DECISION AND FINDINGS
IN THE
CONSISTENCY APPEAL OF
CHEVRON U.S.A., INC.
FROM AN OBJECTION BY THE
STATE OF FLORIDA
January 8, 1993

## Synopsis of Decision

Chevron U.S.A., Inc. and others acquired an interest in Destin Dome Block 97 in 1985 as a result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 94. Chevron is the operator of the lease, which is located approximately 29 miles from Perdido Key, Florida, and about 75 miles south-southeast of Mobile, Alabama, on the Gulf of Mexico OCS. Chevron submitted a Plan of Exploration (POE) for Block 97 to the Minerals Management Service of the Department of the Interior on November 13, 1990. In its POE, Chevron proposes to drill, using water-based drilling fluids and a jack-up drilling unit, over a 210-day period beginning whenever regulatory approval is obtained.

On February 26, 1991, Florida objected to Chevron's consistency certification for the proposed POE. Florida found that the proposed project was inconsistent with the state's policies of protecting its marine and coastal resources.

Under § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA) and the implementing regulations, the state's consistency objection precludes any federal agency from issuing any license or permit necessary for Chevron's proposed activity to proceed, unless the Secretary of Commerce (Secretary) finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or is otherwise necessary in the interest of national security (Ground II).

In accordance with CZMA § 307(c)(3)(B) and 15 C.F.R. Part 930, Subpart H, Chevron filed with the Secretary an appeal from the state's objection to Chevron's consistency certification for its proposed project. Chevron appealed pursuant to both Ground I and Ground II. Additionally, three threshold issues were raised during the course of the appeal.

Upon consideration of the information submitted by Chevron, the state, the public, and several federal agencies, the Secretary made the following findings on the threshold issues:

> First, Chevron argued that the Secretary must set aside Florida's objection because that objection was not consistent with the state's previous decisions on oil and gas activities and is therefore arbitrary. The Secretary declined to set aside Florida's objection, finding that the validity or appropriateness of the state's consistency determination was not an issue properly considered in this appeal.
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> Second, Chevron argued that the Secretary must set aside Florida's objection because in that objection, Florida cited a policy that was not a part of its federally approved coastal management program. Specifically, Chevron argued that Florida based its objection on a new policy of opposing oil and gas drilling within 100 miles of the coast. The

Secretary declined to set aside Florida's objection. The Secretary found it unnecessary to consider the new policy referred to by Chevron, finding that Florida based its objection on elements of its approved coastal management program.

Third, Florida argued that Chevron bears the burden of establishing by clear and convincing evidence that the grounds for an override of the state's consistency objection have been met. The Secretary declined to accept this standard, finding that the degree of evidence Chevron must present to meet its burden of proof is a preponderance of the evidence, which is the traditional standard of proof in administrative proceedings.

The findings on Ground I and II are:

**Ground I**

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

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

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

4. There is no reasonable alternative available to Chevron that would allow its proposed project to be carried out in a manner consistent with Florida's coastal management program.

**Ground II**

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

**Conclusion**

Because Chevron's proposed project has met the requirements of Ground I, the proposed project may be permitted by federal agencies.

## LIST OF ABBREVIATIONS AND DEFINED TERMS

AEA - Area-Wide Environmental Assessment
CAA - Clean Air Act
CZMA - Coastal Zone Management Act
EPA - Environmental Protection Agency
DOE - Department of Energy
DOI - Department of the Interior
FWS - Fish and Wildlife Service
MMS - Minerals Management Service
NAAQS - National Ambient Air Quality Standards
NES - National Energy Strategy
NMFS - National Marine Fisheries Service
NOAA - National Oceanic and Atmospheric Administration
NPDES - National Pollutant Discharge Elimination System
NRC - National Research Council
OCS - Outer Continental Shelf
POE - Plan of Exploration
SEA - Site-Specific Environmental Assessment
State - State of Florida

## DECISION

### I. Factual Background

In December, 1985, Chevron U.S.A., Inc., Conoco, Inc., and Pennzoil Exploration & Production Company acquired an interest in Destin Dome Block 97 as the result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 94. The project is a joint venture, with Chevron U.S.A. Inc. (Chevron) as the operator of the lease and Conoco Inc., Pennzoil Exploration & Production Company, and Mobil Oil Exploration & Producing Southeast Inc. as partial owners.[1] The lease is located approximately 29 miles from Perdido Key, Florida, and about 75 miles south-southeast of Mobile, Alabama, on the Gulf of Mexico OCS. The lease was scheduled to expire on February 28, 1991. On February 27, however, the Department of the Interior's Minerals Management Service (MMS) granted a suspension of operations due to the lack of consistency certification concurrence by the State of Florida. Chevron's Final Brief in Support of a Secretarial Override (Chevron's Final Brief), February 17, 1992; Letter from J. Rogers Pearcy, Regional Director, Minerals Management Service, Gulf of Mexico OCS Region, to Mary Gray Holt, Office of Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (MMS Letter/Enclosure), November 1, 1991.

Chevron submitted a Plan of Exploration (POE) for Block 97 to MMS on November 13, 1990. The State of Florida received copies of the POE on November 30, 1990. The POE proposes the drilling of an exploratory well to assess natural gas reserves in the Norphlet Geologic Trend. Chevron proposes to conduct its drilling, using water-based drilling fluids and a jack-up drilling unit, over a 210-day period beginning whenever regulatory approval is obtained. The well will be drilled, evaluated, and either temporarily or permanently abandoned in accordance with MMS regulations. During the exploratory drilling, Chevron will maintain an onshore support facility in Theodore, Alabama. Chevron's Final Brief at 1; MMS Letter/Enclosure at 3.

According to MMS, the leased block has the potential to contain 0.5 trillion cubic feet (tcf) of natural gas. There are no other exploratory drilling operations ongoing at this time in the area, although some are planned and others have been completed.[2]

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[1] Mobil purchased a one-half interest in Pennzoil's one-third share. Chevron's Statement in Support of a Secretarial Override (Chevron's Opening Brief) at 1.

[2] Chevron states that Mobil is expected to begin drilling on Pensacola Block 933 "in the next few months." Chevron Opening Brief at 3. On April 6, 1992, however, Florida objected to Mobil's consistency certification for the Supplemental Plan of Exploration for Pensacola Area Blocks 845, 846, 889, 890, 933, and 934. On April 6, 1992, Mobil filed an appeal with the Secretary pursuant to § 307(c)(3)(B) of the Coastal Zone Management Act, as amended (CZMA).

Chevron, Conoco, and Texaco have drilled a total of four exploratory wells in the area, in 1988 and 1989. These wells have been temporarily abandoned. Two additional exploratory wells were plugged and abandoned in 1987 and 1989, respectively. MMS Letter/Enclosure at 3.

On December 27, 1990, MMS approved Chevron's POE. On February 26, 1991, Florida objected to Chevron's consistency certification for the proposed POE. Florida found that the proposed project was inconsistent with the state's policies of protecting its marine and coastal resources. Florida's Objection to Chevron's Consistency Certification (Florida's Objection) at 1.

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

## II. Appeal to the Secretary

On March 27, 1991, Chevron filed a Notice of Appeal with the Secretary pursuant to § 307(c)(3)(B) of the CZMA and 15 C.F.R. Part 930, Subpart H. In its appeal, Chevron asks that the Secretary either dismiss Florida's finding of inconsistency on procedural grounds, or find Chevron's proposed project consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. Chevron's Statement in Support of a Secretarial Override (Chevron's Opening Brief) at 12.

Florida filed a response brief on June 20, 1991. On June 27, 1991, Florida requested a public hearing. Letter from Gregory C. Smith, Assistant General Counsel, Florida Governor's Office, to Gray Castle, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce. In a letter dated July 5, 1991, Chevron stated its opposition to Florida's request on the grounds that, inter alia, no information would be submitted at a public hearing that could not be submitted in writing during the comment process. Letter from D.L. Duplantier, Chevron U.S.A., to Gray Castle.

On October 7, 1991, the Department of Commerce (Department) determined that a public hearing was not necessary to fully develop the record in this appeal, and denied the request. Letters from Thomas Campbell, General Counsel, NOAA, to David Duplantier, Chevron U.S.A., and Gregory C. Smith, Assistant General Counsel, Florida Governor's Office.

The Department published a notice of appeal and request for comments in the Federal Register, 56 Fed. Reg. 50099 (October 3, 1991). The Department also published requests for comments in three newspapers: the Pensacola News Journal (October 9, 10, and 11, 1991); the Mobile Press Register (October 16, 17 and 18, 1991); and the Tallahassee Democrat (October 21, 22 and 23, 1991). The Department received several public comments, which have been incorporated into the record in this appeal. These comments have been considered only to the extent they are relevant to the statutory grounds for deciding consistency appeals.

The Department solicited comments from other federal government agencies on whether the proposed project is consistent with the objectives of the CZMA or necessary in the interest of national security. Requests for comments were sent to the Departments of Treasury, Transportation, Interior, Energy, State and Defense. The Department also sent requests for comments to the Environmental Protection Agency, the Coast Guard, the Federal Energy Regulatory Commission, the Army Corps of Engineers, the Department of the Interior's Minerals Management Service, National Park Service, and Fish and Wildlife Service, the National Security Council, and the National Marine Fisheries Service. The Department received responses from all except the Fish and Wildlife Service and the National Park Service. All responses have been included in the record on this appeal.

Chevron and Florida filed final briefs on February 17, 1992, and February 18, 1992, respectively.

## III. Threshold Issues

Chevron raises two threshold issues in its opening brief. First, Chevron claims that I must set aside Florida's objection because that objection is inconsistent with the state's past consistency decisions. Because the state gave no explanation for its departure from past practice, Chevron argues, the state acted in an arbitrary manner and its objection must be set aside. Second, Chevron argues that I must set aside Florida's objection because in that objection, Florida cited a policy that is not part of Florida's federally approved coastal management program. I will address these issues below. In addition, I will address the issue of Chevron's burden of proof, which was raised by Florida.

### A. Inconsistency with Previous State Decisions

Chevron argues that I must set aside Florida's objection because that objection is not consistent with the state's previous oil and gas decisions. Chevron asserts that Florida's determination "must be consistent with prior findings or Florida must give a reasoned explanation for any departure from established precedent." Chevron's Opening Brief at 4. Chevron claims that

because Florida found earlier oil and gas projects consistent with its coastal management program, and did not provide any justification for its change in position with regard to Chevron's proposed project, I must set aside the state's determination as arbitrary.

I find that Chevron's argument is without merit. As in previous decisions, I do not consider in this appeal whether Florida was correct in its determination that the proposed activity is inconsistent with the state's coastal management program, nor do I consider whether the state's objection is correct as a matter of other state law. Rather, once I have found that the state's objection complies with the CZMA and its implementing regulations, I consider only whether Chevron's proposed project, notwithstanding Florida's objection, is either consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. The consistency appeals process, therefore, is not the proper forum for an argument on the validity or appropriateness of Florida's consistency determination.

B. Basis for State's Objection

Chevron next argues that I should set aside Florida's objection because in that objection, Florida cited a policy that is not part of its federally approved coastal management program. Specifically, Chevron alleges that in its objection, Florida relied on a new policy of opposing all oil and gas drilling within 100 miles of the coast. Chevron argues that because this policy is not a part of Florida's approved coastal management program, the state has failed to meet the regulatory requirement that it identify elements of its management program with which Chevron's proposed project will be inconsistent.

Florida responds that, contrary to Chevron's assertion, it based its objection on provisions of its federally approved coastal management program and that it articulated these in its objection. Florida states that its objection to Chevron's proposed activity is based on the state's laws protecting its coastal waters, wetlands, and fisheries resources.

Section 307(c)(3)(B) of the CZMA provides in part:

> After the management program of any coastal state has been approved by the Secretary under section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act * * * and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use or

natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program.

The Department of Commerce's regulations upon which Florida's objection is based, at 15 C.F.R. § 930.64(b), provide that "[s]tate agency objections must describe...how the proposed activity is inconsistent with specific elements of the management program." See 15 C.F.R. § 930.79(c). In past consistency decisions, the Secretary has emphasized that a state must clearly base its objection on provisions of its federally approved coastal management program. See Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990.

In its objection to Chevron's proposed project, Florida stated, "[s]pecifically, we find that the POE and supporting information are inconsistent with the provisions of Chapters 253, 370, 376, and 403, Florida Statutes. Specific sections of these statutes are discussed as follows." Florida's Objection at 2. The state then proceeded to explain how specific statutory provisions charge various state agencies with protection of coastal resources and how Chevron's proposed project was inconsistent with these provisions.

Florida noted that Fla. Stat. §§ 403.021(1), (2), (5) and (6), 403.061, 403.062, 403.161, and 403.918 (1987), charge the Florida Department of Environmental Regulation with prevention of pollution of the state's waters and wetlands. The statutory scheme prohibits pollution of state waters and provides penalties for violations. Florida argued that the possibility of an oil spill rendered Chevron's proposed activity inconsistent with these program policies.

I find that Florida based its objection on specific elements of the state's coastal management program. Because I find that Florida's objection satisfies the statutory requirements, I need not consider issues raised by Florida's statements regarding its 100-mile "buffer zone" policy.

C. Burden of Proof

Florida contends that Chevron bears the burden of "establishing by clear and convincing evidence" that the grounds for an

override of the state's consistency objection are met.[3] Florida's Final Brief at 10. The degree of evidence that an appellant must produce to meet its burden of proof was discussed for the first time in the Decision in the Consistency Appeal of Union Exploration Partners, LTD. In that decision, I found that the degree of evidence which must present is a preponderance of the evidence - the traditional standard of proof for civil and administrative proceedings. In order to rule for appellant, I must find preponderance of the evidence that the grounds for an override of the state's objection have been met.

## IV. Grounds for Reviewing an Appeal

The Department's implementing regulations at 15 C.F.R. § 930.120 provide that the Secretary may find "that a Federal license or permit activity, including those described in detail in an OCS plan . . . which is inconsistent with a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act [Ground I], or is necessary in the interest of national security [Ground II]." See also 15 C.F.R. § 930.130(a). Chevron has pleaded both grounds. Chevron's Opening Brief at 2.

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

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

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

### 1. Element One

The first of the four elements is satisfied if the Secretary finds that "[t]he activity furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the [CZMA]." 15 C.F.R. § 930.121(a).

The CZMA identifies a number of objectives and purposes including

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

[3] Chevron does not dispute that it bears the burden of proof in this appeal in accordance with the Secretary's decision in the Consistency Appeal of the Korea Drilling Company, LTD., (Korea Drilling Decision), January 19, 1989 at 22.

- development of the resources of the coastal zone (sections 302(a), (b), and (i) and 303(1);
- encouragement and assistance to the States to exercise their full authority over the lands and waters in the coastal zone, giving consideration to the need to protect as well as to develop coastal resources (sections 302(h) and (i) and 303(2)).

Congress has broadly defined the national interest in coastal zone management to include both protection and development of coastal resources. In previous appeals involving oil and gas exploration or development, there has been a finding that OCS exploration, development and production activities in the coastal zone are encompassed by the objectives and purposes of the CZMA. See, e.g., Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989, at 6; Amoco Decision at 16.

Florida urges the Secretary to reconsider the "near-automatic" finding that OCS oil and gas activities satisfy the first element. Florida argues that the mere articulation, in sections 302 and 303 of the CZMA, of oil and gas activity as one use of the coastal zone does not mean that activity is an objective or purpose of the CZMA. Florida claims that the objectives and purposes of sections 302 and 303 are "not the competing uses specified therein." Rather, Florida argues, the intent of the CZMA is to "reach beyond the individual uses and to provide a protective mechanism for evaluating those uses competing for, and affecting, the costal zone." Florida's Opening Brief at 20. Florida argues that the first element can only be satisfied by examining whether oil and gas activity will be performed in a manner protective of the coastal zone. Id. at 19-22 (emphasis in the original).

Florida's argument does not persuade me to interpret the first element differently now than in the past. The regulations, at 15 C.F.R. § 930.121, define the factors in CZMA sections 302 and 303, including the development of the natural resources of the coastal zone, as "objectives or purposes" of the Act. The argument that the first element can be satisfied only by examining whether oil and gas activity is performed in a manner protective of the coastal zone has been addressed in prior cases. See Amoco Decision at 15-16; Texaco Decision at 5-6. Implicit in Florida's position is the argument that the impacts of the proposed activity should be considered in determining whether it furthers an objective or purpose of the CZMA. In previous decisions, the Secretary has found that "[a]n assessment of the impacts of such proposed activities is appropriately considered under element two infra." Amoco Decision at 16. As in these previous decisions, I find that the impacts of Chevron's proposed activity should be considered under the second element and not the first element.

Chevron's proposed POE involves the search for gas on the OCS off the Florida coast. Exploration, development and production of offshore oil and gas resources are among the objectives of the CZMA. Because the record demonstrates that Chevron's proposed activity falls within and furthers one of the objectives of sections 302 and 303 of the CZMA, I find that Chevron's proposed POE satisfies the first element of Ground I.

2. Element Two

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

To make this finding, the Secretary must identify the adverse effects of the activity on any land or water use or natural resource of the coastal zone and then determine whether those effects are substantial enough to outweigh the activity's contribution to the national interest. In evaluating the adverse effects of the project, I must consider the adverse effects of the project on its own and in combination with other past, present, or reasonably foreseeable future activities affecting the coastal zone. Adverse effects on the natural resources of the coastal zone may result from the normal conduct of an activity either by itself or in combination with other activities affecting the coastal zone. They may also arise from an unplanned or accidental event such as an oil spill or a vessel collision.

Adverse Effects from Routine Conduct

1 Marine Environment

I turn first to claims made by Chevron in its Environmental Report, which described the marine environment in the vicinity of Block 97 and addressed potential adverse effects from routine exploratory drilling operations on that environment. The report acknowledged that liquid and solid wastes from the activities, including water-based drilling muds and cuttings, would temporarily degrade water quality in the immediate vicinity of the lease area. The report noted that all discharges must adhere to the standards imposed by the EPA National Pollutant Discharge Elimination System (NPDES) permit. The report stated that water quality was expected to quickly return to normal in the area after the drilling operations have been completed. Environmental Report, Exhibit A to Chevron's Statement in Support of a Secretarial Override (Chevron Exhibit A) at 133.

Chevron's Environmental Report noted that while the lease area

does not occupy a position within any known breeding habitat, nursery area, or migratory route, some endangered or threatened species are found in the lease area. Among these are five species of marine turtle (green, hawksbill, Atlantic ridley, leatherback, and loggerhead), although only one (the loggerhead) is found there frequently. Whales (fin, humpback, and sperm) and dolphins also pass through the lease area. Manatees usually move seasonally inshore of the lease area. Chevron Exhibit A at 86.

The Environmental Report observed that possible effects of reduced water clarity on planktonic species include reduced photosynthesis, clogging or interference with filter feeding, and interference with visual predation. According to the Environmental Report, these effects would be local (within the discharge plume) and of short duration (minutes to hours) and are not expected to result in any significant impacts on planktonic or other pelagic communities. Chevron Exhibit A at 135. The report stated that physical presence of the drilling unit and the disposal of drilling muds and cuttings would have a localized and temporary effect on nekton[4]. No definitive bioassays have been conducted with drilling muds using nektonic species found in the lease area. Chevron's Plan of Exploration calls for the use of water-based drilling muds, which are less toxic than oil-based muds.[5] Many fish are highly mobile and would avoid localized areas of disturbance. The report noted that any degradation of water quality could cause fish to avoid the area, but asserted that such effects would be temporary. Id. at 135-136.

The report noted that several aspects of routine operations, including drilling unit installation and removal, presence of a submerged structure, and drilling mud and cutting discharges, could result in benthic impacts. Placement of the drilling unit might kill or damage benthic organisms. The report asserted that disturbed areas would eventually be colonized from surrounding areas once the drilling unit is removed. Chevron Exhibit A at 135-136. The report acknowledged that due to the lack of natural hard-bottom relief in the area, fish and sea turtles might be attracted to the drilling unit because it would provide shelter and some food in the form of fouling biota. According to the Environmental Report, this is not expected to result in adverse effects, especially considering the temporary nature of the proposed drilling activity. Id.

The Site-Specific Environmental Assessment (SEA) prepared by MMS for Block 97 also discussed some of the impacts that could occur

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[4] Nekton include fish, marine mammals, turtles, cephalopod molluscs, and certain swimming crustaceans such as shrimp and crabs. Final Area-Wide Environmental Assessment, Minerals Management Service of the Department of the Interior, at 17.

[5] Plan of Exploration, Gulf of Mexico: Offshore Florida Destin Dome Area Block 97, October 29, 1990, at 4.

as a result of Chevron's exploratory drilling. The SEA estimated that the total amount of drilling cuttings discharged during the exploration activity would be approximately 3,840 barrels of solids. Liquid wastes are expected to include 50,000 barrels of drilling muds and 262,500 gallons each of sanitary wastes and domestic wastes.

The SEA also noted:

> Implementation of the proposed activity would alter the water quality by resuspension of bottom sediments during placement of the drilling rig and the discharge of drill cuttings and muds and other liquid wastes. Rig installation has the potential to disperse pollutants entrapped in the bottom sediments into the water column and create a turbidity plume. These activities would be of short duration and any pollutants would be rapidly dispersed over the block under consideration. At most depths typical of the continental shelf the majority of discharged fluids and cuttings are initially deposited on the seabed within 1,000 m (3,281 ft) of the point of discharge. This material may persist as initially deposited or may undergo rapid or prolonged dispersion, depending on the energy of the bottom boundary layer.

SEA at 11, quoting National Research Council 1983 Report: Drilling Discharges in the Marine Environment (1983 NRC Report).

The SEA further stated that because water quality is expected to return to normal soon after drilling operations are completed, no significant impacts on water quality were expected. SEA at 11.

Chevron's Environmental Report stated that the live bottom survey indicated no live bottom within the Block 97 area. The impact of the discharges on the soft bottom biota in Block 97 is expected to be slight, according to the report, although some burial of macroinfauna and macroepifauna may occur. Chevron Exhibit A at 139.

Florida argues that just because no live bottom was found in the immediate vicinity of the proposed drilling site does not mean there will not be damage to biological resources found there. Florida states that "[m]any living organisms not included within the definition of live bottom could be adversely affected and play just as important a role in this analysis as live bottom species." Florida's Final Brief at 24. Florida points out that Chevron's Environmental Report refers to man-made debris scattered throughout Block 97, which has attracted many organisms. Florida notes 88 species were collected in dredge samples at the site. Id. at 25; Chevron Exhibit A at 58. Florida observes that the algae samples collected "serve as

habitat and food source for many species. Platform shading and discharge of muds and cuttings as discussed above could prevent adequate amounts of light from reaching these species." Florida's Final Brief at 27.

Florida then argues that there is simply not enough information available to adequately assess adverse impacts from Chevron's activities, especially when considered in light of the cumulative impacts of potential future development and production that Florida urges I must consider. Florida's Final Brief at 27.

In evaluating the information in the record, I will necessarily consider the adequacy of the information in determining whether Chevron has satisfied the grounds for a Secretarial override. The adequacy of information will depend to some extent on the likelihood of an impact as well as on the potential extent or severity of an impact. Generally, less information is necessary where the likelihood or extent of the impacts may be low, and more information is necessary where the likelihood or extent of the impacts may be high. For example, where unique habitats or endangered or threatened species exist, more information may be required.

I now turn to comments received from other agencies regarding the adverse effects that might result from the routine conduct of Chevron's proposed activity. The Minerals Management Service of the U.S. Department of the Interior (MMS) offered comments based primarily on its Area-Wide and Site-Specific Environmental Assessments of Block 97 and its vicinity. MMS asserted that its assessments documented that Chevron's POE would not significantly affect offshore or coastal resources. Letter and Enclosure from J. Rogers Pearcy, Regional Director, Minerals Management Service of the Department of the Interior, to Mary Gray Holt, Office of Assistant General Counsel for Ocean Services, NOAA, November 1, 1991 (MMS Letter/Enclosure).

MMS asserted that biological impacts would be minor in the vicinity of the well site. MMS noted that primary impacts to benthic communities from drilling activities result from anchoring activities and discharge of drilling muds and cuttings. MMS observed that Chevron's POE proposes the use of a jack-up drilling rig, which does not involve anchors. MMS stated that for purposes of discussion, it would assume ("very conservatively") that actual suffocation of any existing fauna and flora would be concentrated within a 200-meter radius. Additionally, a thin veneer of sedimentation would be expected to temporarily modify coarse sediments out to a distance of perhaps 300-400 meters. Other normal operations, such as deck discharges, wastes, rig emplacement, air emissions, noise, and transportation of materials and personnel, could be expected to have insignificant impacts, according to MMS. MMS Letter/Enclosure at 11.

As for discharges of drilling muds, MMS asserted that the distribution of toxicities associated with drilling muds and cuttings indicates that most water-based drilling fluids are relatively nontoxic. MMS attributed this conclusion to a comprehensive study of the literature on the fate and effects of drilling fluids in the 1983 NRC Report. MMS Letter/Enclosure at 12. MMS also referred to the findings of three other studies to support its conclusion that impacts from discharges of drilling muds or cuttings would be minor. MMS observed that turbidity plumes commonly occur as a result of exploratory activities in OCS waters. MMS noted that "[i]t has been suggested that these plumes will attenuate light to a deleterious degree." Id. MMS asserted that the effect from turbidity plumes "is likely to mimic atmospheric clouds which cause a reduction of total irradiance during the winter." Id.

MMS further stated that potential impacts on communities outside the immediate drilling area, including any live bottoms or critical fisheries, would be so subtle as to be unmeasurable by any standard. MMS Letter/Enclosure at 12.

Neither of the two agencies responsible for the biological resources discussed above, the Fish and Wildlife Service and the National Marine Fisheries Service, expressed concern about the potential adverse effects of Chevron's proposed project. The Fish and Wildlife Service, as previously noted, did not comment on the appeal, and the National Marine Fisheries Service (NMFS) stated that it did not expect any significant adverse effects. The NMFS asserted that, with regard to effects on fishery habitat, "[o]ur review of the information provided by Chevron revealed that there was an absence of live bottom and hard bottom habitat at the site. Based on this, we did not expect the occurrence of any significant adverse impacts on the biological resources for which NMFS is responsible." Memorandum from William W. Fox, Jr., Assistant Administrator for Fisheries, NMFS, to Mary G. Holt, Attorney-Adviser, NOAA, November 25, 1991.

The only other agency to even address the issue of adverse effects from Chevron's proposed project was the Environmental Protection Agency (EPA). EPA stated: "The available information does not indicate that adverse effects are likely to occur. However, EPA continues to support the need for site-specific monitoring and data gathering when oil and gas activities are conducted." Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, January 16, 1992.

The evidence in the record supports a finding that the routine conduct of Chevron's temporary drilling of a single exploratory well is likely to cause relatively minor adverse effects on this particular marine environment, and that these effects will be

present only in the immediate vicinity of the well site and only during the drilling period. I find that routine conduct of Chevron's proposed activity will not cause significant adverse effects on marine resources. While any adverse effect on an endangered or threatened species would be significant, the likelihood of that occurring is low. In making this finding, I note that NMFS expressed no concerns about the effects of the proposed project on endangered or threatened species.

2) Commercial Fishing

Chevron's Environmental Report considered the potential impacts of the proposed activity on commercial fishing activities. The report found that the direct effects on commercial fishing will be the removal of a limited area of sea floor from use and a temporary degradation in water quality in the immediate area of the drilling site. The degradation in water quality, caused by discharge of drilling muds, could cause some species to avoid the immediate area of the drilling site. The report concluded that this effect would be temporary and would not be likely to affect the fishing potential of the area as a whole. The report noted that the degradation in water quality could also adversely affect, in the immediate area of the drilling site, some larvae and eggs of certain species important to commercial and sport fishermen. The report concluded that such effects would be temporary and are not expected to exert a measurable influence on any fishery. Chevron Exhibit A at 143-144.

Florida notes that Chevron's Photodocumentation Survey accompanying its Environmental Report documented that many species of fish had been observed in Block 97. Florida's Final Brief at 25; Photodocumentation Survey of Destin Dome Area Blocks 96 and 97. Many of these species, Florida states, are important for commercial and recreational purposes. Florida asserts, as noted above, that the 13 species of algae collected from Block 97 serves as food and habitat for many species, and that platform shading and discharge of muds and cuttings could prevent adequate amounts of light from reaching these species.

As noted above, the National Marine Fisheries Service (NMFS), which has jurisdiction over fishery resources in federal waters, stated in its comments that it did not expect there to be any significant adverse impacts on fishery resources caused by Chevron's proposed project. Memorandum from William W. Fox, Jr., Assistant Administrator for Fisheries, National Marine Fisheries Service, to Mary G. Holt, Attorney-Adviser, NOAA, November 25, 1991.

While Chevron's exploratory drilling activity in Block 97 may cause minor, temporary displacement of some commercial fishing activities, there is nothing in the record to indicate that this displacement would cause significant disruption. I noted above

that NMFS, the federal agency charged with responsibility for preserving the fishery resources of the area, did not foresee any significant adverse effects on commercial fishing as a result of Chevron's proposed project. Based on my review of the record, I find that Chevron's proposed exploratory drilling is not likely to cause any significant adverse effects on commercial fishing in the coastal zone.

Adverse Effects from Unplanned Events

1) Oil Spills

(a) Likelihood of Oil Spill and Land Contact

An oil spill during exploratory drilling might occur either as a result of a blowout or from an accident during routine operations. Most oil spills occur as accidental discharges during normal operations, and most of these accidental discharges involve the release of less than 50 barrels. Final Area-Wide Environmental Assessment, Minerals Management Service of the Department of the Interior (AEA), at 52. Decisions in previous consistency appeals involving exploratory oil and gas drilling have noted that the likelihood of a blowout is extremely low. See, e.g., Texaco Decision at 17-18; Amoco Decision at 30. Although there have been some blowouts from exploratory drilling on the United States OCS, all involved gas and no oil was released. Chevron Exhibit A at 122. As Chevron's Environmental Report points out, however, even though the historic probability of a blowout is low, and this drilling prospect is expected to yield dry natural gas rather than oil, a slight possibility of an oil spill still exists.

The severity of oil spill effects on the environment vary greatly, depending on the conditions of the spill and the nature of the environment. The type and amount of oil involved, the geographic location, seasonal timing, and the adequacy of the response are among the factors influencing the severity of environmental effects. Chevron's Environmental Report asserts that spilled oil that is not recovered would eventually be dispersed by currents, weathered by evaporation and dissolution, and decomposed by microbial action. Id. at 123. Most of the acutely toxic aromatic fractions within a crude oil spill could be expected to evaporate within three days. If a mousse were to form, however, it could provide a mechanism for delivery of toxic components to locations quite distant from the site of the spill. Id. The report further noted that Block 97 is approximately 25 miles from shore and oil spilled in any kind of accident could reach the shore in a relatively short period. In worst case conditions, spilled oil could blow directly onto the shore without undergoing much detoxification through weathering processes. Id.

The AEA calculated the probability of an oil spill from Block 97 reaching land. According to this document, Block 97 falls within oil spill area 85. Impacts from an oil spill within this area could affect the coastal land segments extending from Hancock, Harrison and Jackson counties in Mississippi to Escambia and Santa Rosa counties in Florida. The Florida land segment that would be most vulnerable is the land segment including Escambia and Santa Rosa counties, with a 13 percent chance that oil would contact this segment within 10 days. The chance that an oil spill from Block 97 would contact any other Florida land segment within 10 days is less than 0.5 percent, according to the AEA.[6] AEA at 53-54.

(b) Containment

Decisions in previous appeals have held that because some risk of a spill during oil and gas operations always exists, it is appropriate to consider the measures that will be used to contain and clean up an oil spill if one should occur. Texaco Decision at 14.

Florida expresses concern about Chevron's ability to mechanically contain or chemically disperse an oil spill if one should occur. Florida notes that mechanical containment and chemical dispersion under the best of circumstances are only partially effective in containing or reducing the size of an oil slick. Florida's Objection at 2. Florida presents a report prepared for Congress on the Coast Guard's performance in the wake of the Exxon Valdez oil spill. That report stated that "current recovery technology could not have addressed an Exxon Valdez size spill... the best that can typically be expected after a major spill is to recover 10-15 percent of the oil." GAO Report entitled "Coast Guard: Adequacy of Preparation and Response to Exxon Valdez Oil Spill (Florida Exhibit L).

Chevron's Environmental Report noted that Chevron has developed a Gulf of Mexico Regional Oil Spill Contingency Plan which has been approved by MMS, and has submitted a Site-Specific Oil Spill Contingency Plan for Block 97. Chevron Exhibit A at 6. Any spill would be subjected to the containment and cleanup detailed in these plans. Chevron's Environmental Report acknowledges, however, that recent efforts to contain and clean up spilled oil have only been partially successful in open waters and coastal

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[6] The Site-Specific Environmental Assessment for Block 97 also purports to calculate the probability of an oil spill from Block 97 reaching land. The SEA notes that Block 97 falls within oil spill area 85 as defined by the AEA, but then proceeds to calculate probabilities based on a spill from oil spill area 94. According to that calculation, which Florida quoted in its Final Brief at p. 4, the coastal land segment including Escambia and Santa Rosa counties is still the most vulnerable Florida segment, with a 13 percent probability of being contacted by spilled oil, but other Florida counties (Okaloosa, Walton, and Bay) would be vulnerable as well. Based on my review of the AEA and its maps, I find that the SEA was correct to state that Block 97 falls within oil spill area 85, but was in error when it calculated probabilities based on a spill from oil spill area 94.

habitats. Id. at 132.

MMS commented that Chevron had, in its Site-Specific Oil Spill Contingency Plan for Block 97, provided for safeguards additional to those it had included in its regional Gulf of Mexico plan. For example, Chevron will maintain at the drill site a vessel outfitted with a "Fast Response Unit" and additional clean-up and containment equipment. MMS observed that this should ensure that response to an oil spill would happen "within minutes." MMS asserted that small spills that are detected promptly would be almost entirely removed from the water by this on-scene equipment if weather conditions are favorable. MMS Letter/Enclosure at 15.

(c) Effects on Natural Resources

When assessing the adverse effects of a proposed activity, I will consider the potential nature and magnitude of the effects as well as the likelihood that those effects will occur. Florida argues that severe harm could occur as a result of a major oil spill in the Florida Panhandle. Florida notes that the direct oiling of coastal habitats and the diverse plant and animal life found there would be disastrous, and that many questions remain about how oil would affect the viability of many species in the area. Florida's Opening Brief at 26.

Chevron's Environmental Report noted the existence of biologically sensitive marine areas on the Florida coast inshore from Block 97, including salt marshes, tidal flats, barrier beaches, submerged seagrass meadows, and open bay waters. These ecosystems contain nursery grounds for many economically important species and provide habitats, rookeries, nesting areas, and calving grounds for several endangered and threatened species, including the brown pelican, various marine turtles, and the West Indian manatee. Chevron Exhibit A at 37, 88.

The Environmental Report discussed potential adverse impacts of an oil spill. The report noted that the severity of impacts on the environment caused by oil spills varies greatly, depending on the conditions of the spill. Chevron's report discussed potential adverse effects of a major oil spill as follows:

> Air Quality - A burning oil spill would release pollution into the air.
>
> Water Quality - An oil spill would degrade water quality.
>
> Phytoplankton - An oil spill may cause phytoplankton biomass to decrease in vicinity of the spill. Decreased growth rates, altered photosynthetic capabilities, and loss of motility of phytoplankton may result from a spill.

Zooplankton - Numerous effects have been demonstrated. Communities can experience dramatic shifts in response to surprisingly low concentrations of oil in water. In a past oil spill, high mortalities were found in an apparent delayed response.

Benthos - In a past spill in waters of similar depth, oil reached bottom and totally eliminated, in one section, ampeliscid amphipod populations, which made up about 40 percent of the total benthic biomass. Inshore, massive mortalities of heart urchins, other amphipods, and razor clams were also noted. Sublethal effects were also documented. Oil was found in the tissues of a broad range of benthic organisms. Oil effects on benthic animals and plants are well documented. Effects on animals include alterations in feeding patterns, respiration rates, growth rates, reproduction, general behavior, detoxification mechanisms, and various metabolic processes.

Fish - Both benthic and pelagic species can be directly affected by petroleum through ingestion of oil or oiled prey, through uptake of dissolved petroleum compounds through the gills and other body epithelia, through effects on fish eggs and larval survival, or through changes in ecosystems that support fish.

Mammals - Oil can foul marine mammals, primarily whales. The report noted that the endangered or threatened species of whale that might be encountered near the lease area were fin, humpback, and sperm whales.

Turtles - As discussed previously, five endangered or threatened species of sea turtles are found in the waters in this area, although no critical habitat is known to exist in the lease area. Potential avenues of contamination are ingestion of oil, inhalation of volatile components, and adhesion to the skin and shell. Swimming sea turtles have not been shown to actively avoid oil spills. Possible effects of contamination include changes in diving behavior, inflammations of the skin and mucosal areas, lowered resistance to infection, impaired vision, loss of osmoregulatory function of salt glands, high white blood cell counts, and hypoglycemia. Turtle embryos might be adversely affected, depending on the timing of the exposure to oil. Oil contaminating turtle nesting beaches before the nesting season may have only minimal effects, while oil spilled directly on eggs is likely to increase mortality and affect hatchling morphology.

> Inshore and Onshore Effects - Oil fouling in any coastal or estuarine areas of the Gulf would directly or indirectly affect a variety of species, including threatened or endangered species or species important to commercial and sport fisheries. Endangered or threatened species that could be affected by coastal oiling include the five species of sea turtles previously mentioned, as well as osprey, brown pelican, and several species of beach mice. Direct effects would include fouling (primarily birds), oxygen deprivation (turtles), and toxicity from contact or from the ingestion of oil and contaminated food. These effects could cause weakening or greater susceptibility to predation and could be fatal.

Chevron Exhibit A at 122-130.

The discussion of potential effects of an oil spill in the AEA is similar to that in Chevron's Environmental Report. The AEA noted that oil reaching estuaries or marshes may have its most serious biological effects there. Some species of plants in the Gulf coastal salt marshes have been shown to withstand moderate single doses of hydrocarbons, but several spills in the same area would probably prove lethal. While the level of impacts to coastal ecosystems depends on the magnitude of the spill and on the frequency of spills contacting these habitats, a spill that contacts coastal wetlands could have severe and long-term impacts. AEA at 55.

In its comments, MMS acknowledged that a major oil spill could produce significant impacts on the environmental resources of the area. MMS asserted that factors such as the proposed project's distance from shore, the depth of the water, the presence of a response vessel, and the procedures outlined in the Oil Spill Contingency Plan would serve to effectively mitigate, to the extent feasible, the adverse effects of an oil spill in the unlikely event one should occur. MMS Letter/ Enclosure at 18.

Florida also raised concerns about the adverse effects of chemically dispersed oil on marine species, noting that the currently available information about such effects is limited. Florida's Objection at 3. In its comments, MMS cited studies that have investigated the effects of chemically dispersed oil and found its acute toxicity to be the same as that of untreated oil. MMS noted that chemical dispersants would be used only in situations in which they are deemed necessary for the safety of personnel and operations. MMS Letter/Enclosure at 18-19.

(d) Conclusion

The evidence in the record supports a finding that the likelihood

of a major oil spill from Chevron's proposed exploratory well is slight. The evidence does suggest that if a major oil spill were to occur, significant adverse effects could result. Because of the low probability of a major spill, however, the probability that those effects will occur at all is extremely low. While the likelihood of a small accidental spill during normal operations is somewhat greater, the magnitude of harm from such a spill would be much less. Based on the record, I find that it is unlikely that there will be significant adverse effects on the natural resources of the coastal zone caused by an oil spill from Chevron's proposed project.

2) Vessel Collisions

In its Environmental Report, Chevron considered the possibility that a vessel might collide with an endangered species. The report noted that populations in the vicinity of Block 97 that could conceivably be affected by collisions are the bottlenose and spotted dolphins and the West Indian manatee. The report further stated that the probability that the proposed activity will result in a collision with a dolphin is low. Collision incidents between boats and manatees are more common. The Environmental Report stated that although offshore support vessel routes do not approach known critical habitat areas for the manatee, migrations could bring manatees into the shore base area. The report also considered the possibility of a collision between a boat and a marine turtle. As noted above, five endangered or threatened species of sea turtles are found in the vicinity of the lease area. Adult turtles might be attracted to the drilling unit for feeding and resting, which would increase the probability of a collision. Chevron's report noted that MMS, in an earlier report, had judged the potential impacts of collisions on endangered species to be remote possibilities without major potential for direct effects on any single species. Chevron Exhibit A at 139-140.

Chevron's Environmental Report also considered the possibility that ships might collide with the drilling unit, causing adverse effects. The report noted that the presence of the drilling unit was not expected to interfere with ships using established fairways. The report acknowledged that at night and during rough weather or fog, it was possible that ships might collide with the drilling unit. Id. at 146. In its Site-Specific Environmental Assessment (SEA), MMS noted that Block 97 is located outside of major shipping and anchorage areas. SEA at 9.

The evidence in the record suggests that there is a risk of a vessel colliding with the drilling platform during exploratory activities. There is nothing to suggest, however, that this risk is significant. In addition, there is a risk that a vessel associated with the exploratory drilling might collide with an endangered or threatened species. MMS has found that this

possibility is small, without much potential for direct effects on any one species population. Once again, I note that NMFS expressed no concerns about the effects of any aspect of Chevron's proposed project on endangered or threatened species. These factors, combined with the temporary nature of the exploratory activities, lead me to find that it is unlikely that there will be any significant adverse effects on the natural resources of the coastal zone due to a vessel collision in conjunction with Chevron's proposed activities.

Cumulative Adverse Effects

Florida argues that to determine the cumulative effects of Chevron's proposed project, the Secretary must consider any activity in Block 97 that could reasonably be expected to follow Chevron's exploratory drilling in that block, including long-term exploration, development and production of natural gas should Chevron's exploratory drilling prove successful. Florida's Final Brief at 12-13.

Chevron, on the other hand, claims that the Secretary must consider only the cumulative effects caused by or contributed to by this single exploratory well. Chevron argues that because the proposed exploratory drilling will cause only temporary, insignificant effects, there will be no cumulative effects at all from the planned activity. Chevron's Opening Brief at 17.

In evaluating the adverse effects of the project on the natural resources of the coastal zone, I must consider the adverse effects of the project by itself and in combination with other past, present, and reasonably foreseeable activities affecting the coastal zone. See Chevron Decision at 24; Texaco Decision at 6; Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, (Gulf Oil Decision), December 23, 1985, at 8.

There is no specific information in the record on the foreseeability of future development and production on Block 97. Moreover, I decline to accept the premise of Florida's argument that Chevron's exploratory drilling will prove successful. I find that the relevant activity for my review is Chevron's proposed exploratory drilling in Block 97, and not the development and production activities that may follow should this particular exploratory venture prove successful. I will therefore consider the cumulative effects of activities occurring in the area during the drilling period. See Texaco Decision at 24.

Florida claims that Mobil has plans to drill, in the near future, six exploratory wells in the Pensacola map area. Id. at 16. Since the filing of the instant appeal, however, the state has objected to Mobil's Supplemental Plan of Exploration for these six blocks. Mobil has appealed the decision to the Secretary,

and that appeal is currently pending. Consequently, I am unable to find that Mobil's proposed exploratory activity constitutes a present or reasonably foreseeable future activity in the area of Chevron's proposed activity. Additionally, I have previously held that I will only consider the cumulative effects of temporary or short-term activities, the effects of which would not be present after the activity is completed, if that temporary activity is scheduled to occur at the same time the activity before me is to occur. Gulf Oil Decision at 8. There is nothing in the record to indicate that Mobil's proposed activity, even if it could reasonably be expected to occur, would occur at a time when its effects would cumulate with the adverse effects from Chevron's activity. Accordingly, I do not consider Mobil's proposed activity in my review of cumulative effects, and as there is no evidence of other projects that are reasonably foreseeable, I find that there are no cumulative effects of other projects to be reviewed.

Contribution to the National Interest

The national interests to be balanced in element two are limited to those recognized in or defined by the objectives of the CZMA. Korea Drilling Decision at 16. Because our national interests are not static, however, the Secretary has noted that there are several ways to determine the national interest in a proposed project, including seeking the views of federal agencies, examining federal laws and policy statements from the President and federal agencies, and reviewing plans, reports, and studies issued by federal agencies. Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Oil Decision), November 9, 1984, at 15.

Energy self-sufficiency through oil and gas production is a recognized goal of the CZMA and the Secretary has previously held that it furthers the national interest under this element. Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon Decision), June 14, 1989, at 11. The Department sought the views of a number of federal agencies concerning the national interest in Chevron's proposed project. Their responses indicate that energy self-sufficiency continues to be in the national interest. I summarize their comments below.

The Department of Energy (DOE) observed that the importance of exploring and producing domestic energy sources had been described in the Administration's National Energy Strategy (NES), released in February 1991. DOE stated that the NES "recognizes the benefits of natural gas, and urges that its use be substantially increased." Increased OCS production of natural gas, according to the NES, "would increase economic activity, provide specific regions with additional energy resources, reduce the rising level of imports, and provide billions of dollars to the Federal Treasury through bonuses, royalties, and rental

> [E]xploration for and domestic production of natural gas is an important element of our national energy policy. Amendments to the Clean Air Act require increased use of alternative fuels such as natural gas for motor vehicles. It is important that we reduce dependence on foreign sources for essential energy supplies. Denial of permits for exploration projects that may result in expanded domestic production of a clean burning fuel will adversely affect a national interest.

Letter from Joseph F. Canny, Deputy Assistant Secretary for Policy and International Affairs, Department of Transportation, to Mary Gray Holt, Office of the Assistant General Counsel for Ocean Services, NOAA, October 4, 1991.

The Department of Defense commented that "by placing emphasis on exploration where OCS natural gas may be abundant, Chevron's POE can play a role in reducing the Nation's dependence on oil and also help achieve national clean air objectives." Letter from Diane K. Morales, Deputy Assistant Secretary of Defense, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, October 31, 1991.

The State Department commented that "Chevron's exploration plan will advance the goals of the President's National Energy Strategy (NES) related to national energy security.* * * The gas supplies resulting from Chevron's efforts will increase our energy security by diversifying fuel sources and adding to the nation's stock of usable fuels." The Department observed that "[a]s the cleanest of the fossil fuels, natural gas furthers key U.S. environmental objectives, including those related to climate change." Letter from William C. Ramsay, Deputy Assistant Secretary for Energy, Resources and Food Policy, to Mary Gray Holt, Office of Assistant General Counsel for Ocean Services, NOAA, October 25, 1991.

The comments from federal agencies suggest that Chevron's proposed exploratory drilling will help further the national interest under element two. I find, therefore, that Chevron's proposed project will further the national interest in energy self-sufficiency through oil and gas production.

Balancing

In the discussion above, I found that the likely adverse effects of Chevron's proposed project will be temporary and will cease when the exploratory activities proposed by Chevron's POE are completed. I found that the likelihood of an oil spill from Chevron's proposed project is low and poses little threat to the marine resources in the area. I have determined that Chevron's proposed project will further the national interest in energy

self-sufficiency through oil and gas production. I conclude that the proposed project's adverse effects on the natural resources of the coastal zone, when performed separately or in conjunction with other activities, do not outweigh the proposed project's contribution to the national interest. Therefore, I find that Chevron's proposed project satisfies the second element of Ground I.

3. Element Three

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

Clean Air Act

Sections 108 and 109 of the Clean Air Act (CAA), as amended, 42 U.S.C. §§ 7408 and 7409, direct the Administrator of the Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect the public health and welfare. CAA § 110, 42 U.S.C. § 7410, requires each state to develop and enforce an implementation and enforcement plan for attaining and maintaining the NAAQS for the air mass located over the state. EPA has, with some exceptions, the responsibility for regulating emissions from OCS sources.[7]

Florida does not present any evidence to suggest that Chevron's proposed activity will violate the Clean Air Act. The Site-Specific Environmental Assessment for Block 97 stated that the total emissions expected from the proposed activities in Block 97 would be well below the calculated exemption levels, qualifying these activities for exemption from further review. SEA at 11-12. In its comments, EPA also stated that based on available information, estimated emissions fell well below the calculated regulatory exemption levels and were unlikely to cause a violation. Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, DOC, January 16, 1992.

Chevron's proposed activities must comply with applicable emissions standards in order to proceed. There is no evidence in the record suggesting that Chevron's activities will not comply

[7] Congress recently transferred this responsibility to EPA from the Department of the Interior by the passage of §328 of the Clean Air Act, as amended by Public Law 101-549 (Clean Air Act Amendments of 1990), enacted on November 15, 1990. The Department of the Interior retains authority on the OCS adjacent to Texas, Louisiana, Mississippi, Alabama and a small part of Florida (in the Gulf of Mexico, west of 87.5 degrees longitude). 56 Fed. Reg. 63774 et seq. (December 5, 1991).

with applicable standards. Therefore, I find that Chevron's proposed project will not violate the Clean Air Act.

Federal Water Pollution Control Act (Clean Water Act)

Sections 301(a) and 402 of the Clean Water Act provide that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency. Chevron' proposed exploratory drilling in Block 97 is covered under NPDES general permit GMG 280000, 51 Fed. Reg. 24897 (July 9, 1986). MMS Letter/Enclosure at 13.

Florida does not argue that Chevron's proposed exploratory drilling will violate the Clean Water Act.[8] Chevron acknowledges that while discharge from its activities may temporarily degrade water quality in the immediate vicinity of the lease area, any such discharge would adhere to the standards imposed by the general NPDES permit covering its activity. Chevron notes that it expects that water quality will return quickly to normal after drilling operations are complete. Chevron Exhibit A at 133. EPA, the federal agency with responsibility for issuing the NPDES permit, observed that compliance by Chevron with all conditions of the permit would meet the requirements of the Clean Water Act. Letter from Richard E. Sanderson, Director, Office of Federal Activities, EPA, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, DOC, January 16, 1992.

Chevron cannot conduct its proposed exploratory drilling without meeting the terms and conditions of the general NPDES permit, thus meeting the standards of the Clean Water Act. I find nothing in the record to indicate that Chevron's proposed project will violate the conditions of the permit. Therefore, I find that Chevron's proposed project will not violate the requirements of the Clean Water Act.

4. Element Four

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

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[8] Florida argues that EPA is currently considering regulations that will regulate discharges within a certain distance from shore, and until EPA has finalized these regulations, Chevron cannot claim that its exploratory drilling will comply with them. Florida does not dispute that Chevron's proposed drilling will comply with applicable federal permits, which are issued by EPA and which mandate compliance with the Clean Water Act.

As stated in previous appeals, pursuant to 15 C.F.R. § 930.64(b), the burden of describing alternatives that are consistent with the state's coastal management program generally falls upon the state. If the state describes one or more consistent alternatives in its objection, the burden shifts to the appellant, who must then demonstrate that the alternatives are unreasonable or unavailable. Korea Drilling Decision at 22-23.

Chevron argues that Florida did not describe any alternatives in its consistency objection, and so has no right to introduce alternatives in its submissions on appeal. Chevron states that because Florida failed to fulfill its burden, it cannot prevail on this element. Chevron's Final Brief at 13.

Florida, while acknowledging that it did not offer any alternatives in its original objection, argues in its final brief that a reasonable alternative is to delay Chevron's proposed activity until its potential effects can be fairly weighed by the Secretary. Florida argues that "there is the possibility that future research will develop models which could allow Chevron to proceed without the presence of substantial, unanswered questions concerning the impact of this drilling." Florida's Final Brief at 36.

In its objection, Florida made no attempt to describe an alternative to Chevron's proposed project. In fact, Florida stated in its objection that because Chevron's proposed drilling would be conducted within 100 miles of the coast, "there are no alternatives which Chevron can offer to make its plan of exploration consistent with [the state's coastal management plan]." Florida's Objection at 3. Florida only proposed the alternative of delaying Chevron's project in its final brief. I find that Florida has no right to present alternatives for the first time at this late stage.

The Department's regulations at 15 C.F.R. § 930.64(b)(2) require that a state, at the time it objects to the consistency certification for a proposed activity, describe any existing alternatives that would allow the project to be conducted in a manner consistent with the state coastal management program. The CZMA and the implementing regulations charge the state with interpreting its own management program and applying it to proposed activities to determine whether or not they are consistent. If the Department held that the state could introduce alternatives during the appeal, rather than in the objection itself, the practical result would be that applicants would be forced to undertake the costs of preparing and filing an appeal in order to compel the state to describe alternatives. Korea Drilling Decision at 23.

Earlier decisions have recognized that an exception may be made if the state can demonstrate that good cause exists for not

describing an alternative in its objection. For example, changes in technology may offer a reasonable alternative previously unavailable. Korea Drilling Decision at 24. Florida has not alleged that good cause exists for its failure to describe an alternative in its objection, and I find none in the record. I find that Florida has failed to satisfy its burden on this element, and that there is no reasonable alternative that would permit the proposed activity to be conducted in a manner consistent with Florida's coastal management program.

Conclusion for Ground I

Based on the findings made above, I find that Chevron has satisfied the four elements of Ground I. Chevron's proposed project is consistent with the objectives or purposes of the CZMA.

## VI. Ground II: Necessary in the Interest of National Security

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

The Secretary requested the views of several federal agencies concerning the national security interest in Chevron's proposed project. Chevron asserts that the comments received by the Department support the conclusion that the proposed project is necessary to national security. I summarize below the agency comments received regarding the national security interest in Chevron's proposed project.

The Department of Energy (DOE) stated that "the addition of such a potential major contribution to the Nation's domestic energy supply is critical to national security," noting that the National Energy Strategy had attempted to "lessen the Nation's vulnerability to violent fluctuations in either the supply or price of petroleum" by proposing increases in domestic petroleum supplies. DOE noted that "[n]atural gas can be substituted for oil in many applications." Letter from James G. Randolph, Assistant Secretary for Fossil Energy, DOE, to Mary Gray Holt, Attorney-Adviser, NOAA, December 11, 1991.

The State Department offered its opinion that "Chevron's exploration plans will advance the goals of the President's

National Energy Strategy (NES) related to national energy security...The State Department believes it is not in the U.S. national interest to impede exploration for natural gas on the offshore continental shelf." Letter from William C. Ramsay, Deputy Assistant Secretary for Energy, Resources and Food Policy, Department of State, to Mary Gray Holt, Office of Assistant General Counsel for Ocean Services, NOAA, October 25, 1991.

The Department of Defense commented that its review of the matter "has not identified specific national defense objectives which are directly supported by Chevron's POE, but we believe it can contribute in a broader sense to national security interests. * * * By placing emphasis on exploration where OCS natural gas resources may be abundant, Chevron's POE can play a role in reducing the Nation's dependence on oil and also help achieve national clean air objectives." Letter from Diane K. Morales, Deputy Assistant Secretary (Logistics), Department of Defense, to Ray Kammer, Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, October 31, 1991.

The National Security Council commented that "[i]t is in the national security interest of the U.S. to increase the indigenous production of oil and gas, where such production is economic and consistent with environmental requirements." Letter from William F. Sittmann, Executive Secretary, National Security Council, to Thomas Collamore, Assistant Secretary, Department of Commerce, October 22, 1991.

The Minerals Management Service of the Department of the Interior commented that denial of an override of the state's consistency determination "could well, in the extant case, deprive this Nation of a secure and environmentally sound source of natural gas in the Norphlet Trend offshore Florida. These energy reserves represent a major step in the direction of domestic energy security." MMS Letter/Enclosure at 26.

Florida argues that neither Chevron nor the comments summarized above allege that the nation's national security interest is significantly impaired by the denial of permission for Chevron's proposed activity. Florida claims that the record reveals only general assertions regarding the benefits of natural gas production. Florida's Final Brief at 38.

The standard for meeting the criteria of Ground II is clearly stated in 15 C.F.R. § 930.122: significant impairment to a national defense or other national security interest if the particular project is not allowed to go forward as proposed. Although the Secretary will give considerable weight to the comments of any federal agency explaining how a national security or defense interest will be significantly impaired if a proposed project is not approved, the Secretary must ultimately make an independent determination based on the record developed in the

payments." Letter from James G. Randolph, Assistant Secretary for Fossil Energy, DOE, to Mary Gray Holt, Attorney-Adviser, NOAA, December 11, 1991.

The Department of the Interior, and the Minerals Management Service of the Department of the Interior, stated that if this exploration did result in a natural gas discovery and production, significant benefits could result. The Department observed:

> the discovery of a local source of natural gas may encourage substitution as well as benefit consumers in this region through reduced transportation costs. Additionally, substitution of natural gas for coal or oil combustion will contribute to resolution of national air quality concerns. * * * In 1988, Florida was the Nation's second largest consumer of oil for the generation of electricity. To the extent that demand for this gas displaces demand for imported oil, the undesirable consequences of oil import dependency would be reduced. In addition, the Department of Energy identified encouraging the efficient production of natural gas in an environmentally sound manner as one of the goals of the National Energy Strategy. As such, it is important that all domestic sources of natural gas, including the OCS, be identified and developed in an environmentally sound manner.

DOI/MMS Letter and Enclosure at 4.

The National Security Council commented that "[i]t is in the national security interest of the U.S. to increase the indigenous production of oil and gas, where such production is economic and consistent with environmental requirements. The NSC staff supports increased exploration and drilling to determine potential domestic oil and gas reserves and exploit these where economic." Memorandum from William F. Sittmann, Executive Secretary, National Security Council, to Thomas Collamore, Assistant Secretary, Department of Commerce, October 8, 1991.

The Department of the Treasury stated: "[W]e do see significant benefits to the national interest from development of domestic energy resources. It would increase economic activity and generates higher Federal tax revenues that can be used to reduce the Federal deficit. This increased economic activity also contributes to national security by strengthening the economy and by providing for a trained, technical work force." Letter from Maynard Comiez, Director, Office of Policy Analysis, Department of the Treasury, to Ray Kammer, Deputy Under Secretary, NOAA, October 8, 1991.

The Department of Transportation observed:

appeal. Most federal agency comments received in this case were general statements about the national security interest in oil and gas exploration and production. Such general statements without more specific information do not meet the criteria established in the regulation. The comments of MMS were more specific, arguing that failure to override the state's objection in this case could "deprive this nation of a secure and environmentally sound source of natural gas," but do not explain how a national security or defense interest would be "significantly impaired" by the inability to tap this particular source at this time.

Conclusion for Ground II

Neither Chevron nor any federal agency commenting on Ground II has explained specifically how the national security interest or national defense will be significantly impaired if Chevron's proposed project is not allowed to proceed as proposed. Based on the record before me, I find that the requirements of Ground II have not been met.

VII. Conclusion

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

Barbara H. Franklin
Secretary of Commerce