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Volume 1 (of 2 Volumes)

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Analysis of the Permitting Processes Associated with Exploration of Federal OCS Leases

Final Report -- Volume I

November 1980

Prepared for:

U.S. Department of Energy

Assistant Secretary for Resource Applications

Office Leasing Policy Development

Under Contract No. DE-AC01-80RA-35012

DOE/RA/35012-1
Volume 1 (of 2 Volumes)

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EXECUTIVE SUMMARY

The Department of Energy (DOE) has from time to time received complaints that existing permitting procedures significantly delay oil and gas exploration and development both onshore and offshore, and that there is duplication in the permits required. While the objectives sought by those statutes and regulations imposing the permitting requirements are laudable, the total time spent by industry and government agencies for permit application and issuance, plus gathering support data, is considerable. Any simplification or streamlining which can be achieved will benefit the energy industry and will reduce the administrative burden on the agencies involved.

The Office of Leasing Policy Development (LPDO) within Resource Applications has funded this study to assist them in developing recommendations which will lead to the elimination of unnecessary delays in the securing of permits required for domestic OCS oil and gas exploration. The acceleration of OCS exploration and production is especially important for the Alaskan OCS, which is believed to offer an opportunity to find and produce a significantly greater volume of oil. The reduction of the time frames for OCS permitting procedures during the exploration phase would accelerate the development and production of oil and gas in all regions, especially the Alaskan Outer Continental Shelf. The U.S. offshore leasing activity, compared to other nations or areas, is lagging. European nations have already leased 15 percent of their OCS areas, Africa 57 percent, and Asia 35 percent. The U.S. has leased two percent of its OCS as of 1980.

Under contract to LPDO, Jack Faucett Associates (JFA) is currently undertaking the description and analysis of the OCS regulatory process to determine the nature of time delays that affect OCS production of oil and gas. This report represents the results of the first phase of research under this contract, the description and analysis of regulatory activity associated with exploration activities on the Federal OCS. For the purposes of this report, exploration-related regulation is defined as the regulatory activity occurring between a Federal OCS lease sale and the beginning of industry exploratory drilling on tracts awarded in the sale. The second major area of regulatory activity, associated with development/production activities (defined as the period from the discovery of a commercially producible reserve during exploration to production from that reserve), will be described and analyzed in subsequent research under this

contract. Analysis of the regulation of development/production should be complete by August of 1981.

The major causes of delay in the regulatory process governing exploration can be summarized in four broad categories:

- 1) The long and tedious process associated with the Environmental Protection Agency's (EPA) implementation of the National Pollutant Discharge Elimination System Permit (NPDES).
- 2) The lack of mandated time periods for the completion of individual activities in the permitting process.
- 3) The lack of overall coordination of OCS exploratory regulation, including:
 - a) the absence of an overall monitoring system
 - b) the lack of coordination of research and attending data necessary to assess potential impacts of OCS exploration
 - c) the absence of any single overriding authority to resolve stumbling blocks that arise during the regulatory process
 - d) the failure to integrate ongoing research and coordinating efforts into a uniform system of activity, and
 - e) the lack of uniformity in regional implementation of regulations.
- 4) The inexperience of states, the Federal government and industry relating to the appropriate level of regulation for first-time lease sale areas.

The first three delay-causing aspects noted above can be mitigated through better coordination and cooperation in regulation of the OCS. The fourth cause of delay — inexperience — cannot readily be overcome. Regardless of the efficiency of the regulatory process in experienced areas, the adoption of the process by first-time lease areas will require a significant learning process. While the remedies suggested in Part I

of this report should reduce the uncertainty of many aspects of regulation, new lease-sale areas will continue to experience a learning curve associated with OCS regulation. The time required to move along this learning curve will be a function of the complexity of the regulations. Even experienced areas will be subject to learning curves to the extent that regulations are added or changed over time.

Part II of this report presents a description of Federal agency regulation of exploration on the OCS. The U.S. Geological Survey (USGS) within the Department of Interior (DOI) plays the lead role in regulation during exploration. The Environmental Protection Agency regulates discharges associated with drilling, and EPA's implementation of discharge requirements has resulted in considerable delays to exploratory drilling in some lease sale areas. The Corps of Engineers and the Coast Guard also interact in OCS exploration regulation, though seldom do their regulatory activities result in actual delays to exploration activity. The indirect role of numerous other Federal agencies during exploration is also defined in Part II.

The role of state regulation from the time of lease sale through exploration is minimal. The primary state regulatory functions center on review of Federal permits through a Federally-approved Coastal Zone Management (CZM) program or review processes that can be conducted independently of a federally-approved CZM program. The Federal CZM program is described in Chapter II-6 and the regulatory activities conducted by seven coastal states during exploration are detailed in Part III of this report.

This report does not necessarily state or reflect the views, opinions, or policies of the Department of Energy or the Federal Government. The report is intended to provide an unbiased description and analysis of regulatory activities associated with the exploration of federally-leased areas on the OCS. The findings will be used by DOE to assess the need for modification to the existing Federal regulatory activities in the framework of the Nation's domestic energy policy.

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PART I

STUDY RESULTS

CHAPTER I-1
INTRODUCTION

The Outer Continental Shelf (OCS) surrounding the United States is considered by many as the most promising area for domestic petroleum exploration and production. The U.S. Department of Energy (DOE) is responsible for establishing production goals for energy resources, including goals for the production of oil and gas from the Federal OCS. Pursuant to this responsibility, DOE contracted with Jack Faucett Associates (JFA) for an examination of the OCS regulatory process associated with industry exploration of the Federal OCS. This potential energy supply is largely located on Federally-owned lands that are managed under the Outer Continental Shelf Land Act Amendments of 1978 in coordination with state and local governments and other affected parties. National energy policy regarding OCS oil and gas resources is to expand exploration and development in a timely and efficient manner. Therefore, in responsibilities related to the development of OCS production goals and in support of national energy policy, DOE is undertaking an examination of regulatory delays that may slow the production of OCS oil and gas resources.

Federal OCS regions outside of California's OCS and the Western Gulf of Mexico are now experiencing their first sample of offshore activities in the exploration stage of operations. In the Western Gulf, a long history of offshore activity has served to resolve most permitting problems and few regulatory delays are associated with drilling in that area. The permitting processes in frontier regions, however, proceed with many difficulties. Since the operational activities of the oil and gas industry are constrained by difficulties in the permitting process, the time period from lease sale to the beginning of exploratory drilling activities is longer in frontier regions than it is for the Western Gulf. Therefore, the emphasis of this JFA report is on the regulatory processes involved in exploring frontier OCS leases. This is not to imply that other phases of operation, (i.e., development and production) are unimportant in the consideration of the OCS permitting process. Most coastal areas simply have not yet reached the development/production stage.

To assist DOE in developing recommendations to reduce the time period between lease sale and exploratory drilling, the final segment of JFA research consisted of formulating potential actions whereby the Federal government might reduce the time

required to implement the OCS permitting process prior to initiating exploratory drilling. These potential solutions are presented in the next chapter.

1.1 EXPLORATION IN PERSPECTIVE

The exploration activities and related permitting requirements that are discussed throughout this study form only one link in the chain of events that culminate in OCS production on Federal leases. The entire sequence encompasses:

- 1) the lead time required for selection of tracts prior to the sale,
- 2) the sale,
- 3) preparation time for exploratory drilling,
- 4) exploration,
- 5) preparation time for development/production activity, and
- 6) production.

The time required to bring lease sale areas to production varies considerably: while three years might be sufficient for known areas in the Gulf of Mexico, ten years is probably optimistic for production from Federal leases in many areas surrounding Alaska.

With the exception of the mature producing areas in the Gulf of Mexico and offshore California, no major Federal leasing areas have yet reached production activity. We know that the time required through exploration tends to be considerably longer in non-mature regions, but how much more time will pass before production is still unknown. In Exhibit 1-A, the major OCS regions are identified.

As shown in Exhibit 1-B, the proposed 5-year lease sale schedule of the DOI includes sales in all major OCS regions:¹ sixteen sales in the Gulf of Mexico, two in the North Atlantic, two in the Mid Atlantic, two in the South Atlantic, four off the coast of California and ten in waters surrounding Alaska. While lease sales have previously been held in each of these areas, the 1980-85 schedule represents a considerable increase in the leasing rate in non-mature regions. Assuming sales are held according to the

¹ No sales are scheduled off the coast of Washington and Oregon, nor is there indication of industry interest in this area in the foreseeable future.

EXHIBIT I-A: OUTER CONTINENTAL SHELF LEASE AREAS, COTERMINOUS UNITED STATES

JUNE 1980

Levil A. Anderson
Secretary of the Interior

★ The holding of the Chukchi Sale at this time is contingent upon a reasonable assumption that technology will be available for exploration and development of the tracts included in the sale.

EXHIBIT 1-B

schedule, there will be simultaneous exploratory drilling underway in many OCS areas during the next five to seven years. After sales and before any actual drilling, however, there are numerous steps which industry and government must take to ensure safety and approve operations. These steps comprise the pre-exploration phase of the OCS process.

This study focuses on this pre-exploration phase, a phase that may require as little as three to six months following a lease sale in the Gulf of Mexico but can extend to several years in non-mature regions. The phase includes:

1. government decision-making related to the details of implementing lease sale stipulations and other permitting requirements
2. industry's development of an exploration plan and associated permit applications (all of which must be responsive to the governmental requirements resulting from (1) above),
3. government review of the exploration plan and related permit applications, and
4. government issuance of all permits and approvals required for exploration.

Only after all permits and approvals have been granted may industry move toward its primary goal of exploratory drilling to locate marketable reservoirs of oil and/or gas from the OCS.

In Part II, this study summarizes by agency the Federal regulatory requirements associated with OCS exploration. While the affected state governments within each lease area do not play a direct role in regulation of exploration activity (with the exception of Alaska), indirectly they work with the Federal government and industry to protect state interests in relation to offshore drilling. The role of state involvement in OCS exploration of Federal leases is described in Part III, which examines the policies and activities of seven coastal states affected by OCS exploration.

1.2 SCOPE OF ANALYSIS

The purpose of identifying and describing OCS regulatory policy pertaining to the exploration of Federal OCS tracts is to determine whether the attending regulatory activities are conducted in an efficient and timely manner. Thus, the descriptive chapters in Part II focus on what takes place and the time required to accomplish each regulatory activity. Since there is little homogeneity in time requirements across all OCS regions, the timing elements of each regulatory activity are identified by citing the shortest and longest time periods, as well as the usual time period, required.

The foundation for a major portion of the regulatory activities, both state and Federal, relating to Federal OCS leases is the Outer Continental Shelf Land Act Amendments of 1978 (OCSLA Amendments). Section 18(a)(2) of the Amendments explains the overall objectives of OCS regulation. This section is reprinted in Exhibit 1-C. As evidenced in this section, the concern underlying regulatory activities represents a diverse range of priorities, including:

- supplying energy resources under an equitable sharing of risk,
- protecting the environment,
- balancing oil and gas production with other uses of OCS resources,
- considering the interests of the producing sector, and
- working in conjunction with the goals of affected states

The regulatory activities that have resulted from the above considerations represent a complex balancing of these priorities. The objective of this study focuses not on the evaluation of these priorities or the legitimacy of the regulations serving them, but rather on whether the implementation of these regulations is carried forth within an efficient framework.

The results of the analysis of Federal regulatory activity associated with OCS exploration are presented in the next chapter.

EXHIBIT 1-C

OCSLA AMENDMENTS OF 1978
SECTION 18(a)(2)

OCSLA Amendments of 1978
Section 18(a)(2)

Timing and location of exploration, development, and production of oil and gas among the oil- and gas-bearing physiographic regions of the outer Continental Shelf shall be based on a consideration of:

- A. Existing information concerning geographical, geological, and ecological characteristics of such regions.
- B. An equitable sharing of development benefits and environmental risks among the various regions.
- C. The location of regions with respect to, and the relative needs of regional and national energy markets.
- D. The location of regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sea-lanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the outer Continental Shelf.
- E. The interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination.
- F. Laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration.
- G. The relative environmental sensitivity and marine productivity of different areas of the outer Continental Shelf, and
- H. Relevant environmental predictive information for different areas of the outer Continental Shelf.

CHAPTER I-2
STUDY RESULTS

2.1 MAJOR AREAS OF SIGNIFICANT DELAYS IN OCS EXPLORATION ACTIVITIES

The research effort for this study focused on the identification of Federal permits and requirements placed upon industry from the time of lease sale until the time of initial exploratory drilling. After each permit/requirement was identified, the associated activities were analyzed to determine the length of time required to complete the activity as well as the reasons for variation in the time requirements for a given activity. In-depth research and analysis was then focused on activities that 1) showed wide variations in the time required to complete the activity, or 2) routinely required a lengthy amount of time for completion. In the first column of Exhibit 2-A, all Federal permits and/or requirements associated with exploration of Federal OCS leases are identified. In the second column, each permit is separated into distinct activities associated with permit preparation and review. The time periods required to undertake these activities are specified, followed by reasons for delay that are associated with the longest time period that may be required for the activity. This exhibit provides a summary of the permit identification and description that is detailed in Part II of this report.

In Exhibit 2-B, each problem area (as identified in Exhibit 2-A) is expanded to include a brief description of the nature or origin of the problem and potential actions that could be used to alleviate the associated delays.

The problems that were identified as resulting in the largest delays to OCS exploration activity on Federal leases include:

- 1) the long and tedious process used by EPA to issue the National Pollutant Discharge Elimination System Permit (NPDES),
- 2) the lack of Federal and State experience, adequately developed data, and industry experience in first-time (frontier) sale areas,
- 3) the absence of required (mandated) time frames for many governmental decisions or activities within the permitting process, and

PERMIT RELATED ACTIVITIES	ACTIVITY (Industry/Government)	Average Time		Shortest Reported Time		Longest Reported Time		PROBLEMS AFFECTING TIME REQUIREMENTS
		Gulf	Non-Gulf	Gulf	Non-Gulf	Gulf	Non-Gulf	
USGS								
Site Surveys	Industry conducts data collection and analysis prior to preparation of EP	6 weeks	2-3 mos.	3 weeks	2 months	2 months	9 months	1) Reaching agreement in data requirements 2) Finalizing survey design 3) Equipment not available 4) Inconclusive survey results require additional survey work
Exploration Plan	Industry provides location and sequence of drilling; provides equipment design and includes safety plans	1 month	2-4 mos. (new safe area) 1-2 mos. (active area)	2-3 wks	1 month	4-6 mos.	6 months	1) Delay in obtaining site data 2) Delay in determining monitoring details acceptable to states and others 3) Plan rejected; industry must revise 4) Plan rejected; industry must repeat survey work
	Government reviews plan	42 days						1) Mandated review period; schedule is met; no problems; entire time usually required because of multiple reviewing agents
Environmental Report	Industry prepares detailed document describing affected environment and all impacts expected from proposed location and sequence of drilling	Usually not required	2-3 mos. (new safe area) 1 mo. (active area)	-	2-3 wks.	-	9 months	1) Uncertainty as to coverage and level of detail required 2) Inadequate job by 3rd party (contractor) 3) ER rejected as originally submitted; problems of format and content 4) Highly detailed report with many possibilities for errors/shortcomings
	Government reviews report			42 days				1) Reviewed with EP; same comments apply
Environmental Assessment	Government documents decision to approve exploratory drilling; establishes whether a NEPA-EIS will be required (none have been for exploration)			Incorporated in 30-day review of EP and ER				1) Preparation incorporated into 30-day review
Application for Permit to Drill	Industry prepares application supplying technical details of drilling program; can be prepared simultaneously with EP	1 week	1-2 wks	1 week	1-2 wks	1 week	2-3 wks	1) Routine document; no significant delay
	Government reviews and approves APD; final go-ahead before drilling	1 week	1-2 wks	1 day	1 day	2 wks	2-3 wks	1) USGS accommodates its APD review to industry's drilling schedule; no problems.

EXHIBIT 2-A: FEDERAL PERMITTING ACTIVITIES FOR OCS EXPLORATION

PERMIT RELATED ACTIVITIES	ACTIVITY (Industry/Government)	Average Time		Shortest Reported Time		Longest Reported Time		PROBLEMS AFFECTING TIME REQUIREMENTS
		Gulf	Non-Gulf	Gulf	Non-Gulf	Gulf	Non-Gulf	
EPA								
NPDES Permit	Industry prepares and submits an application for an NPDES permit	1 week	3 months	2 days	2 days	2 weeks	6 months	1) Industry-government disagreement on the amount of necessary information 2) Information requirements vary between EPA regions
	EPA reviews application for completeness	N/A	N/A	N/A	N/A	N/A	N/A	1) EPA can judge application incomplete requiring industry submittal of information necessary to make complete
	EPA prepares and issues a draft permit	47 days	95 days	0 days	7 days	109 days	514 days	1) EPA has no mandated time limit by which an issuance decision must be made once application determined complete
	EPA gives public notice of draft permit preparation followed by a public comment period (including any public hearing)	37 days	68 days	32 days	38 days	48 days	149 days	1) EPA may extend or reopen the public comment period, and/or a new draft permit prepared, if substantial new questions are raised during the comment period 2) EPA at its own discretion, or upon request may hold public hearings, adding at least 30 days from hearing notice until hearing plus the time required for the hearing
	EPA issues and serves notice of issuance of the final permit, which, subject to appeal, becomes effective	N/A	N/A	30 days	30 days	N/A	3 or more years	1) EPA has no mandated time limit by which a final permit decision must be made after the conclusion of the public comment period (including any public hearings) 2) Final permit appeals through EPA mechanisms and judicial review may delay the effective date of the permit for several years
COE								
Department of	Industry prepares and	Minimal		Minimal		Minimal		1) No problems

¹ Note that application preparation time relates to preparation of EPA short and standard Form C, which has since been superseded by consolidated permit application forms. Estimates of application preparation time were obtained from industry personnel. Estimates of individual permitting steps were obtained from EPA Region IV and IX NPDES permit tracking information.

² Time estimates measure the period between application until draft permit notice.

³ By regulation, final permits become effective 30 days after serving notice unless no changes in the draft were requested (not included in 1979 Regulations), a later date is specified in the permit, or an evidentiary hearing is requested. These data are not based on permit tracking information.

PERMIT RELATED ACTIVITIES	ACTIVITY (Industry/Government)	Average Time		Shortest Reported Time		Longest Reported Time		PROBLEMS AFFECTING TIME REQUIREMENTS
		Gulf	Non-Gulf	Gulf	Non-Gulf	Gulf	Non-Gulf	
<u>COE - (Continued)</u>	COE reviews application for completeness and requests any additional information; public notice of application is given, and notice is sent to government agencies		Several days		N/A		N/A	1) COE may judge application incomplete and determine that additional information is needed
	COE receives public comment		15 - 30 days		15 days		75 days	1) Length of the public comment period varies between COE districts 2) Public comment period may be extended up to a maximum of 75 days, in unusual circumstances
	COE may hold a public hearing (optional) ⁶		N/A		N/A		N/A	1) COE may hold a public hearing adding at least 30 days from hearing notice until hearing, plus time required for the hearing
	COE prepares and sends a draft permit or forwards the application to higher headquarters		Several days		N/A		N/A	1) Public or government agency objections and industry's rebuttal of the objections may delay the permitting process 2) Referral to Division or Chief of Engineers due to unresolved objections from another Federal agency may delay process
	Industry accepts and signs the draft permit COE signs the draft permit constituting final COE action (any permit appeals made through judicial action)		N/A		N/A		N/A	1) Judicial appeal of a permit may delay the permit's effective date;
<u>Coast Guard</u>	Permits and Requirements of the Coast Guard are Handled in a Routine and Efficient Manner							

⁴ By regulation public notice of application is issued within 15 days of receiving all required information.

⁵ By regulation, public comment is received for 15-30 days following notice, and in unusual circumstances up to 75 days.

⁶ By regulation, public hearing notice must be given at least 30 days before the hearing.

⁷ By regulation, the draft permit is sent to the applicant or the application forwarded within 30 days of the latest: the close of the comment period without objections, resolving notice objections withdrawn, completing coordination following objections rebuttal, or the close of the public hearing record.

FEDERAL PERMITTING ACTIVITY	DELAYS	NATURE OF DELAYS	POSSIBLE REMEDIAL ACTION
USGS			
Site Survey	Supplies data for non-drilling purposes	Provides data beyond that needed to determine safe drilling	- Justify all data needs on "need to know" for safe drilling basis
Exploration Plan	Common drilling information	Repetitive filing of common information	- Adjust data requirements periodically (after 2nd lease sale in given area, for example)
Environmental Report	Repeats Presale EIS	Duplicates information	- Improve coordination of environmental data gathering, analysis, and use.
Environmental Assessment	When results in a "FONSI", has documented (duplicated) many insignificant impacts	Repetitive documentation of routine impacts	- Broaden "categorical exclusion" for exploration activities so as to reduce information required from operators
Application for Permit to Drill	None		
EPA			
NPDES Permit	Prior to submission of application, industry and government may disagree on what is necessary information	Delays EPA permitting procedures until the additional information is received from industry	- Evaluate information requirements and justify their necessity - Encourage the cooperation and the sharing of information between EPA regional offices and among other Federal, State and local authorities.
	EPA may judge an application incomplete requiring industry submittal of additional information	Same as above	Same as first two above
	Information requirements vary between EPA regions	Time and resources needed for industry to prepare an application may vary due to regional variations in information requirements	- Standardize information requirements of the EPA regions, except where special regional conditions warrant otherwise
	EPA at its own discretion, may reopen the public comment period, and/or prepare a new draft permit, if substantial new questions are raised during the comment period	Delays the permitting process by the additional time allowed for comment	- Establish more stringent criteria for need to reopen
	EPA at its own discretion, or upon request may hold public hearings	Delays the permitting process by adding at least 30 days from hearing notice until hearing date plus the time required for the hearing	- Establish more stringent criteria for public hearings

If the public hearing notice is combined with the draft permit notice, the 30 day period before the hearing date and the required 30 day comment period following draft permit notice may occur simultaneously.

EXHIBIT 2-B: PROBLEM ANALYSIS FOR FEDERAL PERMITTING ACTIVITIES

FEDERAL PERMITTING ACTIVITY	DELAYS	NATURE OF DELAYS	POSSIBLE REMEDIAL ACTION
EPA - (Continued)			
	Appeal of final permit decisions through EPA mechanisms (appeal and evidentiary hearing) and judicial action may delay an effective permit	May delay a final permit becoming effective by several years	- Restrict reasons for evidentiary hearing
	Minimal or no time constraints, rather than maximum times are provided for completion of individual permitting steps	EPA may take more time than is necessary to process an application and issue a permit due to there being no mandatory maximum times for permitting steps (e.g., making a tentative or final permit issuance decision)	- Establish mandatory time limits for the permitting process
	Regional variation in the coverage of permits (e.g., Region IV-lease block, Region IX-lease sale area)	Inconsistent permit coverage between regions	- Standardize individual permit coverage among EPA regions
COE			
DA Permit under Section 10	COE may judge an application incomplete requiring industry to submit additional information	Delays COE permitting procedures until the additional information is received from industry	- Encourage more preapplication planning
	Length of the public comment period varies between COE districts	Inconsistent permitting procedures among COE regions	- Standardize COE permitting procedures among COE districts, except where special conditions of the area warrant otherwise
	Public comment period may be extended up to a maximum of 75 days, in unusual circumstances	Delays the permitting process by the additional time allowed for comment	- Establish stringent criteria for use of any comment period longer than the standard 15-30 day period
	Public or government agency objections to the application may delay preparation and mailing of the draft permit	Resolution of objections — coordination following industry's proposed resolution or rebuttal to objections, or referred to higher headquarters, may delay the permitting process	- Encourage more pre-application planning
	COE may hold public hearings	Delays the permitting process by adding at least 30 days from hearing notice until hearing date, plus the time required for the hearing	- Establish more stringent criteria for hearings
	Appeal of the permit decision through judicial action may delay an effective permit	May delay effective date of permit an indeterminate amount of time	- Establish more stringent criteria for appeals
	Variation between districts as to coverage of permits	Inconsistent permit coverage between district offices	- Standardize individual permit coverage among COE districts
	No Significant Problems Arise in Coast Guard Permitting Procedures on the OCS		

* For NPDES applications from major new dischargers, EPA must prepare a non-binding permit decision schedule.

- 4) the lack of any overriding authority to settle intergovernmental or industry-to-government disputes over details in implementing regulations.

The potential solutions developed by JFA to remedy these and other less time-delaying inefficiencies are presented in Section 2.3.

2.2 REGULATORY ACTIVITIES NOT RESULTING IN SIGNIFICANT DELAYS

A number of regulatory activities that are associated with OCS exploration of Federal leases were identified as not having resulted in delays to the operational activities of industry. These regulatory actions do not cause delay because 1) they are handled in an efficient, timely process or 2) they have not as yet been applied to operational activities on the OCS (they stem from new regulations or are optional requirements that have never been implemented on the OCS). Regulatory activities that include:

- USGS review process for exploration plans and accompanying environmental reports,
- Coast Guard regulatory activities, and
- EPA's ocean dumping permit (if dumping sites have been designated)

2.2.1 USGS Review of Exploration Plans and Accompanying Environmental Reports

The OCSLA Amendments of 1978 specify a 30-day period for USGS review of exploration plans and accompanying environmental reports. These plans and reports are prepared by industry and describe in detail the location, specifics, and environmental effects of proposed exploratory drilling. Implementing regulations add a 10-working-day period for USGS's completeness review plus two days for distribution of plans to reviewing agents.

USGS has an excellent record of approving or disapproving plans within the 30-day review period. USGS provides technical, diligence, and environmental reviews and prepares its own environmental assessment. USGS also submits plans to as many as eleven Federal agencies (depending on the region or circumstances of the proposed drilling) and incorporates timely comments made by these Federal agencies into its

review. States without CZM plans may also review plans and submit comments during this period. States with federally-approved CZM plans receive review copies from USGS; if they complete their consistency concurrence review within the 30 days, their comments can also be incorporated. Further information regarding USGS review of exploration plans is found in Part II, Section 2.10.

2.2.2 Coast Guard Regulatory Activities

No significant delays in oil and gas exploratory operations on Federal OCS leases due to Coast Guard requirements were identified. Coast Guard requirements do not involve a lengthy permitting procedure.

Application for a private aid to navigation is submitted by industry, and reviewed for completeness and approved by the Coast Guard. A signed copy is returned to the applicant. Processing time averages about a week, and may be as short as a day. Applications are rarely disapproved, but may be approved upon condition. An application for a Certificate of Financial Responsibility must be submitted at least 45 days before placing the facility and beginning operations, and the certificate may be issued almost immediately or in up to several months depending on the number of structures involved and whether the owning company has previously had financial evidence verified and been issued a certificate. Industry has experienced a problem in obtaining certification because insurance companies will not sign as guarantors to prove financial responsibility, but the Coast Guard has not restricted drilling activities because of this. The exploratory facility or vessel is initially inspected and periodically reinspected, and is issued a certificate of inspection. Equipment, cranes, loadline and other types of certifications are required. Many Coast Guard requirements relate to notification, reporting and maintaining records.

2.2.3 EPA's Ocean Dumping Permit

Due to the fact that no ocean dumping permits have been issued for OCS oil and gas exploratory operations, little historical experience exists to determine delays associated with this permit. However, several pending permit applications seem to indicate an area outside of the actual permit issuance that has potential for significant delay.

The ocean dumping permitting process is one in which most of the individual permitting steps have mandatory time limits for completion. If a designated disposal site is conveniently available, the time from application submission to permit issuance could be as short as 40 to 50 days. However, if a dumping site has not been designated, the issuance of an ocean dumping permit must include this step, and permit issuance could require 1-2 years or more. This expanded time period includes the time required for industry to prepare baseline assessment surveys for EPA's use in an EIS (up to one year, possibly longer) and for EPA to prepare the EIS (again, up to a year). This results from EPA's determination that an EIS is necessary for formal site designation. For further discussion of the ocean dumping permitting process, see Part II, Section 3.9.

2.3 CONCLUSIONS AND POTENTIAL SOLUTIONS

The following pages present the conclusions resulting from Jack Faucett Associates' (JFA) analysis of the permitting activities associated with exploration of Federal OCS leases. Each conclusion is briefly discussed; more detailed information can be found in relevant sections of Part II and III. Following each conclusion, JFA has advanced (a) potential solution(s) to reduce regulatory time requirements. These conclusions/solutions are offered to regulatory decision-makers as possible avenues for change in current regulatory processes. Prior to implementation of any change to current regulatory practice, however, proposed changes should be subjected to the in-depth scrutiny of all affected parties, including regulators within the Federal government, representatives of affected state/local governments as well as the oil and gas industry.

CONCLUSION: EXCESSIVE TIME REQUIREMENTS RESULT FROM THE NPDES PERMITTING PROCESS

The NPDES permitting process is a long and tedious procedure. Even before a permit application is submitted to EPA, industry may spend up to 6 months preparing the application. After the application is filed, the permitting process includes: application completeness review; draft permit preparation and issuance; a public comment period (including any public hearing); preparation and issuance of the final permit; and appeal of the final permit decision. EPA regional offices indicate that in most cases 180 days is required for issuance. Even after issuance, the permit may not be effective for years, if the final permit decision is appealed. Detailed discussion of the time

requirements associated with the NPDES permitting process can be found in Part II, Section 3.7.3.

Remedies possible within EPA that can reduce the time requirements of the NPDES permitting process include:

1. Encourage issuance of general NPDES permits

General NPDES permits are an available mechanism for authorizing a specific category or categories of discharges in a General Permit Program Area. EPA Region VI has proposed a general permit for Federal OCS oil and gas operations in the Gulf of Mexico. Once a general permit is issued, qualified dischargers in the defined area are covered by the same general permit without requiring individual permitting procedures. The use of general NPDES permits can significantly reduce processing time required for authorizations to discharge because one initial permitting process (similar to the individual permit process) can authorize discharge for all qualified dischargers in the area. A detailed discussion of the general permit can be found in Part II, Section 3.6.4.

2. Develop permit limitations, and gather and evaluate environmental data for use in NPDES permitting during the OCS lease sale process.

This recommendation is included in a directive to EPA regions and affected offices from the EPA Administrator dated July 14, 1980. By developing permit limitations at the earliest possible stage in the lease sale process and gathering and evaluating data in cooperation with other Federal agencies in the environmental assessments undertaken during the lease sale process, a significant amount of time could be cut from the NPDES permitting process after the lease sale. As discussed in Part II, Section 3.7.3, with the exception of final permit appeals, the interval between permit application and draft permit issuance is the most time consuming portion of the permitting process. Much of this time is spent in evaluation of the application and other relevant information to determine whether a draft should be issued.

POTENTIAL SOLUTION

Transfer the authority to regulate discharges associated with oil and gas exploration on Federal OCS leases from EPA to DOI.

Prior to October 1, 1976 when EPA assumed the responsibility, the U.S. Geological Survey (USGS) regulated discharges associated with oil and gas operations on Federal OCS leases. According to both USGS and EPA personnel, USGS discharge limitations were very similar to those used by EPA today. USGS discharge limitations were specified in OCS Order #8 (later #7) and various notices to lessees. No lengthy permitting process was required.

Precedents in consolidating various regulatory aspects pertaining to a single activity can be seen 1) in the air quality monitoring (OCSLA Amendments of 1978) of the OCS within DOI (normally an EPA activity) and 2) the transfer from EPA to DOI of responsibility under the Surface Mining and Reclamation Act of 1977 with respect to coal mining wastes or overburden (Twenty-sixth Congress, Second Session).

There would be several advantages to returning the responsibility of regulating discharges to DOI. DOI is already the lead agency with which industry works on OCS leases. By concentrating more authority in a single Federal agency, significantly less time and resources would be required for authorizations prior to drilling. EPA lacks the logistical set-up for enforcement, (i.e., transportation network and staff). DOI has an existing field structure and conducts frequent inspections of OCS oil and gas facilities. According to EPA personnel, the regional offices often lack the manpower to expeditiously process NPDES permits for OCS oil and gas operations. DOI has available trained personnel and in-house expertise to handle matters specifically relating to OCS oil and gas operations and the technology of offshore drilling.

CONCLUSION: MORE MANDATED REVIEW PERIODS NEEDED

Mandated review periods should be realistically established and then enforced.

Mandated review periods can be very effective in both making more predictable and in shortening the length of time a specific permit review will require. Exhibit 2-E in Chapter II-2 illustrates the change in elapsed time resulting from the 30-day Exploration Plan review mandated by the OCSLA Amendments of 1978. A review period which had typically required between three and six months was changed to one requiring a

maximum of 42 days (10 days' completeness review, two days for report distribution, and 30-day permit review). However, even though USGS complies with this mandated time frame for Exploration Plan review, many other governmental activities which must be concluded prior to industry's drilling may result in a total elapsed time of a year or more from time of sale to time of initial drilling activity. Unless all governmental activities required for OCS exploration are completed in a timely and efficient manner, the expeditious review by USGS of the Exploration Plan does not reduce the total time required for industry to obtain all government permits required prior to exploratory drilling.

POTENTIAL SOLUTIONS

Mandated time periods should be established for:

1. The time allowed from the occurrence of a lease sale until the final details of implementing lease sale stipulations and other requirements are developed (see Part II, Section 3.8). Decisions concerning the implementation of lease stipulations must be made before industry can fully develop exploration-related permit applications.
2. A shorter review period wherein the CZM states can substantively object to the contents of an exploration plan/environmental report. This should be less than the 180 days now allowable for state review and more in line with the 30-day period mandated for USGS review of exploration plans (see Chapter 6). This action will require a change in existing legislation.
3. The time period wherein EPA must designate an ocean dumping site in the event that industry is required to dump drilling wastes into specified dumping sites (see Section 3.1). Ocean dumping permits as required by EPA for ocean dumping cannot be issued until an ocean dumping site has been specified. The time required to specify an ocean dumping site has been estimated by EPA at 1-2 years, or more.
4. Under NPDES regulations, the time period within which EPA: a) makes a tentative decision on permit issuance following determination that an application is complete; and b) makes a final permit decision following the

close of the public comment period and panel hearings (if using non-adversary procedures). It should be noted that EPA's consolidated permit regulations do require a non-binding project decision schedule for NPDES applications submitted by major new dischargers. This schedule specifies target dates for preparation of a draft permit and issuance of the final permit.

CONCLUSION: LACK OF KNOWLEDGE ON STATUS OF PERMITTING ACTIVITY

The time period between an OCS lease sale and the drilling of the first exploratory well is routinely requiring more than a year in frontier areas. During this time period, industry, states, and Federal agencies are actively involved in setting and meeting requirements for safe, efficient, and effective OCS drilling.

Many agencies are active, but no one agency has a tracking mechanism to monitor the entire permitting process. Neither is there any central authority that has knowledge of the overall industry progress toward exploratory drilling and the results of that drilling.

With an accelerated lease sale schedule and frontier sales occurring simultaneously in several areas, the value of a centralized oversight of all OCS exploration activity increases. No longer is each frontier sale an isolated event. It is important that an improved system of sale comparisons and post-sale progress be developed.

POTENTIAL SOLUTION

The Department of Energy should institute a system to track all OCS permits, exploration through development. Through consultation with all affected agencies, DOE should establish a milestone reporting system that will provide a documented, objective record of the pace of the activities following each sale.

The milestone points should each represent a specific objective which industry or government must achieve in order to advance to the next step. The development of the identifiable milestones will result in a critical path analysis of the process of moving from lease sale through diligent exploratory drilling.

The proposed tracking system will produce the following results:

1. A record of the progress toward exploration on each lease (sale to initial drilling can presently require in excess of one year).
2. A milestone report, developed by comparison of expected or required time frames with actual time frames.
3. Data for objective analysis of sources of common delay.

CONCLUSION: DATA CONTAINED IN ENVIRONMENTAL REPORTS
MAY BE DUPLICATIVE OR OF LIMITED VALUE

Environmental Reports

The Environmental Report is submitted by the operator as a document accompanying the Exploration Plan. USGS requires the submission of the Environmental Report in order that: 1) an analysis of the affected environment and expected impacts will be available for a consistency determination by states having Federally-approved coastal zone management plans; 2) as an important source of information for USGS's compliance with NEPA's requirement of documented consideration of environmental values in decision making; and 3) as a document that can treat in depth the impacts expected on environmentally sensitive areas and the proposed measures to mitigate such impacts.

The outline of the ER data requirements is extensive, in both the 250.34 regulations and the implementing USGS Guidelines for Preparing OCS Environmental Reports. In particular, the socioeconomic impact analysis required of onshore support facilities is the same for exploration activities involving drilling of limited duration with workers primarily commuting from areas having trained rig employees as it is for production activities involving extensive special services to support production fabrication and drilling activity. Most exploration activity, with the exception of activity in Alaska, is conducted from present or readily-converted onshore support bases and creates few if any significant land impacts. The requirements also ask for detailed descriptions of all aspects of the marine environment in which the drilling will take place.

The intention of the USGS is that the Environmental Report utilize by reference the material which is either on file with USGS, previously submitted to USGS, or readily available in published form (the presale EIS is a document falling in this final category). However, that is not what occurs. Industry submits Environmental Reports that describe the environment by repeating the descriptions appearing in the presale EIS — the presale EIS makes up most of the citations in the environmental reports surveyed during this study. The crucial question to the operator, to whom time is money, is that the report be acceptable to the reviewing parties. A common, frequent complaint of the operators, however, is that the Environmental Report is a document very difficult to get approved. Studies that have become available since the sale must be cited and reports are rejected if specific research results have been omitted.

Given the uncertainty of approval, and the large number of data elements required, many operators hire outside environmental contractors to prepare the reports in hopes of increasing the likelihood of the report being readily approved. The resulting documents are lengthy, highly repetitive for tracts within the same lease sale, and contain information on many insignificant impacts. This description also applies to company-prepared ER's.

Environmental Data

Environmental data is not readily available, in usable form; stronger data development efforts are needed to produce timely, accessible, and usable reports from funded research. This problem affects presale EIS data generated by BLM, environmental data considered by EPA in regulating discharges, data considered by States to assess state impacts, etc.

The problems surrounding OCS data include: 1) data accessibility, 2) data adequacy and 3) data collection coordination. Environmental data collection is fragmented among many agencies. Research data is often collected but then not made available in a generally usable or standardized form. Research studies that take several years to complete are frequently begun in response to a specific crisis or single-purpose need; when public attention to the crisis abates or the precipitating need is no longer pressing, the study may be dropped before useful results are obtained. There is sustained disagreement over the value of predictive studies versus baseline studies.

There are many research needs competing for limited available funds. Significant inefficiencies exist in the management of OCS environmental information; the sustained surveillance of OCS-appropriate research from presale through production and well abandonment is not well developed. EPA suggests that studies used to develop OCS data should be exposed to peer review prior to use in OCS decision-making.

POTENTIAL SOLUTIONS

1. USGS should review its ER policy. The uniform guidelines have raised the data requirements to a level that forces all relatively routine exploration drilling to pass through the same screen and scrutiny required of that exploratory drilling planned for highly sensitive areas as well as all production drilling. Clearly this requires documentation far in excess of that routinely necessary for limited-phase exploratory drilling in areas of minimum risk.
2. A post-sale update of data and studies described in the presale EIS should be developed to serve as the basis for exploratory planning documentation. The post-sale update of the EIS data should provide a document that comprehensively reviews all completed and pertinent studies. One central source of up-to-date data and analysis would enable the operators to prepare environmental reports that emphasize any particular site-specific information that is available and that concentrate on the relevant site-specific impact evaluation portion of the report.
3. One central office should undertake an ongoing effort to guide data collection and analysis of environmental aspects for OCS permitting requirements. Peer review of pertinent OCS studies could also be overseen by this office. A suitable choice for these responsibilities would be the Office of Marine Pollution Assessment of NOAA.

The Office of Marine Pollution Assessment is the staff arm to a Task Force representing the Interagency Coordinating Committee on Ocean Pollution Research, Development, and Monitoring, which implements the National Ocean Pollution Planning Act of 1978. This Task Force coordinates ocean pollution research and monitoring

among 11 agencies and 37 subagencies, with some attention also given to non-governmental research. Oil and gas development is one of its several concerns. This is a new coordinating effort; the office staffing began formally in March of 1980. Prior to that date, the original staff was detailed from several agencies, and the staff continues to include representatives from outside NOAA (DOE has been among the agencies providing staff).

By law this office must develop a 5-year plan which comprehensively addresses research and monitoring of ocean pollution. The 5-year plan and documentation developed in support of the plan are used for justifying selective research appropriations among agencies. Since a major concern regarding OCS development centers around pollution effects, this office (through DOI and/or DOE membership on its Task Force) provides a good possibility for developing the larger perspective on OCS environmental data that is needed.

CONCLUSION: A SINGLE BODY OF AUTHORITY IS
NEEDED TO OVERSEE OCS PERMITTING ACTIVITY

At the present time, no single authority oversees OCS exploration activities exist. Eleven Federal agencies and numerous states interact in the decision-making authority governing OCS exploration. The agencies and states involved in OCS regulation do not always agree; in fact, they may easily contradict one another in the terms and conditions set forth to industry regarding drilling activity. When disagreements or contradictions arise, industry must effectively go from one agency to another trying to resolve the issue. Since no single agency has any authority over any other agency, negotiations must continue until the problem is resolved.

Another troublesome area in the regulation of OCS activity can be referred to as "overly conservative regulation." For numerous reasons, including fear of reprisal from within an agency, unclear wording in regulations or the application of regulation to OCS activities that were not drafted with OCS activities in mind, regulators may feel compelled to implement regulatory requirements in the most stringent manner possible. Rather than making a judgement as to how regulations should be implemented given the circumstances involved, regulators may over-regulate by placing excessive or unnecessary constraints upon industry activity. At present, lengthy and involved judicial review of decisions is the only recourse that industry may use to challenge any sort of regulatory requirements, if intraagency appeal procedures are not satisfactory.

POTENTIAL SOLUTION

For each large area of industry drilling activity on the OCS, (e.g. Mid Atlantic, North Atlantic, Western Gulf, etc.) a Review Board should be established. This Board should consist of a representative from each Federal agency involved in OCS activity as well as a member from each state within the region. The members should be a designated representative of the head of each agency and the Governor of each state. Each Board should be supported by a research staff including legal advisors, persons with expertise in oil and gas drilling and environmental specialists. The Boards should continuously review the status of OCS activity through regular reports of the OCS permit monitoring system suggested previously.

The Boards' purpose would be to resolve disagreements between governmental units or between government and industry in a quick-response mode. The Board should hear, in response to requests by industry or government, the facts surrounding any disputes arising in OCS regulation. The Board should be mandated to provide an opinion on any issues heard within 30 days.

The Boards will only be effective if they are created with the support of each agency, state, and the industry. The Boards will be able to issue reasonable opinions only if supported by an adequate research staff. The opinions of the Board should be forwarded immediately to the head of the affected Federal agency or the Governor of the involved state(s), as well as industry (when industry is a participant). The opinions should be supported by a statement of the Board's findings and should be accompanied by strong recommendations to abide by the opinion. Judicial appeal would, of course, still be open to participants as an avenue for legal recourse in the dispute, but the intent of the Review Board would be to expedite the resolution of regulatory disputes, where possible, by solving the dispute without requiring the time and expense required for formal judicial proceedings.

CONCLUSION: CONTROVERSY SURROUNDS THE SITE SURVEY REQUIREMENTS FOR EXPLORATION ACTIVITY

Site surveys are an important step in the planning process for exploration. The Federal government conducts a presale shallow geologic hazard site survey using a coarse grid pattern. After the sale, USGS directs industry to conduct site-specific, individual

tract, or larger area shallow hazard surveys to a tighter grid spacing and also to conduct any further required surveys or provide special interpretation of the survey data. Such additional survey work may include biological, ordnance, cultural resources, and live bottom surveys. Some of the work is specifically identified in the lease stipulations, in which case it will be clearly known by industry in advance of the sale and raises few problems. However, some lease stipulations or accompaniments to the sale are quite open-ended in their impact on industry. In these cases the specific requirements that industry must meet are not known as of the sale, but must be negotiated among the affected parties, recommended to USGS, and then required of industry at the discretion and direction of USGS. Industry strongly objects to individual aspects of survey requirements in exploration. Additionally, considerable differences in the opinion of government regulators surround the survey requirements.

It is common for those parties that participate in the survey, monitoring, and mitigating measures discussions that follow the sale to use the expectation of industry drilling as a vehicle for proposing extensive additional studies, especially biological studies. However, there is a great divergence of opinion among the scientific community and the various Federal agencies and states as to what is required to justify a study, or what overall directions environmental protection data collection and analysis should take. It is the USGS's position that special biological studies required of industry are legitimate to delineate special biological features, but not to inventory resources. Such a limitation means that all survey requirements must show some relationship to potential drilling problems, marine resource protection, or the need to develop mitigating measures.

In addition to biological surveys, the cultural resources survey, which interprets survey data for sites, structures, or objects of historical or archaeological significance, has been a subject of frequent criticism, since this survey has identified few if any resources that would not have been otherwise identified through routine industry activity.

POTENTIAL SOLUTION

USGS should develop guidelines in cooperation with affected parties to be used in justifying requests for additional survey data for each lease sale area. Any expansion of survey scope beyond safety and carefully specified environmental protection should only occur as part of a defined and clearly-stated policy objective and a justified need and

intended use for the data that is to be collected. At present, this justification is often not included in the initial negotiations regarding required surveys. The primary purpose of OCS exploratory drilling is to identify commercially-viable oil and gas deposits in order to reduce U.S. dependence on foreign oil. In the pursuit of this objective, environmental protection, including high technical drilling and training standards to reduce the probability of oil spills, is vital. But random data collection unrelated to a justified "need to know", a regulatory need, or a purposeful study design, is inefficient, merely adds to the nation's store of unanalyzed data, and should be avoided.

CONCLUSION: UNIQUE CONCERNS IN ALASKA MAY DELAY THE TIMING OF EXPLORATION IN FEDERAL WATERS SURROUNDING ALASKA

Only a small portion of Alaska's shoreline is developed to the point that exploration activities can be undertaken without significant onshore impact to the residents and coastline of the State (see Chapter III-3 and Appendix F). Furthermore, the lack of well developed local political units within many isolated areas hampers the ability of many affected areas to adequately consider the nature and scope of OCS impacts. While the organization of local political units is emerging through the State's coastal zone program, the speed at which local political development is proceeding is not rapid enough to support the Department of Interior's proposed 5-year schedule.

POTENTIAL SOLUTIONS

Because the Federal government has proposed an ambitious schedule of lease sales within Alaska, the Federal government should increase its efforts to aid Alaska in gearing up for OCS exploration. The Federal government should seek to provide the State with support services that may enable the State to prepare itself for OCS exploration more adequately and efficiently. Support that might prove useful could include: 1) monetary support; 2) educational assistance; and 3) any other type of service that could facilitate preparing the State for impacts from OCS drilling. The Federal government should decide upon the specific type of support to be offered in consultation with the State and affected local communities. Support should be offered with the objective of developing a feasible timetable wherein the designation of onshore facility siting can be achieved in accordance with the proposed OCS sale schedule. Additionally, the support should serve to aid the State and local areas to gear up for the time when the State or local areas will have to consider specific permits necessary for the construction of onshore support facilities.

CONCLUSION: A CAREFUL REVIEW OF EXISTING OCS
COORDINATING MECHANISMS IS NEEDED

The scope of this research effort has been to identify OCS exploratory permitting requirements and associated problem areas. This permitting occurs in a complex web of jurisdictions and regulations; exploratory permitting occurs as one interval in a lengthy sequence of events that begins with the Call for Nominations and ends with well abandonment. Over the course of various parts of this sequence there are coordinating mechanisms, information sharing programs, participatory decision-making groups, and a wide variety of governmental aids to OCS coordination.

However, even with such entities as the OCS Advisory Board and its Regional Technical Working Groups, the OCS Oil and Gas Information Program, the Intergovernmental Planning Program, the State CZM-OCS coordinators, and the Biological Task Forces, there is still the problem of slow and hesitant movement toward OCS exploratory drilling.

POTENTIAL SOLUTION

A careful identification and review of all existing OCS coordinating mechanisms is needed. The review should identify 1) the purpose the mechanism is intended to serve, 2) the working means employed to pursue the task objective, 3) the satisfaction level of those who benefit from the program's efforts, 4) the authority such a program exercises, and 5) the contribution the mechanism makes toward the total OCS oil and gas development process. This review should result in recommendations for making these groups more effective links in the chain of OCS development-facilitating mechanisms. Nine Gulf of Mexico and 13 non-GOM sales are proposed for the years 1981 through 1983. This substantial increase in sales offered compared with the 1975-1980 period implies a probable increase in the workload of all those involved in reaching and executing careful decisions. The extent to which existing OCS coordinating mechanisms assist decision-makers at all levels of government in handling this workload can be increased by better organization of these many and diverse efforts.

CONCLUSION: THE PROPOSED NATIONWIDE SECTION 10 PERMIT
WOULD EXPEDITE PERMITTING

Within the existing framework of regulations, the Corps of Engineers (COE) may issue a nationwide permit authorizing a category of activities throughout the U.S. Currently

COE uses a routine procedure to issue individual permits under Section 10 for oil and gas operations on Federal OCS Lease. The COE permit issuance decision is based entirely on the impact of OCS activities on navigation and national security, with environmental considerations left to other Federal agencies. Issuance of a nationwide permit would eliminate the need for individual permit applications.

POTENTIAL SOLUTION

A nationwide Section 10 permit covering all COE authorities for oil and gas development activities in OCS lease areas has been proposed in the Federal Register (45 FR 62776, September 19, 1980). Descriptions of the activities covered are found in Section 330.5(a)(8). Structures for oil and gas exploration on Federal OCS leases placed outside the limits of any designated shipping safety fairway or traffic separation scheme are covered under this permit. Issuance of this proposed nationwide permit should be encouraged.

CONCLUSION: UNIFORM REGIONAL IMPLEMENTATION OF REGULATIONS MAY ACCELERATE OCS PERMITTING

There is significant variation in the implementation of regulations between EPA regional offices (see Section 3.7.2) and between COE district offices (see Section 5.5). Variation is shown in the permit coverage, the information elements required for permit issuance, and the permit processing time. Industry could operate more efficiently across regions if permitting requirements were standardized to the maximum extent practicable.

Variations in the regional office requirements within an agency related to a particular permit result in confusion and create the possibility of time delays in OCS operations. An OCS operator may successfully master the permitting process for one region, but if this operator extends its activity into another region the applications' requirements and processing time may prove quite different.

POTENTIAL SOLUTION

Each Federal agency should be required to identify and review all variations in the implementation of regulations among regional offices. Regional office implementation should then be made consistent among the regions unless special regional conditions warrant otherwise.

PART II

FEDERAL REGULATORY ACTIVITIES DURING
EXPLORATION OF FEDERAL OCS LEASES

CHAPTER II-1
FEDERAL OVERVIEW

The Federal and state agencies involved with OCS regulations are faced with a difficult task -- achieving accelerated OCS production while maintaining strict environmental protection. To promote environmental protection, the National Environmental Policy Act of 1969 initiated a major governmental commitment to include environmental factors in decision-making. Additionally, the Coastal Zone Management Act of 1972 created a new Federal-state cooperative tool for devising and implementing management plans for coastal areas. These coastal management plans give special attention to energy-related issues and impacts on states created by OCS oil and gas development.

The mid-1970's brought pressure to bear upon the Federal government agencies to offer more and larger OCS lease sales. Advocates for accelerated OCS production sought an increased number of sales, increased tract size and more rapid availability of the most promising tracts. At the same time, agencies were charged with meeting public concern caused by a raised sensitivity to the potential environmental impacts from OCS activity. One result of the need to balance these concerns was the OCSLA Amendments of 1978, signed on September 18, 1978. These Amendments were developed with the goal of expediting the systematic development of the OCS, while also protecting the marine, coastal, and human environment. The amendments contain many provisions affecting oil and gas development. Although most of these provisions have now been implemented into final regulations, some still remain under development.

In addition to the OCSLA Amendments of 1978, a series of Acts of the 1970's have impacted OCS exploration of Federal leases. These include:

- Coastal Zone Management Act of 1972
- Occupational Safety and Health Act of 1970
- Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977
- Marine Protection, Research and Sanctuaries Act of 1972
- Fishery Conservation and Management Act of 1976
- Ports and Waterways Safety Act

- Endangered Species Act of 1973 (Section 7)
- Port and Tanker Safety Act of 1978
- Resource Conservation and Recovery Act of 1976
- National Ocean Pollution Planning Act of 1978
- Archaeological and Historical Preservation Act of 1974
- Amendments to the Clean Air Act in the 1970's

Another broad area of regulation results from the need to provide for the multiple use conflicts arising from any use of the sea. Coastal uses that may be affected by OCS oil and gas activity include uses by fishermen, vacationers and shippers as well as national defense activities. Regulations must consider not only the users rights of all parties affected, but also the safety of all users of coastal areas.

The overall purpose of this study was to examine the permits and similar requirements (reports, plans, certificates, and general information for state planning) affecting OCS exploration activity on Federally-leased tracts. The following chapters detail the requirements imposed on the oil industry by the Federal government. The requirements are explained by Federal agency and the legal basis for each requirement is identified.

Moreover, to provide an understanding of how each agency performs its regulatory responsibilities related to OCS exploration, a description of the internal permit processing procedure is included. The information developed to obtain each permit or comply with each requirement is also identified. The chapters are presented as follows:

Chapter II-2: Department of Interior, U.S. Geological Survey (USGS)

The USGS is the lead agency during the post-sale phase of the leasing process. Its regulatory authority during exploration includes the approval of exploration plans and environmental reports, and applications for permits to drill. Other regulatory authority includes the inspection and regulation of exploratory drilling activities. The USGS also negotiates the implementation of lease stipulation with the affected states and the oil and gas industry, and coordinates for state and other Federal agency review of all submitted plans.

Chapter II-3: Environmental Protection Agency (EPA)

The EPA regulates sources of pollution that result from oil and gas activities. Drilling operators are required to obtain an authorization to discharge pollutants at the drilling

site under the National Pollutant Discharge Elimination System (NPDES). Where EPA will not authorize on-site discharge of all associated pollutants, it approves designated sites for ocean dumping and requires an ocean dumping permit.

Chapter II-4: Department of Transportation, U.S. Coast Guard

The U.S. Coast Guard, regulates conditions of maritime safety and environmental protection in offshore areas. The Coast Guard requires approved private aids to navigation, certificates of financial responsibility and of inspection, and notification of actions and incidents related to OCS activities. The Coast Guard also administers the Offshore Oil Spill Pollution Fund.

Chapter II-5: Department of the Army, Corps of Engineers

The U.S. Army Corps of Engineers regulates any alteration or obstruction of navigable waters, including obstruction by exploratory facilities or vessels on the OCS. The Corps also has special responsibility for permitting obstructions in shipping safety fairways and anchorage areas.

Chapter II-6: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)

The Coastal Zone Management (CZM) Program within NOAA provides financial and operating support to states for the development of a state coastal zone management plan. At the option of the state, each state may develop and implement a coastal program along Federal guidelines. When a state plan receives Federal approval under the Coastal Zone Management Act, the state is referred to as having a Federally approved CZM plan. Federally approved CZM programs within states require that the state review activities conducted under Federal permits to concur that the activities are consistent with the state program.

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CHAPTER II-2
U.S. GEOLOGICAL SURVEY

2.1 OVERVIEW

The U.S. Geological Survey has the lead Federal role in regulating post-lease sale drilling activity on the OCS. Regulatory activities during exploration focus on (1) the Exploration Plan (EP) and accompanying Environmental Report (ER), and (2) the Application for Permit to Drill (APD). The EP and ER describe in detail the operator's plans for drilling and the impacts expected from that drilling, including impacts from land-based operator support (marginal in the case of exploratory drilling). The EP and ER are also reviewed by affected states and by Federal agencies having jurisdiction over some aspect of the marine or coastal environment. The APD describes the operational details of the drilling program and the means of industry compliance with applicable OCS orders. Exhibits 2-A and 2-B present the sequence and timing of government and industry activities associated with the EP and APD.

An important preparatory role of the USGS is to work out with other Federal agencies and with affected states acceptable specifications for implementing lease stipulations, especially stipulations involving protection for environmentally sensitive areas. During the preapplication period, USGS reviews information from industry on the details of exploratory drilling, probable environmental impacts and suggested technical means of avoiding adverse impacts. States, other affected agencies, and special task forces assist USGS in the decision-making process of defining the implementation of lease stipulations. After final agreement is reached, USGS is responsible for ensuring industry compliance. Industry's proposed means of compliance are incorporated into Exploration Plans. Mitigating measures, if needed, are described in Environmental Reports.

After industry files the EP and ER, USGS has 10 days to perform a completeness review to determine that information requirements have been met, followed by a 30-day technical review period. These time periods are mandated by regulation and fully complied with by USGS. Time loss by industry resulting from USGS action is therefore associated with interaction occurring outside the formal review period. During the 30-day review period the EP and ER are also examined and reviewed by Federal agencies with coastal concerns and by affected states that choose to review plans. Operators

*** -- States with approved CZM plans have up to 180 days to review EP & ER for consistency concurrence
 ← ← -- Resubmittal required by USGS

USGS
 EXHIBIT 2-A: EXPLORATION PLAN AND ACCOMPANYING ENVIRONMENTAL REPORT

USGS
EXHIBIT 2-B: APPLICATION FOR PERMIT TO DRILL

must also submit a statement to states that have approved CZM plans certifying that the proposed drilling plan is consistent with the state's CZM plan. The CZM state concurs, objects, or remains silent in response to this certification of consistency; concurrence is presumed if 90 days pass without response.

USGS performs both a technical review and an environmental review of the EP and ER. As part of the environmental review, it prepares an environmental assessment that follows detailed department guidelines and incorporates all timely comments submitted by other state and Federal reviewing parties.

Exhibits 2-C and 2-D summarize the time required and problem areas associated with each activity outlined above. Delays associated with the timely execution of EP and APD submission and approval are concentrated in the following areas:

Absence of OCS Oil and Gas Experience

Especially for a first-sale area, delays caused by lack of previous experience can be extensive. Because the mandated review period time frame after the EP is submitted is generally met, the impact of this problem area generally falls on activities that occur prior to the formal review of plans. For example, biological task forces may be appointed for new areas. Where appointed, the BTF must reach agreement on any recommended studies of mammals, fishes, live bottom areas, or other marine resources that must be conducted to aid in determining what resources will require special protection. Any recommended mitigating measures to protect these sensitive resources must also be determined. Where action is required by the operator, this information must be in the operator's hands before exploratory documents can be prepared. In Alaska, the North Atlantic, and the South Atlantic, the biological implementation has caused delays.

Operators in all areas must have approved contingency plans in place prior to drilling. In a new area, this may involve disagreements between industry and USGS over equipment location and equipment specifications and require safety demonstrations for local officials. While some of this can be anticipated and incorporated into company planning, unanticipated local objection can delay operations unexpectedly. Alternatively, operators that have previously submitted and received approval for contingency plans in the area of anticipated drilling can prepare and receive approval of contingency plans in minimal time spans.

EXHIBIT 2-C

EXPLORATION PLAN AND ENVIRONMENTAL REPORT

<u>ACTIVITY</u>	<u>TIME REQUIREMENT</u>	<u>PROBLEMS AFFECTING TIME REQUIREMENTS</u>
1) USGS consults with states and Federal agencies to establish implementation criteria for lease stipulations	2 months - 12 months	<ul style="list-style-type: none"> - Disagreement on aspects of the environment requiring protection - Disagreement on suitable means of environmental protection
2) Industry prepares contingency plans to include with EP & ER	1 week - 6 months (may occur concurrently with (1) above)	<ul style="list-style-type: none"> - Disagreement (industry-government) on the equipment to be used - Disagreement (industry-government) on the location of equipment - Exception, by the government to the overall plan adequacy
3) Industry conducts site surveys	Gulf: 3 weeks - 3 months Non-Gulf: 1 month - 6 months (or more) (may occur concurrently with (1) or (2) above)	<ul style="list-style-type: none"> - Inclement weather - Availability of survey teams/equipment - Government-industry disagreement on survey design - Exception by government to survey adequacy - Site surveys may require information beyond that necessary to address exploration activities
4) Industry prepares EP & ER	Gulf: 2 weeks - 6 weeks First-time sale area: 2 months - 6 months Experienced non-Gulf area: 2 months - 4 months	<ul style="list-style-type: none"> - Industry negotiations with subcontractor for ER preparation (necessary when industry lacks expertise for environmental evaluation or prepares few plans) - Industry-Government disagreement on contents - Extensive duplication within ER of presale EIS data - ER must address potential impacts largely irrelevant to exploration activities
5) USGS receives and reviews EP & ER for completeness	10 days (Specified in 30 CFR 250.34 regulations)	<ul style="list-style-type: none"> - When USGS judges incomplete, additional time is required for industry resubmittal
6) USGS reviews EP	30 days (specified in 30 CFR 250.34 regulations)*	<ul style="list-style-type: none"> - USGS may decide the plan's activities do not provide for diligent exploration of tract - USGS may find the technical aspects of the planned drilling activity unacceptable
7) USGS reviews ER and prepares Environmental Assessment (EA)	USGS undertakes concurrently with EP review and completes within 30 days (specified in 30 CFR 250.34 regulations)	<ul style="list-style-type: none"> - USGS may find environmental information submitted inadequate to prepare EA (resubmittal by industry required) - EA largely interprets data previously collected and reviewed in presale EIS - EA addresses some impacts that have little meaning in relation to exploratory activity

* The 30-day period runs concurrently with the 90-day period (which may be extended by an additional 90 days) for state consistency certification concurrence review.

EXHIBIT 2-D

APPLICATION FOR PERMIT TO DRILL (APD)

<u>ACTIVITY</u>	<u>TIME REQUIREMENT</u>	<u>PROBLEMS AFFECTING TIME REQUIREMENTS</u>
1) Industry prepares APD	Gulf: 2 weeks Non-Gulf: 2 weeks - 2 months	- Few problems; industry-government differences in interpretation of requirements sometimes arise
2) USGS reviews APD	2 days - 2 weeks	- USGS may take exception to the operational details of APD
3) Final USGS approval of APD	At time of conclusion of USGS review of APD, if state consistency certification concurrences have been received	- If affected states utilize more of the 180 day review period than the 30 days permitted USGS for its Exploration Plan review, approval of APD is delayed until CZM concurrences are received

State Consistency Certification

For those states with approved CZM programs there is the potential for significant delay in that Federal statutes allow a state 90 days to review for concurrence plus an additional 90 days upon request (180 days total). In practice most states have concurred in a maximum of 45 days, and this review has not created significant delay. However, a state could conceivably delay exploratory drilling if the total time required by the state to issue consistency certification exceeds the time required by industry and the Federal government to reach agreement on drilling activities. The review of explorations plans by states not having an approved CZM program is limited to the USGS 30-day review period.

Environmental Impact Data Requirements

Extensive and repetitive compilations of environmental data are a present feature of exploration document submittals. Data guidelines within USGS are nearly identical for both exploration and production planning, and yet most exploration activities are conducted from existing or converted support facilities (Alaska is an exception) with minimal onshore impacts. Marine environmental descriptions are largely a duplication of the information developed in the presale EIS, supplemented by up-to-date studies where available. A key issue in USGS review of environmental data is whether industry is adequately protecting environmentally sensitive features of the drilling site and the affected environment. This issue can be lost in the quantity of paperwork generated by industry and government for the purpose of environmental review. The process of repetitively but effectively pulling together all relevant information is highly inefficient.

2.2 CONSERVATION DIVISION STRUCTURE

The OCS regulatory activities of USGS are carried out by the Conservation Division. (An unofficial organizational chart identifying offices with key responsibilities for post sale regulatory activities appears in Appendix A.) Offshore activities are headed by a Deputy Division Chief for Offshore Minerals Regulation in Reston. Four regional offices and their associated district offices implement USGS's responsibility for:

- regulating all operations and activities for the exploration, development, and production of mineral resources on lands leased under the OCS Lands Act as amended

- analyzing environmental factors related to OCS activities
- providing affected states with an opportunity to participate in certain decision-making processes, using mandated procedures for those states with a Federally approved Coastal Zone Management Program.

The industry-prepared Exploration Plan and accompanying Environmental Report, and USGS-prepared Environmental Assessment, are important vehicles for regional office implementation of the above responsibilities. The district offices approve Applications for Permits to Drill, monitor geologic hazards, oversee data acquisition, and inspect industry operations to ensure compliance with OCS orders, notices, and regulations. Their primary role is to provide technical supervision of drilling and production operations, with special attention to human safety, environmental protection, and avoiding waste of oil and gas. Recently increased concern for the environment, frontier OCS exploration, and State involvement in OCS planning have caused the USGS to assign some regional tasks to the district offices, notably in the Atlantic area.

2.3 AUTHORITY

The primary legal mandate for OCS regulation is the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1331 et seq) (OCSLA); as amended by the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) (OCSLA Amendments). The implementing regulations for OCS operations are shown in Appendix A. Other Federal statutes affecting industry's OCS exploratory activity are listed in Appendix A. These statutes are implemented through lease stipulations, presale consultations, plan review and operation specification, and other Federal regulatory procedures.

2.3.1 OCS Orders and Standards

OCS Orders are formally-numbered directives developed and administered by the Conservation Division to promote safety of operations, to protect facilities and equipment, and to minimize pollution. There are 14 numbered orders, although not all orders apply to all areas. Orders have been revised on an area-by-area basis. The orders take the form of requirements, specifications and standards.

In December, 1979¹ the USGS published revised area orders for Nos. 1, 2, 3, 4, 5, 7, 8, and 12. OCS areas covered include Gulf of Mexico, Pacific, Gulf of Alaska, and Atlantic. Arctic Orders will be issued in the near future. Detailed information on the contents of OCS orders appear in Appendix A. OCS Orders will be referred to in the text as OCS Order No. 1-14.

OCS Standards supply detailed technical requirements for the following two activities which require a common response throughout the OCS.

No. 1: Safety Requirements for Drilling Operations in a Hydrogen Sulfide Environment

No. T-1: Training and Qualifications of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations

2.3.2 Notices to Lessees and Letters to Lessees

Notices to Lessees (NTL's) and Letters to Lessees provide information transfer and instruction. Notices and Letters are issued from area (regional) offices to implement the regulations and OCS Orders listed above.

2.3.3 Instructional Memoranda, Guidelines and Other Memoranda

These documents are issued by Division headquarters and describe detailed procedures and information requirements for oil and gas operators and Division staff. They establish uniform methods of compliance among the various regions.

2.4 USGS AND OTHER FEDERAL AGENCIES

The USGS regulates post sale OCS activity in cooperation with a number of other agencies, both within and without the Department of the Interior. Some of these working relationships are outlined in Memoranda of Understanding.

¹44 FR 76212 (December 21, 1979).

In August, 1978, Interior Secretary Andrus issued Secretarial Order 2974 (Revised) on Inter-Bureau Coordination in the OCS Minerals Program (see Appendix A). S.O. 2974 expired September 30, 1980, but the content was made part of the DOI Departmental Manual (Part 655 DM 1) effective October 1, 1980. Order 2974 formalizes and makes explicit the working relationships between the USGS and the Bureau of Land Management (BLM). It also outlines procedures wherein USGS and BLM share technical expertise and also secure additional technical support from:

- Fish and Wildlife Service (FWS)
- Heritage Conservation and Recreation Service (HCERS)
- National Park Service (NPS)

A statement of cooperative procedures between USGS and BLM was issued March 17, 1978, entitled "Protection of Cultural Resources Related to Marine Oil and Gas Operations." It defines USGS and BLM responsibilities for selectively implementing the cultural resource lease stipulation.

2.5 LEASE STIPULATIONS

Lease stipulations are conditions of lease sale that identify restrictions associated with all or specific tracts of a particular sale. Most lease sale announcements contain 8 - 12 lease stipulations. In Appendix A, lease stipulations from selected OCS sales are presented. Lease stipulations can set the stage for major delays while the details of implementing the stipulations are determined.

2.6 EXPLORATORY PERMITS: SITE SURVEYS, EXPLORATION PLAN, ENVIRONMENTAL REPORT, AND APPLICATION FOR PERMIT TO DRILL

The USGS requires industry to collect data from site surveys and to detail proposed drilling activities and their associated impacts via the Exploration Plan, Environmental Report, and the Application for Permit to Drill (APD)

- Site Surveys are conducted to USGS specifications and are used to evaluate proposed drilling activities

- The Exploration Plan is prepared under USGS guidelines and describes the location and sequence of the proposed drilling and provides technical details on drilling equipment and safety procedures.
- The Environmental Report is required by USGS to describe the affected environment (both general and site-specific) and to discuss the environmental impacts of drilling and support activities.
- The APD is prepared by industry to describe in technical detail how drilling activity will be conducted.

Each of these requirements is discussed below.

2.7 SITE SURVEYS

Site surveys are critical to the timing of exploratory permitting, because the operator must complete the survey work and then incorporate the interpreted results and maps into the exploratory plan and the environmental report. The purpose of site surveys is to provide for safe drilling and for environmental protection.

Site surveys include:

- Mandatory - shallow geologic hazard survey
- As Directed - cultural resources, unexploded ordnance, live bottom areas, biological populations, and potential fault movement surveys.

As a standard for comparison with other regions, survey work in mature Gulf areas can be accomplished in six weeks (two weeks to complete the survey design and arrange for a survey vessel, one week to collect the survey data, and three weeks to process the data and prepare all maps and reports). Under pressure, this can be cut to a total time of three weeks. In contrast, the many uncertainties which exist in frontier areas lead to a common range of two to three months for survey work. Complications can extend the period to four to six months. In Alaska, survey work may be limited to a 3-month winter period for certain data and a 3-month summer period for other data, and these restrictions can substantially lengthen the lead times in that region.

The following is a listing of the variables that may be encountered and result in increasing the time for conducting adequate site surveys:

- Determining what surveys will be required

Many of the "as needed" surveys implement particular lease stipulations (see Appendix A). USGS considers state and other Federal agency input into the decision to selectively invoke the lease stipulations. Reaching this decision can cause delay.

- Determining the specific coverage required

An optimal survey design will incorporate data requirements for all required surveys into a single voyage, but this optimum is not always possible.

- Contracting for survey services and report and map preparation

Site survey work is done by a few outside contractors, using small, specially equipped vessels. In frontier areas operators experience delays in obtaining survey vessels.

- Inconclusive Surveys

When site surveys are undertaken where bottom conditions are not well known, an initial survey may not be definitive. If additional survey work must be conducted, this can delay operations, depending on the tentative drilling schedule.

- Data of poor quality and therefore unacceptable to USGS

Data produced by the site surveys must meet quality standards set by the USGS district supervisor. This technical problem is more common in frontier areas than in mature areas, and quality failure means the survey work must be repeated.

- Weather

Small survey boats may encounter high seas or storm activity and have to cease activity until the weather improves. This is a frequent cause of short-term delay.

- Survey Consequences

Survey results are incorporated into the Environmental Report. Where results indicate the need for mitigating measures, these are incorporated into the operating decisions described in the Exploration Plan and the Environmental Report. Deciding upon specific mitigating measures adds to time requirements (see Section 2.8).

2.8 EXPLORATION PLAN

Exploratory operations on Federal OCS oil and gas leases are conducted according to exploration plans filed and approved under Federal regulations 30 CFR 250.34. The regulations give general content requirements, which are amplified to meet the specific requirements for a particular region or district. In Appendix A detailed requirements for one area are presented.

Regions use different methods to instruct their operators regarding plan preparation. The Atlantic region uses a Notice to Lessees containing a written outline and accompanying procedural instructions. In the Pacific and Alaskan regions, the operators are given a copy of the Federal regulations, and requirements for individual plans are negotiated on a case-by-case basis. The Gulf of Mexico issues a brief letter to lessees.

The components of the exploration plan, in addition to the site survey results, are discussed below. The following summarizes the variables that may increase the time required to prepare exploration plan components:

Preparation Time Rapid If:

- Contingency plans are on file with USGS

Preparation Time Delayed If:

- Operator must prepare contingency plans for USGS approval

● <u>Site survey work</u> accomplished without complications	● Site survey work encounters delays outlined in Section 2.7
● <u>Data requirements</u> are known to operator; regulations in place	● New regulations being implemented
● No special <u>environmental protection</u> needed	● Site surveys indicate need for special protection
● Adequate state consultations expeditiously achieved	● Intensive state concern requires repeated state consultations

Total Industry Preparation Time:
One Month

Total Industry Preparation Time:
Up to 6 Months With
Potential for Additional Time

An area for great uncertainty and therefore potential delay is the implementation of lease stipulations to project resources identified either through the site surveys or through other means. Lease stipulations may include or imply various options for industry compliance. USGS must determine the appropriate option for each lease sale, taking into consideration the protective interest and concern of adjacent states and other Federal agencies. Deciding upon the option to be implemented can create delay. Operators must respond with details of implementation that are acceptable to USGS, NMFS, NOAA, CZM states, and others, another source of potential delay. Options may include requirements to relocate drilling, shunt or transport all drilling fluids and cuttings, institute a monitoring program, limit drilling to a specified time of the year, or otherwise modify drilling activities.

2.8.1 Contingency Plans

Contingency plans are usually prepared during exploration plan preparation. They can be submitted for approval prior to the submission of the exploration plan. Contingency plans are sometimes included in their entirety with the exploratory plan and environmental report; if approval has been granted prior to the submission of an exploration plan, they are kept on file in a USGS office. In the latter case they are incorporated in the exploration plan by reference.

Contingency plans are written plans describing immediate responses to an unexpected, suddenly developing danger or problem. They contain detailed information as to equipment, personnel, responsibility and sequence of events. The mandate for contingency plans is the responsibility under 30 CFR 250.12 to "prevent damage to, or waste of, any natural resource or injury to life or property". Implementing instructions are in OCS Orders and standards.

The contingency plans include:

2.8.1.1 Oil Spill Contingency Plan

Oil spill contingency plans are prepared according to guidelines found in OCS Order No. 7. The plan lists responsible personnel and training procedures. It also identifies the activities that will be used to control oil spills of varying magnitudes and achieve compliance with reporting requirements.

The length of time to prepare an oil spill contingency plan varies greatly. If the operator has prepared oil spill plans for other tracts within an area, updating names and addresses and printing and binding may be sufficient and would require two weeks. Alternatively a frontier area may require new cooperative arrangements for equipment, agreement with government agencies on the equipment location, and occasionally a demonstration of clean-up equipment for officials of affected states. This can represent a multiple-month effort.

2.8.1.2 Hydrogen Sulfide Contingency Plan

Unless the area is known to be free of hydrogen sulfide through prior drilling activity, OCS drilling must anticipate the possible presence of this toxic gas. The plan delineates the preventive measures and operating practices to be undertaken as described in OCS Standard "Safety Requirements for Drilling Requirements in a H₂S Environment," No. 1, and also mandated in OCS Order No. 2.

Preparing a hydrogen sulfide contingency plan requires one month for the Gulf and two months for other areas.

2.8.1.3 Critical Operations and Curtailment Plan

OCS Order No. 2 requires operators to develop plans to curtail operations under conditions of threat or damage, if these operations require optimum operating conditions for well control or human or environmental safety. The plan identifies operations that are "critical" to well control, and the prevention of fire, explosion, oil spills and other discharge and omissions. These critical operations are accompanied by a detailed description of the conditions under which those operations will be curtailed. Conditions of threat or damage that require curtailment include threatening weather, reduced availability of oil spill clean-up equipment, and reduced availability of trained personnel and equipment.

There are regional differences in the implementation of this requirement identified within OCS Order No. 2. In the Gulf of Mexico, an operator files a general plan with the district supervisor. This plan covers all the operator's drilling activities in the district and is reviewed annually. In the Pacific, Gulf of Alaska, and Atlantic Regions the operator files a plan with each Exploration Plan. Preparation time is two weeks for the Gulf and four weeks for other areas. In new areas, extensive knowledge of the area is required prior to plan preparation.

2.8.2 Preparation of Exploration Plan

Industry preparation of exploration plans for a new lease area requires many meetings with affected states and Federal agencies to determine data requirements and to contribute to an understanding of industry activities. After this background preparation, a company submits its first plan and develops a preparation procedure. Subsequent plans can then be prepared more quickly. Initial background development and report preparation through exploration plan approval for a new sale area requires at least six to nine months; exploratory plans for an active frontier area require three months.

The exploration plan includes information that would be developed by the operator in the course of normal planning activity as well as information requested by USGS to assess environmental impacts of the proposed activities. The exploration plan and environmental report are reviewed as a single package by numerous persons; to facilitate this review process, the plan and report are prepared as a self-contained unit and contain extensive detail.

To prepare an acceptable plan, the operator must:

- keep abreast of regulatory changes
- determine specific responses sought, where instructions are stated in general terms
- implement lease stipulation(s), where applicable
- represent any subcontractors involved to the USGS.

The completed exploration plan and environmental report are submitted to the appropriate regional office. The exploration plan must be accompanied by a certificate of coastal zone consistency (as provided in 15 CFR 930) whenever the activities described will significantly affect the land and water uses in the coastal zone of a state or states with federally-approved Coastal Zone Management programs. The plan often addresses particular issues known to be of concern to a CZM Office or an individual state.

The exploration plan is not considered "submitted" until it has passed a review for completeness. The appropriate USGS office (region or district) date-stamps incoming plans and has ten working days to review the plan for completeness. This completeness review does not address the adequacy of the detailed report. It merely establishes (or challenges) that the submitted report meets the informational requirements. Plans judged complete have usually been preceded by careful advance preparation and consultation with reviewing parties. The regulations then allow two days for distributing review copies, and 30 days for approval or other disposition.

2.9 ENVIRONMENTAL REPORT

The environmental report is submitted as an accompanying document to the exploration plan and comprehensively describes the existing environment and any expected impacts from the activities proposed in the plan. The environmental report should:

- provide information to affected states, localities, and the public
- provide information required to determine consistency (for those states with approved Coastal Zone Management programs)

- provide information so that the USGS can document potential impacts according to the NEPA process discussed later in this chapter
- provide information to other Federal agencies with responsibilities for coastal zone activities.

Environmental reports are required for all OCS leases, except for the western Gulf of Mexico (defined as that area west of a line extending seaward from the Alabama/Florida state border). For the western Gulf, environmental information is only required when it is needed for coastal zone consistency determinations unless the specific area is labelled by USGS as "environmentally sensitive".

In January, 1980, the Conservation Division promulgated detailed Guidelines for Preparing OCS Environmental Reports (for operators) and Environmental Assessment Procedures and Guidelines: OCS Operations (for USGS staff). An environmental assessment is prepared by the USGS during the review of the exploration plan and environmental report. The guidelines provide uniform methods of compliance with the 250.34-3 regulations.

Companies may prepare environmental reports in-house or they may hire a consultant. The usual time required to prepare an environmental report is the sum of 1) the two to three months necessary for the site survey work and 2) the four to six weeks for in-house environmental report compilation (two months for a consultant-prepared environmental report). Internal review, revision, or modification will require additional time. A routine environmental report by an experienced team can be prepared in two to three weeks, but this time frame is seldom achieved. Most of the environmental data repeats the presale EIS; additional information is included as available.

2.10 AGENCY REVIEW OF EXPLORATION PLANS AND ENVIRONMENTAL REPORTS

This process involves review by the following parties:

Internal USGS review: Includes a technical review, diligence review, environmental review, and preparation of an environmental assessment.

Key Department of the Interior Agencies: Bureau of Land Management, Fish & Wildlife Service, Heritage Conservation and Recreation Service, and National Park Service.

States and Coastal Zone Management Agencies: Depending on the region, up to 30 copies may be distributed among adjacent states.

Other Affected Federal Agencies: National Marine Fisheries Services, Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Coast Guard, Department of Defense and NASA Coordinating Offices, and Coastal Zone Management Office, Washington, D.C. (not all agencies review for all areas)

The time allowed for the approval process of Exploration Plans is mandated in the regulations: 30 calendar days to circulate plans for review and comment, both externally and internally, and grant approval or indicate disapproval. During the approval process, steps are commonly accomplished through telephone contacts, with responses later confirmed in writing (but still within the 30-day period). If operational modifications surface in the review process, they are usually discussed with the operator while the application is under review, as opposed to being initially disclosed at the end of the 30-day approval period. All regional offices have a good record of meeting the 30-day approval deadline, but to do so requires tight scheduling and carefully defined procedures.

The review period described above has been part of the regulatory scheme since the passage of the OCSLA Amendments of 1978. Exhibit 2-E illustrates the effect this mandated review has had on the process of state input into plan review and the time frame for plan review. Because the official review period is now brief, states must prepare themselves in advance if they expect to provide timely and meaningful input into the plan review process.

States with approved CZM plans can also affect OCS planning through their CZM review option. Operators must certify to CZM states that their drilling plans are consistent with the affected state's Federally approved CZM plan. CZM states have 90 days to concur with this certification plus an additional 90 days upon request. USGS approves Exploration Plans in the absence of CZM concurrence, but holds up approval of

EXHIBIT 2-E

COMPARISON OF MANDATED REVIEW PERIOD
WITH PRE-OCSLA AMENDMENTS' REVIEW PERIOD

Pre-OCSLA Amendments¹

Exploration Plan & Environmental
Report filed by operator

↓
Each affected state receives
advance copy; 10* days for states
to raise objections on completeness

↓
USGS negotiates* any problems
identified in (2) with operator
and state—indefinite time period
allowed.

↓
USGS determines plan complete;
has 10* days following this deter-
mination to submit plan to affected
states

↓
USGS considers* all comments sub-
mitted by states in plan evaluation
and responds in writing; 30* day
comment period

↓
USGS prepares environmental
assessment (EA), which includes
responses to all issues raised
above; EA is reviewed and
approved prior to plan approval.

↓
Plans not approved until USGS
receives consistency certification
concurrence from all CZM states;*
time varies from a few days to a
possible 6 months.

Typically 3 months.
Maximum 5-7 months.

¹ 43 FR 3883 (January 27, 1978)

* Detail specified in above
regulations

Post-OCSLA Amendments²

Exploration Plan & Environmental
Report filed by operator

↓
USGS has 10** days to determine
plan complete. Then has 2** days
to submit plan to affected states.

↓
OCSLA Amendments mandate
30-day period for all aspects of USGS
exploration plan review (state
and other Federal agency review;
USGS' preparation of environ-
mental assessment; USGS technical
review)

↓
Plan may be approved prior to
receipt of all consistency con-
currence from all CZM states, but
Applications for Permit to Drill
will not be approved until USGS
receives all consistency concurrences.

Total
Elapsed Time 40-45 Days

² 44 FR 53691 (Sept. 14, 1979)

** Detail specified in above
regulations

APD's, if necessary, until all CZM concurrences are submitted or presumed. While the CZM regulations provide the potential for lengthy state consideration and consequent possible drilling delay, in practice CZM concurrences have usually been forthcoming in less than 45 days.

An important USGS responsibility during the review process is the preparation of an environmental assessment to satisfy requirements for documented 1) Consideration of environmental values required under NEPA and 2) Participation of affected states and local governments in the decision-making process. Applicable regulations for this step appear in 30 CFR 250.34-4.

Much of the material which operators must submit in the environmental report is required in order for USGS to complete the environmental assessment which allows a responsible official to determine whether or not to prepare an Environmental Impact Statement (EIS). To date all OCS exploration activities reviewed under this NEPA process have led to a "finding of no significant impact" and thus it has not been necessary to prepare an EIS.

2.11 APPLICATION FOR PERMIT TO DRILL (APD)

The APD is a document of technical operations and serves as a final go-ahead to exploratory drilling operations.

Appendix A includes instructional material from NTL 78-1 supplied to the operator for the preparation of an APD in the Atlantic area. Many APD requirements are also discussed in OCS Order No. 2 and, to a lesser extent, Order No. 7.

The critical features of the APD are the technical details of the drilling program: blowout prevention (BOP) equipment, casing program, and mud program. One purpose of the APD information is to provide evidence that the companies' operations are of a quality that will pass USGS' inspection during drilling. OCS orders go into great detail on some aspects of drilling, and the APD must also provide evidence that these orders will be followed. APD's are prepared by oil company staff and are considered a normal and routine part of doing business.

APD's are sometimes filed concurrently with the Exploration Plan and sometimes much later. When filed concurrently they take substantially less time to review than the exploration plan, but they cannot be approved until CZM state consistency concurrences (from affected states with approved CZM plans) for the exploration plan are received.

APD's can be reviewed by qualified reviewers in a few hours, but routinely the process requires about two days. APD's are reviewed by a geologist, a geophysicist, and a drilling technician, then by a drilling engineer, and finally are approved and signed by the district supervisor. APD's in the Atlantic area and in Alaska are treated somewhat differently (see Appendix A).

The OCS Orders document reporting requirements in detail. The Orders are then interpreted and implemented through the district offices. A brief overview of the conditions for granting approval to drill for one area is included in Appendix A.

CHAPTER II-3
ENVIRONMENTAL PROTECTION AGENCY

3.1 OVERVIEW

The Environmental Protection Agency (EPA) regulates water pollution stemming from oil and gas exploration activities. The principal activities of EPA in Federal OCS oil and gas exploration relate to:

- Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES)
- Ocean Dumping Permit

EPA also comments and advises on environmental aspects of relevant permits and requirements of other Federal agencies.

NPDES Permit

NPDES permits, regulating point source discharge of pollutants into U.S. waters, are issued and enforced by EPA regional offices. The permits are of two types, general (one permit is issued to cover a specified area) and individual (a permit must be obtained by each lease or facility operator). Currently only individual permits have been issued, but EPA Region VI has proposed a general permit for Federal OCS oil and gas operations in the Gulf of Mexico. Once issued, oil and gas operators on the Gulf of Mexico's Federal OCS will be covered by the same general permit, without requiring individual permitting procedures.

As demonstrated in the flow chart and in the lengthy description presented in the following pages, the NPDES permitting process is a long and tedious procedure. In fact, the time required to prepare an application and get EPA approval for the NPDES permit may far exceed the length of time of actual discharge (discharge may only occur for one to two months for exploratory drilling). Considering that with the exception of some drilling activity off the coast of Alaska, the NPDES permits are issued for the same drilling rigs discharging the same wastes in the same or similar environments, the

lengthy EPA process hardly seems necessary for most drilling activity. Certainly unique or unusual environmental conditions may require special consideration by the Government and subsequently modification of discharges by industry, but these circumstances are the exception rather than the rule. To subject lease operators operating in other than highly sensitive environmental conditions to the full range of NPDES individual permit activities, over and over again, appears to be a needless waste of government and industry resources and add considerable delay to the time required to explore leases on the OCS.

Exhibits 3-A and 3-B present a flowchart and timeline of the conventional NPDES permitting process for an individual permit. Estimates of the time required for preparation of a permit application range from 2 days to 6 months, the actual time required is a function of the specific EPA regional office requirements and the experience and permitting set-up of the applicant.

The conventional NPDES permitting process can be divided into the following sequential steps: application; application completeness review and draft permit preparation; issuance of and public notice of draft permit (draft notice may include public hearing notice); public comment period (including any public hearing); issuance and notice of final permit served; and final permit appeal (evidentiary hearing, appeal to the Administrator and judicial review). Few time constraints for completion of the individual permitting steps are included in the NPDES regulations. Those which are included generally provide minimum rather than maximum time periods for individual permitting steps. EPA does require new dischargers to submit an application 180 days before discharge is to commence; and permittees with expiring permits to submit an application 180 days before the permit expires (there is a special submission schedule for permits expiring before June 1, 1981).

Problem areas associated with the NPDES permit are summarized in Exhibit 3-C. The most time-consuming portion of EPA's responsibilities in the NPDES permitting process is the period from application filing to notice of draft permit issuance. Based on the permit tracking information provided by EPA Regions IX and IV, this period has ranged from 0 to 514 days, the average approximately 90 days. Factors which determine the time requirement include: the regional office's resources (manpower), the experience of the staff, the policies and procedures set-up to process the application, the work load of the staff, the amount of previous activity and information available, whether

* Public Notice of a public hearing may be given at the time of draft permit notice, at EPA's discretion, or a request may be made, granted and notice given any time after the draft permit notice, during the comment period.

EXHIBIT 3-A: NPDES PERMITS

* In BPA Region IX, several applications have been determined incomplete pending site designation (requiring an estimated 1 1/2 years)

EXHIBIT 3-B: OCEAN DUMPING PERMITS

EXHIBIT 3-C

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

<u>ACTIVITY</u>	<u>TIME REQUIREMENT*</u>	<u>PROBLEMS AFFECTING TIME REQUIREMENTS</u>
1) Industry prepares NPDES permit application	Gulf: 1 days - 2 weeks Non-Gulf: 2 days - 6 months	<ul style="list-style-type: none"> - Information requirements vary between EPA regions - Industry-government disagreement on the amount of necessary information (e.g., bioassays)
2) EPA reviews application for completeness	Time not identifiable Within 30 days for a new discharger, 60 days for an existing source, an application should be reviewed for completeness (Specified in 40 CFR 124.3)	<ul style="list-style-type: none"> - EPA can judge application incomplete requiring industry submittal of information necessary to make complete
3) EPA prepares and issues draft permit	Gulf: 0-109 days (Avg 47 days) Non-Gulf: 7-314 days (Avg 95 days) (Time from application until draft permit notice)	<ul style="list-style-type: none"> - EPA has no mandated time limit by which an issuance decision must be made once application determined complete
4) EPA gives public notice of draft permit preparation followed by a public comment period (including any public hearing)	<p>Gulf: 32-48 days (Avg 37 days) Non-Gulf: 38-149 days (Avg 58 days)</p> <p>Following public notice of the draft, public comment shall be allowed for at least 30 days (Specified in 40 CFR 124.10)</p> <p>Notice of any public hearing shall be given at least 30 days before the hearing (Specified in 40 CFR 124.10)</p>	<ul style="list-style-type: none"> - Public comment period may be extended and/or new, modified draft permit prepared, if substantial new questions raised during the public comment period - EPA at own discretion, or upon request may hold public hearing(s); adds 30 days for notice plus time required for hearing
5) EPA issues and serves notice of issuance of final permit, which is then subject to appeal	<p>Non-Gulf: 30 days - 3 or more years</p> <p>Final permits become effective 30 days after serving notice, unless no changes in draft were requested (becomes effective upon issuance), a later date was specified in the permit, or an evidentiary hearing is requested. (Specified in 40 CFR 124.15)</p>	<ul style="list-style-type: none"> - Appeal of final permit may delay effective date of permit for several years

*Time requirement (Gulf and Non-Gulf) estimates were obtained from EPA Regions IV and IX permit tracking information, except for application preparation time, which was obtained from industry personnel.

additional information or corrections to the original application are required, and the complexity of the permit conditions.

Based on the Region IX and IV data, the period between draft permit notice and final permit issuance ranged from 32 to 118 days, the average approximately 60 days. By regulation, a public comment period of at least 30 days follows draft permit notice; and if a public hearing is requested any time during the comment period, notice of public hearing must be given at least 30 days prior to the hearing.

If industry or the public choose to appeal the terms of the final NPDES permit, a considerable delay will result. Appeal may be made via evidentiary hearings, appeal to the Administrator and judicial review.

EPA Regions II, IX and X were identified as having had or presently having appeals on final NPDES permits for Federal OCS oil and gas exploratory operations. Time involved for appeal has lasted up to 3 years or more. While in most cases appeal delays drilling, in Region II, because the applicants agreed to abide by the permit conditions during appeal, drilling was allowed to take place.

Ocean Dumping Permit

Currently, ocean dumping permits have not been issued for dumping of wastes from Federal OCS oil and gas exploratory operations, although there are three pending issuance in EPA Region IX and one in EPA Region IV. In Region IX, due to a Sale 35 lease stipulation, formation cuttings, broken wastes, drilling muds and fluids may not be discharged under an NPDES permit, and so are to be dumped at a designated disposal site and thus will require an ocean dumping permit. In Region IX, the special ocean dumping permit applications are being processed by the EPA regional office. The Region IV research permit application is being processed by the Assistant Administrator for Water and Waste Management. The authority to designate ocean dumping sites has also been delegated to the Assistant Administrator for Water and Waste Management.

With the exception of designation of a disposal site, the ocean dumping permitting process is very similar to that of the NPDES permit. Unlike the NPDES regulations, those for ocean dumping impose many mandatory maximum time periods for completion of the individual permitting steps (See Exhibit 3-A and 3-B).

An application to dump wastes in a designated disposal site can be issued and effective in 40-50 days (assuming initial application is complete, no objection by other government agencies, and no requests for public hearings or appeals are made). The formal designation of a disposal site, however, can pose significant problems.

Site designation requires the applicant to prepare a baseline survey that indicates seasonal information, and data may be required for 1 or more seasons of the year. Estimates of the time required to prepare a baseline survey are 6 months to a year or more. In addition, EPA considers site designation a "major Federal action significantly affecting the quality of the human environment" (NEPA) for which EPA policy requires an Environmental Impact Statement (EIS). Notice of the proposed site must also be published in the Federal Register followed by a 60 day comment period. Time required for site designation may range from 12 to 18 months.

SPCC Plan

The development and implementation of a Spill Prevention Control and Countermeasure Plan has not yet been required for Federal OCS oil and gas exploratory drilling facilities, although regulations that would apply to exploratory drilling are currently being developed. Proposed regulations would require operators to prepare SPCC Plans if they fail to comply with U.S. Geological Survey requirements or if an oil spill of more than 200 barrels of oil occurs during a 30 day period.

RCRA Permit

Currently, wastes associated with offshore oil and gas drilling that are barged ashore are exempt from the requirements of the Resource Conservation and Recovery Act (RCRA), which regulates Hazardous Waste Management facilities. Under 40 CFR 261.4 Exclusions, all drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas are classified as solid (non-hazardous) wastes. If at any time materials relating to oil and gas drilling are determined "hazardous" to human health and the environment, a RCRA permit will be required for owners of hazardous waste landfills. According to EPA personnel, a 2-year study of "hazardous" wastes has been ordered by the House and Senate.

3.2 EPA's ORGANIZATION

The Environmental Protection Agency (EPA) is an independent Federal agency headed by an Administrator. At EPA Headquarters, the Office of the General Counsel, and offices associated with the Assistant Administrators for Enforcement, Research and Development, and Water and Waste Management are involved in EPA's regulatory activities for offshore oil and gas facilities. EPA headquarters is responsible for seeing that broad EPA policies are carried out by the EPA regional offices, which issue and enforce NPDES and ocean dumping permits. In addition, the Assistant Administrator for Water and Waste Management is responsible for issuance of research and emergency permits and formally designating disposal sites for ocean dumping.

There are ten EPA regional offices, of which seven could potentially be involved in issuing and enforcing NPDES and ocean dumping permits. These seven regions include:

- EPA Region I. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
- EPA Region II. New Jersey, New York, Virgin Islands, and Puerto Rico
- EPA Region III. Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
- EPA Region IV. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
- EPA Region VI. Arkansas, Louisiana, New Mexico, Oklahoma and Texas
- EPA Region IX. Arizona, California, Hawaii, Nevada, Guam, and American Samoa
- EPA Region X. Alaska, Idaho, Oregon, and Washington

Each regional office is headed by a Regional Administrator. Although there are regional differences, the organization for NPDES program implementation is basically the same. Each region has a compliance branch and a legal branch, although the

division or branch names may vary. For example, in Region II four divisions are involved: Enforcement, Planning and Management, Water, and Surveillance and Analysis. The Water Enforcement Branch within the Enforcement Division is responsible for upper level legal action for the NPDES Program. The Permits Administration branch of the Planning and Management Division is responsible for initial enforcement actions, compliance tracking and the administrative aspects of the NPDES Program. The Water Permits Branch of the Water Division oversees the technical aspects of permit writing and enforcement. The Surveillance and Analysis Division does the actual sampling and inspection, and analyzes the results.

The regional offices have considerable discretion in the interpretation and implementation of the NPDES regulations. This causes substantial differences in the coverage of the permits, processing time, and information requirements as well as ancillary efforts of the NPDES permit applicants.

3.3 AUTHORIZATION TO DISCHARGE UNDER THE NPDES

The NPDES permit regulates the point source discharge of pollutants into U.S. waters. A point source is any discernible, confined, and discrete conveyance (e.g., pipe, floating craft) from which pollutants are, or may be discharged. Pollutants associated with oil and gas exploratory operations result from: deck drainage, drilling muds, drill cuttings, sanitary sewage, domestic waste, well completion and/or treatment fluids, sand and drilled cuttings wastewater, and miscellaneous wastewater streams.

The National Pollutant Discharge Elimination System (NPDES) is a national program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the Clean Water Act (CWA). EPA regulations for NPDES permitting are found in Title 40 of the Code of Federal Regulations, primarily Parts 122 and 124.

Until recently, NPDES permits were implemented under regulations issued June 7, 1979 (effective August 13, 1979). The NPDES program is currently implemented under consolidated permit regulations issued on May 19, 1980 (largely effective July 18, 1980). The Consolidated Regulations govern not only the NPDES program but also:

- State Dredge or Fill ("404") program (under the Clean Water Act)

- Prevention of Significant Deterioration (PSD) program (under the Clean Air Act)
- Hazardous Waste Management program (under the Resource Conservation and Recovery Act) and
- Underground Injection Control program (under the Safe Drinking Water Act).

Only those regulations applicable to the NPDES program apply to Federal OCS drilling operations. Under the Consolidated Regulations, Subparts A and D of each Part apply to the NPDES program. Subpart A applies to each permit program included in that Part, and Subpart D refers to additional program - specific requirements for the NPDES program. Applicable portions of Part 122 define the NPDES program, and of Part 124 describe the NPDES permitting procedures.

The following sections describe NPDES permitting procedures associated with the Consolidated Regulations. Where changes between the Consolidated Regulations and the June 7, 1979 regulations (hereafter referred to as the 1979 Regulations) were identified, the 1979 Regulation differences are discussed in footnotes.

3.4 TYPES OF NPDES PERMITS

There are two basic types of NPDES permits: general and individual. In the general permit program, all dischargers of a particular class or category of discharges in a designated General Permit Program Area (GPPA) are subject to the same general permit. A general permit requires a single lengthy permit processing period similar to that for individual permits. However, once issued all dischargers of the pollutants in the area (as defined by the general permit) are authorized to discharge and need not individually apply for a permit. Although all NPDES permits issued for OCS oil and gas drilling operations have thus far been individual permits, EPA Region VI has proposed a general permit for such dischargers on the Gulf of Mexico Federal OCS. (For a more detailed discussion of general permits see Section 3.6.4).

Another important aspect of the NPDES program is the classification of the discharger. In the NPDES program, a discharger may be one of three types: new source, new

discharger, or existing source. A new source refers to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, and whose construction started:

- after promulgation of applicable standards of performance (Section 306 of CWA), or
- after such standards have been proposed, providing the standards are promulgated within 120 days of proposal.

A new discharger refers to any building, structure, facility or installation:

- where there is or may be a new or additional discharge of pollutants at a site that as of October 18, 1972 had never discharged pollutants
- that has never received a final effective NPDES permit
- that is not a new source

Under the Consolidated Regulations, a new discharger also includes any existing mobile point source that begins discharging at a location for which it does not have an existing permit (e.g., offshore oil drilling rig)¹. An existing source refers to any source which is not a new source or a new discharger.

Because finalized new source performance standards have not been promulgated, only the new discharger and existing source classifications are applicable to offshore oil and gas drilling facilities. Several years ago, new source performance standards were proposed and several offshore oil and gas permits were issued under the new source classification.²

¹The 1979 Regulations did not explicitly include "any existing mobile point source that begins discharging at a location for which it does not have an existing permit" in the new discharger definition. Inclusion in the Consolidated Regulations has caused significant disagreement between industry and EPA.

²The current EPA policy is that offshore oil and gas drilling facilities cannot be classed as new sources.

Classification as a new source subjects the applicant to additional requirements that could substantially prolong the NPDES permitting process. If a new source determination is made, an environmental assessment and possibly an Environmental Impact Statement (EIS) would be required.

3.5 THE NPDES PERMITTING PROCESS

Two types of procedures are available for NPDES permitting: conventional and non-adversary. Conventional EPA procedures (40 CFR Subparts A, D and E)³ provide the opportunity to request an evidentiary hearing to reconsider or contest the Regional Administrator's final permit decision. An evidentiary hearing is a formal hearing allowing industry or the public to appeal the final permit decision.

Non-adversary procedures (40 CFR 124 Subpart F)⁴ provide the opportunity for a panel hearing to be held on the draft permit, if the Regional Administrator determines on his own that one is needed, or by request. A panel hearing is an informal proceeding whereby a panel of experts attempt to analyze public comments received on the draft permit to assist EPA in developing a final permit decision. A panel hearing involves factual inquiry rather than an appeal of a permit decision. Non-adversary procedures are generally used in non-controversial situations and do not provide the opportunity for evidentiary hearings, although like conventional procedures the permit decision may be appealed to the Administrator.

In most instances (at the Regional Administrator's discretion), non-adversary procedures are used in proceedings for the issuance of an NPDES permit for "initial licensing." Initial licensing refers to the first decision on an NPDES permit applied for by a discharger that has not previously held one and the first decision on any variance. At the Regional Administrator's discretion, a draft general permit may be processed under non-adversary procedures. In addition, a formal hearing granted under Subpart E may be held under non-adversary procedures.

The NPDES permitting process can be divided into the following sequential steps:

- Application (See Section 3.5.1)

³ Conventional EPA procedures are found in 40 CFR 124, Subparts A-H in the 1979 Regulations.

⁴ Non-adversary panel procedures are found in 40 CFR 124, Subpart I in the 1979 Regulations.

- Tentative Decision to Deny or Preparation and Issuance of Draft Permit (See Section 3.5.2)
- Public Comment, Public Hearings (see Section 3.5.3 or if non-adversary procedures, see Section 3.5.6.1); Panel Hearing (non-adversary procedure only, see Section 3.5.6)
- Final Permit Issuance (See Section 3.5.4 or if non-adversary procedures, see Section 3.5.6)
- Evidentiary Hearing (conventional EPA procedures only, see Section 3.5.5)
- Appeal to the Administrator (see Section 3.5.5.5)
- Judicial Review (see Section 3.5.5.5)

Hearings, either public, evidentiary, or panel, are optional. Public hearings may be held after the written comment period following draft permit notice, and provide an opportunity for additional public input. Both public and panel hearings are informal proceedings held on the draft permit, by request or by the Regional Administrator's own discretion. An evidentiary hearing is a formal proceeding to appeal the Regional Administrator's final permit decision. After all EPA appeal procedures are exhausted, judicial review of the Administrator's decision may be requested.

Detailed flow charts depicting NPDES permitting processes are included in Exhibits 3-D, 3-E, 3-F and 3-G. The detailed description of the NPDES permitting process that follows assumes issuance of an individual permit for the discharge of pollutants associated with Federal OCS oil and gas drilling operations, pursuant to 40 CFR 122 and 124.

3.5.1 Application

The lease operator (drilling contractor, or facility operator in Regions IX and X) must submit an application for an NPDES permit to the Regional Administrator. Application must be made at least 180 days prior to commencing a new discharge or permit expiration.⁵ NPDES permit applications are made on EPA Forms 3510-1, General

⁵For permits expiring prior to June 1, 1981, under 40 CFR 122.53, earlier deadlines for application submission are provided. II-3-13

EXHIBIT 3-D
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEMS (NPDES)

¹ Both the 1970 Regulations and the Consolidated Regulations require that a person requesting a new discharge submit an application at least 180 days before discharge is to commence. The 1970 Regulations require holders of existing permits to submit new applications at least 180 days before expiration. The Consolidated Regulations provide a table of deadlines prior to which permittees with expiring permits must submit a new application.

² The 1970 Regulations do not specify a time frame for completeness review.

³ The 1970 Regulations do not require a project decision schedule.

⁴ The Consolidated Regulations state that once the application is completed, additional information may be requested only when necessary to clarify, modify, or supplement previously submitted material. The 1970 Regulations state that the applicant is notified if further information is necessary to evaluate the discharge completely or accurately.

⁵ The decision to deny a permit is made through the same procedures as any other decision on a permit. A draft notice of intent to deny (a type of draft permit) is issued and with a fact sheet or statement of basis is made available for public comment. A response to comments and final decision is then prepared. An evidentiary hearing and appeal to the Administrator is also available.

EXHIBIT 3-E
NPDES - CONVENTIONAL EPA PROCEDURES

¹ The Consolidated Regulations state that if an applicant moves to begin operation before a final EPA action is taken through subject to an extraordinary hearing request or a final hearing under Sections 124.14 and 124.15, the Presiding Officer may issue an extraordinary order.

² A hearing can be granted only if the request involves a substantial material issue of fact. The 1978 Regulations provide an time limit within which a decision on hearing requests must be made.

³ All extraordinary hearing requests granted for a particular permit are combined in a single extraordinary hearing. Under the 1978 Regulations, if the RA grants an extraordinary hearing request, additional requests are treated as requests to be a party.

EXHIBIT 3-E - (Continued)

EXHIBIT 3-F
NPDES - NON-ADVERSARY PROCEDURES

¹⁰ The Consolidated Regulations Section 124.110 provide that where notice of draft permit and notice of the grant of a panel hearing are given at the same time, the comment periods under Sections 124.113 and 124.118 are merged and held as a single public comment period.

¹¹ The 1979 regulations state that if no request for a panel hearing is made, or if such request is denied, the draft permit becomes the recommended decision.

EXHIBIT 3-F - (Continued)

EXHIBIT 3-G
NPDES PROCEDURES

DEFINITIONS FOR EXHIBITS 3-D through 3-G

Regional Administrator - the Regional Administrator of the appropriate Regional Office of the EPA or his delegated representative.

Presiding Officer - An Administrative Law Judge designated to preside at a hearing.

Regional Hearing Clerk - An EPA employee designated by the Regional Administrator to establish a repository for all books, records, documents, etc., relating to an evidentiary hearing.

Agency Trial Staff - EPA employees designated to investigate, litigate and present the evidence, arguments and position of EPA in the evidentiary or non-adversary hearing.

Decisional Body - An EPA employee who is or may be involved in the decisional process of the proceeding, including the Administrator, Judicial Officer, Presiding Officer, Regional Administrator (if not part of the Agency trial staff) and any of their direct support staff participating in the decisional process. For a non-adversary proceeding, panel members are also included in the decisional body.

Panel Hearing Members - 3 or more EPA employees, or at the Regional Administrator's discretion, persons other than EPA employees having special expertise or responsibility in areas relating to the hearing issues.

Regional Administrator (RA)
Presiding Officer (PO)
Corps of Engineers (COE)
Fish and Wildlife Service (FWS)
National Marine Fisheries Service (NMFS)

Information and 3510-2d (new operations) or 3510-2c (existing operations) Discharges to Surface Water.⁶ (See Appendix B, Exhibits 1 and 2 for a sample of Form 1 and 2C, respectively.)

The Regional Administrator reviews the application for completeness within 30 days of receiving a new discharger's application or 60 days of receiving an existing source's application⁷. Following review, the applicant is given written notification of the completeness review. If the application is judged incomplete, the applicant must provide necessary information as listed in a Notice of Deficiency. A date for submitting the necessary information is provided in the notice of deficiency for an existing source. The effective date of an application is the date on which the Regional Administrator notifies the applicant of a complete application.

After an application is deemed complete, additional information may be requested only when necessary to clarify, modify or supplement previously submitted material.⁸ If the Regional Administrator determines that a site visit is necessary, the applicant is notified and a date for the visit is scheduled.

For each application from a major new discharger, the Regional Administrator must prepare a project decision schedule.⁹ The schedule is to specify target dates for: preparing a draft permit, giving public notice, completing the public comment period (including public hearing), issuing the final permit and completing any formal hearings. Although not legally binding, EPA expects these schedules to be followed. This schedule must be sent to the applicant no later than the effective date of the application.

⁶Under the 1979 Regulations, applications were made on either EPA Form 7550-8 (Short Form C) or EPA Form 7550-23 (Standard Form C). Samples of these forms are included in Appendix B, Exhibits 3-5.

⁷The 1979 Regulations provided no time limits for completeness review.

⁸The 1979 Regulations did not include limitations to additional information requests after an application was deemed complete. Further information had to be provided if the Regional Administrator determined it necessary in order to evaluate the discharge.

⁹The 1979 Regulations did not require that a project decision schedule be prepared.

3.5.2 Tentative Decision on Permit Issuance

Once an application is deemed complete, all relevant data and information are analyzed and the Regional Administrator tentatively decides whether to issue or deny the permit. There is no time limit within which this decision must be made. If the tentative decision is to issue the permit, a Draft Permit is prepared; if the decision is to deny the application, a Notice of Intent to Deny is issued. As defined in the regulations, a Notice of Intent to Deny (or terminate) a permit is a type of draft permit that follows the same procedures as any other draft permit.

All draft permits must be accompanied by either a Fact Sheet or Statement of Basis. (See Appendix B, Exhibit 6 for a sample of a fact sheet.) The Fact Sheet or Statement of Basis describes the conditions of the draft permit, the facts and questions examined and considered in developing the draft permit, or in the event of termination or denial, reasons supporting that decision. The Fact Sheet is prepared for every draft permit involving: a major facility, substantial public interest, major issues, permits incorporating variances (See Section 3.6.1), or general permits. A "major facility" means any facility or activity so classified by the Regional Administrator. Where a Fact Sheet is not required, a Statement of Basis, briefer and less detailed than a Fact Sheet, is prepared. An administrative record for the draft permit including all relevant documentation is maintained by EPA.

Prior to giving notice of the draft permit, the Regional Administrator may choose to follow the non-adversary rather than conventional EPA permitting procedures. No guidelines are available to the EPA regions as to which procedure should be used, and the determination is usually made by agreement between the parties involved. If objections to the permit are anticipated, then procedures are followed wherein an evidentiary hearing may be requested to challenge the final permit i.e., conventional procedures. If prior to the public notice of a draft permit, the Regional Administrator determines that non-adversary procedures are to be followed, the use of these procedures must be announced in the draft notice (non-adversary procedures are discussed in Section 3.5.6). The following sections (3.5.3 - 3.5.5) describe conventional EPA procedures.

3.5.3 Public Comments and Hearings

A public notice is issued after the draft permit has been prepared. The Regional Administrator has the discretion to determine whether a public hearing should be held. If this determination is made prior to draft permit notice, the hearing notice and the draft permit notice may be combined. Public notices, given for preparation of draft permits (or tentative denial of applications) and scheduling of hearings (public, evidentiary or panel), are sent to: the applicant, other concerned Federal and state agencies, and persons or organizations known or believed to be interested in the application. (See Appendix B, Exhibits 7 and 8 for a sample of a draft permit notice and a draft permit, respectively.)

A public comment period of at least 30 days is required following notice of draft permit preparation. During the public comment period, any interested person may submit written comments and request a public hearing, if one has not yet been scheduled. Longer comment periods may be requested and can be granted as necessary. If substantial new questions concerning a permit are raised during the comment period, the Regional Administrator may decide to: prepare a new draft permit, reopen or extend the comment period, and/or hold further proceedings under non-adversary procedures.¹⁰

During the public comment period, the District Engineer of the Corps of Engineers (COE) may advise the Regional Administrator in writing of any adverse effect the granting of an NPDES permit might have on the anchorage and navigation of U.S. waters. If the granting of the NPDES permit would result in substantial impairment to anchorage or navigation, the permit is denied and the applicant is so notified. Review or appeal of permit denial under these circumstances is made through COE. If the Regional Administrator is advised that special operating requirements are necessary to avoid substantial impairment, these requirements are included in the permit.

Government agencies with jurisdiction over fish, wildlife or public health may respond to the Regional Administrator during the public comment period. These agencies may advise that restrictions be placed on the operator to avoid substantial impairment of fish, shellfish or wildlife resources. EPA may include these restrictions in the permit.

¹⁰ *The option to hold further proceedings under non-adversary procedures, if substantial new questions are raised, was not included in the 1979 Regulations.*

If a request for public hearing is made and granted, notice must be given at least 30 days before the scheduled hearing date. The Regional Administrator then designates a Presiding Officer who is responsible for the scheduling and orderly conduct of the hearing. During the public hearing any person may submit oral or written statements and data concerning the draft permit. The public comment period is automatically extended to the close of any public hearings.

3.5.4 Final Permit Issuance

After the close of the public comment period, including any public hearing, the Regional Administrator makes a final decision to issue or deny the permit. At that time, the Regional Administrator must also respond to comments received on the permit. Issuance of the final permit, like the draft permit, must be based on an administrative record that contains all the documentation on the permit.

Notification of the Regional Administrator's final decision is sent to the applicant and each person who submitted written comments or requested notice of the final permit decision. (See Appendix B, Exhibit 9 for a sample of applicant notification and final NPDES permit.) A final permit decision is effective 30 days after serving notice of the decision unless:

- an evidentiary hearing is requested
- a later date is specified in the decision
- there were no comments made requesting changes in the draft permit.

If no comments were made requesting changes in the draft permit, the permit is effective upon issuance.¹¹

3.5.5 Final Permit Appeals

3.5.5.1 Requests and Decision to Hold Evidentiary Hearings

Any interested person may request an evidentiary hearing to reconsider or contest the terms of an individual final permit. (See Appendix B, Exhibit 10 for a sample of an evidentiary hearing request.) The discretion of the Regional Administrator to grant

¹¹The 1979 Regulations did not include a provision for immediately effective permits where no changes in the draft permit were requested.

an evidentiary hearing is defined in the regulations: "the Regional Administrator shall decide the extent to which, if at all, the request shall be granted, provided that the request conforms to the requirements of Section 124.74 and sets forth material issues of fact relevant to the issuance of the permit."¹² Interpretation of the Regional Administrator's discretion under the existing regulations has been that an evidentiary hearing must be granted if a properly submitted request involves an issue of material (i.e., significant) fact. However, the Regional Administrator has considerable leeway in determining what constitutes an issue of material fact. According to personnel in EPA's Office of the General Counsel, the changes between the 1979 Regulations and Consolidated Regulations clarify this definition, thus enabling the Regional Administrator to grant evidentiary hearings more freely.

An evidentiary hearing request must be granted or denied within 30 days after the time allowed for submitting requests.¹³ A decision by the Regional Administrator denying an evidentiary hearing request is subject to review by the Administrator upon petition. The Administrator, Regional Administrator, or Presiding Officer has the discretion to consolidate or hear separately evidentiary hearings held under 40 CFR 124, Subpart E.¹⁴

3.5.5.2 Industry Drilling Activity During the Evidentiary Hearing Process

Under the Consolidated Regulations, Section 124.60(a)(2), if an applicant has received a final permit subject to an evidentiary hearing request or an evidentiary hearing, the Presiding Officer may issue an order authorizing the applicant to begin operations before final EPA action.¹⁵ The applicant must request the order and agree to comply

¹² Under the 1979 Regulations, 40 CFR 124.75, "the Regional Administrator shall grant a request either in whole or in part only if the request conforms to the requirements of Section 124.74 and sets forth material issues of fact relevant to the issuance of the permit."

¹³ The 1979 Regulations provided no time limit within which a decision on hearing requests must be made.

¹⁴ Under the 1979 Regulations, 40 CFR 125, Subpart H.

¹⁵ This provision is not included in the 1979 Regulations, although conditions for issuance of the order are based on those normally required for issuance of a preliminary injunction.

with all conditions of the final permit during the period until final EPA action. The request may be granted where no party opposes it; or if opposed, the applicant must demonstrate that:

- no irreparable harm to the environment will occur during this period if operations are allowed to commence
- the public interest requires that commencement of operations be allowed, and
- the applicant is likely to prevail on merit.

This provision was included in the regulations to reduce delays associated with the evidentiary hearing process.

3.5.5.3 The Pre-Hearing Procedure

A public notice of the grant of a hearing is issued by the Regional Administrator, after which any person may request to be admitted to the hearing as a party. Where an evidentiary hearing has been granted regarding initial issuance of a permit to a new discharger, the applicant is without a permit pending final EPA action. For an existing source, contested terms or conditions of the final permit are stayed, but uncontested conditions are enforceable obligations of the discharger.

Prehearing (or during a hearing) conferences, or written proposals relating to: the clarification, simplification or limitation of the issues, scheduling of matters relating to the hearing, consideration of previously unavailable evidence, and the identification of witnesses to the hearing, may be required by the Presiding Officer.

If any party contends that there is no genuine issue of material fact for determination, the party may file a motion for summary determination regarding all or part of the contested issues at least 45 days before the hearing date. Response or countermotions to this contention may be filed by any other party within 30 days after service of the motion.

Parties opposing the motion must show that there is an issue of material fact. The Presiding Officer must rule on the motion within 30 days after the filing of the responses. If, as a result of a motion for summary determination, decisions on all issues of material fact are made, no evidentiary hearing will be held and an initial decision is prepared by the Presiding Officer. If summary determination is denied or if only partial summary determination is granted, the hearing proceeds on the remaining issues.

3.5.5.4 The Evidentiary Hearing

In an evidentiary hearing, the permit applicant must persuade EPA that a permit should be issued; EPA must present a case supporting challenged terms and conditions; and other parties must present a case supporting their challenge of permit terms and conditions, or that denial or issuance of the permit is invalid or improper. The Presiding Officer is responsible for conducting the hearing so that there is a fair and expeditious disposition of contested matters.

During the hearing, evidence is presented, direct and rebuttal testimony are filed, and testimony and cross examination of witnesses may be allowed. Interlocutory appeals (made during the proceeding) of orders or rulings may be made to the Administrator. The Administrator must accept or decline the appeal within 30 days of submission. In exceptional circumstances, the proceeding may be stayed pending the Administrator's decision on the order or ruling.

After a certified transcript of the proceeding is filed, a period of 30 days is allowed for any corrections. Within 45 days after the transcript is filed, any party may file proposed findings of fact and conclusions, along with a supporting brief. Reply briefs may also be allowed.

The Presiding Officer (after reviewing the record including any findings and conclusions, briefs, and decisions made during the hearing) issues and files an initial decision. This decision becomes effective 30 days after service, unless a petition is made for review by the Administrator; or the Administrator, on his own, decides to file a notice of review.

3.5.5.5 Review by the Administrator and Judicial Review

An appeal to the Administrator must be made within 30 days of serving the initial decision or of the denial of a request for an evidentiary hearing. Any party may appeal (a) any matter set forth in the initial decision or denial or (b) any order or ruling objected to during the hearing. Within 15 days after service of a petition for review, parties may file responsive petitions. The Administrator may decide on his own, within 30 days of an initial decision or denial, to review the decision. If this decision is made, notice must be given to all parties and the Regional Administrator within seven days. The Administrator must issue an order granting or denying petition for review within a reasonable time. A brief in support of the petition may be filed within 21 days after a petition for review has been granted. Responsive briefs may be filed within 21 days of service of the brief supporting petition. Reply briefs may then be filed within two weeks. The Administrator may decide that:

- the recommended decision be affirmed without opinion
- the proceeding be remanded (sent back to the evidentiary hearing)
- a new decision made without remanding the proceeding.

If the Administrator denies review, or the recommended decision is affirmed without opinion, then the initial decision or denial becomes the final EPA action upon serving notice of the Administrator's action. If the Administrator remands the proceeding, final EPA action is withheld until the completion of remanded proceedings. If a new decision is made without remand, the final permit is redrafted and reissued. After review by the Administrator, all EPA appeal procedures are exhausted. However, judicial review is available if requested.

3.5.6 Non-Adversary Procedures

Non-adversary panel procedures are applicable:

- in proceedings for issuance of any NPDES permit that constitutes initial licensing
- to process draft NPDES general permits, at the Regional Administrator's discretion

- in initial licensing proceedings by request, or at the Regional Administrator's discretion, where an evidentiary hearing has been granted, and
- in other than initial licensing proceedings, by request, if not objected to, where an evidentiary hearing has been granted.

Conventional EPA procedures and non-adversary panel procedures are basically the same through public notice of the draft permit (see Sections 3.5.1 - 3.5.3). The Regional Administrator may decide, before draft permit preparation, that a public and/or panel hearing is necessary. If this decision is made, the notice of draft permit preparation may also include hearing notices.

3.5.6.1 Public Comment and Hearings

As with the conventional EPA procedures, a public comment period of at least 30 days follows the notice of draft permit preparation. If substantial new questions are raised during the comment period, a new draft permit may be prepared or the comment period reopened or extended. During the comment period, other Federal and state agencies review the draft permit and advise EPA of special considerations relevant to permit issuance.

At the discretion of the Regional Administrator, the comment period may include an opportunity to request a public hearing. If the Regional Administrator decides on his own that a public hearing should be held or if a request for a public hearing is granted, notice must be given at least 30 days before the scheduled public hearing date. By the close of the comment period, any person may request that EPA hold a panel hearing on the draft permit by submitting a written request.

3.5.6.2 Panel Hearings

If a properly submitted request for a panel hearing is granted, or the Regional Administrator decides on his own that a panel hearing should be held, public notice of the panel hearing is given. This notice must include a statement as to whether the Regional Administrator or the Presiding Officer is to issue the recommended decision. If no request for a panel hearing is made, or if the request is denied and the Regional Administrator does not decide on his own to have a panel hearing, the recommended decision is then prepared.¹⁶

¹⁶ Under the 1979 Regulations, the draft permit would be treated procedurally as the recommended decision of a hearing process.

The hearing schedule is announced by the Presiding Officer no less than two weeks before the hearing date. Anyone who wishes to participate in the panel hearing can file a motion to participate within the time period stated in the notice of the hearing. No later than 30 days before the hearing, each party files its comments on the draft permit. Under 40 CFR 124.116, if the panel hearing notice is given at the same time as the draft permit notice, the comment period following the draft permit notice and the comment period prior to a panel hearing are merged and held as a single public comment period. When the parties appear at the panel hearing, they may submit written responses to the written comments.

Motions and the right of interlocutory appeal are available as with conventional EPA procedures. During the panel hearing, witnesses give testimony and panel members only cross-examine them, except where the Presiding Officer determines that cross-examination by other parties would expedite the proceedings. The parties may submit written questions to the Presiding Officer. Within 10 days after the hearing, any participant may submit any additional written information.

Within 15 days of the panel hearing transcript being filed, any participant may submit a written request to the Presiding Officer to cross-examine on any issue of material fact. After all motions for cross-examination are submitted, the Presiding Officer consults with the panel and issues an order granting or denying requests. If a request for cross-examination is granted, a supplementary hearing is held. Requests for alternate methods of clarifying the record may be made instead of, or in addition to, the request for cross-examination.

Each party to the proceedings may, unless ordered by the Presiding Officer, submit proposed findings of fact, conclusions, and a brief in support thereof. Such submission must be made within 20 days after all cross-examination requests are denied or the full hearing transcript, including cross-examination, is available. Reply briefs may be filed within 10 days thereafter.

The recommended decision is prepared and filed as soon as possible after the hearing concludes. As with conventional EPA procedures, within 30 days after serving the decision, any matter concerning the recommended decision or any adverse order or ruling of the Presiding Officer that was objected to can be appealed to the Administrator. After all appeals proceedings, the Administrator issues a final decision that is filed and served on all hearing participants. If within the stipulated time period no party appeals the recommended decision, or if the Administrator denies review, the recommended decision is deemed the final decision of EPA. Judicial review is available after the EPA appeal procedures are exhausted.

3.6 ADDITIONAL INFORMATION ON THE PERMITTING PROCESS

3.6.1 Variances

Under sections 301 or 316 of the Clean Water Act (CWA) or 40 CFR Parts 125 or 435, a variance allows waiver of, or modifications to, effluent limitation requirements or time deadlines of the CWA. Variances permit the establishment of alternative effluent limitations based on factors fundamentally different from those on which an effluent guideline was based. Variances may also be requested pursuant to CWA Sections 301(c) (economic capability), 301(g) (water quality factors), 301(h) and 301(i) (relating to publicly owned treatment works (POTW)), 301(k) (innovative technology), 302(b) (water quality related effluent limitations), and 316(a) (thermal pollution).

All initial applications for variances must be made by the close of the public comment period, with the exception of thermal variances. If requested at the time of permit application, final EPA decision on thermal variances may be made before the final permit is issued. Depending on when the complete application for variance is filed, a tentative decision on the request for variance is incorporated in the draft permit, or a new draft permit is formulated. The processing of a variance or modification may be separated from the permit, if the processing of the permit would otherwise be significantly delayed. If the request for a variance is separated from the NPDES permit, it is processed in much the same way as a separate permit. Variance decisions made by EPA may be appealed under conventional EPA or non-adversary panel procedures, provided the applicable requirements are met.

3.6.2 Monitoring, Reporting, Notification, Records

An NPDES permittee is required to notify the Regional Administrator within 24 hours of:

- becoming aware of any noncompliance that may endanger health or the environment (written notification must also be submitted within 5 days)
- violating the maximum daily discharge limitation for specified pollutants
- causing an unanticipated bypass¹⁷ which exceeds the effluent limitations in the permit
- causing any upset¹⁸ that exceeds the effluent limitations in the permit.

In addition, the permittee must give notice:

- of any planned physical alterations or additions to the facility
- in advance of any planned facility or activity changes that may result in noncompliance
- of intent to transfer the permit to another person (if notice is made at least 30 days in advance of the proposed transfer date, automatic transfer may be allowed)
- at least 10 days before the date of an anticipated bypass, if possible
- if a discharge of toxic pollutants not listed in the permit, in excess of specified notification levels, is anticipated

¹⁷ A bypass is an intentional diversion of waste streams from any portion of a treatment facility.

¹⁸ An upset is an exceptional incident, due to factors beyond the reasonable control of the permittee, in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations.

- of the use of toxic pollutants not specified in the permit application.

Monitoring results must be reported to EPA in a "Discharge Monitoring Report" at a frequency specified in the permit, and monitoring records retained. Reports on compliance, noncompliance, and progress on requirements contained in any compliance schedule included in the permit must be submitted no later than 14 days following each schedule date. The first NPDES permit issued to a new discharger commencing discharge after August 13, 1979, or a recommencing discharger does not contain a compliance schedule for meeting effluent standards and limitations. Those standards must be met prior to commencing discharge.

3.6.3 Modification, Revocation and Reissuance, and Termination

After an NPDES permit is issued, certain reasons (as specified in 40 CFR 122.15 and 122.16) can necessitate modifying, revoking and reissuing or terminating the permit. Causes for modification include:

- material and substantial alterations or additions to the facility or activity
- additional information not available at the time of permit issuance
- new regulations
- requests for variances
- changes in any condition that requires reduction or elimination of a permitted discharge
- changes regarding toxic pollutants, effluent limitations or standards, etc.

The Regional Administrator may modify or revoke and reissue a permit when notified of a proposed transfer of the permit or if cause exists for termination. Causes for termination or denial of permit renewal include:

- noncompliance

- failure to disclose or misrepresentation of facts in the permit application
- threats to human health or the environment from the permitted activity
- changes in any condition that requires reduction or elimination of a permitted discharge.

Permits may be modified, revoked and reissued, or terminated at the written request of any other interested person, or by the Regional Administrator. Submission of an updated application may be required by the Regional Administrator for a modification and is required where the permit is revoked and reissued. If the Regional Administrator makes a tentative decision to modify or revoke and reissue a permit, the conventional procedures for draft permit preparation, public notice, public comment, public hearing, decision on final permit, and permit appeal are followed. Denials of requests are not subject to public notice, comment or hearings, but may be informally appealed to the Administrator by letter. If the Administrator takes no action within 60 days of receiving the letter, the appeal is considered denied.

During permit modification procedures, only conditions subject to modification are reopened. All other aspects of the existing permit remain in effect. When a permit is revoked and reissued, the entire permit is reopened and subject to revision. During the revocation and reissuance proceeding, all conditions of the existing permit must be complied with until a new final permit is reissued.

3.6.4 General Permit

A general NPDES permit authorizes a category of discharges under the Clean Water Act within a geographical area. The permitting procedures for issuance are similar to those for an individual permit. Once the general permit is issued, existing or new dischargers of the covered category of discharges within the designated General Permit Program Area (GPPA) are automatically permitted and are not required to apply for an NPDES permit.

The Regional Administrator may, under certain conditions, require a discharger authorized by a general permit to apply for and obtain an individual NPDES permit. Any owner or operator authorized by a general permit may request to be excluded from general permit coverage by applying for an individual permit no later than 90 days after the general permit is published in the Federal Register. The individual permit application must be accompanied by reasons supporting the request. Dischargers authorized by a general permit may not request an evidentiary hearing to challenge the terms and conditions of the permit, although at the Regional Administrator's discretion a panel hearing on the draft permit is available. A discharger excluded from a general permit and operating under an individual permit may request that the individual permit be revoked. The discharger should then be covered by the general permit.

A draft general permit may be formulated by the Regional Administrator without an application from a discharger. During the public comment period on the draft general permit, the Regional Administrator must send a copy of the draft permit and the administrative record to the Deputy Assistant Administrator for Water Enforcement. The Deputy Assistant Administrator has 30 days from receipt of the permit, or until the end of the public comment period, whichever is later, to comment on, object to, or make recommendations with respect to the draft.¹⁹ If the Deputy Assistant Administrator objects to the draft general permit, the Regional Administrator cannot issue the final general permit until concurrence is obtained. The final general permit is published by EPA in the Federal Register.

3.6.5 Other Federal Laws

NPDES permits must be consistent with several Federal laws in addition to the Clean Water Act. The Regional Administrator is required under the Endangered Species Act to ensure, in consultation with either the Secretary of the Interior or the Secretary of Commerce, that activities authorized by EPA will not adversely affect the existence or habitat of an endangered species. Under the Coastal Zone Management Act, EPA cannot permit an activity that affects the land or water use in the coastal zone of a state with an approved Coastal Zone Management (CZM) program, unless the state concurs with the applicant's certification of compliance with the program (nonconurrence may be overridden by the Secretary of Commerce). Under the Fish and Wildlife

¹⁹ Under the 1979 Regulations, the Deputy Assistant Administrator has 90 days from the date of draft permit notice to object to the permit.

Coordination Act, prior to authorizing a permit that would involve modification of any body of water, the Regional Administrator must consult with state agencies having jurisdiction over wildlife resources. EPA has determined that new sources require environmental assessment and sometimes preparation of an Environmental Impact Statement (EIS) due to the requirements of the National Environmental Policy Act. Executive Orders pertaining to offshore oil and gas operations must also be followed. Some EPA permits also require consideration of the Wild and Scenic Rivers Act and the National Historic Preservation Act of 1966.

3.7 REGIONAL APPLICATION OF THE NPDES PERMITTING PROCESS

Of the ten EPA regional offices, seven cover states with coastal areas and could potentially issue NPDES permits for Federal OCS oil and gas drilling operations. In most EPA regions, very few final NPDES permits for Federal offshore oil and gas exploratory drilling have been issued.

3.7.1 NPDES Permit Activity by Region

In Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), several applications for NPDES permits have been submitted for Sale 42 leases. In Region II (New Jersey, New York, Virgin Islands, and Puerto Rico) 15 permits have been issued for the Baltimore Canyon lease area. Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia) has had no Federal offshore oil and gas permitting activity. Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee) has issued 24 permits. In Region VI (Arkansas, Louisiana, New Mexico, Oklahoma and Texas), 12 individual permits have been issued, and a general permit has been proposed. Region IX (Arizona, California, Hawaii, Nevada, Guam, and American Samoa) has issued 16 permits for exploratory drilling vessels. In Region X (Alaska, Idaho, Oregon, and Washington), 37 NPDES permits have been issued for offshore oil and gas drilling operations (includes permits for production platforms and in state waters).

3.7.2 Regional Variations

While the mandated permitting procedures for issuing NPDES permits are the same across the country (the same standard application forms are used and the same basic steps are followed), the coverage of the permit varies by region.

During exploration, most EPA regions issue an individual NPDES permit to the lease operator rather than to a drilling contractor. This is consistent with BLM's rule that the lease operator is the legally responsible party; it also may reduce the number of permits issued, as the lease operator changes less often than the drilling contractor. In contrast, Regions IX and X NPDES permits are issued to drilling contractors or the operators of the exploratory drilling facilities.

An individual NPDES permit is usually issued for a specific rig or drilling vessel in an area covering a lease block. Notification of rig movement from one drilling location to another is generally required. NPDES permit coverage also varies by region:

- Region I. Permits are issued for each drilling location, although only a form letter notifying EPA of rig movement is required to modify the permit when the drilling location is changed
- Region II. The permitted area covers the applicant's lease area, whether it covers one block or several
- Regions III and X. Permits cover the lease block
- In Region IV. The permit covers the lease block and contiguous lease blocks, but notice is required when operations are shifted
- Region VI. One individual permit is issued per lease block in areas not covered by a proposed general permit
- Region IX. Permits cover an entire lease sale area and require notice of which locations are being drilled.

3.7.3 Time Requirements

Industry finds significant regional variation in the amount of time needed to prepare an NPDES permit application. Estimates of preparation time for the Region VI Office, which permits the Gulf of Mexico, range from 2 days to 2 weeks. As the Gulf is a mature oil and gas producing area, industry has found NPDES permit application relatively routine.²⁰ Industry has indicated that application preparation time for the Region IX office, which permits offshore California, is the same as for the Gulf. Applications were also usually made on EPA's short Form C. In the Mid- and South Atlantic areas, where NPDES permits are issued by EPA Regions II and IV, respectively, industry estimates application preparation time at three to four months. Preparation time estimates for Region I, which permits Georges Bank (Sale 42), vary from four weeks to six months, depending on the staff available. The amount of time required for preparation is basically a function of the specific EPA regional office requirements, and the experience and permitting set-up of the applicant.

The EPA regional offices with experience issuing NPDES permits indicate that in most cases six months is required for issuance. (This excludes the time required for final permit appeals.) The Region IV office estimates that 70 percent of their NPDES permits for Federal OCS oil and gas operations have been issued within 5-6 months; the shortest time required for issuance was 13 weeks. Region IV had no appeals related to these permits. In Region II, prior to the 1979 Regulations, the goal for elapsed time from application to final permit issuance was 100 days. Under the 1979 Regulations, more special notices, provisions for public input, and increased documentation requirements extended this time frame. Region II now estimates a minimum period of 100 to 110 days, and an average of 180 days, for permit issuance.

EPA does require that applications be submitted 180 days prior to a new discharger commencing discharge or an existing permit expiring (for a permit expiring before June 1, 1981, a special submission schedule is presented in 40 CFR 122.53). Few time constraints for completion of the individual permitting steps are included in the NPDES regulations. Those which are included generally provide minimum rather than maximum time periods for completion.

²⁰ Most gulf operators had been required to submit limited information (short Form C) and were sent a waiver letter saying EPA would take no action as long as DOI discharge regulations were met. This was done due to the large number of dischargers and EPA's lack of manpower, and in anticipation of the now proposed general permit.

With the exception of final permit appeals, the interval between permit application and draft permit issuance is the most time consuming portion of the permitting process. By regulation, between application and draft notice, the only time constraint included is that an application should be reviewed for completeness within 30 days (new discharger) or 60 days (existing source) of receipt. In addition, the regulations provide that a non-binding project decision schedule, specifying target dates for various permit processing steps (e.g., draft permit prepared), be prepared for major NPDES new discharger applications. Based on the permit tracking information provided by EPA Regions IX and IV, this period has ranged from 0 to 514 days, the average approximately 90 days. Factors which determine the time requirement include: the regional office's resources (manpower), the experience and workload of the staff, the policies and procedures set-up to process the application and develop the draft permit, the amount of previous activity and information available, whether additional information or corrections to the initial application are required, and the complexity of permit conditions.

Based on the Region IX and IV data, the period between public notice of draft permit preparation and final permit issuance ranged from 32 to 118 days, the average approximately 60 days. By regulation, a public comment period of at least 30 days follows draft permit notice. If substantial new questions are raised during the comment period, a new draft permit may be prepared, or the comment period may be reopened or extended. In most instances, the minimum 30 day comment period is held. If a public hearing is to be held, public notice must be given at least 30 days before the scheduled hearing date, even though in most instances the actual hearing lasts only a day or so. If EPA decides prior to the draft permit notice that a public hearing is necessary, public hearing and draft permit notices may be combined, potentially saving 30 days. This savings comes from overlapping the 30-day comment period following the draft permit notice and the 30-day notice period before a public hearing.

By regulation, the final permit becomes effective 30 days after serving notice unless: an evidentiary hearing is requested, a later date is specified in the decision, or there were no comments requesting draft permit changes (and therefore the permit is effective upon issuance). Appeal of a final permit has the greatest potential for delaying an effective permit. If an evidentiary hearing was granted and the applicant was a new discharger, the applicant would be without a permit pending final EPA action. If the applicant was an existing source, pending final EPA action, uncontested terms of the final permit would be enforceable, and contested terms would not. Under

certain conditions, the Presiding Officer of an evidentiary hearing has the authority to allow an applicant to begin operations before final EPA action.

Appeals of final NPDES permits for Federal OCS oil and gas exploratory drilling operations have occurred or are presently pending in EPA Regions II, IX and X. In EPA Region II, a consolidated evidentiary hearing granted for permits issued in November 1977 has only recently been settled, a period between final permit issuance to final settlement of almost 3 years. In this case, due to the permit applicants' agreeing to meet permit conditions during appeal, drilling was not delayed. Recent Regions IX and X appeals are currently unresolved, and drilling has been delayed. Appeal procedures may require up to 4 or 5 years, as evidenced by the appeals involving functioning offshore platforms in Region X. In this case, appeal included an evidentiary hearing, appeal to the Administrator, judicial review and several remand proceedings.

Some of the contested issues for which a NPDES permit evidentiary hearing has been granted include:

- whether exploratory rigs should be considered a new source or an existing source
- whether adequate study had been made of the effects of the discharge of drilling muds and cuttings on marine life
- whether effluent limitations were technically unfeasible or unreasonable (e.g., deck drainage limitations, oil and grease content, etc.)
- whether there were appropriate upset or bypass provisions
- limitations on mud composition
- the requirement that discharge sites be at least one-half mile apart
- duration of the discharge requirements
- monitoring requirements.

Industry strongly opposes the classification of exploratory rigs as new sources. Though EPA has tried to class exploratory rigs as new sources, the classification has not held because new source performance standards have not been finalized.

In attempting to modify NPDES permits on Sale 35 leases to also cover the adjacent Sale 48 leases in the Santa Barbara Channel, EPA has been challenged by industry and environmentalists. Environmentalists contend that site-specific investigation of the effect of discharging drilling muds and cuttings on marine life is needed, while EPA contends that a bioassay would adequately determine the effect. Industry contends that a bioassay is not needed and that past studies adequately show no adverse effect. An evidentiary hearing process was initiated in May, 1980. Other issues that have been contested in evidentiary hearings involve specific technical operations questions.

EPA regional personnel report that prior to the 1979 Regulations, the Regional Administrator had more discretion in determining whether an evidentiary hearing was granted or denied. Current EPA policy requires that a hearing must be granted if material issues or facts are involved.

The general consensus of the personnel contacted at EPA regional offices was that there are no bottlenecks built into the NPDES permitting process. Delays result from the utilization of the administrative process in areas considered by some to be important or sensitive. EPA regional personnel suggest that within the framework of the existing regulations, the permit process may be expedited by including notice of public hearing with the draft permit notice, potentially saving 30 days.

In Region IX, EPA has streamlined its permitting process by granting blanket exploratory permits to drilling contractors to drill anywhere in a leased area. This is similar to a general permit but the special permitting requirements for a general permit are not followed. The lease sale area could be considered the general permit program area (GPPA) and the category of discharges those associated with offshore oil and gas drilling.

Within the present regulatory framework, the issuance of general permits seems to offer the greatest reduction of the NPDES permitting time. Once issued, operators within the defined area would be covered by the general permit, and each individual company would not need to apply for and obtain a separate permit. According to EPA

personnel, general permits for the exploratory mode, with the exclusion of environmentally sensitive areas, seem appropriate.

Region VI has proposed a general permit for discharges associated with oil and gas drilling operations on the Gulf of Mexico Federal OCS. Due to the large number of applications, the lack of appropriate manpower to process such permit applications, and the absence of approved state programs in this region, 3000 dischargers are currently operating without NPDES permits. Region VI plans that individual permits will be issued to biologically sensitive areas such as the Flower Garden Banks area, with general permits being issued for the remainder of the Gulf under Region VI's jurisdiction.

In addition to issuance of general permits, reduction of NPDES permitting time may occur as a result of EPA achieving objectives set forth in a July 14, 1980 directive from the Administrator concerning coordination of regulatory activities for offshore oil and gas facilities (see Appendix B, Exhibit 11). The directive commits EPA to developing a permitting process whereby permit limitations will be developed during the lease sale process by gathering and evaluating all necessary information in cooperation with other Federal agencies in the environment assessments undertaken at that time. The objective of this approach is to be able to issue NPDES permits as soon after the lease sale as possible. In addition, where portions of lease sales warrant uniform environmental limitations, issuance of standardized permits is to be promoted; and effluent limitations and ocean discharge guidelines are to be promulgated.

To achieve these objectives, several steps have been taken. EPA has established an OCS Coordination Committee to coordinate OCS permitting activities with the program efforts of the involved EPA offices. EPA is continuing efforts to develop a memorandum of understanding (MOU) with the Coast Guard, BLM and USGS. An agreement is being sought on EPA's participation in the preparation of environmental evaluations for lease sales. Draft general permits for offshore oil and gas facilities in the Gulf of Mexico have been proposed. Ocean discharge criteria under Section 403 (c) has been promulgated. Ocean dumping permit regulations are being evaluated to determine if revisions are necessary to ensure prompt disposal site designation and permit issuance. A Drilling Muds Task Force is examining the environmental impacts of drilling mud and formation water discharges from offshore oil and gas facilities.

3.8 OCEAN DUMPING PERMIT

If pollutants associated with offshore oil and gas drilling are neither barged ashore nor discharged at the drilling site, they may instead be dumped at a specified ocean dumping site. An ocean dumping permit has not been issued in cases involving Federal OCS oil and gas exploratory operations, although Region IX has 3 such ocean dumping permit applications pending and Region IV, one.

Environmental Protection Agency ocean dumping regulations and criteria were established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. These regulations and criteria appear under Title 40 of the Code of Federal Regulations, Subchapter H, Parts 220-229. The permitting procedures involved in ocean dumping permit issuance appear in Parts 221-222.

Ocean dumping permits may be one of 4 types:

- General. For dumping of certain materials with minimum adverse environmental impact, generally in small quantities or in emergency situations
- Special. For dumping of materials which satisfy the dumping criteria (expire no later than three years from issuance)
- Emergency. For emergency dumping of certain prohibited materials
- Research. For dumping of materials as part of a research project (expire no later than 18 months from issuance)

Ocean dumping permit applications, for disposal of wastes associated with offshore oil and gas exploratory operations, currently pending in EPA Region IX (6 leases from Sale 35) are for special permits, the application in Region IV (offshore Mobile, Alabama) is for a research permit. Special permits are issued by the Regional Administrators and research permits (also emergency permits) are issued by the Assistant Administrator for Water and Waste Management. General permits are published in EPA regulations (40 CFR 229). In addition to issuance of permits, the Assistant Administrator of Water and Waste Management also designates disposal sites for ocean dumping.

3.9 THE OCEAN DUMPING PERMITTING PROCESS

The permitting process for an ocean dumping permit involves the following steps:

- Application and Completeness Review
- Tentative Decision to Issue or Deny and Public Notice
- Government agency Comments and Public Hearing
- Assistant Administrator for Water and Waste Management or Regional Administrator's Determination
- Adjudicatory Hearing
- Appeal to the Administrator (if the Regional Administrator previously made the determination)
- Judicial Review

3.9.1 Application

Any person, not necessarily the person proposing to do the dumping, may submit an application for an ocean dumping permit to the Assistant Administrator for Water and Waste Management (hereafter referred to as the Assistant Administrator)/Regional Administrator. The application is then reviewed for completeness and the applicant notified in writing within 30 days whether any additional information is needed.

3.9.2 Site Designation

Where an application is made to dump wastes in other than an existing disposal site, the Assistant Administrator for Water and Waste Management may be required to formally designate, by promulgation in 40 CFR 228, a disposal site. Special permits require formal site designation. Dumping sites for materials disposed of under an emergency or research permit are specified as a permit condition, and do not require formal designation. Dumping sites for general permits are published as part of the promulgation of each permit.

EPA considers designation of disposal sites for ocean dumping "a major Federal action significantly affecting the quality of the human environment" (NEPA) for which EPA policy is to require an Environmental Impact Statement (EIS). Notice of a proposed site must be published in the Federal Register followed by a 60 day comment period. EPA personnel estimate that the site designation process would require 12-18 months.

To provide information used in the preparation of the EIS and evaluation of disposal sites, EPA requires that the applicant complete and submit baseline assessment surveys. A baseline assessment survey is a comprehensive oceanographic study to determine the physical, chemical, geological and biological structure of a proposed disposal site. EPA requires that baseline surveys indicate seasonal information, i.e., survey data may be required for 1 season of the year (plus monitoring before and after disposal at the site) up to 4 seasons. Both the special and research permit applications for dumping of wastes associated with offshore oil and gas exploratory drilling operations, which are currently pending, are being required to submit surveys.

EPA personnel estimate that any where from 6 months to more than a year would be required for preparation of the survey. Time required depends on the number of seasons for which data are needed, the availability of a survey ship, the weather, the distance offshore, the water depth and other factors.

Currently pending applications for dumping of wastes associated with offshore oil and gas drilling operations are being considered incomplete until the baseline surveys are completed. Guidelines for ocean disposal site baseline assessment surveys, as well as procedures for site designation are found in 40 CFR 228.

3.9.3 Tentative Decision to Issue or Deny, Notice and Review

Within 30 days after receipt of a completed permit application, EPA gives notice of the application and makes a tentative determination on permit issuance or denial. If this tentative decision is favorable, proposed conditions for the permit are included in the notice. Copies of this notice are sent to:

- the state agency responsible for a state's Coastal Zone Management Program, if the proposed dumping site is within 500 miles of the state
- the Corps of Engineers (COE), so they may determine whether navigation would be unreasonably impaired by the issuance of the permit
- the Coast Guard, for review and suggestions for means to facilitate surveillance and enforcement

- the regional officials of the Departments of Commerce and Interior, the regional director of the NMFS-NOAA, and the agency with jurisdiction over fish and wildlife of any affected state(s)
- the Food and Drug Administration.

Federal agencies have 30 days from the receipt of the notice to object to permit issuance; otherwise EPA assumes there are no objections.

If the COE finds that navigation would be unreasonably impaired, no dumping permit would be issued. Neither may wastes be dumped where there might be unacceptable interference with fishing or navigation or unacceptable danger to shorelines or beaches. An ocean dumping permit cannot be issued unless specified environmental impact criteria are met and no practical alternatives are available.

3.9.4 Public Hearing

Any person may request a public hearing to consider the impacts of all or part of a permit, within 30 days of a notice of decision to issue. If the Assistant Administrator/Regional Administrator decides to hold a public hearing, or if a genuine issue-related request is made for a public hearing, then a public hearing date is set for no less than 30 days from the Assistant Administrator/Regional Administrator's determination or a request for a hearing. Public notice of the hearing is then made.

A Presiding Officer conducts an informal public hearing expeditiously, but allows public comments and permits anyone to appear. Within 30 days after the public hearing, unless more time is needed, for good cause the Presiding Officer must send written recommendations concerning issuance, denial or conditions of a permit to the Assistant Administrator/Regional Administrator.

3.9.5 Administrator or Regional Administrator's Determination

Within 30 days following receipt of the Presiding Officer's recommendations or, if no hearing was held, after the 30-day period to request a hearing, the Assistant Administrator/Regional Administrator must decide on the issuance, denial or conditions of the permit, and give notice of that decision.

The determination becomes effective no sooner than 10 days after notice of this determination, if no request for an adjudicatory hearing is made during that period. If a request for an adjudicatory hearing is filed, but denied, the determination becomes effective no sooner than 20 days after the notice. If an adjudicatory hearing is approved, issuance or denial becomes effective no sooner than the date of final determination.

3.9.6 Adjudicatory Hearing

Any person who participated in the public hearing may appeal a permit decision by requesting an adjudicatory (formal) hearing within 10 days of receiving notice of the issuance or denial. If this request is properly submitted, and if the Assistant Administrator/Regional Administrator determines that such a hearing is warranted, then the hearing date is set for no sooner than 30 days after receipt of an appropriate request. Public notice is given of the hearing.

Any interested person, at a reasonable time before the hearing, may submit a written request to the Presiding Officer to be admitted as a party. If properly submitted, this request must be granted. The Presiding Officer may hold pre-hearing conferences and issue a pre-hearing order detailing disputed issues, admissibility of evidence, and hearing procedures.

Unless the hearing concerns EPA revising, revoking, or limiting the terms and conditions of a permit, the burden of proof lies with the person requesting the hearing. Witnesses are heard and parties are allowed cross-examination to the extent necessary to disclose all relevant facts. The proceedings of the hearing are recorded.

Within 30 days after the hearing concludes, the Presiding Officer must submit to the Assistant Administrator/Regional Administrator findings of fact, conclusions and recommendations. Within 20 days following the Presiding Officer's submission, any party may submit written comments and exceptions.

Within 45 days after the Presiding Officer submits his findings, the Assistant Administrator/Regional Administrator makes a determination on all issues. Notice of this determination and its basis is mailed to all parties to the adjudicatory hearing.

3.9.7 Appeal to the Administrator

If the determination was made by the Regional Administrator, a party to the hearing may appeal to the Administrator within 10 days of receiving the notice of this determination. The Administrator may decide on his own to review such determination. Within 45 days of the filing of a notice of appeal, the Administrator must render final determination.

3.9.8 Judicial Review

After all EPA appeal procedures have been utilized, judicial review may be requested.

3.10 SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN

EPA requires the preparation of a Spill Prevention Control and Countermeasure Plan (SPCC Plan) by owners and/or operators of onshore and offshore facilities, including mobile or portable facilities, if these facilities can reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the U.S. or adjoining shorelines. Discharges of oil in harmful quantities include discharges that:

- violate applicable water quality standards
- cause a film or sheen on the surface of the water
- cause a sludge to be deposited beneath the water surface.

The development and implementation of SPCC Plans is currently applicable to offshore facilities only in the territorial seas, and has not yet been required for Federal OCS oil and gas exploratory drilling facilities. Under the authority of Sections 311 and 501 of the Clean Water Act amendments of 1977, offshore oil and gas drilling facilities on the OCS became subject to the oil pollution prevention regulations (40 CFR 112) requiring preparation of an SPCC Plan. EPA has thus far elected not to require OCS facilities to prepare these plans. In addition, OCS facilities are currently not subject to the other requirements of 40 CFR 112 which include: inspections, records, personnel training, equipment standards, and so forth.

Under proposed revisions to 40 CFR 112 (45 FR 33814, May 20, 1980), oil and gas drilling facilities on the OCS are not required to prepare SPCC Plans if they are in

compliance with the regulations, Operating Orders and Notices to Lessees issued by the U.S. Geological Survey (USGS). Where the offshore facility fails to comply with these USGS requirements or, experiences an oil spill of more than 200 barrels of oil during a period of 30 days, the facility must prepare an SPCC Plan and send it to the Regional Administrator within 120 days for review and amendment. EPA personnel report that these regulations will not be finalized for several months.

CHAPTER II-4
U.S. COAST GUARD

4.1 OVERVIEW

The Coast Guard has legally-mandated responsibilities related to navigation, navigable water, and shipping. These include: saving and protecting life and property, safeguarding navigation on the high seas and navigable waters of the U.S., maritime law enforcement, and readiness for military operations. In partial fulfillment of these responsibilities, the Coast Guard requires the following from operators involved in Federal OCS oil and gas exploration activities:

- Coast Guard-approved application for private aids to navigation
- certification of financial responsibility for marine oil pollution
- certification of inspection of mobile offshore drilling units (MODU) operating under the U.S. Flag, and their reinspection and certificate renewal every two years
- various types of certifications, e.g., equipment, cranes, load line, etc.
- notification of actions and incidents, such as notification when a MODU arrives at or moves to another location
- notification of deaths, serious injuries, fires and pollution incidents or occurrences that pose an imminent threat of such casualties
- reports of damage or unsafe equipment
- maintenance of records of certain inspections, tests, drills, and incidents.

Despite the many and varied responsibilities of the Coast Guard pertaining to exploration activities on the OCS, neither the requirements or the processing time of the Coast Guard result in delays to OCS exploration. The requirements are well-defined and the processing of necessary paperwork is undertaken in a minimal amount of time.

4.2 ORGANIZATION

The U.S. Coast Guard is an agency of the U.S. Department of Transportation. The structural organization for the performance of Coast Guard's assigned functions and duties consists of the Commandant, 2 Area Offices and 12 District Offices.

The Area Offices (in New York and San Francisco) are operational intermediates between the districts and the Commandant. These offices are involved when operational coordination between more than one district is required. Ten of the 12 Coast Guard District Offices, can potentially be involved in some aspect of UCS oil and gas operations. These 10 district offices are located in:

- Boston (First district)
- New York (Third district)
- Portsmouth (Fifth district)
- Miami (Seventh district)
- New Orleans (Eighth district)
- Long Beach (Eleventh district)
- San Francisco (Twelfth district)
- Seattle (Thirteenth district)
- Honolulu (Fourteenth district) and
- Juneau (Seventeenth district).

The District Commander has the final authority and responsibility for the local Coast Guard functions in his district.

Within each district there are Marine Inspection and Captain of the Port Offices. These two offices may be combined in a single Marine Safety Office, may be separate offices, or may have their responsibilities implemented by a Port Safety Office, Marine Inspection Detachment, or Marine Safety Detachment. The Marine Inspection Office has specified authority over a Marine Inspection Zone, and the Captain of the Port Office has specified authority over a Captain of the Port Zone. The geographic area of the zones are defined in 33 CFR Part 3. Within each Marine Inspection Zone, the Officer in Charge, Marine Inspection, has the final authority and responsibility for functions regarding vessel inspections; investigation of marine casualties, accidents and personnel issues; and enforcement of vessel inspection, navigation, and seamen's laws.

The Captains of the Port and their representatives within each Captain of the Port Zone, enforce port safety and security and marine environmental protection regulations.

4.3 PRIVATE AIDS TO NAVIGATION

Private aids to navigation include the marking of structures and floating obstructions by prescribed lights and signals (obstruction lights and fog signals). These aids to navigation are required for artificial islands and fixed structures erected on or over the OCS and in U.S. waters.

These aids are required under: Sections 83, 85, 92, 633, 63 Stat. 500, 501, 503, 545; Section 4, 67 Stat. 462; Section 6(b) (1), 80 Stat. 938; 14 U.S.C. 81, 83, 85, 86, 92, 633; 43 U.S.C. 1333; 49 U.S.C. 1655(b), 1657(e); 49 CFR 1.4(a)(2), (f), (g). Regulations for private aids to navigation and aids to navigation on artificial islands and fixed structures appear in Title 33 of the Code of Federal Regulations, Parts 66 and 67, respectively.

An application to establish and maintain, discontinue, change, or transfer ownership of a private aid to navigation is submitted to the Coast Guard District Commander. Applications for private aids to navigation operated in navigable waters are made using form CG-2554 (see Appendix C, Exhibit 1). Form CG-4143 must be completed for each artificial island or structure that is to remain six months or more on or over the OCS or in U.S. waters (see Appendix C, Exhibits 2 and 3). If the structure is to remain in place less than six months, an application may be made by letter. The application must include evidence that authorization to erect any aid to navigation consisting of a fixed structure has been obtained from the Corps of Engineers (see Chapter II-5). Authorization may be in the form of a letter of permission or a permit.

While form CG-2554 can be used to apply for all private aids to navigation, it is usually used for voluntary private aids, underwater wrecks or obstructions. Form CG-2554 should be submitted immediately after it is known that an underwater obstruction will be left standing after a rig is moved. Form CG-4143, specifically for artificial islands and fixed structures, should be submitted, if possible, 30 days prior to the date of action.

Upon receipt of the application, it is reviewed for completeness. If the District Commander approves the application, a signed copy is returned to the applicant. The decision of the District Commander may be appealed to the Commandant within 30 days of the decision date, and the Commandant's decision is final.

According to Coast Guard personnel, applications are rarely disapproved, but some are approved upon condition that certain specifications be met. Processing time for an application averages about one week, but can be as short as one day depending on the need for approval.

Fog signals must be certified as to compliance with the appropriate Coast Guard regulations and must be tested in the presence of a Coast Guard representative. A written request must be made for a representative to witness the test. Private aids to navigation are subject to Coast Guard inspection at any time.

4.4 CERTIFICATE OF FINANCIAL RESPONSIBILITY FOR OCS POLLUTION LIABILITY

Regulations concerning certification of financial responsibility for marine oil pollution on the OCS by facilities appears in 33 CFR 135 and by vessels in 46 CFR 544. Owners and operators of vessels maintain evidence of financial responsibility with the Federal Maritime Commission. Owners or operators of offshore facilities, including platforms, wells, pipelines and mobile offshore drilling units (MODU), as defined by Section 135.201, are required to establish and maintain evidence of financial responsibility with the Coast Guard. Offshore facilities that are used to drill for or process only natural gas are not subject to this requirement, unless the facilities have the capacity to transport, store, or otherwise handle more than 1000 barrels of condensate at any one time. Each facility used for drilling, producing or handling more than 1000 barrels of oil at any one time must be financially responsible for pollution damages up to \$35,000,000. Owners (or operators) of offshore facilities, however, have frequently been unable to prove this financial responsibility because of ambiguous wording in the Outer Continental Shelf Lands Act (OCSLA) Amendments of 1978. Until the ambiguity is resolved, if insurance is presented as evidence with the application for certification and underwriters will not sign as guarantors, the Coast Guard is not requiring a Certificate of Financial Responsibility as a precondition for OCS operating activities.

The authority and functions of the Commandant of the Coast Guard as administrator of the fund, are delegated to the Fund Administrator. The Fund Administrator accepts any one or more of the following methods for establishing evidence of financial responsibility: insurance, guaranty, indemnity, surety bond, qualification as self-insurer or alternate evidence, at the Fund Administrator's discretion. An application for a Certificate of Financial Responsibility must be submitted at least 45 days before placing the offshore facility into operation or coverage becomes effective (see Appendix C, Exhibit 4). If the Fund Administrator determines that an applicant has adequately demonstrated evidence of financial responsibility, a Certificate of Financial Responsibility is issued for that facility (see Appendix C, Exhibit 5). If the Fund Administrator intends to deny a certificate, the applicant is advised in writing. If the intended denial is based on an applicant's false statements, or on failure to comply with or respond to inquiries, regulations, or orders of the Fund Administrator regarding failure to establish evidence of financial responsibility, the applicant may request a hearing to show compliance. The informal hearing, conducted by an official designated by the Fund Administrator, results in recommendations to the Fund Administrator whose decision constitutes final Coast Guard action.

The Fund Administrator has delegated the authority to issue Certificates of Financial Responsibility for offshore facilities for the entire U.S. Outer Continental Shelf to personnel at the 8th Coast Guard District in New Orleans. The certification program in New Orleans has been in operation for just over 1 year, and at present is handled by one individual. The verification of the submitted evidence of financial responsibility is a two-step process. First, the Administrator determines whether the applied-for facility meets the specifications of a single offshore facility requiring certification, basically same ownership, same field and physically hooked together. Second, the evidence presented to show financial responsibility is verified. If the application is for a single facility such as a MODU, and if the owning company has previously had financial evidence verified and been issued a certificate, then the certification can be obtained almost immediately. If the facility consists of numerous structures and the owning company has not previously had financial evidence verified, processing time can stretch to several months.

One problem that the offshore industry experiences in facility certification is that insurance companies will not sign as guarantors to prove financial responsibility (see Appendix C, Exhibit 6). The insurance companies feel that due to the ambiguous

wording of the Act, they could be subject to unlimited liability beyond their policy holders' coverage. Since most applicants for certification show financial responsibility by insurance, a large number of applicants have not been issued Certificates of Financial Responsibility. Drilling activities for these applicants have not been restricted. Their applications are pending.

The certificates are not issued for a specified period of time. A certificate remains in effect as long as the conditions of issuance continue. If evidence of financial responsibility is provided by qualification as a self insurer, annual financial data must be submitted to the Fund Administrator's delegated representative. Certifications for mobile offshore drilling units that relocate and that may be employed by different companies may be cancelled and either a new application required or the original certificate amended. When the facility completes operations, notification is given to the Coast Guard and the certificate is cancelled.

4.5 OFFSHORE OIL SPILL POLLUTION FUND

In recognition of the potential costs of oil pollution associated with offshore drilling activity, the OCSLA Amendments of 1978 established an Offshore Oil Spill Pollution Fund. The Coast Guard administers this Fund and establishes policies, procedures, and administrative practices regarding offshore oil pollution liability and compensation. Regulations appear under 33 CFR, Subchapter M, Parts 135 and 136.

To finance the Offshore Oil Spill Pollution Fund, a fee of \$.03/barrel on oil produced on the OCS is imposed on the owner of the oil when the oil is produced. The Commandant may modify or suspend by regulation (giving at least 90 days prior notice) the barrel fee so as to maintain the statutory Fund level.

The person in charge of the vessel or offshore facility must inform appropriate Coast Guard personnel of a pollution incident, including occurrences that pose an imminent threat of oil pollution. Upon learning of an incident, the Fund Administrator prepares a Notice of Designation identifying the source of the oil pollution. This notice is sent to the owner, operator and any guarantor. Unless the owner, operator or guarantor denies the designation within five days of receiving the notice, acceptance of liability for losses resulting from the incident is assumed. If the Commandant determines economic loss as covered by Section 303(a) of the OCSLA, the incident is advertised.

4.6 MOBILE OFFSHORE DRILLING UNITS

4.6.1 Inspections and Certificates

Regulations concerning mobile offshore drilling units (MODU) appear in Title 46 of the Code of Federal Regulations, Subchapter I-A, Parts 107-109. The legal authority for these regulations is found in 46 U.S.C. 86, 367, 375, 395, 400, 407, 408, 411, 412, 416, 481, 43 U.S.C. 1333(d) and 1655(b)(1) and 49 CFR 1.46(b) and (n)(6).

Prior to initial construction and the issuance of an original Certificate of Inspection, three copies of the plans, specifications and structural calculations concerning the construction, arrangement, equipment and safety features of the unit must be submitted for approval. These include the general plan, hull structure, stability, fire control, marine engineering, electrical engineering, lifesaving equipment, personnel accommodations, construction portfolio, operating manual, and crane plans. The operating manual, which contains guidance for the safe operation of the unit under normal and emergency conditions, must be approved by the Commandant.

Under Part 107, Inspection and Certification, the owner or builder of a MODU must submit, before construction is started, an Application for Inspection of U.S. Vessel, Form CG-3752 (see Appendix C, Exhibit 7). The application is submitted to the Officer in Charge, Marine Inspection (hereafter referred to as the OCMI), in the zone where the unit is to be constructed. Upon inspection, an original Certificate of Inspection is issued for the unit. The certificate is valid for 24 months from the date of issuance.

Thereafter, the master, owner or agent of a certificated unit may apply for biennial inspection for renewal of the Certificate of Inspection by submitting the same Form CG-3752. If the unit is operating in international service, the application must be submitted 60 days before the certificate's expiration date.

If the unit fails inspection and the Coast Guard withholds reissuance or suspends the Certificate of Inspection, the owner, master, or person in charge of the unit may request and be issued a Permit to Proceed to Another Port for Repairs, Form CG-948, if the OCMI is satisfied the vessel can be navigated safely (see Appendix C, Exhibit 8). This permit is usually issued in cases where the unit sustains some type of damage that renders it unseaworthy. A Temporary Certificate of Inspection may be issued to a

MODU and be effective until a Certificate of Inspection is issued. If a requirement for equipment and data listed on a Certificate of Inspection changes, the Coast Guard issues a Certificate of Inspection Amendment, Form CG-858 (see Appendix C, Exhibit 9).

Each MODU must either be dry-docked or given a special examination, depending on the type of unit, at least once during each 24 month period after the MODU is issued a Certificate of Inspection. The master, person in charge, owner, or agent of a certificated unit must notify the appropriate Officer in Charge before the unit is dry-docked or specially examined. The dry-docking or special examination must be done in the presence of a Coast Guard Inspector. For units operating in international service, this notice must be at least 60 days prior to dry-docking or special examination. A column stabilized unit or a surface type unit must be specially examined in accordance with a plan submitted by the owner of the unit and accepted by the Commandant.

The Coast Guard reinspects a unit within the period between the 10th and 14th month after the certificate is issued. In addition, the unit is inspected if alterations are made that affect the safety of the unit; after accidents; after defects are found that affect the seaworthiness, or safety or efficiency of a lifesaving or firefighting device; and after repairs have been made because of an accident or defect.

Safety equipment must be tested, equipment installation tests made, and cranes inspected and certified. Crane tests must be witnessed and inspections conducted by a Coast Guard marine inspector, the American Bureau of Shipping (A.B.S.) or the International Cargo Gear Bureau, Inc. (I.C.G.B.) for cranes under certification by those organizations. The Coast Guard accepts current certificates issued by A.B.S. or I.C.G.B. as evidence of the acceptable condition of cranes. A sample A.B.S. load line certificate is included in Appendix C, Exhibit 10.

If a MODU engages in international voyages, a Safety Radiotelegraph Certificate or Exemption Certificate may be required.

Under the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS 74), self-propelled vessels that are 500 gross tons or over and are engaged on international voyages must carry a Safety Equipment Certificate and a Safety Construction Certificate.

A Safety Equipment Certificate, valid for 2 years, is issued if the unit has a Certificate of Inspection and meets SOLAS 74 requirements. A MODU owner or operator may apply for a Safety Construction Certificate from either the American Bureau of Shipping or the Coast Guard. A Safety Construction Certificate is valid for five years. Exemption from the requirements of these two certificates may be requested.

4.6.2 Operating Manual, Records, Reports

Under Part 109, Operations, various reports, notifications and records are required. These include:

- notice to the District Commander, as soon as a Corps of Engineers' permit is obtained, or 30 days before the MODU arrives on the OCS, as to its location, expected date to commence operations, etc.
- notice of MODU relocation
- immediate notification of a discharge of oil or hazardous substance
- notification of marine casualties
- report of damages to aids to navigation
- report of unsafe machinery
- report of repairs to boilers and pressure vessels, unless they are normal repairs
- report of breaking a safety valve seal on a boiler
- repairs and alterations of emergency equipment
- the maintenance of an official logbook for units for which this is required by 46 U.S.C. 201, on Form CG-706 (this includes a log of tests, drills and inspections that must be filed with the OCMI when a voyage is completed). Sample logbook sheets are included in Appendix C, Exhibit 11.

- record of firefighting equipment inspections.
- crane record book and crane certificates.

Forms used to report various incidents include:

- Form CG-924E, if a marine incident involves injury to persons or loss of life (see Appendix C, Exhibit 12), and
- Form CG-2692, if the incident involves damage to property or the grounding or stranding of a vessel, except under normal operations (see Appendix C, Exhibit 13).

Other written reports or notifications are submitted by letter according to the appropriate regulations.

4.7 PROTECTION OF LIFE, PROPERTY AND THE ENVIRONMENT

Under Title 33 of the Code of Federal Regulations, Subchapter N, Parts 140, 142-147, from authority granted by the Outer Continental Shelf Lands Act (OCSLA) of 1953, the Coast Guard is responsible for promoting safety of life and property on "artificial islands and fixed structures" located on the OCS. In the May 1, 1980 Federal Register (FR 29072-29087), new proposed regulations for Subchapter N were presented. With these new regulations the title of the subchapter would change from "Artificial Islands and Fixed Structures on the OCS" to "Outer Continental Shelf Activities". The new regulations expand Subchapter N's purpose to promoting safety of life and property on "facilities, vessels and other units engaged in OCS activities," protecting the marine environment, and implementing the OCSLA Amendments of 1978.

4.7.1 Proposed Regulations

The proposed new Subchapter N modifies the scope of existing regulations to the broader scope of the OCSLA Amendments of 1978. Regulations are expanded to cover vessels, rigs, platforms, artificial islands, and other vehicles, structures and devices used for activities pursuant to the Act, except pipelines and deepwater ports.

Completely new regulations implement provisions of the OCSLA amendments of 1978 for the manning of certain vessels, rigs, platforms or other vehicles or structures used for OCS activities by U.S. citizens only. Other proposed new regulations stemming from the Amendments require that workplaces be free from recognized hazards and that operations be in compliance with occupational safety and health standards. A new 33 CFR Part 141 is also proposed. The following section describes the Coast Guard's responsibilities under the existing and proposed regulations.

4.7.2 Inspections and Crew Requirements

The proposed regulations specifically require an annual inspection of the unit, while in the existing regulations the OCMI has discretion to determine the time of inspections. The proposed and existing regulations provide for both scheduled and unannounced inspections of OCS facilities. These inspections may require drills and tests. Investigation procedures not detailed in the existing regulations are in the new regulations. In addition, the proposed regulations would change somewhat the methods for appeal from Coast Guard actions or decisions. The proposed regulations implement civil and criminal penalties for noncompliance not now in the existing regulations. The proposed regulations also expand coverage of certain requirements for domestic MODU to foreign MODU.

The new regulations would require a unit's regular crew members to be U.S. citizens or resident aliens, unless: (a) contractual provisions or national registry manning requirements provide that a person be employed on a particular unit, (b) not enough qualified U.S. citizens or resident aliens are available to work, or (c) the President determines that such a policy would not be consistent with the national interest.

If an application for a certificate of exemption, (valid for one year), is applied for based on the lack of qualified employees, the Coast Guard will seek an advisory opinion from the Division of Labor Certification of the Employment Service of the Department of Labor. If exemption is applied for under the President's determination of national security needs, the Commandant consults with other Federal agencies and forwards the request and comments to the President for judgment.

Employees of these units must present evidence of citizenship or resident alien status to the owner/operator, or may be required to obtain a letter acknowledging a

determination of citizenship/resident status from the OCMI. The OCMI has the responsibility to perform or have performed inspection, enforcement, and administration of the regulations in Subchapter N. The owner/operator of the unit will be required to maintain a record identifying the document by which citizenship or resident alien status was established.

Subchapter N regulations allow for appeal by any person directly affected by actions or decisions of the OCMI made under Subchapter N, by first requesting reconsideration, then by appealing within 30 days to the District Commander. The District Commander's ruling may be appealed within 30 days to the Chief, Office of Merchant Marine Safety (in the proposed regulations and to the Commandant in the existing regulations). Finally, appeal may be made by petitioning for judicial review.

Each unit engaged in OCS activities is subject to inspections by the Coast Guard, under the direction of the OCMI. The inspections may include the examination of records and the performance of emergency drills and other tests to determine if Subchapter N requirements are met. A comprehensive annual on-site inspection is made of the equipment and procedures designed to prevent major accidents, fires or spillages.

A letter of compliance, valid for 1 year, is issued to the owner/operator of a foreign mobile offshore drilling unit if the OCMI determines the requirements of Subchapter N are met. For matters covered by the Safety of Life at Sea (SOLAS), Loadline and MODU certificates, the Coast Guard recognizes valid international certificates.

All deaths, substantial injury, major fire, oil spillage exceeding 200 barrels during a 30 day period, and other incidents as determined necessary will be investigated under the direction of the OCMI. Investigations may include representatives of the U.S. Geological Survey. The investigating officer will have the power to administer oaths, subpoena witnesses and require production of documents and any other evidence necessary for the investigation.

Any person may report possible violations of Subchapter N or other unsafe or hazardous working conditions on the unit to the OCMI. The report is reviewed and any necessary investigation conducted. If any deficiency or hazard is found, the owner/operator is notified and enforcement measures are initiated.

Coast Guard design and equipment requirements relate only to matters affecting navigation and workplace safety or health. They supplement U.S. Geological Survey regulations and orders (See Chapter II-2). In terms of the Coast Guard requirements, if a MODU lacks a valid Certificate of Inspection, and design and equipment requirements are met, the owner/operator of the unit will be issued a letter of compliance by the OCML.

4.7.3. Records and Reports

Concerning OCS operations notice requirements, the owner/operator of each OCS facility must give notice of operation to the District Commander at least 30 days before the expected date of commencing operations. This may be submitted with the application for aids to navigation. Immediate notice to the Coast Guard by the most rapid means available is required for any death or incidents resulting in injury to five or more persons. A written follow up within 10 days is also required. For other injuries or damage to lifesaving or firefighting equipment, a written report must be filed within five days and no other notification is required. Reports must also be provided concerning diving casualties and oil pollution incidents. Records of all emergency drills, required at least once each month, must be maintained and are subject to Coast Guard request. Owners or operators of MODU's must keep the District Commander informed of the location or relocation of MODU's on the OCS.

4.8 OIL POLLUTION REPORTING

Oil pollution regulations applicable to certain U.S. seagoing vessels, including tankers, are found under Title 33 of the Code of Federal Regulations, Part 151. These regulations implement the Oil Pollution Act of 1961 as amended. Under the regulations, an Oil Record Book is maintained and includes a record of actions or operations involved in the loading or unloading of oil, including discharges and maintenance of tanks. Upon the completion of a foreign voyage, the Oil Record Book must be delivered to the Coast Guard Marine Inspection Office in the port of final destination. When the vessel is not engaged in a foreign voyage, a report is submitted in April and October, and includes entries for the preceding six months. Corps of Engineers, Bureau of Customs and Coast Guard personnel have the authority to board vessels for the inspection and enforcement of the Oil Pollution Act. Representatives of the Secretary of Transportation, Bureau of Customs and Coast Guard may board and examine applicable records while a foreign ship is within U.S. territorial waters.

Under the authority of the Federal Water Pollution Control Act, as amended by the Clean Water Act, Section 311(b)(5), and the regulations found in 33 CFR 153, any person in charge of a vessel or an onshore or offshore facility must immediately notify the Coast Guard's National Response Center by telephone (1-800-424-8802), in the event of a discharge of oil or a hazardous substance from that vessel or facility, if the quantity discharged has been determined harmful to public health or welfare. The On-Scene Coordinator is the EPA or Coast Guard official designated to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge. Failure to make this immediate notification may result in a fine of up to \$10,000 and/or imprisonment of up to one year.

In addition, owners or operators of a vessel or facility that suffers a discharge must use the methods and procedures prescribed by the regulations for the removal of discharged oil. Should a discharge occur that requires Federal removal activity the owner/operator of the discharging vessel or facility is liable to the Pollution Fund for actual costs of Federal and State agencies. These costs cannot exceed limits established by Section 311(f) and (g) of the Act.

Regulations defining the Coast Guard's authority over large oil transfer facilities appear in 33 CFR Part 154. These regulations affect each onshore or offshore facility when it transfers oil in bulk to or from any vessel that has a capacity of 250 or more barrels of oil, except in certain cases involving transfers of lubricating or nonpetroleum based oil. The authority for regulations under 33 CFR Part 154, as well as Parts 155 and 156, is Section 311(j)(1)(c) of the Federal Water Pollution Control Act; 33 U.S.C. 1161(j)(1)(c); E.O. 11734, 3 CFR, 1971-1975 COMP, p.793, 49 CFR 1.46(m).

The operator of each large oil transfer facility must submit a letter of intent to operate the facility or to conduct mobile facility operations to the Captain of the Port (a Coast Guard Officer commanding a Captain of the Port Area or his representative, or where there is no such area, a District Commander, or his representative) at least 60 days before the intended operations. In addition, an operations manual must be submitted that describes the procedures, duties and responsibilities of personnel conducting oil transfer operations. The Coast Guard at any time may inspect an oil transfer facility and the facility operator must perform tests requested to determine compliance. The Captain of the Port (hereafter referred to as the COTP) records the results of facility inspections and supplies the facility with a written result of the inspection for the facility's records.

If the COTP determines that an amendment to the operations manual is necessary, the operator has at least 14 days to submit any information or arguments concerning the amendment. After this time, the COTP either notifies the operator if the amendment is still required or rescinds the notice of proposed amendment. If the amendment is still required, it becomes effective not less than 30 days after the notice, unless the facility operator petitions the Commandant to reconsider. A copy of each change in the operations manual must be provided to the COTP before the facility may transfer oil. The COTP may waive compliance with the requirements of Part 154 if an application for waiver is submitted 30 days before commencing operations.

Regulations for vessel design and operations appear under 33 CFR Part 155. These rules apply to the operation of vessels on navigable waters and contiguous zones of the U.S. for the purpose of preventing the discharge of oil. A written record is maintained for inspection by the Commandant; this record lists the person in charge of each transfer of oil and the date and result of the vessel's most recent inspection, as well as other information. Orders of suspension and waivers are possible.

Title 33 CFR Part 156, oil transfer operations regulations, applies to oil transfer to or from any vessel with a capacity of 250 or more barrels of oil. Under these regulations, no person may transfer oil to or from a vessel unless each person in charge has signed a declaration of inspection. Equipment used in oil transfer operations must be tested and inspected by the operator of the vessel or facility annually. Hoses need to be tested annually for facilities. For vessels, hoses are tested during the biennial and mid-period inspection.

If the COTP, under 33 CFR 156 determines that immediate action is necessary to prevent the discharge or threat of discharge of oil, the COTP may issue an order suspending oil transfer operations. The facility owner may petition the COTP and the District Commander for reconsideration of the order.

According to Coast Guard personnel, most producing platforms transport oil by pipeline, rather than over the side transfer to vessels.

4.9 MEMORANDA OF UNDERSTANDING

To promote consistent and coordinated regulation of OCS facilities and activities, the U.S. Coast Guard has entered into a Memorandum of Understanding with the Occupational Safety and Health Administration (OSHA) (see Appendix C, Exhibit 14) and with the U.S. Geological Survey (USGS) (see Appendix C, Exhibit 15). Another Memorandum of Understanding between the Coast Guard and the USGS has been developed but not officially signed off (see Appendix C, Exhibit 16).

The Memorandum of Understanding between the Coast Guard and OSHA (effective Dec. 19, 1979) establishes procedures for consultation and coordination regarding the occupational safety and health of personnel working on the OCS. Under the authority of the OCSLA as amended, the Coast Guard develops and promulgates standards for occupational safety and health of the OCS. Working conditions on the OCS not addressed by the Coast Guard are within the jurisdiction of OSHA, under the authority of the Occupational Safety and Health Act of 1970. The memorandum defines avenues of cooperation between the two agencies including:

- exchange of data and study results
- review of existing standards and participation in standards research and development
- exchange of technical expertise
- interagency advance notice of rulemaking, review and consultation wherever appropriate.

To minimize the need for routine OSHA inspections, OSHA consults the Coast Guard to coordinate inspections. In the event of accidents, the Coast Guard would conduct the investigation, make available information, invite OSHA to any formal hearings, and develop lines of inquiry that might be suggested by OSHA. If OSHA receives complaints of occupational health and safety violations on the OCS, they are referred to the Coast Guard. Both agencies review and develop training programs for agency personnel who inspect drilling activities.

According to Coast Guard personnel, once Coast Guard occupational safety and health regulations are promulgated under the OCSLA, OSHA will not actively regulate activities on the OCS. Any complaints concerning worker safety received by OSHA will be referred to the Coast Guard.

The Memorandum of Understanding between the Coast Guard and the USGS (effective April 11, 1977) establishes procedures for consultation and coordination regarding the environmental impact of and the safety requirements with respect to design, construction and operation of U.S. mobile offshore drilling units (MODU) on the U.S. OCS. The agreement provides that each agency is to separately enforce its own requirements, but concerning matters of mutual concern, each is to consult with the other. Both USGS and Coast Guard may use the personnel, facilities, advice and information provided by the other to carry out its responsibilities. Areas for which each agency is responsible for technical review and approval are defined. USGS responsibilities relate to safety of operations, conservation of natural resources, and protection of the environment; Coast Guard responsibilities relate to safety and health of personnel, safety and integrity of the unit, and protection of the environment. Either agency may request inspection assistance from the other. The memorandum defines USGS and Coast Guard responsibilities regarding casualty investigations, and situations where consultation or involvement of the other agency may occur. The two agencies are to cooperate in developing standards, regulations, Orders and notices concerning mobile offshore drilling units.

The proposed Memorandum of Understanding between the Coast Guard and USGS concerns regulation of artificial islands, installations and other devices on the U.S. OCS. The memorandum provides guidelines for technical review and approval responsibility related to design, fabrication and installation plans. The USGS has responsibility for fixed OCS facilities and the Coast Guard for all floating OCS facilities and vessels, including MODU's and mobile well-serving units. The agreement identifies the agency responsible for establishing standards for various types of equipment and systems, and also the agency that administers or controls specified operational procedures. The coordination of inspections by the Coast Guard and USGS is encouraged. Guidelines for individual and joint investigation by the two agencies specifying the lead agency and the support agency are also included. The memorandum enables the USGS to request that the Coast Guard give a technical review of the oil spill contingency portions of exploration and development and production plans. This memorandum will become effective when both the Director of the U.S. Geological Survey and the Commandant of the Coast Guard sign the document.

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CHAPTER II-5
CORPS OF ENGINEERS

5.1 OVERVIEW

The Corps of Engineers (COE) permit obstruction or alteration of navigable waters under Section 10 of the River and Harbor Act (extended to OCS structures by Section 4(e) of the OCSLA, as amended)¹. While other COE permits may be required for the production phase of OCS oil and gas operations, normally only the Section 10 permit is required for the exploration phase. The Section 10 permit does not appear to be a major stumbling block in the permitting of OCS oil and gas exploratory operations. This relatively routine permitting process normally requires 30-60 days.

COE permits are of four types: letters of permission, individual, general and nationwide permits. Currently, most districts issue an individual permit (area permit) to the lease owner or operator. Development of general Section 10 permits (authorizing specified activities in a specified area) for OCS oil and gas operations is being encouraged, and one has been proposed by the Galveston District Office. In addition, a nationwide Section 10 permit (authorizes specified activities throughout the U.S.) covering all COE authorities for oil and gas development activities in OCS lease areas has been proposed.

Exhibit 5-A presents a flowchart and timeline of the COE permitting process. The process can be divided into the following sequential steps: application; application completeness review; public notice of application; public comment period and public hearing; permit issuance and appeal (judicial review).

By regulation: public notice of application must be given within 15 days of receiving all required information; public comment is received for 15-30 days following the notice; a public hearing notice is given at least 30 days before the hearing; and the draft permit (notice of denial) is sent to the applicant or the application forwarded within 30 days of the close of the comment period without objections, receiving notice withdrawing objections, completing coordination following the applicant's rebuttal of objections, or the closing of the public hearing record, whichever is the latest.

¹ Although the COE authority to permit alteration or obstruction to navigation was extended to OCS structures by Section 4(e) of the OCSLA, these permits are commonly referred to as Section 10 permits and so are referred to in this way in the report.

EXHIBIT 5-A

CORPS OF ENGINEERS

DEPARTMENT OF ARMY PERMIT UNDER SECTION 10 (SECTION 4(e))

COE personnel have indicated that for Section 10 permits involving structures for oil and gas exploration activities in OCS lease areas, typically, several days are required from application receipt until public notice of application, a 15-30 day comment period is held, and a few days later the permit is issued. The major reason for this relatively quick permitting process for OCS oil and gas operations is the fact that the COE does not consider environmental questions in their decisions on permit issuance, only the impact of these activities on navigation and national security. Currently, the appropriateness of this limited scope of COE review is being examined.

While the COE permitting for OCS oil and gas operations has been relatively routine, there is potential for delay as indicated in Exhibit 5-B.

5.2 LEGAL MANDATE

Under Section 10 of the River and Harbor Act of 1899, the COE regulates:

- the construction of any structure in or over navigable waters of the U.S.
- the excavation or depositing of material in navigable waters of the U.S.
- other work affecting the course, location, condition, or capacity of navigable waters of the U.S.

Section 4(e) of the Outer Continental Shelf Lands Act (OCSLA) of 1953, as amended, extended this authority to prevent obstructions to navigation in navigable waters to artificial islands and fixed structures located on the OCS. Artificial islands and fixed structures include any type of drilling rig, permanent, floating, or ship-based, where any structure remains in the sea bed floor.

Under Section 404 of the Clean Water Act (formally the Federal Water Pollution Control Act), the COE issues permits for the discharge of dredged or fill material into the waters of the U.S. at specified disposal sites. Under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, permits are issued for the transportation of dredged material for the purpose of dumping it in ocean waters at specified disposal sites.

The COE permit program regulations appear in Title 33 of the Code of Federal Regulations, Parts 320 and 322 through 329. Special policies and procedures for Section

EXHIBIT 5-B

DEPARTMENT OF ARMY (DA) PERMIT UNDER SECTION 10 (SECTION 4(e))

<u>ACTIVITY</u>	<u>TIME REQUIREMENT</u>	<u>PROBLEMS AFFECTING TIME REQUIREMENTS</u>
1) Industry prepares DA permit application	Minimal	- No problems
2) COE reviews application for completeness and requests any additional information	Minimal	- COE may determine additional information is necessary
3) COE gives public notice of application, notice sent to government agencies; public comment period; (optional) public hearing	<ul style="list-style-type: none">- Public notice issued within 15 days of receiving all required information (Specified in 33 CFR 325.2(d)(1))- Public comment received for 15-30 days after notice (Specified in 33 CFR 325.2(d)(2))- Public hearing notice at least 30 days before hearing (Specified in 33 CFR 327.11)	<ul style="list-style-type: none">- Length of public comment period varies between COE districts- Public comment period may be extended up to a maximum of 75 days, in unusual circumstances- COE may hold a public hearing; adds at least 30 days for notice plus time required for hearing
4) Draft permit (or notice of denial) sent to applicant or application forwarded to higher headquarters	<p>Within 30 days of the latest:</p> <ul style="list-style-type: none">- close of comment period without objections- receiving notice objections withdrawn- completing coordination following objections rebuttal- close of public hearing record (Specified in 33 CFR 325.2(d)(3))	<ul style="list-style-type: none">- Public or government agency objections and industry's proposed resolution or rebuttal to objections may delay final decision- Referral to the Division or Chief of Engineers due to unresolved objections from another Federal agency may delay process
5) After applicant accepts and signs draft permit, issuing official signs the permit constituting final COE action (any permit appeals made through judicial action)	Minimal (unless judicial appeal is sought)	- Judicial appeal of permit may delay effective date of the permit

10 permits appear in Part 322, for Section 404 permits in Part 323, and for Section 103 permits in Part 324. General procedures for all COE permits appear in Part 325. Public hearing procedures, enforcement procedures and COE general regulatory policies appear in Parts 327, 326 and 320, respectively.

5.3 PERMITS FOR OCS OIL AND GAS OPERATIONS

Permits issued under Section 4(e) apply to artificial islands and fixed structures on Federal OCS leases. However, permits involving discharges of dredged and fill material into U.S. waters (Section 404) and ocean dumping of dredged material (Section 103) are seldom necessary for Federal OCS oil and gas operations and are not considered here. Section 404 permits do not apply at the exploration phase of operations, although they would in the production phase².

Permits issued by the COE are in one of four forms: letters of permission, individual permits, general permits, and nationwide permits³. Letters of permission and individual permits are obtained through submission of individual applications. General permits govern a category or categories of activities in a specific geographical region. Nationwide permits authorize the performance of certain specified activities that have only a minimum adverse environmental impact throughout the U.S. Nationwide permits are issued by Federal regulation and appear in 33 CFR 322.4 and 323.4⁴. If an activity is covered by a general or nationwide permit, permit application does not have to be made, but specified conditions must be met.

5.4 NATIONWIDE AND GENERAL PERMITS

Presently, one nationwide permit would apply to OCS oil and gas exploratory operations. If a floating vessel is temporarily anchored and engaged in survey activities that do not disturb the OCS floor (i.e., core sampling or sonic testing), such activities are covered under the 33 CFR Section 322.4(f) nationwide Section 10 permit for survey activities.

²Section 404 does not apply beyond the territorial seas. Backfill and bedding for pipelines extending into the territorial seas are covered under a nationwide Section 404 permit.

³Under COE regulations proposed on September 19, 1980 (45 FR 62732 - 62777) (hereafter referred to as the proposed regulations), nationwide permits are defined as being a type of general permit. General permits, under the proposed regulations, authorize a category or categories of activities in a specific geographical region ("regional permit") or nationwide ("nationwide permit").

⁴Under the proposed regulations, nationwide permits are recodified in 33 CFR 330.

In addition to this existing nationwide permit, a nationwide Section 10 permit covering all COE authorities for oil and gas development activities in OCS lease areas has been proposed in the Federal Register (45 FR 62775-62777, Sept. 19, 1980) and is open for public comment. Also, a nationwide permit covering private aids to navigation has been proposed in the Federal Register.

The Office of the Chief of Engineers is encouraging all COE district offices to develop general Section 10 permits for OCS oil and gas operations. Because the decision to issue these permits is based only on navigation and national security issues, they may be good candidates for general permit consideration.

The Galveston District Engineer's Office has in fact proposed a general Section 10 permit for Federal offshore oil field development activities in the Gulf of Mexico. This general permit may soon be issued. While governmental agency objections had previously delayed issuance, the current delay, according to Galveston's Permit Branch Chief, is due to the lack of manpower.

The Corps of Engineers is a decentralized agency. Permits are handled by the 36 individual COE district offices, and by the division office in New England and Hawaii. Approximately 20 of the district offices serve regions in which OCS oil and gas exploratory activities could occur.

The Corps strives for consistency in permit handling between the districts through staff visits and inspections. However, due to the COE's decentralized nature and each district's different implementation of the regulations, district authorizations vary significantly.

5.5 LOCALLY ISSUED PERMITS

Currently, most districts issue an individual permit, referred to as an area permit, to the lease owner or operator of a Federal offshore oil and gas lease. The coverage of an area permit varies by district. In the New Orleans district, a single permit may cover the lease block and contiguous lease blocks in a leased area. In the Galveston district, a permit may cover all lease blocks in the same leased area that are not more than one block apart. And in the Los Angeles district, a permit covers the leased area as defined by specified latitudinal and longitudinal coordinates.

In the New Orleans district, area permits cover any type of work, at any type of facility, regardless of the mode of operation (exploration, development and production) within the specified area. The New Orleans Office does require notification when work commences, is completed, and when operations move off location. In the Galveston district, the single area permit covers both the exploration and development/production modes, but requires a letter of application and approval for each specific site or work (e.g., relocation of an exploratory rig, construction of a production platform). Should the proposed Section 10 general permit for the Galveston district be issued, individual applications for a permit will be unnecessary, but the lease owner or operator will still have to apply for approval of a specific site or activity. The Los Angeles district issues a letter of permission for exploratory drilling and an individual permit for each activity.

District offices also differ in the length of the public comment period that follows the notice of application for a Section 10 permit. The New Orleans office normally provides a 20-day comment period, Galveston a 15-day period, and Los Angeles a 30-day period. Federal regulations require a minimum of 15 days and a maximum of 30 days for public comment, except in unusual circumstances.

The length of time Section 10 permits are valid also varies by district and is dependent upon the needs of the permittee. In Galveston, Federal OCS permits are issued for a period of 5 years. In Los Angeles, permits are issued for a period of 3 years, but there is a liberal extension policy.

Private aids-to-navigation permits are also handled differently by the COE offices. Many COE districts issue general permits for these private aids, but some require individual permits. The Galveston district requires an individual permit although in most cases the private aids-to-navigation are included in the plan submitted with the associated offshore structure and the permit processing is consolidated.

The oil and gas industry objects to this lack of consistent requirements between COE offices. They complain, for example, that the requirement of application and approval of specific work instead of simple notification is an undue burden and causes delays in operations. The approval process has taken as long as 45 days in the Galveston district. Although notification is sufficient in New Orleans, COE personnel justify the application/approval requirement in Galveston by claiming (a) special navigational problems in the Gulf of Mexico and, (b) that the Galveston office wants the opportunity to examine each individual site and type of activity.

The Section 10 permit does not appear to be a major stumbling block in the permitting of offshore oil and gas drilling operations on Federal OCS leases. COE district personnel estimate that this permit process takes a maximum of 60 days, when no controversy arises. According to personnel at the New Orleans District Office, this relatively routine process normally takes only 30 days. The New Orleans office has had no hearings on OCS permits in some time.

One reason for this relatively quick permit process is the fact that the COE does not consider environmental questions in their decisions on permit issuance for activities on OCS leases. The normal processing of a Section 10 permit requires Environmental Assessment, and possibly the preparation of an Environmental Impact Statement (EIS). To avoid regulatory duplication, under 33 CFR 322.5(f), COE leaves environmental evaluation of OCS leases to the Bureau of Land Management, in cooperation with other Federal agencies. The COE permit issuance decision is based entirely on the impact of the OCS activities on navigation and national security⁵. Only comments and public hearing requests based on issues related to navigation and national security are considered. Any environmentally-related issues are referred to the Department of Interior.

5.6 PERMIT PROCESSING

Both the application form for COE permits (ENG Form 4345) and the permit itself are fairly standard (See Appendix D, Exhibits 1 and 2). A single type of permit is used whether Section 10, 404 or 103 is involved (See Appendix D, Exhibit 3).

COE permit processing involves the following steps:

- Application (See Section 5.6.1)
- Certifications (See Section 5.6.2)
- Environmental Assessment (See Section 5.6.3)
- Public Notice of Application (See Section 5.6.4)
- Comment Period (See Section 5.6.5)

⁵The proposed regulations request public comment on the appropriateness of this limited scope of COE review of OCS applications. (See preamble discussion of 33 CFR Section 322.5(f) in the September 19, 1980 Federal Register.)

- Public Hearing (See Section 5.6.6)
- Determination to Deny or Issue Permit (See Section 5.6.7)
- Draft Permit Signed by Applicant and Issuing Official (See Section 5.6.8)
- Judicial Appeal (See Section 5.6.9).

5.6.1 Application

An application for a COE permit is submitted to the appropriate District Engineer, who reviews the application and requests any additional information. An official file is kept of all applications.

5.6.2 Certifications

If the proposed activity will affect the coastal zone of a state operating under an approved coastal zone management (CZM) program, the District Engineer must obtain from the applicant a certification of consistency with the State CZM program. The District Engineer sends a copy of the notice of permit application and a request for certification review to the State's Coastal Zone Agency. If the State objects to the certification or requires further review, the District Engineer cannot issue the permit until the State concurs or the Secretary of Commerce determines the activity to be consistent with the purpose of the CZM Act or necessary in the interest of national security. If the State neither concurs nor objects to the certification within 6 months, concurrence is presumed.

For OCS activities in a marine sanctuary, the applicant must submit certification from the Secretary of Commerce that the activities will be consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The applicant must also meet applicable regulations. If certification is required, no permit will be issued until such certification is obtained.

If any certification or authorization is denied, the COE permit cannot be issued. If a Federal, State, or local agency fails to take definite action granting or denying the required authorization or fails to furnish comments, within 3 months of public notice of permit application, the District Engineer can process the application to a conclusion.

(17)

5.6.3 Environmental Assessment

The COE relies on environmental documentation performed by DOI, Bureau of Land Management when processing permits for structures in OCS lease areas. However, under Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), an environmental assessment must still be prepared.

If the District Engineer makes a determination that an Environmental Impact Statement (EIS) is not needed, this determination is placed in the record as the Environmental Assessment. Currently, for Section 10 permits for structures on the OCS, a very abbreviated type of environmental assessment is performed due to the fact that an EIS is done for the lease sale by BLM. If an EIS was required, public notice would be given upon completion of the draft EIS. A public hearing on a permit requiring an EIS may not be held until the completion of the draft EIS. The draft EIS may serve as the environmental assessment. If an EIS was required, the permit cannot be issued until 30 days following the notice of filing of the final EIS with the Council on Environmental Quality, during which time public comments are accepted.

5.6.4 Public Notice

The District Engineer must issue a public notice of the permit application within 15 days after all required information is received. Copies of all public notices are sent to the following Federal agency personnel: the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency, the Regional Director of the National Marine Fisheries Service, and the Field Representative of the Secretary of the Interior. The COE sends notices to these agencies for comments and objections. In addition, notices are sent to the U.S. Senators and Representatives for the affected area. If the Senators or Representatives comment on the permit application, they will be notified as to its final disposition.

Public notices are also sent to the State agency responsible for fish and wildlife and other appropriate State, county and city agencies.

In certain circumstances other government officials must receive notices of permit applications:

- if the activity involves construction of fixed structures or artificial islands on the OCS or in the territorial seas (Section 10 permit), then the Deputy Assistant Secretary of Defense, the Director, Defense Mapping Agency and the Director, National Ocean Survey, NOAA receive notices
- if the construction of structures may affect aircraft operations or seaplane operations, then the Regional Director, Federal Aviation Administration receives a notice
- if the activity is connected with a foreign-trade zone, then the Executive Secretary, Foreign-Trade Zones Board and the District Director of Customs receive notices.

5.6.5 Comment Period

Public comment on the proposed permit is received no more than 30 days and no less than 15 days from the date of notice. In unusual circumstances the District Engineer may extend the comment period to a maximum of 75 days from the date of notice. A public hearing may be requested.

5.6.6 Public Hearing

For a Section 10 permit, if a request for a hearing involves material issues of fact regarding navigation and national security, and if the District Engineer determines there is sufficient public interest, then a public hearing will be held. Public hearings may also be held without a request at the discretion of the District Engineer. Public notice of a hearing must be given not less than 30 days before the hearing date, unless a "public necessity" requires a shorter time.

The Presiding Officer (normally the District Engineer) opens a public hearing by explaining its purposes and procedures. Any person may appear at the public hearing, submit oral or written statements, call witnesses and present recommendations. Participants have the opportunity for rebuttal.

Written comments can be made within 10 days following the public hearing. After 10 days, the hearing file is closed to public comment, unless good cause can be shown to keep it open.

5.6.7 Determination to Deny or Issue Permit

Evaluation of COE permit applications requires input from many Federal agencies, depending on the nature of the regulated activity.

- In evaluating all COE permit applications, the District Engineer is required by the Fish and Wildlife Coordination Act to consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service and the head of the agency responsible for fish and wildlife for the affected State. The District Engineer must seriously consider any comments or suggestions made.
- Under 33CFR 322.5(e), applications for COE permits for installation of aids to navigation are coordinated with the appropriate Coast Guard District Commander and include a condition that the permittee conform to applicable Coast Guard requirements. In most cases, coordination consists of sending public notice of the application and sometimes the COE permit to the Coast Guard District Commander.
- COE permits concerning the construction, operation, maintenance or connection of facilities at the borders of the U.S. must be authorized by the President, Secretary of State, or delegated officials.
- COE permits concerning structures in U.S. navigable waters associated with seaplane operations require close coordination with the Federal Aviation Administration (FAA).
- If a COE permit involves structures or activities in a foreign-trade zone, the District Engineer must recognize Foreign-Trade Zones Board considerations.
- All COE permits require coordination with the Environmental Protection Agency (EPA). For Section 10 permits, this coordination is limited to EPA being sent notice of the permit application and providing comments.

Other general policies or considerations used in evaluating permit applications include: public interest review; historic, scenic and recreation values; effect on the limits of the territorial sea, and any interference with adjacent properties or water resource.

Upon completion of evaluation, an initial decision or recommendation as to permit issuance is made by the COE. A findings of fact is made for all applications to support this determination.

5.6.8 Draft Permit Signed

If the permit is approved, two copies of the draft are sent to the applicant for acceptance and signature. The copies are then returned to the issuing official for signature. The signature of the issuing official on the authorizing document constitutes final action on the permit.

If a permit is denied, the applicant is notified of the denial and the reasons for that decision. The signature on the letter notifying the applicant of denial constitutes final action by the COE.

The District Engineer either (a) sends a notice of denial to the applicant or (b) issues the draft permit to the applicant for acceptance and signature, or (c) forwards the application to higher headquarters, within 30 days of whichever of the following is the latest:

- the closing of the comment period without objections
- receiving a notice withdrawing objections
- completing coordination following receipt of applicant's rebuttal of objections
- closing of the public hearing record
- the expiration of the waiting period following the filing of the Final Environmental Impact Statement (FEIS) with the Council on Environmental Quality.

5.6.9 Decision Referral

In situations where permit issuance is extremely controversial, the District Engineer may refer the case to the Division Engineer, who in turn may refer the case to the Chief of Engineers. There is no detailed administrative appeal procedure for COE permits. Appeals are made by requesting judicial action.

5.7 SHIPPING SAFETY FAIRWAYS AND ANCHORAGE AREA

Special restrictions to offshore oil and gas operations are placed on areas established as shipping safety fairways and anchorage areas. Under 33 CFR Section 209.135, entitled Shipping Safety Fairways and Anchorage Areas, Gulf of Mexico, no Section 10 permit can be granted for the erection of structures in a fairway. These permits are granted in anchorage areas, but the number of structures is limited by spacing; i.e., the structure must be at least 2 nautical miles from any existing structure. In several instances in the Gulf, owners or operators, because of the 2-mile spacing requirement, have been limited as to where they could drill on their leased area.

In the Galveston district, there is also policy requiring pipelines to be buried certain distances under safety fairways (10 feet) and anchorage areas (16½ feet). As a result of the concerns of shipping interests and requests by the Coast Guard, the pipeline burial policy in the Gulf of Mexico is being revised. Requirements for pipeline burial within safety fairways and anchorage areas vary by COE district.

Within the shipping safety fairway in the Pacific Ocean at Port Hueneme, California, the COE will not grant Section 10 permits to structures (33 CFR Section 209.138). In addition, the COE has special regulations for authorization of exploratory drilling in the Gulf of Santa Catalina, California, to take into account the traffic separation scheme, the precautionary zone and traffic lanes (33 CFR 209.138a).

As mandated by the Ports and Waterways Safety Act (PWSA) as amended by the Port and Tanker Safety Act of 1979, the Coast Guard is currently studying various water areas of the U.S. in preparation for establishing safe access routes for the movement of vessel traffic proceeding to or from ports. While the Act would limit the establishment of routing systems where oil and gas leases are held prior to the announcement of a study of the need of port access routes in that area, there could be restrictions on the

manner in which specific areas of the OCS leased after the date of a study notice may be explored and developed for oil and gas.

The Act does provide that the right of navigation is paramount over all other uses, but also that in designating these routes the Secretary (Coast Guard) must "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved". The Secretary is also directed to consult with the Secretaries of State, Interior, Commerce and the Army, and with the Governors of affected States. Parties who may be affected by the proposed action are also to be consulted and their views considered.

In addition, the Act states that the Secretary (Coast Guard) "may from time to time, as necessary, adjust the location or limits of designated fairways or traffic separation schemes, in order to accommodate the needs of other uses which cannot be reasonably accommodated otherwise," provided this would not adversely affect the purpose for which the designation was made. An April 16, 1979 Federal Register notice stated that the Coast Guard anticipates establishing, where appropriate and possible, temporary measures to provide safe routing, while allowing full exploration of areas not yet under oil and gas development.

5.8 MODIFICATION, SUSPENSION OR REVOCATION OF AUTHORIZATIONS

As a result of a reevaluation of the circumstances and conditions of a permit, the District Engineer may determine that a modification of a COE permit is required. If so, the District Engineer and permittee will consult informally to try to reach an agreement regarding the modification. If such an agreement is reached, the permittee will receive written notice of the modification. If an agreement cannot be reached, the permittee may officially be notified of the reasons for the modification and that he may request a hearing, or the District Engineer may suspend the permit. The modification becomes effective at least 10 days after the notice, unless a hearing is requested.

The District Engineer may determine that the public interest requires immediate suspension of a permit. The permittee is then notified in writing (a) of the suspension and (b) that a decision will be made to either reinstate, modify or revoke the permit, and (c) that the permittee may request a hearing within 10 days of receipt of the

suspension notice. If the District Engineer recommends revocation, the District Engineer will submit a report to the Chief of Engineers. The Chief will make the final decision on revocation. The Chief of Engineers may allow the permittee to submit additional relevant information. The permittee receives written notice of the final decision.

If the permittee is found to be in non-compliance, the District Engineer first attempts to reach a mutually agreeable resolution. If such a resolution can not be reached, a written demand for compliance is made. If the permittee does not agree to comply within 5 days, the District Engineer issues a notice of immediate suspension and appropriate legal action is considered.

Timely inspections should be made during performance of a permitted activity and appropriate notices and instructions given to the permittees to ensure that the submitted plan is followed.

5.9 MEMORANDA OF AGREEMENT

The regulatory programs or activities of one Federal agency may impact on the regulatory activities of another. Memoranda of Agreement between those agencies show their recognition of the need to adopt policies and procedures that coordinate such activities. On March 24, 1980, the Secretary of the Army signed Memoranda of Agreement with the Secretaries of Interior, Transportation, Agriculture and Commerce, and the Administrator of the Environmental Protection Agency (EPA). These agreements apply to the processing of Department of the Army permit applications under one or more of the following: Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research and Sanctuaries Act.

The agreements between the Secretary of the Army and the Secretaries of Interior and Commerce and the Administrator of EPA provide that these agencies be notified of COE permits and that they may present reports, recommendations and objections within the specified public comment period. If these agencies have unresolved objections, they may request review by the Department of the Army.

The agreements between the Secretary of the Army and the Secretaries of Transportation and Agriculture define methods of coordination (especially regarding environmental documentation) when actions of these two agencies require COE permits. In addition, notification and comment provisions and methods to follow for objections to COE permit applications submitted by other agencies or individuals are specified.

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CHAPTER II-6
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:
COASTAL ZONE PROGRAM

The Coastal Zone Management Act (CZMA) of 1972, as amended in 1976, 1980, and by the OCSLA Amendments of 1978, created a new approach to managing the nation's coastal resources. The Office of Coastal Zone Management, within the National Oceanic and Atmospheric Administration of the Department of Commerce, administers the program.

Coastal zone management, as characterized by CZMA, is a new concept. The Act outlines a complex voluntary program of state-Federal partnerships in the management of coastal resources. The Federal CZM Office evaluates its activities according to two objectives¹. The initial objective is to encourage and assist the states in developing and implementing management programs to achieve wise use of the land and water resources of the coastal zone. This procedural objective requires either instituting a new management process within the state, or utilizing existing state laws to design a management program that will meet the objectives of the CZMA.

The second objective is for states to utilize the Federally-approved Coastal Zone Management Programs in the review and approval of proposed activities directly affecting the state's coastal zone, especially through the Federal consistency review procedure.

6.1 LAWS AND REGULATIONS

Coastal Zone Management Act of 1972 (PL92-583, amended in 1976 by PL94-370, and in 1980 by S2622.): CZMA.

Outer Continental Shelf Lands Act Amendments of 1978 (PL95-372):
OCSLA Amendments, signed September 18, 1978.

¹The Office of Coastal Zone Management, *National Oceanic and Atmospheric Administration, The First Five Years of Coastal Zone Management*, Washington, D. C., March, 1979.

Among other things the 1976 amendments created the Coastal Energy Impact Program (CEIP) to provide grants and loans to finance public facilities and services required to accommodate population increases caused by the siting, construction, expansion, or operation of new or expanded energy facilities, with special attention given to OCS energy activities. The OCSLA Amendments altered the CEIP funding provisions and changed the timing of consistency consideration for OCS activities. The 1980 amendments emphasize state responsibility to meet new national policy objectives of protection and management.

The key regulations are:

- 15 CFR 930, "Federal Consistency With Approved Coastal Management Programs," Amendment to above establishing consistency procedure for OCS exploration, development, and production activities, as a result of Section 504 of the OCSLA Amendments, in 44 FR 3705, January 18, 1979²

6.2. COASTAL MANAGEMENT PROGRAMS

The initial CZM effort has been to assist states in developing coastal zone management programs that will meet the program standards necessary to receive Federal approval. The CZMA provides 80% Federal funding for the development of these programs. Exhibit 6-A lists states affected by OCS activities that have Federally approved programs as of September 30, 1980. Also shown are states moving toward approved programs.

Several issues of critical concern to OCS management are addressed through these approved plans. The first critical issue is the basic one of environmental protection. Environmental groups favor resource protection as the dominant focus of coastal management. NOAA's position is that coastal management includes both resource protection and resource development. It is the state's responsibility to choose the appropriate mix of preservation and development within the state, after consulting with a wide variety of governmental units, interest groups, and the public. A major part of coastal review involves an assessment of the appropriateness of the mix.

²Other important CZM regulations have appeared in 43 FR 10510; 44 FR 18590; 44 FR 29580; and 44 FR 37142.

EXHIBIT 6-A

STATES AFFECTED BY OCS ACTIVITY WITH
FEDERALLY-APPROVED COASTAL ZONE MANAGEMENT

<u>State</u>	<u>Program Approval Date</u>
California	November, 1977
Massachusetts	April, 1978
Rhode Island	May, 1978
North Carolina	September, 1978
Maryland	September, 1978
Maine	September, 1978
Alaska	July, 1979
Delaware	August, 1979
South Carolina	September, 1979
Alabama	September, 1979
Mississippi	September, 1980
Louisiana	September, 1980
Connecticut	September, 1980
Pennsylvania	September, 1980
New Jersey	September, 1980

States moving toward Federally approved programs include Texas and Florida.

A second major issue is the balance between local interests and objectives, and national objectives. An approved management program must include an energy facility planning process that is prepared to address this potential conflict in an orderly and timely fashion. The process must:

- identify energy facilities likely to locate in or affect a state's coastal zone
- assess the suitability of sites for such facilities, including costs and benefits of proposed and alternate sites in terms of local, state, and Federal interests
- identify enforceable state procedures for managing energy facilities and their impacts
- identify avenues for public and private parties to participate in the planning process.

In addition, management programs are encouraged to designate a single state agency to fill the lead responsibility for energy siting decisions, and to develop standardized procedures for meeting state permitting requirements.

The extent to which states seriously address the above concerns will determine the framework within which industry must work when it seeks to develop OCS oil and gas. This framework may assist in identifying the probable work elements necessary for planning decisions.

Once a state has an approved coastal management program, consistency certificate determination provides the best formal opportunity for the state's participation related to exploration activities on the Federal OCS (informal state participation in Federal planning activities prior to industry's submission of exploration plans and permits is also critical to effective state participation). To comply with state consistency, industry must submit with each exploration permit application or plan identified in the CZM plan of affected states a certification that a) each activity described in the plan complies with the affected state's approved coastal zone management program and b) the plan will be carried out in a manner consistent with such a program.

States receive a copy of industry submitted permit applications or plans from USGS and states with Federally approved CZM plans are given three months (with a possible extension to six months if a reason for delay can be given) for review of exploration-related documents.³ If the state does not provide notification throughout the initial three months, the state is presumed to concur with the consistency determination. In order to have the right of consistency determination it is necessary that the state refer specifically in the state-prepared CZM plan to the OCS permits and licenses for which the state will require consistency. In the absence of such references, the state's approval of these permits and licenses will not be conditional on consistency certificate concurrence.

Prelease activities found to directly affect the coastal zone must also be consistent with coastal management programs, but only to the maximum extent practicable.

6.3 FEDERAL ACTIVITIES SUBJECT TO STATE CONSISTENCY DETERMINATION

The following Federal permits for exploration activity may require a consistency determination by the state if the state has specifically referenced these permits in the state CZM plan:

- Exploration Plan (EP) and accompanying environmental report (see Chapter 2)
- National Pollutant Discharge Elimination System (NPDES) Permit (see Chapter 3)
- Corps of Engineers' permits (see Chapter 6)

Other documents related to exploration on Federal leases include the environmental assessment (Chapter 2) and the Application for Permit to Drill (Chapter 2). The environmental assessment is prepared by USGS based on the environmental report

³ *It is worthwhile to note that states lacking an approved plan are restricted to much shorter time frames for review of these documents.*

submitted by industry (with the exploration plan) as well as on state comments or objections to the EP. In addition, USGS may request the states to assist directly in the preparation of the environmental assessment. The application for permit to drill (APD) is prepared by the lessee and submitted to USGS. USGS approval of the APD is not granted until all other permits for drilling have been granted. APD approval authorizes the lessee to proceed with drilling. The states receive a copy of the approved APD for information purposes only. USGS will not approve the APD until Federal approval and affected state CZM consistency determinations have been received on all necessary permits.

PART III

STATE REGULATORY ACTIVITIES DURING
EXPLORATION OF FEDERAL OCS LEASES

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CHAPTER III-1

STATE PARTICIPATION IN REGULATION OF FEDERAL OCS EXPLORATION

1.1 INTRODUCTION

The Outer Continental Shelf Lands Act Amendments of 1978 contain a number of provisions that affect the way states deal with OCS matters both with regard to policy formulation and its day-to-day implementation. The following are among the more important provisions directly affecting states during exploration of Federal OCS tracts:

- Increased funding to states to mitigate the adverse effects of OCS activities
- Provision for increased involvement by states and local governments in the OCS decision-making process
- Provision for an information program to affected states so that they can base their decisions and recommendations on up-to-date estimates of offshore resources

The categories of overall state regulatory activities related to Federal OCS leases include:

- regulatory activities exercised jointly under state and Federal laws
- regulatory activities under state law
- regulatory activities delegated to local government under state laws.

Of these three categories, the state activities exercised jointly with the Federal government constitute the mainstay of state involvement in exploration of Federal OCS tracts. It is through the state participation in Federal OCS decision-making, much of which is outside the realm of formal regulation and occurs during the Federal planning stages for lease sales, lease stipulations and environmental protection, that states most effectively impact exploration activity. Little direct state involvement in regulation of

exploration in Federal OCS areas is required because industry activity is primarily conducted outside of state waters and the onshore impacts to a particular state for exploration activities are usually minimal. (The level of industry activity during exploration on a per-tract basis is low and of short duration and the required needs in onshore support facilities can usually be met by pre-existing facilities.) The State of Alaska proves an exception to this, however, in that developed shorelines within Alaska are lacking in many areas and thus the construction of even the most basic shore facilities (docking areas and food supply bases) may be necessary to support OCS exploration activity. Thus, in Alaska, the regulatory activities of the State and local areas can play a much larger role in exploration of Federal OCS tracts.

1.2 STATES EXAMINED

To define state participation in Federal OCS exploration with limited study resources, all coastal States affected by OCS activity under the proposed five-year Department of Interior Lease Sale Schedule were scrutinized as potential candidates for detailed examination. Seven States were then selected for review. The justification for the selection of each State follows:

Alaska

More lease sales are scheduled off Alaska's coast in the current five-year schedule than off the coast of any other state. In addition, unique characteristics of Alaska, such as the harsh climate, dependence on coastal resources for subsistence living, and limited infrastructure development along its coast, make OCS-related activity subject to more State government interaction than is true in other states.

California

In California, where two-thirds of the estuary habitat was lost between 1947 and 1967 because of dredging and filling, and where an offshore oil well blowout in 1969 coated miles of beaches with oily tar, the State has instituted long and careful review procedures for coastal activities. Many state and local government agencies participate in these reviews. California, therefore, provides an example of more complex regulation of OCS activity which might result in long delays for OCS operators.

Louisiana & Texas

Both Louisiana and Texas have been subject to offshore petroleum development for many years. Their limited regulatory activities, which appear to have caused few delays for offshore operations, offer a contrast to those of Alaska and California.

North Carolina

Unlike the other states, North Carolina has no previous experience with offshore petroleum development.

Massachusetts and New Jersey

Both Massachusetts and New Jersey have limited experience with OCS-related development, but have prepared themselves extensively for greater OCS-related activity in their respective States. New Jersey also offers an example of the way in which a State can streamline complex regulatory activities to perform the same careful review in a shorter time.

1.3 ORGANIZATION OF STATE DISCUSSIONS

The discussion for each state focuses on the in-place or proposed state Coastal Zone Management (CZM) program (including Federally-approved plans and those under development): A Federal perspective on CZM programs appears in Part II-6. State discussions focus on the consistency determination elements within the programs that impact exploration activities on Federal OCS leases. Local authority that may impact the regulation of exploration on Federal leases is addressed, where applicable. State permits that may be required of industry during exploration activities are also identified.

1.4 STATE REGULATORY PERSPECTIVE

States have the difficult task of balancing the utilization of their coastal resources between preservation and development, among competing uses, and between local, state, and Federal aims and objectives. The states may support OCS development, but this support will also recognize the needs of other important state industries such as tourism and fishing.

Under the Federal Coastal Zone Management Act, the Federal government makes planning grants available to states to set up coastal zone management programs that will meet Federal standards. Once a state has a Federally-approved coastal zone management program, the state CZM agency reviews activities proposed for the Coastal Zone for consistency with the approved program. Activities licensed or permitted by Federal agencies must pass consistency review. A general description of state activity within the framework of a Federally approved CZM plan is provided in Part II, Chapter 6. The variable aspects of state CZM programs within each of the seven states reviewed are discussed in the following chapters, by state. States lacking a Federally approved CZM plan conduct a more limited role in regulating exploration of the Federal OCS.

States without a Federally-approved CZM plan rely on procedures mandated by PL 95-372 for participation in Federal decisions related to exploration of Federal OCS tracts. The primary difference during exploration between CZM and non-CZM states is seen in the time allowed for review of Exploration Plans and accompanying Environmental reports. Whereas states with Federally approved CZM plans have up to six months for this review, review in non-CZM states is restricted to the length of USGS review of these documents — 30 days from the time the documents are circulated — for review after USGS has determined them complete.

All states reviewed here, except Texas, have Federally-approved programs and have developed special procedures for making consistency determinations. Texas is developing procedures for consistency review in the event they receive approval for their coastal management programs. Procedures vary among the states. Some states involve several agencies or the public in the review process. Others rely primarily on the CZM agency for review of the consistency certification. Therefore, the time for review also varies significantly. While most reviews take one month or less, some reviews for more complex or controversial activities may take closer to six months. However, these appear to be the exception.

CHAPTER III-2

ALASKA

2.1 INTRODUCTION

Alaska contains approximately thirty-four thousand miles of coastline and three hundred sixty million acres of submerged State and Federal lands defined as Outer Continental Shelf (OCS). These offshore lands represent the Nation's largest frontier petroleum area and are likely to hold a significant quantity of the Nation's remaining oil and gas resources. The leasing, exploration, development and production of these resources face difficulties that could far surpass difficulties encountered in the other OCS areas of the United States. Severe climatic conditions, ice covered seas, and numerous instabilities in the earth's crust causing severe earthquakes present major technical challenges that make Alaskan operations expensive and fraught with high risk.

These technical problems, however, have caused fewer time delays than social, environmental and economic considerations. Alaskan lifestyles and the complex intertwining of Alaskan culture with the State's coastlands and seas require careful planning of OCS activity. Offshore oil development depends on the nearby coastal areas for supply and support facility sites. The Alaskan coastal areas most affected by OCS operations are environmentally and biologically sensitive wilderness regions. These regions are primarily inhabited by native peoples in small settlements who tend to hold their traditional lifestyle above other values. Additionally, OCS development is often in conflict with the State's principal renewable resource industry — fishing. Waters of Alaska contain a significant proportion of the United States salmon and king crab resources, and a large portion of the world's bottomfish resources. A five-month "drilling window" has been included in lease stipulations for arctic waters that restricts drilling to the period November 1 through March 31 to protect aquatic life from the potential adverse effects of year-round drilling.

To understand the major factors causing delays in Alaskan OCS activities, an understanding of the concerns unique or significant to Alaska is required. These issues reflect the sometimes conflicting relationship between OCS activities and Alaska's resources and people. Most of these issues concern the potential impact of oil spills or the rapid influx of people and development activity accompanying the OCS program.

Major issues of concern in Alaska include:

- the protection of subsistence resources
- the protection of fisheries resources
- the mitigation of adverse community and lifestyle impacts
- disputes among the Federal, State and local governments
- the lack of adequate transportation systems and supply base infrastructure
- Alaska-related technical issues
- unique environmental concerns
- the Alaska coastal management program.

Opposition to OCS activities centered on any one of these issues can cause:

- cancellation or delay of OCS sales and activities
- deletion of sales tracts from sales offering
- offering of tracts with restrictive lease and permit stipulations.

More detail on these issues is provided in Appendix F.

2.2 COASTAL ZONE MANAGEMENT PROGRAM

Although the State of Alaska has been developing a Coastal Zone Management Program since 1974, the Program did not receive State and Federal approval until the middle of 1979. The Alaska Coastal Management Act of 1977 (AS 46.40) provided the legal authority to use existing laws to carry out coastal zone management. While the Alaska Coastal Policy Council has been established to set coastal management standards, the

Division of Policy Development and Planning in the Governor's Office is the lead agency for coastal zone management which is coordinated in its Office of Coastal Management. The Director of the Division of Policy Development and Planning serves as Co-chairman of the Alaska Coastal Policy Council.

Alaska's approach to coastal zone management is a partnership between State and local governments. A statewide policy perspective is provided by standards and guidelines established by the Alaska Coastal Policy Council which is comprised of government representatives from seven State agencies and public representatives from nine coastal regions around Alaska.

The actual coastal plans are completed as part of district coastal management programs. Where local government entities exist, these communities must create district programs. In unincorporated areas, a pseudo-local government may be formed to create a district program when the area is faced with possible OCS-related development.

Coastal Resource Service Areas are established for the purpose of developing and adopting a coastal management program where no local government exists. The Coastal Resource Service Areas are defined by the boundaries of the State's regional educational attendance areas (REAA). A service area plan can cover the coastal zone in one or more of these educational attendance areas. An amendment to the Alaska Coastal Management Act during the 1980 legislature allows service areas to cover parts of a regional educational attendance area in appropriate situations, such as when only part of an REAA lies in the coastal zone. The formation of Coastal Resource Service Areas requires local support and is a reason for significant delay in establishing district coastal management programs along much of Alaska's coastline. The Coastal Resource Service Areas usually are not formed until the residents of the area call for its formation.

The Division of Policy Development and Planning in the Governor's Office is charged with the implementation of the standards and guidelines of the Alaska Coastal Policy Council. The Division is responsible for administrative functions, including the coordination of the State and district coastal programs. While State and Federal agencies make their own initial determinations of consistency with the Alaska Coastal Management Program, the Division also reviews their activities for consistency. If a

State agency declines to make a particular consistency determination or desires help, the Division may make the determination. The Division is also the arbitrator for agreements on consistency, and coordinates consistency determination for actions involving more than one State agency to ensure that these activities are consistent. The Division provides particular attention to uses of state concern, which are land and water uses that significantly affect the public interest and extend beyond local concern. All OCS-related activities would fall in this category.

State agency consistency requirements are especially significant in Alaska.¹ The State will eventually own over one hundred four million acres of uplands (twenty-eight percent of Alaska's land area), as well as nearly all of the tide and submerged lands for a distance of three miles seaward along Alaska's thirty-four thousand mile coastline. Furthermore, the State controls the vast majority of the freshwater resources. These ownership rights are in addition to the normal State regulatory authorities. Consequently, most development activities require some form of State permit or approval. Since private land is scarce, OCS-related activities may occur on State-owned uplands.

If a consistency determination disagreement occurs among State agencies, the Division of Policy Development and Planning tries to resolve the difference within 30 days of receipt of the complaint. If it cannot be resolved, the Division will take it to the Policy Council if it pertains to district programs or to the Governor if it pertains to other programs.

2.2.1 Status of District Plans and Relationships to OCS Activities

Numerous district program efforts are at various stages of development. In some unorganized borough coastal areas, Coastal Resource Service Areas are in the process of being formed. In other unorganized borough areas, the service areas are formed and work has begun on plan development. District programs are being developed in most organized borough areas and many cities. Three areas - the Municipality of Anchorage, the Annette Island Reservation, and Haines in Southeast Alaska - have completed and approved district programs.

¹ This refers to intrastate consistency and not Federal/State consistency.

Once a local district program is developed, impacts related to OCS development would be subject to more direction and control. Many Alaskan communities are concerned about OCS impacts and want to have the additional protection provided by a district plan before an OCS sale takes place.

Thus, there is a general desire in Alaska to expedite plan development and, where necessary, delay sales until plans have been completed.

The specific relationship of the district plans and OCS activities can best be understood by reviewing the status of the district programs on the coastline adjacent to existing and planned OCS sale areas. Exhibit 2-A indicates the appropriate district program areas. The following identify the status of the district programs along the coastline moving from north to south, from the North Slope to the Gulf of Alaska:

- North Slope Borough -- The North Slope Borough District Plan is nearly completed for the mid-Beaufort Sea area, which includes the Prudhoe Bay oil field and is adjacent to the first Beaufort Sea OCS sale area (December 1979). The plan is currently being modified and other segments of the plan covering the remainder of the North Slope Borough should be started this year. The plan expansion will cover the coastline adjacent to the Chukchi Sea (February 1985) and the second Beaufort Sea (February 1983) OCS sales. This plan will likely be completed before December of 1981.
- Nana Region-Kotzebue -- The Nana region area has no borough government and the City of Kotzebue has decided to be part of a regionwide coastal resource service area plan. The Coastal Resource Service Area has been formed, the board selected and work has begun on developing a work program for district plan formation. A plan will take two to three years to be completed. This area is adjacent to the Hope Basin OCS sale scheduled for May of 1985.
- Bering Straits Region -- The Bering Straits region is also an unorganized borough area and has just elected a coastal resource service area board. The service area has not yet been approved and certified. Completion of a district program will require at least two and a half to

EXHIBIT 2-A: COASTAL MANAGEMENT DISTRICT PLANNING AREAS AFFECTED BY OCS LEASING

three years and a 1983 completion date may be optimistic. The Norton Basin sale area, which is scheduled for September of 1982, is adjacent to this region.

- Nome — The City of Nome is developing its own district program separate from the Bering Straits area. The work on the plan should begin shortly and may be completed by December of 1981. Nome is also adjacent to the Norton Basin sale area.
- Yukon/Kuskokwim Delta — This region is an unorganized borough. A service area has been formed and work is beginning on work plans. A district plan may be completed in two to three years. The Navarin Basin sale area is near this region and is scheduled for December 1984. The St. George Basin sale is also in the area and is scheduled for December of 1982.
- Bethel — The City of Bethel just started development of the city coastal district plan. It may be completed by the legislatively mandated December 1981 deadline. It is also near the Navarin and St. George Basin sale areas.
- Bristol Bay/Alaska Peninsula — This area, except for the small Bristol Bay Borough enclave, is an unorganized borough area. It is speculated that the area will form a service area by spring of 1981 and possibly have a plan completed by 1984. The St. George Basin sale scheduled for 1982 and the Northern Aleutian Shelf sale scheduled for 1983 are directly adjacent to this area. The portion of the Cook Inlet Sale scheduled for September of 1981 may also affect the area.
- Dillingham — The City of Dillingham has not yet decided whether to join the Bristol Bay Alaska Peninsula Service area or complete a plan on its own. It has not started working on a plan at this time. It will be affected by the St. George Basin and Northern Aleutian Shelf sales.
- Bristol Bay Borough — This small borough on the west side of the Alaskan Peninsula is located near the Northern Aleutian Shelf sale area. The borough is expected to have a plan completed by December 1981.

- Aleutian/Pribilof Islands — An amendment to the Alaska Coastal Management Act (CSSB 562) was passed this session primarily to allow this area to form three separate service areas. At this time, the alignment of coastal resource service areas is still being determined. A plan may not be completed before 1984 or 1985. The three or four towns in this area with planning powers are choosing to integrate into the new service areas. The St. George Basin sale (1982) and the Northern Aleutian Shelf sale (1983) will directly affect the Aleutian and Pribilof Islands.
- Kodiak — The borough of Kodiak is starting to work on its coastal management plan. It may be completed by December of 1981. Two sales, the Shelikof Straits portion of Cook Inlet Sales (September 1981) and the Kodiak (April 1983) sale, will affect Kodiak.
- Cook Inlet Area — The Cook Inlet is surrounded by three boroughs: Kenai, Anchorage, and the Matanuska-Susitna. The Anchorage Borough has completed its plan and the Mat-Su and Kenai Boroughs are in the process of forming plans. Kenai and perhaps the Mat-Su Borough will have completed plans by December 1981. This area is one of the most prepared for OCS development. Only one of the ten scheduled sales (Shelikof Straits) may have some direct effects on the area.
- Gulf of Alaska — The towns of Valdez, Cordova and Yakutat are developing coastal plans which should be completed within the next two years. The entire Gulf of Alaska coastal region, however, has no government or service area structure in place. It is uncertain how this area will be covered by the coastal management program. One additional sale (Eastern Gulf, October 1980) is scheduled near this area and would have direct impacts.

Some coastal areas will have just completed district programs at the time of the adjacent OCS sales and others will definitely not have completed plans by the sale dates. The areas which most likely will not have completed plans have no local government structure and are therefore least prepared to control the impacts from OCS development. Two traditional native village areas, the Bering Straits and Yukon/Kuskokwim areas, may be close to plan completion at the time of OCS sales. The Bristol

Bay/Alaska Peninsula and Aleutian/Pribilof areas (noted for fishing, unique wildlife and subsistence) most likely will not have plans developed when the adjacent OCS sales take place. The Gulf of Alaska area will also not have a plan when the Eastern Gulf sale takes place.

Given the above status of programs and the optimistic timeframes, five of the ten scheduled sales will most likely take place adjacent to extensive coastlines which are in unorganized borough areas and not covered by completed coastal management plans. The sales include the Norton Basin, the Navarin Basin, the St. George Basin, the Northern Aleutian Shelf, and the Eastern Gulf of Alaska.

2.2.2 OCS Delays Due to District Programs

Since most of the coastal population adjacent to planned OCS sale basins depend on the fishing industry or subsistence resources for their existence, there is a strong desire to use district programs to control OCS related development. This may affect the timing of OCS activities in two ways: (a) delay lease sales due to preparation of district programs and (b) delay exploration and development on leases due to program activities. The use of the North Slope Borough Program to control activities related to the Beaufort Sea Sale illustrates the potential impact district programs can have on the timing of OCS activities.

The district programs may provide a basis for requesting sales delays to provide time for plans to be prepared. In many of the coastal areas of Alaska, residents want local coastal management plans completed before OCS development takes place. In many of these areas, a coastal management plan may not be completed for three or four years. The previous discussion on the status of district plans noted that five of the ten Alaskan OCS sales are scheduled to occur before adjacent coastal areas have plans. This situation has already resulted in calls for sales delays by local groups such as the Alaskan Village Chiefs Association and the State government.

The Federal government acknowledged this concern in their final environmental statement for the five-year OCS leasing schedule. One of the alternative schedules examined (Alternative 3) proposed delays for the sales in the Norton Basin, St. George Basin and the Northern Aleutian Shelf to allow the unorganized boroughs in the area to develop coastal zone management plans. The alternative emphasized that if plans are

not completed in these areas, no local controls or mechanisms are in place to implement the general standards, much less reflect local concerns on service base facility siting decisions or other actions.

Developed coastal management district plans can expedite or delay OCS activities. The district plans can include stipulations affecting OCS activities which might impact the State's territorial waters (three miles seaward) and coastal lands. Though the most direct jurisdiction concerns OCS shorebased activities and facility sites such as supply bases and service enclave, jurisdiction over State waters could also affect drilling activities. Territorial water concerns include offshore platform related oil spills or pollution, potentially affecting State waters and impacts accompanying OCS related vessel activities in these waters.

The designation of OCS enclave supply and support sites in district plans could expedite OCS development. The Kenai Peninsula Borough, for example, is expected to indicate prime petroleum related development sites. Once such sites are officially established, consistency requirements and State policy would tend to encourage expeditious permit processing for activities at the designated sites.

The original version of North Slope Borough's proposed coastal management plan illustrates the potential a district program has to affect the timing of OCS activities. The Borough's plan directly addresses the issues of subsistence lifestyle versus petroleum development, and local self-determination versus apparent State and national interests. The Borough's success in establishing its plan will set precedents important to the approaches chosen by other coastal districts in southwestern and western Alaska.

The North Slope Borough's proposed plan focused exclusively on its two main uses: subsistence resources and oil development activities. The two uses are officially defined as "coastal zone management uses of state concern." The plan's main objective was to preserve the lifestyle of the area and protect the region's subsistence resource base. This protection was to be provided by controlling the rate and location of oil development activities.

The Borough's plan created its own permit program to determine "where, when and how" petroleum development should take place. The plan was to be implemented through the use of the Borough's zoning powers and the State and Federal coastal management

consistency requirements. The Borough plan zoned the "mid-Beaufort" area into four districts or "areas meriting special attention." The areas were zoned for conservation, geophysical hazard, deferred development and petroleum service base operations and production. Parts of the Prudhoe Bay oil field were zoned for conservation or deferred development. When the draft plan was circulated during the summer of 1979, it became the subject of much controversy. It was significantly modified as a result of oil industry and State reaction, but remained unchanged in concept and principle. The plan has not yet received State approval. However, if the Borough's coastal plan is revised, approved and implemented, it would set a precedent for strong local control of OCS facility siting.

2.3 CONSISTENCY REVIEW CERTIFICATION

In Alaska, Federal agencies must comply with both approved district plans for specified areas and the general State standards. As was true with the State consistency provisions, Federal consistency requirements are unusually important in Alaska, since the Federal government owns nearly 95 percent of the land and the majority of the coastal lands. Federal actions which directly affect the State's coastal area must be in accord with the coastal management program unless national interest would be compromised by the State or local district program laws.

Actions affected by the consistency requirements include any direct Federal actions (building a facility, use or disposal of Federal lands, etc.), licenses and permits, OCS activities which affect state land, and Federal assistance actions to State or local areas. The State has memoranda of understanding with most Federal agencies on what is most likely to affect the coastal zone. There are no requirements or procedures for public input into the consistency decision. U.S. Army Corps of Engineers permit activities account for fifty-five percent of the State's Federal consistency activity. The other determinations are related to Housing and Urban Development (eight percent), Farmer's Home Administration (eight percent), and seventeen other agencies (twenty-three percent).

In an effort to expedite consistency determinations on Federal actions, the State is in the process of using memoranda of understanding with all Federal agencies to limit the State's review period for all Federal activities to 30 days, with 15-day extensions as necessary. No successive period of 15-day extensions combined with the initial 30-day period could last longer than the six months allowed under the Federal Coastal Zone Management Act.

In the State's consistency efforts to date over five hundred Federal actions have been reviewed and approximately twenty have been subject to significant delay. Consistency reviews have ranged from 30 to 120 days and have averaged 37 days. All consistency reviews have been completed well within the six month time frame, but no decisions have yet been forwarded to the Secretary of Commerce due to an impasse between State and Federal agencies. The review effort is coordinated through a State computer tracking program.

Since the Secretary of Commerce approved Alaska's Coastal Management Program in July of 1979, the State has had few opportunities to exercise consistency review prerogatives on OCS. The only major consistency review to date on OCS actions concerns the Notice of Sale for the December 1979 Beaufort Sea lease sale. Although the Department of Interior had not officially acknowledged the State's right to review "notice of sale" stipulations for consistency, the State completed a consistency review of the Beaufort Sea notice anyway. As a result, the State listed seven significant stipulations required to make the sale consistent with the coastal management program. The Department of Interior included all seven stipulations in the final "notice of sale".

2.4 STATE-FEDERAL COORDINATION OF OCS RELATED ACTIONS

In terms of OCS related permits, the major attempt to coordinate State and Federal permits is the incorporation of U.S. Army Corps of Engineers regulations for dredge and fill operations into the coastal zone management standards. This would require that all State and local permit decisions be based on the Corps of Engineers standards.

This attempt at coordination has the potential for significant impact on all permit activity. Since there is extremely limited existing waterfront development, almost any OCS-related project along the coast will require dredge and fill related activity. Thus, most permits will be covered by the Corps regulations.

The differing attitudes between the State and the Federal government toward OCS-related development and other Alaskan issues has led to the State of Alaska's desire to maintain its regulatory autonomy and independence, particularly in its issuance of permits. This tends to discourage State efforts to develop formal processes for permit coordination. For any of their regulatory areas, the State as well as districts within the State may use permits as a regulatory device. In the future, one would expect coastal

communities concerned with the impact of OCS activities to exercise local permitting authority to control the rate of OCS activity, particularly if the State overrides any of their authorities under the district coastal programs.

2.5 KEY STIPULATIONS IN OCS LEASE SALES IN ALASKA

A stipulation, as used by the Department of the Interior in OCS operations, is a "condition" attached directly to each lease issued for a particular tract. The operator must conform to these conditions or stipulations, or lose his lease. Often at the request of the State, stipulations in Alaskan OCS leases have been used as a mechanism to manage the unique environmental and social impacts from OCS activities and to deal with tract-specific technical problems. These stipulations can have a significant impact on the timing of OCS exploration activities.

2.5.1 Role of Stipulations

Key stipulations in Alaskan OCS lease sales are defined here as those that have the greatest potential to delay exploration of the Alaskan OCS. These stipulations may require surveys, reports, or other predrilling work by the operator. The general stipulations included in each Alaskan lease sale reflect State concerns. These areas are:

- cultural resource protection
- biological resource protection
- environment/social training program
- notice of support activity
- discharge of production drilling muds and cuttings
- five month drilling window (arctic waters only).

The latest and most complete lease sale stipulations for each of the above areas is provided in Appendix F. Also included in Appendix F is a brief discussion of the three lease sales held in Alaska as of October 1980.

2.6 STATE PERMITS

State permits which may be required for OCS exploration activity are outlined below. These permits are as follows:

- Tidelands Permit
- Miscellaneous Land Use Permit
- Special Land Use Permit
- Discharge into Navigable Waters Certificate
- Right-of-Way and Easement
- Facilities and Vessels Handling Crude Oil and Petroleum Products Certificate of Risk Avoidance
- Wastewater Disposal Permit
- Water Rights Permit
- Solid Waste Disposal Permit
- Sand and Gravel Extraction Permit

The permits that may be required for exploration-related activity in Alaska include permits for many activities that in other states would not be necessary until development/production activity (if at all). The requirement for land-use type permits during exploration stems from 1) the lack of any type of existing developed infrastructure on much of the coastline and 2) the lack of privately owned land (causing the industry to use State land for many support-based operations). Thus, industry may be required to develop its own support bases (that would probably exist in other states) and in some cases to locate them on State-owned land for exploration activities. A description of each of the permits that may be required in establishing support bases is included in Appendix F.

CHAPTER III-3
CALIFORNIA

3.1 COASTAL ZONE MANAGEMENT PROGRAM

3.1.1 Introduction

The California Coastal Management Program (CCMP) was established by the State of California to protect and maintain the coastal zone environment, and was Federally-approved in November, 1977. The enabling legislation for the Program is primarily contained in the California Coastal Zone Management Act of 1976 (Coastal Act), with additional responsibilities and directives authorized by the California Conservancy Act of 1976 and the California Urban and Coastal Park Bond Act of 1976. The CCMP is administered by the California Coastal Commission in all locations except the San Francisco Bay Area, where it is administered by the San Francisco Bay Conservation and Development Commission (BCDC).

The California Coastal Act created a 15-member California Coastal Commission and six regional commissions. The regional commissions expire in July, 1981. They serve an interim function while local areas develop their own coastal programs under Coastal Commission guidelines. In general, the local coastal program will consist of approved land use plan and zoning ordinances. Additional implementing measures may be required for areas designated by the Coastal Commission and the legislatures as "sensitive resource areas."

Proposed local land use plans are reviewed for consistency with the policies of the Coastal Act prior to plan certification. After the regional commissions expire, the Coastal Commission will take over future reviews of local coastal programs. Should new exploration-phase onshore support facilities be required, local land use plans may be an important factor in siting decisions.

3.1.2 Consistency Certification Review

The Coastal Commission is responsible for managing consistency certification review procedures for exploration plans.

The Coastal Commission staff reviews the exploration plan and environmental report for consistency with the State coastal management plan. In addition to overall consistency with the plan, the Coastal Commission has several specific requirements to which industry must conform, notably maintaining specified on-site oil spill prevention and control equipment, limiting drilling to at least six miles beyond certain resources areas such as the Channel Islands, and drilling outside certain limits beyond traffic separation schemes.

The Coastal Commission certification concurrence procedure requires an average of four weeks. The Coastal Commission staff performs its own review and submits the plan to the following State agencies for specific technical review:

Department of Conservation:	Division of Oil and Gas Mines and Geology Division
State Lands Commission:	Head Office Appropriate Field Office
Department of Fish and Game	

Comments from the above agencies are incorporated into the Coastal Commission staff review and recommendation. The Coastal Commission holds an open public hearing at which it reviews and acts on the staff recommendation. Local government representatives are notified of the staff recommendation and may attend the hearing; industry representatives and public groups may also attend. If the proposal is considered controversial the hearing may extend to a second meeting, but that is not a common occurrence.

The Commission has reviewed about 20 plans. It has denied concurrence to one well that was proposed to be inside the drilling limits indicated above; industry cancelled its plans for that well.

Consistency review is the focal point for State involvement in OCS exploration activities. In addition to ascertaining that proposed activities will be conducted consistently with the coastal plan, this review also serves the important function of notifying State agencies of the potential for future oil and gas production activities.

These production activities involve extensive State planning input and permitting, but a review of these activities lies outside the scope of this research effort.

3.2 FUTURE OCS EXPLORATION AND STATE PERMITTING

In addition to State coastal consistency review, there is potential State OCS involvement through other permitting activities. However, future California activity concerned with the exploration phase will largely be a function of the location of future lease sales. If future exploration can be serviced from existing onshore support facilities, there will be little if any State permitting involved beyond consistency review.

BLM's Final Five-Year OCS Oil and Gas Leasing Schedule (June, 1980) proposes four sales off California:

<u>Sale No.</u>	<u>Proposed Sale Area</u>	<u>Proposed Sale Date</u>
53	Central Northern California	May, 1981
68	Southern California	June, 1982
73	California	May, 1983
80	California	June, 1984

As of early November, 1980, the proposed area for Sale 53 has been cut from five basins (North to South: Eel River, Bodega Bay, Point Arena, Santa Cruz, and Santa Maria) to one: the Santa Maria Basin, just north of Point Conception. This reduction, occurring with the draft Secretarial Issue Document, changed the number of tracts to be offered from 242 to 115. There is active oil and gas development off Point Conception to the south, and any exploratory activity which results from Sale 53 can be supported from existing onshore support facilities in that area and therefore will not involve State permits.

Any exploration from Sale 68 will also utilize existing support facilities.

Sales 73 and 80 are both in the early planning stages. Inasmuch as Sale 53 originally included tracts in selected basins all along the California coast, the potential exists for any of these areas to be proposed again. If oil and gas exploration moves beyond the range of Southern California onshore support facilities, then any number of possibilities

arise for providing needed onshore support. Existing facilities may be utilized as is, or converted to oil and gas use, or new facilities may be required. However, the uncertainty over the location of future OCS exploratory drilling makes any specific discussion of exploration-phase State permitting highly speculative at this time.

CHAPTER III-4

LOUISIANA

The Louisiana State and Local Coastal Resources Management Act of 1978 established the Louisiana Coastal Resources Program. The State's Department of Natural Resources has the primary responsibility for implementation of the program. The program was granted Federal approval in September of 1980. To determine which level of government has permitting authority for a particular coastal activity, activities are designated as either being of State or local concern. All activities pursuant to Federal OCS leases are assigned to the State to ensure that national interests are adequately considered.

While the newly-approved Coastal Resources Program does require the State of Louisiana to undertake consistency determination for several Federal permits related to Federal OCS exploration, the long-time experience of the State with offshore oil and gas activity results in minimal impact on the State from these exploration activities. The State does not therefore, place a high level of importance on review of exploration related permits. The State is now attempting to coordinate its activities under the new Program to ensure that unnecessary effort is not exhausted by either industry or the State relative to exploration permit preparation and review. In fact, the State has already concluded that industry's environmental report, which under the new Program industry must prepare where prior to plan approval it was not required in the Western Gulf (see Part II, Section 2.9), contains more information than is necessary to the State for review purposes. Louisiana is therefore working with industry, as well as the States of Mississippi and Alabama, to reduce and standardize environmental report requirements for the Western Gulf. From all appearances, Louisiana will work under the Coastal Resources Program, as they did prior to the Program, to minimize any regulatory constraints on exploration that might arise from State activities.

The State does, of course, place a great deal of emphasis on reviewing Federal permits and issuing State permits for activities with high levels of onshore impact that occur with industry activity subsequent to exploration such as pipeline construction and other onshore support of OCS production.

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CHAPTER III-5
MASSACHUSETTS

The Massachusetts Coastal Zone Management Program was established in 1978 under authority granted to the Secretary of Environmental Affairs by Massachusetts General Laws Chapter 21A. Pursuant to General Laws Chapter 21A (G.L.C. 21A), the Secretary established CZM policies as part of the State environmental policy, implemented the CZM Program, and established a Massachusetts Coastal Zone Management Office within the Office of the Secretary. The Executive Office of Environmental Affairs (EOEA), of which the Secretary of Environmental Affairs is the chief executive officer, is the lead agency for the Massachusetts Coastal Zone Management Program. The Program is Federally approved. The only direct activity of the Office is Federal consistency certification.

The policies of the Massachusetts program make special note of energy-related development. The State policies emphasize that exploration, development and production of offshore oil and gas resources will be accommodated but its impacts on the marine environment and recreational values of the coast and its conflicts with maritime-dependent use must be minimized. The location of harbor-related activities of offshore oil and gas development in existing port facilities is encouraged.

Where Federal activities directly affect the coastal zone, Federal consistency determination may be required. The Massachusetts CZM Program also includes proposed Bureau of Land Management lease sales as a listed Federal activity requiring such consistency determination.

Federal permits which could be required in relation to OCS oil and gas operations and which are listed in the Massachusetts CZM Program as being subject to Federal consistency include:

- USGS Exploration Plan and accompanying Environmental Report
- Corps of Engineers permits under Sections 404, 10, 103, and 4(f)
- EPA NPDES and Ocean Dumping Permits.

The basic procedure for Federal consistency certification review of Federal permits and licenses in Massachusetts can be divided into the following steps:

- submission of the consistency certification to the Massachusetts Office of Coastal Zone Management (OCZM)
- public notice of certification receipt in the Environmental Monitor
- a minimum two week public comment period following publication date or until the final decision under the Massachusetts Environmental Policy Act has been published.
- OCZM may hold one or more public hearings. Notice of the hearings must be given at least 21 days prior to the hearing
- decision by OCZM on consistency certification at the earliest practical time.

For activities requiring a Federal permit not listed in the CZM Program or occurring outside the coastal zone, which "could reasonably be expected to affect land or water uses in the coastal zone," the Massachusetts CZM Office may require a certification of consistency with CZM policies. If determined necessary, within 30 days of receiving the Federal permit application notice, the CZM Office must notify the Federal permit applicant, the Federal agency and the Assistant Administrator of NOAA of the need to file certification.

Since Massachusetts has had little experience in dealing with OCS activities — the first OCS oil and gas lease sale, Lease Sale 42, Georges Bank, occurred in December, 1979 — the State is only beginning to develop OCS permitting processes. There is a special OCS Coordinator in the Massachusetts Office of Coastal Zone Management (OCZM) responsible for the coordination of Federal consistency certification and comments on Federal agency actions. The Coordinator provides an interface with the Federal agencies involved in OCS activities and provides a contact point for fishing interests, environmental groups, the oil companies, and relevant State agencies.

According to the OCS coordinator, the State has not yet received any Federal permit applications for consistency determination. To speed the formal approval process when it does begin, however, both the State and USGS have requested that industry submit rough-draft copies of the exploration plan for consideration. The industry is complying and as of November 1980 the State is working with USGS and industry to fully define the requirements of the State for concurrence of consistency under the CZM program. The State has decided that a public hearing will be held for the first exploration plan submitted: the decision as to whether hearings will be required for exploration plans submitted after the first one has not yet been made. The State cannot estimate the length of time that will be required for consistency determination of Federal permit applications that will be submitted under Sale 42. The exploration activities in Federal waters off the coast of Massachusetts will be conducted with the use of existing onshore support facilities. Therefore, the issuance of State permits for land-use permits is not anticipated during industry exploration of these waters.

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CHAPTER III-6
NEW JERSEY

The New Jersey Coastal Management Program received Federal approval in September, 1978 for the initial Bay and Ocean Shore Segment of its program, covering the coast from Sandy Hook to Cape May and most of the Delaware Bay. In September, 1980, the State received Federal approval for a complete coastal management program, incorporating revisions to the Bay and Ocean Shore Segment and a geographical expansion of the program's coverage to include the balance of the State's coast. The New Jersey Department of Environmental Protection administers the program through its Division of Coastal Resources.

New Jersey's interest in OCS activity is primarily focused on the prospects of potential Atlantic oil and gas production, and the State has an active program of studies underway which anticipate the possibility of a commercial discovery.

At the exploration phase the State conducts a consistency concurrence review of exploration plans and accompanying environmental reports through the Bureau of Coastal Planning and Development (CPD), Division of Coastal Resources. Plans and reports are reviewed by:

Department of Environmental Protection

Division of Coastal Resources

Bureau of Coastal Planning and Development

Division of Fish, Game, and Wildlife

Division of Water Resources

Office of Historic and Cultural Resources

Bureau of Spill Control and Hazardous Substances

Department of Energy: for conformance to the State energy master plan

CPD asks for internal comments in 30 days and generally responds to USGS within 45 days. The shortest consistency review required three days and the longest, 2½ months. New Jersey reviews Mid-Atlantic plans; it is considered an "affected State" for North Atlantic drilling but is waiving its right to review North Atlantic plans.

The State has concluded that onshore and near shore impacts of OCS drilling are minimal. The CPD staff biologist has participated on the Mid-Atlantic Task Force and found the Task Force to be a helpful mechanism for sharing knowledge and State concerns. Should a commercial discovery affecting New Jersey be made, the State anticipates a much more structured State response pattern than has been found necessary for exploration activities.

CHAPTER III-7
NORTH CAROLINA

The Coastal Resources Commission (Coastal Commission) was established as a regional resource management body by the Coastal Area Management Act of 1974. The Commission operates within the Department of Natural Resources and Community Development, the lead agency for North Carolina's coastal management plan. North Carolina's coastal management plan was Federally approved on September 1, 1978.

The main purpose of the North Carolina Coastal Area Management Act is to protect and maintain the environment of the coastal zone. Specifically, the Act is intended to:

- protect, preserve, and conserve natural resources including but not limited to water use, scenic vistas, and fish and wildlife
- facilitate the economic development of the coastal area, including but not limited to construction, location, and design of industries, port facilities, commercial establishments and development
- improve recreation and tourist facilities and parklands
- develop transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other facilities
- preserve and enhance the historic, cultural, and scientific aspects of the coastal area.

North Carolina is actively interested in OCS activities. The Governor's office comments on all Federal activities related to OCS leasing and environmental studies decisions, and the state considers this role of the Governor of central importance as a tool for coordinated Federal-state planning.

North Carolina emphasizes the Governor's role because the State's coastal management plan was developed prior to any focused State interest on proposed OCS activities, and

thus the coastal plan is limited in the extent to which it addresses OCS issues. The Office of Coastal Management (OCM) in the Department of Natural Resources and Community Development serves as the designated agency for consistency determination, but OCS related consistency determinations are not conducted through the OCM, but rather through a special OCS Task Force.

The OCS Task Force operates within the Department of Administration, Office of Marine Affairs, as an interagency coordinating body. Its membership includes:

State Representatives

- Office of Marine Affairs (Coordinator)
- Office of Coastal Management
- State Geologist
- Energy Division
- Ports Authority
- Department of Transportation
- Division of Marine Fisheries
- Division of Land Resources
- Division of Environmental Management
- Industrial Development Division

Local Representatives

- League of Municipalities
- Association of County Commissioners

The Task Force interacts at several governmental levels and in close cooperation with the OCM. Regarding exploration activities, it works with the Governor to develop his response to the review of exploration plans. It also recommends to the OCM the State's proposed response for consistency certification concurrence for exploration plans, and works closely with OCM to develop the official consistency response, which is submitted to USGS by the Secretary of Natural Resources and Community Development. Consistency review can only be conducted within guidelines established in the coastal plan; the Governor's comments are not constrained by the plan and thus for North Carolina are a more useful avenue for expressing State concerns specifically related to OCS activity.

Effective comments by the Governor must be submitted within 15 days of USGS distribution of exploration plans for review. This time schedule is met with a notification that the Governor's comments are not to be taken as a consistency concurrence. Consistency concurrence is generally submitted in 30-45 days.

North Carolina is considered an affected State for all OCS exploration between New Jersey and Florida. The OCM reviews exploration plans for all drilling proposed within those limits and determines whether the specific drilling activities affect the State. One consistency concurrence that took the full six months was for a well proposed for the Baltimore Canyon; the State's concern related to a problem with potential impacts on sea scallop beds.

To date there has not been any exploratory drilling directly off the North Carolina shore, and no onshore support facilities have been needed in the State. Thus direct State permitting involvement has been limited to the review mechanisms described above.

CHAPTER III-8

TEXAS

The State of Texas has been the beneficiary of successful offshore oil and gas production for many years. The State is well accustomed to the nature of activities associated with oil and gas exploration, development and production and the State's shoreline and support facilities are well-developed to accommodate industry drilling activity. Due to the ability of Texas to easily accommodate industry's relatively low level of activity during exploration of Federal OCS tracts, the Governor's Office does not at this time feel that it is necessary for the State to formally review or comment upon the Federal permits related to exploration activity. Thus, the State does not currently review the Federal permits including exploration plans, NPPES permits, Corps of Engineers' permits, or the Applications for Permit to Drill. The State does feel strongly, however, about the importance of State interaction in pipeline planning and other facility siting associated with development/production activity on the OCS. Therefore, the State does participate in the review of Federal permits and also issues State permits for industry activities subsequent to exploration in Federal OCS areas.

Texas is in the process of developing the Texas Coastal Program for Federal CZM approval, though approval will probably not be given until late 1981 or early 1982. The Texas Energy and National Resources Advisory Council is currently handling program development and according to personnel the State's role in consistency determination of exploration-related permits is not yet defined under the proposed program. Thus, no conclusions can be made at this time regarding changes that the State might make in its review process when the CZM program is formally in place. Indications are that the State will, however, continue to play a minimal role in regulation of industry's exploration of Federal OCS tracts.