Outer Continental Shelf Revenue Sharing: A Proposal to End the Seaweed Rebellion

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The outer continental shelf (OCS), which is the undersea land beginning three miles seaward from the United States' coasts, contains one of the largest known domestic reserves of oil and gas.[1] The federal government, which exercises sovereign rights over the seabed and subsoil of the OCS, leases OCS lands for oil and gas development.[2] Since 1971, the federal government has sought to accelerate and expand OCS leasing in order to make the U.S. energy-independent, to alleviate balance of payments problems, and to reduce budgetary deficits.[3] This effort has been particularly noteworthy during the Reagan administration, which has increased OCS leasing[4] while seeking to eliminate the funding for vital ocean and coastal programs.[5]

Coastal states have resisted the federal government's efforts to expand OCS leasing. Coastal states contend that the federal government is primarily concerned with the economic effects of OCS

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1. The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in § 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. § 1331(a) (1982).

Section 1301 defines "land beneath navigable water" as "all lands permanently or periodically covered by tidal water up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the entire coastline of each such State. . ." 43 U.S.C. § 1301 (1982).

It has been estimated that as much as "60% of the Nation's undiscovered oil and gas resources" are contained in the OCS. GENERAL ACCOUNTING OFFICE, ISSUES IN LEASING OFFSHORE LANDS FOR OIL AND GAS DEVELOPMENT, March 26, 1981, EMD-81-59 at 1.

2. 43 U.S.C. § 1332 (1982).

3. GENERAL ACCOUNTING OFFICE, *supra* note 1, at 16-17.

4. Office of the President, *America's New Beginning: A Program For Economic Recovery*, February 18, 1981, 4-36, 4-37; 46 Fed. Reg. 39226 (1981).

5. Eliopoulis, *Coastal Zone Management: Program at the Crossroads*, 13 ENV'T REP. (BNA) Monograph No. 30 (September 17, 1982).

development, while ignoring the impact of such development on important ocean and coastal industries and the environment.[6] The opposition by coastal states to OCS development, which has occurred in both the courts and Congress, has become known as the "Seaweed Rebellion."[7]

In the courts, the coastal states have questioned the Department of Interior's (DOI) interpretation of various statutory mandates. The coastal states have opposed the Secretary of Interior's (SOI) interpretation of § 18 of the Outer Continental Shelf Lands Act (OCSLA)[8] pertaining to the development of the five year OCS leasing program.[9] The coastal states have also challenged Interior's restrictive interpretation of "directly affecting" in § 307(c)(1) of the Coastal Zone Management Act (CZMA)[10] which precluded OCS lease sales from consistency review.[11]

When the courts upheld Interior's interpretation of the statutes, the coastal states resorted to Congress to have the statutory mandates amended.[12] Although these efforts were unsuccessful, Congress did enact moratoriums on OCS leasing in certain environmentally sensitive areas.[13] In addition, in 1981 Congress be-

6. *OCS Oil and Gas Leasing Program: Hearings Before the Subcommittee on Energy Resources and Materials Production of the Senate Energy and Natural Resources Committee*, 96th Cong. 2d Sess. 21-36 (1980) (statement of Jay Hammond, Governor of Alaska).

Impact of Offshore Oil and Gas Development on Georges Bank: Joint Hearings Before Senate Commerce, Science, and Transportation Committee and the Subcommittee on Energy Resources and Materials Production of the Senate Energy and Natural Resources Committee, 96th Cong., 2d Sess. 99-152 (1980) (statements of Francis X. Bellotti, Attorney General, Massachusetts, and Sarah Bates, Conservation Law Foundation of New England).

OCS Oversight, Part I: Hearings Before the Subcommittee on Panama Canal/OCS of the House Merchant Marine and Fisheries Committee, 97th Cong., 1st Sess. 277-317 (1981) (statements of Gary R. Magnuson, Assistant Director of Resources, California, and Edward Reilly, Director of Massachusetts Office of Coastal Zone Management). *Offshore Leasing: Department of Interior Oversight: Hearings Before the Subcommittee of the House Committee on Government Operations*, 97th Cong., 1st Sess. 16-36 (1981) (statement of Edmund G. Brown, Governor of California).

7. Note, *The Seaweed Rebellion: Federal-State Conflicts Over Offshore Oil and Gas Development*, 18 WILLAMETTE L. REV. 535 (1982); Note, *The Seaweed Rebellion Revisited: Continuing Federal-State Conflicts in OCS Oil and Gas Leasing*, 20 WILLAMETTE L. REV. 83 (1984).

8. 43 U.S.C. § 1344 (1982).

9. California v. Watt (Watt I), 668 F.2d 1290 (D.C. Cir. 1981); California v. Watt (Watt II), 712 F.2d 584 (D.C. Cir. 1983).

10. 16 U.S.C. § 1456(c)(1) (1982).

11. Secretary of the Interior v. California, 464 U.S. 312 (1984).

12. H.R. 3595, H.R. 3862, H.R. 3864, 98th Cong., 1st Sess. (1983) (to amend OCSLA); H.R. 4589 and S. 2324, 98th Cong., 2d Sess. (1984) (to amend CZMA).

13. GENERAL ACCOUNTING OFFICE, EARLY ASSESSMENT OF INTERIOR'S AREA-

gan to consider various bills providing for the sharing of OCS revenues with coastal states as a means to diminish coastal state opposition to OCS development.[14] In 1984, in the final days of the 98th Congress, the Senate failed to act on a compromise OCS revenue sharing bill that was passed by the House.[15] In 1985, OCS revenue sharing was included in the Omnibus Budget Reconciliation Act of 1985, which was not enacted by the close of the first session of the 99th Congress.[16]

This article will provide a brief historical overview of the federal-state conflicts which generated the establishment of the statutory framework which governs OCS development. The various battles of the Seaweed Rebellion will then be analyzed. Congressional efforts to enact an OCS revenue sharing bill will be reviewed. Finally, the rationale for the enactment of an OCS revenue sharing bill will be set forth.

I.
STATUTORY FRAMEWORK

It is first necessary to examine the history of federal-state conflicts over OCS development. These conflicts have caused Congress to enact statutes which govern OCS development. The statutes require the Department of Interior to consider various factors in its OCS decisionmaking process. Interior's compliance with these statutory mandates has been the central issue of the Seaweed Rebellion.

The first major conflict precipitated by offshore petroleum development was the "Tidelands Controversy", which began before World War II.[17] This controversy concerned whether the federal or state governments held title to offshore coastal lands. In several cases the Supreme Court declared that the federal government owned offshore coastal lands.[18] However, in 1953, Congress enacted the Submerged Lands Act (SLA), which granted the states

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WIDE PROGRAM FOR LEASING OFFSHORE LANDS, July 15, 1985, RCED-85-66 and 51-53. *See also infra* and notes 75-85 and text accompanying.

14. H.R. 4597, 97th Cong., 1st Sess. (1981).

15. S. 2463, 98th Cong., 2d Sess. (1984).

16. H.R. 3500, 99th Cong., 1st Sess. (1985). H.R. REP. No. 300, 99th Cong., 1st Sess. 553-559 (1985); 131 CONG. REC. H9201-9202 (October 24, 1985); H.R. REP. No. 453, 99th Cong., 1st Sess. 45-56 (1985). 16 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-3 (December 12, 1985), 1-4 (December 19, 1985); 17 COASTAL ZONE MANAGEMENT (NAUTILUS) 1 (January 9, 1986).

17. For an extensive analysis of the tidelands controversy see H.M. MARSHALL & B. ZISK, THE FEDERAL-STATE STRUGGLE FOR OFFSHORE OIL (1966).

18. United States v. California, 332 U.S. 19 (1947); United States v. Louisiana, 339 U.S. 699 (1950); United States v. Texas, 339 U.S. 707 (1950).

quitclaim title to the land three miles seaward of their coasts.[19] The SLA overturned the Supreme Court's decisions and enabled the coastal states to regulate, and derive the benefits from, offshore petroleum development.

One month after the passage of the SLA, Congress enacted the Outer Continental Shelf Lands Act (OCSLA) which granted the federal government jurisdiction over OCS lands beyond the three mile limit established by the SLA.[20] The SOI was delegated broad discretionary authority to regulate OCS development.[21] By constructing the statute in general terms, Congress intended to create a flexible OCS development process that would be adaptable to changing conditions.[22]

There was little public scrutiny of OCS operations from 1953 through 1969. Offshore development was limited, and the technology for oil and gas development in the deeper OCS waters was still in its infancy. Nevertheless, by the late 1960's, new public concerns, such as environmental protection and coastal management, began to emerge. These concerns caused Congress to enact new statutes which would affect OCS development.[23] Congressional efforts were spurred by the Santa Barbara oil spill, which legitimized the concerns of environmental groups and focused national attention on the dangers of offshore petroleum development.[24]

Responding to the growing environmental consciousness, Congress enacted various laws which affect OCS development. The National Environmental Policy Act requires Interior to consider the environmental impacts of OCS development.[25] The Marine Sanctuaries Act allows the Secretary of Commerce to preserve small discrete marine areas for "conservation, recreational, ecological, historical, research, educational, or aesthetic qualities which give them national significance."[26] The Endangered Species Act permits

19. 43 U.S.C. §§ 1301-1315 (1986).

20. 43 U.S.C. §§ 1331-56, 1801-66 (1986). *See also* Christopher, *The Outer Continental Shelf Lands Act: Key to a New Frontier*, 6 STAN. L. REV. 23 (1953).

21. 43 U.S.C. § 1334 (1982). The OCSLA has since been described as "essentially a carte blanche delegation of authority to the Secretary of Interior." H.R. REP. NO. 590, 95th Cong., 1st Sess. 54 (1977).

22. Coulter, *The Outer Continental Shelf Lands Act—Its Adequacies and Limitations*, 4 NAT. RES. LAW. 725, 726 (1971).

23. Bowman, *The Environmental Movement: An Assessment of Ecology Politics*, 5 ENV. AFF. 649, 650-652 (1976).

24. *Id.*, Jones, *Understanding the Offshore Oil and Gas Controversy*, 17 GONZAGA L. REV. 221, 242 n.94 (1982).

25. 42 U.S.C. §§ 4321-4335 (1982).

26. 16 U.S.C. §§ 1431-1433 (1982).

the prohibition or termination of OCS activities which threaten an endangered species.[27] And the Coastal Zone Management Act (CZMA) grants the states some control over federal activities which directly affect their coastal zones.[28] These statutes insure that the DOI will consider environmental factors in its decisionmaking process.

The CZMA is particularly significant. The purpose of the CZMA is to establish a "national policy to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone."[29] Coastal states are encouraged to assume the planning and regulatory functions in their coastal zones.[30] The CZMA seeks to accomplish this in two ways. First, coastal states receive grants to develop and implement coastal zone management programs. Second, certain federal activities which affect the coastal zone are to be conducted in a manner which is consistent "to the maximum extent practicable with state coastal zone management programs."[31]

At the same time Congress was instructing federal agencies to consider environmental factors in their decisionmaking process, there was growing recognition of a domestic energy shortage. In 1971, President Nixon decided to pursue an extensive OCS leasing program.[32] For the first time, OCS leasing was scheduled to occur in the undeveloped frontier areas. The goals of the program were expanded in 1973[33] and again in 1974 following the Arab oil boycott.[34]

The expanded OCS leasing program was opposed by many coastal states, coastal communities, and environmental and fishing industry groups. These groups resorted to the courts to halt particular lease sales.[35] The courts were called upon to interpret the new

27. 16 U.S.C. §§ 1531-1533 (1982).

28. 16 U.S.C. §§ 1451-1453 (1982).

29. *Id.* at § 1452(a).

30. *Id.* at § 1451(h).

31. *Id.* at §§ 1454, 1455, 1456(c).

32. Special Message to the Congress on Energy Resources, 195 PUB. PAPERS p. 709 (June 4, 1971).

33. Address to the Nation About Policies to Deal with the Energy Shortages, 323 PUB. PAPERS 916 (Nov. 7, 1973).

34. Special Message to the Congress on the Energy Crisis, 17 PUB. PAPERS 29 (Jan. 23, 1974).

35. *See, e.g.*, Sierra Club v. Morton, 510 F.2d 813 (5th Cir. 1975); Natural Resources Defense Council, Inc. (NRDC) v. Morton, 510 F.2d 813 (5th Cir. 1975); California v. Morton, 404 F. Supp. 26 (C.D. Cal. 1975), *vacated and appeal dismissed*, 608 F.2d 1247 (1979).

statutory mandates. Meanwhile, Congress sought to reduce state opposition and to expedite OCS development by enacting amendments to the CZMA and the OCSLA.[36]

In 1976 Congress enacted the CZMA amendments to deal with the impacts of OCS development on the coastal zone.[37] Congress established the Coastal Energy Impact Program (CEIP) to provide funds to coastal states and communities impacted by OCS energy development.[38] Furthermore, a new section was added to the consistency provisions.[39] The addition granted the coastal states the right to determine if a federal lessee's exploration, development and production plans were consistent with the state's coastal zone management program.

In 1978 Congress passed amendments to the OCSLA which were designed to expedite OCS development, balance energy and environmental concerns, and increase state and local participation in the OCS development process.[40] The OCSLA Amendments divided OCS development into four distinct stages: 1) the development of a five year OCS leasing program, 2) the lease sale, 3) exploration, and 4) development and production.[41]

The conflicts between the federal and coastal state governments have resulted in the enactment of various statutes which govern OCS development. The OCSLA requires the Department of Interior to expedite OCS development, but in a manner which protects coastal states' interests and the environment.[42] Coastal states are able to participate in the OCS development process through the provisions in the OCSLA, the CZMA,[43] and other statutes. The mandate of these statutory provisions has been the focus of the Seaweed Rebellion.

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36. CZMA Amendments of 1976, Pub. L. No. 94-370, 90 Stat. 1013 (amending 16 U.S.C. §§ 1451-64); OCSLA Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 629 (amending 16 U.S.C. §§ 1456, 1456a, 43 U.S.C. §§ 1331-56, 1801-66); *see also* Murphy and Belsky, *OCS Development: A New Law and a New Beginning*, 7 COASTAL ZONE MANAGEMENT J. 297 (1980).

37. 16 U.S.C. § 1451(i) (1985).

38. 16 U.S.C. § 1456a (1985).

39. 167 U.S.C. § 1456(c)(3)(B) (1985). If a coastal state and a federal agency disagree over the consistency of a lease plan with the state management program then the Secretary of Commerce shall mediate the differences between the parties. 16 U.S.C. § 1456(h) (1985).

40. 43 U.S.C. § 1802 (1986).

41. *Id.* at § 1344 (five year program); § 1345 (lease sale); § 1340 (exploration); § 1351 (development and production).

42. *Supra* notes 39, 40.

43. *Supra* notes 10, 39.

II.
INTERIOR'S FIVE YEAR OCS LEASING PROGRAM

The first battle of the Seaweed Rebellion involved a challenge by several coastal states to the DOI's five year OCS leasing program. Section 18 of the OCSLA requires the SOI to develop a five year OCS leasing program which establishes the size, timing, and location of leasing activities to meet the nation's energy needs. In developing the five year program, the SOI must consider various factors and balance energy potential, environmental effects, and adverse impacts of the coastal zone.[44]

Secretary of Interior Cecil D. Andrus submitted the first five year OCS leasing program to Congress and to state governors in April 1980.[45] On June 16, 1980, the Secretary approved the five year OCS leasing program, which called for 31 lease sales and 5 reoffering sales.[46] In July, the States of Alaska and California, off whose coasts 50% of the leasing was scheduled to occur, the North Slope Borough of Alaska, and the Natural Resources Defense Council (NRDC) brought suits alleging that the SOI had failed to comply with the mandate of § 18 in composing the five year OCS program.[47]

The principal issue before the D.C. Circuit Court was the SOI's interpretation of § 18 of the OCSLA.[48] The court utilized a hybrid standard to review the SOI's decisions.[49] The SOI's decisions on factual questions—those which require the SOI to evaluate data and draw conclusions therefrom—would be upheld if they were supported by substantial evidence.[50] The SOI's policy decisions—those for which the statute establishes standards, but allows the SOI discretion as to how to meet the standards—would be sustained if they were not arbitrary and capricious.[51] However, the SOI's statutory

44. 43 U.S.C. § 1344(a) (1986).

45. Watt I, *supra* note 9, at 1300.

46. *Id.* The program specified eleven sales in the Gulf of Mexico, six in the Atlantic, four off California, and ten off Alaska.

47. *Id.* The Sierra Club, the Conservation Law Foundation of New England, and the Friends of the Earth joined the NRDC suit. The American Petroleum Institute and several oil companies intervened in the suit on behalf of the DOI.

48. Section 23(c)(1) of the OCSLA provides, "Any action of the Secretary to approve a leasing program pursuant to § 1344 of this Title shall be subject to judicial review only in the United States Court of Appeals for the District of Columbia." 43 U.S.C. § 1349(c) (1982).

49. Watt I, *supra* note 9, at 1300-1313. The court relied on the standards set forth in Industrial Union, AFL-CIO v. Hodgson, 499 F.2d 467 (D.C. Cir. 1974).

50. *Id.* at 1301-1302.

51. *Id.* The court stated, "We must determine whether 'the decision is based on a

interpretations, while entitled to judicial deference, would be scrutinized by the court.[52] The crucial element in the court's decision was its characterization of several of the issues as questions of statutory interpretation.

The court held that the SOI did not adequately consider several of the factors set forth in § 18(a) of the OCSLA in developing the five year OCS leasing program.[53] First, the SOI did not define lease sales in the program "as precisely as possible."[54] The Secretary conceded that he could have been more specific concerning lease sales 73 and 80 off the coast of California, but he wanted to retain a degree of flexibility. The court determined that the specificity requirement was in the statute to put state and local governments on notice so that they could prepare for OCS development. The SOI's broad designation of the California planning area did not allow state and local governments to prepare for OCS leasing.[55]

Second, the SOI did not consider the equitable sharing of development benefits and environmental risks among regions required by § 18(a)(2)(B). The court held that "the Secretary's interpretation of 'environmental risks' is at odds with the plain meaning of the statutory language."[56] Environmental risks were not solely dependent on the likelihood of an oil spill, as Interior contended. Environmental risks were dependent on the probability of a spill and the amount of damage that a spill would cause. The amount of damage was, in turn, dependent on the environmental sensitivity of an area. Since the SOI definition of environmental risks was incorrect, the Secretary's analysis of this factor was flawed.[57] Furthermore, his failure to consider the environmental sensitivity of the various OCS regions as required by § 18(a)(2)(G) precluded his compliance with the sec-

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consideration of the relevant factors and whether there has been a clear error of judgment,' " citing Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

52. *Id.* at 1302-1303, citing Griggs v. Duke Power Co., 401 U.S. 424, 433-434 (1971) and Barlow v. Collins, 397 U.S. 159, 166 (1970). In addition, the court held that it was not "obligated to stand aside and rubberstamp" administrative decisions that were "inconsistent with a statutory mandate or that frustrate the Congressional policy underlying the statute," citing Volkswagenwerk AktienGesellschaft v. FMC, 390 U.S. 261, 272 (1968).

53. *Id.* at 1303-1315.

54. *Id.* at 1303-1304. Section 18 requires the SOI to develop a leasing schedule which indicates "as precisely as possible, the size, timing, and location of leasing activity which he determines will best meet national energy needs for the five-year period following its approval or reapproval." 43 U.S.C. § 1344(a) (1982).

55. *Id.* at 1304.

56. *Id.* at 1308.

57. *Id.*

tion B requirement that environmental risks be equitably balanced among regions.[58]

Third, the SOI did not consider the relative environmental sensitivity and marine productivity of different areas as required by § 18(a)(2)(G).[59] The SOI did limit intra-region comparisons, but decided that it would be impossible to do the meaningful area comparisons required by the law. The court held that the SOI must attempt to meet the statutory requirement, especially since several alternative means for an area by area comparison were set forth in the record. Even though such information would be speculative, the Secretary was required to make a good faith effort at compliance.[60]

Finally, since the Secretary did not adequately consider several of the § 18(a)(2) factors, he could not properly balance the potential for energy discovery, environmental damage, and adverse coastal zone impacts in selecting the timing and location of lease sales as required by § 18(a)(3).[61]

While the litigation over Secretary Andrus's five year OCS leasing program was underway, President Reagan came into office. The new Secretary of Interior, James G. Watt, immediately began to revise Secretary Andrus' program.[62] On April 17, 1981, Secretary Watt issued a draft five year program which "increase[d] the pace, acreage, and quality of offerings and achieve[d] early leasing [in the] high potential areas."[63] At the same time, the Secretary proposed new streamlined OCS procedures which included "area-wide environmental and hydrocarbon assessments, tiering of NEPA documents, area-wide lease offerings and more efficient methods for assuring a receipt of fair market value."[64] Secretary Watt stressed the OCS development "is not a partnership" between the federal and state governments.[65]

On July 24, 1981 Secretary Watt submitted his five year leasing

58. *Id.*

59. *Id.* at 1311-1313.

60. *Id.* at 1313.

61. *Id.* at 1315-1321.

62. Section 18(e) of the OCSLA directs the SOI to review the leasing program annually and authorizes him to revise and reapprove the program "at any time." 43 U.S.C. § 1344(e) (1982).

63. 11 ENV'T REP. (BNA) 2219 (April 17, 1981).

64. 46 Fed. Reg. 22468 (1981); 47 Fed. Reg. 25967 (1982); *See also* GENERAL ACCOUNTING OFFICE, PITFALLS IN INTERIOR'S NEW ACCELERATED OFFSHORE LEASING PROGRAM REQUIRE ATTENTION, December 18, 1981, EMD-82-26 at 11-21.

65. 12 ENV'T REP. (BNA) 5 (May 1, 1981).

program to Congress.[66] However, in October 1981, the D.C. Circuit Court remanded Secretary Andrus' program back to the DOI with instructions and a schedule for compliance. OCS leasing was allowed to continue while the program was being revised.[67]

After submitting several draft proposals to comply with the court's order, Secretary Watt approved the revised five year OCS leasing program on July 21, 1982. The revised program called for 41 lease sales, comprising an area of approximately one billion acres, to occur from August 1982 through June 1987. The new program was 20 times greater than Secretary Andrus' program and the area to be leased was 25 times greater than the area previously leased throughout the entire OCS program.[68]

The next day the States of Alaska, California, Florida, Oregon, and Washington brought suit challenging the new five year OCS leasing program. The Natural Resources Defense Council (NRDC), along with six other environmental groups, brought a companion suit.[69] The petitioners alleged that the Secretary violated the mandate of § 18 of the OCSLA and the October 1981 court decision.

The D.C. Circuit Court was asked to review Secretary Watt's five year program to determine if it complied with § 18 of the OCSLA. The court employed the same standard of review that it had in the prior case, but the court characterized Secretary Watt's decisions differently.[70] In the challenge to Secretary Andrus' program, the court held that several of the issues revolved around questions of statutory interpretation, therefore the court reviewed Interior's interpretations to insure that they "effectuate[d] the intent of Congress."[71] In the challenge to Secretary Watt's program, the court held that the issues focused on the adequacy of the Secretary's analysis, therefore the court could only set aside the Secretary's deci-

66. 46 Fed. Reg. 39226 (1981).

67. Watt I, *supra* note 9, at 1326.

68. STAFF OF THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, 98TH CONG., 1ST SESS., SECRETARY OF INTERIOR JAMES G. WATT'S FIVE YEAR OIL AND GAS LEASING PLAN FOR THE OCS 6 (Comm. Print No. 4, 1983).

69. Watt II, *supra* note 9, at 590, n.18. The Sierra Club, Conservation Law Foundation of New England, National Wildlife Federation, National Audubon Society, North Slope Borough of Alaska, Cenaliulrit, and the Yukon-Kuskokwim Coastal Resource Service Board joined the suit. The Commonwealth of Massachusetts, Oregon Shores Conservation Coalition, Oregon Environmental Council, and Oregon Wilderness Coalition filed amicus briefs in support of the petitioners.

70. *Id.* at 590.

71. Watt I, *supra* note 9, at 1303.

sions if they were arbitrary and capricious.[72] The court then, rejecting the petitioners' contentions,[73] found that Secretary Watt had complied with the mandate of § 18 of the OCSLA in developing the five year OCS leasing program.

After losing the battle in court, the coastal states resorted to Congress to influence Interior's five year OCS leasing program. The coastal states pursued two different tacks in Congress. First, several bills pertaining to OCS development were introduced into Congress.[74] These bills were designed to insure a careful balancing of energy and environmental factors, to limit the Secretary's discretion, to strengthen congressional oversight, to expand the role of coastal states, to eliminate many of the streamlining procedures, and to delay leasing in environmentally sensitive areas. None of the bills was enacted by Congress.

The second tack pursued by the coastal states proved to be more successful. The coastal states worked for the establishment of moratoriums on OCS leasing in certain environmentally sensitive areas. In 1983 the House attacked a proviso to Interior's appropriation bill which prohibited the expenditure of funds for leasing in particular OCS areas.[75] The Senate, however, refused to enact the moratoriums on the grounds that it would cost the U.S. Treasury $400 million in fiscal year (FY) 1984.[76] Despite the threat of a presidential veto, the conference committee reported an Interior appropriation bill which contained moratoriums on OCS leasing in certain areas included in Lease Sales 52, 73, 79, 80, and 82.[77] President Reagan signed the bill, which contained moratoriums on the

72. Watt II, *supra* note 9, at 590.

73. *Id.* at 590. The petitioners alleged that the SOI 1) failed to indicate the size, timing, and location of leasing activity "as precisely as possible"; 2) failed to base his program on § 18(a)(2) factors; 3) violated § 18(a)(3) by making arbitrary assumptions and utilizing incorrect methodology; 4) violated § 18(a)(4) because his program failed to assure the receipt of fair market value; 5) violated § 18(a)(1), (2), (3), and NEPA by failing to consider the environmental impacts of the program on Washington and Oregon; 6) violated § 18(f)(5) by failing to state when a consistency determination would be conducted.

74. *Supra* note 12. *See also Consideration of Legislation to Restrict the Department of Interior's Oil and Gas Leasing Program on the Outer Continental Shelf: Hearings before the Subcommittee on Mining, Forest Management, and Bonneville Power Administration of the House Committee on Interior and Insular Affairs*, 98th Cong., 1st Sess. 310-365, 868-888 (1983).

75. H.R. REP. No. 253, 98th Cong., 1st Sess. 35-36 (1983).

76. S. REP. No. 184, 98th Cong., 1st Sess. 37 (1983).

77. H.R. REP. No. 399, 98th Cong., 1st Sess. 28-30 (1983). The location of the sales were as follows: lease sale 52—North Atlantic, lease sale 73—Central and Northern California, lease sale 79—Eastern gulf of Mexico, lease sale 80—Southern California, and lease sale 82—North Atlantic.

leasing of 53.3 million acres of OCS lands through FY 1984.[78]

The DOI criticized the moratoriums. Interior argued that it had undertaken an exhaustive effort to develop the five year OCS leasing program, which carefully balanced energy development and environmental protection. This program was being pulled apart by parochial interests. Such an effort would jeopardize the partnership between the federal government and the oil industry. Furthermore, the moratoriums would increase lease sales in other OCS areas to make up for the shortfall.[79]

Congress confronted the issue of OCS moratoriums in 1984. The House decided to continue the moratoriums on OCS leasing in areas off the coasts of California and Massachusetts.[80] The Senate again opposed the moratoriums, which were termed "short-sighted, politically motivated, policy decisions which have only served to reduce the necessary revenues to the Federal Treasury."[81] Nevertheless, Congress, by continuing resolution, maintained the moratoriums through FY 1985.[82]

In 1985, Congress again considered OCS moratoriums. The Senate Appropriations Committee continued to exclude OCS moratoriums from Interior's appropriation bill,[83] while the House Appropriations Committee approved a 1986 funding bill which would continue leasing moratoriums on the areas off the coast of Massachusetts.[84] The moratoriums on OCS leasing in certain areas off the coast of California, which had been included in prior Interior appropriations bills, were dropped as a result of an agreement between Interior and the California congressional delegation.[85] However, there were several attempts to restore the ban on leasing in certain areas off the coast of California.[86]

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78. An Act Making Appropriations for the Department of the Interior, Pub. L. No. 98-146 §§ 206-208, 97 Stat. 919, 934 (1983). *See also* 14 COASTAL ZONE MANAGEMENT (NAUTILUS) 1 (October 27, 1983) and 6 (November 24, 1983).

79. 15 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-3, (June 14, 1984). *Department of Interior and Related Agencies Appropriations for 1985: Hearings Before the Subcommittee on the Department of Interior and Related Agencies of the House Committee on Appropriations*, 98th Cong., 2d Sess., 854-855 (1984) (statement of William P. Clark, Secretary of Interior).

80. H.R. REP. No. 886, 98th Cong., 2d Sess. 33-35 (1984).

81. S. REP. No. 578, 98th Cong., 2d Sess. 49 (1984).

82. H.R. REP. No. 1159, 98th Cong., 2d Sess. 18 (1984).

83. S. REP. No. 141, 99th Cong., 1st Sess. 34 (1985).

84. H.R. 3011, 99th Cong., 1st Sess. 33-38 (1985); H.R. REP. No. 205, 99th Cong., 1st Sess. 33-35 (1985).

85. *Id.* 16 ENV'T REP. (BNA) 471 (July 19, 1985).

86. On September 10, Secretary Hodel stated that he could not abide by the agreement. 16 ENV'T REP. (BNA) 869-870 (September 13, 1985). On September 18, House

Public Law No. 99-190, which was enacted in 1985, continued the moratorium on OCS leasing in certain areas in the North Atlantic and required the DOI and California state officials to negotiate a compromise over moratoriums on OCS leasing off the coast of California.[87]

In summary, the coastal states lost the first battle of the Seaweed Rebellion in the courts. After the litigation failed, the coastal states turned their attention to Congress where the states achieved a degree of success. Moratoriums on OCS leasing in certain environmentally sensitive areas were established. However, these moratoriums are of limited value because each year they must be renewed. Consequently, the moratoriums only represent a stalemate in the federal-state battle over OCS development.

III.

CONSISTENCY REVIEW FOR OCS LEASE SALES

The second battle of the Seaweed Rebellion focused on whether OCS lease sales were subject to consistency review under § 307(c)(1) of the CZMA. Section 307(c)(1) provides that federal activity "directly affecting" a state's coastal zone must be conducted "in a manner which is to the maximum extent practicable, consistent with the approved state's management program[s]."[88] The conflict between the State of California and the DOI regarding Lease Sale 53 brought this issue before the courts.[89]

In July 1980, the California Coastal Commission requested that the SOI submit a consistency determination upon publication of the proposed Notice of Sale for Lease Sale 53.[90] The SOI refused on the grounds that Lease Sale 53 would not directly affect the coastal

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Joint Resolution 380 was enacted, which continued the California moratoriums until November 15, 1985. 16 ENV'T REP. (BNA) 898 (September 20, 1985). In late November, the House Appropriations Committee rejected the leasing ban off California by a vote of 27 to 26. 16 ENV'T REP. (BNA) 1448 (December 6, 1985).

87. H.R. REP. NO. 443, 99th Cong., 1st Sess. 59-60, 287 (1985), 16 ENVT. REP. (BNA) 1661-1662 (December 27, 1985).

88. Section 307(c)(1) states, "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs." 16 U.S.C. § 1456(c)(1) (1982).

89. For a complete discussion of this conflict see Fitzgerald, *Secretary of Interior v. California; Should OCS Lease Sales Be Subject to Consistency Review?*, 12 B.C. ENVTL. AFF. L. REV. 425 (1985).

90. California v. Watt, 683 F.2d 1253, 1258-1259 (9th Cir. 1982), *rev'd*, 464 U.S. 312 (1984).

zone.[91] Nevertheless, the SOI nullified many of the Commission's objections to the sale by deleting tracts in four of the five basins originally scheduled for leasing.[92]

The Commission admitted that the deletions satisfied many of its objections.[93] However, 31 of the tracts in the remaining Santa Maria Basin had to be deleted because developments on these tracts could jeopardize the sea otter.[94] When negotiations failed to resolve the conflict, California brought suit.

On May 27, 1981, the U.S. District Court issued a preliminary injunction preventing the SOI from accepting or rejecting any bids on the disputed tracts in Lease Sale 53.[95] On August 18, 1981, the U.S. District Court in its decision on the merits held that the Final Notice of Sale directly affected California's coastal zone, and therefore a consistency determination was required under § 307(c)(1).[96]

After the Ninth Circuit Court upheld the District Court decision,[97] Interior appealed the case to the Supreme Court. In its brief to the Court, Interior adopted a restrictive interpretation of "directly affecting."[98] Interior alleged that the only activities that directly affected a state's coastal zone were those that caused a physical alteration in the coastal zone. Since OCS lease sales did

91. *Id.* CZMA regulations provided that the federal agency conducting an activity directly affecting the coastal zone must submit a consistency determination to each affected state. The consistency determination is a document describing how the federal activity has been tailored to be consistent with the state coastal zone management program. 15 C.F.R. §§ 930.34(a), 930.39 (1979). The state has 45 days to review the consistency determination and notify the federal agency of its agreement or objections. *Id.* at § 930.41(a). If a federal agency determined that a proposed activity did not have "direct effects" on the coastal zone, it must notify adjacent states of the "negative determination." *Id.* at § 930.35(d). If the federal agency and a state had a disagreement about these determinations, either party could request the Secretary of Commerce to mediate the dispute. *Id.* at § 930.110-.116. *See generally* Linsley, *Federal Consistency and Outer Continental Shelf Oil and Gas Leasing: The Application of the "Directly Affecting" Test to Pre-Lease Sale Activities*, 9 B.C. ENVTL. AFF. L. REV. 431, 440-442 (1980).

92. Brief for the Petitioners on Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit at 12, California v. Watt, 683 F.2d 1253 (1982).

93. *Id.*

94. *Id.* The NRDC filed a companion suit, representing itself, Sierra Club, Friends of the Earth, Friends of the Sea Otter, and the Environmental Coalition for Lease Sale 53.

95. 11 ENVTL. L. REP. (ENVTL. L. INST.) 20,565 (May 27, 1981). The following day, May 28, Lease Sale 53 was held. Interior received $2.3 billion in lease offerings. 81 of the 111 tracts offered for lease received bids, including 21 of the disputed tracts. 12 ENV'T REP. (BNA) 196 (June 5, 1981).

96. California v. Watt, 520 F. Supp. 1359 (C.D. Cal. 1981).

97. *Supra* note 90.

98. *Supra* note 92 at 20-21.

not cause any physical impact on the coastal zone, Interior argued, they were not subject to consistency review under § 307(c)(1). Consistency review was limited to activities occurring during the exploration, development and production stages under § 307(c)(3)(B).[99] Interior relied primarily on the language and structure of § 307(c)(1) and the Outer Continental Shelf Lands Act Amendments (OCSLAA) to support its position.

California, in its brief, adopted a more policy-oriented approach.[100] California maintained that OCS lease sales directly affected the state's coastal zone because the sales were the first step in a series of events leading to development. The Final Notice of Sale established which tracts would be leased and the conditions under which such development would occur. The fact that subsequent activities by the lessees were subject to consistency review did not make the effects of OCS leasing any less direct.[101] Furthermore, requiring the DOI to submit a consistency determination would expedite OCS development by reducing conflict at the later stages in the process.[102] California's position was supported by the lower court decisions,[103] the post-enactment congressional interpretations of the CZMA,[104] and NOAA[105] and Department of Justice[106] inter-

99. *Id.* at 21-22. Section 307(c)(3)(B) states that "After the management program of any coastal state has been approved. . ., any person who submits to the Secretary of Interior any plan for the exploration or development of, or production from, any area which has been leased under the OCSLA (43 U.S.C. §§ 1331 *et seq.*) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information. . . ." 16 U.S.C. § 1456(c)(3)(B) (1982).

100. Brief in Opposition to Petitions for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, California v. Watt, 683 F.2d 1253 (9th Cir. 1982).

101. *Id.* at 10. *See also* 43 C.F.R. § 3315.4(a) (1979).

102. *Supra* note 100 at 26-27.

103. *Supra* notes 90, 96.

104. S. REP. No. 277, 94th Cong., 1st Sess. (1976). H.R. REP. No. 878, 94th Cong., 2d Sess. (1976). S. REP. No. 783, 96th Cong., 2d Sess. (1980). H.R. REP. No. 1012, 96th Cong., 2d Sess. (1980). *See also* Fitzgerald, *supra* note 89, at 455-459.

105. 44 Fed. Reg. 37142 (1979). *See also* Fitzgerald, *supra* note 89, at 459-464.

106. Informal Department of Justice Advisory Opinion rendered for the Department of Commerce and the Department of Interior (Apr. 20, 1979). (On file at Office of the UCLA Journal of Environmental Law and Policy, Los Angeles). The Department of Justice was asked to determine if OCS pre-leasing activities were subject to consis-

pretations of "directly affecting."

On January 11, 1984, in a 5-4 decision written by Justice O'Connor, the Court held that only federal activities occurring within the geographical boundaries of the coastal zone can directly affect the coastal zone.[107] Reviewing the legislative history of the CZMA, Justice O'Connor pointed out that in 1972, Congress rejected four proposals which would have extended the provisions of the CZMA beyond the 3 mile coastal zone.[108] In 1976, Congress also rejected a proposal to make OCS leasing subject to consistency review.[109] Justice O'Connor interpreted these congressional actions as demonstrating an explicit intent by Congress to exclude OCS lease sales from consistency review.[110]

Justice O'Connor proceeded to assert that the enactment of the OCSLAA in 1978 supported her conclusion. The OCSLAA delineated the specific stages in the OCS development process and specifically separated OCS lease sales from the subsequent development stages. Since OCS lease sales only entitled the lessees to priority in the submission of subsequent plans, OCS lease sales did not directly affect the coastal zone. Consequently, OCS lease sales were not subject to consistency review which was limited to the later two stages of the OCS development process under § 307(c)(3)(B).[111]

Justice Stevens in his dissenting opinion was very critical of the majority's position. Justice Stevens asserted that the majority decision contradicted the plain language, the legislative history, and the purposes of the CZMA, as well as the two lower court decisions.[112]

Justice Stevens pointed out that nothing in the plain language of the statute distinguished between federal activity occurring inside and federal activity occurring outside of the coastal zone.[113] Furthermore, since the express purpose of Congress was to encourage cooperative federal-state long-term planning to protect the coastal zone, federal activity occurring outside of the coastal zone must be subject to consistency review under § 307(c)(1).[114] Preliminary ver-

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tency review in a prior dispute over Lease Sale 48. For a full discussion of this conflict see Linsley, *supra* note 91.

107. 464 U.S. 312 (1984).

108. *Id.* at 324-330.

109. *Id.* at 334-335.

110. *Id.* at 330-335.

111. *Id.* at 335-343. *See also* note 99.

112. *Id.* at 344-376.

113. *Id.* at 345-347.

114. *Id.*

sions of the CZMA had expressly recognized this need.[115] Congress inserted "directly affecting" in § 307(c)(1) to expand the scope of the consistency provisions to federal activities, such as OCS lease sales, which occur outside of state coastal zones.[116] In addition, the subsequent legislative history of the CZMA Amendments in 1976 and 1980 support this position.[117]

Justice Stevens, addressing the majority's reliance on the OCSLAA, pointed out that Congress did not intend the OCSLAA to interfere with the consistency requirements of the CZMA.[118] The OCSLAA contains a savings clause which specifically precluded any interference with the consistency provisions of the CZMA.[119] The congressional report explaining this clause reinforces this position.[120]

Congress quickly responded to the Supreme Court's narrow interpretation of "directly affecting." Congresspersons introduced bills designed to reverse the Court's decision and to guarantee the states a major role in future consistency determinations.[121] The bills substituted "significantly affecting" for "directly affecting" in § 307(c)(1), thus insuring that OCS lease sales would be subject to consistency review.[122] The consistency standard was altered from "to the maximum extent practicable" to "fully consistent."[123] Fur-

115. *Id.* at 347-355.

116. *Id.* at 355-364.

117. *Id.* at 364-375.

118. *Id.* at 370-373.

119. *Id.* at 371. The OCSLA Amendments state, "Except as otherwise expressly provided in this Act, nothing in this chapter shall be construed to amend, modify, or repeal any provisions of the Coastal Zone Management Act of 1972. . . ." 43 U.S.C. § 1866(a) (1982).

120. *Id.* The report states, "The committee is aware that under the Coastal Zone Management Act of 1972, as amended in 1976 (16 U.S.C. § 1451 *et seq.*) certain OCS activities including lease sales and approval of development and production plans must comply with 'consistency' requirements as to coastal zone management plans approved by the Secretary of Commerce. Except for specific changes made by Titles IV and V of the 1977 Amendments, nothing in this act is intended to amend, modify, or repeal any provisions of the Coastal Zone Management Act. Specifically, nothing is intended to alter procedures for consistency once a State has an approved Coastal Zone Management Plan." H.R. REP. No. 590, 95th Cong., 1st Sess. 153 n.52, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS, 1450, 1559 n.52.

121. H.R. 4589 and S. 2324, *supra* note 12. *See also* 15 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-3 (February 16, 1984).

122. Both bills, as introduced, retained the "directly affecting" language. After committee action, "significantly affecting" was substituted for "directly affecting." *See* S. REP. No. 512, 98th Cong., 2d Sess. 6-9 (1984). In the House, the bill was amended by the Subcommittee on Oceanography before it was sent to the House Merchant Marine and Fisheries Committee. 15 ENV'T REP. (BNA) 40 (May 11, 1984).

123. *Id.* S. REP. No. 512 at 9-10.

thermore, "substantial deference" was to be given to a state's interpretation of its "enforceable, mandatory policies."[124] Even though the Senate Commerce Committee issued a favorable report on the bill, no further action was taken before the close of the 98th Congress in 1984.[125]

The battle over consistency review of OCS lease sales was another defeat for the coastal states in the Seaweed Rebellion. The Supreme Court's decision diminishes state input at the crucial early stages of the OCS development process. The states are relegated to a minor advisory role during the lease sale stage. This is the only point in the OCS development process at which the entire lease sale can be evaluated to determine if the lease sale conforms with the state's coastal zone program. Later review is restricted to particular tracts under § 307(c)(3)(B). Consequently, the Supreme Court's decision is contrary to the purpose of the CZMA, which is designed to foster federal-state cooperation for the management and protection of the natural systems of the coastal zone.

IV.
CONGRESSIONAL FUNDING FOR OCEAN AND COASTAL PROGRAMS

The third battle of the Seaweed Rebellion concerned the funding for vital ocean and coastal programs. President Reagan came to office seeking to reduce the federal deficit. To help accomplish this, he decided to accelerate and expand OCS leasing, while attempting to terminate the funding for many ocean and coastal programs.[126] The pursuit of these contrary policies provided further impetus to the Seaweed Rebellion.

The Reagan administration targeted the programs established under the CZMA for elimination on the grounds that the programs had accomplished their goals.[127] The administration asserted that

124. *Id.* S. REP. NO. 512 at 10-11.

125. The House considered altering the consistency language when it was considering the reauthorization of the CZMA in 1985. However, it decided not to change the language because of the threat of a presidential veto. 16 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-3 (May 2, 1985), *see also* 16 ENV'T REP. (BNA) 549 (August 2, 1985).

126. *See supra* notes 4 and 5.

127. *Budget Rescissions for FY 1981: Hearings before the Subcommittee on Commerce, Justice, State, and the Judiciary Appropriations of the House Committee on Appropriations*, 97th Cong., 1st Sess. 1100-1265 (1981) (statement by James P. Walsh, Acting NOAA Administrator).

Appropriations for FY 1982: Hearings before the Subcommittee on State, Justice, Commerce, and Judiciary Appropriations of the Senate Appropriations Committee, 97th

the states were aware of the benefits of sound coastal zone management, thus they would continue to fund the programs. Furthermore, the 1976 Coastal Energy Impact Program (CEIP), which provided loans and grants to coastal states to mitigate the adverse impacts of OCS development, was slated for termination because the projected OCS development boom/bust cycle never occurred.[128]

Congress was initially receptive to the administration's requests. In a 1981 supplementary budget bill, Congress agreed to transfer $33 million from CEIP to CZMA in FY 1982.[129] The Conference Committee Report stated that "[c]oastal states should not anticipate receiving any Federal funding beyond the funds provided in the Act and that these funds shall be used to phase down the grants to States for the period fiscal year 1982-fiscal year 1984."[130]

In 1983, Congress reassessed the importance of maintaining state coastal zone management programs. The Reagan administration again requested the termination of § 306 grants which provide federal funds for the implementation of state coastal zone management programs.[131] Congress refused the administration's request. Instead, Congress appropriated $21 million for § 306 grants in FY 1984.[132] This strong commitment on the part of Congress was reaffirmed when Congress appropriated $34 million for § 306 and

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Cong., 1st Sess. 897-968 (1981) (statement of James P. Walsh, Acting NOAA Administrator). *Appropriations for FY 1983: Hearings before the Subcommittee on State, Justice, Commerce, and Judiciary Appropriations of the Senate Appropriations Committee*, 97th Cong., 2d Sess. 653-722 (1982) (statement of John V. Byrne, NOAA Administrator). *Appropriations for FY 1984: Hearings before the Subcommittee on Commerce, Justice, State, and the Judiciary Appropriations of the House Committee on Appropriations*, 98th Cong., 1st Sess. 839-1501 (1983) (statement of John V. Byrne, NOAA Administrator). *Appropriations for FY 1985: Hearings before the Subcommittee on Commerce, Justice, State, and the Judiciary Appropriations of the House Committee on Appropriations*, 98th Cong., 2d Sess. 1083-1501 (1984) (statement of John V. Byrne, NOAA Administrator). *Appropriations for FY 1986: Hearings before the Subcommittee on Commerce, Justice, State, and the Judiciary Appropriations of the House Committee on Appropriations*, 99th Cong., 1st Sess. 70-75 (1985) (statement of Malcolm Baldridge, Secretary of Commerce).

128. *Id.* Derheimer and Salmon, *Coastal Energy Impact Mitigation in the Gulf: The Past Reviewed and Alternatives for the Future*, 10 COASTAL ZONE MGMT. J. 161, 163-164 (1982).

129. H.R. 3512, 97th Cong., 1st Sess. (1981). *See infra* note 132.

130. H.R. REP. No. 124, 97th Cong., 1st Sess. 22 (1981).

131. *See supra* note 127.

132. H.R. 3222, 98th Cong., 1st Sess. (1983). *See also* H.R. REP. No. 478, 98th Cong., 1st Sess. (1983).

For a complete history of CZMA funding see H.R. REP. No. 103, 99th Cong., 1st Sess. 14 (1985).

§ 306a grants for FY 1985,[133] and $35 million for § 306 grants for FY 1986,[134] despite administration requests to the contrary.[135]

The Reagan administration also proposed to eliminate the funding for the following programs: 1) National Sea Grant (NSG), which was established in 1966 to develop a network of universities dedicated to marine education and research;[136] 2) Commercial Fisheries and Research and Development Act (CFRDA), which was established in 1964 to provide grants for research and the development of commercial fisheries;[137] and 3) Anadromous Fish Conservation Act (AFCA), which was enacted in 1965 "for the purpose of conserving, developing, and enhancing the anadromous fishery resources of the nation."[138] The administration contended that the goals of these programs had been achieved.[139] Furthermore, it was time for the states and private industry to fund these programs because the states and private industry are the direct beneficiaries.[140] Congress, however, consistently refused to follow the administration's requests and continued the funding for these programs.[141]

The coastal states have been successful in Congress in maintaining the funding for vital ocean and coastal programs. Congress initially complied with the Reagan administration's request to reduce the funding for these programs as a means of reducing the federal deficit. However, Congress came to realize the national importance of ocean and coastal management. Many of the problems in the nation's ocean and coastal areas, such as energy development, fishery resource conservation, and marine pollution, transcend state

§ 306 Program Administration Grants

1980	1981	1982	1983	1984	1985	1986
$32.45m	$33.962m	(1)	(2)	(3)$5m	$34m	$35m

(1) $33,000,000 deferred from CEIP loan fund and reprogrammed
(2) $7,170,000 CEIP appropriation transfer: principal and interest repayment
(3) Also: $16,000,000 CEIP appropriation transfer

133. H.R. 5712, 98th Cong., 2d Sess. (1984). *See also* H.R. REP. No. 952, 98th Cong., 2d Sess. 14 (1984).

134. H.R. 2965, 99th Cong., 1st Sess. (1985). *See also* H.R. REP. No. 414, 99th Cong., 1st Sess. 15 (1985), 16 ENV'T REP. (BNA) 1602 (December 13, 1985), 16 ENV'T REP. (BNA) 1662 (December 27, 1985).

135. *Supra* note 127.

136. 33 U.S.C. §§ 1121-1131 (1982). *See also* H.R. REP. No. 628, 97th Cong., 2d Sess. 75 (1982); H.R. REP. No. 206, 98th Cong., 1st Sess. 41-42, 47-48 (1983).

137. 16 U.S.C. § 779 (1982).

138. 16 U.S.C. § 757 (1982).

139. *Supra* note 127.

140. *Id.*

141. Congressional Appropriations FY 1981-1986

boundaries. Coastal state governments alone are incapable of dealing with these problems. Furthermore, the coastal state governments cannot provide the educational opportunities and scientific research necessary to address these problems. Consequently, Congress decided that the national interest dictated continued federal funding of ocean and coastal management programs.

V.
OCS REVENUE SHARING BILLS

The Reagan administration engendered a great deal of hostility by pursuing an aggressive OCS leasing program while attempting to terminate the funding for vital ocean and coastal programs. This hostility arose from the coastal states already involved in litigation over Interior's five year OCS leasing program and in litigation over consistency review of OCS lease sales. In order to sustain the funding for ocean and coastal programs and to minimize coastal state opposition to OCS leasing, congresspersons introduced various bills which provided for the sharing of OCS revenues with the coastal states.

In 1981, Representative Walter B. Jones, chairman of the House Merchant Marine and Fisheries Committee (HMMFC), introduced

FY	AFCA	CFRDA	NSG	Bill and Report
1981	$2m	$.85	$37m	H.R. 3512, 97th Cong., 1st Sess. (1981) (1) H.R. REP. No. 124 (1981)
1982	$2m	$5m	$37m	H.R. 6863, 97th Cong., 2d Sess. (1982) H.R. REP. No. 747 (1982)
1983	$3m	$4m	$33m	H.R. RES. 631, 97th Cong. 2d Sess. (1982) H.R. REP. No. 980 (1982)
1984	$2.8m	$4m	$36.5m	H.R. 3222, 98th Cong., 1st Sess. (1983) H.R. 478 (1983)
1985	$3.5m	$4.5m	$39m	H.R. 5712, 98th Cong., 2d Sess. (1984) H.R. REP. No. 952 (1984)
1986	$3.25m	$3m	$39m	H.R. 2965, 99th Cong., 1st Sess. (1985) H.R. REP No. 414, 99th Cong., 1st Sess. 15 (1985)

(1) President Reagan's Budget Rescission for FY 1981 m=million

H.R. 4597.[142] The bill established a National Ocean and Coastal Resources Management Fund which would be funded by 5% of the OCS revenues received after October 1, 1982. There was a ceiling on the fund of $300 million.[143] The coastal states would receive block grants from the fund which were to be allocated by a formula which gave equal weight to the following factors: 1) offshore oil and gas activities, 2) coastal-related coal activities, 3) coastal-related energy facilities, 4) shoreline mileage, and 5) coastal population. Items (4) and (5) were considered only if the state had an approved coastal zone management program.[144] The block grants were to be used for the following activities: 1) 30% for CZMA and CEIP, 2) 10% for NSG, 3) 10% for CFRDA and AFCA, and 4) the remainder for any of the aforementioned at the state's discretion.[145]

In 1982, a substitute revenue sharing bill, H.R. 5543, was introduced by Representative Jones and Representative Norman D'Amours.[146] On May 20, the bill was favorably reported from the HMMFC.[147] Some of the changes from H.R. 4597 were as follows:

First, the fund would be financed by 10% of the increase in OCS revenues from base year 1982, with a ceiling of $300 million.[148] This meant that the U.S. Treasury would not lose any money since the payments would come from increases in OCS revenues.

Second, the first two criteria of the formula were changed to a) ½ of the actual leasing off the state's coast and the volume of oil and gas first landed in the state, and b) the potential leasing scheduled to occur off the state's coast.[149]

Third, NSG funds, comprising 10-20% of the fund, would be deducted prior to the allocation of the block grants because the goals of NSG could not be adequately met by block grants.[150]

Fourth, the block grants would be spent as follows: a) 30% to CZMA activities; b) 10% to CEIP activities; c) 20% for the enhancement and management of living marine resources;[151] and d) the remainder to be spent on the enhancement and management

142. H.R. 4597, *supra* note 14.
143. *Id.* at § 402.
144. *Id.* at § 403.
145. *Id.* at § 404.
146. H.R. 5543, 97th Cong., 2d Sess. (1982).
147. H.R. REP. No. 628, *supra* note 136.
148. *Id.* at 55.
149. *Id.* at 56-57.
150. *Id.* at 56.
151. *Id.* at 58-59. Living marine resources were broadly defined to include marine mammals, sea turtles, marine birds and fisheries.

of natural resources which did not necessarily have to be located in the coastal zone.[152]

Fifth, each state with an approved coastal zone management program would receive ½ of 1% of the fund.[153]

The Reagan administration opposed the bill, arguing that the bill would aggravate existing deficits. The earmarking of funds for particular programs would preserve programs that were scheduled for termination. Furthermore, the significant regulatory and reporting requirements were contrary to the administration's goals of reducing bureaucratic burdens.[154]

Congressional opponents of the bill were working on a substitute revenue sharing bill. They asserted that the state and local governments should evenly divide federal funds, and the amount of the funds should be directly related to the leasing activity and the proximity of such activity to the state's coast. Furthermore, they maintained, allocation to the fund should not proceed through the normal appropriation process, but should be in the form of an entitlement.[155]

In September, H.R. 5543 came to the House floor. President Reagan sent a pink letter to Congress signifying that he was prepared to veto the legislation.[156] Representative Gene Snyder, an opponent of the bill, threatened to attach 28 amendments to the measure.[157] Despite this opposition, H.R. 5543 was passed by the House by a vote of 260 to 134.[158] However, no further action on OCS revenue sharing occurred in 1982 because the Senate was just beginning to consider its own OCS revenue sharing legislation.[159]

In 1983, H.R. 5, which was identical to H.R. 5543, was introduced by Representative Jones.[160] Two amendments were made to

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152. *Id.*

153. *Id.* at 57.

154. *Id.* at 79-80 (the dissenting view of Representative Gene Snyder).

155. *Id.* at 77-78 (the additional views of Representatives John B. Breaux, Jack Fields, Don Young, Edwin Forsythe, Carroll Hubbard, Bill Tauzin).

156. 13 ENV'T REP. (BNA) 783 (October 8, 1982).

157. 128 CONG. REC. H7416 (daily ed. Sept. 22, 1982) (statement of Representative Gene Snyder).

158. 128 CONG. REC. H7968 (daily ed. Sept. 29, 1982).

159. Three revenue sharing bills were introduced into the Senate in 1982: S. 2129, 97th Cong., 2d Sess. (1982), introduced by Senator Mitchell; S. 2792, 97th Cong., 2d Sess. (1982), introduced by Senators Stevens, Murkowski, Hollings, Packwood, Inouye, Gorton, Sarbanes, Mitchell, Hayakawa, Cranston, Thurmond, Chiles, Rudman, Cohen, Riegle, Johnston; and S. 2794, 97th Cong., 2d Sess. (1982), introduced by Senators Weicker, Tsongas.

160. H.R. 5, 98th Cong., 1st Sess. (1983).

the bill in the HMMFC.[161] First, to increase the states' flexibility, only 25% of the block grant was earmarked for CZMA activities.[162] The remaining 75% of the block grant was to be used, at the state's discretion, for ocean and coastal management efforts, such as CEIP activities, and living marine and natural resource-oriented activities. Although no percentage requirements were established, a portion of the grant had to be used in all three categories. Second, each state was required to allocate 35% of its block grant to the local governments.[163] The bill was passed by the HMMFC by a vote of 37 to 2.[164]

In the committee, opponents of the bill argued that the formula for determining the amount of the block grants did not adequately consider the impacts of OCS development. The formula overemphasized coastal-related energy facilities, coastal mileage, and coastal population. Consequently, states with no OCS activity, such as the Great Lakes states, would receive more money than coastal states that experience the impacts of OCS development.[165] Furthermore, opponents wanted to eliminate the requirement of having an approved coastal zone management program to qualify for the coastal mileage and coastal population criteria in the formula.[166]

When H.R. 5 reached the House floor, opponents introduced amendments to alter the formula and to eliminate the requirement of an approved coastal zone management program. These amendments were defeated.[167] H.R. 5 was passed by the House by a vote of 301 to 93,[168] an even greater margin than in 1982.

In 1983, the Senate began considering its own version of an OCS revenue sharing bill. Initially, Senate Commerce Committee Republicans and Democrats disagreed about the nature of the bill.[169] Senate Republicans introduced S. 800 which established an Ocean and Coastal Development Impact Assistance Fund. The fund would be financed by 5% of the OCS revenues received annu-

161. H.R. REP. NO. 206, *supra* note 136, at 9-10 (1983).
162. *Id.* at 9, 85.
163. *Id.*
164. *Id.* at 10-11.
165. *Id.* at 104-105 (the dissenting view of Congressman Jack Fields).
166. *Id.*
167. 129 CONG. REC. H6817 (daily ed. Sept. 13, 1983). An amendment offered by Representative Fields was designed to consider only OCS leasing occurring within 250 miles of the state's shore. 129 CONG. REC. H6842 (daily ed. Sept. 14, 1983).
168. 129 CONG. REC. H6848 (daily ed. Sept. 14, 1983).
169. 14 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-2 (March 17, 1983). 14 COASTAL ZONE MANAGEMENT (NAUTILUS) 3-4 (March 24, 1983).

ally, beginning in FY 1983.[170] The money would be automatically appropriated into the fund and the Secretary of Commerce (SOC) would distribute block grants to the states according to a formula.[171] The coastal states could use the block grants at their own discretion.[172]

Senate Democrats introduced S. 872 which was similar to H.R. 5.[173] S. 872 established an Ocean and Coastal Resources Management Fund which the SOC could utilize to supplement NSG appropriations and to provide block grants to coastal states. The initial payment into the fund would equal the lesser of either $400 million or 5% of the OCS revenues for FY 1983. Each year thereafter the fund would receive 1% of the OCS revenues which were in excess of the initial deposit. Money would be allotted to the Fund through the normal appropriation process. No less than 10% of the fund would be granted to NSG, with the balance going to the coastal states by way of block grants which were determined by a formula.[174] The money was earmarked for specific purposes and 15% of the state's block grant had to be passed through to local governments.[175]

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170. S. 800, 98th Cong., 1st Sess. § 4 (1983).

171. *Id.* § 5. Each state with an approved coastal zone management program would receive 1.5% of the Fund. The remainder of the Fund would be distributed as block grants according to the following formula: 1) 25% consideration for the amount of oil and gas produced during the previous fiscal year from tracts in which the state had an interest; 2) 25% consideration for the amount of bonus revenues received from tracts in which the state had an interest; 3) 25% consideration for the coastal population of the state; 4) 15% consideration for shoreline mileage of the state. Numbers (3) and (4) applied only if the state had an approved coastal zone management program.

172. *Id.* § 6. The block grants could be used for the following: 1) living marine resources research, management, and enhancement, 2) coastal management planning and implementation as provided under the CZMA, 3) assessment and mitigation of impacts resulting from OCS energy activities, 4) long range coastal and ocean research and education, and natural resource management, 5) capital infrastructure necessitated by coastal energy development as provided by CEIP. 40% of the grant had to be passed through to local governments.

173. S. 872, 98th Cong., 1st Sess. (1983).

174. *Id.* at § 5. Each coastal state would receive $2 million from the Fund, except those with an approved coastal zone management program would receive $6 million. Each coastal territory would receive $1 million, except those with an approved coastal program would receive $3 million. The remainder would be awarded by block grants to the states according to the following formula: 1) 35% consideration for state coastal population; 2) 15% consideration for shoreline mileage, 3) 20% consideration for the amount of oil and gas produced from state tracts during the five fiscal years prior to the disbursement from the Fund, 4) 15% consideration for the bonus revenues received during the past five fiscal years from state tracts, 5) 20% consideration for coastal-related energy facilities. These block grants could only be awarded to coastal states with, or working towards, an approved coastal zone management program.

175. *Id.* at § 6. The block grants were to used as follows: 1) at least 10% for

On April 21, the Senate Commerce Committee issued a favorable report on S. 800.[176] The bill established an Ocean and Coastal Resources Management and Development Fund which would be financed by 5% of the OCS revenues averaged over the preceding three years. The money would be allocated to the fund through the normal appropriation process. Each coastal state with an approved coastal zone management program would receive 1.5% of the fund, territories with an approved coastal zone management program would receive .75% of the fund, the remaining coastal states and territories would receive .5% of the fund, NSG would receive 10% of the fund, and a National Coastal Resources Research and Development Institute, to be administered in affiliation with the Oregon State University Marine Sciences Center would receive 1.5%. The remainder would be allocated to states with or working towards an approved coastal zone management program. The fund would be distributed by block grants according to the following formula: 35% for coastal population, 15% for shoreline mileage, 10% for coastal-related energy facilities, 20% for bonus revenues received, and 20% for oil and gas produced. The coastal states were required to pass 30% of the block grant on to local governments. The block grants, which were subject to the normal appropriation process, could be used for the following purposes: 1) CZMA activities; 2) assessment and mitigation of the impacts from OCS development; 3) ocean and coastal research, education, and resource management; 4) management and enhancement of living marine resources; 5) preservation and enhancement of natural coastal habitat; and 6) capital infrastructure.[177]

H.R. 5 was passed by the House, but S. 800 got stalled in the Senate. In June, Senators Jepsen and Helms attempted to attach to S. 800 a Human Life Rider which was not dropped until November.[178] At that point, Senator Stevens unsuccessfully attempted to attach a compromise OCS revenue sharing bill to a Supplemental Appropriations Bill.[179] The next day Senator Stevens attempted to

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CZMA, 2) at least 10% for CEIP, 3) at least 5% for AFCA and CFRDA, 4) at least 30% for activities consistent with state coastal zone management programs, including long range ocean and coastal research and education, activities which manage and enhance living marine resources, activities which promote interstate coastal zone management coordination under § 309 of the CZMA, activities which enhance the preservation of natural habitats, and activities conducted pursuant to § 306(A) of the CZMA.

176. S. REP. No. 112, 98th Cong., 1st Sess. (1983).

177. *Id.* at 25-29.

178. 129 CONG. REC. S9018 (daily ed. June 23, 1983).

179. 14 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-4 (December 8, 1983).

attach the bill to a Defense Department Appropriation Bill, but this effort failed due to Senator Stennis' objection.[180] Consequently, the Senate failed to pass an OCS revenue sharing bill in 1983.

In 1984, adroit congressional maneuvering moved the OCS revenue sharing bill along. Taking the initiative, the House struck out the language of the National Marine Fisheries Service Appropriation Bill (S. 2463) which had been passed by the Senate in June, and substituted the language of H.R. 5. The House then asked the Senate for a conference to work out the differences. Before Congress left for the July 4 holiday, the Senate agreed to go to conference on the issue.[181]

On August 8, the House and Senate conferees reached an agreement. The compromise revenue sharing bill established an Ocean and Coastal Resources Management and Development Fund consisting of 4% of the average OCS revenue received during the previous three fiscal years.[182] There was a ceiling of $300 million on the initial deposit into the fund. Money would be appropriated to the Fund through the normal appropriation process.[183] Block grants to the coastal states would be awarded by the SOC according to the following equally weighted formula: 1) ½ of the actual OCS leasing and volume of oil and gas first landed in the coastal state, 2) proposed OCS lease sales off the state's coast, 3) coastal-related energy facilities, 4) shoreline mileage, and 5) coastal population. Items (4) and (5) would apply only if the state has, or is working towards, an approved coastal zone management program.[184] The block grants could be used for the following purposes: 1) CZMA activities; 2) CEIP activities; 3) enhancement, management, and development of living marine resources; or 4) preservation, enhancement, and management of natural resources.[185] One-third of the block grant had to be passed through to local governments.[186] However, no funds were allotted for NSG; NSG would continue to be treated as a separate budgetary item.

The Reagan administration opposed the compromise OCS revenue sharing bill. The Secretary of Treasury, SOI, SOC, and Office of Management and Budget Director wrote to the conference com-

180. *Id.*

181. 15 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-2 (July 12, 1984).

182. S. 2463, 98th Cong., 2d Sess. § 104 (1984), 130 CONG. REC. H9233-H9239 (daily ed. Sept. 10, 1984).

183. *Id.* at § 104.

184. *Id.* at § 105.

185. *Id.* at § 106.

186. *Id.* at § 107.

mittee opposing the bill.[187] Nevertheless, on September 13, 1984, the House approved the compromise bill by a vote of 312 to 94.[188]

In the Senate, the compromise bill did not meet with success. Senators David Durenberger and John Danforth argued against the bill, preventing the Senate from voting on the measure. Both senators questioned how the bill arrived on the Senate floor. Since the bill was attached to a fisheries bill, the Senate never had an opportunity to fully discuss the issue. Both Senators felt that the bill should have been brought up in the normal course of business, not as a conference report "at the 11th hour."[189]

Senator Durenberger proceeded to argue that federal ownership of onshore lands posed unique problems for inland states that justified federal revenue sharing programs. However, federal ownership of the OCS did not pose the same problems for coastal states. Furthermore, he argued, OCS development did not cause any adverse impacts on the coastal zone. If any adverse socioeconomic or environmental impacts did occur, then federal programs, such as those established under the CZMA, would address the problems.[190] Senator Durenberger labeled the compromise bill "pork barrel federalism."[191] He stated that an OCS revenue sharing program "may be an entitlement spelled with a small 'E,' but it is pork barrel politics spelled with a capital 'P'."[192]

In 1985 in the 99th Congress, several OCS revenue sharing bills were introduced.[193] Representative Jones submitted H.R. 5[194] which was similar to the H.R. 5 that was passed by the House in 1983.[195] Representative Young introduced H.R. 624 which established the Coastal Resource and Economic Development Grant.[196] Block grants would be provided to coastal states from the Grant, based on the bonuses and royalties derived from OCS lease sales

187. 130 CONG. REC. S13847 (daily ed. Oct. 9, 1984) (letter to Howard Baker from Secretary of Treasury, Donald T. Regan, Secretary of Interior, William P. Clark, Director of OMB, David A. Stockman, and Secretary of Energy, Donald P. Hodel).

188. 130 CONG. REC. H9485-86 (daily ed. Sept. 13, 1984).

189. *Id.* at S13844-61 (daily ed. Oct. 9, 1984).

190. *Id.* at S13846.

191. *Id.*

192. *Id.*

193. Secretary of Interior Donald Hodel endorsed OCS revenue sharing. His only difficulty with the concept was that all of the OCS revenue sharing bills introduced did not limit revenue sharing to states with OCS activities occurring off their coasts. 16 COASTAL ZONE MANAGEMENT (NAUTILUS) 1 (April 11, 1985).

194. H.R. 5, 99th Cong., 1st Sess. (1985).

195. *Supra* notes 160, 161.

196. H.R. 624, 99th Cong., 1st Sess. (1985).

occurring from 3 to 250 miles seaward of the state's boundaries.[197] In addition, Senator Stevens introduced S. 55 which was similar to the 1984 compromise OCS revenue sharing bill.[198]

The House again passed an OCS revenue sharing bill. The House Omnibus Budget Reconciliaton Act contained provisions for the establishment of the Ocean and Coastal Resources Management and Development Block Grant Act, which was similar to the 1984 compromise OCS revenue sharing bill.[199] The Senate version of the Budget Reconciliation Act did not contain any OCS revenue sharing provisions.[200] The Conference Committee included the provisions for the establishment of an OCS revenue sharing program in the Omnibus Budget Reconciliation Act of 1985, which was not enacted by the close of the 99th Congress, 1st Session.[201]

VI.

THE RATIONALE FOR OCS REVENUE SHARING

The enactment of an OCS revenue sharing bill would be an exercise in sound public policy because it would 1) maintain the federal-

197. Between $150-350 million, derived from 3% of the annual revenues, would be available for the Secretary of Treasury to provide grants to coastal states. OCS bonus and royalty payments, emanating from OCS lease sales occurring from 3 to 250 miles beyond the state's seaward boundary, would determine 85% of the state's total payment. The remaining 15% would be based on the amount of energy-related facilities located in the coastal zone. The coastal states would be required to utilize the grants for the enhancement of environmental and economic conditions in the coastal area. The governor would be required to use 1/4 of the grant to assist local communities. However, there was no earmarking of funds for particular programs.

198. S. 55, 99th Cong., 1st Sess. (1985). S. 55 would establish the Ocean and Coastal Resources Management and Development Fund. The fund would initially be awarded 4% of the average OCS revenues received over the past 3 years, up to $300 million, and would increase no more than 5% each subsequent year. The Secretary of Commerce would grant coastal states block grants according to five equally weighted criteria: 1) actual OCS leasing and production, 2) planned OCS leasing, 3) coastal-related energy facilities, 4) shoreline mileage, and 5) coastal population. If a state did not have an approved coastal zone management program, 50% of the funds attributable to coastal-related energy facilities would be withheld and 70% of the funds attributable to shoreline mileage and coastal population would be withheld. The block grants could be utilized for CZMA and CEIP activities, the development of living marine resources, and the preservation and management of the coastal zone.

199. *Supra* note 16. There were two minor changes from the 1984 compromise measure. First, the funds would not be allocated to the fund until FY 1988, instead of FY 1987. Second, for the first year the fund would be capped at $150 million, rather than $300 million. Beginning in FY 1989, as much as $300 million could be deposited into the fund. 16 COASTAL ZONE MANAGEMENT (NAUTILUS) 1-2 (September 26, 1985).

200. S. 1730, 99th Cong., 1st Sess. (1985). S. REP. No. 146, 99th Cong., 1st Ses. 248-253 (1985).

201. H.R. REP. No. 453, *supra* note 16, at 45-51 (1985).

state partnership in managing the coastal zone;[202] 2) enhance federal OCS revenues by providing greater predictability to the OCS leasing schedule;[203] 3) rectify the inequity between inland and coastal states regarding the revenues received from federal leasing;[204] and 4) reduce federal bureaucracy through the use of block grants.[205]

1. The Maintenance of the Federal-State Partnership

OCS development can have a major impact on the coastal zone. The impact depends upon the degree of primary and secondary activities occurring in the zone. Primary activities which occur during oil and gas exploration involve transportation of supplies to drilling rigs, assembly of production platforms, laying of pipelines, and construction of onshore treatment facilities and pumping stations.[206] Secondary activities which occur during the production stage include construction of refineries, petrochemical plants, and platform and construction yards.[207] In addition, the influx of population resulting from OCS development can require state and local governments to provide additional schools, hospitals, police, roads, housing, and recreational opportunities.[208] Land use and socioeconomic impacts will vary by area. Areas with an existing coastal infrastructure, such as Louisiana or New England, will be better able to accommodate OCS development than Northern California and Alaska.[209]

OCS development also poses environmental risks. Oil spills are a serious threat.[210] Other environmental concerns include damage to the fishing industry, marine mammal and wildlife habitats, and wet-

202. H.R. REP. NO. 628, *supra* note 136, at 48-49; H.R. REP. NO. 206, *supra* note 136, at 72-74; S. REP. NO. 112, 98th Cong., 1st Sess. 9-13 (1983).

203. *Id.* H.R. REP. NO. 628 at 51-53; H.R. REP. NO. 206 at 77-78.

204. *Id.* H.R. REP. NO. 628 at 49-50; H.R. REP. NO. 206 at 74-76; S. REP. NO. 112 at 13-20.

205. *Id.* H.R. REP. NO. 628 at 51; H.R. REP. NO. 206 at 76.

206. *Id.* H.R. REP. NO. 628 at 20.

207. *Id.*

208. *Id.* at 20-21.

209. *Id.* However, even areas with extensive coastal development will experience the impacts of OCS development. GENERAL ACCOUNTING OFFICE, MITIGATING THE SOCIOECONOMIC IMPACTS OF ENERGY DEVELOPMENT, March 2, 1982, EMD-82-13, at 60.

210. H.R. REP. NO. 628 at 21-22. It must pointed out that OCS development has been relatively safe. Of the 4 billion barrels of oil produced since the Santa Barbara oil spill, only 791 barrels have been lost as the result of blowouts. In that same period, the spills from operations, pipelines, and transfers equalled 60,000 barrels, which is less than the amount lost in the Santa Barbara oil spill. *Id.* at 22.

lands; deterioration of air quality; and diminishment of water quality resulting from the discharge of drill muds and cuttings.[211]

The CZMA has fostered federal-state cooperation in dealing with the impacts of OCS development. Federal funds have enabled coastal states to develop and maintain coastal zone management programs. These programs are designed to protect the coastal zone, while accommodating economic development.[212] The consistency provisions have allowed the coastal states to review and approve federal lessees' OCS exploration and development and production plans.[213] Consequently, the CZMA has provided the means for the coastal states to participate rationally in the OCS development process.

The Reagan administration has consistently sought to terminate CZMA funding. The administration argues that the federal government has done its share by providing funds to coastal states for the development and implementation of their programs.[214] The administration also asserts that the time has come for the states to assume the program's financial burden.[215]

The Reagan administration fails to recognize the national interest in maintaining state coastal programs. State coastal zone management programs provide for simplification of the permitting process; siting of onshore support facilities; planning for pipeline corridors; disposal of dredge spoils; reviewing of consistency petitions; management of anadromous fisheries; and protection of unique coastal resource systems.[216] The CZMA has replaced haphazard growth and development with planned and orderly coastal development.

The Reagan administration has continually asserted that coastal states, realizing the benefits of coastal zone management, will maintain their efforts in the event of the termination of federal funding.[217] However, coastal state officials have continually testified in Congress that state budgetary problems will preclude or severely restrict state funding of coastal zone management programs.[218]

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211. *Id.*

212. 16 U.S.C. § 1455 (1982).

213. 16 U.S.C. § 1456(c)(3)(B) (1982). *See also supra* note 99.

214. *Supra* notes 4, 5, and 127.

215. *Id.*

216. *Coastal Management, Part I: Hearings before the Subcommittee on Oceanography of the Committee on Merchant Marine and Fisheries*, 97th Cong., 1st Sess. 4-10 (1981) (statement of Robert W. Knecht, Assistant Administrator for Coastal Zone Management, NOAA, U.S. Dept. of Commerce), cited at H.R. REP. NO. 628, *supra* note 136, at 33. *See also* H.R. REP. NO. 103, *supra* note 132, at 24-35.

217. *Supra* note 127.

218. *Ocean and Coastal Development Impact Assistance Block Grant Act: Hearing*

Furthermore, a survey of state coastal officials, done by the Coastal States Organization, supports the congressional testimony. The survey found that if federal grants were cut back or eliminated, it would result in the following: 1) a reduction in planning and regulatory functions due to the loss of staff; 2) the termination of local governments' and territories' coastal zone management efforts; 3) the end of public involvement in the program; and 4) the inability of coastal states to meet the national goals mandated by the law.[219]

The administration's position is contrary to congressional intent expressed in the Coastal Zone Management Improvement Act of 1980.[220] In 1980, Congress recognized that the federal funding for the CZMA must continue because the state programs had not yet been sufficiently institutionalized.[221] Furthermore, the states were required to meet new national objectives in the development and implementation of their coastal zone management programs.[222] The House report stated that the principles of the CZMA "are as sound today as they were in 1972. The partnerships which have developed between the Federal Government and state and local governments have been responsible for many of the successes in coastal management."[223]

The House Report specifically recognized that "the acceleration of OCS activity will have a profound impact on the coastal zone."[224] Consequently, the report held that the "rational balancing of competing pressures on finite coastal resources which was intended by the 1972 act" and the recognition that such balancing would be increasingly difficult in the future, warranted the reauthorization of the CZMA.[225]

In 1985, Congress began considering the reauthorization of the

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before the Committee on Commerce, Science, and Transportation of the U.S. Senate, 98th Cong., 1st Sess. 29-36 (1983) (statement of Arthur Rocque, Jr., Chairman of the Coastal States Organization). Mr. Rocque stated that of the 28 existing coastal zone programs, 8 would continue without federal funding and 16 would be eliminated, while all those remaining would suffer drastic cutbacks in service.

219. *Coastal Zone Management Act of 1972 Reauthorization: Hearings before National Ocean Policy Study and the Committee on Commerce, Science and Transportation of the U.S. Senate*, 99th Cong., 1st Sess. 26-35 (1985) (statement of Richard F. Delaney, Chairman of the Coastal States Organization (CSO), referring to CSO survey "*Impact of Federal Budget Cuts on State Coastal Programs.*" (April 1985).

220. Coastal Zone Management Improvement Act of 1980, Pub. L. No. 96-464, 94 Stat. 2060 (amending 16 U.S.C. §§ 1451-53, 1455, 1456a, b, 1458, 1461-64).

221. H.R. REP. No. 1012, 96th Cong., 2d Sess. 33 (1980).

222. *Id.* at 16, 33.

223. *Id.* at 14.

224. *Id.* at 33.

225. *Id.*

CZMA.[226] The House report on CZMA reauthorization specifically rejected the administration's position that the states should bear the costs of coastal zone management efforts. The report held that state coastal zone management programs serve important national interests. Since coastal states cannot afford to fund the program, the termination of federal funding "would jeopardize the existence of many programs and seriously curtail the activities of most programs."[227] Consequently, the committee reaffirmed "the commitment of the Congress to uphold its side of the federal and state partnership to protect, manage, and develop the Nation's coastal resources."[228]

The Reagan administration contends that OCS revenue sharing will not enhance the federal-state partnership. First, the administration argues that there is no incentive in the revenue sharing bills for the coastal states to support OCS development. The coastal states will take their share of the OCS revenues and continue to oppose OCS development.[229]

This contention is erroneous. All of the OCS revenue sharing bills have included incentives for the coastal states to support OCS development. The allocation formulas in all of the revenue sharing bills have considered actual OCS leasing and production and potential OCS leasing occurring off the state's coast. For example, the 1985 OCS revenue sharing bill includes actual OCS leasing and production[230] and potential OCS leasing as two of five equally weighted criteria for determining the size of the block grant awarded to a coastal state.[231] The allocation formula provides the incentive for the coastal states to support OCS development.

Second, the administration objects that the Great Lakes states will share the OCS revenues; but states, such as Texas, which experience the impacts of OCS development, yet do not have an approved coastal zone management program, will be denied funding.[232]

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226. S. 959, 99th Cong., 1st Sess. (1985); S. REP. No. 71, 99th Cong., 1st Sess. (1985); H.R. REP. No. 206, *supra* note 136.

227. H.R. REP. No. 103, *supra* note 132, at 32.

228. *Id.* at 31.

229. U.S. DEPARTMENT OF INTERIOR, FEDERAL OCS REVENUE SHARING: A CRITICAL REVIEW OF ISSUES, cited in 130 CONG. REC. S13848-51 (daily ed. Oct. 9, 1984) at S13850-51.

230. H.R. REP. No. 453, *supra* note 16, at 47. Production is defined as the amount of OCS oil and gas first landed in the state during the prior fiscal year. *Id.*

231. *Id.* at 47-48.

232. FEDERAL OCS REVENUE SHARING, *supra* note 229, at S13851.

Again the administration's position does not accurately reflect the allocation formula in the 1985 OCS revenue sharing bill. Coastal states, such as Texas, which do not have an approved coastal zone management program would not be denied block grants under the OCS revenue sharing bill. Such coastal states would not qualify for two of the five criteria in the allocation formula, coastal mileage and population, but these coastal states would qualify under the remaining three criteria.[233] The requirement of an approved coastal zone management program is not an unjust burden to impose on coastal states. An approved program insures that the state recognizes national goals and interests in the management of its coastal zone.[234] The federal government can utilize its control over funds to encourage the states to cooperate with federal efforts to realize national goals.[235]

In addition, the awarding of block grants to the Great Lakes states expressly recognizes the impacts of electric generating facilities on the coastal zone.[236] Many electric generating facilities are located along the Great Lakes because the lakes provide the cooling water for energy and industrial development.[237] The construction and operation of electric power plants pose environmental problems, such as the deterioration of air and water quality. Furthermore, the Great Lakes coastal zone contains approximately 70% of the nation's coal-fired facilities.[238] In the future, there will be a need to build additional power plants and convert existing plants to coal.[239] The block grants will enable the Great Lakes states to better accommodate this type of development in their coastal zones.

The awarding of block grants to the Great Lakes states implicitly recognizes the impacts of coal transportation on the coastal zone. Coal transportation causes an increase in the erosion of waterways, an increase in port dredging and dredge disposal, loss of wetlands, and decreased access to coastal areas.[240] The 1980 CZMA amendments provided grants to coastal states experiencing the effects of

233. H.R. REP. No. 453, *supra* note 16, at 47-48.

234. 16 U.S.C. §§ 1452-1455.

235. Harris v. McRae, 448 U.S. 297, 318, 325 (1980).

236. H.R. REP. No. 628, *supra* note 136, at 76; H.R. REP. No. 206, *supra* note 136, at 32-33.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* From 1979 to 1982, coal transport reached 40 million tons annually on the Great Lakes. The projection by the year 2000 was for 135 million tons annually. *See also* H.R. REP. No. 1012, *supra* note 221, at 19-20.

coal transportation.[241] Since the nation is committed to the use of coal, the federal government should help the coastal states address the impacts of such use. The sharing of OCS revenues with states along the Great Lakes, which are a major link in the nation's coal transport network, would provide these states with the funds necessary to mitigate the adverse impacts of coal transportation. Furthermore, the greater use of coal reduces the demand for developing OCS energy resources, and thus diminishes the risks to coastal states.

Third, the administration argues that coastal zone problems are not related to OCS development, but are the result of onshore activity and state regulatory mismanagement.[242] This criticism ignores the impacts of OCS development and neglects the fact that federal funds have allowed the coastal states to establish and maintain coastal zone management programs which provide the infrastructure for effective coastal resource management.[243] If federal funding for the CZMA is terminated, the coastal states will lose their ability to manage their coastal zones effectively and to deal rationally with the impacts of OCS development. This is especially significant in light of Interior's aggressive five year OCS leasing program.

Fourth, the administration contends that the existence of a separate fund comprised of OCS revenue will provide the coastal states with the opportunity to lobby for increasing appropriations to the fund. Furthermore, it argues, OCS revenue sharing will only maintain the funding for programs which should be terminated.[244]

The administration's position is incorrect. The possibility of continual coastal state pressure to increase the state's share of OCS revenues was to a large extent precluded by requiring the funds for block grants to be allocated through the normal appropriation process, rather than as an entitlement.[245] Each year the coastal states have to lobby for their share of the OCS revenues, not to establish the amount of the fund. Congress could increase the fund, but that would require additional legislative action.

Congress has supported the CZMA. In 1980, Congress reauthorized the CZMA for five years.[246] Nevertheless, the Reagan

241. *Supra* note 221 at 19-20.

242. FEDERAL OCS REVENUE SHARING, *supra* note 229, at S13851 (comments by Senator Durenberger summarizing the Administration's arguments).

243. *Supra* notes 206-211, and text accompanying.

244. FEDERAL OCS REVENUE SHARING, *supra* note 229, at S13851 (comments by Senator Durenburger summarizing the Administration's arguments).

245. *See* H.R. REP. NO. 453, *supra* note 16, at 47.

246. Coastal Zone Management Improvement Act of 1980, *supra* note 220.

administration targeted the CZMA programs for termination.[247] Congress initially followed the administration's requests by limiting appropriations to the program from FY 1981 through FY 1983.[248] However, congressional appropriations for FY 1984 through FY 1986 have dramatically increased.[249]

In 1985, Congress began to consider the reauthorization of the CZMA. The House passed a bill that would reauthorize the CZMA for four years.[250] The Senate Commerce Committee issued a report that also recommended the reauthorization of the CZMA through 1990.[251] Furthermore, the conference committee provided for the reauthorization of the CZMA through 1990 in the Omnibus Budget Reconciliation Act of 1985 which had not been enacted by the close of 99th Congress, 1st session.[252]

In summary, OCS revenue sharing provides a means for insuring the funding for programs established under the CZMA. If the CZMA is reauthorized by Congress, then OCS revenue sharing will not be necessary to sustain these programs. In such a case, OCS revenues would supplement CZMA activities and strengthen state management and preservation of living marine and natural resources. In addition, since the Coastal Energy Impact Program is not included in the CZMA reauthorization, OCS revenues would help the states deal with the impacts of OCS development.

If, however, the CZMA is not reauthorized, then OCS revenue sharing will be essential to continue the existence of the vital programs established under the CZMA. In such a case, an OCS revenue sharing program would provide coastal states with more authority over coastal management decisions. Coastal states would be granted OCS revenues through block grants that would be utilized for a wide-range of activities. Coastal states would determine, within broad statutory guidelines, which programs would be funded.[253] And, coastal states could tailor the expenditure of these funds to meet their own specific needs.

2. The Enhancement of OCS Revenues

President Reagan's program for economic recovery called for ex-

247. *Supra* notes 4, 5, 127.
248. *Supra* notes 129, 130, and text accompanying.
249. *Supra* note 132.
250. H.R. REP. NO. 300, *supra* note 16 at 559-565. *See also* H.R. REP. NO. 103, *supra* note 132.
251. S. 959, *supra* note 226; S. REP. NO. 71, *supra* note 226.
252. 16 ENVT. REP. (BNA) 1661-1662 (December 27, 1985).
253. H.R. REP. NO. 206, *supra* note 136, at 97-99.

panding OCS development to make the U.S. energy self-sufficient and to raise revenues to reduce the budget deficit.[254] In 1981, the General Accounting Office (GAO) issued a report which was critical of Interior's five year OCS leasing program.[255] The report asserted that the streamlined leasing procedures could increase litigation because the changes could disrupt the balancing of interests achieved to date.[256] Consequently, it was essential to prevent potential challenges "if the new proposed program is to be viewed with any degree of certainty and confidence."[257]

In a 1982 report, the GAO questioned the administration's ability to achieve its revenue projections from OCS development.[258] The GAO asserted that the litigation added uncertainty to the OCS leasing process.[259] The report stated that,

> [g]iven the threat of litigation, . . . there is a distinct possibility that the program may not be implemented as planned and sales may be delayed. The threat of litigation may also reduce industry's willingness to risk large sums of money on lease bonuses.[260]

In a 1985 report, the GAO pointed out that five of the first ten areawide lease sales have generated litigation.[261] The GAO stressed that the success of Interior's OCS program would be based on Interior's ability to "reduce the level of litigation and leasing moratoriums brought against the program."[262]

An OCS revenue sharing program would improve the administration's opportunity to meet its OCS leasing goals. The expansion of OCS leasing and the streamlining of OCS leasing procedures will increase coastal state and public opposition to OCS development. Additional litigation will be generated. The litigation will delay OCS lease sales and disrupt the OCS leasing schedule. This will eliminate the predictability of OCS lease sales that the petroleum industry considers so vital.[263] These delays and uncertainties could

254. *America's New Beginning: A Program for Economic Recovery*, *supra* note 4.

255. GENERAL ACCOUNTING OFFICE, *supra* note 64.

256. *Id.* at iv, 65.

257. *Id.* at 65.

258. GENERAL ACCOUNTING OFFICE, OUTLOOK FOR ACHIEVING FISCAL YEAR 1983 OFFSHORE REVENUE ESTIMATE—POSSIBLE BUT NOT LIKELY, June 8, 1982, EMD-82-83.

259. *Id.* at 37.

260. *Id.*

261. GENERAL ACCOUNTING OFFICE, *supra* note 13, at 51.

262. *Id.* at 54.

263. GENERAL ACCOUNTING OFFICE, *supra* note 258, at 32-33; H.R. REP. NO. 206, *supra* note 136, at 52, 55-56.

diminish the petroleum industry's willingness to commit large sums of money for OCS lease sales and subsequent development costs.

This litigation is also very costly. In an unpublished 1982 report, the DOI concluded that the delays resulting from OCS litigation cost the federal government $280 million annually.[264] This cost was conservatively projected to increase to $1 billion annually.[265] The DOI report concluded that

> [t]he only apparent solution to reducing the cost of opposition to the OCS program is to provide the States and localities with an incentive to support leasing which is perceived by the States and localities as sufficient to counterbalance their perception of the potential harm and risk to which they are subject. OCS revenue sharing is the best incentive to achieve that balance.[266]

OCS revenue sharing would serve as an economic incentive for the coastal states to support OCS development. There is no guarantee that the coastal states will cease to litigate OCS lease sales. However, experience from other federal-state revenue sharing programs indicates that state and local governments will support development, despite the environmental risks, when the states are consulted and share in the economic benefits of such development. Furthermore, coastal states, such as Alaska and California, are not inherently opposed to OCS development. This is evidenced by their own aggressive offshore leasing programs in their coastal zones.[267]

OCS revenue sharing would not be costly to the federal government. The 1985 OCS revenue sharing bill would grant the coastal states $150 million for fiscal year 1988 and $300 million for fiscal year 1989.[268] This can be viewed as a transfer payment with little cost to the federal government. This moderate investment would insure the continued existence of ocean and coastal programs, encourage the coastal states to support OCS development, and diminish costly litigation. Greater predictability in the OCS leasing program should enhance the federal government's revenues from OCS lease sales.

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264. H.R. REP. NO. 206, *supra* note 136, at 53-54.

265. *Id.*

266. 130 CONG. REC. H9478 (daily ed. Sept. 13, 1984) (statement of Congressman D'Amours).

267. DEPARTMENT OF INTERIOR, MEMORANDUM: THE ROLE OF INCENTIVES IN OCS REVENUE SHARING, March 17, 1982.

268. H.R. REP. 453, *supra* note 16, at 46-47. Beginning with fiscal year 1990 and for each fiscal year thereafter, no more than 105% of the previous year's deposit into the Fund could be deposited into the Fund.

3. Rectifying the Inequity Between Coastal and Inland States

Coastal states are being treated differently than inland states regarding the revenues derived from federal leasing.[269] OCS development is the only federal leasing program which does not provide the affected states with a form of revenue sharing.[270] With the exception of CZMA grants, the coastal states have no means of raising revenues to deal with the adverse impacts of OCS development. Coastal states are required to bear the risks of OCS development, but they are not able to share directly in its benefits. An OCS revenue sharing program will rectify the inequity in the treatment of coastal and inland states.

Inland states receive revenues from other federal leasing programs. Such revenues are derived from 1) revenue sharing programs, 2) payments in lieu of taxes, and 3) taxes on federal lessees.

There are many federal leasing programs which provide for the sharing of revenues with the states in which the land is located. The National Forest Revenue Act allocates 25% of the proceeds from timber harvesting in the national forests to state and local governments to be used for the benefit of public schools and county roads.[271] The Taylor Grazing Act provides to the states 12½% of all grazing and stock raising receipts from federal leases. The states must use the money for the benefit of the affected counties.[272] The Mineral Leasing Act (MLA) grants to the affected states 50% of federal mineral leasing receipts. The states must use that money for the construction of roads and schools, and to mitigate the adverse impacts of development. In addition, 40% of the MLA receipts are placed in a special reclamation fund which furthers the activities of the Bureau of Reclamation within seventeen western states.[273]

The Payment in Lieu of Taxes Act of 1976 directs the SOI to make payments to affected local and county governments.[274] The payments compensate for the property tax lost as a result of federal ownership and supplement other revenue sharing programs. Local and county governments receive the greater of either $0.75 per acre minus other revenue sharing receipts, or $0.10 per acre.[275] The

269. *Supra* note 204.
270. H.R. REP. No. 206, *supra* note 136, at 63.
271. 16 U.S.C. § 500 (1982).
272. 43 U.S.C. §§ 315-376 (1982).
273. 30 U.S.C. §§ 181-287 (1982). *See also* H.R. REP. No. 206, *supra* note 136, at 64-67.
274. 31 U.S.C. § 1601-1607 (1982). *See also* H.R. REP. No. 628, *supra* note 136, at 45.
275. 31 U.S.C. § 1602 (1982).

governing unit determines how to spend the money.

Under the MLA, state and local governments may tax the activities of federal lessees on federal lands. Taxable activities include improvements, output, property, and other assets.[276] One of the most important state taxes is the severance tax levied on depletable resources extracted from the ground.[277] In 1981, the Supreme Court upheld the constitutional validity of the state severance tax.[278]

The Reagan administration argues that federal leasing policy does not treat coastal and inland states unequally. The administration's position is that inland and offshore leasing are fundamentally different: The federal government retains title to onshore lands which the states could otherwise employ for their own benefit, such as mineral leasing or alternative development. Federal ownership restricts use of and access to such land. Revenue sharing compensates the inland states for the federal government's retention of title. OCS development, however, occurs on exclusively federal land, as expressed in the SLA and the OCSLA. Since coastal states have no interest in OCS lands, the administration argues, they do not suffer any deprivation warranting compensation from federal leasing activities. In the administration's view, OCS revenue sharing is just an attempt by the coastal states to lay claim to revenues to which they are not entitled.[279]

Moreover, the administration asserts that onshore development can cause problems, such as road construction and the provision of services which must be addressed by state and local governments, whereas OCS development does not cause any adverse environmental or socioeconomic impacts.[280] Thus, it argues, inland states bear a unique cost which does not have a counterpart in the coastal states with adjacent OCS development. Consequently, according to the administration, there is no rationale for an OCS revenue sharing program.[281]

The administration's first contention is dubious. The nature of federal land is not affected by its location. Federal lands are held in trust for all U.S. citizens. The fact that federal land is located

276. 30 U.S.C. § 189 (1982). *See also* H.R. REP. No. 628, *supra* note 136, at 45-46; H.R. REP. No. 206, *supra* note 136, at 68-71.

277. Coastal states are prohibited from expanding state taxation to the OCS by the OCSLA. 43 U.S.C. § 1333(a)(2)(A) (1986).

278. Commonwealth Edison Co. v. Montana, 453 U.S. 607 (1981).

279. FEDERAL OCS REVENUE SHARING, *supra* note 229, at S13850.

280. *Id.*

281. *Id.*

within the boundary of a state does not give the state any primary interest in the land. Mineral resources, whether inland or offshore, belong to all U.S. citizens, therefore their extraction should be treated equitably.[282]

Federal revenue sharing programs are designed to compensate state and local governments for the federal government's retention of lands within state boundaries and to mitigate the adverse impacts of such development. OCS revenue sharing would accomplish the same purpose. It would help coastal states deal with the adverse impacts of OCS development. Coastal states bear risks from OCS development that are analogous to, if not greater than, the risks borne by inland states from onshore development. Yet, coastal states, unlike inland states, are not compensated for this risk. OCS leasing is the only federal leasing program that does not provide for a form of revenue sharing with the affected states. This economic inequity represents an unusual form of federalism, one that places coastal states at a disadvantage when confronting federal leasing off their coasts.[283]

The administration's second contention that OCS development does not cause any adverse impacts on the coastal states is erroneous. Although OCS leasing does not occur within state boundaries, OCS oil and gas resources cannot be recovered from federal lands without affecting state coastal lands. Many studies have concluded that OCS development can cause major socioeconomic changes and serious environmental damage.[284] The administration's conclusion is simply contrary to the available evidence.

If the federal government does not address this inequity, coastal states may decide to act unilaterally. In 1978, the Louisiana legislature enacted a "first use" tax on certain uses of natural gas brought into Louisiana.[285] The tax, which was imposed on pipeline companies, principally affected OCS gas first shipped into Louisiana, then sold to out-of-state customers. Louisiana residents did not have to bear the burden of the tax because of numerous exemptions. However, the tax was uniformly applied to gas being exported from Louisiana. Louisiana asserted that the tax was a cost associated with uses made by the owner in preparation for marketing and that such

282. *Id.*

283. H.R. REP. No. 206, *supra* note 136, at 72.

284. *Supra* notes 206-211, and text accompanying. *See also* H.R. REP. No. 628, *supra* note 136, at 19-22; H.R. REP. No. 206, *supra* note 136, at 26-34.

285. Maryland v. Louisiana, 451 U.S. 725, 731 (1981).

cost should be borne by the ultimate consumer.[286] The U.S. Supreme Court declared the Louisiana statute unconstitutional.[287] The Louisiana legislature then considered a Coastal Wetlands Environmental Levy to resolve the problem of the first use tax. However, this bill was defeated after intense opposition from the petroleum industry.[288]

The State of Alaska pursued a less direct approach. In Lease Sale 57, Alaska requested an "Information to Lessee" (ITL) which stated

> Lessees are encouraged to consult with, and enter into agreements with, local individuals, organizations and governments to compensate for direct and indirect social and economic impacts of exploration, development and production activities.[289]

Although the ITL was not binding, this represented another attempt by a coastal state to obtain revenues from OCS operations to compensate for the impacts of OCS development.

Local governments may also choose to act. In 1979, the City of Port Arthur, Texas annexed adjacent submerged lands and navigable waters so that the city's boundary coincided with the state's jurisdiction of three marine leagues.[290] In 1980, the city imposed an ad valorem tax of $774,430 on Superior Oil Company's offshore property in the annexed area. The State of Texas and Superior Oil Company brought suits challenging the annexation. However, the Texas Court of Appeals and the Fifth Circuit Court upheld the city's action.[291]

These aggressive state and local actions could be indicative of a future trend towards diverse and unequal state and local controls affecting OCS development. This trend could interject further uncertainty into the process, and that uncertainty could impede OCS development.

In summary, coastal states are being treated differently than inland states regarding the revenues derived from federal leasing.

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286. *Id.*

287. *Id.*

288. H.R. REP. No. 206, *supra* note 136, at 74.

289. *Id.* at 74-75. Information to Lessees, which are included in the Final Notice of Sale, put lessees on notice as to possible subsequent obligations that may be placed upon them.

290. *Id.* at 75. The states of Texas and Florida were granted title to offshore lands three marine leagues (9 miles) from their coasts in the Gulf of Mexico. U.S. v. Louisiana, 364 U.S. 502 (1960).

291. Superior Oil Co. v. City of Port Arthur, 628 S.W.2d 94 (Tex. Civ. App. 1981); Superior Oil Co. v. City of Port Arthur, 726 F.2d 203 (5th Cir. 1984), *rev'g* 553 F. Supp. 511 (E.D. Tex. 1982).

Coastal states are required to bear the risks of OCS development, but they do not share in its benefits. Coastal states do not have the means to deal with the impacts of OCS development. Coastal states can tax onshore-based industries and employees, but this revenue is inadequate.[292]

Inland states, however, are able to tax much of the lessee's activities on federal lands. In addition, inland states share the revenues derived from onshore federal leasing. These funds allow inland states to offset the impacts of such activities.

The resulting economic inequity, which is an unusual form of federalism, engenders a great deal of hostility. Coastal states and communities have devised novel means for generating revenues to deal with the impacts of offshore development. Such efforts could jeopardize OCS development. OCS revenue sharing will diminish opposition and provide state and local governments with the funds to deal with the adverse impacts of OCS development.

4. The Reduction of Federal Bureaucracy

OCS revenue sharing is consistent with President Reagan's "New Federalism." OCS revenues would be provided to coastal states through block grants. This would reduce federal regulations and emphasize state and local government decisionmaking. Coastal states would be granted authority to fund activities and projects independent of federal approval. The funds could be utilized for a wide range of activities. Furthermore, many of the requirements associated with categorical grants, such as matching funds and time limits, would not be mandated.[293]

The Omnibus Budget Reconciliation Act of 1985 contains provisions for the establishment of an OCS revenue sharing program.[294] Block grants would be awarded annually to the coastal states, which would have great flexibility in the use of the grants. The block grants could be utilized for CZMA and CEIP activities, and "the enhancement, management, and development of living marine resources," and for "preservation, enhancement and management of . . . natural resources."[295] Funds were not earmarked for particular programs. Consequently, the coastal states could tailor the funds to their own particular needs.

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292. H.R. REP. NO. 206, *supra* note 136, at 72.

293. H.R. REP. NO. 628, *supra* note 136, at 51; H.R. REP. NO. 206, *supra* note 136, at 76, 97-99.

294. H.R. REP. NO. 453, *supra* note 16, at 47-51.

295. *Id.* at 49-50.

VII.
CONCLUSION

OCS oil and gas development has been a very controversial issue that has generated much conflict between the federal government and the coastal states. This conflict, known as the Seaweed Rebellion, has taken place in the courts and in Congress. It has been particularly significant during the Reagan administration because the Reagan administration has sought to pursue an aggressive OCS leasing program, while attempting to terminate the funding for vital ocean and coastal programs.

In the courts, coastal states have challenged the Department of Interior's interpretation of various statutory provisions. Coastal states opposed Interior's interpretation of OCSLA § 18 pertaining to the development of the five year OCS leasing program. Coastal states also contested Interior's interpretation of § 307(c)(1) of the CZMA which precluded OCS lease sales from consistency review.

After the courts sustained Interior's interpretations of the statutory provisions, the coastal states petitioned Congress to have the statutory language altered. Congress considered various bills which would have amended the OCSLA to limit the Secretary of Interior's discretion, to strengthen congressional oversight, and to insure the proper balancing of energy and environmental factors in the OCS development process. There were also attempts to make OCS lease sales subject to consistency review by substituting "significantly affecting" for "directly affecting" in § 307(c)(1) of the CZMA. Although these bills were never enacted, Congress did establish moratoriums on OCS leasing in certain environmentally sensitive areas. These moratoriums, however, are only stalemates in the ongoing federal-state struggle.

While these battles were underway, Congress began to consider various bills which provided for the sharing of OCS revenues with the coastal states. These bills were designed to maintain the funding for vital ocean and coastal programs, and thus encourage the coastal states to support OCS leasing. After extensive efforts in Congress, a compromise OCS revenue sharing bill was passed by the House, but was not considered by the Senate before the close of the 98th Congress in 1984. In the first session of the 99th Congress in 1985, Congress has provided for the establishment of an OCS revenue sharing program as part of the Omnibus Budget Reconciliation Act.

An OCS revenue sharing bill would be an exercise in sound public policy for several reasons:

First, revenue sharing would maintain the funding for vital ocean and coastal programs, especially those established under the CZMA. Congress enacted the CZMA in 1972 to provide for the effective management of the nation's coastal zone. In 1976, Congress amended the CZMA to accommodate OCS development. In 1980, Congress reauthorized the CZMA for five years. Even though the program has come under assault by the Reagan administration, Congress has maintained the program's funding. Congress has recognized that the CZMA has established a cooperative federal-state management structure which provides for the resolution of multiple use conflicts, the protection of natural resources, the management of coastal development, the simplification and coordination of government decisionmaking, and the expansion of public and local government participation in coastal management decisions.

The CZMA is being considered for reauthorization. If the CZMA is reauthorized, the need for an OCS revenue sharing program to support CZMA activities will be partially diminished. Under this circumstance, OCS revenue sharing could supplement CZMA activities, help coastal states deal with the impacts of OCS development, and strengthen state management and preservation of living marine and natural resources. Furthermore, OCS revenue sharing could provide an alternative means to fund coastal zone management activities. In the event of budgetary constraints or congressional or executive hostility towards the CZMA, OCS revenue sharing would insure that the coastal states could continue the funding for these programs.

If the CZMA is not reauthorized, Congress will have an even stronger incentive to enact an OCS revenue sharing bill. OCS revenue sharing will be the only means to provide the funding for the programs established under the CZMA. In such an event, the OCS revenue sharing program would grant the states greater authority over coastal zone management decisions. Coastal states would determine which programs would be funded. Expenditures could address specific OCS impacts. OCS revenue sharing would grant the coastal states funds which could be utilized to best meet the states' particular needs.

Second, OCS revenue sharing would enhance federal revenues by providing greater predictability to the OCS program. This rationale can be viewed as an attempt by the federal government to "buy off" coastal state opposition. This characterization cannot be totally dismissed. However, characterizing OCS revenue sharing as a "buy-

off" mistakes the nature of coastal state opposition to OCS development. Coastal states are not opposed to offshore development per se, as evidenced by their own leasing programs on offshore state lands.[296] Coastal states have opposed OCS development on the grounds that such development would not occur under the proper conditions or should not occur in certain areas which are environmentally sensitive.

If an OCS revenue sharing program is established, the coastal states could still seek judicial review of Interior's OCS leasing plans to insure conformance with statutory mandates. The courts could halt OCS leasing until the Department of Interior has complied with the law. When such leasing does occur, the coastal states will derive their share of OCS revenues. Consequently, OCS revenue sharing could temper coastal states' demands and make them more amenable to OCS development, but OCS revenue sharing would not lead coastal states to ignore Interior's statutory violations.

Third, OCS revenue sharing would rectify the inequity between coastal and inland states regarding the revenue derived from federal leasing. OCS leasing is the only federal leasing program which does not provide for revenue sharing with the affected states. Presently, coastal states bear all of the risks from OCS development, but derive none of its benefits. In contrast, inland states, which do not bear the same degree of risk from onshore development as coastal states bear from OCS development, are nevertheless able to share in the benefits from onshore development.

Finally, OCS revenue sharing would be harmonious with President Reagan's "New Federalism." OCS revenue sharing would enhance the authority of coastal states, and thus diminish federal supervision. Block grants would be provided to coastal states, and coastal states would then have the flexibility to tailor the expenditure of these funds to address their own problems.

It is time for Congress to enact an OCS revenue sharing bill which will strengthen the federal-state partnership and insure effective ocean and coastal management for the future.

POSTSCRIPT

In April 1986, the Omnibus Budget Reconciliation Act of 1985 became law. The CZMA was reauthorized through 1990. How-

296. *Supra* notes 1, 19, and 267.

ever, OCS revenue sharing provisions were not included in the Act.[297]

297. For a detailed history of the Omnibus Budget Reconciliation Act of 1985 see Gettinger, *Deficit-Reduction Bill's Tortuous Journey Ends*, 44 CONG. Q. 751 (April 5, 1986).