

APPENDIX D

FEDERAL LAWS & EXECUTIVE ORDERS

D. Federal Laws and Executive Orders

1. Federal Laws

a. The Outer Continental Shelf Lands Act (OCSLA)

The OCSLA of 1953 authorized the Secretary of the Interior to grant mineral leases and to prescribe regulations governing oil and gas activities on Outer Continental Shelf (OCS) lands. The OCSLA defines the OCS as:

“ . . . all submerged lands lying seaward and outside of the areas lands beneath navigable waters as defined in section 2 of the Submerged Lands Act and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.”

The pertinent provision of the Submerged Lands Act defines “navigable waters” as:

“ . . . all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles ”

Under the OCSLA, the U.S. Department of the Interior (USDOI) is required to:

- manage the orderly leasing, exploration, development, and production of oil and gas resources on the Federal OCS;
- ensure the protection of the human, marine, and coastal environments;
- ensure that the public receives a fair and equitable return for these resources; and
- ensure that free-market competition is maintained.

Within the USDOI, the Minerals Management Service (MMS) is charged with the responsibility of managing and regulating the development of OCS oil and gas resources in accordance with the provisions of the OCSLA. The MMS operating regulations are presented in Chapter 30, Code of Federal Regulations (CFR), Part 250.

b. The National Environment Policy Act (NEPA)

The NEPA of 1969 is the foundation of environmental policymaking in the United States. The NEPA process is intended to help public officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment. The NEPA established two primary mechanisms for this purpose:

- The Council on Environmental Quality (CEQ) was established to advise Agencies on the environmental decisionmaking process and to oversee and coordinate the development of Federal environmental policy.
- Agencies must include an environmental review process early in the planning for proposed actions.

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The CEQ issued regulations in 1978 implementing NEPA. The regulations include procedures to be used by Federal Agencies for the environmental review process. These regulations provide for the use of the NEPA process to identify and assess reasonable alternatives to proposed actions that avoid or minimize adverse effects of these actions upon the quality of the human environment. Scoping is used to identify the scope and significance of important environmental issues associated with a proposed Federal action through coordination with Federal, State, and local agencies; the general public; and any interested individual or organization prior to the development of an impact statement. The process also identifies and eliminates from further detailed study issues that are not significant or that have been covered by prior environmental review.

The NEPA requires all Federal Agencies to use a systematic, interdisciplinary approach to protect the human environment. Such an approach ensures the integrated use of natural and social sciences in any planning and decisionmaking that may have an impact on the environment. The NEPA also requires the preparation of a detailed environmental impact statement (EIS) on any major Federal action that may have a significant impact on the environment. The EIS must address any adverse environmental effects that cannot be avoided or mitigated, alternatives to the proposed action, the relationship between short-term resources and long-term productivity, and irreversible and irretrievable commitments of resources. Environmental assessments (EA's) are prepared to determine if significant impacts may occur. If an EA finds that significant impacts may occur, NEPA requires preparation of an EIS. The briefest form of NEPA review is the categorical exclusion review (CER). The purpose of a CER is to verify that neither an EA nor an EIS is needed prior to making a decision on the activity being considered for approval.

c. The Energy Policy Act of 2005

This law, enacted in 2005, gives the MMS new responsibilities over Federal offshore renewable energy and related uses of the OCS. Section 388 of the Act gives the Secretary of the Interior the authority to grant leases, easements, or rights-of-way for renewable energy-related uses on the Federal OCS, and to monitor and regulate the facilities used for energy production and energy support services.

d. The Alaska National Interest Lands Conservation Act (ANILCA)

In 1980, ANILCA created over 100 million acres of new national parks, refuges, monuments, conservation areas, recreation areas, forests, and wild and scenic rivers in the State of Alaska for the preservation of "nationally significant" natural resources. To address special issues and needs arising from the new land designations, ANILCA contains numerous provisions and special rules for managing Alaska's public lands and nationally important resource development potential. The ANILCA requires Federal land managers to balance the national interest in Alaska's scenic and wildlife resources with recognition of Alaska's economy and infrastructure, and its distinctive rural way of life. Title VIII of ANILCA requires that subsistence uses by "rural" Alaska residents be given a priority over all other (sport and commercial) uses of fish and game on Federal public lands in Alaska. As a compromise, Congress allowed the State to continue managing fish and game uses on Federal public lands, but only on the condition that the State of Alaska adopt a statute that made the new Title VIII "rural" subsistence priority applicable on State, as well as on Federal lands. If the State ever fell out of compliance with Title VIII, Congress required the Secretary of the Interior to reassume management of fish and game on the Federal public lands.

Section 810 of the ANILCA creates special steps a Federal Agency must take before it decides to "withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public land."

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Specifically, the Federal Agency must first evaluate three factors: the effect of its action on subsistence uses and needs; the availability of other lands for the purposes sought to be achieved; and alternatives which would “reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.” If the Federal Agency concludes that its action “would significantly restrict subsistence uses,” it must notify the appropriate State agency, regional council, and local committee. It then must hold a hearing in the vicinity of the area involved, and must make the following findings:

- Such significant restriction of subsistence uses is necessary and consistent with sound management principles for the utilization of public lands.
- The proposed activity will involve the minimal amount of public lands necessary to accomplish the purpose of such use, occupancy, or other disposition.
- Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions. (16 U.S.C. 3120(a)(3)).

In *People of the Village of Gambell vs. Clark*, 746 F.2d 572 (9th Cir. 1984) (Gambell I), the court ruled that the “lands and waters” of the OCS were “public lands” for the purpose of this section. The court later ruled that the provisions of section 810 should not be applied in a staged manner, despite the staged decisionmaking approach set out in the OCS Lands Act and relied upon by the Supreme Court in *Secretary of the Interior vs. California (People of the Village of Gambell vs. Hodel*, Civ. No. 85-3877 (9th Cir. Oct. 25, 1985)). As a result of these rulings, the USDOJ prepares an analysis under section 810 of ANILCA for OCS lease sales and plans of exploration and development/production for activities offshore Alaska. The provisions of ANILCA do not apply to the 5-Year Leasing Program because the USDOJ does not make any of the above-described decisions.

e. The Clean Air Act (CAA)

The CAA, as amended, delineates jurisdiction of air quality between the U.S. Environmental Protection Agency (USEPA) and the MMS. For OCS operations in the Gulf of Mexico, those west of 87.5° W. longitude are subject to MMS air quality regulations; operations east of 87.5° W. longitude are subject to USEPA air quality regulations.

Under the CAA, the Secretary of the Interior is required to consult with the USEPA Administrator “to assure coordination of air pollution control regulations for OCS emissions and emissions in adjacent onshore areas.” The MMS established 30 CFR 250.302, 250.303, and 250.304 to comply with the CAA. The regulated pollutants include carbon monoxide, particulates, sulfur dioxide, nitrogen oxides, and volatile organic compounds (as a precursor to ozone). In areas where hydrogen sulfide may be present, operations are regulated by 30 CFR 250.417. The MMS regulations allow for the collection of information about potential sources of pollution for the purpose of determining whether the projected emissions of air pollutants from a facility could result in ambient onshore air pollutant concentrations above maximum levels provided in the regulations. These regulations also stipulate appropriate emissions controls deemed necessary to prevent accidents and air quality deterioration.

f. The Federal Water Pollution Control Act (FWPCA) and Clean Water Act (CWA)

The FWPCA establishes water pollution control activities to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. The CWA of 1977 amended the FWPCA. Title III of the CWA requires the USEPA to establish national effluent limitation standards for existing point sources of waste-water discharges which reflect the application of the best practical

control technology currently available. These standards apply to existing OCS exploratory drillships, semisubmersible vessels, and jackup rigs used in exploration activities. The CWA also requires the USEPA to establish regulations for effluent limitations for categories and classes of point sources that require the application of “best available control technology economically achievable.”

Section 311 of the CWA, as amended, prohibits the discharge of oil or hazardous substances into the navigable waters of the United States that may affect natural resources, except under limited circumstances, and establishes civil penalty liability and enforcement procedures to be administered by the U.S. Coast Guard (USCG). The CWA Title IV establishes requirements for Federal permits and licenses to conduct an activity (including construction or operation of facilities) that may result in any discharges into navigable waters. Section 402 of the CWA gives the USEPA the authority to issue National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants. The NPDES permits apply to all sources of wastewater discharges from exploratory vessels and production platforms operating on the OCS.

g. The Coastal Zone Management Act (CZMA) and the Coastal Zone Reauthorization Amendments of 1990

Congress passed the CZMA and created the Coastal Zone Management Program to improve the management of our Nation’s coastal areas. The program, a voluntary partnership between the Federal Government and the coastal States and territories, is administered at the Federal level by the National Oceanic and Atmospheric Administration (NOAA) within the U.S. Department of Commerce (USDOC). The program’s goal is to reduce potential conflicts between environmental and economic interests in the coastal area through the use of federally-approved coastal management programs (CMP’s).

The CZMA allows a coastal State or territory, with a federally-approved CMP, to review Federal activities for Federal consistency. Federal consistency is the CZMA requirement that all Federal actions that are reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a State’s/territory’s CMP. Section 307 of the CZMA contains the Federal consistency provisions that impose certain requirements on Federal Agencies to comply with enforceable policies detailed in the federally-approved CMP’s:

- Section 307(c)(1) requires that any direct Federal Agency activities affecting any land or water use or natural resources of the coastal zone be consistent, to the maximum extent practicable, with enforceable policies of the State’s CMP. This section applies to OCS lease sales.
- Section 307(c)(3)(A) requires that any Federal licenses/permit affecting any land or water use or natural resources of the coastal zone be consistent with enforceable policies of the State’s CMP. This section applies to geological and geophysical permits. Additionally, this section prohibits the Federal Agency from issuing the license/permit until the affected State(s) has concurred with or presumed to concur with the applicant’s consistency certification or until the Secretary of Commerce has overridden the State’s consistency objection to the licensed/permitted activity.
- Section 307(c)(3)(B) requires that activities affecting any land or water use or natural resources of the coastal zone, described in detail in OCS exploration or development and production plans, be consistent with enforceable policies of the State’s CMP. The MMS is prohibited from approving an OCS plan until the affected State(s) has concurred with, or is presumed to concur with, the applicant's consistency certification or until the Secretary of Commerce has overridden the State’s consistency objection.

h. The Endangered Species Act (ESA)

The ESA of 1973 establishes policy to protect and conserve threatened and endangered species and the ecosystems upon which they depend. The ESA is administered by the USDOJ, Fish and Wildlife Service (FWS) and the USDOC, National Marine Fisheries Service (NMFS). Section 7 of the ESA mandates that all Federal Agencies consult with the FWS or NMFS to ensure that any agency action is not likely to:

- jeopardize the continued existence of any endangered or threatened species, and/or
- destroy or adversely modify an endangered or threatened species' critical habitat.

The ESA requires Federal Agencies to formally consult when there is reason to believe that a listed (or proposed to be listed) species may be affected by a proposed action. Formal endangered species consultations provide a threshold examination and a biological opinion on the likelihood that the proposed activity will or will not jeopardize the continued existence of the resource, and on the effect of the proposed activity on the endangered species. The biological opinion may include recommendations for modification of the proposed activity. The FWS or NMFS notifies the Federal Agency in writing when insufficient information is available to conclude that the proposed activity is not likely to jeopardize the species or its habitat. In such cases, the Federal Agency must obtain additional information, and, if recommended by the FWS or NMFS, conduct appropriate biological surveys or studies to determine how the proposed activity may affect the endangered species or its critical habitat. After such additional information is received, FWS or NMFS would conclude the consultation process by issuing a formal biological opinion. For OCS activities in the Western and Central Gulf of Mexico Planning Areas, the MMS consults with FWS and/or NMFS at the multisale stage. This consultation covers OCS activities from lease sale through the exploration, development, production, and decommission stages. For other OCS areas, the MMS consults with FWS and/or NMFS at the lease sale stage; however, this consultation only covers leasing and exploration activities. A separate consultation is conducted for development, production, and decommissioning stages.

i. The Magnuson-Stevens Fishery Conservation and Management Act (FCMA)

The FCMA of 1976 established and delineated an area from the States' seaward boundary to approximately 200 nautical miles out as a fisheries conservation zone for the United States and its possessions. The FCMA created eight regional fishery management councils (FMC's) and mandated a continuing planning program for marine fisheries management by the FMC's. Also, FCMA requires the FMC to prepare a fishery management plan (FMP), based upon the best available scientific and economic data, for each commercial species (or related group of species) of fish in need of conservation and management within each respective region.

When the Sustainable Fisheries Act of 1996 reauthorized the FCMA, Congress required the NMFS to designate and conserve essential fish habitat (EFH) for those species managed under an existing FMP. By designating EFH, Congress hoped to minimize any adverse effects on habitat caused by fishing or nonfishing activities and to identify other actions to encourage the conservation and enhancement of such habitat. The phrase "essential fish habitat" encompasses "those waters and substrate necessary to fishes for spawning, breeding, feeding, or growth to maturity." As a result of this change, Federal Agencies must consult with NMFS on those activities that may have direct (e.g., physical disruption) or indirect (e.g., loss of prey species) effects on EFH. For OCS activities in the Western and Central Gulf of Mexico Planning Areas, the MMS consults with NMFS at the multisale stage. This consultation covers OCS activities from lease sale through the exploration, development, production, and decommission stages. For other OCS areas, MMS consults with NMFS at each OCS project stage individually (e.g., the lease sale, exploration plan, and development and production plan).

j. The Marine Mammal Protection Act (MMPA)

The MMPA was enacted in 1972 to ensure that marine mammals are maintained at, or in some cases restored to, healthy population levels. Jurisdiction over marine mammals under the MMPA is split between two Federal Agencies, FWS and NMFS. The FWS has jurisdiction over sea otters, polar bears, manatees, dugongs, and walrus, while the NMFS has jurisdiction over all other marine mammals.

The MMPA established a moratorium on the taking or importing of marine mammals except during certain activities that are regulated and permitted. Such activities include scientific research, public display, commercial and educational photography, import and export of marine mammal parts, commercial fishing authorizations, and take incidental to non-fishing commercial activities. Taking is defined as “to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal.” Harass is defined as any act of pursuit, torment, or annoyance that has the potential to:

- injure a marine mammal or marine mammal stock in the wild, or
- disturb a marine mammal or marine mammal stock in the wild by disrupting behavioral patterns (e.g., breathing, nursing, breeding).

Upon request, the Secretary (of either the USDOJ or the USDOC, depending on jurisdiction) can authorize the unintentional taking of small numbers of marine mammals incidental to activities other than commercial fishing (e.g., offshore oil and gas exploration and development) for a period of 1-5 years, depending on the level of anticipated take. To authorize the taking, the Secretary must find that the total of the taking during the 5-year period (or less) would have a negligible impact on the affected species. Also, the Secretary shall withdraw or suspend permission to take marine mammals incidental to oil and gas production, and other activities when:

- the applicable regulations concerning the methods of taking, monitoring, or reporting are not being complied with; or
- the taking is having, or may be having, more than a negligible impact on the affected species or stock.

The MMS coordinates with the FWS and NMFS to ensure that MMS and offshore operators comply with the MMPA, and to identify mitigation and monitoring requirements for permits or approvals for activities like seismic surveys and platform removals.

k. The International Convention of the Prevention of Pollution from Ships (MARPOL) and Marine Plastic Pollution Research and Control Act (MPPRCA)

In 1978, MARPOL was updated to include five annexes on ocean dumping. By signing onto MARPOL, countries agree to enforce Annexes I and II (oil and noxious liquid substances) of the treaty. Annexes III (hazardous substances), IV (sewage) and V (plastics) are optional. The United States is signatory to two of the optional MARPOL Annexes, III and V. Annex V is of particular importance to the maritime community (e.g., shippers, oil platform personnel, fishers, recreational boaters) because it prohibits the disposal of plastic at sea and regulates the disposal of other types of garbage at sea. The USCG is the enforcement agency for MARPOL Annex V within the U.S. Exclusive Economic Zone (EEZ) (within 200 miles of the U.S. shoreline).

The MPPRCA is the Federal law implementing MARPOL Annex V in all U.S. waters. Under the MPPRCA, it is illegal to throw plastic trash off any vessel within the EEZ. It is also illegal to throw any other garbage (e.g., orange peels, paper plates, glass jars, and monofilament fishing line) overboard while navigating in inland waters or within 3 miles offshore. The greater the distance from shore, the fewer restrictions apply to nonplastic garbage. However, dumping plastics overboard in any waters anywhere is illegal at anytime. Fixed and floating platforms, drilling rigs, manned production platforms, and support vessels operating under a Federal oil and gas lease are required to develop waste management plans and to post placards reflecting discharge limitations and restrictions. Garbage must be brought ashore and properly disposed of in a trash can, dumpster, or recycling container. Docks and marinas are required to provide facilities to handle normal amounts of garbage from their paying customers. Violations of MARPOL or MPPRCA may result in a fine of up to \$50,000 for each incident. If criminal intent can be proven, an individual may be fined up to \$250,000 and/or imprisoned up to 6 years. If an organization is responsible, it may be fined up to \$500,000 and/or 6 years of imprisonment.

l. The Marine Protection, Research, and Sanctuaries Act (MPRSA)

The MPRSA of 1972 regulates the ocean dumping of waste, provides for a research program on ocean dumping, and provides for the designation and regulation of marine sanctuaries. Also known as the Ocean Dumping Act, it regulates the ocean dumping of all material beyond the territorial limit (3 miles from shore) and prevents or strictly limits dumping material that “would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.” Material includes, but is not limited to, dredged material; solid waste; incinerator residue; garbage; sewage; sewage sludge; munitions; chemical and biological warfare agents; radioactive materials; chemicals; biological and laboratory waste; wrecked or discarded equipment; rocks; sand; excavation debris; and industrial, municipal, agricultural, and other waste. The term does not include sewage from vessels or oil, unless the oil is transported via a vessel or aircraft for the purpose of dumping. Disposal by means of a pipe, regardless of how far at sea the discharge occurs, is regulated by the CWA through the NPDES permit process.

Title III of the MPRSA, later called the National Marine Sanctuaries Act, charged the Secretary of the Department of Commerce to identify, designate, and manage marine sites based on conservational, ecological, recreational, historical, aesthetic, scientific, or educational value within significant national ocean and Great Lake waters. The NOAA administers the National Marine Sanctuary Program. Twelve national marine sanctuaries, representing a wide variety of ocean environments, have been designated.

m. The Merchant Marine Act of 1920 (Jones Act)

The Jones Act regulates coastal shipping between U.S. ports and inland waterways. The Jones Act provides that “no merchandise shall be transported by water, or by land and water . . . between points in the United States . . . in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States” Therefore, the Jones Act requires that all goods shipped between different ports in the United States or its territories must be:

- carried on vessels built and documented (flagged) in the United States,
- crewed by U.S. citizens or legal aliens licensed by the USCG, and
- owned and operated by U.S. citizens.

The rationale behind the Jones Act and earlier sabotage laws was that the United States needed a merchant marine fleet to ensure that its domestic waterborne commerce remains under Government jurisdiction for regulatory, safety, and national defense considerations. The same general principles of safety regulations are applied to other modes of transportation in the United States. While other modes of transportation can operate foreign-built equipment, these units must comply with U.S. standards. However, many foreign-built ships do not meet the standards required of U.S.-built ships and, thus, are excluded from domestic shipping.

The U.S. Customs Service has determined that facilities fixed or attached to the OCS used for the purpose of oil exploration are considered points within the United States. The OCS oil facilities are considered U.S. sovereign territory and fall under the requirements of the Jones Act; so all shipping to and from these facilities related to OCS oil exploration can only be conducted by vessels meeting the requirements of the Jones Act. Shuttle tankering of oil that is produced at OCS facilities can only be legally provided by U.S.-registered vessels and aircraft that are properly endorsed for coastwise trade under the laws of the United States.

n. The National Fishing Enhancement Act

The National Fishing Enhancement Act of 1984, also known as the Artificial Reef Act, established broad artificial-reef development standards and a national policy to encourage the development of artificial reefs that will enhance fishery resources and commercial and recreational fishing. The national plan identifies oil and gas structures as acceptable material of opportunity for artificial-reef development. The MMS adopted a rigs-to-reefs policy in 1985 in response to this Act and to broaden interest in the use of petroleum platforms as artificial reefs.

o. The National Historic Preservation Act (NHPA)

The NHPA of 1966 requires the head of any Federal Agency possessing licensing authority or having direct or indirect jurisdiction over a proposed Federal or federally-assisted activity to consider the proposed activity's effect on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The historic properties (i.e. archaeological resources) on the OCS include historic shipwrecks, sunken aircraft, lighthouses, and prehistoric archaeological sites that have become inundated due to the 120-m rise in global sea level since the height of the last ice age (ca. 19,000 years ago).

Because the OCS is not federally-owned land and the Federal Government has not claimed direct ownership of historic properties on the OCS, the MMS only has the authority to ensure that any Agency-funded and permitted actions do not adversely affect significant historic properties. Beyond avoidance of adverse impacts, MMS does not possess the legal authority to manage the historic properties on the OCS. The MMS has conducted archaeological baseline studies of the OCS to determine where known historic properties may be located and to outline areas where presently unknown historic properties may be located. These baseline studies are used to identify "archaeologically sensitive" areas that may contain significant historic properties. Prior to approving any OCS exploration or development activities within an archaeologically sensitive area, MMS requires the lessee to conduct a marine remote sensing survey and to prepare an archaeological report. If the marine remote sensing survey indicates any evidence of a potential historic property, the lessee either must:

- move the site of the proposed lease operations a sufficient distance to avoid the potential historic property, or

- conduct further investigations to determine the nature and significance of the potential historic property.

If further investigation determines that there is a significant historic property within the area of proposed OCS operations, NHPA consultation procedures are followed.

p. The Oil Pollution Act (OPA 90)

The OPA 90 establishes a single uniform Federal system of liability and compensation for damages caused by oil spills in U.S. navigable waters. The OPA 90 requires removal of spilled oil and establishes a national system of planning for and responding to oil-spill incidents. Additionally, OPA 90 includes provisions to:

- improve oil-spill prevention, preparedness, and response capability;
- establish limitations on liability for damages resulting from oil pollution;
- promote funding for natural resource damage assessment;
- implement a fund for the payment of compensation for such damages; and
- establish an oil pollution research and development program.

The USCG is responsible for enforcing vessel compliance with OPA 90. The Secretary of the Interior is given authority over offshore facilities and associated pipelines (except deepwater ports) for all Federal and State waters, including responsibility for spill prevention, oil-spill contingency plans, oil-spill containment and cleanup equipment, financial responsibility certification, and civil penalties. The Secretary of the Interior delegated this authority to MMS.

The MMS regulations governing oil-spill financial responsibility (OSFR) for offshore facilities and related requirements for certain crude oil wells, production platforms, and pipelines located in the OCS and certain State waters became effective in October 1998. The regulations implement the OPA requirement for responsible parties to demonstrate they can pay for cleanup and damages caused by facility oil spills. Responsible parties can be required to demonstrate as much as \$150 million in OSFR if MMS determines that it is justified by the risks from potential oil spills from the covered offshore facilities. The minimum amount of OSFR that must be demonstrated is \$35 million for covered offshore facilities located in the OCS, and \$10 million for covered offshore facilities located in State waters. The regulation exempts persons responsible for facilities having a potential worst-case, oil-spill discharge of 1,000 bbl or less, unless the risks posed by a facility justify a lower threshold.

q. The Outer Continental Shelf Deep Water Royalty Relief Act

The Outer Continental Shelf Deep Water Royalty Relief Act of 1995 authorizes the Secretary of the Interior to offer OCS blocks for lease with suspension of royalties for a volume, value, or period of production. Deepwater royalty relief applies to blocks offered for lease in the western and central Gulf of Mexico in water depths exceeding 200 m through November 28, 2000. The MMS has developed procedures for suspension of royalty payment on production from eligible leases.

r. The Ports and Waterways Safety Act

The Ports and Waterways Safety Act authorizes the USCG to designate safety fairways, fairway anchorages, and traffic separation schemes to provide unobstructed approaches through oil fields for

vessels using ports. The USCG regulations provide listings of these designated areas along with special conditions related to oil and gas production. In general, no fixed structures such as platforms are allowed in fairways. Temporary underwater obstacles such as anchors and attendant cables or chains attached to floating or semisubmersible drilling rigs may be placed in a fairway under certain conditions. Fixed structures may be placed in anchorages, but the number of structures is limited.

s. The Resource Conservation and Recovery Act (RCRA)

The RCRA provides a framework for the safe disposal and management of hazardous and solid wastes. Most oil-field wastes have been exempted from coverage under RCRA hazardous waste regulations. Any hazardous wastes generated on the OCS that are not exempt must be transported to shore for disposal at a hazardous waste facility.

2. Executive Orders (EO)

a. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 1994)

In the memorandum to heads of departments and agencies that accompanied the EO, the President specifically recognized the importance of procedures under NEPA for identifying and addressing environmental justice concerns. The memorandum states that “each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by [NEPA].” In August 1994, the Secretary of the Interior directed its bureaus to include EJ in NEPA documentation, and in February 1998, the CEQ issued guidance to assist Federal Agencies in addressing EJ.

The issue of disproportionate, OCS-related impacts on minority and low-income populations is addressed in all OCS regions when such analysis is required by NEPA. This issue is a primary focus in Alaska OCS Region environmental assessments where Native Alaskan subsistence hunting, fishing, and gathering activities occur in coastal areas.

Executive Order No. 12898 provides the following:

Section 1-1. IMPLEMENTATION.

1-101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marianas Islands.

1-102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency (“Administrator”) or the Administrator’s designee shall convene an interagency Federal Working Group on Environmental Justice (“Working Group”). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development;

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(d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall:

(1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies.

(a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

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(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform this Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. *Reports to the President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. RESEARCH, DATA COLLECTION, AND ANALYSIS.

3-301. *Human Health and Environmental Research and Analysis.*

(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

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(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. *Human Health and Environmental Data Collection and Analysis.* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. § 552a):

(a) each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4-401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4-402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

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Sec. 5-5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION.

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. GENERAL PROVISIONS.

6-601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

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6-608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

b. Executive Order 13007: Indian Sacred Sites (May 1996)

The Indian Sacred Sites EO directs Federal land managing Agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites. It is MMS's policy to consider the potential effects of all aspects of plans, projects, programs, and activities on Indian sacred sites, and to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments before taking actions that may affect Indian sacred sites located on Federal lands.

c. Executive Order 13089: Coral Reef Protection (June 1998)

This EO directs the U.S. Coral Reef Task Force, co-chaired by the Secretaries of Interior and Commerce, to develop and implement a comprehensive program of research and mapping to inventory, monitor, and "identify the major causes and consequences of degradation of coral reef ecosystems." Additionally, the EO directs Federal Agencies to protect coral reef ecosystems and, to the extent permitted by law, prohibits them from authorizing funding or carrying out any actions that will degrade these ecosystems. Relatedly, the USDOJ works with domestic and international partners through the Coral Reef Initiative. This initiative focuses efforts to protect and monitor coral reefs around the world by building and sustaining partnerships, programs, and institutional capacities at the local, national, regional, and international levels.

d. Executive Order 12114: Environmental Effects Abroad (January 1979)

This EO requires that Federal officials be informed of environmental considerations, and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States, including Antarctica. Such Federal actions include:

- all major Federal actions significantly affecting the environment outside the jurisdiction of any nation (the oceans or Antarctica). This would apply to proposals that result in actions within the United States, which because of ocean currents, winds, stream flow, or other natural processes, may affect parts of the oceans not claimed by any nation (high seas). Included in this category would be an OCS project that, because of ocean currents, could result in effluents or spilled oil reaching fishing grounds or areas not claimed by another nation.
- all major Federal actions significantly affecting the environment of a foreign nation not involved in the action. This would apply to proposals that result in actions within U.S. territory or within the EEZ that, because of ocean currents, winds, stream flow, or other natural processes, may affect parts of another nation, or seas or oceans within the jurisdiction of other nations. This category would include an OCS project located up-current from the Mexican coastline that could affect Mexico's territory in the event of an oil spill. Also in this

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category are all major Federal actions in which a foreign nation is a participant and that would normally be covered by the EIS addressing the U.S. part of the proposal. An example would be an OCS right-of-way pipeline bringing Canadian energy resources to the northeast United States.

- all major Federal actions providing a foreign nation with a product, or involving a project that produces an emission or effluent prohibited or regulated by U.S. Federal law because of its effects on the environment or the creation of a serious public health risk.

Federal actions causing significant impacts on environments outside the United States are to be addressed in:

- EIS's (generic, program (5-Year OCS Leasing Program EIS), and project-specific (OCS lease sale EIS);
- documents prepared for decisionmakers containing reviews of environmental issues involved in Federal actions, or summaries of environmental analyses (e.g., OCS lease sale decision documents, Records of Decision); and
- environmental studies or research prepared by the United States and one or more foreign nations, or by an international body in which the United States is a member or participant.

The United States, Canada, and Mexico are negotiating a Transboundary Environmental Impact Assessments (TEIA) Agreement through the North Atlantic Free Trade Agreement (NAFTA) Commission on Environmental Cooperation (CEC). The CEC deals with a wide range of environmental and natural resource protection issues common to Canada, the United States, and Mexico. Developing a TEIA process is one of the requirements of the 1991 North American Agreement on Environmental Cooperation. Under this agreement, a transboundary environmental impact is any impact on the environment within the area under the jurisdiction of Canada, the United States, or Mexico caused by a proposed project, the physical origin of which is situated wholly or in part within the area under the jurisdiction of one of the three countries. For example, a proposed project on the United States OCS that, because of ocean currents, winds, or proximity to the Mexican coastline, could affect Mexican waters (fishing industry, fish resources, etc.) or the Mexican coastline (oil spill contacts, etc.) would be a project considered to have the potential to cause transboundary environmental impacts. The agreement recognizes that there is a significant bilateral nature to many transboundary issues and calls upon the three countries to develop an agreement to:

- assess the environmental impacts of proposed projects in any of the three countries party to the agreement (NAFTA) which would be likely to cause significant adverse transboundary impacts within the jurisdiction of any of the other parties;
- develop a system of notification, consultation, and sharing of relevant information between countries with respect to such projects; and
- give consideration to mitigating measures to address the potential adverse effects of such projects.

Negotiations are currently underway between the three parties to the agreement, but the final language has yet to be worked out. Because the requirements of the assessment portion of the agreement are somewhat similar to the requirements imposed by EO 12114, (i.e., impacts to foreign territory must be addressed in NEPA documents), the MMS requires that EIS's prepared on major Federal OCS actions contain an assessment of potential significant impacts to foreign territory.

e. Executive Order 13158: Marine Protected Areas (MPA's) (May 2000)

The EO defines an MPA as “any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.” The EO directs Federal Agencies to work closely with State, local, and nongovernmental partners to create a comprehensive system of MPA’s “representing diverse U.S. marine ecosystems, and the Nation’s natural and cultural resources.” Ultimately, the MPA system will include new sites, as well as enhancements to the conservation of existing sites. Five principal components of the EO are:

- **National MPA List:** The USDOC and the USDOJ will develop and maintain a national list of MPA’s in U.S. waters. Candidate sites for the list are drawn from existing programs for Federal, tribal, State and local protected areas. When completed, the list and the companion data on each site will serve several purposes such as ensuring that agencies “avoid harm” to MPA’s, providing a foundation for the analysis of gaps in the existing system of protections, and helping improve the effectiveness of existing MPA’s.
- **The MPA Web Site:** The USDOC and USDOJ will develop and maintain a publicly accessible web site to provide information on MPA’s and Federal Agency reports required by the EO. Also, the web site will be used to publish and maintain the National MPA List and other useful information, such as maps of MPA’s; a virtual library of MPA reference materials, including links to other web sites; information on the MPA Advisory Committee; activities of the national MPA Center; MPA program summaries; and background materials such as MPA definitions, benefits, management challenges, and management tools.
- **The MPA Federal Advisory Committee:** Created to provide expert advice on, and recommendations for, a national system of MPA’s, this advisory committee will include nonfederal representatives from science, resource management, environmental organizations, and industry.
- **The Mandate to Avoid Harmful Federal Actions:** This mandate directs Federal Agencies to avoid harm to MPA’s or their resources through activities that they undertake, fund, or approve.
- **The Marine Protected Areas Center:** The EO directs NOAA to create a Marine Protected Areas Center (MPA Center). In cooperation with the USDOJ and working closely with other organizations, the MPA Center will coordinate the effort to implement the EO and will:
 - develop the framework for a national system of MPA’s;
 - coordinate the development of information, tools, and strategies;
 - provide guidance that will encourage efforts to enhance and expand the protection of existing MPA’s and to establish or recommend new ones;
 - coordinate the MPA web site;
 - partner with Federal and nonfederal organizations to conduct research, analysis, and exploration;
 - help maintain the National MPA List; and
 - support the MPA Advisory Committee.

f. Executive Order 13112: Invasive Species (February 1999)

The EO defines an “invasive species” as a species that is nonnative (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause, economic or environmental harm or harm to human health. This EO requires all Federal Agencies to:

- identify any actions affecting the status of invasive species;
- prevent invasive species introduction;

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- detect and respond to and control populations of invasive species in a cost-effective and environmentally sound manner;
- monitor invasive species populations accurately and reliably;
- provide for restoration of native species and habitat conditions in invaded ecosystems;
- conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species;
- promote public education on invasive species and the means to address them; and,
- refrain from authorizing, funding, or carrying out actions that are likely to cause or promote invasive species introduction or spread, unless the Agency has determined that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize risk of harm will be taken.

Additionally, the EO established the National Invasive Species Council (Council), co-chaired by the Secretaries of Agriculture, Commerce and the Interior, and comprised of the Secretaries of State, Treasury, Defense, and Transportation, and the Administrator of the Environmental Protection Agency. The Council:

- provides national leadership on invasive species;
- sees that Federal efforts are coordinated and effective;
- promotes action at local, State, tribal and ecosystem levels;
- identifies recommendations for international cooperation;
- facilitates a coordinated network to document and monitor invasive species;
- develops a web-based information network;
- provides guidance on invasive species for Federal Agencies to use in implementing the NEPA; and
- prepares an Invasive Species Management Plan to serve as the blueprint for Federal action to prevent introduction; provide control; and minimize economic, environmental, and human health impacts of invasive species.

The MMS requires that EIS's prepared on major Federal OCS actions (e.g., 5-Year OCS Leasing Program and OCS lease sales) contain an assessment of the proposed action's contribution to the invasive species problem.