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Witness Statement

Statement of Craig Wyman
Representing
The American Petroleum Institute,
The National Ocean Industries Association,
The Independent Petroleum Association of America,
The United States Oil and Gas Association,
And the International Association of Drilling Contractors
before the U.S. House of Representatives
Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans
May 24, 2001

Testimony of the American Petroleum Institute, the National Ocean Industries Association, the U.S. Oil and Gas Association, the Independent Petroleum Association of America, and the International Association of Drilling Contractors

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Before the United States House of Representatives
Committee on Resources
Subcommittee on Fisheries Conservation, Wildlife and Oceans

Hearing on H.R. 897, a Bill to reauthorize the Coastal Zone Management Act of 1972
May 24, 2001

We appreciate the opportunity to appear at today's hearing on the proposed reauthorization of the Coastal Zone Management Act ("CZMA"). I am here to represent several oil and gas trade associations including the American Petroleum Institute ("API"), the National Ocean Industries Association ("NOIA"), the U.S. Oil and Gas Association ("USOGA"), the Independent Petroleum Association of America ("IPAA"), and the International Association of Drilling Contractors ("IADC"). These five national trade associations represent hundreds of companies, both majors and independents, engaged in all sectors of the U.S. oil and natural gas industry, including exploration, production, refining, distribution, marketing, equipment manufacture and supply, and other diverse offshore support services. We believe that a critical section of the CZMA regulatory program has run adrift of Congress's legislative intentions and, if left unchecked, could

permanently harm this nation's offshore leasing program under the integrally-related Outer Continental Shelf Lands Act ("OCSLA"). The member companies ask Congress to reflect carefully on the CZMA reauthorization's impact on our national energy policy.

In the OCSLA, Congress has declared that the OCS is a A*vital national resource reserve* . . . which should be made available for expeditious and orderly development . . . ." 43 U.S.C. ' 1332(3) (emphasis added). The CZMA in turn at 16 U.S.C. ' 1455(d)(8) clearly provides that each approved state CZMA program must contain A*adequate consideration of the national interest* involved in planning for, and managing the coastal zone, including the siting of [energy] facilities . . ." (emphasis added). In an effort to regain and restore these congressional directives, we respectfully submit today's testimony in support of much-needed revisions to the CZMA's consistency review process.

These associations' member companies hold the vast majority of the oil and gas leases on the OCS, and their members have bid tens of billions of dollars at OCS lease sales. In our view, the CZMA consistency certification program as applied to OCS activity over recent years has seriously undermined the ongoing viability of OCS lease operations. The import of the program's flawed administration is the alteration of the economic risk structure of the OCSLA crafted by Congress after decades of experience and study. Potential bidders in OCS lease sales have valid, serious questions whether their lease investments will be rendered worthless as a result of subsequent CZMA consistency certification disputes. We are gravely concerned that these problems will not only continue to harm the oil and gas exploration and producing industry, but might actually threaten the viability of the entire OCS leasing program. The damage to the OCS leasing program B the source of 26% of both domestic natural gas production and domestic oil production B could be severe and could have serious adverse impacts on the nation's already strained ability to meet increasing energy and fuel supply needs.

The revisions that we suggest to the CZMA consistency review provisions for OCS activities would improve the effectiveness of the consistency process and eliminate uncertainty and delays under the current CZMA requirements. These revisions would:

_ Clarify the territorial scope of a state's consistency review of private permits;

_ Allow a single consistency certification determination for all activities;

_ Specify that only the Secretary of the Interior would determine information requirements for consistency certification and legal criterion for overrides;

_ Ensure timely decisions in override appeals by imposing a specific deadline.

The CZMA Consistency Process

The CZMA broadly covers both coordination of permitting activity among federal and state agencies and the federal funding of state programs for the management of coastal areas. The CZMA's "consistency" provisions, which are intended to accomplish this federal/state coordination, are the focus of the present inquiry. The consistency process, in turn, is broadly divided into two types of consistency "determinations," i.e., those made directly by federal agencies when considering the effects of their own actions on a state's coastal zone, and those required for applicants for federal licenses and permits having effects on a state's coastal zone. Today's testimony is directed mainly on the impacts of the proposed regulations on the private permitting processes. However, increased difficulties by federal agencies in conducting their consistency

procedures can generate adverse impacts on the private sector as well.

CZMA's Relationship with the OCS Leasing Program

OCS mineral leases are issued by the MMS under the authority of the Outer Continental Shelf Lands Act, 43 U.S.C. ' 1331 *et seq*. OCSLA leases require lessees to pay up-front cash bonuses, followed by periodic lease rental payments, for the tracts they acquire. 43 U.S.C. ' 1337. Under the OCSLA statutory scheme, an OCS lessee may thereafter prepare a Plan of Exploration ("POE") as part of the "exploration" stage of lease activity. If recoverable resources are found, the lessee may then submit to the MMS a Plan of Development and Production, or "POD," to continue on to the "production" stage. In the course of filing either plan, the OCSLA further stipulates that the OCS lessee will certify that its activities will be consistent with the coastal zone management plan of any affected state that has an approved CZMA program. *See* 43 U.S.C. ' 1340(c)(2) (applying CZMA certification requirement to exploration plans); 43 U.S.C. ' 1351(h) (applying the requirement to production plans).

Under the CZMA consistency requirements, a federal agency is prohibited from granting any further permits to conduct activities under a POE or DOP unless the state has concurred that such activities are consistent with its approved CZMA program, or unless the Secretary of Commerce "overrides" the state's objection. In recent years a number of states, including North Carolina, California and Florida have used their consistency determination authority to attempt to stifle oil and gas leasing, exploration and development. Moreover, certain state CZMA objections have been upheld by the Secretary of Commerce on dubious grounds, meaning that further OCS development was thwarted. Even in those instances where the Secretary has overridden the state's objection, the appellate process has been hampered by inordinate delays. For example, during the 1990s, appeals involving OCS activity have taken from 16 months to 4 years from the state's initial objection to the final override decision.

This testimony focuses on two themes. First, the testimony underscores the importance of the OCS leasing program to this nation. Next, it discusses those areas of the CZMA consistency process which could be improved through amendments to the CZMA as part of the pending reauthorization legislation.

The OCSLA Leasing Program is Vital to This Nation

The integrity of the leasing program established by the OCSLA, 43 U.S.C. ' 1331 *et seq.*, is vital to this nation. The OCS program supplies an essential share of domestic energy production in addition to billions of dollars of non-tax governmental revenues.

By the end of 1999, nearly twelve billion barrels of oil and over 130 trillion cubic feet of natural gas have been produced under the OCS leasing program. By the end of 2000, the OCS accounted for fully 26% of domestic natural gas production and 26% of domestic oil production. At the end of 1999, over 8,100 oil and gas leases issued under the OCSLA existed on the nation's Outer Continental Shelf. Additional leases have been issued by the MMS, and lease sales will continue into the foreseeable future. Over the last eleven and one-half years alone, OCS lessees have paid the federal government over $6 billion in lease bonuses. Indeed, the MMS collected over $1.4 billion in lease bonuses in 1997, $1.3 billion in 1998, and $.3 billion in 1999. As of the end of 2000, over 83% of all oil royalties paid on Federal and Indian leased lands, and over 74% of gas royalties, came from the OCS.

If the direction the CZMA consistency process has taken with regard to OCS activity is allowed to stand, all OCS lessees, as well as bidders at future OCS lease sales, will face stark uncertainties regarding the

OCSLA statutory scheme. The OCS leasing program should work to ensure that OCS lessees that comply with their lease terms and operational requirements have a fair chance at a return on their lease investment. Instead, the CZMA consistency program has allowed states to unilaterally use the process as a tool in their philosophical opposition to offshore drilling. As observed by the Court of Federal Claims in the context of an analogous CZMA consistency dispute involving the North Carolina Manteo project, "common sense suggests that no sophisticated oil and gas company with many years of experience in drilling for oil in offshore leased tracts would knowingly agree to pay the huge, up-front considerations . . . for such tenuous and unilaterally interruptible drilling rights."

We are also concerned that the Department of Commerce's implicit endorsement, in recent override decisions, of certain state CZMA objections based on a purported "inadequacy of information," will only embolden other coastal states that categorically oppose offshore development to misuse the CZMA and OCSLA processes. Accordingly, the industry's incentive to bid for OCS leases, especially in new, frontier OCS areas, will be drastically undercut.

Possible CZMA Legislative Proposals to Address Industry Concerns

This section of today's testimony addresses possible legislative changes to the CZMA to address concerns regarding the impact of the CZMA consistency review process on the future orderly exploration and development of the federal OCS. As discussed above, certain coastal states in recent years have become increasingly aggressive in using the consistency review process to obstruct offshore energy development. A combination of such state action and Congressional intervention led to the June 2000 U.S. Supreme Court decision in *Marathon Oil et al v. United States*, 530 U.S. 604, 120 U.S. 2423, in which the court ordered the federal government to return over $158 million in bonus monies paid for leases in the Manteo area offshore the state of North Carolina. The Manteo experience, along with others, shows the need to improve CZMA consistency review procedure to avoid such process breakdowns in the future. Towards this end, our member companies have identified a focused and limited collection of critical CZMA provisions that could be amended to promote a more rationally based national program.

A. Amendment of the definition of "enforceable policy" in 16 U.S.C. ' 1453(6a)

In order to effectuate congressional intent, we recommend that the definition of "enforceable policy" be changed to limit the expansion of a state's CZMA consistency review over activities outside of its own geographic boundaries. The legislative history of the 1990 CZMA amendments is clear that Congress did not intend to allow the expansion of the territorial scope of state consistency review of federal licenses and permits. Nevertheless, a number of states, as well as Commerce in its recent December 8, 2000 CZMA consistency procedure rulemaking, have taken the position that states may review activities and block permits issued for activities taking place in *other* states.

In the 1990 CZMA amendments, Congress removed the word "directly" before "affecting the coastal zone" in the statute's provisions for federal *agency* consistency certification for federal *agency* activities. The intent of this change was to ensure that federal *agency* activities both within or outside the coastal zone were subject to CZMA consistency review, not to expand a state's authority for consistency review to another state. In essence, the 1984 U.S. Supreme Court decision in *Secretary of the Interior v. California* found that MMS lease sales did not "directly" affect the coastal zone, and thus were not subject to CZMA consistency review. To overturn the Supreme Court decision Congress removed the words "directly affecting" from CZMA Section 307(c)(1)'s requirement for federal agency action and provided that consistency would now be required for "Each Federal agency activity *within or outside the coastal zone that affects* any land or

water use or *natural resource* of the coastal zone . . ." (Emphasis added.)

At the same time, in what were termed technical changes, the entirely separate provisions in CZMA Section 307(c)(3)(A) and (B) B applying federal consistency review to *private* permit applicants and to OCS Plans B were amended to refer to those consistency activities "in or *outside*" of the coastal zone affecting "any land or water use or *natural resource*" of the coastal zone. (Emphasis added.) Unlike CZMA Section 307(c)(1), these latter sections had not previously been written to place the adverb "directly" before the verb "affecting." Again, this change was not intended to expand a state's authority for consistency review.

The Conference Report plainly states Congress' actual intention regarding the future construction of CZMA Section 307(c)(3):

> The conferees want to make it clear that the changes made . . . [to Section 307(c)(3) governing private permit applicants] are technical modifications. None of the amendments made by this section are intended to change the existing implementation of these consistency provisions. For example, ***none of the changes made to Section 307(c)(3)(A) and (B), and (d) change existing law to allow a state to expand the scope of its consistency review authority.*** Specifically, these changes do not affect or modify existing law or enlarge the scope of consistency review authority under Section (c)(3)(A) and (B), and (d) with respect to the proposed project to divert water from Lake Gaston to the city of Virginia Beach, Virginia, for municipal water supply purposes. These technical changes are necessary to, and are made solely for the purpose of, conforming these existing provisions with the changes to Section 307(c)(1) of the CZMA which are needed to overturn the *Watt v. California* Supreme Court decision.

(Emphasis added). H.R. Conf. Rep. 101-964, at 968 *et seq*., *reprinted in* 1990 U.S.C.C.A.N. at 2673, *et seq*.

Prior to the 1990 amendments to CZMA, the public record shows that both DOJ and the Corps of Engineers had issued legal opinions and filed briefs in federal courts which disputed a state's authority under the CZMA to conduct consistency review outside of its own boundaries. During the most recent Department of Commerce CZMA rulemaking, exhaustive comments submitted by the City of Virginia Beach with regard to the "Lake Gaston dispute" (mentioned specifically in the Conference Report quoted above and involving North Carolina's attempted CZMA veto of a Virginia-based project), highlighted the specific legislative history regarding the 1990 amendments, as well as other fundamental rules of statutory construction, that establish that one state's coastal policies cannot be legally enforced to block a federal permit applicant's activities taking place entirely in different state.

The "Lake Gaston dispute" ultimately led to a December 3, 1992 Secretarial override decision in which the first Bush administration's Secretary Franklin ruled that North Carolina lacked legal authority to block an activity located entirely in another state. It was not until 1993 that a political policy reversal by Clinton-appointee Secretary Brown acquiesced to the NOAA legal staff's position that promoted such state extra-territorial review authority.

The record is thus quite clear that, both before and immediately after the time the 1990 Amendments were passed, the predominant federal government position rejected a state's authority to conduct consistency review for private permit applicants' activities outside of its boundaries. When passing the 1990 Amendments, Congress made clear that no change to the scope of existing state review authority over

private permits would occur. Accordingly, an amendment to the CZMA to change the definition of "enforceable policy" is necessary to overturn the Department of Commerce's newly minted and untenable position that expands a state's consistency authority outside its boundaries.

B0 Amend 16 U.S.C. ' 1456(c)(3)(B) to allow a single consistency certification for an OCS Plan to cover all activities, including air and water permits

The oil and gas industry has experienced inordinate delays regarding the lack of coordination between federal agencies in processing permits for OCS activities, especially including delays involving separate state consistency reviews for those permits. There are also serious concerns raised by the recent CZMA rulemaking indicating that new "licenses or permits" involving heretofore-routine approvals of OCS activities will be subject to separate consistency review.

This amendment is intended to increase the efficiency of state consistency review for OCS Plans by achieving a single consistency certification for all related permitted activities, including air and water discharges, conducted pursuant to either an exploration plan, or a plan of development and production. Contrary to any suggestion that such a change would unacceptably limit state consistency review information, DOI regulations require an exacting explanation of the federal applicant's plans, including air and water discharges.

Attached to this testimony for this Subcommittee's ready reference are the requirements for OCS exploration and development plans set forth at 30 C.F.R. " 250.203 and 250.204. These MMS regulations state in detail information requirements for both water and air emissions and include specific discussion of "[e]nvironmentally sensitive areas (onshore as well as offshore) . . . and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act . . . which may be affected by the proposed activities." There is also specific direction for consultation by the MMS with CZMA agencies of affected states regarding any limitation on the amount of information necessary to be included.

Moreover, language requiring activities to be described "in detail" is already built into the OCS information exchange process by the language of the OCSLA. Most pertinently, for development and production plans, the OCSLA at 43 U.S.C.' 1351(d) specifically says that "the Secretary shall not grant any license or permit for any activity *described in detail in a plan* and affecting any land use or water use in the coastal zone of a State . . . unless the State concurs or [if an override decision is issued]." (Emphasis added). Substantially similar language is found under the provisions for exploration plans at 43 U.S.C. ' 1340(c)(3), which directs that "an exploration plan submitted under this subsection shall include [information] *in the degree of detail which the Secretary may by regulation require*." (Emphasis added). The attached MMS regulations implementing these provisions abundantly satisfy concerns regarding detailed information being provided to support consistency certifications.

C0 Amend 16 U.S.C. ' 1456(c)(3)(B) to recognize that the Secretary of the Interior will determine information requirements for consistency certifications

This proposed amendment is closely related to the preceding amendment regarding a single consistency certification determination. To further promote the efficiency of the consistency process, not only should a permit applicant be permitted to file a single consistency determination for its OCS plans, but the information supplied in support of that consistency determination should be allowed to conform to a known set of information requirements identified by the Department of the Interior. In the past, the consistency process has broken down all too often based on unreasonable and unceasing unilateral state information

requests. Moreover, certain states have lodged such consistency objections even while refusing to respond to the OCS permit applicant's request for a simple itemization of the information that the state may find lacking.

While existing regulations provide that state information requirements are subject to a public approval oversight process, state expansions of consistency review information requirements have on more than one occasion been treated as merely "routine" amendments to state programs requiring minimum public notice and comment. In addition, Commerce's past uncritical endorsement of state demands for "adequate information" ignores the realpolitik of state consistency review information requests. The CZMA experience has shown to any disinterested observer that certain coastal states have used purported findings of "lack of information" to deny consistency certifications and to obstruct OCS activity on very questionable grounds, especially considering the abundance of information on OCS oil and gas exploration and development that has been accumulated over the last 50 years.

Finally, any question whether the Secretary of the Interior is qualified to determine what information is needed for a state to make an informed consistency decision should be convincingly answered by the detailed MMS information requirements for OCS Plans attached to this memorandum, as well as the specific OCSLA requirements for DOI consultation with state coastal zone authorities regarding areas of particular state concern.

D0 Amend 16 U.S.C. ' 1456(c)(3)(B)(iii) to provide that the Secretary of Interior would decide override appeals concerning OCS activities

The Manteo consistency review process led to the Secretary of Commerce making unprecedented rulings declining to override North Carolina's objections and putting into question the Secretary's very recognition of the importance of future exploration of frontier OCS areas in environmentally sound ways. Commerce's recent CZMA rulemaking has now further put into question the application of the legal criterion for Secretarial overrides in a way that would work presumptively against frontier OCS exploration. These experiences, as well as consideration of the greater expertise possessed by the Secretary of the Interior with regard to OCS plans and their environmental effects, support an amendment of 16 U.S.C. ' 1456(c)(3)(B)(iii) to allow the Secretary of the Interior to handle appeals of state objections to OCS Plans.

First, we are concerned that a superficially minor change made to the Secretarial override criteria in recent rulemaking could now authorize arbitrary and capricious agency action. Commerce's CZMA rulemaking has changed the Secretarial override criteria. 15 C.F.R. ' 930.121 previously included the specific finding that "[t]he challenged activity furthers one of the national objectives or purposes of the [CZMA]," but the new CZMA rules have added the requirement that the activity must "significantly or substantially" further the national interest requirements. While this change to the "national interest" criterion may appear innocuous, it could have substantial detrimental impacts. For example, while Commerce in its December 8, 2000 preamble makes a point of noting that "[a]n example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development," 65 Fed. Reg. 77150 (bottom middle column), this observation gives OCS lessees a degree of comfort as to the new criterion's application to OCS *development*, but not necessarily to *exploration*. This distinction is significant because the Secretary of Commerce's Manteo POE and NPDES permit override decisions specifically found, contrary to longstanding Secretarial precedent, that the drilling of an exploration well in an important frontier OCS area would only provide a A*minimal* contribution" to the national interest. Particularly emphasizing that the Manteo POE had indicated that there was a 10 percent chance of actually finding mineral reserves (which in the industry is a quite solid chance for even conservative decision making), the

Secretary found that the supposedly small chance of exploratory success diminished the Manteo project's contribution to the national interest. Therefore, the new override criterion could now be used by the Secretary of Commerce to reject the importance of OCS exploratory activity in frontier areas.

Any possible suggestion that the Secretary of the Interior lacks experience with CZMA issues, or that the CZMA's override decisionmaking procedures would be "inappropriately bifurcated," is unfounded. First, such concern pointedly ignores the educational process that all federal agencies have undergone over the last 25 years in administering CZMA consistency review requirements regarding their actions. Federal agencies in general B and DOI with its myriad agencies with coastal responsibilities in particular B have become quite sophisticated in determining project impacts on a state's coastal zone. Indeed, this educational process is embedded in the very framework of Commerce's consistency regulations.

A related concern that the DOI Secretary would lack "responsibility for the implementation of the statute upon which the decision is based" ignores the long existing, parallel process under which the Secretary of Commerce has exercised authority, as part of the CZMA override process itself, to determine a private permit applicant's satisfaction of the requirements of both the Clean Air Act and the Clean Water Act. Neither statute is directly administered by Commerce, but this analogous circumstance evidently has not hampered past Secretarial override decisionmaking.

Finally, the bifurcation of the processing of override appeals achieved by this amendment would be entirely consistent with the already existing statutory division between OCS Plans' consistency review and all other private permit review, as established in the separate CZMA sections of 16 U.S.C. ' 1656(c)(3)(A) and (B). The pre-existing statutory recognition of a unique OCS planning process would only be strengthened by Congressional recognition of the Secretary of the Interior, in charge of administering OCS activity, as the appropriate decision-maker to weigh the beneficial vs. adverse impacts of such planning.

E0 Amend 16 U.S.C. ' 1465 to ensure timely decisions by Secretary in override appeals

Despite Congress's 1996 amendment to the CZMA to add 16 U.S.C. ' 1465, which was specifically intended to expedite the override decisionmaking process, these appeals continue to be drawn out by overlong agency commenting, and by Commerce's implementation of the present requirement that the deadline for decisionmaking does not begin to run until after the administrative record is "closed." A new amendment is needed to institute a definite deadline that is only governed by the time an appeal is filed.

The member companies note that in practice the materials that comprise the administrative record for the Secretarial override decision are fully developed by the time a state's consistency objection is lodged. The override criteria can be readily applied to the already-assembled information. If unusual situations arise where legitimate reasons exist for an extension of the decisionmaking deadline, the 1996 amendment already allows a 45-day "safety valve" extension.

There is no foundation to any suggestion that the change could result in Secretarial decisions based on "incomplete information" regarding possible coastal impacts. Indeed, speculation regarding such vague and lingering information concerns essentially makes the case for the need for this new amendment. There will always be a federal regulatory mindset, shared by certain of the coastal states, that tilts towards preferring "one more study to be completed" before ever reaching a final decision. The need for predictability in these override decisions mandates a preordained time for review; otherwise, continuing abuse will be endemic to the decisional process.

Conclusion

We believe that the foregoing discussion has amply demonstrated that the continuing development of OCS resources is vital to the nation's energy future, an observation which Congress included as an explicit finding in the Outer Continental Shelf Lands Act Amendments enacted over 22 years ago this year. This testimony has also identified several areas of concern with regard to the future effectiveness of this process as it relates specifically to states' consistency reviews over OCS activity. The testimony's suggested amendments to the CZMA as part of the reauthorization legislation would work to distinctly improve the efficiency, as well as the fundamental fairness, of that process.

ATTACHMENT

TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

PART 250--OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart B--Exploration and Development and Production Plans

Sec. 250. **203** Exploration Plan.

(a) The leasee shall submit for approval an Exploration Plan which includes the following:
(1) The proposed type and sequence of exploration activities to be undertaken together with a timetable for their performance from commencement to completion.
(2) A description of the type of mobile drilling unit, platform, or artificial island to be used including a discussion of the drilling program and important safety and pollution-prevention features. In the Alaska OCS Region, lessees shall include provisions for--
(i) Drilling a relief well should a blowout occur,
(ii) Loss or disablement of a drilling unit, and
(iii) Loss or damage to support craft.
(3) A table indicating the approximate location of each proposed exploratory well, including surface locations, proposed well depths, and water depth at well sites.
(b) The lessee shall submit the following supporting information to accompany the Exploration Plan:
(1) Data and information described below which the Regional Supervisor deems necessary to evaluate geologic conditions:
(i) Current structure contour maps drawn to the top of each prospective hydrocarbon accumulation showing the approximate surface and bottomhole location of each proposed well.
(ii) Full-scale interpreted, and if appropriate, migrated Common Depth Point seismic lines intersecting at or near the primary well locations.
(iii) A time versus depth chart based on the appropriate velocity analysis in the area of interpretation.
(iv) Interpreted structure sections corresponding to each seismic line submitted in paragraph (b)(1)(ii) of this section showing the location and proposed depth of each well.
(v) A generalized stratigraphic column from the surface to total depth.
(vi) A description of the geology of the prospect.
(vii) A plat showing exploration seismic coverage of the lease.
(viii) A bathymetry map showing surface locations of proposed wells.

(ix) An analysis of seafloor and subsurface geologic and manmade hazards. Unless the lessee can demonstrate to the satisfaction of the Regional Supervisor that data sufficient to determine the presence or absence of such conditions are available, the lessee shall conduct a shallow hazards survey in accordance with the Regional Supervisor's specifications. The Regional Supervisor may require the submission of a shallow hazards report and the data upon which the analysis is based.
(2) An oil-spill response plan as described in part 254 or reference to an approved Regional Response Plan.
(3) A discussion of the measures that have been or will be taken to satisfy the conditions of lease stipulations.
(4) A list of the proposed drilling fluids, including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal.
(5) Information concerning the presence of hydrogen sulfide (H2S) and the following proposed precautionary measures:
(i) A classification of the lease area as to whether it is within an area known to contain H2S, an area where the presence of H2S is unknown, or an area where the absence of H2S has been confirmed as described in Sec. 250.417 of this part and the documentation supporting the classification; and
(ii) If the classification is an area known to contain H2S or an area where the presence of H2S is unknown, an H2S Contingency Plan as required in Sec. 250.417 of this part.
(6) A detailed discussion of new or unusual technology to be employed. The lessee shall indicate which portions of the supporting information the lessee believes are exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the implementing regulations (43 CFR part 2). The lessee shall include a written discussion of the general subject matter of the deleted portions for transmittal to the recipients of plan copies.
(7) A brief description of the onshore facilities to be used to support the exploration activities including information as to whether the facilities are existing, proposed, or are to be expanded; a brief description of support vessels to be used and information concerning their frequency of travel; and a map showing the lease relative to the shoreline and depicting proposed transportation routes.
(8) For onshore support facilities, except in the western GOM, indicate the following:
(i) The location, size, number, and land requirements (including rights-of-way and easements) of the onshore support and storage facilities and, where possible, a timetable for the acquisition of lands and the construction or expansion of any facilities.
(ii) The estimated number of persons expected to be employed in support of offshore, onshore, and transportation activities and, where possible, the approximate number of new employees. and families likely to move into the affected area.
(iii) Major supplies, services, energy, water, or other resources within affected States necessary for carrying out the related plan.
(iv) The source, composition, frequency, and duration of emissions of air pollutants.
(9) The quantity, composition, and method of disposal of solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transportation operations.
(10) Historic weather patterns and other meteorological conditions of offshore areas including temperature, sky cover and visibility, precipitation, storm frequency and magnitude, wind direction and velocity, and freezing and icing conditions listing, where possible, the means and extremes of each.
(11) Physical oceanography including onsite direction and velocity of currents and tides, sea states, temperature, and salinity, water quality, and icing conditions, where appropriate.
(12) Onsite flora and fauna including both pelagic and benthic communities, transitory birds and mammals that may breed or migrate through the area when proposed activities are being conducted, identification of endangered and threatened species and their critical habitats that could be affected by proposed activities,

and typical fishing seasons and locations of fishing activities. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into this discussion.
(13) Environmentally sensitive areas (onshore as well as offshore), e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, and areas of particular concern identified by an affected State pursuant to the Coastal Zone Management Act (CZMA) which may be affected by the proposed activities.
(14) Onsite uses of the area based on information available, e.g., shipping, military use, recreation, boating, commercial fishing, subsistence hunting and fishing, and other mineral exploration in the area.
(15) If the Regional Director believes that an archaeological resource may exist in the lease area, the Regional Director will notify the lessee in writing. Prior to commencing any operations, the lessee shall prepare a report, as specified by the Regional Director, to determine the potential existence of any archaeological resource that may be affected by operations. The report shall be prepared by an archaeologist and geophysicist and shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information.
(16) Existing and planned monitoring systems that are measuring or will measure environmental conditions and provide data and information on the impacts of activities in the geographic areas.
(17) An assessment of the direct and cumulative effects on the offshore and onshore environments expected to occur as a result of implementation of the Exploration Plan, expressed in terms of magnitude and duration, with special emphasis upon the identification and evaluation of unavoidable and irreversible impacts on the environment. Measures to minimize or mitigate impacts should be identified and discussed.
(18) Certificate(s) of coastal zone consistency as provided in 15 CFR part 930.
(19) For each OCS facility, the lessee shall submit the information described below when it is needed to make the findings under Sec. 250.303 or Sec. 250.304 of this part:
(i)(A) Projected emissions from each proposed or modified facility for each year of operation and the basis for all calculations to include (if the drilling unit has not yet been determined, the lessee shall use worst-case estimates for the type of unit proposed):
(1) For each source, the amount of the emission by air pollutant expressed in tons per year and the frequency and duration of emissions.
(2) For each facility, the total amount of emissions by air pollutant expressed in tons per year and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s).
(3) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned.
(4) A schematic drawing which identifies the location and elevation of each source.
(5) If projected emissions are based on the use of emission- reduction control technology, a description of the controls providing the information required by paragraph (b)(19)(iv) of this section.
(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.
(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the results obtained through the use of the model(s). Only model(s) that has been approved by the Director may be used.
(B) The best available meteorological information and data consistent with the model(s) used stating the basis for the data and information selected.
(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of Sec. 250.303 of this part) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable to include the status of each area by air pollutant, the class of attainment area, and the air-pollution control agency whose jurisdiction covers the

area identified.
(iv) The emission-reduction controls available to reduce emissions, including the source, the emission-reduction control technology, reductions to be achieved, and monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission- reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.
(20) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be made.
(21) Such other information and data as the Regional Supervisor may require.
(c) Information and data discussed in other documents previously submitted to MMS or otherwise readily available to reviewers may be referenced. The material being referenced shall be cited, described briefly, and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be so referenced.
(d) The Regional Director, after consultation with the Governor of the affected State(s) or the Governor's designated representative, the CZM agency of affected State(s), and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration (NOAA) may limit the amount of information required to be included to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions.
(e) The Regional Supervisor shall determine within 10 working days after receipt of the Exploration Plan whether additional information is needed. If no deficiencies are identified and the required number of copies have been received, the plan will be deemed submitted.
(f) Within 2 working days after we deem the Exploration Plan submitted, the Regional Supervisor will send by receipted mail a copy of the plan (except those portions exempt from disclosure under the Freedom of Information Act and 43 CFR part 2) to the Governor or the Governor's designated representative and the CZM agency of each affected State. Consistency review begins when the State's CZM agency receives a copy of the deemed submitted plan, consistency certification, and required necessary data and information as directed by 15 CFR 930.78.
(g) In accordance with the National Environmental Policy Act (NEPA), the Regional Supervisor shall evaluate the environmental impacts of the activities described in the Exploration Plan.
(h) In the evaluation of an Exploration Plan, the Regional Supervisor shall consider written comments from the Governor of an affected State or the Governor's designated representative which are received prior to the deadline specified by the Regional Supervisor. The Regional Supervisor may consult directly with affected States regarding matters contained in the comments.
(i) Within 30 days of submission of a proposed Exploration Plan, the Regional Supervisor shall accomplish one of the following:
(1) Approve the plan;
(2) Require the lessee to modify any plan which is inconsistent with the provisions of the lease, the Act, or the regulations prescribed under the Act including air quality, environmental, safety, and health requirements; or
(3) Disapprove the plan if the Regional Supervisor determines that a proposed activity would probably cause serious harm or damage to life (including fish and other aquatic life), property, natural resources offshore including any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment, and that the proposed activity cannot be modified to avoid the condition(s).
(j) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving an Exploration Plan or for requiring modification of a plan. For plans requiring modification, the Regional Supervisor shall also notify the lessee in writing of the conditions that must be met for plan approval.
(k)(1) The lessee may resubmit an Exploration Plan, as modified, to the Regional Supervisor in the same manner as for a new plan. Only information related to the proposed modifications need be submitted. The

Regional Supervisor shall approve, disapprove, or require modification of the resubmitted plan based upon the criteria in paragraph (i) of this section within 30 days of the resubmission date.
(2) An Exploration Plan which has been disapproved pursuant to paragraph (i)(3) of this section may be resubmitted if there is a change in the conditions which caused it to be disapproved. The Regional Supervisor shall approve, require modification, or disapprove such a plan within 30 days of the resubmission date.
(l) When a State objects to a lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to--
(1) The Regional Supervisor for review pursuant to the criteria in paragraphs (h), (i), and (j) of this section; and
(2) Through the Regional Supervisor to the State for review pursuant to the CZMA and the implementing regulations (15 CFR 930.83 and 930.84).

Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the CZMA and the implementing regulations (subpart H of 15 CFR part 930). The Regional Supervisor shall approve or disapprove a plan as resubmitted within 30 days of the resubmission date.
(m) If the Regional Supervisor disapproves an Exploration Plan, the Secretary may, subject to the provisions of section 5(a)(2)(B) of the Act and the implementing regulations in Sec. 250.182 and 256.77 of this chapter II, cancel the lease(s), and the lessee shall be entitled to compensation in accordance with section 5(a)(2)(c) of the Act.
(n)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Exploration Plan and may request updated information on schedules and procedures. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and in other onshore or offshore conditions affecting or affected by exploration activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require the needed revision.
(2) Revisions to an approved or pending Exploration Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated or requires additional permits, the revisions shall be subject to all of the procedures in this section.
(o) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.
(p) The lessee may not drill any well until the District Supervisor's approval of an Application for Permit to Drill (APD), submitted in accordance with the requirements of Sec. 250.414 of this part, has been received. The District Supervisor shall not approve any APD until all affected States with approved CZM programs have concurred or have been conclusively presumed to concur with the applicant's coastal zone consistency certification accompanying a plan, or the Secretary of Commerce has made the finding authorized by section 307(c)(3)(B)(iii) of the CZMA. The APD's must conform to the activities described in detail in the approved Exploration Plan and shall not be subject to a separate State coastal zone consistency review.
(q) Nothing in this section or in an approved plan shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Exploration Plan.

TITLE 30--MINERAL RESOURCES

DEPARTMENT OF THE INTERIOR

PART 250--OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart B--Exploration and Development and Production Plans

Sec. 250. **204** Development and Production Plan.

(a) The lessee shall submit for approval a Development and Production Plan which includes the following:
(1) A description of and schedule for the development and production activities to be performed including plan commencement date, date of first production, total time to complete all development and production activities, and dates and sequences for drilling wells and installing facilities and equipment.
(2) A description of any drilling vessels, platforms, pipelines, or other facilities and operations located offshore which are proposed or known by the lessee (whether or not owned or operated by the lessee) to be directly related to the proposed development, including the location, size, design, and important safety, pollution prevention, and environmental monitoring features of the facilities and operations.
(b) The lessee shall submit the following supporting information to accompany the Development and Production Plan:
(1) Geological and geophysical (G&G) data and information, including the following:
(i) A plat showing the surface location of any proposed fixed structure or well.
(ii) A plat showing the surface and bottomhole locations and giving the measured and true vertical depths for each proposed well.
(iii) Current interpretations of relevant G&G data.
(iv) Current structure map(s) showing the surface and bottomhole location of each proposed well and the depths of expected productive formations.
(v) Interpreted structure sections showing the depths of expected productive formations.
(vi) A bathymetric map showing surface locations of fixed structures and wells or a table of water depths at each proposed site.
(vii) A discussion of seafloor conditions including a shallow hazards analysis for proposed drilling and platform sites and pipeline routes. This information shall be derived from the shallow hazards report required by Sec. 250.909 of this part.
(2) Information concerning the presence of H2S and proposed precautionary measures, including the following:
(i) A classification of the lease area as to whether it is within an area known to contain H2S, an area where the presence of H2S is unknown, or an area where the absence of H2S has been confirmed as described in Sec. 250.417 of this part and the documentation supporting the classification; or
(ii) If the classification is an area known to contain H2S or an area where the presence of H2S is unknown, an H2S Contingency Plan as required in Sec. 250.417 of this part.
(3) A description of the environmental safeguards to be implemented, including an updated oil-spill response plan as described in part 254 of this chapter or reference to an approved plan.
(4) A discussion of the steps that have been or will be taken to satisfy the conditions of lease stipulations.
(5)(i) A description of technology and reservoir engineering practices intended to increase the ultimate recovery of oil and gas, i.e., secondary, tertiary, or other enhanced recovery practices;
(ii) A description of technology and recovery practices and procedures intended to assure optimum recovery

of sulphur; or
(iii) A description of technology and recovery practices and procedures intended to assure optimum recovery of oil and gas and sulphur.
(6) A discussion of the proposed drilling and completion programs.
(7) A detailed description of new or unusual technology to be
employed. The lessee shall indicate which portions of the information the lessee believes are exempt from disclosure under the FOIA (5 U.S.C. 552) and the implementing regulations (43 CFR part 2). The lessee shall include a written discussion of the general subject matter of the deleted portions for transmittal to recipients of plan copies.
(8) A brief description of the following:
(i) The location, description, and size of any offshore, and to the maximum extent practicable, land-based operations to be conducted or contracted for as a result of the proposed activity, including the following:
(A) The acreage required within a State for facilities, rights-of-way, and easements.
(B) The means proposed for transportation of oil, gas, and sulphur to shore; the routes to be followed by each mode of transportation; and the estimated quantities of oil, gas, and sulphur to be moved along such routes.
(C) An estimate of the frequency of boat and aircraft departures and arrivals, the onshore location of terminals, and the normal routes for each mode of transportation.
(ii) A list of the proposed drilling fluids including components and their chemical compositions, information on the projected amounts and rates of drilling fluid and cuttings discharges, and method of disposal. If the information is provided in an approved Environmental Protection Agency, National Pollutant Discharge Elimination System permit, or a pending permit application, the lessee may reference these documents.
(iii) The quantities, types, and plans for disposal of other solid and liquid wastes and pollutants likely to be generated by offshore, onshore, and transport operations and, regarding any wastes which may require onshore disposal, the means of transportation to be used to bring the wastes to shore, disposal methods to be utilized, and location of onshore waste disposal or treatment facilities.
(iv) The following information on onshore support facilities, except in the western GOM:
(A) The approximate number, timing, and duration of employment of persons who will be engaged in onshore development and production activities, an approximate number of local personnel who will be employed for or in support of the development activities (classified by the major skills or crafts that will be required from local sources and estimated number of each such skill needed), and the approximate total number of persons who will be employed during the onshore construction activity and during all activities related to offshore development and production.
(B) The approximate number of people and families to be added to the population of local nearshore areas as a result of the planned development.
(C) An estimate of significant quantities of energy and resources to be used or consumed including electricity, water, oil and gas, diesel fuel, aggregate, or other supplies which may be purchased within an affected State.
(D) The types of contractors or vendors which will be needed, although not specifically identified, and which may place a demand on local goods and services.
(E) The source, composition, frequency, and duration of emissions of air pollutants.
(v) A narrative description of the existing environment with an emphasis placed on those environmental values that may be affected by the proposed action. This section shall contain a description of the physical environment of the area covered by the related plan. This portion of the plan shall include data and information obtained or developed by the lessee together with other pertinent information and data available to the lessee from other sources. The environmental information and data shall include the following, where appropriate:

(A) If the Regional Director believes that an archaeological resource may exist in the lease area, the Regional Director will notify the lessee in writing. Prior to commencing any operations, the lessee shall prepare a report, as specified by the Regional Director, to determine the potential existence of any archaeological resource that may be affected by operations. The report shall be prepared by an archaeologist and geophysicist and shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information.
(B) The aquatic biota, including a description of fishery and marine mammal use of the lease and the significance of the lease, and a description of any threatened and endangered species and their critical habitat. The results of any biological surveys required by the Regional Supervisor (including a copy of survey reports or references to previously submitted reports) should be incorporated into these discussions.
(C) Environmentally sensitive areas (e.g., refuges, preserves, sanctuaries, rookeries, calving grounds, coastal habitat, beaches, and areas of particular environmental concern) which may be affected by the proposed activities.
(D) The predevelopment, ambient water-column quality and temperature data for incremental depths for the areas encompassed by the plan.
(E) The physical oceanography, including ocean currents described as to prevailing direction, seasonal variations, and variations at different water depths in the lease.
(F) Historic weather patterns and other meteorological conditions, including storm frequency and magnitude, wave height and direction, wind direction and velocity, air temperature, visibility, freezing and icing conditions, and ambient air quality listing, where possible, the means and extremes of each.
(G) The other uses of the area known to the lessee, including military use for national security or defense, subsistence hunting and fishing, commercial fishing, recreation, shipping, and other mineral exploration or development.
(H) The existing or planned monitoring systems that are measuring or will measure impacts of activities on the environment in the planning area.
(9) For sulphur operations, the degree of subsidence that is expected at various stages of production, and measures that will be taken to assure safety of operations and protection of the environment. Special attention shall be given to the effects of subsidence on existing or potential oil and gas production, fixed bottom-founded structures, and pipelines.
(10) For sulphur operations, a discussion of the potential toxic or thermal effects on the environment caused by the discharge of bleedwater, including a description of the measures that will be taken into account to mitigate these impacts.
(11) An assessment of the effects on the environment expected to occur as a result of implementation of the plan, identifying specific and cumulative impacts that may occur both onshore and offshore, and the measures proposed to mitigate these impacts. Such impacts shall be quantified to the fullest extent possible including magnitude and duration and shall be accumulated for all activities for each of the major elements of the environment (e.g., water or biota).
(12) A discussion of alternatives to the activities proposed that were considered during the development of the plan including a comparison of the environmental effects.
(13) Certificate(s) of coastal zone consistency as provided in 15 CFR part 930.
(14) For each OCS facility, such information described below needed to make the findings under Sec. 250.303 or Sec. 250.304 of this part:
(i)(A) Projected emissions from each proposed or modified facility for each year of operation and basis for all calculations to include the following:
(1) For each source, the amount of the emission by air pollutant expressed in tons per year and frequency and duration of emissions;
(2) For each proposed facility, the total amount of emissions by air pollutant expressed in tons per year, the

frequency distribution of total emissions by air pollutant expressed in pounds per day and, in addition for a modified facility only, the incremental amount of total emissions by air pollutant resulting from the new or modified source(s);
(3) A detailed description of all processes, processing equipment, and storage units, including information on fuels to be burned;
(4) A schematic drawing which identifies the location and elevation of each source; and
(5) If projected emissions are based on the use of emission- reduction control technology, a description of the controls providing the information required by paragraph (b)(12)(iv)(A) of this section.
(B) The distance of each proposed facility from the mean high water mark (mean higher high water mark on the Pacific coast) of any State.
(ii)(A) The model(s) used to determine the effect on the onshore air quality of emissions from each facility, or from other facilities when required by the Regional Supervisor, and the result obtained through the use of the model(s). Only model(s) that has been approved by the Director may be used.
(B) The best available meteorological information and data
consistent with the model(s) used stating the basis for the information
and data selected.
(iii) The air quality status of any onshore area where the air quality is significantly affected (within the meaning of Sec. 250.303 of this part) by projected emissions from each facility proposed in the plan. The area should be classified as nonattainment, attainment, or unclassifiable listing the status of each area by air pollutant, the class of attainment areas, and the air pollution control agency whose jurisdiction covers the area identified.
(iv)(A) The emission-reduction controls available to reduce emissions including the source, emission-reduction control technology, reductions to be achieved, and monitoring system the lessee proposes to use to measure emissions. The lessee shall indicate which emission- reduction control technology the lessee believes constitutes the best available control technology and the basis for that opinion.
(B) The ownership of the offshore and onshore offsetting source(s) and the reduction obtainable from each offsetting source.
(15) A brief discussion of any approved or anticipated suspensions of production necessary to hold the lease(s) in an active status.
(16) The name, address, and telephone number of an individual employee of the lessee to whom inquiries by the Regional Supervisor and the affected State(s) may be directed.
(17) Such other data and information as the Regional Supervisor may require.
(c) Data and information discussed in other documents previously submitted to MMS or otherwise readily available to reviewers may be incorporated by reference. The material being incorporated shall be cited and described briefly and include a statement of where the material is available for inspection. Any material based on proprietary data which is not itself available for inspection shall not be incorporated by reference.
(d)(1) Development and Production Plans are not required for leases in the western GOM. For these leases, the lessee shall submit to the Regional Supervisor for approval a Development Operations Coordination Document with all information necessary to assure conformance with the Act, other laws, applicable regulations, lease provisions, or as otherwise needed to carry out the functions and responsibilities of the Regional Supervisor.
(2) Any information required in paragraph (d)(1) of this section shall be considered a Development and Production Plan for the purpose of references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.
(e) The Regional Director, after consultation with the Governor(s) of the affected State(s) or the Governor's designated representative, the CZM agency of the affected State(s), and the Office of Ocean and Coastal Resource Management of NOAA may limit the amount of information required to be included in a

Development and Production Plan to that necessary to assure conformance with the Act, other laws, applicable regulations, and lease provisions. In determining the information to be included in a plan, the Regional Director shall consider current and expected operating conditions together with experience gained during past operations of a similar nature in the area of proposed activities.

(f) The Regional Supervisor shall determine within 20 working days after receipt whether additional material is needed. If no deficiencies are identified and the requested number of copies have been received, the plan shall be deemed submitted.

(g) Within 5 working days after a Development and Production Plan has been deemed submitted, the Regional Supervisor shall transmit a copy of the plan, except for those portions of the plan determined to be exempt from disclosure under the FOIA and the implementing regulations (43 CFR part 2), to the Governor or the Governor's designated representative and the CZM agency of each affected State and to the executive of each affected local government that requests a copy. The Regional Supervisor shall make copies available to appropriate Federal Agencies, interstate entities, and the public. The plan will be available for review at the appropriate MMS Regional Public Information Office.

(h) The Governor or the Governor's designated representative and the CZM agency of each affected State and the executive of each affected local government shall have 60 days from the date of receipt of the Development and Production Plan to submit comments and recommendations to the Regional Supervisor. The executive of any affected local government must forward all recommendations to the Governor of the State prior to submitting them to the Regional Supervisor. The Regional Supervisor shall accept those recommendations from the Governor that provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. The Regional Supervisor shall explain in writing the reasons for accepting or rejecting any recommendations. In addition, any interested Federal Agency or person may submit comments and recommendations to the Regional Supervisor. All comments and recommendations shall be made available to the public.

(i) We will process the plan according to this section and 15 CFR part 930. Accordingly, consistency review begins when the State's CZM agency receives a copy of the deemed submitted plan, consistency certification, and required necessary data and information as directed by 15 CFR 930.78.

(j) The Regional Supervisor will evaluate the environmental impact of the activities described in the Development and Production Plan (DPP) and prepare the appropriate environmental documentation required by the National Environmental Policy Act of 1969. At least once in each planning area (other than the western and central Gulf of Mexico planning areas), we will prepare an environmental impact statement (EIS) and send copies of the draft EIS to the Governor of each affected State and the executive of each affected local government that requests a copy. Additionally, when we prepare a DPP EIS and when the State's federally approved coastal management program requires a DPP NEPA document for use in determining consistency, we will forward a copy of the draft EIS to the State's CZM Agency. We will also make copies of the draft EIS available to any appropriate Federal Agency, interstate entity, and the public.

(k) Prior to or immediately after a determination by the Director that approval of a Development and Production Plan requires that the procedures under NEPA shall commence, the Regional Supervisor may require lessees of tracts in the vicinity, for which Development and Production Plans have not been approved, to submit preliminary or final plans for their leases.

(l) No later than 60 days after the last day of the comment period provided in paragraph (h) of this section or within 60 days of the release of the final EIS describing the proposed activities, the Regional Supervisor shall accomplish the following:

(1) Approve the plan;

(2) Require modification of the plan if it is determined that the lessee has failed to make adequate provisions for safety, environmental protection, or conservation of resources including compliance with the regulations prescribed under the Act; or

(3) Disapprove the plan if one or more of the following occurs:
(i) The lessee fails to demonstrate that compliance with the requirements of the Act, provisions of the regulations prescribed under the Act, or other applicable Federal laws is possible;
(ii) State concurrence with the applicant's coastal zone consistency certification has not been received, the State's concurrence has not been conclusively presumed, or the State objects to the consistency certification, and the Secretary of Commerce does not make the determination authorized by section 307(c)(3)(B)(iii) of the CZMA;
(iii) Operations threaten national security or defense; or
(iv) Exceptional geological conditions in the lease area, exceptional resource value in the marine or coastal environment, or other exceptional circumstances exist, and all of the following:
(A) Implementation of the plan would probably cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or to the marine, coastal, or human environments.
(B) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time.
(C) The advantages of disapproving the plan outweigh the advantages of development and production.
(m) The Regional Supervisor shall notify the lessee in writing of the reason(s) for disapproving a Development and Production Plan or for requiring modification of a plan and the conditions which must be met for plan approval.
(n) The lessee may resubmit a Development and Production Plan, as modified, to the Regional Supervisor. Only information related to the proposed modifications need be submitted. Within 60 days following the 60-day comment period provided for in paragraph (h) of this section, the Regional Supervisor shall approve, disapprove, or require modification of the modified plan.
(o)(1) If a Development and Production Plan is disapproved for the sole reason that a State consistency certification has not been obtained, the Regional Supervisor shall approve the plan upon receipt of the concurrence, at the time when concurrence is conclusively presumed, or when the Secretary of Commerce makes a finding authorized by section 307(c)(3)(B)(iii) of the CZMA.
(2) If a Development and Production Plan is disapproved because a State objects to the lessee's coastal zone consistency certification, the lessee shall modify the plan to accommodate the State's objection(s) and resubmit the plan to (i) the Regional Supervisor for review pursuant to the criteria in paragraph (l) of this section; and (ii) through the Regional Supervisor, to the State for review pursuant to the CZMA and the implementing regulations (15 CFR 930.83 and 930.84). Alternatively, the lessee may appeal the State's objection to the Secretary of Commerce pursuant to the procedures described in section 307 of the CZMA and the implementing regulations (subpart H of 15 CFR part 930). The Regional Supervisor shall approve, disapprove, or require modification of a plan as revised within 60 days following the 60-day comment period provided for in paragraph (h) of this section.
(p) Development and Production Plans disapproved pursuant to paragraph (l)(3) of this section are subject to the provisions of section 25(h)(2) of the Act and the implementing regulations in Secs. 250.183 and 256.77 of this chapter.
(q)(1) The Regional Supervisor shall periodically review the activities being conducted under an approved Development and Production Plan. The frequency and extent of the Regional Supervisor's review shall be based upon the significance of any changes in available information and onshore or offshore conditions affecting or impacted by development or production activities being conducted pursuant to the plan. If the review indicates that the plan should be revised to meet the requirements of this part, the Regional Supervisor shall require the needed revisions.
(2) Revisions to an approved or pending Development and Production Plan, whether initiated by the lessee or ordered by the Regional Supervisor, shall be submitted to the Regional Supervisor for approval. Only

information related to the proposed revisions need be submitted. When the Regional Supervisor determines that a proposed revision could result in a significant change in the impacts previously identified and evaluated, requires additional permits, or proposes activities not previously identified and evaluated, the revision shall be subject to all of the procedures in this section.

(3) When any revision to an approved Development and Production Plan is proposed by the lessee, the Regional Supervisor may approve the revision if it is determined that the revision is consistent with the protection of the marine, coastal, and human environments and will lead to greater recovery of oil and natural gas; will improve the efficiency, safety, and environmental protection of the recovery operation; is the only means available to avoid substantial economic hardship to the lessee; or is otherwise not inconsistent with the provisions of the Act.

(r) Whenever the lessee fails to submit a Development and Production Plan in accordance with provisions of this section or fails to comply with an approved plan, the lease may be cancelled in accordance with sections 5 (c) and (d) of the Act and the implementing regulations in Secs. 250.183 and 256.77 of this chapter.

(s) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, copies of any data obtained as a result of those surveys and monitoring programs.

(t) The lessee may not drill any well until the District Supervisor's approval of an APD, filed in accordance with the requirements of Sec. 250.414 of this part, has been received. All APD's and applications to install platforms and structures, pipelines, and production equipment must conform to the activities described in detail in the approved Development and Production Plan and shall not be subject to a separate State coastal zone consistency review.

(u) Nothing in this section or approved plans shall limit the lessee's responsibility to take appropriate measures to meet emergency situations. In such situations, the Regional Supervisor may approve or require departures from an approved Development and Production Plan.

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