IMPROVING THE PROCESS FOR DEVELOPING THE 5-YEAR OCS OIL & GAS LEASING PROGRAM

REPORT OF THE TASK GROUP
OCS POLICY COMMITTEE

SEPTEMBER 1988

RESOLUTION

Whereas, the Secretary of the Department of the Interior (DOI), at the May 1987 OCS Policy Committee meeting, requested the Committee to review the process used by DOI to develop the 5-Year OCS Oil and Gas Leasing Program and to make recommendations for improving the process for developing future programs; and

Whereas, a Task Group of the Policy Committee was formed to respond to this request; and

Whereas, a study entitled, "Improving the Process for Developing the 5-Year OCS Oil and Gas Leasing Program," was completed by the Task Group and recommended for adoption by the Policy Committee; and

Whereas, all members of the Policy Committee have been given multiple opportunities to provide commentary and guidance to the Task Group effort and this information has been utilized in preparing the Report of the Task Group;

Now therefore be it resolved, that the Report of the Task Group be approved and adopted by the Policy Committee; and

Further, be it resolved, that the Report of the Task Group be transmitted to the Secretary of the Department of the Interior with this resolution; and

Further, be it resolved, that the Policy Committee urge the Secretary to take early action to implement the Recommendations contained in the Report in formulating and executing the next 5-Year Oil and Gas Leasing Program.

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I. PREFACE

OCS Advisory Board

The Outer Continental Shelf (OCS) Advisory Board was established by the Department of the Interior (DOI) to provide counsel to the Secretary on various OCS issues representing the collective viewpoint of coastal States, environmental interests, industry representatives, and other parties. The OCS Advisory Board is comprised of three elements:

(1) the OCS Policy Committee.
(2) the Regional Technical Working Groups (RTWG's), and
(3) the Scientific Committee.

The Policy Committee provides policy advice concerning the performance of various activities under the OCS Lands Act (OCSLA). This includes various aspects of 5-year OCS oil and gas program development; lease sale activities; exploration, development, and production activities; and protection of the environmental resources of the OCS.

The RTWG's provide advice on technical matters of regional concern regarding prelease and postlease activities, and on environmental studies requirements. The RTWG's provide opportunities for the public to discuss technical issues and concerns regarding offshore mineral activities. They also provide the DOI with technical views of various leasing program documents, and formulate environmental studies recommendations.

The Scientific Committee provides advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program. The committee reviews the information produced by the studies program and may recommend changes in scope, direction, or emphasis.

Task Group

Secretary of the Interior, Donald P. Hodel, in his May 1987 address to the OCS Policy Committee in San Francisco included remarks concerning the 5-Year OCS Oil and Gas Leasing Program for mid-1987 through mid-1992. He noted that the DOI had engaged in extensive discussions to arrive at a program, and stressed that deferral of subareas within planning areas was an unprecedented step undertaken in an attempt to focus debate on higher potential areas. Secretary Hodel then asked the Policy Committee to review the process that the DOI used to develop this 5-year program and make recommendations for improving the process for developing future programs. As a result, a Task Group was formed to examine the 5-Year program process and report its recommendations to the full committee at the September 1988 meeting. The Task Group met 6 times over the 16 month period. Task Group members were:

O.J. Shirley	*Shell Oil, Chairman*
Chip Groat	*Louisiana*
Robert L. Grogan	*Alaska*
Andy Palmer	*Environmental Policy Institute*
Larry Schmidt	*New Jersey*
Jan Sharpless/Mike Kahoe	*California*
Paul Stang/Ann Wiggin	*DOI/Minerals Management Service (MMS), Secretary*

Purpose of Report

This report presents the findings, conclusions, and recommendations of the Task Group relative to the process of developing the 5-year OCS leasing program and ways to address other issues attendant to the OCS program.

II. THE 5-YEAR OCS OIL & GAS LEASING PROGRAM

Section 18 of the OCSLA, as amended in 1978, requires the Secretary of the Interior to prepare, maintain, and periodically revise a 5-year OCS leasing program which includes a "schedule of proposed lease sales, indicating, as precisely as possible, the size, timing, and location of leasing activity." Section 18 also specifies four principles for the preparation of that program.

Three 5-year OCS oil and gas leasing programs have been developed and issued pursuant to section 18 of the OCSLA. The first program was approved in June 1980 by Secretary Cecil Andrus and the second in July 1982 by Secretary James Watt. The third program was approved by Secretary Donald Hodel in July 1987. Prior to the 1978 amendments, which added section 18 in its entirety, OCS oil and gas leasing programs had been issued as a discretionary act of the Secretary of the Interior.

Most of the elements adopted by Secretary Hodel for the 1987 5-year program have evolved from experience gained from prior programs. However, in developing the 1987 program, increased attention was given to consultation with affected parties and attempts to resolve conflict earlier in the planning process. Specifically, approaches such as focusing on promising acreage and subarea deferrals were adopted to help alleviate controversy about the Act's criteria concerning the size, timing, and location of proposed sales.

Further discussion on the 5-year program is presented in Appendix A. There is a brief description of past programs and legal challenges, a list of the elements and requirements of section 18 of the OCSLA, and a description of the evolution in key elements of the program since 1978. Also, included in Appendix B is a description of regional experiences and some recent attempts to resolve conflict on OCS leasing issues through the use of negotiation and consensus-building techniques.

III. FINDINGS OF TASK GROUP

The Task Group examined the process used for developing the current 5-year program. The strong points and deficiencies identified by the group are listed below.

Strengths of the Existing Process:

- *Addresses all congressional mandates contained in the OCSLA.*

- *Provides a process and forum for receiving input from all interested and potentially affected parties.*

- *Provides a mechanism to consider the concerns of all commenters.*

- *Requires the Secretary to consider and make specific reference to the concerns of the Governors of affected coastal states.*

- *Provides flexibility to change the program to respond to needs and interests of the Nation.*

- *Provides an orderly, and until recently, predictable approach to the leasing of the OCS which allows planning by the interested parties.*

- *Has resulted in the exploration of the majority of OCS basins which to date have been considered most promising.*

- *Has resulted in the leasing of over 50 million acres in 96 OCS sales (as of 8/88) using the basic elements of the process now in place.*

- *Has resulted in exploratory drilling, development, and substantial production from the OCS.*

- *Has generated over $84 billion in revenue for the U.S. Treasury in the 35 years since leasing was first authorized in 1953.*

- *Has provided almost $2.2 billion to coastal States in 8(g) revenue distributions or scheduled payments.*

- *Has provided a large source of funds for the Land and Water Conservation Fund and the Historic Preservation Fund (over $10 billion since 1971), which provide grants to States.*

Weaknesses of the Existing Process:

- *In spite of the uncertainties about the resource base, DOI has progressively found it necessary to produce data designed to defend court action along with that which is needed for program decisions.*

- *The process demands responsible comments from state and local governments yet provides no financial resources to defray these costs.*

- *The communication process has not worked well and has led to a misunderstanding of the objectives of the program and how it works.*

- *The process often results in the issue being debated in the media and elsewhere on bases which have radically differing interpretations of factual information and scientific evaluations.*

- *Public hearings do not always provide a good forum for developing needed information useful to the decision process.*

- *In controversial OCS areas, the program as currently implemented is promoting confrontation among affected interests. Although potential forums exist, no effective forum has been established for resolution of conflicting statements or viewpoints.*

- *The current process lacks consensus-building elements.*

- *The current structure of the program leads the Secretary to make decisions amid voluminous conflicting and often contentious inputs with little knowledge of the mid-ground, if any, among the affected parties.*

- *Major issues are increasingly being resolved outside the process including congressional intervention through the appropriations process. Failure to reach consensus has resulted in congressional attention and action (moratoria) which has to a large degree politicized the program and caused uncertainty and delays in executing the plan.*

IV. CONCLUSIONS

Despite increasing controversies over some OCS areas and program elements, the basic processes for developing and executing the 5-year OCS leasing program have been effective overall in facilitating the leasing/exploration of the OCS.

However, the Task Group concluded that Secretarial decisionmaking regarding the program is often handicapped by a lack of information on the attitudes of the public toward proposed actions and the lack of consensus viewpoints among parties participating in the process. The Task Group believes that fundamental changes in the process are not necessary although modifications and adjustments of some elements would likely be beneficial. Among these are the following:

- including mechanisms and resources to promote structured discussions among representatives of affected interests in an effort to narrow the areas of contention and, where possible, to obtain consensus on the resolution of remaining issues.

- enhancing the public information program to include continuing outreach efforts in affected localities (with extra efforts where public hearings are planned) to inform the public of processes required by sections 18 and 19 and factual information concerning planned actions affecting the offshore and onshore areas.

- obtaining better and more complete information on public attitudes toward the program and proposed action by MMS/DOI through the use of public opinion research techniques, not specific just to the area directly affected by the action.

Additionally, the Task Group believes that the lack of funds for coastal States and localities is a serious impediment in the process. The group concluded that:

- financial assistance should be provided by the Federal Government to offset the costs of responsible participation in the process.

- broader sharing of OCS revenues would provide a more immediate, tangible benefit, which could promote more balance in the public debates.

It is recognized, however, that even with full information and full opportunities for participation, consensus may be lacking in some areas.

V. RECOMMENDATIONS

Based on the findings and conclusions discussed above, the members of the Task Group make the following recommendations:

1. That the OCS Policy Committee be instructed to establish a mechanism to identify and seek to narrow issues affecting the OCS program. It is further recommended that this charge be addressed by the following actions:

- *Form issue groups among interested parties within each region of the OCS designed to identify issues in the context of the 5-Year Program, identify key players and their positions, narrow issues to the degree possible, and indicate where there is a likelihood of reaching consensus.*

- *Issue groups should be appointed by the Chair of the OCS Policy Committee after consultation with MMS and with agreement from the affected States.*

- *Provide, through the Scientific Committee, counsel to each such issue group on concerns of an environmental or scientific nature.*

- *See Appendix C for more detail.*

2. That DOI seek to obtain better and more complete information on public attitudes toward the Program:

- *By use of public opinion research in localities and regions where all or portions of the proposed program are controversial.*

- *By use of both quantitative and qualitative research elements to obtain an understanding of the underlying reasons for the opinions.*

- *See Appendix C for more detail.*

3. That a public outreach effort be initiated as early in the process as possible and especially in advance of public hearings to better inform the public in the affected locality as to the purpose of the hearing and facts concerning the action planned.

- *The outreach effort should be tailored to the perceived needs in each locality but could include use of print and electronic media, "town hall" presentations by DOI officials, and "information centers" to distribute printed materials and answer fundamental questions, etc.*

4. **That the MMS Regional Directors or regional representatives be given more responsibility in resolving differences and seeking consensus at the regional level in the development and/or implementation of the 5-year program.**

   - *The Regional Directors frequently have more insight into issues as they have more detailed knowledge of the specific subject matter and are closer to their State and local counterparts and the local affected interests.*

5. **That DOI continue to work with the Congress to seek legislation which would enable broader sharing of OCS revenues with affected coastal states.**

6. **That DOI encourage the Administration to provide sufficient funding to coastal states (CEIP or comparable programs) to reimburse their reasonable costs of responding to actions proposed for the OCS.**

7. **That DOI continue to use subarea deferrals at the 5-year program stage in the development of future 5-year programs, as a means of avoiding unnecessary conflict.**

   - *Deferral decisions should be based on information regarding both environmental and hydrocarbon potential.*

8. **That DOI simplify the process of program development by issuing the Draft Proposed Program as an updated version of the previous program document.**

   - *This would be a new document based on the 1987 Program. All relevant information from the previous program should be included with full opportunity for public participation and input.*

9. **That DOI continue the approach of "focusing on promising acreage" to determine lease sale size.**

10. **That DOI continue use of frontier exploration sales to provide for the possibility of changing geologic interpretation and improved economic conditions. The decision on whether or not to have the sale should be subject to sufficient industry interest.**

APPENDIX A
HE 5-YEAR PROGRAM

History and Background

Three 5-year OCS oil and gas leasing programs have been developed and issued pursuant to section 18 of the OCS Lands Act, as amended in 1978. Prior to the 1978 amendments, which added section 18 in its entirety, OCS oil and gas leasing programs had been issued as a discretionary act of the Secretary of the Interior.

- The first program prepared under section 18 received final approval by Secretary Andrus in June 1980. It scheduled 36 lease sales in a total of 16 OCS planning areas between September 1980 and July 1985. The sales were scheduled annually in the Central and Western Gulf of Mexico Planning Areas and biennially or less frequently elsewhere. The program included fair market value provisions establishing a minimum bid of $25 per acre, and it provided for determining the amount of acreage to be offered in each scheduled lease sale through a process of tract selection entailing presale nomination and evaluation of individual tracts. The tract selection process resulted in relatively small lease sales which offered fewer tracts than were nominated by industry. For instance, lease sales held under the program resulted in the leasing of about 2 million acres in 1981.

- Secretary Watt approved his program in July 1982. It scheduled 41 lease sales in a total of 18 OCS planning areas between August 1982 and June 1987, maintaining the same annual/biennial pacing of the first program. The 1982 program established the minimum bid for leases at $150 per acre subject to sale-by-sale reconsideration. It also provided that virtually all of the lease sales scheduled to be held after April 1983 would implement an areawide process for determining the amount of acreage to be offered for lease. The areawide process enabled industry to express interest over broad areas within practically the entire planning area with the expectation that most of those areas actually would be offered for lease. The areawide process resulted in larger sales than those previously held under tract selection. For example, in 1983, nearly 6 million acres were leased using the areawide process.

- The third program prepared under section 18 was approved by Secretary Hodel in July 1987. The Hodel program, which currently is in effect, schedules 35 sales in a total of 21 OCS planning areas between July 1987 and July 1992. Sales are scheduled annually in the Central and Western Gulf of Mexico Planning Areas and triennially or less frequently elsewhere. Eleven of the sales are frontier exploration sales which will be preceded by a special reassessment of industry interest. The program maintains the minimum bid provisions established under the 1982 program, and provides for determining the amount of acreage to be included in each sale by a process of focusing on promising acreage. The 1987 program also takes the unprecedented step of deferring specific portions of planning areas from leasing consideration for the duration of the program.

The 1980 program was challenged in the U.S. Court of Appeals for the District of Columbia Circuit. In its 1981 decision on the case, the court upheld DOI's actions on the majority of the elements of the program, but found fault with certain parts of the analysis supporting the program. Leasing under that program was allowed to continue, but the court provided specific guidance to be followed in the formulation of the second 5-year program, which was then already in preparation by the DOI under Secretary Watt. The 1982 program also was challenged in the U.S. Court of Appeals. In its July 1983 opinion, the court upheld the Watt program as having complied fully with the OCS Lands Act, as amended, and with the guidance the court had set forth in its 1981 opinion. Lawsuits have been filed against the Hodel program. The suits charge that the program fails to comply fully with the requirements of the OCS Lands Act, as amended, and the National Environmental Policy Act. The U.S. Court of Appeals will hear the case during the summer of 1988 and

is expected to issue its decision in early 1989.

Elements and Requirements of Section 18

Section 18 of the OCS Lands Act requires the Secretary of the Interior to prepare, maintain, and periodically revise a 5-year OCS leasing program which includes a "schedule of proposed lease sales, indicating, as precisely as possible, the size, timing, and location of leasing activity." Section 18 also specifies four principles for the preparation of that program. The first two principles require the Secretary to consider fully a *wide range of factors:*

1) Management of the OCS must be based on a wide range of considerations--economic, social, and environmental values of the renewable and nonrenewable resources, and the potential impact of exploration on other resources of the OCS and the marine, coastal, and human environments;

2) Scheduling oil and gas activities in various OCS areas shall be based on a consideration of eight factors:

A) existing information concerning the geographical, geological, and ecological characteristics of such regions;

B) an equitable sharing of developmental benefits and environmental risks among the various regions;

C) the location of such regions with respect to, and the relative needs of, regional and national energy markets;

D) the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the OCS;

E) the interest of potential oil and gas producers in the development of oil and gas resources as indicated by exploration or nomination;

F) laws, goals, and policies of affected States which have been specifically identified by the Governors of such States as relevant matters for the Secretary's consideration;

G) the relative environmental sensitivity and marine productivity of different areas of the OCS; and

H) relevant environmental and predictive information for different areas of the OCS.

The second two principles provide policy direction. Section 18(a)(3) requires the Secretary's decision to obtain . . . to the maximum extent practicable . . . a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone.

Section 18(a)(4) requires that the program be conducted so as to assure the receipt of fair market value for lands leased and rights conveyed.

Program Evolution Since 1978

TRACT SELECTION VERSUS AREAWIDE

The 1980 Program was the first 5-year program developed under section 18. It incorporated a tract selection approach which restricted the amount of acreage offered--generally 1 to 2 million acres--in part because of opposition to leasing and in part because of administrative constraints on the number of specific tracts that were processed through the environmental impact analysis and presale tract evaluation steps in preparing for lease sales. Given these constraints, some of the tracts nominated could be offered.

Areawide sales--beginning with Sale 76, Mid-Atlantic, held in April 1983--allowed for the offering of up to entire planning areas by postponing tract evaluations until after the sale. Areawide sales generally reduced the filtering of industry interest by governmental judgment and made it more likely that unique exploration theories would be pursued. However, areawide sales became a focus of concern because some acreage was included in lease sales that was highly controversial and believed to have low hydrocarbon potential.

In January 1984, the areawide approach was modified to provide for the deletion of tracts early in the presale process where industry interest was absent or low and/or where environmental concern was high.
The 1987 5-year program, the current program, entitled this modified approach "focusing on promising acreage." It is a flexible approach which provides for the offering of virtually an entire planning area (e.g., in the Central and Western Gulf of Mexico) or a relatively small portion of a planning area (e.g., offshore northern California).

SUBAREA DEFERRALS AT THE 5-YEAR PROGRAM STAGE

The 1987 Program is the first to defer from leasing portions of planning areas (subareas). Over 100 subareas were nominated for deferral by commenters on the program. Subareas totaling over 200 million acres were deferred in 13 planning areas around the Nation. In addition, over 38 million additional acres were highlighted for special consideration in the presale process; i.e., those subareas will receive special mention in the Call for Information and Nominations and consideration as potential deferral alternatives in the environmental impact statement (EIS) scoping process.

INCREASED CONSULTATION

The OCS Lands Act provides for a number of opportunities for public comment and input from States in the development of the OCS leasing program, in the presale process, and in the postsale permitting process.

The development of the 1987 program involved more consultation than previous programs in that it received input from the OCS Advisory Board Policy Committee over a 3-year period; it overlapped the negotiating process concerning California OCS sales, resulting in an additional program comment round (the Draft Proposed Final Program for offshore California dated February 1987); nine public hearings were held on the EIS for the program; and it was the subject of three rounds of testimony before the House Merchant Marine and Fisheries Committee Subcommittee on Panama Canal/OCS.

CONCEPT OF FRONTIER EXPLORATION SALES

The concept of frontier exploration sales was developed to add flexibility to the program. This concept provides for the possibility that changes in geologic data or interpretation, and changes in economic or other conditions, could create bidding interest in areas which appeared relatively unattractive at the time the program was being developed.

A frontier exploration sale is one for which industry interest is to be re-examined before the start of the presale process. This re-examination will be based on responses to a Request for Interest published four months before the Call. If interest is determined to be insufficient to justify proceeding with the sale, the sale can be delayed and a Request for Interest re-issued on an annual or less frequent basis. This process can be repeated until interest is determined to be sufficient to hold the sale or the sale is cancelled. Eleven such sales were scheduled in the 1987 Program.

SLOWER PACE OF LEASING FOR THE NEW PROGRAM

Annual sales were retained in the Central and Western Gulf of Mexico. The pace of leasing for most other areas was reduced from biennial sales to triennial. In the areas estimated to have the least net social value, single sales were proposed.

CONCEPT OF SUPPLEMENTAL SALES

The concept of supplemental sales was developed for areas outside the Central and Western Gulf of Mexico to offer selected tracts earlier than they would otherwise be offered, thereby reducing the delay cost of reoffering blocks on which bids were rejected or forfeited--especially since the pace of leasing was being slowed in those areas. In addition, this concept reintroduced OCS drainage sales which in the past were scheduled ad hoc, prior to the passage of section 18. Three supplemental sales were scheduled. However, the DOI has deferred holding supplemental sales until regulations are final.

APPENDIX B

EFFORTS TO RESOLVE CONTROVERSY ON OCS ISSUES

Negotiation & Consensus Building Efforts

This appendix summarizes some of the efforts which have been used, or are currently being used, to resolve controversy attendant to various OCS issues. All of these efforts involved some type of negotiation technique to try to build consensus among some or all the affected parties. Each effort met with varying degrees of success. However, the Task Group believes that in each case, notwithstanding the ultimate results, the process of negotiation was useful in that the parties gained a better understanding of the issues and a better understanding of each others' positions.

After reviewing these negotiation experiences, the Task Group noted that some of the more successful efforts had certain characteristics which may have contributed to their success. Some of the same approaches may prove to be useful for future negotiation efforts as well:

- Early in the process, the parties reached agreement on the objectives and desired outcome.
- There were a limited number of affected interests.
- The issues to be negotiated were well-defined.
- The negotiations included all major affected parties.
- Principals were actively involved.
- The same people were involved throughout the process.
- Some funding was provided so that all affected interests could participate.
- Issues were debated on a sound technical basis.

These experiences revealed that it is often easier to reach consensus on the process to be used than it is to reach consensus on how to resolve the issues themselves.

REGIONAL EXPERIENCES

California

Congressional moratoria prohibited leasing portions of the OCS off California between 1982 and 1985. In the 1985 congressional appropriations reports, both the House and Senate included language urging the DOI to negotiate resolutions to issues in moratoria areas.

In June and July 1985, Secretary Hodel met six times with several members of Congress from California. The result of those talks was a "preliminary agreement" which limited leasing in the moratoria areas off California to about 150 specified tracts through the year 2000. The preliminary agreement did not affect those areas off California which were never subject to moratoria. Eleven California town meetings were conducted by the DOI in an attempt to gather comments from the affected public. In August 1985, based on a consideration of comments, the Secretary announced his intention to defer from leasing in the new 5-year program eight subareas. He declined to make final the terms of the "preliminary agreement" stating that the cost to the Nation of the preliminary agreement could be enormous in terms of the adverse impacts upon national energy and economic goals.

On December 19, 1985, Congress responded by enacting Public Law (P.L.) 99-190. That law directed the Secretary of the Interior to work with a congressional panel (consisting of members of the California congressional delegation, committees involved in OCS issues, and ranking members of Congress) to try to reach consensus on leasing issues. Thirteen Representatives and five Senators were designated to participate in the California OCS discussions. A total of 16 meetings were convened in 1986.

The DOI made a number of changes stating that they were an attempt to reach consensus. It deferred subareas comprising approximately 6 million acres off California

in the proposed 5-year program issued in February 1986. In addition, about 96% of the planning area for Northern California OCS Sale 91 was deferred in the Call for Information and Nominations, which initiated the process for that sale.

The parties submitted a number of proposals aimed at developing a basis for a solution. No final consensus on substance was reached, however. Instead, a "process solution" was incorporated in the continuing resolution for Fiscal Year (FY) 1987 appropriations (section 111 of P.L. 99-591). That provision required inter alia that the Secretary consider proposals for leasing offshore California submitted by Governor Deukmejian of California in his section 18 comments and the separate proposals of the co-chairmen of the congressional panel (Congressmen Panetta and Regula), as part of the development of the 5-Year OCS Oil and Gas Leasing Program for Mid-1987 through Mid-1992.

The proposals included provisions such as the deferral of areas from leasing until the year 2000; adoption of lease stipulations at the 5-year program stage; restrictions on leasing, exploration, and development of the areas available for lease; slant drilling provisions; and limited litigation protection. All elements of those three proposals, along with DOI's February 1986 Proposed Program for the California OCS, were analyzed in the programmatic environmental impact statement and the "California Analysis" document.

In February 1987, pursuant to section 111 of P.L. 99-591, Secretary Hodel submitted a draft of the proposed final leasing program for the OCS offshore California to the co-chairmen of the congressional panel for a 30-day review period. The Secretary's proposal was called "the amalgamated proposal" because it contained elements from all four of the proposals analyzed in detail in the California Analysis. The amalgamated proposal deferred from leasing about 75 percent of the OCS planning areas offshore California including the deferral of 87 percent of the previous moratorium area. The proposal also contained a commitment to adopt lease stipulations providing comparable protection to those negotiated with California previously in sales 73 and 80.

In March 1987, members of Congress submitted comments on the amalgamated proposal. The comments of a number of other parties were submitted as attachments to these comments or independently. In April 1987, the amalgamated proposal--with the additional deferral of two small subareas in southern California--was submitted to Congress and the President as part of the Proposed Final Program for the entire OCS. During the 60-day statutory waiting period, Congress took no action affecting the new 5-year program, enabling Secretary Hodel to make the Program final without further changes in July 1987.

North Atlantic

There have been annual legislative moratoria on OCS leasing on Georges Bank since FY 1984. Most parties agree that this state of affairs is a holding pattern, not a solution. In addition, House Report language on the FY 1987 and FY 1988 appropriations bills called upon DOI to pursue a resolution of the long-term leasing status of the moratorium areas through continuing negotiations with appropriate congressional, State, and local officials.

Upon consideration of the responses to DOI's June 1987 Federal Register Notice requesting comments on this subject, Secretary Hodel decided to propose a two phase process of fact-finding and policy discussions. In the first phase, the National Research Council (NRC) would establish a committee of technical experts, well-respected in their fields, to examine this issue. In the second phase, the committee's report would be the subject of review and provide a basis for policy discussions by the Governors of the North Atlantic States or their designees, policy officers of DOI, and other affected parties.

In January, February, and March of 1988, DOI held a variety of meetings with representatives of the North Atlantic Governors, Members of Congress and their staffs, the oil and gas industry, commercial fishermen, environmental groups, and the National Research Council staff. They have generally indicated their interest in working with Interior to find an approach to resolving this issue.

At the most recent meeting, in late March, several of the concerned parties suggested

the formation of a small, representative working group to draft a proposal for negotiating the issues and conflicts concerning OCS leasing in the North Atlantic. The DOI is implementing that approach. A representative from Chevron U.S.A., Inc. has agreed to chair the working group.

Florida

Two major concerns have been expressed consistently by the State of Florida. First, the State is concerned about a possible oil spill reaching coastal recreation areas. Second, the State has opposed leasing or drilling activities south of 26 degrees north latitude. This is a subtropical area characterized by warm, shallow waters and inhabited by corals and other sensitive marine life forms. These concerns resulted in an FY 1984 moratorium covering nearshore areas and selective sensitive offshore areas in the Eastern Gulf of Mexico, and requiring collection of 3 years of environmental and oceanographic data prior to approval of exploration for any leases south of 26 degrees north latitude.

The initially approved program for the 1987-1992 period deferred an Atlantic coastal buffer, the flight impact zone of the Kennedy Space Center (except for 121 blocks of high industry interest), the Atlantic coastal segment of the Straits of Florida Planning Area, and an Eastern Gulf coastal buffer from Cape San Blas to near Naples, and prohibited leasing south of 26 degrees north latitude adjacent to Florida Bay and the Florida Keys during Sale 116 (November 1988) but not from Sale 137 (November 1991). Florida filed litigation against the approved program. In an agreement signed by the Governor and the Secretary of the Interior on March 24, 1988, Florida agreed to drop its litigation. DOI agreed to extend the Eastern Gulf buffer area south of 26 degrees north, to defer the balance of the Straits of Florida Planning Area, and to apply certain standards to assure protection of areas near Cape San Blas from the risks of oil spills. On June 16, 1988, the Secretary agreed to split Eastern Gulf of Mexico Sale 116 (November 1988) into two parts to allow further consultation with the State on Part II south of 26 degrees north latitude. At the same time, the Secretary announced agreement with the State to form task forces to further analyze oil spill risks and to analyze potential impacts of drilling operations on coastal and marine resources. Despite these measures, the Congress included a 1-year moratoria on leasing and exploration south of 26 degrees north latitude in the 1989 Appropriations Act.

Washington-Oregon

During development of the 5-year program for mid-1987 to mid-1992, the Governor of Oregon repeatedly requested establishment of a special mechanism for consultation on Washington-Oregon Sale 132, scheduled for April 1992. The current Governor Goldschmidt revised that request to one for a special Washington-Oregon task force. In addition, both the House Report and Senate Report on DOI's FY 1988 Appropriations Bill contained language encouraging Interior to consult with officials of both States concerning Sale 132.

Both Washington and Oregon filed lawsuits against the new 5-year program, but Governor Goldschmidt of Oregon sent a letter to DOI expressing his reluctance in filing suit and his hope that cooperation between the State and DOI would still continue.

During late 1987 and early 1988, MMS headquarters and regional staff had meetings with representatives of both States and representatives of the Northwest Indian Fisheries Commission to discuss environmental studies planning and other issues including creation of a special consultation mechanism. In early February, the Governors submitted to the Secretary a detailed proposal for a Pacific Northwest OCS Task Force. The proposal calls for wide participation including Federal, State, Indian and other public and private sector representatives to have input to environmental studies planning and implementation, lease sale area identification, lease sale timing, and environmental impact statement preparation.

Officials of MMS reviewed the Governors' proposal, agreed with its general concept, and suggested some modifications. State and Indian representatives currently are considering those modifications as all interested parties are working toward agreement on a charter for the task force.

Alaska

Under the current 5-year program, a total of 12 lease sales are scheduled off Alaska's coast. Alaska has chosen to work with the DOI under section 18 and 19 to resolve State concerns rather than resorting to congressional budget moratoria and legal challenges to the 5-year program. However, Alaska feels that relying solely on the OCSLA has not always been successful.

Alaska's greatest concern with the OCS leasing program has been DOI's proposed sales in Bristol Bay. The State maintains that the national and international importance of this area's biological wealth is unparalleled. The State continues to be involved in litigation over the Secretary's decision to move forward with leasing in this area (lease sale 92) under the previous 5-year program. Disregarding this major conflict, the DOI decided to include a new Bristol Bay lease sale (sale 117) in the current 5-year program.

The State of Alaska strongly supports the establishment by MMS of a regional consensus building mechanism. Had such a process been in place at the time of the Bristol Bay sale, the State feels much of the present conflict could have been avoided.

THE INSTITUTE FOR RESOURCE MANAGEMENT (IRM) JOINT PROPOSAL FOR OCS ACTIVITIES IN THE BERING SEA

The IRM sponsored a project to evaluate some new approaches to reduce potential conflict surrounding leasing and development of the OCS. The project evolved from an American Petroleum Institute sponsored tour of Alaska with environmentalists in September of 1984. The test case selected was the Bering Sea, outside of Bristol Bay. Participants included representatives from the oil industry, environmental community, fishing industry, and Native groups. An explicit decision was made not to include Federal or State agencies. The consensus of the group was that participation by Federal and State officials could lead to posturing and limit opportunities for frank exchange of views and information. Both Industry and the environmental-fisheries-native groups independently identified areas of interest or concern. IRM performed the role of support staff and made arrangements for logistics since the group had decided against having a professional facilitator. The eight steering committee members set the agenda, but negotiation only took place at meetings of all participants. Through negotiation, a compromise was reached on areas to be recommended for inclusion or exclusion from the 5-year OCS oil and gas leasing program. The recommendations were submitted to the DOI as part of the public comment process at the Proposed Program stage.

The IRM joint proposal consisted of a map showing which areas should remain available for lease for the 5-year program: of the 132 million acres in the Norton, St. George, and Navarin planning areas, 48 million acres were recommended for inclusion in the Program. Additionally, a Bering Sea Advisory Committee was proposed to serve as a forum for continuing the negotiation process on technical issues such as stipulations for individual sales. This was done since participants could not agree on a set of stipulations which should be recommended for all sales. The proposal was endorsed by 14 villages and Native organizations, 11 environmental groups, 9 oil production companies, and 2 commercial fishing organizations. The IRM effort represented a significant step in bringing together special interest groups which often have strikingly different views about the offshore leasing program.

Most of the Bering Sea areas recommended for deferral from leasing by that proposal were deferred from leasing in the 1987 program. Substantial amounts of areas were recommended for deferral by IRM but remained under consideration for leasing. These were highlighted for consideration for deferral on a sale-by-sale basis. The DOI felt that these highlighted areas may contain hydrocarbon potential based on agency and Industry proprietary data. The A number of IRM participants felt that the final program deviated too far from the recommendations to be acceptable.

The DOI has indicated a willingness to encourage efforts which seek to reduce the differences between industry and environmental interests. However, it is largely up to the participants to demonstrate that their

negotiation process can help to reach mutually beneficial decisions. Needing a reasoned basis for its decisions, DOI has discussed with IRM the possibility of getting the parties to the agreement to allow the maps showing both the industry and environmental priorities to be shared with the Department.

Funding for the IRM effort was a significant problem. The logistics required numerous meetings with native groups. Changes in industry participants also caused some problems.

AIR QUALITY - NEGOTIATED RULEMAKING EFFORTS

The effort to facilitate an agreement on air quality rules for OCS activities adjacent to California was based on preliminary discussions to reach an out-of-court settlement of a lawsuit filed by the State of California in July 1981. The State believes the nationwide air quality rules do not adequately protect the California onshore air quality.

At the close of the comment period for the Notice of Proposed Rulemaking to develop new air quality rules (April 1985), California suggested negotiated rulemaking as the process to develop new air quality rules. Secretary Hodel agreed and the process started in the Summer of 1986 with the Mediation Institute serving as the convener, facilitator, and mediator.

During the first phase, the Mediation Institute identified and contacted the affected parties and made a preliminary determination that negotiations could be successful.

During the second phase, five caucuses were formed: environmental, local governments, State government, oil industry, and Federal agencies (OMB, DOE, EPA, DOJ, and DOI). The initial sessions identified and grouped 65 issues, so that the subsequent negotiations were better focussed and more orderly. Agreement has been reached on a large variety of issues, though full agreement has not yet been reached (as of 7/88). The ground rule established at the outset was that agreement had to be reached on the whole package of issues as a unit; consensus on part was not sufficient.

Negotiating sessions were held once a month. Because of the large number of people participating at each session (between 50 - 75), smaller technical and policy workgroups were established to focus on specific technical aspects of the discussions or to develop policy options for the issues for the large group to consider, discuss, and resolve.

Slow but steady progress was made to discuss and resolve the many issues. The tougher issues were frequently deferred, hence the process stretched out longer than planned.

The Federal caucus prepared several, increasingly more complete drafts for a proposed rule which were discussed and modified by the other negotiating caucuses. Separating technical and policy issues proved to be vitally important to assure progress.

It was vital that everyone knew and understood the protocols for the negotiating process. The parties agreed that the sessions should remain closed to the public in order to facilitate negotiation. California law, however, did not allow exclusion of members of the public who wanted to attend. Few, if any, did attend.

Each of the 5 caucuses had to pay its own way (travel, per diem, salaries). The environmental caucuses were at a financial disadvantage relative to the State and Federal agencies. A resulting problem was that the environmental group didn't always have a full team. However, representatives from all caucuses did attend all sessions. DOI, the State, and the Western Oil and Gas Association paid for the facility and facilitator. In retrospect, funding for the environmental caucuses should have been resolved at the outset.

Principal negotiators for each caucus devoted at least at least 300 hours over the 18 months, excluding travel time, with some devoting considerably more time.

The mediators had limited technical expertise on the issues, and thereby were able to provide unbiased mediation. They helped assure that the process flowed smoothly and

equitably; that logistic support was adequate; that participants were all involved and felt like they had a stake in the outcome.

It was generally recognized that this type of mediation process works best if it involves a well-defined issue in a specific geographic area. Thus, use of mediation for 5-year program issues may not be of benefit. The mediation approach is not quick, cheap, or easy, but it provides a more useful forum to resolve issues that affect large numbers of groups or that involve controversial issues that the affected groups are willing to resolve.

The general view is that the process would be a success even if agreement might not be reached on all issues. The process of negotiation is useful in that all the parties obtained a better understanding of each others' positions. The mechanisms for dialogue which were put in place by the effort will help overcome future stumbling blocks.

THE JOINT OIL/FISHERIES COMMITTEE

The Joint Oil/Fisheries Committee is an example of conflict resolution conducted by the private sector on offshore oil and gas issues. In early April 1983, members of both the commercial fishing industry and the oil and gas and geophysical industries met in Santa Barbara, California, to air concerns about historic and potential conflicts between the two industries operating offshore in the Santa Barbara Channel and Santa Maria Basin. With the assistance of The Mediation Institute and the Santa Barbara Marine Advisor, the two industries agreed to undertake extended discussion and negotiations on an agenda of several issues arising from this initial interindustry meeting. At that time each industry-elected representative met with their counterparts to continue further discussion. This was the formation of the Joint Oil/Fisheries Committee.

Aided by the Sea Grant Marine Advisory Office and The Mediation Institute, the "Joint Committee," as it is now called, continues to meet on a regular basis for these negotiations. Issues which have been successfully negotiated to date are 1) the establishment of a Liaison Office to facilitate interindustry communication, 2) a set of recommendations to the State Lands Commission which were incorporated into their renewed Geophysical/Geological Permit (specifically relating to adequate notification procedures), 3) the establishment of a Santa Barbara Channel Oil Service Vessel Traffic Corridor Program, 4) a pilot study of concerns about geophysical survey acoustic energy sources and their potential effect for dispersal of commercial rockfish, and 5) a geophysical manual providing guidance on ways to reduce conflicts between geophysical and fishing operations.

In part, this work has been accomplished by the generation of subcommittees to work on specific issues. For instance, the Seismic Steering Committee, a subcommittee intended to work on the seismic survey notice requirements issues, dealt with that question. That subcommittee also incorporated representation from the State Lands Commission, the California Department of Fish and Game, the Minerals Management Service, and the National Marine Fisheries Service. Further, that subcommittee negotiated an approach to studying the question of whether or not the acoustic signals generated during geophysical surveys have a dispersal effect on commercially viable fish stocks. A report on this issue was published by the committee in July, 1985. A similar committee is now embarked on a joint fact-finding effort to answer the question of potential effects of those acoustic signals on the eggs and larvae of commercial fish species.

Currently, the Committee is composed of five members representing commercial fishing industry, and five members representing the oil and gas and geophysical industries.

On the issue of direct mitigation for impacts on commercial fishing activities, the Committee has been less successful in reaching a consensus solution between the two industries. However, the Committee has developed a package of mitigation, for which they asked State assistance in implementing. The State is currently using a portion of its 8(g) funds to implement this package. The State's involvement is proposed for three years, after which any further activities would be undertaken by the commercial fishing industry themselves through a fisheries development corporation.

JOINT REVIEW PANELS

Joint Review Panels are a forum used in California to provide more consistent and coordinated review of major offshore projects and their onshore components, and of other related projects such as onshore pipeline systems. The panels consist of the major permitting and environmental review agencies for each of the projects. Generally, one or more agencies represent each of the federal, State, and local levels of government, including the federal NEPA lead agency and the State or local California Environmental Quality Act (CEQA) lead agency. The California Secretary of Environmental Affairs is also represented on the panels, and provides mainly a facilitator or mediator role for panel discussions.

The major responsibility of the panels is to prepare a joint Environmental Impact Statement/Environmental Impact Report in accordance with NEPA and CEQA, respectively. This joint document covers both the onshore and offshore components of each project. The document also becomes the basis for any permits issued by the member agencies or any other responsible federal, State and local agencies.

While the Joint Review Panels and the joint documents have not resolved every conflict, they have substantially reduced the number of issues encountered at the development stage through a number of means. First, this tool provides a means for coordinating the many individual agency decisions made under various land use, development, resource management, and environmental laws and regulations. The Joint Review Panels pursue this goal by bringing the major permitting and environmental review agencies together at the beginning of a proposed project. Most differences between the agencies are worked out through the panel and through the joint document. This process also helps ensure that only one environmental document is prepared for any one project.

Second, the joint documents provide the means to evaluate the balance between the potential contributions to the national energy supply and the environmental interests of the State and affected local governments, on a case-by-case basis. The joint documents prepared to date are exhaustive studies that analyze the benefits and risks, both individually for the proposed projects and cumulatively along with other anticipated offshore developments. The joint nature of the document, with the participation of DOI along with State and local agencies, ensures that this analysis covers the entire range of project effects, including both onshore and offshore.

Third, the panels are a clear example of what can be achieved when the various levels of government work cooperatively. More than anything else, the panels allow differences to be worked out on a staff level and discussed on the basis of technical information, before they expand into a potential source of conflict between the agencies themselves. The panels further provide the opportunity to work out a single program of feasible and effective mitigation measures that can be applied consistently throughout the regulatory process for the subject project facilities.

Fourth, the measures and policies worked out through the panels have provided the technical basis the State and local agencies use in preparing their recommendations on lease sales and the 5-Year Leasing Program. By doing so, potential conflicts at these earlier stages have been resolved through lease stipulations and leasing policies adopted by DOI.

Subarea Deferrals

The leasing process defined in the OCSLA is intended to be progressive in nature -- this concept was upheld by the Federal courts in litigation concerning prior programs. The 5-year program results in an initial schedule for further review of various planning areas during more detailed presale planning. Areas can and always have been excluded, in varying degrees, from individual lease sales during the presale planning process. Following leasing, even more detailed planning is required for the development and approval of plans of exploration and development and production. The DOI has authority to disapprove any specific proposal for drilling operations even though a lease has been granted.

The deferral of subareas was intended by the Secretary to be a way of removing the most

obvious areas of conflict where a convergence of low industry interest, low resource potential, and high conflicts with other resources or uses indicated that it would not be prudent to retain an area for further evaluation for inclusion in a scheduled lease sale. Attention thus could be focused on more difficult issues at later stages of the overall decision process. The Task Group believes that subarea deferrals did help to lessen controversy in some areas, but notes that it is impossible to resolve all conflicts given the nature of the OCS leasing program.

However, in early 1988, as a result of continuing threats of moratoria, the Secretary was moved to question the value of subarea deferrals for future programs since he felt that for the 1987 program they have not helped appreciably to lessen conflict. The Secretary asserted that there is no incentive for subarea deferrals if they become a focal point for opposition to the content of the program rather than an opportunity for early resolution of conflicts. However, most of the States and the environmental community feel strongly that subarea deferrals have removed conflict. They believe that it is important for the public to see some deferrals of controversial areas during this stage of the process.

APPENDIX C
ALTERNATIVES EXAMINED

The Task Group examined some alternative approaches to help reduce conflict surrounding OCS leasing and thus contribute to improvements in the program development process. Some of the alternatives are administrative or procedural in nature while others would require changes to the OCSLA.

Administrative & Procedural

REDEFINITION OF THE DUTIES OF THE OCS ADVISORY BOARD

The Task Group recognizes the many problems inherent in attempts to build consensus around highly controversial topics such as OCS leasing issues. Especially at the national level, it may not be possible to achieve consensus on many issues due to the fact that the Secretary must make decisions under certain statutory criteria, including requirements to balance benefits and costs and provide for equitable sharing of benefits and risks among regions. However, in examining the role of consensus-building for the 5-year program, the Task Group concluded that much more could be accomplished at the regional level to lower the breadth of contention and foster a better understanding of the true issues and problems. This effort could be undertaken to assist the Secretary in carrying out his section 18 responsibilities. It would be possible to also use this mechanism to address other issues related to the OCS, such as marine mining, etc.

As stated in the Preface, the three groups which comprise the OCS Advisory Board now perform certain functions designed to assist the Secretary and the MMS in developing and executing the 5-year leasing program. However, the agenda of each group and the missions undertaken are, to a large degree, discretionary with the chairman and membership of each group. As a consequence the utility and quality of the output from the Board is highly variable. This is particularly true of the OCS Policy Committee whose role and mission is less well defined than that of the RTWG's and the Scientific Committee.

The Policy Committee has the time, talent, and appropriate representation to provide much greater assistance to the Secretary toward identification and resolution of issues related to the 5-Year Program. Direction to undertake such work would provide more substance to the deliberations of the Committee which would be welcomed by the members and could be of much value to the Secretary. Although many systems or organizational schemes can be devised to undertake this additional activity, the following concept was developed by the Task Group and is proposed as Recommendation 1:

- The OCS Policy Committee, in consultation among its membership and with the MMS and as requested by the Secretary, would identify important issues related to the development and execution of the 5-year OCS leasing program;

- The identified issues would be prioritized both in order of their importance to the program and the likelihood that some degree of resolution would be possible;

- The Chairman of the Policy Committee would appoint a task group from the Committee membership to address each issue identified for study. Task groups addressing regional issues would be formed after consultation with MMS and with agreement from affected States; and would specifically include members representing the States affected by the issue, the Regional Directors of MMS, and RTWG's.

- Each task group would identify other resources needed to address the assigned issue, looking first for assistance from the Scientific Committee or RTWG's. Private members of the Committee would assist in obtaining participants from their interest group;

- The MMS would assign a representative to each Task Group to assist in making arrangements and to provide information to the participants on legal and policy issues, DOI/MMS viewpoints, etc;

- consideration would be given to the appointment of a facilitator for those task

groups assigned to address particularly contentious issues. If needed the facilitator would be selected jointly by the task group chairman and the MMS representative;

- Task groups would function to:

  1) identify issues
  2) frame the issues in the context of a 5-year program
  3) identify key players and their positions
  4) narrow issues to the degree possible
  5) indicate where there is likelihood of reaching consensus
  6) report to the Policy Committee on the results of the efforts

- Each task group would establish necessary protocol and a meeting schedule with an objective of completing its assignment efficiently and in time to be of use in reaching decisions regarding the OCS Program related to the issue being addressed;

- Each task group would present a written report to the Policy Committee upon conclusion of its work. The report would present the findings of the group and would be expected to include background information and causal factors related to the issue together with consensus views, where possible, as to best approaches to resolving conflicts surrounding the issue;

- The Policy Committee would review each task group report and offer suggestions, if any, as to how the report might be improved relative to format, consistency with findings on similar issues in other regions, etc;

- The final report, incorporating suggestions from the Policy Committee would be forwarded to the Secretary without additional recommendations by the Chairman of the Policy Committee. Reports addressing regional issues would also be forwarded to the Governors of affected States. Members of the Policy Committee wishing to comment on the final report would address their comments to the Secretary with copies to the Chairman of the OCS Policy Committee and the task group chairman;

- In due course the Secretary would be expected to respond to each task group report and related correspondence. The Secretary's response would be directed to Chairman of the OCS Policy Committee;

- The cost of all task group activities would be borne by the MMS. It is recognized that the funding for participation in the regional task groups could be a problem for some organizations. However, funding decisions would have to be looked at on a case-by-case basis. This occasionally may require MMS to provide funds to insure appropriate participation in the task groups.

PUBLIC OUTREACH

OCS oil and gas leasing and development generates a lot of controversy both at the National and local levels. Some of the controversy can be attributed to misconceptions about DOI's policies and programs and a lack of understanding about the OCS leasing process. Some of the controversy is due to misconceptions about the potential risks of the proposed action. Additionally, some members of the public believe that their concerns are not being addressed by the DOI nor reflected in the decisions being made for the 5-year leasing program. In some OCS areas, the program promotes confrontation among affected interests and no effective forum has been found for resolution of conflicting statements or viewpoints.

The DOI leasing program would benefit from expanded outreach efforts to inform the public about the OCSLA section 18 and 19 processes. Although Secretary Hodel, in developing the current program, incorporated increased consultation through negotiation and public hearings, it still seems that the communications process has not worked as well as was hoped and there is a large degree of disagreement and misunderstanding about the leasing program within the general public. The lack of effective communication contributes to increased conflict over program issues, and tends to slow down negotiation and consensus-building efforts, potentially delaying program decisions.

The outreach effort should focus on education rather than solely information distribution. An emphasis should be placed on

ensuring public awareness and participation. A program of presentations to high school and university students has proven to be an effective means of reaching the public on other National issues. The DOI should consider outreach programs for students, as well as for other interested groups in affected localities.

The DOI should continue to hold public hearings, but pursue other approaches in communicating with the public as well. Other approaches should include opportunities for a diversity of views to be expressed and could include the use of television, radio, and the possibility of an OCS newsletter which could be sent to community leaders around the country. The DOI could benefit from techniques used by marketing experts, such as opinion research, or advance work through the media, such as television public service announcements. These techniques could increase understanding of both DOI and the public regarding offshore leasing issues. It is imperative that appropriate lead-times are included for the outreach programs. The DOI should build an early presence in an area, so that the education efforts are not misinterpreted to be a device to sway public opinion. It is important for DOI to commit to ongoing, sustained outreach programs, rather than establish an ad hoc presence in areas as issues arise. Public opinion surveys would provide more reliable information concerning public viewpoints of the Program. The surveys should be done using a layered approach; that is, survey at the local community level, and at the broader regional or State level, and at the National level. The research should include both quantitative and qualitative elements to reveal the level of support or opposition for the proposal as well as the underlying reasons for opinions stated.

Recommendations 2 and 3 were developed to address the need for improved public outreach efforts.

SUBAREA DEFERRALS

As indicated above, questions have been raised by the Secretary about the value of subarea deferrals at the 5-year program stage. Subarea deferrals were first introduced into the 5-year decision process by Secretary Hodel in 1986 with the stated objective of relieving controversy over leasing. They were not a part of prior 5-year programs.

There is general acknowledgement within the Task Group that section 18 requires an initial assessment of all unleased potential hydrocarbon-bearing areas of the OCS (regardless of their previous status as deferred or available). Clearly, there are certain areas of the OCS which merit deferral from leasing. Further, the precedent of subarea deferrals has been set by the 1987 program. Subarea deferrals will not remove all controversy from the program, but they are perceived by many as greatly reducing the amount of controversy and the number of conflicts that must be resolved later through the lease sale planning process.

The Task Group believes that subarea deferrals should continue for future 5-year programs -- see Recommendation 7.

DELEGATION TO THE REGIONS TO SEEK ACCOMMODATION/CONSENSUS WHEREVER POSSIBLE

One means for reducing conflict surrounding the leasing program would be to delegate authority to the Regional Directors and/or the Secretary's regional representatives. These representatives could be given the authority and direction to try to resolve more issues at the regional level, rather than allowing regional issues to reach national attention. Currently, most of the efforts to resolve contentious issues seem to be focused at the headquarters level in Washington, D.C. There appears to be less than full communication between the Washington office and the Regions regarding these issues.

Recommendation 4 was developed in support of the delegation concept. Efficiencies may be gained if decisions were made by subordinate managers who may have more detailed knowledge of the specific subject matter and are closer to their State and local counterparts and local industry, interest groups, and the general public. Another advantage of this approach is that it allows technical people to be closer to the decision making level. Delegation of authority also saves time. One problem with delegation is that it may be difficult, and indeed inappropriate, to

try to assure uniformity and consistency among all OCS Regions.

FOCUSING ON PROMISING ACREAGE

The size of sales is determined during the presale process. Under the 1987 program, focusing on promising acreage was chosen to describe the process of winnowing down from the areas included in the 5-year program to the area offered for lease. Under this approach, a wide range of sale sizes is possible. In a planning area where oil and gas prospects are more or less uniformly spread, where there is an existing infrastructure, where environmental concerns have been successfully mitigated through stipulations rather than deferrals, and where the public and governmental units of adjacent onshore areas are supportive of oil and gas activities--e.g., in the Central and Western Gulf of Mexico--areas offered for sale can be about as large as the entire planning area. In planning areas where these conditions do not exist--e.g., offshore Central and Northern California--areas actually offered for sale are likely to consist of small portions of the planning area.

The current policy appears to be flexible enough to allow a great variety of sale sizes. The key in each case will be the exercise of judgment appropriate to each different set of facts.

Focusing on promising acreage could provide a means to reduce controversy about sales by early removal of areas that might not be leased due to low industry interest or intense opposition. The leasing decisions would be focused on areas where industry and government geologists and geophysicists think exploration is worthwhile. This could serve to allay fears about unrestricted leasing and development; and responds to objections that sale areas are too large to adequately study.

One criticism of this approach is that focusing on promising acreage is not precise enough because of the wide range of outcomes that can occur--e.g., larger sized sales as seen in the Gulf of Mexico, or the smaller sized sales such as was seen in the Beaufort sea.

In Recommendation 9, the Task Group proposes that DOI continue using the approach of focusing on promising acreage.

FRONTIER EXPLORATION SALES

The concept of frontier exploration sales was developed for the 1987 Program to increase flexibility in the schedule. For certain OCS areas which currently may appear unattractive for leasing, flexibility is beneficial to provide for the possibility of future changes in oil prices and other economic conditions, or for improved geological and geophysical data.

The frontier exploration sales would include an additional presale step requesting whether there is industry interest in proceeding with a sale. Responses to the request will influence whether a frontier exploration sale will be held, cancelled, or delayed until interest is determined to be sufficient to hold the sale. A possible drawback of frontier exploration sales is that additional uncertainty as to whether a sale will be held might result in less data collection for these areas.

In Recommendation 10, the Task Group proposes that DOI continue the use of frontier exploration sales, but with assurances that adequate environmental studies will be performed.

Legislative

OCS REVENUE SHARING

The OCS Leasing Program is one of the largest producers of revenue for the U.S. Treasury and is a major contributor to the economic strength and security of the Nation. Yet, States receive OCS receipts from only a limited set of nearshore tracts. One suggestion for alleviating this is to amend the OCS Lands Act to allow for broader sharing of revenues from OCS leasing and production with State and local governments. OCS revenue sharing is not a new concept. It has been debated in Congress since the early 1970's.

OCS revenue sharing is a priority of long standing with coastal States. The concern over the lack of revenue sharing has been compounded by Administration proposals for sharp cuts in or elimination of Federal funding for coastal zone management, sea grant research, and related programs of special interest to substantial marine and coastal zone constituency. There is a seeming contradiction where revenues from Federal onshore mineral leasing operations are generously shared with States while offshore revenues are not. Yet the adverse effects of OCS activity are largely localized in nature, while the benefits are primarily regional and national in scope. Those benefits that do accrue to local areas in the form of jobs occur much later in the process. Even then, most specialized jobs and sourcing primarily go to established oil and gas supply centers. As a result, local areas naturally tend to focus on the negative effects of OCS development at the 5-year and leasing stages, as the potential direct benefits are not as apparent. Federal OCS revenue sharing could address these apparent inequities while helping to increase overall revenues from the OCS program by providing an immediate benefit and promoting cooperation among all levels of government.

Arguments in favor of revenue sharing include the following:

- There is widespread support for legislation to share OCS oil and gas receipts with State and local governments.

- OCS revenue sharing could be designed to provide coastal states and localities with a demonstrable direct benefit from support of the national goals of the leasing program. The cooperation and goodwill of coastal States and localities is essential to the success of the leasing program.

- Federal financial support helps assure the ability of coastal states to manage ocean and coastal resources, to participate in the OCS oil and gas leasing program, and to avoid or minimize potential adverse onshore or nearshore impacts.

- The prospect of a fair share of the increased revenues that are derived from that program could encourage States and localities to work with the DOI in making the program a success. This could result in expanded energy production, increased revenues for everyone concerned, and should help offset the initial reduction in Federal OCS revenues that may result from implementation of a revenue sharing program.

- Any and all decreases in delays brought on by revenue sharing will be of benefit to the Nation

The disadvantages of revenue sharing include:

- Revenue sharing may not reduce opposition to OCS leasing. Lawsuits and delays may result regardless of any sharing of the revenues.

- One immediate result of revenue sharing will be a reduction in Federal revenues; however, if such sharing led to better consensus building, sale delays may be decreased, which would allow for earlier receipt of revenues from the expedited sales and production.

- Revenues derived from offshore leasing are currently shared with all the States and all the people. The provisions of the OCS Lands Act were designed by Congress to provide adequate protection and appropriate compensation to affected States, therefore, revenue sharing could be viewed as unnecessary in terms of actual damages from most OCS operations.

- Revenue sharing proposals could provide windfall payments to states unaffected by OCS leasing.

- States adjacent to nearby Federal leasing and production activity (from the 8g zone) already receive a portion (27%) of OCS oil and gas receipts. But this is limited to the first 3 miles of Federal OCS and to leases issued after 1978.

In light of the DOI's emphasis on the consultation process, the Task Group also addressed the issue of whether there are sufficient funds available to coastal States to fully participate in the process.

The planning process for both the 5-Year Program and lease sales is long, complex, and requires frequent consultation with the affected states and localities. Effective

participation within this process by the State and local governments requires that they devote significant resources to technical reviews and framing recommendations within the requirements of the OCSLA. Especially in areas with no existing leasing and production, the process provides no incentives to justify these costs. Because of these costs, the existing process builds in an incentive for areas with no existing leasing to simply oppose leasing through political means, rather than having to justify the costs of participating in a process whose direct benefits are 10 to 15 years away. Particularly at the 5-year program stage, the potential risks appear to be localized, and any potential benefits are far in the future and spread over the Nation. As a result, the public debates tend to focus on the risks. Funding specifically earmarked to support participation in the consultation process similar to Coastal Energy Impact Program (CEIP) funding would increase the ability of States and localities to negotiate their concerns within the existing OCSLA process.

The Task Group recommends that DOI encourage the Administration to provide sufficient funding and work towards legislation enabling broader sharing of revenues--see recommendations 5 and 6.

TWO-STAGE LEASING

A two-stage leasing system would separate exploration rights from development rights so that the initial lease would allow for exploration only. The decision to offer rights to develop and produce discoveries resulting from the exploration phase would be separate and apart from the decision to allow leasing for exploration. Subsequent leasing for development and production could be done either on a competitive basis or be awarded in a similar manner as preference right leases are issued for some onshore minerals.

Proponents of a two-stage approach cite various advantages. This approach would have primary application in areas where there are high environmental values and also moderate to high petroleum production potential. This would provide the opportunity to assess environmentally sensitive areas for hydrocarbon potential as there would be less public opposition to an exploration sale than there would be to a regular sale, since the decision to develop leases would be left to a subsequent process. A more complete knowledge of hydrocarbon potential would assist the DOI in balancing the need for leasing against the need to protect the marine environment. The absence or presence of oil and gas might also help convince the public of the need to develop or not. State and local governments would have more certainty as to whether an area was to be developed and could make better long-range decisions on allocation of their resources. Allocation of research dollars for environmental studies could also be more intelligently made.

Opponents of the two-stage approach see it as unworkable because it provides no incentive for oil companies to bid for exploration rights alone. The only incentive for bidding on an OCS lease is the right to develop and produce any oil and gas which is discovered. Without development rights, no company would be willing to expend money to prepare for a lease sale (i.e., gather seismic and geological data necessary for the identification of prospective areas offshore). Thus it is probable that the industry would be unprepared to identify tracts of potential interest in an "exploration only" sale. In addition, opponent express doubt that such sales would be more readily accepted by leasing opponents than are regular sales.

No concensus could be found on this issue, and therefore, the Task Group makes no recommendation related to two-stage leasing.

OTHER LEGISLATIVE CHANGES

Certain improvements in formulation of the 5-Year Program would require changes in the law. Simplifying the process of program development would reduce some of the unnecessary workload burden for both MMS and commenters. However, helping to open up the OCSLA to amendment could also result in changes harmful to the program; for example, the recent moratoria.

The analyses and decision options prepared for the Secretary for the 5-Year OCS Oil and Gas Leasing Program consist of a Secretarial Issue Document (SID) with technical appendices. The SID served several functions:

(1) It provided information on the various factors which the Secretary is required to consider under section 18 of the OCSLA.

(2) It developed a framework and guidelines for balancing costs and benefits.

(3) It discussed options from which choices could be made concerning the size, timing, and location of lease sales.

For the current program, the SID contained 173 pages and there were 21 technical appendices. A 3-volume Final Environmental Impact Statement (EIS) for the program was also issued.

One possibility for reducing the analytical and response burden associated with repetitive program stages would be to amend the Act to eliminate the Draft Proposed Program stage. Such a revision, however, would eliminate an opportunity to comment and thus identify issues which need to be resolved in the process. It is conceivable that the 5-Year Program development process could be simplified without amending the Act. The Draft Proposed Program could be issued in a more simplified version: updating prior analyses and findings, with explanations of any proposed changes, as required by section 18(a). The NEPA requirements would still be fulfilled and not affected by this proposed change--see Recommendation 8.