated that "The Sale 116 area off southwest Florida, which contains our nations only mangrove-coral reef ecosystem and is a gateway for the precious Everglades, deserves special protection. See Mobil Pulley Ridge Decision at 15-18, Appendix A.

There are other distinctions between the Mobil Pulley Ridge Decision and this case as well. The Secretary in Mobil Pulley Ridge specifically noted that "several agencies when queried as to the proposed POE's adverse impacts on the natural resources of the coastal zone and to the proposed POE's contribution to the national interest conducted their own balancing and recommended that I do not override Florida's objection." Id. at 34. The administrative record in the instant case contains significantly different agency comments.

Brief.²³ Florida cites the Ecology and Socioeconomic Reports to support its argument that there is inadequate information for the area of the Gulf of Mexico where Mobil's activities are located to determine the impacts to Florida's coastal zone. Florida's Final Brief at 6-11. The Ecology Report Executive Summary describes various areas of OCS activities and ecological impacts that require further study.²⁴

The Socioeconomic Report Executive Summary also indicates that further efforts should be made to identify socioeconomic issues for study in the Gulf of Mexico.²⁵

However, while the executive summaries of the two reports draw general conclusions regarding the adequacy of the ESP, they do not specifically address Mobil's proposed SPOE, are not site-

²³ The NRC formed the Committee to Review the Outer Continental Shelf Environmental Studies Program (Committee), which is responsible for the conduct of environmental studies on the outer continental shelf and for collecting information used in environmental impact statements and to inform federal management decisions. The Committee was broken into three panels for the study: ecology, physical oceanography, and socioeconomic. Each panel issued a separate report of its findings.

Florida submitted the Executive Summaries of the "Assessment of the U.S. Outer Continental Shelf Environmental Studies Program; II. Ecology" (Ecology Report), 1992, and the "Assessment of the U.S. Outer Continental Shelf Environmental Studies Program; III; Social and Economic Studies" (Socioeconomic Report), 1992; cited as Exhibit A and Exhibit B to Florida's Final Brief, respectively. At the time of filing its Final Brief, the State had not been notified that the Ecology Report was final. Florida's Final Brief at 6.

²⁴ The Ecology Report Executive Summary states that there is a "lack of information for OCS areas in the Gulf of Mexico, specifically the at-sea distribution of birds and mammals, the distribution and abundance of sea turtles, and characterization of benthic communities sufficiently detailed to support leasing decisions." Ecology Report Executive Summary at 4.

²⁵ The Socioeconomic Report Executive Summary states that "[t]here is no systematic MMS program for identifying and analyzing important socioeconomic issues for study in the Gulf of Mexico . . . The Northern Gulf of Mexico is the most heavily developed section of the OCS in the world. Greater efforts should be made to learn from the OCS oil production/Gulf of Mexico experience."

specific and do not support that there is insufficient information to assess the effects of Mobil's activities on Florida's coastal resources or uses. Moreover, while identifying general informational needs for OCS activities, the Ecology Report Executive Summary indicates that nearshore and onshore communities are unlikely to be affected during exploration.²⁶ Ecology Report Executive Summary at 4.

I find, therefore, that the information contained in the record is adequate to evaluate the coastal impacts of Mobil's exploratory drilling activities proposed in its SPOE.²⁷

I have divided my discussion of the project's individual and cumulative adverse coastal effects into the following areas:

- (i) Adverse Impacts from Routine Operations;
- (ii) Cumulative Adverse Coastal Effects;
- (iii) Adverse Coastal Effects from Accidental Events - Oil Spills;
- (iv) Impacts to Coastal Uses; and

²⁶ The Ecology Report also states that within the ESP there has been a lack of focus on the impacts of OCS activities on nearshore and onshore communities that could be seriously affected when oil moves ashore. However, I find there is sufficient information in the administrative record in this case to determine the coastal impacts from an unplanned oil spill resulting from Mobil's SPOE, discussed later in Element Two, infra.

²⁷ I recently declined to override state objections to Mobil's proposal to drill an exploratory well and discharge drilling wastes offshore North Carolina, based on the lack of adequate information to assess the coastal impacts of that drilling proposal. Decision and Findings in the Plan of Exploration Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc., (Mobil Manteo POE Decision) September 2, 1994; Decision and Findings in the Drilling Discharge Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc., (Mobil Manteo Drilling Discharge Decision) September 2, 1994, (Mobil Manteo Decisions). The adequacy of information in an appeal is dependent on the facts of each case and on the administrative record for each case. The Mobil-Manteo cases differed principally from this one in that those records contained stronger comments and information on the lack of adequate information for my Element Two analysis. I note the concerns of Federal agencies, the findings of the North Carolina Environmental Sciences Review Panel and the significance of The Point to North Carolina coastal resources and uses as some differences with this case.

(v) Conclusion on Adverse Effects.

While the discussion in these sections will overlap, this organization provides the appropriate focus on particular actions or coastal effects.

(i) Adverse Impacts from Routine Operations

I find that Mobil's proposed activity will have minimal adverse impacts on the resources of Florida's coastal zone, when performed separately from other past, present, or reasonably foreseeable activities affecting the coastal zone.

The exploratory drillsite proposed in Mobil's SPOE is located near Pensacola, Florida, off a segment of the Florida Panhandle.²⁸ Information characterizing the Florida Panhandle, including the area within the vicinity of Mobil's proposed project, is provided in the "Ecological Characterization of the Florida Panhandle" (Ecological Characterization), October 1988; Florida's Exhibit H.²⁹ The Ecological Characterization identifies the Panhandle as containing estuarine and marine habitats including salt or tidal marshes, oyster reefs, seagrass beds, and sandy beaches. Ecological Characterization at 181-248. Page 190 of the Ecological Characterization states the following:

²⁸ The proposed exploration would occur about 13.5 miles from the State's coast, outside of the State's coastal zone. Location alone, however, is not predictive of possible coastal effects. See Mobil-Manteo POE Decision at 12.

²⁹ In its Final Brief, Mobil takes issue with Florida's definition of the Pensacola Block Area as including the broad Panhandle region. Mobil argues that "the actual activities at issue, and the actual impacts at issue, have implicitly limited the relevant area." Mobil's Final Brief at 12-13.

The Florida Panhandle extends from the Ochlockonee River basin west to the Florida-Alabama border and north to the Georgia and Alabama borders. See Figure 2. Ecological Characterization at 1. By referencing the Ecological Characterization I am not making any determination that the entire Florida Panhandle is at risk from Mobil's activities. Rather, I cite it as relevant only to describing the type of marine environment found in the Panhandle, including the vicinity of the Pensacola Lease Blocks. Based on the information in the record, I will necessarily determine later in this section the extent of the area impacted by Mobil's activity, and the nature of the adverse effects on Florida's coastal resources and uses at risk from Mobil's proposed activity.

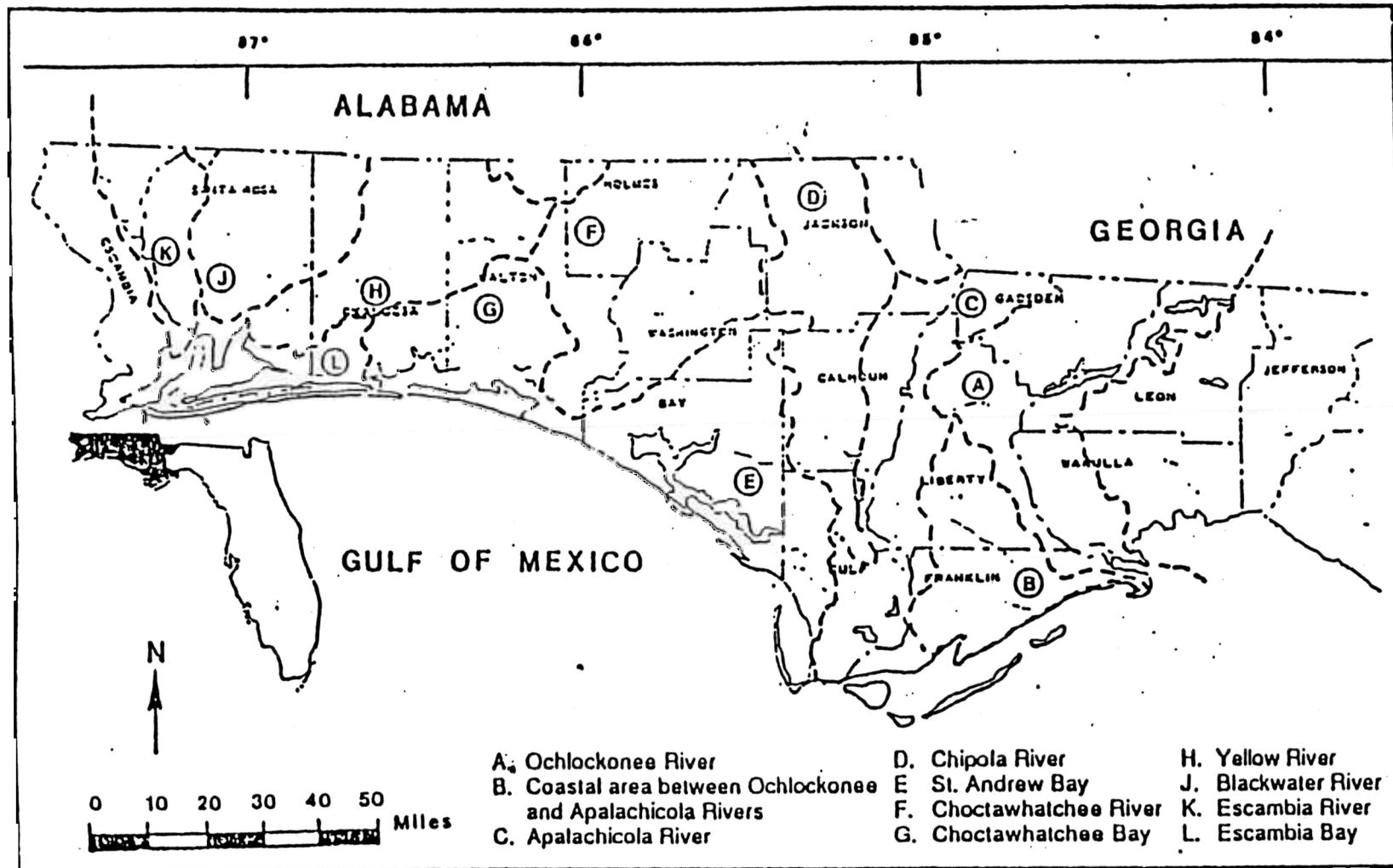


Figure 1. Florida Panhandle drainage basins and features.

(Figure 2

The salt marsh is a critical nursery, refuge, and feeding area for many commercially important estuarine organisms such as fish and crab. The plants protect the juvenile forms of many of the estuarine organisms against predation. They also supply the bulk of the detritus for the estuarine system. They have the important function of buffering coastal regions from the erosional effects of storms.

Seagrasses are also one of the more important habitats in the nearshore coastal zones of Florida. Id. at 211. Seagrasses serve as sediment traps, a direct food source for herbivorous organisms, a refuge from predators for many juvenile forms of fish and invertebrates, including commercial species, and provide habitat for certain assemblages of invertebrate species that burrow or grow attached to leaves and that would otherwise be uncommon or absent. Id. at 212.

As regards the western Panhandle, the area where the Pensacola Blocks are located, the Ecological Characterization states that "[s]eagrass beds cover a greater area in the eastern Panhandle than in the western . . . this difference is correlated with the greater industrial development in the western Panhandle . . . Panhandle salt marshes are prevalent and more evenly distributed than the seagrasses." Id. at 243.³⁰

Oyster reefs are also found in all the Panhandle estuaries, but those in the western estuaries tend to be unusable by humans because oysters concentrate the contaminants introduced to the waters by surrounding development. Id. at 243.³¹

³⁰ The Ecological Characterization identifies that the Pensacola Bay System (includes Pensacola Bay, Escambia Bay, East Bay, and Santa Rosa Sound), is the most impacted by human activity of all the watersheds in the Panhandle. "The data that exist for the 1970's and 1980's show an accelerated decline of grassbeds in many bays, especially in the Pensacola estuary system where Escambia Bay grassbeds are nearly entirely absent." Ecological Characterization at 215.

³¹ Mobil's Environmental Report (ER) for the Pensacola Lease Blocks, including Block 889, identifies several areas of biological concern located inshore and onshore from the lease area. The ER describes the northeastern Gulf coast as primarily consisting of estuarine and coastal ecosystems, which include salt marshes, oyster beds, grass beds, dunes, tidal flats, and barrier beaches. These coastal ecosystems contain nursery areas for many economically important species, and provide habitats, rookeries, and nesting areas for many endangered and threatened species, including the brown pelican, various marine turtles, and

The bottom within the lease block area is predominantly sandy with varying amounts of shell fragments. No exposed hard bottom was detected within the vicinity of the live bottom survey area and no live bottom fauna were observed.³² Biotas observed in the bottom photodocumentation surveys included cerianthids, sea pens, box crabs, sea stars and echinoids.³³ As the bottom itself is not a coastal resource, and since there is no significant live bottom documented at the proposed site, there is no indication in the record that the coastal foodweb extends to the bottom area located in the area of Lease Block 889.³⁴

Florida also has a number of Areas of Special Management in Escambia and Santa Rosa Counties. ER at 41, 93, 95. Two of these Areas of Special Management, the Fort Pickens State Aquatic Preserve and the Gulf Islands National Seashore, are approximately 10 miles from Mobil's proposed site. Florida's Response Brief at 39. However, the record does not indicate that these areas will be adversely impacted by Mobil's proposed activities.

Mobil's ER describes that impacts from the routine operation of Mobil's exploratory drilling, such as from discharge of drilling muds and cuttings, are expected to be minor and reversible and

the West Indian Manatee. Mobil's Environmental Report (ER) Mobil's Exhibit 2(K), at 93.

³² ER at 70. A live bottom survey of the Pensacola Blocks was conducted by Continental Shelf Associates, Inc. (1989).

³³ I note that in its concurrence to Mobil's POE, Florida agreed that the bottom sediments are either coarse sand/shell hash or sandy silt and that no rock outcrops or hard bottom formations or associated epifauna were observed. Mobil's Exhibit 5. The U.S. Environmental Protection Agency (EPA) also concurred that no significant live bottoms were present on the Pensacola Lease Blocks. Letter of W. Ray Cunningham, Director, Water Management Division, EPA, to Mr. G. J. Barbier, Mobil, (Mobil's Exhibit 13), dated December 12, 1989.

³⁴ Fishermen have constructed a number of artificial reefs in the lease areas due to the lack of rock outcroppings in the sandy area offshore from Pensacola. The reefs provide substrata for sessile biota and, after they are heavily fouled attract many large fishes. ER at 70. Discussion of the impacts of Mobil's SPOE on fishing is discussed in Element Two, infra.

limited primarily to the lease blocks and vicinity. ER at 150.³⁵ Water quality is expected to quickly return to normal in the area after drilling operations have been completed, and effects are expected to be temporary. Id.³⁶ There is no indication that these impacts will have an adverse effect on the natural resources of Florida's coastal zone.³⁷

³⁵ The ER acknowledges that drilling activities would temporarily reduce water quality adjacent to the drilling unit due to discharges of drilling fluids and cuttings, thus possibly causing fish to avoid the area. Id. The possible effects of reduced water clarity on planktonic species could include reduced photosynthesis, clogging or interference with filter feeding, and interference with visual predation. ER at 140. However, these effects should also be local and of short duration and should not result in any significant impacts on planktonic or other pelagic communities. Id. The physical presence of the drilling unit and the disposal of drilling muds and cuttings should have a localized and temporary effect on the nekton. Id.

³⁶ The Area-Wide Environmental Assessment for exploration activities in the Northwest Section of Eastern Planning Area, Gulf of Mexico Region (AEA), contains findings similar to that of Mobil's ER; that there may be a temporary and localized adverse effect on the phytoplankton and zooplankton due to the plume caused by the temporary resuspension of bottom sediments during placement of offshore structures and the disposal of drilling muds and cuttings during the exploratory phase. AEA at 162.

³⁷ The AEA and ER also discuss that certain routine operations could result in benthic impacts from placement of the drilling unit at the drillsite, and discharge of drilling muds and cuttings. Impacts would primarily be in the form of smothering of benthic organisms and alteration of the substrates in the immediate area of the drillsite. However, both the AEA and ER assert that disturbed areas will eventually be colonized from surrounding areas once the drilling unit is removed, and that fauna generally recolonize the deposits quickly, although the post-drilling species may differ from pre-drilling species. ER at 140; AEA at 62-63. The record does not support that adverse coastal effects would result from these localized benthic impacts.

The ER also relates that due to the lack of natural hard-bottom relief in the area, fish and sea turtles might be attracted to the drilling unit because it would provide shelter and some food in the form of fouling biota. ER at 140. However, the presence in the area of a significant number of artificial reefs may lessen the attraction of the drilling unit. Also, adverse impacts on marine animals are not expected because of the

The Site-Specific Environmental Assessment (SEA) prepared by the MMS for Block 889 also discusses some of the impacts that could occur as a result of Mobil's exploratory drilling. Mobil's Exhibit 2(F) (SEA) at 4-5.³⁸ The SEA notes that discharge amounts will comply with the provisions of an EPA NPDES general permit, and that activities are expected to be of short duration and all pollutants would be rapidly dispersed. Further, these impacts are limited to the area within the proximity of the drill site. I note that the SEA also states the "[i]mpacts on coastal habitats are expected to be insignificant as a result of the proposed action. Id. at 14.

The MMS offered comments based primarily on its Area-Wide and Site Specific Environmental Assessments of the Pensacola Blocks.³⁹ The MMS asserted that its assessments documented that Mobil's activities would not significantly affect offshore or coastal resources, water or air quality, or biological resources. MMS Letter/Enclosure at 10.⁴⁰

temporary nature of the proposed drilling activity. Id.

³⁸ The SEA describes that solid waste discharges from the rig would consist of drill cuttings and drilling muds. SEA at 4-5. The SEA estimates that the total amount of drilling cuttings discharged during the exploration drilling of the one well proposed in the SPOE would be approximately 2,632 barrels of solids. Id. Liquid wastes are expected to include 324,000 gallons of sanitary wastes, and 1,5000,000 gallons of domestic wastes. Id.

³⁹ Letter and Enclosure from J. Rogers Percy, Regional Director, Minerals Management Service of the Department of Interior, to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, November 4, 1992 (MMS Letter/Enclosure). There are two Site-Specific Environmental Assessments, one for the six Pensacola Blocks proposed in Mobil's POE, which includes Block 889, and one solely for Block 889, the well site proposed in Mobil's SPOE.

⁴⁰ In evaluating adverse effects from routine gas and oil activities associated with Mobil's proposed activity, MMS considered a number of impact-producing factors including: proposed discharge of drilling-related effluents at the drill site; support activities (i.e., support/service boat trips and helicopter flights); location of a temporary support base at Theodore, Alabama, to stage exploration activities; proposed discharge of air pollution emissions; risk of vessel collision; risk of small/operational spills and resultant effects; visual and physical presence of the jack-up rig; and setting of the jack-up rig, actual drilling of the exploratory well, and various

The MMS contends that potential biological impacts in Pensacola Block 889 would be minor in the immediate area of the well site. The most likely impacts of drilling on benthic organisms would result from drilling unit placement and drilling mud and cuttings impacts, including burial, smothering and increased sedimentation. MMS assumed, "very conservatively," that the actual suffocation of any existing fauna and flora would be concentrated within a 200-meter radius. Id. at 12. Additionally, a thin veneer of sedimentation would be expected to temporarily modify coarse sediments out to a distance of perhaps 300-400 meters. Other normal operations (deck discharges, wastes, rig emplacement, air emissions, noise, and transportation of materials and personnel, etc.) are expected to have insignificant impacts. Id.⁴¹

MMS asserts that impacts on communities farther away, including live bottoms and any critical fisheries, etc., "are expected to be so subtle as to be unmeasurable by any standard." MMS Letter/Enclosure at 13. Thus, there is little indication that the coastal resources of Florida's coastal zone will be adversely impacted from Mobil's proposed activities.

I find it significant that neither the FWS nor the NMFS, the two agencies responsible for the biological resources that occur in the area of Mobil's proposed activity, expressed concern about the potential adverse effects of the conduct of Mobil's proposed activity. The sole concern of the FWS was the distance of Mobil's onshore emergency base from the well sites. Letter from Richard N. Smith, Director Fish and Wildlife Service, Department of Interior, to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, November 25, 1992.⁴²

other operational factors (e.g., noise associated with the exploratory activity). MMS Letter/Enclosure at 8-9.

⁴¹ MMS also asserts that the distribution of toxicities associated with drilling muds and cuttings indicates that most water-based drilling fluids are relatively nontoxic. The MMS based this conclusion on a comprehensive study of the literature on the fate and effects of drilling fluids in the marine environment found in the National Academy of Science's 1983 NRC Report. The impacts from discharge of cuttings would also be temporary and minor, resulting primarily from the physical change of the substrate rather than any toxic effects.

⁴² Specifically, the FWS was concerned that in the event of an oil spill or related emergency, the spill could travel a substantial distance before the arrival of a fast response unit, thus endangering fish and wildlife coastal resources. Because

NMFS' comments were in the context of its review of DOI's Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992-1997. NMFS commented generally that it recommends the use of lease blocks that would direct oil and gas exploration away from coastal areas. Memorandum from William W. Fox, Jr., Assistant Administrator for Fisheries, NMFS, to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, November 9, 1992.⁴³

No other Federal agency commented on the issue of adverse coastal effects from the routine conduct of Mobil's proposed project. Nor did any agency object to Mobil's proposed SPOE on any other basis.

I find that the record supports a finding that the routine conduct of Mobil's temporary drilling of a single exploratory well, when reviewed separately, is likely to cause relatively minor, transient adverse effects on the marine environment and that these effects will be limited to the immediate vicinity of the well site and only during the drilling period. Thus, I find that Mobil's activity, when performed separately, will have minimal adverse impacts on the resources of Florida's coastal zone.

(ii) Cumulative Adverse Coastal Effects

I find that although cumulative coastal impacts may result from Mobil's SPOE in combination with its POE, these impacts will be minimal.

To satisfy Element Two, I must also identify the cumulative adverse effects on the natural resources and uses⁴⁴ of the coastal zone of the objected-to activity being performed, in combination with other activities affecting the coastal zone.

Mobil is required to have a dedicated oil spill response vessel, necessary support vessels, and equipment, the concerns of the FWS were addressed. The FWS had no other comment regarding Mobil's proposed activity.

⁴³ In this review of the Resource Management Program, NMFS preferred an alternative in the Atlantic/Gulf of Mexico that would provide a 30-mile buffer area for the west Florida coast. Id. However, NMFS emphasized that the agency did not review or specifically respond to Mobil's SPOE to conduct oil and gas drilling activities on the OCS near Pensacola, Florida. Id.

See also the discussion of impacts to coastal uses. Infra.

In order to identify cumulative adverse coastal effects, I review "the effects of an objected to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected to activity is likely to contribute adverse effects on the natural resources of the coastal zone."⁴⁵

Florida argues that to adequately discuss the magnitude of impacts which may occur, the Secretary must consider any activity that could reasonably be expected to follow Mobil's exploratory drilling, including subsequent, long-term exploration, development and production of natural gas. Florida described a scenario of possible activities to predict the possible activities that may occur, including seven exploration wells, eight production platforms and seven production wells. Florida's Response Brief at 22-23.

Florida also argues that I must consider the potential effects of Chevron's plan to develop and produce its Destin Dome 56 unit, because "[t]hey are scheduled to submit their Plan of Development to MMS later this year." Florida's Final Brief at 25. Finally, Florida asserts that Chevron, after exploring Destin Dome Block 97, plans to drill delineation and production wells. Florida's Response Brief at 23.

Development and Production Activities

As regards Pensacola Block 889, the MMS indicated that:

There are no other oil and gas activities occurring in the vicinity of Pensacola Block 889 at this time. Amoco may commence drilling a single well on Desoto Canyon 133 (100 miles from Block 889) in the next few months. For purposes of the subject Appeal for Pensacola Block 889, the opinion of MMS is that the areal extent of potential adverse impacts associated with the proposed exploratory drilling of one well is limited and the cumulative impacts on the various resource categories/issues discussed in this Appeal are not significant.⁴⁶

Coastal impacts of subsequent development and production activities may be considered in the context of cumulative impacts, if those future activities are reasonably foreseeable. However, there is no specific information in the record on the likelihood of future development and production for Mobil's

⁴⁵ Decision and Findings in the Consistency Appeal of Gulf Oil Corporation (Gulf Decision), December 23, 1985, at 8.

MMS Letter/Enclosure 2 at 23.

Pensacola Blocks, or Chevron's Destin Dome Block 97. Based on the record, the possibility that Mobil or Chevron's exploratory activities will discover oil or gas reserves for subsequent development or production is speculative. Consequently, I will not accept Florida's argument that Mobil and Chevron's exploratory drilling will prove successful. Therefore, I find that it is not reasonably foreseeable that Mobil or Chevron will conduct development activities at the Pensacola Blocks or Destin Dome Block 97, respectively. C.f., Mobil Pulley Ridge Decision at 14-15. Nor does the record contain any specific information regarding the foreseeability of potential development and production activity to be conducted by Chevron at Destin Dome 56.

Consequently, I find that the record fails to support that it is reasonably foreseeable that the potential development of Mobil's Pensacola Blocks, Chevron's Destin Dome Block 97 or Destin Dome Block 56 are part of the baseline of activities that I must consider in determining whether Mobil's exploration of Pensacola Block 889 will contribute cumulative adverse effects to the coastal zone.

Exploratory Activities

In 1993, the Secretary overrode Florida's objection to Chevron's POE for Block 97. Mobil acknowledges that Chevron planned to begin drilling an exploratory well on Destin Dome Block 97 in mid-1993. The estimated drilling period is 210 days. Aside from Mobil's assertion, there is no specific information in the record indicating the timing and nature of Chevron's potential exploratory activity. In my examination of cumulative effects, I am not limited to determining whether an activity will occur simultaneously with Mobil's activity.⁴⁷ My examination is based on whether it is reasonably foreseeable that the effects of Chevron's activities are likely to contribute adverse effects on the natural resources or uses of Florida's coastal zone. However, Destin Dome Block 97 is located approximately 29 miles from Perdido Key, Florida and approximately 75 miles south-southeast of Mobile, Alabama. Chevron Destin Dome Decision at 1. The Secretary found that impacts from exploratory activities at Destin Dome Block would be minor and localized. Id. at 12-13. Thus, even if Chevron's activities could be reasonably expected

⁴⁷ Mobil notes that its proposed activities would likely not begin until after Chevron has completed its exploratory activities on Destin Dome Block 97. Mobil argues that there is nothing in the record to indicate that its exploratory activity would occur at the same time as other exploratory or related projects in the area. Mobil's Final Brief at 19, citing Chevron Destin Dome Decision at 21. See also Gulf Decision at 8; Unocal Pulley Ridge Decision at 25.

to occur, the record does not support that the effects of the activity would cumulate with adverse effects resulting from Mobil's activities.

Therefore, I find that the record fails to support that it is reasonably foreseeable that Chevron's exploratory activities for Destin Dome Block 97 are part of the baseline of activities that I must consider in determining whether Mobil's activities will contribute adverse effects to the natural resources or uses of Florida's coastal zone.

To evaluate whether there are cumulative impacts from Mobil's SPOE, it is appropriate for me to examine the exploratory activities proposed in Mobil's POE. Mobil proposes to first drill the well proposed in its SPOE. The well would be drilled, evaluated, and temporarily abandoned. The remaining six wells proposed in its POE will be drilled in a sequence that would depend on the data results from previously drilled wells, on a schedule of approximately 200 days per well. Mobil's Statement at 7; Mobil's Exhibit 6.

In previous decisions, the Secretary has stated that he will consider the cumulative effects of temporary or short-term activities, the effects of which would not be present after the activity is completed, if that temporary activity is scheduled to occur at the same time the activity before me is to occur.⁴⁸ None of Mobil's seven wells will be drilled simultaneously. However, Mobil's proposed drilling schedule indicates that once drilling commences, there could virtually be no break in the drilling of the seven exploratory wells on the Pensacola Blocks. Each well is scheduled to be drilled almost immediately after the previous well, although the sequence of the drilling may change based on results from previously drilled wells. Although each exploratory activity will be conducted as a discrete, temporary activity without any overlap, it is reasonably foreseeable that cumulative coastal impacts could result from the consecutive drilling of seven exploratory wells for a period of approximately four years.

Although I have found that it is reasonably foreseeable that cumulative coastal impacts may result from Mobil's SPOE in combination with its POE, I believe these impacts will be minimal for the following reasons: (1) while not determinative, the fact that Mobil's seven wells will not be drilled simultaneously decreases the likelihood that significant cumulative impacts will occur; (2) the information in the administrative record indicates that adverse effects on the marine environment resulting from

⁴⁸ See e.g., Chevron Destin Dome Decision at 21; Gulf Decision at 8.

Mobil's exploratory drilling will be limited to the immediate vicinity of each well site, and will have minimal adverse effects on the resources and uses of Florida's coastal zone; (3) primary impacts resulting from the placement of the drill rig, and mud and cuttings discharges associated with Mobil's activities are likely to be temporary and the evidence indicates that the area will naturally recover once drilling is terminated; and (4) while the information indicates that there could be almost continuous exploratory drilling on the six adjacent Pensacola Lease Blocks for approximately four years, there is no indication that this will significantly alter the temporary, short-term nature of the impacts resulting from drilling each individual exploratory well, nor does the evidence suggest that the natural recovery process will be slowed or stopped once such drilling is completed.

In conclusion, I find that although the six wells proposed in Mobil's POE are reasonably foreseeable future activities occurring in the area of Florida's coastal zone in which the exploratory well proposed in Mobil's SPOE is likely to contribute adverse coastal effects, Mobil's SPOE will result in only minimal cumulative adverse effects on the resources of the coastal zone.

(iii) Adverse Coastal Effects from Accidental Events - Oil Spills

Likelihood of an Oil Spill

The likelihood of an oil spill is low.

An oil spill during exploratory drilling might occur either as a result of a blowout or from an accident during routine operations. Most oil spills occur as accidental discharges during normal operations, and most of these accidental discharges involve the release of less than 50 barrels. AEA at 52. Decisions in previous consistency appeals involving oil and gas drilling have noted that the likelihood of a blowout is low.⁴⁹

The OCS drilling record and the regional geological data support that the risk of an oil spill from its proposed activity is low. The statistical record for oil and gas drilling in OCS waters demonstrates that of 7,853 exploratory wells drilled in federal waters during the years 1947-1987, not one barrel of crude oil or condensate spilled as a result of a blowout. Mobil's Statement at 32; SEA at 3.⁵⁰ Mobil's ER notes, however, that "while oil

See Texaco Decision at 17-18; Amoco Decision at 30.

⁵⁰ The statistical record shows that if an oil spill were to occur during exploratory drilling, it would most likely be transportation-related, and would involve diesel fuel and not

spills during exploratory operations have a low probability of occurrence, the possibility of a significant oil spill cannot be discounted." ER at 128.

Mobil contends that all geological data show that the Pensacola Blocks present a dry-gas prospect, and carry an extremely low probability of finding liquid hydrocarbons, and therefore, there is a negligible risk of an oil spill. Mobil's Statement at 31-32.

In its comments, MMS also concluded that "[c]onsidering the low probability of a blowout anywhere on the OCS . . . and the likelihood that the Pensacola geology [a dry gas prospect] will serve to further reduce that probability, the chance of a blowout resulting in spilled oil must be considered small." MMS Letter/Enclosure at 17-19.

I find that based on the statistical and historical record of oil spills occurring on the OCS and that the record indicates that the Pensacola Block 889 is essentially a dry gas prospect, there is a low likelihood of an oil spill occurring from Mobil's exploratory activity.

Containment

Mobil has demonstrated that it has implemented risk reducing mitigative measures, including following the procedures in the Oil Spill Contingency Plan and Site Specific Spill Contingency Plan.

Decisions in previous appeals have held that because some risk of a spill during oil and gas operations always exists, it is appropriate to consider the measures that will be used to contain and clean up an oil spill if one should occur. Texaco Decision at 13.

Mobil's SPOE includes "risk reducing mitigative measures," including:

Mobil will utilize and operate a blowout preventer in

crude oil. SEA at 3. During the ten year period between 1976-1985, of approximately 3,620 new well starts in federal water, there were approximately 72 reported diesel spills associated with exploratory drilling. Id. Nearly all of these spills were a result of an accident during transfer operations for the supply vessel to the drilling platform. Id. Sixty-one incidents involved spills of less than 50 barrels, and eleven incidents of greater than 50 barrels. Id. Thus, the probability of a spill of greater than 50 barrels is 0.3%. Id.; Mobil's Statement at 32-33.

strict compliance with MMS requirements;

All drilling rig discharges and emissions will be in strict compliance with MMS and EPA regulations;

Rig personnel will be thoroughly trained, and all drilling equipment will be regularly inspected;

Mobil representatives will be on the drill site, and at the Theodore, Alabama shore base, on a 24-hour basis;

A comprehensive Gulf-Wide Oil Spill Contingency Plan for Mobil's drilling activities containing necessary assurances of a full response capability for the proposed activity has been approved by MMS;

Mobil has prepared a site-specific spill contingency plan that includes spill trajectory modelling, and discussions of the logistics of a spill response and response times for deployment of cleanup equipment; and

Mobil will maintain containment and cleanup equipment on a dedicated boat at or near the well site, and supplemented by onshore stockpiles.

Mobil's Statement at 34-36; Mobil's Exhibit 18; SEA.⁵¹

⁵¹ Florida does not dispute the specific elements of Mobil's contingency plan. Florida does argue, however, that there is insufficient physical oceanographic information to assess spill movement and areas of potential impact. Florida compares this case to the Mobil Pulley Ridge Decision. See Florida's Response Brief at 24. However, as I indicated earlier, I find Mobil Pulley Ridge is factually distinguishable from this case. The NRC Report and Mobil Pulley Ridge discussed the physical oceanography south of 26 degrees north latitude; that the area is dominated by wind-driven and eddy-related currents on the shelf and by the LOOP Current in the deeper waters, which plays a significant role in trajectories of oil spilled south of 26 degrees north latitude. Mobil Pulley Ridge Decision at 27; NRC Report at 24-28. The Mobil Pulley Ridge Decision's discussion of impacts to coastal resources is inapplicable to this case. I also note that in Mobil Pulley Ridge both oil and gas were potentially contained in the lease areas whereas in this case the record indicates that the area of the proposed drill site is primarily a dry gas prospect. Thus, the probability of a oil spill occurring is lower in this case.

Although Florida asserts that further study is needed to assess the potential impacts of an oil spill, I find that the

Effects of an Oil Spill on the Natural Resources of the Coastal Zone

It is unlikely that adverse impacts on the natural resources of Florida's coastal zone will result from an oil spill occurring from Mobil's exploratory activities.

The severity of oil spill effects on the environment varies greatly, depending on the conditions of the spill and the nature of the environment. The type and amount of oil involved, the geographic location, seasonal timing, and the adequacy of the response are among the factors that influence the severity of environmental effects. Mobil's ER states that the "spilled oil would eventually be dispersed by currents, weathered by evaporation and dissolution, and decomposed by microbial action. Most of the acutely toxic aromatic fractions in a crude oil spill would evaporate within three days." ER at 129.

The AEA calculated the probability of an oil spill from the Pensacola Blocks reaching land. According to the AEA, the Pensacola Blocks fall within oil spill area 86. Impacts from an oil spill within this area could affect the coastal land segments extending from Hancock, Harrison, and Jackson counties in Mississippi to Escambia and Santa Rosa counties in Florida. AEA at 53-54. The Florida land segment that would be most vulnerable is the land segment including Escambia and Santa Rosa Counties, with a 33 percent chance that an oil spill from the Pensacola Blocks would contact this segment within 10 days.⁵² The SEA for

administrative record is sufficient for my analysis of the potential impacts that could result from an oil spill occurring from Mobil's activity. See *infra*. I note that in its review of Mobil's POE, Florida did not raise concerns regarding an oil spill impacting coastal resources. Rather, in correspondence, Florida requested and received from Mobil, among other items, information regarding Mobil's oil spill response plan; specifically, justification why Mobil did not locate Pensacola as its shore base for location of onshore oil spill containment and clean-up equipment. Florida's concurrence to Mobil's POE expressly acknowledged Mobil's explanation for retaining Theodore, Alabama as its shore base. Mobil's Exhibits 3-5. Further, I note that in its Response Brief Florida supports its assertion that the effects of an oil spill could be enormous, by citing to the AEA and SEA for the Pensacola Blocks. Thus, based on existing information, Florida was able to discuss the impacts of a spill occurring in the Pensacola Block Area. Florida's Response Brief at 26-27.

⁵² The SEA for the six Pensacola Blocks, including Block 889, also indicates that there is a 33 percent chance that an oil

Block 889 describes that an oil spill from Block 889 has a 38 percent chance of contacting Escambia County, Florida within 10 days. SEA at 9.⁵³

When assessing the adverse coastal effects of a proposed activity, I will consider the potential nature and magnitude of the effects in addition to the likelihood that those effects will occur.

Mobil's ER discusses potential adverse impacts of an oil spill. The ER notes that the severity of impacts resulting from an oil spill varies greatly, depending on the conditions of the spill. The ER also notes that although it is unlikely that a spill would occur during offshore operations, a large nearshore spill could have a tremendous impact on ecosystems and economics along the southern Alabama/northwest Florida coast. ER. at 136.⁵⁴ Mobil's ER discusses potential adverse coastal effects of a major oil spill as follows:

Inshore and Onshore Effects: Oil fouling in

spill would reach Escambia County within 10 days. SEA for Pensacola Blocks at 13.

⁵³ The SEA for Block 889 references the AEA but describes the Pensacola Block Area as being in Oil Spill Area 70. Also, the percentages listed are slightly different than those listed in the AEA and SEA for the Pensacola Blocks. Page 9 of the SEA for Block 889 states that the:

[c]oastal land segment 23 (Baldwin County in Alabama) would be [sic] have a 30 percent chance that an oil spill occurring in Oil Spill Area 70 would contact this area within 10 days. The percent chance that an oil spill occurring in Oil Spill Area 70 would contact Mobile County, Alabama in this time span is 4 percent; and Escambia County, Florida, 38 percent (USDOl, MMS, Final EIS 118/122).

Mobil's Site-Specific Oil Spill Contingency Plan (Contingency Plan) for the six Pensacola Blocks also indicates there is a 38 percent chance of an oil spill reaching segment 24 (Escambia County) within 10 days. Contingency Plan at 3-7. Because the SPOE is for the one additional well on Block 889, I will give greater weight to the percentages listed in the SEA for Block 889 to analyze the impacts of an oil spill on Florida's coastal resources.

⁵⁴ Any spill will be subjected to containment and cleanup efforts but recent efforts have only been partially successful . . . in open water and coastal habitats. ER at 136.

coastal or estuarine areas of the Gulf would directly or indirectly affect a variety of species, including threatened or endangered species or species important to commercial and sport fisheries. Direct effects on biota would include fouling (particularly birds), oxygen deprivation (particularly fishes and turtles), and toxicity from the ingestion of oil or contaminated food. These effects could be fatal, cause weakening, or cause greater susceptibility to predation. Indirect effects include destruction of or damage to habitat, especially breeding and nursery areas. Long-term impacts can include oil becoming grounded in relatively low energy coastal habitats where it can remain for years and continue to affect biota. Some particularly sensitive habitats found in northwestern Florida include tidal marshes and sheltered flats, oyster cultch areas, submerged aquatic vegetation beds, and fish and shellfish nursery areas. Larvae and eggs can be affected by toxic levels of oil dissolved in the water column as well as by loss of rearing habitat which protects larvae and juveniles from predation. Oil that reaches coastal marshes can be expected to have significant long-term effects. Animal populations could be severely effected for many years. Pollutants in marshes would result in reduced rates of transpiration, respiration, and photosynthesis. Seagrass ecosystems can also be severely impacted, including direct mortality due to smothering, fouling, and asphyxiation; poisoning from direct contact with oil; and absorption of toxic fractions from the water column. Barrier beaches will be a likely landing location if oil is spilled and comes ashore. These beaches provide summer nesting and feeding habitat for loggerhead sea turtles and various bird species.

ER at 132-136

The AEA also notes that oil reaching estuaries or marshes may have its most serious biological effects there. Estuarine organisms can be exposed to long periods of contamination because the vegetation traps and holds the contaminants. AEA at 55. Marsh vegetation is extremely sensitive to oil spills; subsequent cleanup operations are often difficult, if not impossible, to conduct without causing additional damage to the vegetation. The principal adverse impacts of spilled oil contacting seagrass beds and coastal marshes manifest themselves in the death or greatly reduced viability of the vegetation involved. Death of seagrass causes loss of habitat and biological productivity. The same is true for marsh destruction, but in addition, marsh loss results in soil erosion and land loss, which represents a permanent

adverse impact on coastal habitats. Id.⁵⁵

In its comments, MMS acknowledged that a major oil spill could produce significant impacts on the environmental resources of the area. MMS asserted, however, that factors such as the proposed project's distance from shore, the depth of 100 feet, the presence of dedicated onsite equipment, and the procedures outlined in the Oil Spill Contingency Plan would serve to effectively mitigate, to the extent feasible, a potential oil spill impact in the unlikely event one should occur. MMS Letter/Enclosure at 20.⁵⁶

This case is similar to the Chevron Destin Dome Decision. In that Decision, the exploratory well proposed by Chevron was also located off the northwest Florida coast and created a risk to similar coastal resources as in this case. The Secretary found that it was unlikely there would be significant adverse effects on the natural resources of the coastal zone caused by an oil spill from Chevron's proposed project. Chevron Destin Dome Decision at 19. As in Chevron Destin Dome, the evidence in the record in this case suggests that significant impacts could result if an oil spill were to occur during Mobil's exploratory drilling. However, similar to Chevron Destin Dome, because, in

⁵⁵ Although it does not specifically address Mobil's proposed activities, I note that the Ecological Characterization of the Florida Panhandle states that "[b]ecause the estuaries are spawning and nursery grounds for many species, an oil spill could cause serious damage to future commercial and noncommercial stocks." Ecological Characterization at 206. Direct contact with oil can cause mortality of seagrass beds. Id. at 225. Further, marshes are extremely sensitive and susceptible to oil pollution. Due to their location, they can be affected by oil residue spilled in the Gulf of Mexico and estuarine waters causing primary productivity to be severely reduced for months after a spill. Id. at 189. The Ecological Characterization describes that many larger pelagic species such as fish can avoid oil spills. However, oil spills pose a potential impact for sea turtles, especially juvenile turtles, through direct contact when they surface to breathe, or indirectly by affecting food sources. The effects of hydrocarbon ingestion by marine mammals is unknown. Id. at 235.

⁵⁶ Florida raised concerns that currently only limited scientific information is available regarding the effects of chemically dispersed oil on marine species. Florida's Objection Letter at 3. In its comments MMS cites a number of studies that have investigated the effects of chemically dispersed oil and found that its acute toxicity to be the same as that of untreated oil. MMS Letter/Enclosure at 21.

part, of the low probability of a major spill, the probability that adverse effects on coastal resources will occur at all is low.

Based on the administrative record, I find that although significant adverse impacts on the natural resources of Florida's coastal zone from an oil spill could result from Mobil's exploratory activities, it is unlikely such impacts will occur because (1) based on the statistical and historical record of oil spills occurring on the OCS, there is a low probability such a major oil spill would occur; (2) the record indicates the Pensacola Block area is a dry gas prospect, thus further decreasing the possibility oil will be encountered; (3) Mobil has demonstrated that it has implemented risk reducing mitigative measures to contain an oil spill should one occur; and (4) MMS indicated that factors such as the project's distance from shore, water depth, presence of dedicated onsite equipment, and procedures in the Oil Spill Contingency Plan serve to effectively mitigate impacts from a potential oil spill if one should occur. Further, I find that this case is similar to Chevron Destin Dome where the Secretary found that it is unlikely adverse impacts would result from an oil spill occurring from Chevron's proposed POE.⁵⁷

I find, therefore, that it is unlikely adverse impacts on the natural resources of Florida's coastal zone will result from an oil spill occurring from Mobil's exploratory activities.

(iv) Impacts to Coastal Uses

The administrative record identifies primarily two type of uses of Florida's coastal zone: commercial and recreational fishing; and recreation and tourism.⁵⁸

Commercial and Recreational Fishing

⁵⁷ I note that the Secretary issued the Chevron Destin Dome Decision one day after issuing the Mobil Pulley Ridge Decision. As in this case, the facts led the Secretary to render different findings under Ground I, Element Two of those decisions.

⁵⁸ The Pensacola Offshore Ocean Dredged Material Disposal Site (ODMDS) is located on Pensacola Lease Block 846. According to the AEA, the ODMDS is used for fine grain materials dredged during construction of a larger homeport facility for the U.S. Navy, and subsequently for material dredged from the Navy's channel, Pensacola harbor Ship Channel, or from private dredging operations. AEA at 127. The SEA for Block 889 states the "[d]rilling and ocean dumping of fine particulate material are considered mutually compatible by the USEPA." SEA at 27.

I find that there would be minimal adverse effects on fishing as a result of Mobil's activities under its SPOE.

According to the AEA, "[t]he Gulf of Mexico is the single most important area for fisheries production in the United States. AEA at 37. The offshore waters of Pensacola Bay, one of four large estuaries in northwest Florida, inshore from the lease area, support extensive commercial fisheries. Id. Commercial species important to the counties in the vicinity of the lease area include Atlantic croaker, drums, seatrouts, spot, gulf menhaden, Spanish sardine, thread herring, bluefish, mackerels, groupers, scamp red snapper and vermillion snapper. Different types of shellfish also occur, including blue crab, hard clams, oyster, shrimps, and stone crab. ER at 105. The entrance to Pensacola Bay is a popular summer sportfishing area for Spanish and King mackerel, bluefish, and cobia. Ecological Characterization at 232.⁵⁹

In the Panhandle, "a number of charter sport fishing boats, numerous private boats, and party boats . . . fish the nearshore marine waters during the warmer months." Ecological Characterization at 232. However, according to the Ecological Characterization, the majority of charter boats leave from Destin Harbor and Panama City, away from the Pensacola Lease site. Id. at 233. In 1988, commercial landings "in the eight coastal counties onshore of the lease area totaled 41,983,568 pounds valued at \$ 46,181,925 and comprised 36 of the 41% of Florida's total Gulf coast fishery catch weight and value, respectively (FDNR, 1989)." ER at 105.

Direct effects of operations in the lease area on commercial fishing are the removal of a limited area of seafloor from use and the temporary degradation of water quality at the immediate area of the drillsites. ER at 148. Degradation of water quality would adversely affect fishing, causing some species to avoid the immediate area of the drillsite. Id. These effects, however, are expected to be temporary and should not affect any fishery potential in the area as a whole, and populations should return to normal once drilling is completed. Id. Some larvae and eggs of certain species important to commercial and sport fishermen could be adversely affected in the immediate area of the drillsite, but such effects are not expected to exert a measurable influence on any fishery. Id. at 149.

An oil spill would affect adults and larvae of important species

⁵⁹ Mobil's ER and the Ecological Characterization describe in detail the distribution and productivity of these fish throughout the Florida Panhandle. ER at 108-122; Ecological Characterization at 231-234.

by damaging habitat, breeding, and nursery areas as well as causing mortality of both adults and larvae. Some fish may become tainted with oil, through ingestion or contact with oil, and thus become unmarketable. Contaminated areas would be avoided by both recreational and commercial fishermen for at least the duration of the spill due to fouling of boats and fishing gear, tainting and unpleasant odor. ER at 132. However, as indicated earlier, based on the administrative record I find that it is unlikely that adverse coastal impacts from an oil spill will result from Mobil's activities proposed in its SPOE.

According to the SEA, "[t]he major environmental consequences on commercial fishing would be from space use conflicts, temporary degradation of water quality, and gear conflicts. SEA at 24. However, [i]t is not expected that exploratory drilling activities by MEPUS at this one additional well site will have an adverse impact on any fisheries, since (1) the space precluded from use by the fishermen is small, and (2) the proposed operations will be short term (a maximum of 200 days)." Id.

The SEA confirms that commercial fisheries resources could be adversely affected by the discharge of drilling muds, as they contain materials toxic to marine fish and shellfish. However, the SEA points out that this is only at concentrations four or five orders of magnitude higher than those found more than a few meters from the discharge point. SEA at 24. Further, dilution is extremely rapid to the extent that every substance measure in the water column is at background levels at a distance of 2,000 meters from the discharge point. Id. at 24-25. Gear conflicts result in the loss of lines, net materials, traps, trawls, actual catch, business down time, and fishing vessel damage. Id. at 25. However, the proposed exploration activity represents a negligible impact to commercial fishing gear, time and catch. Id.

As I indicated in my earlier discussion of cumulative impacts, supra, the information in the administrative record indicates that there will be minimal cumulative adverse coastal effects resulting from Mobil's activity, because, in part, effects will be temporary and limited to the immediate vicinity of each of the seven exploratory well sites Mobil proposes to drill in its POE and SPOE. Therefore, I find that the record supports that there will be minimal adverse cumulative effects to Florida's coastal fisheries uses.

I find it significant the NMFS did not have any comments on the impact on fishing from Mobil's exploratory drilling activities proposed in its SPOE.

Recreation/Tourism

I find that there would be minimal adverse effects on recreation

and tourism as a result of Mobil's activities under its SPOE.

Approximately 81 miles of recreational saltwater beaches extend along northwest Florida's coastline from Escambia to Wakulla counties. AEA at 40. Boating and associated activities (i.e., sport fishing and scuba) are the primary recreational activities along the northwest coast of Florida. Id. at 40-41. According to the State, Bay and Escambia counties ranked third and fourth, respectively, in the top ten county destination of auto visitors for Florida in 1990. Florida's Response Brief at 45. A number of artificial reefs of recreational importance are located near the lease area, composed of materials such as bridge rubble, old automobiles, tires, ships, barges, and dismantled oil/gas platforms. ER at 122. Although the locations of the artificial reefs in and around the Pensacola Blocks "would not be known by recreational fishermen they would help maintain local fish populations and might act as source areas for the permitted artificial reefs." Id.

The presence of the drilling unit is expected to attract a variety of benthic and pelagic fishes, thus resulting in increased recreational fishing in the vicinity of the drilling unit. ER at 149. This effect will be temporary and no other impacts on recreation or tourism are anticipated. Id. Further, the SEA states that "[d]ue to the distance offshore and the temporary nature of the proposed activities, impacts to aesthetic and recreational resources in the coastal area would be insignificant." SEA at 25. Thus, the record indicates that there will be minimal adverse effects on recreational uses of the coastal zone. Further, similar to commercial fishing, the record also supports that there will be minimal cumulative adverse effects on recreational uses of Florida's coastal zone.

Oil reaching saltwater beaches can adversely impact recreational use at or near these areas. However, based on the administrative record, I find that it is unlikely that adverse coastal impacts from an oil spill will result from Mobil's activities proposed in its SPOE.

(v) Conclusion on Adverse Effects

I have evaluated the information in the record on adverse effects of Mobil's proposed SPOE on the natural resources and land and water uses of Florida coastal zone. I find that the exploration will have minimal adverse effects on the resources and uses of Florida's coastal zone, when conducted by itself or when its cumulative effects are considered. Further, I find that it is unlikely adverse impacts on the resources and uses of Florida's coastal zone will result from an oil spill occurring from Mobil's exploratory activities.

b. Contribution to the National Interest

I find that the additional well proposed in Mobil's SPOE will contribute to the national interest in energy self-sufficiency through oil and gas production.

The national interests to be balanced in Element Two are limited to those recognized in or defined by the objectives and purposes of the CZMA. See Korea Drilling Decision at 16. Because our national interests are not static, however, the Secretary has noted that there are several ways to determine the national interest in a proposed project, including seeking the views of Federal agencies, examining Federal laws and policy statements from the President and Federal agencies, and reviewing plans, reports and studies issued by the Federal agencies. See Unocal Pulley Ridge Decision at 15.

Mobil contends that in light of the strong Federal policy to promote the expeditious exploration of this Nation's offshore oil and gas resources, the Secretary should find that Mobil's plan contributes significantly to the national interest. Mobil asserts that the Pensacola Blocks "could contain more than 900 billion cubic feet of natural gas." Mobil's Statement at 15.

Florida asserts that Mobil cannot state with certainty whether any hydrocarbons will be found in the Pensacola Blocks, and that even if Mobil's estimates are correct, the amount of hydrocarbons found would not be a significant contribution to the national interest. Florida's Response Brief at 53.

Energy self-sufficiency through oil and gas production is a recognized goal of the CZMA (section 302(j)). Moreover, of those Federal agencies that commented on the issue of the national interest in Mobil's proposed activity, most expressed support for domestic energy production.

The Department of Energy (DOE) observed that the importance of exploring and producing energy sources has been fully examined in the Administration's National Energy Strategy (NES), released in 1991. Letter from James G. Randolph, Assistant Secretary for Fossil Energy, DOE to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, December 1, 1992. In its comments DOE stated:

Mobil believes that the lease blocks at issue in this appeal could contain more than 900 billion cubic feet of natural gas . . . The addition of such a potential major contribution to the Nation's domestic energy supply is critical to national security.⁶⁰

⁶⁰ DOE also stated that the NES "recognizes natural gas as a practicable alternative to oil in a number of applications, and

The DOI and the MMS stated that if this exploration did result in a natural gas discovery and production, significant benefits could result. The DOI observed that:

Should this exploration result in a natural gas discovery and production, significant benefits could result . . . The discovery of a local source of gas may encourage substitution as well as benefit consumers in this region through reduced transportation costs . . . Additionally, substitution of natural gas for coal or oil combustion will contribute to resolution of national air quality concerns . . . To the extent that demand for gas displaces demand for imported oil, the undesirable consequences of oil import dependency would be reduced.

Letter from David C. O'Neal, Assistant Secretary, Land and Minerals Management, DOI to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, November 5, 1992, Enclosure 2 at p. 7.

The National Security Council, Department of Defense and Department of Treasury generally agree that it is in the national interest to explore for OCS oil and gas reserves.⁶¹ Recognizing that prior to exploration the amount of oil and gas reserves is uncertain, previous Secretaries have found that exploratory drilling furthers "the national interest in attaining energy self-sufficiency by ascertaining information concerning the oil and gas reserves available for production."⁶²

urges that its use be substantially increased." Id. Greater use of natural gas can "help lessen the Nation's reliance on foreign oil, reduce the Nation's trade deficit, boost the U.S. gross national product, and as a result of these, strengthen our national security interests." Id.

⁶¹ Letter from William F. Sittman, Executive Secretary, National Security Council, to Carole A. Trimble, Chief of Staff and Counsellor to the Secretary, Department of Commerce, October 6, 1992; Letter from Diane K. Morales, Deputy Assistant Secretary, Department of Defense, to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, Department of Commerce, November 10, 1992; Letter from Maynard S. Comiez, Director, Office of Policy Analysis, Department of the Treasury, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, October 6, 1992.

⁶² See Mobil Pulley Ridge Decision at 33; Texaco Decision at 30-31; Amoco Decision at 45.

Comments from Federal agencies support that Mobil's proposed exploratory activities will help further the national interest. Consequently, based on the administrative record, I find that Mobil's proposed activity in general furthers the national interest in energy self-sufficiency through oil and gas production.⁶³

c. Balancing

I find that the information in the record supports a finding that the national interest benefits of Mobil's SPOE outweigh the proposed activity's adverse effects on the State's coastal resources and uses.

As regards this element of Ground I, I must be convinced by a preponderance of the evidence that Mobil's proposed SPOE will not cause adverse effects on the natural resources and uses of Florida's coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh the proposed SPOE's contribution to the national interest. See 15 C.F.R. § 930.121(b); Mobil Pulley Ridge Decision at 33-34. I have evaluated the information in the record on adverse effects of Mobil's proposed SPOE on the natural resources and land and water uses of Florida's coastal zone. I found that the exploration will have minimal adverse effects on the resources and uses of Florida's coastal zone, when conducted separately or when its cumulative effects are considered. Further, I found that it is unlikely adverse coastal impacts will result from an oil spill occurring from Mobil's exploratory activities.

I have evaluated the information in the administrative record on the contribution of the proposed activity to the national interest. I found that the proposed one-well exploration plan will contribute generally to the national interest.

⁶³ I note that Mobil's well is proposed as part of an overall plan to drill seven wells on the Pensacola Blocks. Therefore, while I find that the drilling of the one well proposed in Mobil's SPOE furthers the national interest in energy self-sufficiency, I disagree with Mobil's statement that the activity "contributes significantly to the national interest." Mobil's Statement at 12. The fact that the exploratory well proposed in Mobil's SPOE will be drilled first may have some significance because it could have a direct bearing on the sequence of the additional six wells proposed by Mobil in its SPOE, and ultimately on the chances for discovering natural gas. However, I am unable to give much weight to the significance, if any, of Mobil's drilling schedule in the absence of other information in the administrative record regarding why Mobil proposed the additional well in its SPOE.

In examining the proposed activity, I note that NMFS and FWS did not express significant concerns regarding the impacts of Mobil's proposed SPOE.⁶⁴

Consequently, I find that Mobil's SPOE's contribution to the national interest outweighs the proposed activity's adverse effects on the State's coastal resources and uses.

Accordingly, I find that Mobil's proposed SPOE satisfies Element Two of Ground I.

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

I conclude that the project meets the requirements of the Clean Water Act and the Clean Air Act, and therefore satisfies Element 3 of Ground I.

The third element of Ground I is 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 (CAA) and Federal Water Pollution Control Act (CWA) are incorporated in all State coastal programs approved under the CZMA. 16 U.S.C. § 1456(f).

Federal Water Pollution Control Act (Clean Water Act)

Sections 301(a) and 402 of the Clean Water Act (CWA) provide that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA. Mobil's exploratory drilling in Block 889 is covered under NPDES general permit GMG 289646. Letter of W. Ray Cunningham, Director, Water Management Division, EPA, to F.R. Seal, Jr., Mobil (Mobil's Exhibit 22), dated June 5, 1991.

The EPA commented that the proposed activities will not be in violation of the CWA if Mobil complies with the condition of EPA's permit. *Id.* Also, Mobil states that all discharges associated with the drilling of the proposed wells will be in strict adherence with the provisions of the EPA NPDES General Permit. Mobil's SPOE at 6; Mobil's Exhibit 6.

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

⁶⁴ I also note that State had previously concurred to Mobil's POE to drill six wells on the Pensacola Blocks.

Clean Air Act

Sections 108 and 109 of the CAA, 42 U.S.C. §§ 7408 and 7409, direct the Administrator of the Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) for air pollutants to protect the public health and welfare. Section 110 of the CAA, 42 U.S.C. § 7410, requires each state to develop and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state. With some exceptions, EPA has the responsibility for regulating emissions from OCS sources.⁶⁵

Florida asserts that the quantities of emissions of air pollutants appear to be significantly underestimated in Mobil's POE and ER, particularly in the case of sulfur dioxide emissions. Nor did Mobil consider hydrogen sulfide from either natural gas or liquid hydrocarbon sources. Florida's Response Brief at 55. Additionally, Florida asserts that "air dispersion modeling of sulfur dioxide emissions from Mobil's POE was performed using EPA's SCREEN model," and that such emission levels from an uncontrolled flare from an individual well could violate the NAAQS and exceed the Prevention of Significant Deterioration (PSD) requirements of the CAA. Florida's Final Brief at 26-27.⁶⁶ Florida further argues that nitrogen oxide compounds from Mobil's drilling operations could result in enhanced nitrification of onshore surface waters under certain meteorological conditions. Id. at 28.⁶⁷

⁶⁵ Congress transferred this responsibility to EPA from the Department of the Interior by the passage of § 328 of the CAA, as amended by Public Law 101-549 (Clean Air Act Amendments of 1990), enacted on November 15, 1990. The Department of the Interior retains authority on the OCS adjacent to Texas, Louisiana, Mississippi, Alabama and a small part of Florida (in the Gulf of Mexico, west of 87.5 degrees longitude). 56 Fed. Reg. 637774 et seq. (December 5, 1991).

⁶⁶ As I discussed earlier in this decision, the activity which is the subject of this appeal is the additional well proposed in Mobil's SPOE. Florida references the initial POE which is relevant only insofar as the analysis of environmental impacts in the AEA and ER pertain to the emissions of the seventh well proposed in the SPOE.

⁶⁷ It is true, as Florida asserts, that "[i]dentified emission sources are only from diesel engines and do not consider hydrogen sulfide . . . from either natural gas or liquid hydrocarbon sources." However, Florida also acknowledges that Mobil proposes to flare any hydrogen sulfide encountered during well testing, Florida's Response Brief at 55, and that Mobil is

The ER lists the projected emissions for operations at the Pensacola Block drillsites. The SEA for Block 889, referencing the ER, states that the total emissions expected from the proposed activities would be well below the calculated exemption levels, qualifying these activities for exemption from further air quality review. SEA at 27.⁶⁸

I accord considerable weight to the EPA's comments that based on the available information the activities associated with Mobil's proposed exploratory drilling do not indicate that there would be a violation of the CAA.⁶⁹

Consequently, I find that the record does not contain any evidence to suggest that Mobil's proposed SPOE will violate the Clean Air Act.

4. Element Four: No Reasonable, Available Alternative

I find that there is no reasonable alternative available to Mobil's proposed SPOE which would permit the activity to be

required to use the three-stage control which removes 99.8% of sulfur dioxide from any recovered sour gas. Florida's Final Brief at 27. There is no evidence in the record indicating that the types of events Florida describes, such as an uncontrolled flare, are likely to occur. Nor does EPA, in its comments, express any concern over such an event occurring.

⁶⁸ Additionally, the AEA, at page 72, explains that:

The major predictable source of air pollutants associated with exploratory activities originates from the stationary combustion diesel engines which provide the power for the drilling rig. Nitrogen oxides would be the predominant pollutant. Other pollutants . . . would be a much lesser amount . . . In a worse case scenario, continuous drilling for 365 days each year, the emissions of [nitrogen oxide] would amount to 217 tons . . . No significant degradation of the ambient air quality is expected because of the normal mixing and dissipation due to climactic conditions.

⁶⁹ Letter from Richard E. Sanderson, Director, Office of Fed, EPA, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, DOC, December 23, 1992.

conducted in a manner consistent with Florida's CMP.

The fourth element of Ground I determines whether "[t]here is no reasonable alternative available . . . which would permit the activity to be conducted in a manner consistent with the [State's coastal] management program." 15 C.F.R. § 930.121(d).

Florida offers only one possible alternative to Mobil's SPOE; to delay the exploration until adequate information is gathered and assessed. Florida's Objection Letter at 7. In the recent Unocal Pulley Ridge Decision, the Secretary rejected this argument, finding that this alternative would not allow the proposed activity to be conducted in a manner consistent with the State's CMP. Unocal Pulley Ridge Decision at 35. Florida relies on the Secretary's statement in the Unocal Pulley Ridge Decision that "there is at best only a possibility that the studies will demonstrate that Union's proposed POE complies with Florida's CMP." Florida's Final Brief at 29, citing Unocal Pulley Ridge Decision at 35. Florida argues that it is this possibility that Florida wants resolved before pursuing activities that may cause irreversible damage to Florida's coastal resources.

I am not persuaded by Florida's argument. That new information may or may not allow Florida to make a determination that Mobil's activity is consistent with Florida's CMP is insufficient to meet the regulatory requirements of 15 C.F.R. § 930.64(b)(2), which require the state, at the time it objects to the consistency certification for a proposed activity, to describe any existing alternatives that would allow the project to be conducted in a manner consistent with the state coastal management program. As the Secretary explained in the Unocal Pulley Ridge Decision, "whether the completion of these studies represents an alternative which would allow Union's activity to be conducted in a manner consistent with the State's CMP is at best speculation." Unocal Pulley Ridge Decision at 35. The purpose behind requiring the State to initially identify its proposed alternative as consistent with its CMP is to present the applicant, following a State's objection, with three realistic options: to either adopt the alternative, abandon the project, or file an appeal. Korea Drilling Decision at 23. Here, there is no incentive for Mobil to pursue the first option of adopting Florida's proposed alternative if it may ultimately prove to be inconsistent with the State's CMP. Moreover, collecting additional information is not an alternative way for Mobil to conduct its activity.

Accordingly, I find that there is no reasonable alternative available to Mobil's proposed SPOE which would permit the activity to be conducted in a manner consistent with Florida's CMP, and therefore, Mobil's proposed SPOE satisfies Element Four of Ground I.

Conclusion for Ground I

Based on the findings above, I find that Mobil has satisfied all four elements of Ground I. Therefore, the activities described in detail in Mobil's proposed SPOE are consistent with the objectives or purposes of the CZMA.

Ground II: Necessary in the Interest of National Security

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

The second statutory ground for an override of a State's objection to a proposed activity is based on a finding that an activity is necessary in the interest of national security. To make this determination I must find that "a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. § 930.122.⁷⁰

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

The DOD responded by stating that:

⁷⁰ Mobil requests the Secretary to reconsider the approach of requiring a specific linkage between a particular project and a "significant impairment" of national security, and requests the Secretary to "give due recognition to the continuing, marked decline in overall domestic drilling and energy production as a 'significant impairment' of national security." Id.

However, the regulations at 15 C.F.R. § 930.122 require the Secretary to review whether national security would be significantly impaired if the activity were not permitted to proceed "as proposed". This requirement is clear that there must be a specific link between a particular project and a significant impairment of national security if the project is not allowed to proceed as proposed. Mobil does not offer any persuasive reason for reading this requirement more broadly. Nor do previous appeals suggest any other interpretation. However, a decline in domestic production may increase the significance of an individual project to the national security. This determination will depend on the facts of each individual case.

DOD encourages the development of secure petroleum resources which reduce U.S. energy dependence on foreign sources of supply, as long as they are consistent with requirements and other applicable environmental rules and regulations. DOD supports the exploration and development of the outer continental shelf, so long as such activities do not conflict with military requirements for navigation and flight operations, such as those conducted from Naval Air Station Pensacola and Eglin Air Force Base, Florida.⁷¹

The DOE asserted:

Mobil believes that the lease blocks at issue in this appeal could contain more than 900 billion cubic feet of natural gas. In addition, further explorations in the area off Pensacola will add significantly to the knowledge of the extent of recoverable hydrocarbon reserves known to exist in the area. Chevron, which has conducted exploratory drilling in the same area, has stated that it believes industry has already discovered 10-12 trillion cubic feet of natural gas in the Norphlet Trend. Mobil's leases lie above this same trend. The addition of such a potential major contribution to the Nation's domestic energy supply is critical to national security.⁷²

DOE further states:

Greater use of natural gas, an abundant domestic resource, can help lessen the Nation's reliance on foreign oil, reduce the Nation's trade deficit, boost the U.S. gross national product, and as a result of these, strengthen our national security and economic interests.

Id. The MMS stated:

Denial of a DOC override of the State's consistency determination could well, in the extant case, deprive

⁷¹ Letter from Diane K. Morales, Deputy Assistant Secretary, (Logistics), Department of Defense, to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, November, 10, 1992.

⁷² Letter form James G. Randolph, Assistant Secretary for Fossil Fuel, Department of Energy to Mary O'Donnell, Attorney-Adviser, Office of Assistant General Counsel for Ocean Services, NOAA, December 1, 1992.

this Nation of a secure and environmentally sound source of natural gas from the Norphlet Trend offshore Florida. These energy resources represent a major step in the direction of domestic energy security. As the events in the Persian Gulf indicated, this Nation's domestic energy security, or rather the present lack thereof, significantly compromises national defense and national security.

MMS Letter/Enclosure at 29. Additional comments submitted by the Department of Treasury, National Security Council, and the Federal Energy Regulatory Commission also agree that it is in the national interest to increase the domestic supply of oil and gas resources, where such production is economically sound and environmentally responsible.

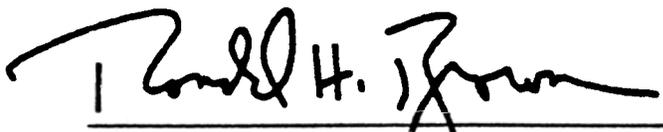
Despite the comments, I am unpersuaded that a national defense or other national security interest would be significantly impaired if Mobil were not permitted to conduct the exploratory drilling of one well on Pensacola Block 889, as proposed. Denial of Mobil's proposed SPOE will not foreclose exploration of the Norphlet Trend. As indicated in DOE's comments, Chevron has already conducted exploratory drilling on the Norphlet Trend. Moreover, Mobil has an approved POE to explore six sites in the Pensacola Lease Block Area.

Conclusion for Ground II

The comments in the administrative record fail to persuade me that a national defense or other national security interest will be significantly impaired if Mobil were not permitted to explore Pensacola Block 889 as proposed in its SPOE. Therefore, based on the record before me, I now find that the requirements for Ground II have not been met.

V. CONCLUSION

I have found that Mobil's SPOE is consistent with the objectives or purposes of the CZMA. Accordingly, I override Florida's objection to Mobil's SPOE.



Ronald H. Brown
Secretary of Commerce

JUN 20 1995