DECISION AND FINDINGS

IN THE

CONSISTENCY APPEAL OF

TEXACO, INC.

FROM AN

OBJECTION BY THE

CALIFORNIA COASTAL COMMISSION

MAY 19, 1989

SYNOPSIS OF DECISION

After a successful bid in Lease Sale 80, Texaco, Inc., with B.P. Alaska Exploration Company and Sun Exploration Company acquired full working interest in Lease 0512. Lease 0512 is located offshore of Santa Barbara County, California and adjacent to state waters. This location is at the western end of the Santa Barbara Channel, approximately three miles west-southwest of Point Conception. Texaco is the designated operator of the lease.

Texaco applied to the U.S. Environmental Protection Agency (EPA) for an individual National Pollutant Discharge Elimination System (NPDES) permit to discharge drill muds, cuttings and other associated discharges from Lease 0512. EPA issued an individual NPDES permit to Texaco subject to consistency concurrence by the California Coastal Commission (Commission). Texaco next submitted its proposed Plan of Exploration (POE) to the Minerals Management Service (MMS) of the Department of the Interior (DOI). The POE proposed drilling up to eight exploratory oil and gas wells at a rate of three wells per year. The wells would be drilled one at a time, and the drilling duration would be approximately three months per well.

The Commission received the consistency certifications for the proposed POE and the individual NPDES permit in September, 1987. On February 23, 1988, the Commission objected to Texaco's consistency certifications for the proposed POE and to the individual NPDES permit. The Commission found the proposed POE inconsistent with the California Coastal Management Program (CCMP) policies on protection against oil spills, commercial fishing, vessel traffic safety, protection of marine resources and cumulative impacts. Although the Commission found the individual NPDES permit consistent with the CCMP policies, it objected because that permit was "inextricably linked" to the proposed POE.

Under section 307(c)(3)(B) of the CZMA and 15 C.F.R. § 930.81, a consistency objection precludes Federal agencies from issuing any permit or license necessary for Texaco's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that the objected-to activity may be Federally approved because it is consistent with the objectives or purposes of the CZMA (Ground I) or otherwise necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must sustain the appeal.

Texaco filed a Notice of Appeal, Supporting Brief and exhibits with the Secretary pursuant to subsections 307(c)(3)(A) and (B) of the Coastal Zone Management Act (CZMA), 16 U.S.C. § 1456(c)(3)(A) and (B) and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. Texaco

appealed under Grounds I and II. During the course of the appeal, Texaco raised the threshold issue of whether the Commission could object to the individual NPDES permit on the ground that it is "inextricably linked" to the objected-to POE.

Upon consideration of the information submitted by Texaco, the Commission, and interested Federal agencies, as well as other information in the administrative record of the appeal, the following findings were made. For the threshold issue, it was determined that the objection to the individual NPDES permit was not valid because the objection did not describe how that permit was inconsistent with the policies of the CCMP as required by 15 C.F.R. §§ 930.64(b) and 930.79(c). The findings made on Grounds I and II are:

Ground I

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

(b) The proposed project will not cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest.

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

(d) There is no reasonable alternative available to Texaco that would permit its proposed project to be carried out in a manner consistent with the California Coastal Management Program.

Ground II

Because of the finding that Texaco has satisfied the first of the two alternative grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection, it is not necessary to address Ground II.

Conclusion

Because Texaco's proposed project has satisfied the requirements of Ground I, the proposed project may be permitted by Federal agencies.

Factual Background

On October 17, 1984, Texaco, Inc. with B. P. Alaska Exploration Company and Sun Exploration Company acquired full working interest in Lease Tract 82W-54N, Lease 0512 (Lease 0512) after a successful bid in Lease Sale 80. Texaco's Notice of Appeal Brief, March 22, 1988, at 2 (Tx. Ap. Br.). Although a portion of the working interest has been assigned to Nippon Offshore California Oil Company, Texaco is the designated operator of the lease. Id. Lease 0512 is located offshore of Santa Barbara County, California and adjacent to state waters. This location is at the western end of Santa Barbara Channel, approximately three miles west-southwest of Point Conception. See Figure 1. The lease expires November 30, 1989. Letter from J. Lisle Reed, Regional Director, Pacific OCS Region, Minerals Management Service, to Katherine A. Pease, Assistant General Counsel, NOAA, June 9, 1988, enclosure at 1 (MMS Letter/Enclosure).

The California Coastal Commission (Commission) objected to Lease Sale 80 in its entirety. 1/ The Commission asserted the need for further analysis to determine the most environmentally protective method of oil transportation. It also based its objection on the cumulative effects of offshore operations on commercial fishing, vessel traffic safety, air and water quality and other coastal resources. Adopted Findings on Consistency Certification, February 26, 1988, at 9 (Adopted Findings). Due to the decision in Secretary of the Interior v. California, 464 U.S. 312 (1984) which held that Federal oil and gas lease sales on the outer continental shelf (OCS) are not subject to state consistency review under section 307 of the Coastal Zone Management Act (CZMA), the lease sale proceeded despite the Commission's objection. Id.

Texaco applied to the U.S. Environmental Protection Agency (EPA) for an individual National Pollutant Discharge Elimination System (NPDES) permit to discharge drill muds, cuttings and other associated discharges from Lease 0512 in 1986. On April 24, 1987, EPA notified Texaco of the issuance of Permit No. CA0110745 subject to consistency concurrence by the Commission.

In 1987, Texaco submitted its proposed Plan of Exploration (POE) to the Minerals Management Service (MMS) of the Department of the Interior (DOI). MMS declared the proposed POE "officially submitted" on September 16, 1987, and on September 21, 1987, the Commission received the consistency certifications for the proposed POE and the individual NPDES permit. Tx. Ap. Br. at 2; Response Brief of the California Coastal Commission, May 5, 1988, at 2 (CCC Resp. Br.).

REGIONAL MAP

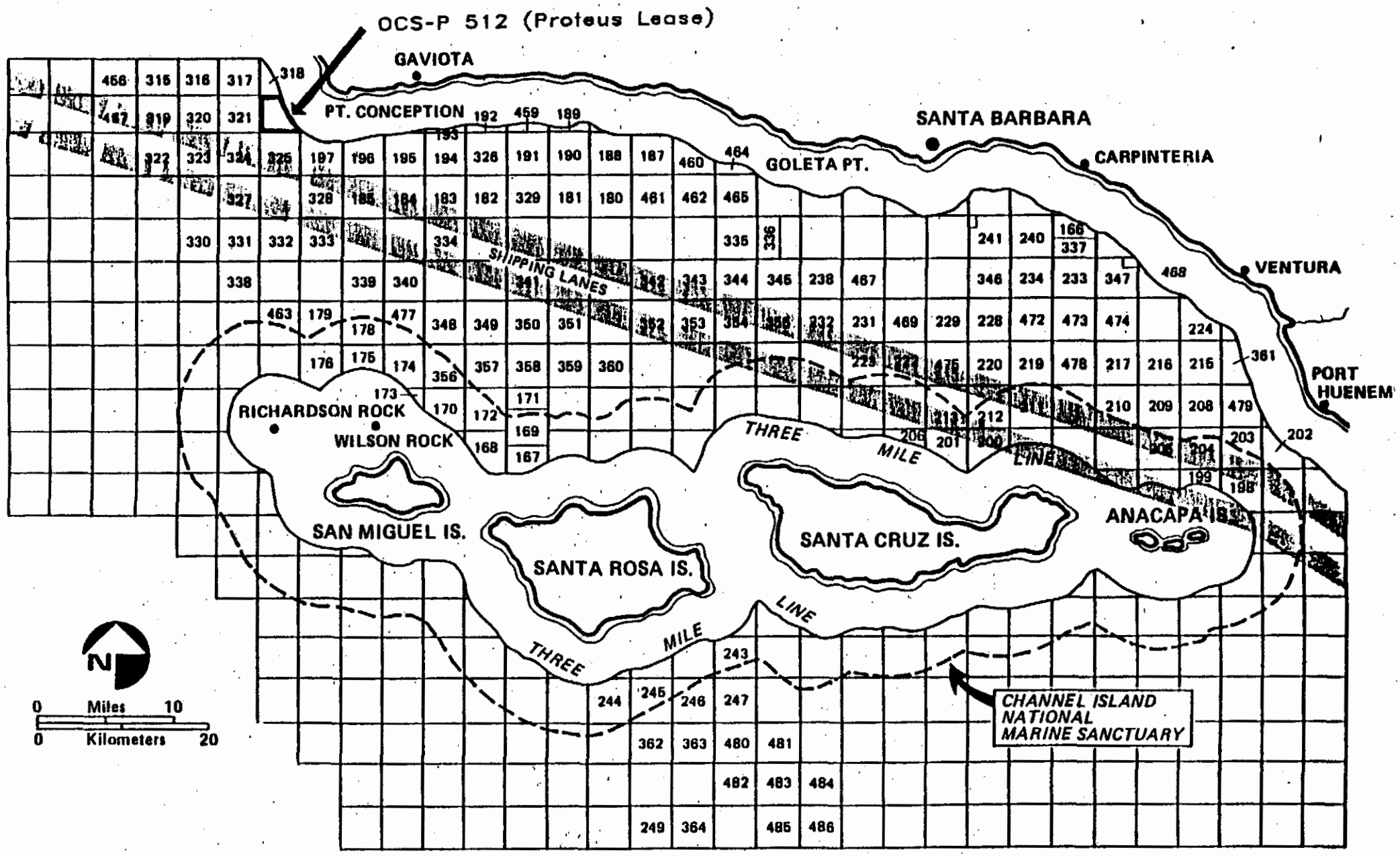


FIGURE 1

The POE proposed drilling up to eight exploratory oil and gas wells at a rate of three wells per year over a two and one-half year time period. The wells would be drilled one at a time from a semi-submersible drilling vessel held in place by eight 30,000 pound anchors. The drilling depths would be approximately one to two miles in water depths of 310 to 525 feet. Texaco estimated a drilling duration of two and one-half to three months per well. Adopted Findings at 1, 8; Tx. Ap. Br. at 2.

On February 23, 1988, the Commission objected to Texaco's consistency certification for the proposed POE by a vote of 7 to 3 and objected to the individual NPDES permit by a vote of 5 to 3. Three days later the Commission adopted written findings to support the two objections. Tx. Ap. Br. at 2-3. The Commission found the proposed POE inconsistent with the California Coastal Management Program (CCMP) policies on protection against oil spills, commercial fishing, vessel traffic safety, protection of marine resources and cumulative impacts. Adopted Findings at 4. Concerning the individual NPDES permit, the Commission found it to be consistent with the CCMP policies based on the provisions of the permit and the additional mitigation measures agreed to by Texaco. The Commission, however, objected to the individual NPDES permit because it was "inextricably linked" to the proposed POE already objected to by the Commission. The Commission further noted that it could not assume that the objected-to project would be in the proposed location. Thus, the site-specific analysis of water quality impacts by the Commission would not necessarily be applicable. Because of the uncertainty of the proposed project's location now that the Commission had objected to it, the Commission could not determine whether the discharge of muds and cuttings would be consistent with the CCMP. Adopted Findings at 44-45.

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

Appeal to the Secretary of Commerce 2/

On March 23, 1988, Texaco filed a Notice of Appeal, Supporting Brief and exhibits with the Secretary pursuant to subsections 307(c)(3)(A) and (B) of the CZMA, 16 U.S.C. § 1456(c)(3)(A) and (B). Texaco requests that the Secretary find its proposed POE and individual NPDES permit consistent with the objectives or purposes of the CZMA (Ground I) or otherwise necessary in the interest of national security (Ground II). Tx. Ap. Br. at 1. The parties to the appeal are Texaco, Inc. and the California

Coastal Commission. By memorandum dated May 19, 1989, the Secretary delegated to the Under Secretary for Oceans and Atmosphere the authority to decide this appeal.

The Commission filed a response brief on May 6, 1988, and both Texaco and the Commission filed briefs on October 8, 1988. No public hearing was requested or held.

The Department of Commerce (Department) published a notice of appeal and request for comments in the Federal Register (53 Fed. Reg. 16893-94, May 12, 1988). On June 8, 9, 10, 1988, the Department published a notice requesting comments in Santa Barbara News - Press, a newspaper of general circulation in Santa Barbara County. Sixty-four persons wrote in support of Texaco's proposed project. 3/ The Department received no public comments opposing the proposed project.

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

Threshold Issues

Texaco raises several procedural issues regarding the Commission's treatment of the individual NPDES permit. Although the Commission concluded that the individual NPDES permit was consistent with the CCMP policies based on the provisions of the permit and the additional, agreed-upon mitigation measures, it objected to the individual NPDES permit on the ground that it is "inextricably linked" to the objected-to POE. Adopted Findings at 6, 44-45.

Texaco asserts that the Commission did not complete its consistency review within the six-month time period established by section 307(c)(3)(A) and (B) of the CZMA. Texaco's calculations are based on a commencement date of May 27, 1987. Texaco apparently selects this date based on a provision of the permit which states that it becomes effective "on May 27, 1987, or on such date, whichever is later, when the discharger provides EPA with a certificate, concurred with by the California Coastal Commission, that the activity is consistent with the approved State Coastal Zone Management Plan." (emphasis added). Tx. POE at Appendix H.

GENERAL RECORDING INFO. 160 min recording time, 20 min break on each 40 min. of recording time. We can record no longer than 60 min til break. BREAKS will be in WATTIS with tea,coffee,fruit. Be tidy plz.
Please be personally responsible for length of breaks. Be efficient in moving to and fro. To cross please use stage or immediately behind risers on stage to cross, or in back of guard's desk.

DOORS ARE CLOSED DURING RECORDING -NO ONE ALLOWED IN - The sound booth is the green room. This area is for technicians, HB,and me.It is full of equipment,hot,and crowded. Sorry. Wish could hear it. I will communicate through Maestro or come to stage to speak to you.

The following singers please use text tonight rather than hum in those places that were designated as humming

S. Casey, T.Ding, C. Fidlar, C. Patton, J. Fanucci, L.Miller, B. Tozier.

BARITONES FOCUS, THINK COLOR,QUALITY,HEIGHT OF VOWEL,
DO NOT OVER SING
YOU MAY OVER EAT DO NOT OVER SING
The following singers 430, 423, 422, 411, 407 be especially careful.

BASSES - 2nd's that is-think high color, SING ON THE TOP SIDE OF THE PITCH, USE BRIGHT QUALITY, DO NOT SETTLE INTO THE WOOFFINESS OF THE WHIFFENPOOFS. THINK TENOR QUALITY. Give space in the top for ease in the passaggio. Especially 454,460,464,466, 467,468,469,470,B02, 474.

LANGUAGE REFINEMENT-SCHWA VOWEL HAS BEEN "UH" AS IN MENSCHUN
TRY MENTION. IT BRINGS THE VOWEL FORWARD TO A BETTER PLACE. FURCH-TUH TO FURCH-TIH GOT-TUHR TO GOT-TIR. Well a person never stops trying, right? It is more like an Ih vowel than a gross UH.

Nanie, p. 21.....
bass and baritone please add the following marking.....
BASS 2 HUMMING, BARITONES singing text.....
In bar 163 sing straight tone, crescendo beats 5and 6, warm up 164 with vibrato and decrescendo and shape 4-5-6with articulation. Listen to alto - tenor as well as add this subtlety to your part. Thanks.

Have a great one. Are we having fun yet? Are we there yet, Dad. "Yep, close". I have very positive feelings about this recording. Judging from what has gone before us on disc. this is going to be the best!

San Francisco Syomphoy Chorus Notes
Good Evening Singers: This is it. Read on.
5 PM ---------- MAY 3-----TUESDAY----DAY 1 RECORDING-------

PROCEED DIRECTLY PAST GUARD'S DESK TO THE WATTIS ROOM. USE WATTIS ROOM FOR LINE UP, READING NOTES, LEAVING BAGS ETC. USE BATHROOMS in the Davies Hall lobby - through the back right door.
Upon arrival go directly to the Wattis Room to the spot that corresponds to your stage placement. There will not be enough chairs for everyone. ROW 1 IN FRONT OF PAINTINGS, ROW 7 NEAREST THE BAR AND TAPESTRY. Row 7 is the terrace row.

5:25----------PROCEED TO STAGE--------- AS PER SEATING CHART. Access stage from Wattis."Fiddle alley"off limits til further notice. TAKE ONLY WHAT YOU NEED FOR THE RECORDING TO THE STAGE. YOU MAY LEAVE "STUFF".Leave anything that rattles like jewelryetc. in Wattis Room. WE RECORD NANIE AND SCHICKSALSLIED TONIGHT IN THAT ORDER. WEDNESDAY WE RECORD GESANG AND ALLADIN IN THAT ORDER.

5:30----------WARMUP ON STAGE----15MIN----------
ORCHESTRA IS WARMING UP BEFORE AND AFTER US. IF YOU NEED TO LEAVE STAGE AFTER WARMUP YOU MAY. MOST OF YOU WILL STAY SINCETHERE IS NOT TIME TO EXIT AND RETURN BEFORE RECORDING BEGINS.
DURING THIS 15 MIN. EACH BENCH DECIDE WHO WILL CHECK THE BENCHBEFORE EACH TAKE. NO SCRAPES, FALLS AND ACCIDENTS PLEASE.

SILENCE - IMPORTANT AND PRAPS MORE DIFFICULT THAN SOUND.
SOFT PLACES:page turns,Beepers, coughs,scrapes,Orchestral intros.,interludes and postludes! Take a valium...JUST JOKING.

Our 15 min on stage is to adjust to the new positions and neighbors on stage. We've pulled everyone forward and cut the chorus to 160 to accomodate. Sing yourself in carefully, listening etc. When we've sung a bit on stage your'e ready to record.....

REALLY GIVE FOR EACH TAKE
C O N C E N T R A T I O N
M E A N I N G
T O N E Q U A L I T Y
C O L O R
PHRASE SHAPES
RHYTHMIC ACCENT
LANGUAGE INFLECTION

Use 100 percent enthusiasm for each take but pace the voice. Use only 95 percent of the voice. Maintain the QUALITY, COLOR, WARMTH, of the TONE,SHAPING LANGUAGE AND PHRASE. WE'RE DOING THIS IS FOR THE WORLD TONIGHT. It is like the difference between playing in a live theater and shooting a movie. THE MICROPHONE IS ON YOU, UP CLOSE. NEVER SING LOUDER
B E A U T I F U L

State Coastal Zone Management Plan." (emphasis added). Tx. POE at Appendix H.

It is the responsibility of the permit applicant to provide a consistency certification to the State agency responsible for consistency review. See 15 C.F.R. § 930.57. Based on the record before me, the Commission did not receive the consistency certification for the individual NPDES permit until September 21, 1987. Adopted Findings at 1; CCC Resp. Br. at 2. The Commission objected to the consistency certification for the individual NPDES permit on February 23, 1988. Adopted Findings at 1. The objection occurred well within the six-month statutory time period, and, thus is timely.

Texaco also questions whether the Commission can validly object to a consistency certification if it finds that the proposed activity is consistent with California Federally-approved coastal management program. As has been determined in two pending appeals, 4/ such an objection would be invalid.

To constitute a valid objection, 15 C.F.R. §§ 930.64(b) and 930.79(c) require that the objection include a statement of "how the proposed activity is inconsistent with specific elements of the [state's] management program." In this appeal, I find that the Commission's objection to Texaco's consistency certification for its individual NPDES permit, in light of the Commission's specific finding that the permit is consistent with California's coastal management program, is not a valid objection within the meaning of the CZMA and its implementing regulations. Because I have found that the Commission's objection to the individual NPDES permit is not valid, I will consider only Texaco's proposed POE under the criteria established by the Department's implementing regulations.

Grounds for Reviewing an Appeal

The Department's implementing regulations at 15 C.F.R. § 930.120 provide that the Secretary may find "that a Federal license or permit activity, including those described in detail in an OCS plan ... which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act [Ground I], or is necessary in the interest of national security [Ground II]. See also 15 C.F.R. § 930.130(a). Texaco has pleaded both grounds. Tx. Ap. Br. at 1.

The Department's regulations interpreting these two statutory grounds are found at 15 C.F.R. §§ 930.121 and 930.122.

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

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

1. First Element

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

The CZMA identifies a number of objectives and purposes including

- preservation, protection and where possible restoration or enhancement of the resources of the coastal zone (Sections 302(a), (b), (c), (d), (e), (f), (g) and (i) and 303(1));
- development the resources of the coastal zone (Sections 302(a), (b), and (i) and 303(1));
- encouragement and assistance to the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources. (Sections 302(h) and (i) and 303(2)).

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

As noted in previous CZMA consistency decisions, OCS exploration, development, and production activities and their effects on land and water uses of the coastal zone are included within the objectives and purposes of the CZMA. In addition, Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources. Thus, as stated in previous decisions, this element "normally" will be found to be satisfied on appeal. Findings and Decision in the Matter of the Appeal by Exxon Company, U.S.A., February 18, 1984, at 7; Decision and Findings in the Consistency Appeal of Union Oil Company of California, November 9, 1984, at 8; Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, December 23, 1985, at 4 (Gulf Oil Decision).

The Commission urges that the Secretary reconsider the position taken in past decisions that OCS exploration and development activities normally will satisfy element one. The Commission argues that "the goal of the CZMA is not merely to develop

coastal resources, but rather is to develop resources in a manner that is consistent with coastal resource protection" (emphasis in the original). It also posits that under element one, the Secretary should analyze "whether the activity as a whole, including its impacts, is consistent with the CZMA." According to the Commission's position, it is not enough to determine merely if the project's objectives are consistent with the goals of the CZMA. CCC Resp. Br. at 9-10.

Texaco counters the Commission's argument by observing that in the past, element one has been used only to determine whether the activity furthers one of the national objectives or purposes of the CZMA. Texaco also points out that an activity need only further one of the objectives or purposes of the CZMA *not* several as is inherent in the Commission's interpretation of element one. Texaco Final Response, October 7, 1988, at 4-5 (Tx. Resp. Br.).

The Commission's argument does not persuade me to interpret element one differently now than in the past. For the purpose of element one, the objective(s) of a proposed activity is indivisible from the activity itself. Texaco's proposed POE involves the search for oil and gas in an area offshore of California. Exploration, development and production of offshore oil and gas resources and their effects on the resources of the coastal zone are among the objectives of the CZMA. An assessment of the impacts of such proposed activities is appropriately considered under element two *infra*. Because the record demonstrates that Texaco's proposed activity falls within and further the objectives of Sections 302 and 303 of the CZMA, I find that Texaco's proposed POE satisfies the first element of Ground I.

2. Second Element

To satisfy the second element of Ground I, the Secretary must find that "[w]hen performed separately or when its cumulative effects are considered, [the activity] will not cause adverse effects on the natural resources of the coastal zone substantial enough to outweigh its contribution to the national interest." 15 C.F.R. § 930.121(b).

The second element requires that the Secretary identify: 1) the adverse effects of the objected-to activity on the natural resources of the coastal zone from the activity itself, ignoring other activities affecting the coastal zone; 2) the cumulative adverse effects on the natural resources of the coastal zone from the objected-to activity being performed in combination with other activities affecting the coastal zone; and 3) the proposed activity's contribution to the national interest. The Secretary then must determine whether the adverse effects on the natural resources of the coastal zone are substantial enough to outweigh the proposed activity's contribution to the national interest.

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

The Commission focused on a number of these adverse impacts including impacts on marine resources, negative effects on commercial fishing, and vessel traffic safety concerns. It also discussed the risk and impact of oil spills. While I will concentrate my discussion primarily on those areas of concern raised by the Commission, all adverse effects on the natural resources of the coastal zone are considered in balancing the adverse effects against the project's contribution to the national interest.

Adverse Effects from Routine Conduct

1) Marine Resources

Texaco's Environmental Report considered a number of adverse impacts on marine resources from the exploration of Lease 0512. That report noted that some impacts on benthic communities will result from anchor placement and drilling apparatus and disposal of drilling muds and cuttings. Nonmotile or slow moving epifaunal species and infaunal organisms at impact points will be lost. Anchor placement represents a very small surface area, and no damage is expected to hardbottom habitats. Environmental Report at 4-21 - 4-23. No impacts to intertidal communities or sensitive or unique marine environments are expected from normal activities. Id. at 4-21, 4-27. Impacts on planktonic communities will be small and localized with insignificant increases in nutrient levels near the drilling rig. Any increase in water turbidity would reduce phytoplankton production. Id. at 4-26. There would be minor increases in the local water column turbidity during periods of cutting disposal, disposal of cement slurry and the discharge of muds. Thermal discharges will increase temperatures from 2° to 4° at the circulating rate of 2000 gallons per minute. Id. at 4-9 - 4-12.

The Commission focused on the uniqueness of the area as it considered adverse impacts on the marine environment. The Commission's Adopted Findings characterized the general area off Point Conception as "biologically rich." The area is a transition zone between the colder, northern California currents and the warmer southern ones. The convergence of the currents results in "upwelling" which is the movement of nutrient rich deep waters to the sunlit surface waters. 5/ This upwelling initiates plankton bloom, and this "mixing" results in a high level of biological productivity as well as varied assemblages of

subtidal and intertidal marine resources. Adopted Findings at 2, 53.

The area is considered to be the limit for the ranges of twenty species of invertebrates and fourteen species of fish. Some species of seabirds maintain nesting colonies on Point Conception, and the threatened California sea otter has been observed in this area. Gray whales migrate through the project area. In addition, numerous kelp beds are located between Point Conception and Gaviota. CCC Resp. Br. at 23-25.

The Channel Islands National Marine Sanctuary is located to the southeast of Lease 0512. See Figure 1. The Channel Islands encompass the most significant pinniped habitat area in the Western United States. San Miguel Island houses the largest number and concentration of these species. There are six species of seals and sea lions on San Miguel, five of which also breed there. Three quarters of the 74,000 seals and sea lions in this general area spend at least part of each year in the Northern Channel Islands. San Miguel also is the principal seabird rookery in the Northern Channel Islands and the largest rookery in Southern California. CCC Resp. Br. at 25.

The Commission objected, in part, to Texaco's proposed project due to potential disturbances to gray whales that would be migrating through the project area when Texaco proposed to conduct drilling activities and due to the potential for oil spills to damage significantly important marine resources. The Commission found that Texaco had not done enough to mitigate the adverse impacts of its proposed project. Adopted Findings at 54.

a) Gray Whales

The Commission expressed several concerns about gray whale migration through the project area. First, supply boat and helicopter traffic could harass a whale. Injuries to a whale could result if there were a collision between a supply boat and a whale. Second, the Commission cited a study that documented behavior changes caused by drilling noise. These behavioral changes appear to be designed to avoid the noise and are temporary. While concerned about the impacts of expanded oil and gas activities on gray whales, the National Marine Fisheries Service (NMFS) is unable to predict a threshold level that would result in changes of migration routes or what effect such a change would have on the whale population. Id. at 53.

In the Environmental Report accompanying Texaco's proposed POE was a Marine Mammal Avoidance Plan. Part of that plan considered the gray whale. To avoid disturbance to the gray whale, the plan delineates the following measures:

- helicopters must maintain an altitude of a least 1000 feet during the gray whale mitigation period from November to June; when flying within one mile of shore from Point Conception north; and at any time whales or other marine mammals are sighted.

- when an advanced observation of gray whales is made, helicopters must remain at least one half mile from the observed whales.

- service vessels must maintain a distance of at least 1000 feet from observed whales.

- service vessels may not cross directly in front of whales.

- service vessels will not parallel whale trajectories at a speed faster than the whales unless they are trying to achieve a safe distance from those whales.

- special efforts must be taken to avoid separation of calves from their mothers.

- geophysical operators must shut down temporarily whenever whales are within 1.25 miles of such operations.

Environmental Report, Appendix D at 3-4.

Texaco also agreed to additional measures to minimize gray whale disturbance and conflict. Those measures, which further distinguish between crew, supply, support and service vessels, include:

- crew and supply boats will maintain a distance of at least 330 feet from gray whales;

- support vessels will not cross directly in front of migrating whales;

- when parallelling whales, support vessels will operate at a constant speed slower than the whales;

- females whales will not be separated from calves;

- support boats will not be used to herd or drive whales; and

- if a whale exhibits evasive or defensive behavior, support vessels will drop back until the animal calms or moves out of the area.

Adopted Findings at 53.

Commenting on Texaco's appeal, the NMFS, which has the statutory responsibility for protecting gray whales, indicated that marine resource issues, including marine mammals, will be satisfactorily resolved if the mitigation measures outlined in the Staff Recommendation 6/ and agreed to by Texaco are adopted. Memorandum from James W. Brennan, Assistant Administrator for Fisheries, (NMFS), to Katherine A. Pease, GCOS (NOAA GC), July 25, 1988 (NMFS Memorandum).

Despite the extensive measures to which Texaco has agreed to minimize the potential disturbance to gray whales, the Commission still had concerns. Adopted Findings at 54. The Commission, however, offers no recommendations concerning additional measures that would further minimize disruption to the gray whale. Further, NMFS, the agency possessing gray whale expertise, is satisfied with the measures described above. In conjunction with mitigation measures agreed to by Texaco, I find that the routine conduct of Texaco's proposed project will not have a significant adverse impact on the gray whale.

b) Other Marine Resources

Texaco's Environmental Report discussed adverse impacts on other marine resources. It noted that minor impacts on marine mammals are expected, although impacts on sea lions are not expected to be significant. Environmental Report at 4-28. Likewise, no significant impact on marine birds is expected. Id. at 4-27. Fishes will experience limited disturbances. Demersal fishes would be affected the most by disposal of drill cuttings and muds. Id.

The Commission did not identify any adverse affects on other marine resources that would result from the routine conduct of Texaco's proposed activity. The U. S. Fish and Wildlife Service (FWS) conducted a Section 7 Consultation on Lease Sale 80. That Consultation resulted in a No Jeopardy finding. Specifically, the FWS determined that exploratory activities would not jeopardize any of the Federally-listed species in the area. Environmental Impact Statement, Proposed Southern California Lease Offering -- April 1984, December, 1983, at 8-204-205 (Lease Sale 80 EIS).

In commenting on this appeal, the FWS stated "it is the Service's determination that the proposed action is unlikely to result in any significant adverse effect to fish and wildlife resources." Letter from Sam Marler, Director, Fish and Wildlife Service to William E. Evans, Under Secretary of Commerce, August 29, 1988 (FWS Letter). The NMFS commented that "[t]he description of marine resources and the discussion of potential impacts to those resources ... is thorough and acceptable." NMFS Memorandum.

When considering the proposed POE, the California Department of Fish and Game stated that "the proposed exploratory program, with the exception of a major oil spill, would probably not impact coastal near shore marine resources such as kelp beds, sea otters, and other marine intertidal and subtidal resources." Adopted Findings at 53.

I find that the routine conduct of Texaco's proposed activity will not have a significant adverse impact on marine resources.

2) Commercial Fishing

Lease 0512 is located in California Department of Fish and Game's fish block 658. The annual catch from that block in order of weight by species is rockfish, crab, shark, halibut, sole, spot prawn and lobster. Id. at 50. Because fishing efforts would be displaced even with mitigation measures, the Commission found Texaco's proposed project inconsistent with California's coastal management program provision of protecting commercial fishing. Id. at 52.

When the Minerals Management Service conducted an environmental assessment of Texaco's proposed POE, it identified the following potential impacts from the proposed drilling on commercial fishing in or near Lease 0512:

- creation of temporary obstacles from the drilling vessel and associated anchor pattern that precludes use of the space by hook and line fishermen, set and drift net fishermen (approximately 1.4 - 2.8 square miles would likely be precluded from use at each well site);
- associated vessel traffic would temporarily interfere with commercial operations;
- damage and/or destruction of commercial fishing gear;
- discharge of drill muds and cuttings; and
- potential conflicts with hook and line fishermen due to some lost opportunity for rockfish production.

Id. at 50.

Texaco took a number of steps to deal with the potential adverse impacts of its proposed project on the commercial fishing sector. First, it sent a notice to fishermen on August 7, 1986, and requested comments. Texaco representatives met with gill netters, trawl fishermen and trap fishermen. Tx. Ap. Br. at 16. As a result of these meetings, Texaco agreed to a number of mitigation measures:

- use of helicopters as primary transport of crews;
- full-time standby vessel to be employed on project site for oil spill response;
- anchor buoys to be affixed with acoustical releases and submerged at least 150 feet;
- a contract fishing vessel will be on standby from September through December and during May, whenever Texaco is notified of active fishing on Lease 0512; the fishing vessel will warn and assist drift net fishermen and will help to untangle gear;
- supply boats will only take refuge in Cojo Bay during adverse weather conditions;
- supply boats will observe designated vessel traffic corridors;
- a chart with the exact location of anchors will be provided to commercial fishermen;
- hook and line fishing will be allowed within the anchor pattern while drilling except during hazardous operations or adverse weather conditions; and
- will provide compensation to trap and set gill fishermen for temporary removal and replacement of gear during anchor placement and retrieval and compensation for verifiable loss in production.

Id. at 16-17.

In addition, prior to the drilling of any well located near hardbottom features, Texaco agreed to provide evidence showing that anchor placement would avoid such hardbottom features. Adopted Findings at 52.

When discussing its finding of inconsistency, the Commission pointed out that fishermen had testified concerning adverse impacts. That testimony highlighted two points. First, drilling mud discharges may prevent hook and line fishing for rockfish. Second, anchor scars are difficult to avoid and inhibit fishing capabilities. Id. Texaco countered by observing that while one fisherman at the public hearing testified in opposition to oil and gas operations in general, no one spoke in opposition to the proposed commercial fishing mitigation measures. Tx. Ap. Br. at 17.

Texaco also reiterated in the information filed during the course of this appeal that exploration wells will be sited and anchors

positioned to avoid hardbottom features. Id. In response, the Commission noted that Texaco had only provided the anchor locations for well #1 and that most of the proposed wells are near hardbottom features. CCC Resp. Br. at 27. Texaco then explained that it had followed standard industry practice by developing definitive anchor locations only for the first well. Texaco said that the other well sites may have to be relocated depending on the exploratory results from the first well. Texaco has made a written commitment to the Commission to provide proposed anchor patterns for wells 3, 4, 5 and 7 sufficiently in advance of the proposed drilling for the Commission and MMS to review. These anchor patterns will avoid hardbottom features. Tx. Resp. Br. at 17-18.

Reviewing Texaco's proposed activities, the NMFS stated "the [NMFS] Southwest Regional review of the environmental discussions presented with the Exploratory Drilling Plan, indicated that Texaco's coordination efforts with local fishing industry representatives, and the Company's subsequent agreement to specific mitigation measures, satisfied the concerns of NMFS in that regard." NMFS Memorandum.

While certain activities associated with offshore oil and gas exploration such as anchor placement and supply boat traffic may cause minor, temporary displacement of some commercial fishing activities, the record before me does not indicate that the displacement or disruption would be significant. Because only one well will be drilled at a time, the physical area precluded will not be great. Due to the temporary nature of exploratory drilling, the operations at each well site will be limited to two and one half to three months. Those factors, coupled with the mitigation measures listed above and agreed to by Texaco, lead me to find that Texaco's proposed project will not cause any significant adverse effects on commercial fishing in the coastal zone.

Adverse Effects from Unplanned Events

1) Oil Spills

Texaco focused on the adverse impacts of oil spills in its Environmental Report. It recognized that impacts would vary depending on the magnitude of the oil spill. I summarize those impacts.

Water Quality - Would be affected.

Pleasure Boating, Sportfishing and Recreation - A major oil spill would temporarily disrupt recreational activities.

Intertidal Communities - The majority of the rocky intertidal species and biomass is not likely to be affected

significantly. Factors affecting the impact on organisms include type of oil spilled, amount of oil, weathered state of oil, life history stage of species, season and record of prior exposure.

Benthic Communities - Crude oil spilled would be a potential hazard to subtidal benthic communities. Certain populations of sensitive species, particularly microcrustaceans and shallow water endemics may be eliminated or significantly reduced.

Planktonic Communities - The local impact of a major oil spill would result in mortality of many plankton species; however, rapid repopulation would be expected.

Fishes - Impacts from on oil spill would cause the highest mortality on eggs and larval. Losses would be insignificant in terms of the total population.

Sensitive or Unique Marine Environments - These areas could be impacted by a major spill, particularly the North Channel Islands.

Avian Resources - Marine birds, particularly pelagic birds, historically have been severely affected by oil spills.

Marine Mammals - An oil spill could cause significant impacts particularly if it contacted pinniped breeding and pupping grounds. A disruption of the rookery could result in 50% mortality of the pups. If an oil spill is carried northward, it could impact sea otter populations. Any mortality to the southern sea otter is considered significant. Impacts on cetacean species, while difficult to predict, should not be significant.

Environmental Report at 4-39 - 4-45.

The Commission found that Texaco's proposed project posed unacceptable risks to marine resources due to the ever present possibility of an oil spill. Oil spill trajectory modelling predicts that if a spill of 1000 or more barrels originated from Lease 0512, it would more likely migrate toward the Channel Islands than north (Point Arguello) or northeast (toward mainland). Oil spilled in February through June and August and September is predicted to reach the Channel Islands. It would take about 36 hours for the oil to reach San Miguel Island (one of the Channel Islands) in June. For the other months, the oil would reach mid-Channel in 72 hours but would still be heading toward the Channel Islands. MMS Letter/Enclosure at 12.

Should a major spill occur on Lease 0512, the biologically sensitive areas of Point Conception, Point Arguello, the Channel

Islands National Marine Sanctuary, San Miguel Island, Santa Cruz Island and Santa Rosa Island could be adversely impacted. There could be locally significant impacts on subtidal and intertidal communities. Serious impacts to fur seals, sea otters and seabirds could occur as well as mortality to threatened or endangered species. A major oil spill could also affect commercial fishing and recreational activities. Id. at 12-13.

Point Conception/Point Arguello is an area of rough seas, severe storms, high winds and heavy fog. These factors intensify the risk of oil spills and increase the difficulty of oil spill containment. Despite mitigation measures, the Commission concluded Texaco's ability to contain and clean up effectively an oil spill was limited by weather and sea conditions, the uncertainty in projecting trajectories and the limited effectiveness of dispersants. The Commission recommended that additional exploration and development of this particular tract should not occur until the oil and gas industry improved its ability to prevent spills and to clean up spills. Adopted Findings at 2, 48.

It is indisputable that there is always some risk of an oil spill during oil and gas operations. See Tx. Ap. Br. at 15. Because this possibility exists, attention must be focused on measures to contain and clean up oil spills. The Commission states that equipment currently available does not have the capability of recovering all of the oil from a large spill or even from many small spills in the open ocean. If there is a major spill and that spill moves toward shore, current clean up technology cannot keep all of the oil off the beaches. Adopted Findings at 45. The Coast Guard Oil Pollution Response Planning Guide for Extreme Weather documents the limits of performance of oil spill clean up equipment using an outrigger boom system such as that proposed by Texaco. Data contained in the EIS/R for Cities Services Platform Julius indicate that reasonable oil recovery efforts could be attempted approximately 65% of the time with monthly averages ranging from 53% to 71%. These figures are based on the percentage of time that visibility is greater than one mile, waves are less than six feet and winds are less than twenty-two knots. Coast Guard representatives confirm that offshore clean up operations are generally ineffective and hazardous when waves are greater than six feet. Data from EPA's OHMSETT oil spill equipment testing facility show that oil recovery efficiencies are reduced when seas exceed two feet. The seas in the area of Texaco's proposed project exceed two feet approximately 70% of the time. Recovery of oil is more difficult if the oil is heavy or highly viscous crude like that expected to be discovered on Lease 0512. Id. at 46.

The Commission noted that oil spill trajectory models used to predict the movement of the spill are not always accurate. For example, during the PUERTO RICAN oil spill in 1984, the model

predicted a southwesterly movement. The oil, however, moved in the opposite direction after the first days of the spill. Id. The Commission's concerns about the consequences of an oil spill are heightened because Texaco's proposed project is located in an area where an oil spill moving toward shore would impact a variety of natural resources. The spill could affect the extensive kelp beds, the rocky intertidal areas and the mouths of streams which include productive wetlands and estuarine habitat. Access to the shoreline by tank trucks and clean up crews could be difficult in many areas at Point Conception because of lack of public roads within two large ranches in the area. CCC Resp. Br. at 19.

Texaco developed a number of measures designed to contain and clean up oil spills. The oil spill containment and clean up equipment that must be located at the site of offshore drilling operations includes:

- 1500 foot oil spill containment boom capable of open ocean use;
- oil recovery device (skimmer) capable of open ocean use;
- oil storage capacity to handle skimmer until oil spill cooperative can arrive from shore with additional equipment;
- boat located at site of drilling operation or within 15-60 minutes of site equipped with a second boat capable of assisting deployment of boom; and
- oil sorbent material capable of absorbing fifteen barrels of crude oil.

Adopted Findings at 46-47.

Texaco also agreed to provide sufficient oil storage capacity to handle the amount of oil the on-site skimmer could collect. The Clean Seas Oil Spill Cooperative is likewise available to assist in the case of a spill. The Cooperative is composed of many oil companies who have pooled financial resources and personnel to respond to oil spills. Its role is to provide assistance for spills that would exceed Texaco's onsite capability and for initial response to large spills. 7/ Id. at 47.

Texaco planned to use Exxon's Corexit 9527 to disperse spilled oil. According to an Environmental Canada report, 8/ this dispersant does not work well on many heavy oils, and the combination of that dispersant and oil may be more toxic to fish and wildlife than the oil alone. Id. A Cities Service study concluded that Exxon's Corexit 9550 is more effective on many types of heavy oil. Texaco agreed to provide dispersants which

are currently considered the most likely to work on viscous crude. Id. at 48. Since heavy oil cannot be dispersed just by using available chemicals, other clean up strategies are necessary. Id.

The Commission determined that the measures proposed by Texaco, in combination with the Clean Seas Oil Spill Cooperative, represent the best available clean up capabilities at this time. Nevertheless, the Commission found that the proposed project posed unacceptable individual and cumulative risks to marine resources due to the possibility of a spill which would be aggravated by the complex currents in the area. Id. at 49.

While Texaco acknowledges some risk of oil spills during oil and gas operations, it directs my attention to statistics contained in a report prepared by the American Petroleum Institute entitled "California Offshore Energy: Promise and Challenge," September, 1986 (API Report). That report states that there has been only one major offshore oil spill in the United States that reached shore -- 1969 Santa Barbara Union Platform A blowout. 9/ Concerning that spill, the National Academy of Sciences reported that within a year the affected area was recovering well and that there were "no directly attributable damaging effects of oil on large marine mammals or benthic (bottom-dwelling) fauna." The API Report notes that more than 32,000 wells have been drilled in Federal and state waters of the United States. There has never been an oil blowout during exploratory drilling in U.S. waters. During the years 1971 through 1983, an average of 6800 barrels of oil has been spilled per year from all exploratory and production operations on the U.S. OCS. In 1984, only ten barrels were spilled in the OCS off California with 9.5 of those barrels recovered. API Report at 2, 32, 35.

The Commission counters by pointing out that the largest oil spill prior to 1980 resulted from a blowout on IXTOC I, an exploratory well in Mexican waters. That well blew in June, 1979 and was not brought under control until March, 1980.

Several Federal agencies commented on the issue of oil spill risks. The FWS stated "[a]fter reviewing available biological data, the Service has concluded that risks of a large oil spill from exploratory drilling are minimal." FWS Letter. The Department of Transportation replied "Coast Guard headquarters staff and personnel from the Eleventh Coast Guard District have reviewed the exploration plans presented by Texaco with respect to ... oil spill prevention, and oil spill cleanup. They perceive no problems in these areas." Letter from Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation, to Katherine A. Pease, Assistant General Counsel, NOAA, July 20, 1988 (Transportation Letter).

The Minerals Management Service observed

> [t]he probability of a major oil spill occurring on the Pacific OCS from exploratory activities is very unlikely, as an examination of the exploratory drilling history on the Pacific OCS shows. Since September 20, 1963, a total of 318 exploratory wells have been drilled in our region. During these 24 years, there have been no major oil spills related to exploratory activities. In fact, the only spills which have occurred have been four barrels or less in volume. The facts that no abnormally pressured formations have been encountered in the Region, and the utilization on the drilling unit of state-of-the-art blowout prevention equipment, have contributed to the excellent safety record of exploratory operations on the Pacific OCS, and render such an event very unlikely to occur during future exploratory drilling operations in this area.
>
> The Pacific OCS Region believes strongly that the primary way to reduce impacts from major oil spills is to minimize the probability of a spill occurring during drilling .... Blowout prevention equipment, installed at the well head on the sea floor, will seal the well should abnormally pressured formations, lost circulation, or other unusual conditions, be encounter, thus ensuring that well control is maintained at all times.
>
> MMS Letter/Enclosure at 11.

Based on the record before me, I find that the risk of a major oil spill from an exploratory well on Lease 0512 to be slight. While the likelihood of a spill of a few barrels is greater, the effects of such a spill would be minor. Texaco, as well, will use state-of-the-art technology and has taken all feasible steps for containment and clean up should a spill occur. I conclude that it is unlikely that there will be any significant adverse impacts on the natural resources of the coastal zone caused by an oil spill from Texaco's proposed project.

2) Vessel Traffic Safety

Lease 0512 is located approximately three miles north of the northbound coastal traffic lane. See Figure 1. The Coast Guard is proposing an extension of the established traffic lanes. If such an extension occurs, the Texaco drillship on Lease 0512 would be located over one mile from the established traffic lanes. Adopted Findings at 55.

The Commission found that locating a drillship at the proposed well sites represented a hazard to vessel traffic safety because no formal shipping lanes have been designated in this area. The Commission stated that because Lease 0512 is immediately

northwest of the terminus of the established traffic lanes, vessels would be turning to follow the change in direction of the shoreline. According to historic Coast Guard vessel radar tracking, there is a wide variety of vessel traffic routes in this area. Id.

Texaco proposed safety features for the drillship which include:

- radar with audible alarm;
- radio to be manned 24 hours a day;
- three-mile fog horn;
- five-mile obstruction lights lit 24 hours a day; and
- aircraft warning lights on the derrick.

Id.

Despite these safety features, the Commission expressed concerns about the adverse impacts. Id.

Texaco rebuts the Commission's position by referencing a study by the National Maritime Research Center which is cited in Texaco's Environmental Report at 4-17. That study stated that less than 5% of transient ship traffic would unintentionally stray outside traffic safety lanes at any point in the Santa Barbara Channel. Relying on this study, the Environmental Report stated

> [t]he study concluded that in no instance should careless navigation, infrequent position fixes, inherent inaccuracies in navigational equipment, ship handling characteristics or weather conditions cause vessels to alter their course more than 1 mile outside the lanes if they are attempting to use the VTSS [Vessel Traffic Separation Scheme]. The probability of a vessel ramming the drilling vessel beyond the VTSS is expected to be extremely low.

See also Tx. Ap. Br. at 19-20.

Based on that study, Texaco asserts that Lease 0512 is not in a high risk area and that vessel traffic safety had never been mentioned as a concern by any Commissioner during public deliberation nor raised by the public. Texaco also points out that "any vessel which might stray on to OCS-P Lease 0512 would, no doubt, have to first pass through a lease tract which the Coastal Commission previously certified as consistent with vessel traffic safety concerns!" Tx. Ap. Br. at 20.

To supplement the safety measures listed above, Texaco also will use its advanced radar and warning system located on nearly Platform Harvest to monitor vessel traffic in the area. The Harvest system tracts up to sixty ships, displays speed and distance and the closest point of approach between a ship and the platform. The operator can select inner and outer guard zones, and if a ship penetrates these zones, audible and visual alarms activate automatically. Tx. Ap. Br. at 20-21. Texaco further notes that before drilling begins, the Coast Guard will publish the location and time of the rig in "Notice to Mariners." Tx. Resp. Br. at 11.

The United States Coast Guard reviewed Texaco's proposed POE. It commented

> [t]he nearest exploratory platform would be approximately three miles from the boundary of the Santa Barbara Channel Traffic Separation Scheme. Although the Coastal Commission report identifies this as a possible problem, all facilities will have safety equipment considered necessary by the Coast Guard, and the Coast Guard does not find any significant risk to shipping from a platform on this tract.
>
> Transportation Letter.

The study by the National Maritime Research Center concluded the likelihood that a vessel transiting the Santa Barbara Channel would collide with a drilling rig located temporarily on Lease 0512 to be "extremely low." This study does not support the Commission's conclusion that the proposed well sites on Lease 0512 pose a hazard to vessel traffic safety. Risks of vessel collisions are further reduced by Texaco's commitment to use sophisticated radar equipment on the drilling ship and on nearby Platform Harvest. The United States Coast Guard, the Federal agency responsible for vessel traffic safety, found no significant risk to shipping from a platform on Lease 0512. These factors plus the temporary nature of the exploratory platform cause me to find that Texaco's proposed exploration activities will not have a significant adverse effect on vessel traffic safety.

3) <u>Military Use</u>

The Commission noted the potential impacts resulting from a platform located on Lease 0512 because that lease lies in the path of rocket launches from Vandenberg Air Force Base. Adopted Findings at 57. The Department of the Navy, responding on behalf of the Department of Defense, also raised concerns about the proximity of Texaco's proposed project to the Air Force Base. While advocating a "shared use" policy to accommodate both defense and industry needs, the Navy pointed out that the proposed activities fall within a "very high risk zone (zone 4)."

Concerning oil and gas exploration and development in zone 4, the Air Force Risk Category states "[t]he platform is in a direct or near direct overflight of the missile ground trace or in the target region of a homing missile. The platform is within the planned impact area of spent stages or solid rocket motors. Normally, all people are excluded from the Very High Risk Zone." Enclosure to Navy Letter. The Navy response concluded

> [a]lthough Platform Hermosa is now operating in that zone [zone 4], the Air Force prefers to have no increase in the density of platforms in the area. The hazards in zone 4 to both operating crews and oil company equipment are so great that the Air Force expects to call for total evacuation of any platform within zone 4 during any space launch mission. Neither does the Air Force anticipate any change to this requirement in the forseeable [sic] future. (We would also note that the Vandenberg mission is so critical to national defense that its operations will continue regardless of platform proliferation. But everyone concerned, especially the oil and gas industry, must be sensitive to the hazards associated with operating within the risk zones.)
>
> Letter from F.S. Sterns, Director, Installation and Facilities to Katherine A. Pease, Assistant General Counsel, NOAA, July 18, 1988, at 2 (Navy Letter).

The Commission noted that "[t]he increased risk of a serious oil spill, with no personnel available to operate emergency systems, could be substantial." Adopted Findings at 3. The Commission did not analyze further this risk.

Because of military uses, the MMS has included Lease Stipulation 1A to certain leases, including Lease 0512. That stipulation, in part, provides that "[t]he lessee ... agrees that the United States reserves and has the right to temporarily suspend operations of the lessee ... in the interests of national security .... Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated ... will come into effect ... when national security interests necessitate such action." Exploration Plan OCS Lease P-0512, July 1987, Appendix F at 1 (Tx. POE).

In response to the stipulation, Texaco developed a "Plan for Evacuation or Sheltering of Rig Personnel During Vandenberg AFB Operations." (Plan). While the Plan concentrates on the safety of personnel and equipment, I restrict my focus to those factors designed to reduce the risk of an oil spill. I, therefore, will only consider the safeguards developed for rig operations to prevent oil spills during military operations. The Plan provides that twenty-four hours before the military operation, the following steps will be taken at the drilling rig

<u>if drilling</u>

- Plan to circulate bottoms up and prepare to pull the bit 100' into the casing shoe and close the pipe rams, close all down hole valves on B.O.P. stack, close blind rams, choke and kill line valves and leave the well in a secure state.

<u>if testing</u>

- Shut in the test tools and reverse out the drill pipe. Release the barge to proceed to a sheltered area. The final shut in can be accomplished while reversing. Make sure no live oil is in the drill string or in on-board tankage. Close the sub sea tree and secure the well by closing the pipe rams and all B.O.P. choke and kill lines. Do not unseat the packer.

Plan at 5-6.

In a memorandum to the California Coastal Commission, the Air Force, while noting its preference that no additional platforms be installed in zone 4, stated that it "will require coordination of the mobile drilling rig schedule with Air Force operations to preclude mutual interference. This has been successfully accomplished in the past and is mutually beneficial from operational and economic standpoints." Memorandum from Lt. Col. J.R. Neiderhause, Director of Safety, Department of the Air Force to California Coastal Commission, February 25, 1988. One of the attachments to that memorandum was "Notice to Prospective Lessees - Risks to Offshore Oil Platforms near Vandenberg AFB." Part of that Notice stated "[a]lthough evacuation will protect personnel from death or serious injury, missile and space booster debris can cause grave and serious material damage to the oil rig with subsequent damage to the environment from oil spills and secondary fires."

The record indicates that the potential of damage to the drilling rig would be from a direct hit from an errant missile, from debris of an aborted launch or from parts that routinely detach from a missile during a launch. Obviously, there is a potential for one or more of these situations to happen. It appears from the record before me, though, that no platform located in the vicinity of Vandenberg has been damaged by debris. None has sustained a direct hit from an errant missile. And, according to an Air Force representative, the statistics are on Texaco's side that none of these things would occur to its drilling rig. Memorandum to the File, "Conversations with F. Stern, Navy and J. Rittenhouse, Air Force," from Katherine Pease, November 3, 1988.

Based on the steps that Texaco will take to secure its drilling rig and the low probability of an accident caused by a launch from Vandenberg, I find that an oil spill is not likely to result from military operations in the area.

Cumulative Adverse Effects

One of the grounds cited by the Commission for objecting to the proposed project was overall cumulative impacts. In Lease Sale 80, the Commission opposed additional leasing in the Santa Barbara Channel because of its concern about cumulative impacts. It noted that nearly 1000 wells have been drilled in the Pacific OCS, with drilling primarily occurring in the Santa Barbara Channel and offshore Santa Maria Basin. Nearly 1300 additional wells may be drilled in the area from Santa Barbara to San Diego County based on DOI's projections. The Commission is concerned about the impact such potential development would have on the natural resources of the coastal zone. Adopted Findings at 3.

The Commission expressed concern over the cumulative impact of ocean disposal of muds and cuttings based on the substantial amount of oil and gas drilling that has already occurred and will continue to occur in the Santa Barbara Channel. The Commission noted, however, that the evidence remained inconclusive as to whether discharges from Texaco's proposed project would cumulatively result in significant degradation of marine biological resources. Id. at 42-43.

The Commission also identified cumulative adverse effects resulting from oil spills and cumulative adverse impacts on commercial fishing, marine resources, visual and recreational amenities and the predominantly rural character of Santa Barbara County coastline west and north of the City of Santa Barbara. The Commission and Texaco urge that I employ differing tests to consider the cumulative adverse impacts on the natural resources of the coastal zone. The Commission proposes that I adopt the meaning of cumulative effect as it is defined in California's coastal management program. There, cumulative effect means "the incremental effects of an individual project ... in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CCC Resp. Br. at 12-13. Under this definition, there is no distinction between temporary projects, such as an exploratory well, and permanent projects, such as a production platform. Id. at 13. Further, the Commission states that a consideration of probable future projects would include Texaco's development of the proposed project site. The Commission explains "[i]f exploration were to be approved and oil discovered in economically producible quantities, the probability that a production facility will be proposed at the site ... is high. As

a result, the production phase must be reviewed as a related 'probable future project.'" Id. at 14.

Texaco, on the other hand, favors a narrower scope of review. Texaco states that a more appropriate scope of review is to consider the "cumulative impacts which occur as a result of Texaco's actual exploratory project in conjunction with related projects." Tx. Resp. Br. at 7. Such a review should not include "hypothetical" future development activities. Id. at 8.

I find that the scope proposed by the Commission is too sweeping. It is unclear whether the Commission would have me consider all oil and gas exploration and development along the California coast as well as any future exploration and development. I find the former possibility too broad geographically and the latter too speculative. Rather, I rely on the standard used in the Gulf Oil Decision. There, the Secretary construed "cumulative effects" to mean "the effects of an objected-to activity when added to the baseline of other past, present and reasonably foreseeable future activities occurring in the area of, and adjacent to, the coastal zone in which the objected-to activity is likely to contribute to adverse effects on the natural resources of the coastal zone." Gulf Oil Decision at 8.

The Commission suggests that I consider exploration of Lease 0512 as non-temporary because it would take over two and one half years to drill all eight wells. CCC Resp. Br. at 15. Texaco points out that drilling would not be continuous. There would be a period of several months for analysis of the well data. Nor is it certain that all eight wells will be drilled, if the first ones are successful. Tx. Resp. Br. at 10.

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

For the purpose of this appeal, I have selected the following geographical area to consider for the cumulative impact analysis -- the northern border is delineated by tracts 445-448, the eastern border is delineated by tracts 195, 184 and the southern boundary is delineated by tracts 322-324/185-184. See Figure 2. Within this area, a number of exploratory wells have been drilled. See Figure 3. Development and production platforms exist on Tracts 316 (Hermosa), 315 (Harvest) and 450 (Hidalgo). See Figure 4. An additional platform (Hacienda) is proposed but not yet approved. See Figure 5. The record indicates that

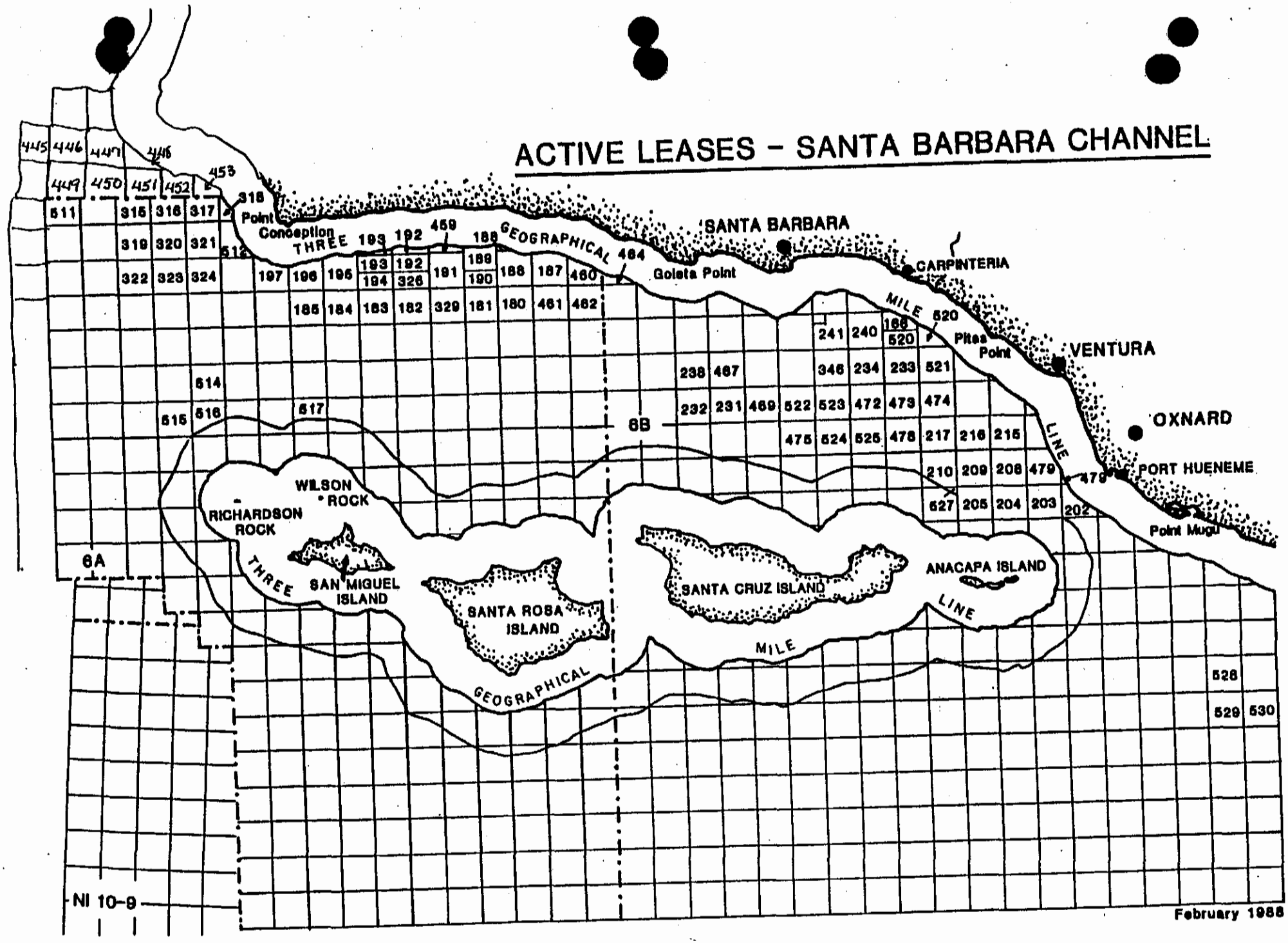

ACTIVE LEASES - SANTA BARBARA CHANNEL
SANTA BARBARA
CARPINTERIA
VENTURA
OXNARD
PORT HUENEME
Point Mugu
Pitas Point
Goleta Point
Point Conception
THREE GEOGRAPHICAL MILE LINE
WILSON ROCK
RICHARDSON ROCK
SAN MIGUEL ISLAND
SANTA ROSA ISLAND
SANTA CRUZ ISLAND
ANACAPA ISLAND
6A
6B
NI 10-9
February 1988

FIGURE 2

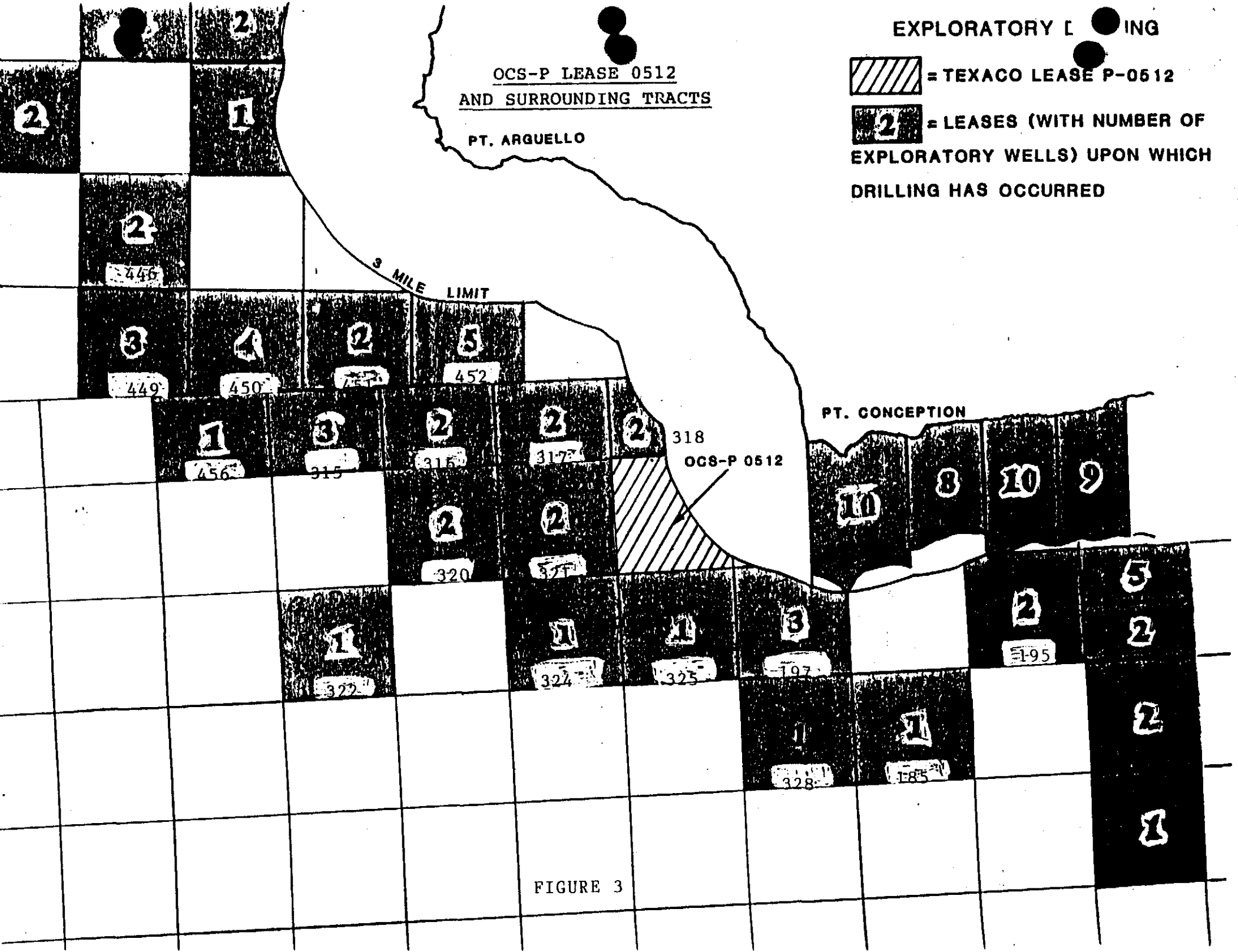
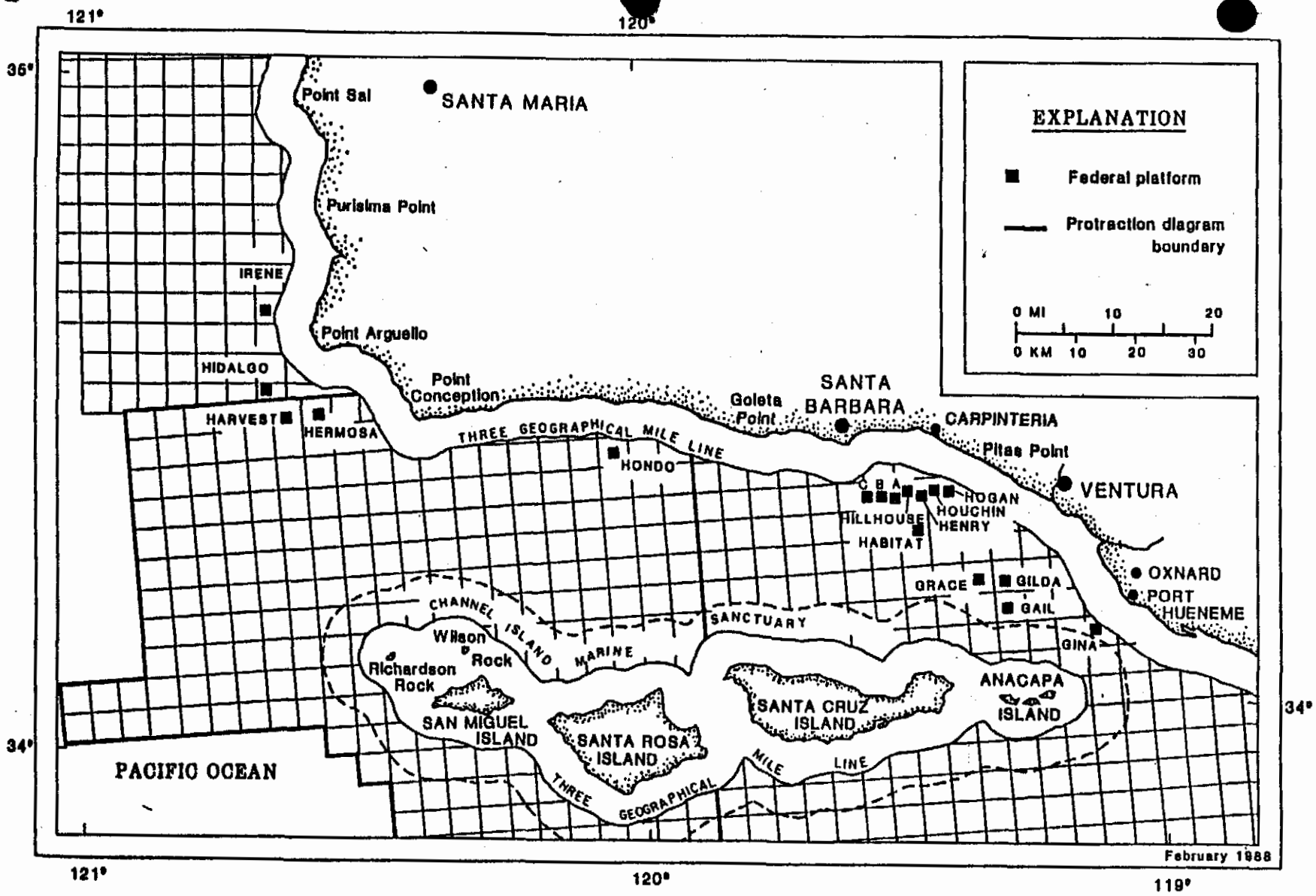

OCS-P LEASE 0512
AND SURROUNDING TRACTS
EXPLORATORY DRILLING
= TEXACO LEASE P-0512
= LEASES (WITH NUMBER OF EXPLORATORY WELLS) UPON WHICH DRILLING HAS OCCURRED
PT. ARGUELLO
3 MILE LIMIT
PT. CONCEPTION
OCS-P 0512
318
446
449
450
452
456
315
316
317
320
322
324
325
197
328
185
195

FIGURE 3



EXISTING FEDERAL PLATFORMS - SANTA MARIA/SANTA BARBARA

FIGURE 4

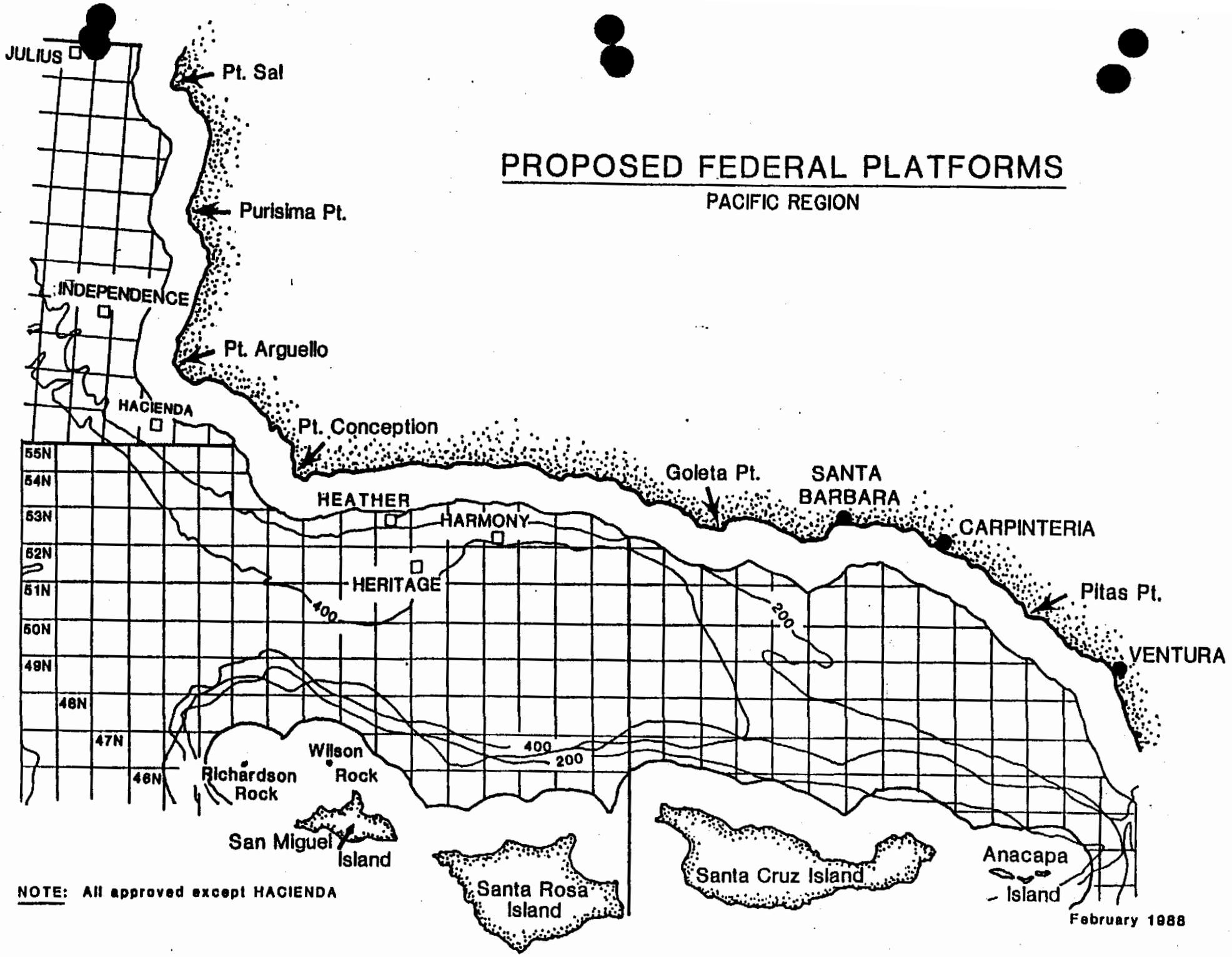

PROPOSED FEDERAL PLATFORMS
PACIFIC REGION
JULIUS
Pt. Sal
Purisima Pt.
INDEPENDENCE
Pt. Arguello
HACIENDA
Pt. Conception
55N
54N
53N
52N
51N
50N
49N
48N
47N
46N
HEATHER
HARMONY
HERITAGE
400
200
Goleta Pt.
SANTA BARBARA
CARPINTERIA
Pitas Pt.
VENTURA
Richardson Rock
Wilson Rock
San Miguel Island
Santa Rosa Island
Santa Cruz Island
Anacapa Island
NOTE: All approved except HACIENDA
February 1988

FIGURE 5

tracts 0195, 0196, 0197, 0316, 0317, 0318, 0319, 0320, 0321, 0322, 0323, 0324, 0451 and 0453 have a total of twenty-two approved but undrilled exploratory wells. MMS Letter/Memorandum at 3. The MMS does not expect that all twenty-two wells will be drilled. Id. It did not anticipate any exploratory applications for permit to drill through the end of 1988. MMS does expect drilling of several development wells. Chevron expects to drill six wells from Platform Hidalgo by the end of 1988. It expects to complete the drilling phase by the end of 1989. Texaco's Platform Harvest has completed its drilling phase. Chevron's Platform Hermosa is on a similar schedule as Platform Hidalgo. Id.

At this time, it is impossible to determine whether any of this drilling will occur contemporaneously with that proposed for Lease 0512. Even if Texaco's drilling occurs during the same time period as that of Chevron's, due to the temporary nature of Texaco's proposed project, it is not likely to contribute significantly to other possible adverse effects from oil and gas development activities occurring in this area. Likewise, while there is a potential for a number of exploratory wells to be drilled in this area, those exploratory activities will not necessarily occur at the same time as Texaco's proposed project.

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

> Water Quality - In the immediate area of oil exploration and development, water quality would be degraded. The degradation would be very low at the point where routine discharges enter the ocean. Impacts on water quality from oil spills would be moderate in the subarea where the spill occurred.
>
> Ocean Dumping - Impacts to dump sites would be very low unless bottom disturbing activities occur in a hazardous waste site area, in which case high or very high impacts could occur.
>
> Air Quality - There would be insignificant increases in onshore concentrations of nitrogen oxides, sulfur dioxide, carbon monoxide and total suspended particulates. There could be a relatively small increase in ozone concentrations. This would be a moderate impact (significant, localized air quality degradation within a nonattainment area).
>
> Intertidal Benthos - A loss of a few individuals would occur along a narrow area next to pipelines. There would be moderate, localized impacts to intertidal communities in the narrow path of pipelines to be constructed.

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

Fish Resources - Very low impacts are expected.

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

Seabirds - Low impact.

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

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

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

Marine Vessel Traffic - Additional vessel traffic will result in low impacts. Some vessel conflicts may occur but would be minor in nature and infrequent. Vessel accidents should be low in the Santa Barbara Channel if current Coast Guard policy is followed.

Military Uses - Impacts are expected to be high. Stipulations should mitigate the impacts.

Lease Sale 80 EIS at 2-47 - 2-50.

The EIS for Lease Sale 80 also considered the risk of oil spills. The model 10/ used attempts to predict what is likely to occur over the lifetime of the Lease Sale proposal -- thus, it would consider both the exploratory as well as the development and production stages. The EIS acknowledges that actual environmental risk may be higher or lower than predicted. The EIS used two situations to predict the likelihood of an oil spill(s). One considered the mostly likely development of the proposed lease offering area, and the other focused on total lease offering development. Each was subdivided into discrete geographic areas. The Santa Barbara Channel was one of these areas, and I will use the analysis for the Santa Barbara Channel under the most likely development scenario.

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

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

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

> [e]xisting Federal and state leases are very likely to result in one or more large or very large oil spills (the probabilities are 99+ percent and 96 percent, respectively) over the life of the Proposal .... The probabilities that spills may occur from import (foreign and Alaskan) tankering without the proposal enacted are very likely (97) percent for large spills and likely (84 percent) for very large spills .... With the Proposal enacted these risks are reduced slightly due to the displacement of Alaska crude oil by oil from the Proposal going to California refineries. The risk from crude oil imports of one or more spills is still likely and very likely, as the probabilities of one or more spills are 97 percent (large spills) and 82 percent (very large spills) ... over the expected life of the Proposal. The Proposal would therefore represent 7 percent of the total risk of oil spills from offshore activities and crude oil imported into the region.
>
> Id. at 4-22 - 4-23.

The EIS' cumulative oil spill analysis is for the entire lease sale area. Even considering the more limited Santa Barbara Channel analysis (an area much greater than that I have determined appropriate to consider), the EIS concludes that the Lease Sale proposal "represents virtually no additional risk of a large or very large oil spill to the Santa Barbara Channel area." Id. at 4-22. Texaco's proposed activity would impact a much smaller area, thus the potential adverse cumulative impacts would

be substantially less. The fact that Texaco's proposed activity is temporary and short-termed also lessen its potential cumulative adverse impact.

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

While the Commission cites adverse cumulative impacts on marine resources and visual and recreational amenities, it does not discuss what those impacts would be. To the extent that the impacts result from oil spills, I find that significant adverse impacts are not likely to occur. With regard to the cumulative visual impact from one additional drilling rig, I note the temporary and short-term nature of the drilling rig. Thus, I find that Texaco's proposed activity does not add significantly to the cumulative adverse visual impact.

Finally, I turn to cumulative interference with commercial fishing operations. The Commission observes that oil and gas development and commercial fishing activities are somewhat mutually exclusive. Thus, the greater the development, the greater the impacts on commercial fishing. CCC Resp. Br. at 27. The record indicates that there will be some interference with commercial fishing. Due to the small geographic area precluded as a result of the location of the drilling rig, the short drilling period and the temporary nature of the drilling as well as the limited exploration and development likely to occur during the same time as Texaco's proposed project, I find that Texaco's proposed project will not contribute significantly to the cumulative adverse effects on the commercial fishing industry.

Contribution to the National Interest

With respect to the proposed project's contribution to the national interest, Texaco cites the need to find and develop new oil resources. According to Texaco, oil reserves have declined from 39 billion barrels in 1971 to 28 billion barrels in 1986. Domestic production is declining, and the United States imports approximately 42% of its petroleum needs. Tx. Ap. Br. at 26.

Texaco points out that only California and Alaska have large domestic oil reserves. And exploration is necessary if commercial discoveries are to be made. Texaco estimates that Lease 0512 may contain 50 to 90 million barrels of oil. It observes that development of such a potential reserve would help the balance of trade. Id.

The Commission states that the addition of 50-90 million barrels to energy security is a minute contribution. Other projects on the California OCS could produce much more; for example, Exxon's

Santa Ynez Unit (SYU) is projected to produce ten times that amount. Overall, California OCS oil production contributed only 0.9% of total domestic production in 1986. Thus, the Commission reasons that Texaco's potential contribution could scarcely be considered significant. CCC Resp. Br. at 12.

Texaco responds that few projects would meet the Commission's standard of "significant." Rather, Lease 0512 is an average project when considering all reserves discovered on the California OCS since the 1960's. Tx. Resp. Br. at 5-6.

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

> The Department of State indicated that the "drop in world oil prices since 1985 has resulted in the loss of some U.S. production and a sharp decline in domestic exploration. These factors increase urgency of taking advantage of economically viable opportunities for new production." It also added that "[d]evelopment of 100 million barrels of oil which Texaco estimates to be present in OCS-P Lease Block 0512 would make a significant contribution to limiting U.S. dependence on imported energy, and contribute to the strength of the U.S. economy." Letter to William E. Evans, Under Secretary, Department of Commerce from John P. Ferriter, Deputy Assistant Secretary for International Energy & Resources Policy, July 26, 1988.
>
> The National Security Council noted that Texaco's proposed project would directly support essential national objectives by "increasing indigenous production of hydrocarbons." Increased domestic oil and gas production enhances U.S. security. Memorandum from Paul Schott Stevens, Executive Secretary to Donald A. Danner, Chief of Staff, Department of Commerce, July 13, 1988.
>
> The Department of Energy found that it is in the national interest "not to be overly reliant on imported oil and to replenish the Nation's petroleum reserves through new discoveries." The area that Texaco proposes to drill is an unexplored area, and it is uncertain oil exists in "meaningful quantities" until drilling begins. New discoveries can only be made through exploratory drilling. In 1987, the United States imported 37% of its crude oil needs, and high import levels are projected into the mid-1990's. Letter from Joseph F. Salgado, Acting Deputy Secretary/Under Secretary to William E. Evans, Under Secretary, Department of Commerce, August 23, 1988.
>
> The Department of the Treasury observed that significant benefits accrue to the national interest from the

development of domestic energy resources. This development will increase economic activity, generate higher tax revenues which help to reduce the Federal deficit, provide for a trained, technical work force and supplement oil reserves which can be used if imports are disrupted. Treasury concluded that "it is important to have a continued stream of economically viable exploration and development projects so that new oil production from these projects will be available to replace declining activity from older or exhausted wells." Letter from Michael R. Darby, Assistant Secretary for Economic Policy to William E. Evans, Administrator, NOAA, July 19, 1988 (Treasury Letter).

The Department of Transportation stated while the level of future hydrocarbon production from Lease 0512 is unknown at this time, any substantial production would contribute to U.S. energy needs and reduce dependence on imported oil. Because the transportation section is a major user of oil, the Department of Transportation is "especially sensitive to the need for a stable, assured supply of crude oil." Transportation Letter.

The Federal Energy Regulatory Commission said production from Lease 0512 would increase energy security, improve balance of payments and provide revenue to the U.S. Treasury. To the extent that gas will be produced and transported through the gas pipeline, charges to natural gas customers will be reduced. Letter from Richard P. O'Neill to Katherine A. Pease, Assistant General Counsel, NOAA, June 22, 1988.

The Minerals Management Service of the Department of the Interior commented that Congress, through the Outer Continental Shelf Lands Act, has established a national policy of exploration and development of OCS oil and gas resources. Such development will help to achieve greater energy self sufficiency. MMS Letter/Enclosure at 18-19.

The Department of the Navy, on behalf of the Department of Defense, stated that it "fully supports the national goal of exploration and development of our nation's offshore oil and gas resources." It added "[w]e cannot, however, go so far to say that any particular exploration plan or production base is directly linked to any national defense or national security objective nor can we identify any defense or national security interest that would be significantly impaired by the failure of any single exploration or production plan to go forward." Navy Letter.

While the predicted reserves in Lease 0512 are not the size of Exxon's SYU project, I find that Texaco's proposed project will further the national interest in attaining energy self-

sufficiency by ascertaining information concerning the oil and gas reserves actually available for production.

Balancing

In the discussion above, I found that Texaco's proposed project, when considered alone, will have an insignificant adverse effect on the natural resources of the coastal zone. I also have determined that when I consider Texaco's proposed activities in conjunction with other activities being conducted in the general area, that Texaco's activities will contribute only sightly to the cumulative adverse effects on the natural resources of the coastal zone. Most of the potential adverse impacts from Texaco's proposed project are temporary in nature and will cease when the exploratory activities are completed.

I have found that the possibility of an oil spill from Texaco's proposed project is low and poses little threat to the marine resources in the area. I also have determined that Texaco's activities add little to the potential risk of an oil spill from other exploration and development activities occurring in the general vicinity of Lease 0512.

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

3. Third Element

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

Clean Air Act

Section 109 of the Clean Air Act (CAA), 42 U.S.C. § 7409, directs the Administrator of EPA to prescribe national ambient air quality standards (NAAQSs) for air pollutants to protect the public health and welfare. Section 110, 42 U.S.C. § 7410, requires each state to prepare and enforce an implementation and enforcement plan for attaining and maintaining the NAAQSs for the air mass located over the state.

Upon review of the proposed project, the Commission found that "Texaco's POE, which has been amended to incorporate the mitigation measures ... meets the ARB's [Air Resources Board] and the APCD's [Air Pollution Control District] requirements, and is therefore consistent with ... the [California] Coastal Act ...." Adopted Findings at 25. Both Texaco and the Commission agree that air quality is not an issue in this appeal. See CCC Resp. Br. at 28; Tx. Resp. Br. at 21. Texaco also points out that it committed to undertake mitigation measures consistent with Lease Sales 73 and 80 air quality stipulation as well as controls beyond these requirements (i.e., reduced supply boat speed and idling time; use diesel fuel #1). Tx. Ap. Br. at 8-9. EPA, in commenting on this appeal, observed that it did "not believe that there is any probable basis to believe that the project will violate any of the requirements of the Clean Air Act, as amended." Letter from Jennifer Joy Wilson, Assistant Administrator for External Affairs to William E. Evans, Under Secretary for Oceans and Atmosphere, Department of Commerce, August 22, 1988 (EPA Letter).

Under the Outer Continental Shelf Lands Act, the Department of the Interior has exclusive jurisdiction to regulate air emissions from oil and gas activities on the OCS. California v. Kleppe, 604 F.2d 1187 (9th Cir. 1979). Interior must set these emission standards at levels permitting state and local governments to attain the air quality standards of the CAA. Id. The Secretary of the Interior has promulgated regulations to ensure compliance with CAA ambient air standards for OCS activities, including exploratory drilling, which affect the air quality of a state. 30 C.F.R. Part 250.

Texaco's Environmental Report stated that the incremental impacts on air quality of the project in the far field would be uniformly below Interior's significance levels, instrument thresholds and Interior's maximum allowable increases. Near field incremental impacts would be below these levels except for the 24-hour TSP calculated increments. Photochemically reactive emissions do not increase any exceedance. Environmental Report at 4-7 - 4-8.

Because Texaco cannot conduct its proposed exploratory drilling without complying with Interior's regulations, Texaco will meet the relevant standards of the Clean Air Act. Therefore, I find that Texaco's proposed activity will not violate any requirement of the Clean Air Act.

Federal Water Pollution Control Act (Clean Water Act)

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

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

On April 24, 1987, EPA issued Texaco an individual NPDES permit to discharge muds, cuttings, wash water, well completion and treatment fluids, deck drainage, sanitary wastes, domestic wastes, distillation unit blowdown, non-contact cooling water, excess cement, blow-out preventer control fluid and fire control systems test water. Tx. POE at Appendix H.

When reviewing Texaco's proposed project, the California State Water Resources Control Board (SWRCB), an agency with primary responsibility for water quality, stated that Lease 0512 is "not near any wetlands, estuaries or Biologically sensitive sites (such as Areas of Special Biologioal Significance) ...." It also commented that there was no indication from reports provided by the Commission staff that there would be an impact on the coastal waters of California. Tx. Ap. Br. at 11, 14.

The SWRCB did propose a program for five of the eight wells to monitor ocean currents. Texaco agreed to the program even though it went well beyond the requirements of the NPDES permit. Id. at 12.

Texaco agreed to mitigation including:

- drilling wells three and seven outside the spring upwelling period;
- discharges to be metered and monitored for wells one, two, three, four and seven, and no discharges will occur when currents are moving toward shore; and
- submit a work program, subject to the approval of the Commission's Executive Director, detailing how the current metering program will be designed.

Adopted Findings at 44.

The Commission concluded that "under the provisions of the NPDES permit, and with these additional mitigation measures agreed to by Texaco, the project is consistent with [the California Coastal Act] and the State's ocean plan standards with respect to discharge of drilling wastes." Id.

EPA commented on the requirements of the CWA as they relate to Texaco's proposed project. EPA has funded two studies to assess the impacts of muds and cuttings discharge on the California OCS. The results of those studies lead EPA to conclude that exploration projects such as Texaco's would not likely involve unreasonable degradation of the marine waters. EPA summarized that the permitted discharges would not cause a substantial

adverse impact on the natural resources of the coastal zone because

> (1) there will be no significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities; (2) there will be no threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms; and (3) there will be no loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.
>
> EPA Letter at 4.

Responding to the question of whether the proposed project will violate any requirements of the Clean Water Act, EPA stated

> [t]he proposed activities of the Appellant [Texaco] will not violate the requirements of the CWA. The CWA makes unlawful the discharge of pollutants into OCS waters except in accordance with the terms of a NPDES permit. Thus, Appellant's activities will not violate the CWA unless Appellant violates the terms of the NPDES permit that EPA has issued.
>
> Id. at 5.

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

4. Fourth Element

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

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

Texaco asserts that the Commission did not identify any reasonable alternatives nor make any effort to do so. Rather,

according to Texaco, the Commission merely stated that no alternative existed. Tx. Ap. Br. at 29-30. The Commission counters that Texaco had not provided any information to demonstrate that no reasonable alternatives existed -- thus, Texaco failed to meet its burden. CCC Resp. Br. at 30.

As explained in the Korea Drilling consistency decision, "the regulations governing consistency appeals do not discuss 'burden of proof.'" Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., January 19, 1989, at 22 (Korea Drilling Decision).

According to the Department's regulations at 15 C.F.R. § 930.79(c), "[i]f the State agency objects to one or more of the Federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with ... § 930.64(b) ...." Section 930.64(b) provides, in part, that "state agency objections must describe ... alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the management program."

As discussed in detail in the Korea Drilling Decision, these regulations serve several purposes.

> First, it gives the applicant a choice: adopt the alternative (or, if more than one is identified, adopt one of the alternatives) or, if the applicant believes all alternatives not to be reasonable or available, either abandon the proposed activity or appeal to the Secretary and demonstrate the unreasonableness or unavailability of the alternatives. Second, it establishes that an alternative is consistent with a State's program because the State body charged by the Act with determining consistency makes the identification of the alternative.
>
> Korea Drilling Decision at 23.

Section 307(c)(3) of the CZMA and its implementing regulations place the burden of identifying an alternative(s) on the Commission. Once an alternative(s) is identified, the burden shifts to Texaco to demonstrate that the alternative(s) is unreasonable. Korea Drilling Decision at 23.

The record before me reveals that the Commission considered two alternatives -- change of location and deferral of exploration. The Commission noted that it could approve a proposed project if it finds that "alternative locations are either infeasible or more environmentally damaging." Adopted Findings at 59. It concluded that the record did not indicate either of these factors. Id.

The Commission, while indicating that feasible, less environmentally damaging locations may exist, does not identify any alternative locations for Texaco's proposed activity. Texaco argues that alternative well sites on the lease do not exist. In its Environmental Report, Texaco concluded that "[t]he proposed drilling sites were selected after the careful review of all available geophysical, geological and environmental survey investigations, and no other locations are presently interpreted to offer any noteworthy advantage with respect to improved possibilities of encountering hydrocarbons with less environmental impacts." Environmental Report at 5-1. Texaco adds that it appears from the discussion at the public hearing on its proposed project, that no drilling location(s) on the lease would be acceptable to a majority of the Commissioners. It also states that the potential reserves on Lease 0512 cannot be accessed from another lease. Tx. Resp. Br. at 29.

Based on the record before me, I find that the Commission's discussion of a different drilling location(s) is not specific enough to describe an alternative that would permit Texaco's proposed activity to be conducted in a manner consistent with the CCMP. See Korea Drilling Decision at 24.

The Commission also proposes deferral of exploration as an alternative to the proposed project. The Commission states that onshore support facilities such as processing plants, marine terminals, supply and crew bases, and crude oil pipelines are inadequate to process, transport and refine resources developed from previously leased tracts. Until such facilities exists, the Commission argues that it is premature to conduct additional exploration and development. Adopted Findings at 61. The Commission adds that deferral also would allow time for the oil and gas industry to improve significantly its oil spill prevention and cleanup capabilities. CCC Resp. Br. at 30. The Commission asserts that deferral is a reasonable alternative for a number reasons. First, the present price of oil is low. Second, the resources are not wasted if they are not exploited at this time. Third, the environment would be protected from the impact of a potential oil spill. And fourth, the small portion of energy supplies from Lease 0512 that are deferred would not have a significant effect on the Nation's economy or oil supply. Adopted Findings at 61; Brief of California Coastal Commission in Response to Comments, October 7, 1988, at 6.

Texaco counters that deferral is not a reasonable alternative. Texaco purchased lease rights in 1984 and has worked with various agencies to meet regulatory requirements before the lease expires in 1989. In short, Texaco observes that deferral would prevent the project from going forward. Tx. Resp. Br. at 26-28. Texaco also points out that a comprehensive transportation and treatment plan exists to serve oil produced from Lease 0512 should a discovery occur. It states "[c]onsolidated offshore, common

carrier (open to all on an equal basis) pipelines and an onshore treatment facility at Gaviota, California have not only been approved by the California Coastal Commission to serve the Point Arguello Field, but these facilities are presently nearing completion and operation. Texaco is a partner in these facilities." Tx Ap. Br. at 25. Texaco notes that the Commission's comments concerning transportation and treatment facilities are more appropriate for development and production plans rather than a plan of exploration. Id.

I cite Treasury's comments on deferral. It stated that:

> [w]e note the long lead time required for oil production to come on stream following exploration (5-8 years), and that, if approved, Texaco's project would provide additional oil supplies in the 1990's when the Department of Energy forecasts oil prices to be higher. Further, postponing oil exploration and development imposes costs on the public in terms of reduced current economic activity and in terms of the oil which will not be available in the 1990's. To maintain our national energy production, it is important to have a continued stream of economically viable exploration and development projects so that new oil production from these projects will be available to replace declining activity from older or exhausted wells.
>
> Treasury Letter at 1-2.

The Gulf Oil Decision considered deferral of a POE. I, therefore, turn to the rationale in the Gulf Oil Decision. In that case, the Commission had approved exploration plans on almost all of the tracts surrounding Gulf's. The Commission, however, requested that Gulf Oil defer exploratory drilling until local governments had completed planning for pipelines, onshore processing facilities and other industrial infrastructure. Such planning would take several years. The Commission stated that the same oil reserves would be available at a later date, and Gulf would have the advantage of "tapping into" an existing infrastructure. Gulf's lease expired in 1989. That decision noted that the Commission had failed to show why the Gulf tract should be treated differently from the surrounding tracts. The Secretary found that Gulf's proposed project did not require any additional onshore facilities. Deferral was not reasonable, in part, because of "the unproven relationship between infrastructure planning and Gulf's one exploratory well, and [that] the opportunity for local planning ... already exists." Gulf Oil Decision at 20, 22-23.

The record in Texaco reveals even more persuasive facts than those existing in the Gulf Oil Decision. The infrastructure here is well beyond the planning stage. It has been approved and nearing completion of construction. As Texaco points out, this

EXPLORATION PROJECT COMPARISON: COASTAL CONSISTENCY

Prepared By Texaco Inc.

	TEXACO PROJECT	ADJACENT LEASES					
	P-0512	P-0317	P-0318	P-0321	P-0324	P-0325	P-0187
PLANNING							
Plan of Exploration	YES	YES	YES	YES	YES	YES	YES
Environmental Report	YES	NO	NO	NO	NO	NO	NO
Biological Survey	YES	NO	NO	NO	NO	NO	NO
Geohazards Survey	YES	NO	NO	NO	NO	NO	NO
Oil Spill Cleanup Plan	YES	NO	NO	NO	NO	NO	NO
Marine Mammal Avoidance Plan	YES	NO	NO	NO	NO	NO	NO
Fisheries Training Program	YES	NO	NO	NO	NO	NO	NO
Hydrogen Sulfide Contingency Plan	YES	NO	NO	NO	NO	NO	NO
Military Evacuation Plan	YES	NO	NO	NO	NO	NO	NO
AIR QUALITY							
Air Quality Modeling Analyses	YES	NO	NO	NO	NO	NO	NO
Injection Retard Timing	YES	NO	NO	NO	NO	NO	NO
Vapor Recovery System	YES	NO	NO	NO	NO	NO	NO
Supply Boat Speed Reduction	YES	NO	NO	NO	NO	NO	NO
Supply Boat Idling Reduction	YES	NO	NO	NO	NO	NO	NO
Supply Boat Engine Retrofit	YES	NO	NO	NO	NO	NO	NO
Diesel Fuel #1	YES	NO	NO	NO	NO	NO	NO
Flare System	YES	NO	NO	NO	NO	NO	NO
H_2S Scrubber System	YES	NO	NO	NO	NO	NO	NO
COMMERCIAL FISHING							
Advance Notice of Activities	YES	NO	NO	NO	NO	NO	NO
Submerged Buoys	YES	NO	NO	NO	NO	NO	NO
Standby Assistance Vessel	YES	NO	NO	NO	NO	NO	NO
Helicopters for Crew Transport	YES	NO	NO	NO	NO	NO	NO
Oil Service Vessel Traffic Corridors	YES	NO	NO	NO	NO	NO	NO
Obstruction Free Supply Boat Moorings	YES	NO	NO	NO	NO	NO	NO
Precise Notice of Anchor Locations	YES	NO	NO	NO	NO	NO	NO
Compensation during Anchor Placement/Retrieval	YES	NO	NO	NO	NO	NO	NO
Fishing Within Anchor Patterns	YES	NO	NO	NO	NO	NO	NO
Anchor Placement to Avoid Hard Bottom Features	YES	NO	NO	NO	NO	NO	NO
VESSEL TRAFFIC SAFETY							
Fog Horn	YES	NO	NO	NO	NO	NO	NO
24 hour Obstruction Lights	YES	NO	NO	NO	NO	NO	NO
Aircraft Warning Lights	YES	NO	NO	NO	NO	NO	NO
Audible Alarm Radar on Rig	YES	NO	NO	NO	NO	NO	NO
24 hour Manned Radio	YES	NO	NO	NO	NO	NO	NO
Automatic Radar Plotting Aid (ARPA)	YES	NO	NO	NO	NO	NO	NO
OIL SPILL RESPONSE							
Continuous Stand-by Vessel and Crew	YES	YES	YES	YES	YES	YES	YES
Spill Containment Boom	YES	YES	YES	YES	YES	YES	YES
Open Ocean Skimmer	YES	YES	YES	YES	YES	YES	YES
Oil Storage Capacity	YES	NO	NO	NO	NO	NO	NO
Oil Absorbent Material	YES	YES	YES	YES	YES	YES	YES
Clean Seas Response Support	YES	YES	YES	YES	YES	YES	YES
WATER QUALITY							
Mud Modeling	YES	NO	NO	NO	NO	NO	NO
Bioassay Testing of Muds	YES	NO	NO	NO	NO	NO	NO
Mud Ingredient Inventory	YES	NO	NO	NO	NO	NO	NO
No Chrome	YES	NO	NO	NO	NO	NO	NO
No Diesel	YES	NO	NO	NO	NO	NO	NO
Real Time Current Metering	YES	NO	NO	NO	NO	NO	NO
Discharge of Muds Only When Currents Allow	YES	NO	NO	NO	NO	NO	NO
Accurate Positioning of Anchors	YES	NO	NO	NO	NO	NO	NO
NPDES PERMIT	YES	NO	NO	NO	NO	NO	NO
COASTAL CONSISTENCY BY THE CALIFORNIA COASTAL COMMISSION	NO	YES	YES	YES	YES	YES	YES

FIGURE 6

infrastructure discussion is more important for the development of a lease, not exploration. I concur. As in Gulf Oil, the Commission here has approved exploration on Tracts 0317, 0318, 0321, 0324, 0325 and 0197, all adjacent tracts to Lease 0512 in Federal waters. See Figure 1. Texaco also provided a chart that compared the measures incorporated in its POE with other POE's approved by the Commission on adjacent leaseholds. See Figure 6; Tx. Resp. Br. at 44. An examination of that chart reveals that many more safety and mitigation measures are included for Lease 0512 than required or provided on adjacent leases. The Commission has failed to convince me that Lease 0512 should be treated any differently from the adjacent tracts.

Because of the pending expiration of Texaco's lease in 1989, the soon-to-be completed infrastructure and the disparate treatment between proposed activities on Lease 0512 and surrounding leases, I find that deferral of exploration is not a reasonable alternative and that no reasonable alternative is available to Texaco that would permit its proposed activity to be conducted in a manner consistent with the California Coastal Management Program.

5. Conclusion for Ground I

On the basis of the findings I have made in this decision, I find that Texaco has satisfied the four elements of Ground I. Texaco's proposed project is consistent with the objectives or purposes of the CZMA.

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

Because I have found that Texaco has satisfied the first of the two alternative grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the State, it is not necessary to address the second statutory ground - "necessary in the interest of national security."

Conclusion

I have found that Texaco's proposed project is consistent with the objectives or purposes of the CZMA. As a result, Texaco's proposed project may be permitted by Federal agencies.

Under Secretary for Oceans
and Atmosphere

May 19, 1989

Footnotes

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

2/ In this appeal, as with previous consistency appeal decisions, I have not considered whether the California Coastal Commission properly interpreted and applied its mandatory, enforceable policies in its decision that the proposed activities were inconsistent with the California Coastal Management Program. Although there is some authority indicating that the Secretary may review the "correctness" of a State's objection, it is the policy of the Department to limit consistency appeal decisions to the consideration of statutory and regulatory grounds for an override. Therefore, I have examined the objections solely for the purpose of determining whether they were lodged properly -- that is, whether the objections complied with the requirements of the CZMA and its implementing regulations.

3/ Of those comments, only fourteen addressed the criteria that I must consider under 15 C.F.R. §§ 930.121 and 930.122. While all materials received have been incorporated into the record, they are considered only as they are relevant to the statutory and regulatory criteria for deciding consistency appeals. See Decision and Findings in the Consistency Appeal of Long Island Lighting Company, February 26, 1988, at 4, fn. 4.

4/ Conoco Consistency Appeal, Letter from William E. Evans, Under Secretary for Oceans and Atmosphere to John R. Eldridge, Conoco Inc., August 19, 1988; Chevron Consistency Appeal, Letter from William E. Evans, Under Secretary for Oceans and Atmosphere to Richard J. Harris, Chevron U.S.A., Inc., August 19, 1988.

5/ The area off Point Conception is one of the major upwelling centers on the West Coast. The upwelling usually occurs in the spring and summer but may occur throughout the year if there are strong offshore winds. Adopted Findings at 53; CCC Resp. Br. at 23.

6/ Those recommendations are the same as the measures discussed in the Adopted Findings at 53.

7/ Mr. Clean III vessel is located near Platform Harvest, approximately one hour from the proposed site. It is equipped with oil skimmers, oil containment boom, and 1400 bbl. capacity. Mr. Clean I is located in Santa Barbara Harbor, about six to seven hours away, and Mr. Clean II is located in Port San Luis, approximately five to six hours away. Adopted Findings at 47.

8/ Acute Lethal Toxicity of Prudhoe Bay Crude Oil and Corexit 9527 to Arctic Marine Fish and Invertebrates, 1982.

9/ API estimates that spill between 20,000 and 80,000 barrels, API Report at 2, while the Commission cites a much higher figure of 35,000 to 300,000 barrels. CCC Resp. Br. at 20.

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