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Coastal Zone Impacts of Offshore Oil and Gas Development: An Accommodation Through the California Coastal Act of 1976

In the unique area where land meets sea, increased, and often competing, demands for the use of coastal region resources have led to a recognition of the fragility of the economic, social and environmental balance.¹ California, with 1072 miles of shoreline, has an obvious interest in the preservation and development of its coastal resources. The nation also has an interest in the efficiently planned development, preservation and restoration of coastal areas, and this national interest was the basis of the federal Coastal Zone Management Act of 1972.²

The federal act seeks to entice the coastal state into establishing a comprehensive plan for the management of its individual coastal area.³ An incentive is provided in the form of federal funding for both the development and implementation of a state plan.⁴ Of singular importance is the consistency clause⁵ of the act requiring that federal activity affecting the coastal zone be conducted in a manner consistent with the state-developed coastal management program. The popular approval of Proposition 20, the California Coastal Initiative, in November of 1972 is indicative of the efficacy of subordinating federal decisions affecting the coastal zone to the state to encourage the state to develop a comprehensive coastal program.⁶

A significant problem in California's creation of a comprehensive plan for

1. See 16 U.S.C. §1451 (Supp. III 1973) (amended 1976).

2. 16 U.S.C. §1451 *et seq.* (Supp. III 1973) (amended 1976).

3. 16 U.S.C. §1451(h) (Supp. III 1973) (amended 1976).

4. 16 U.S.C. §1455 (Supp. III 1973) (amended 1976).

5. 16 U.S.C. §1456(c)(i) (Supp. III 1973), *as amended by* Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §6, 90 Stat. 1018 reads:

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.

To employ the consistency requirement it must first be found that the federal activity is located in or affects the coastal zone of the state. For the purposes of this comment a cursory determination that the outer continental shelf lease activity does affect the coastal zone will be accepted. This premise is based on the Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §3, 90 Stat. 1013.

6. California Coastal Zone Conservation Act of 1972; CAL. PUB. RES. CODE §27000 *et seq.* (repealed 1977).

its coastal region is the impact⁷ of federally-controlled⁸ leasing of the outer continental shelf⁹ for the development of oil and gas resources. Among the most significant of federal actions affecting the coastal zone,¹⁰ the federal leasing program has fostered a conflict¹¹ between state and federal agencies over the scope of state participation in decisions concerning outer continental shelf development. The conflict persists despite the emphasis in the federal Coastal Zone Management Act on state pre-eminence in developing its coastal regions.¹²

Technology now affords the opportunity to exploit the offshore treasure trove of mineral resources.¹³ Furthermore, the rising cost of gas and oil, and the dependency of the United States on imported petroleum to meet energy needs, cause the development of these continental shelf resources to assume national importance.¹⁴ While outer continental shelf development is directly under federal jurisdiction,¹⁵ the development cannot be effected without support facilities in the adjacent coastal state.¹⁶ For economic and technological reasons, the majority of the onshore developments stimulated by offshore development on the outer continental shelf are "coastal-dependent."¹⁷ Therefore, it would be incongruous to expect California to manage its coastline without recognizing a coordinate authority to affect outer continental shelf development.¹⁸

The federal agencies charged with outer continental shelf development¹⁹

7. See text accompanying notes 81-89 *infra*.

8. The Outer Continental Shelf Lands Act, 43 U.S.C. §1332(a) (1970); and see text accompanying notes 108-111 *infra*.

9. 43 U.S.C. §1331(c) (1970). The outer continental shelf means all submerged lands seaward of and outside of lands defined in 43 U.S.C. §1301 as being within state jurisdiction. In the international field the outer continental shelf is defined as the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to the depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of exploitation of the natural resources of the said area. Convention on the Continental Shelf, [1964] 15 U.S.T. 471, 473 (pt. I), T.I.A.S. No. 5578, 499 U.N.T.S. 311, 312, art. I.

10. STAFF OF SENATE COMM. ON COMMERCE, 93 CONG., 2D SESS., OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT AND THE COASTAL ZONE, NATIONAL OCEAN POLICY STUDY 9 (Comm. Print 1974) [hereinafter cited as NATIONAL OCEAN POLICY STUDY].

11. See note 125 *infra* and accompanying text.

12. 16 U.S.C. §1451(h) (Supp. III 1973) (amended 1976).

13. STAFF OF SENATE COMM. ON COMMERCE, 93RD CONG., 1ST SESS., THE OCEANS AND NATIONAL ECONOMIC DEVELOPMENT 54 (Comm. Print 1973) (Testimony of Dr. Dayton H. Clewell, Senior Vice President of Mobile Oil Corporation) [hereinafter cited as OCEANS AND ECONOMIC DEVELOPMENT]. Industry has the capability to explore in any water depth, to produce oil at 600 feet, and the potential to produce oil and gas in 800 feet of water.

14. Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 806-08 (1975).

15. 43 U.S.C. §1332(a) (1970); see text accompanying notes 108-115 *infra*.

16. See note 88 *infra*.

17. "Coastal dependent" development or use means any development or use which requires a site on, or adjacent to, the sea to be able to function at all. California Coastal Act of 1976, CAL. PUB. RES. CODE §30101, CAL. STATS. 1976, c. 1330, §1 at —.

18. Activity in areas outside state jurisdiction would create irresistible pressures on the coastal zone itself. See Schoenbaum & Rosenberg, *The Legal Implementation of Coastal Zone Management: The North Carolina Model*, 1976 DUKE L. REV. 1, 10. The state would then have to adjust its coast plan to provide for these pressures.

19. The Department of Interior is designated as the federal agency responsible for outer continental shelf mineral development. 43 U.S.C. §1334(a)(i) (1970).

and coastal zone management coordination²⁰ narrowly interpret the scope of congressionally authorized state participation in developmental decisions.²¹ This narrow interpretation would require the federal agencies to notify the affected coastal states of federal plans, with the expectation the state would react by attempting to minimize adverse impacts.²² The state, on the other hand, seeks broader participation in making those decisions that will create coastal zone impacts²³ thus directing coastal development rather than reacting to federal decisions. The July 1976 amendment to the federal Coastal Zone Management Act²⁴ supports broader state participation by reaffirming the states' fundamental responsibility for the management of the coastal zone.²⁵ Congress also clarified the applicability of the consistency clause to include outer continental shelf oil and gas leasing decisions.²⁶ Via a general revenue funding program,²⁷ Congress recognizes, and provides for, the need to counteract adverse impacts of offshore oil and gas activities by efficient state coastal management. By tying the allocation of funds to outer continental shelf oil and gas production,²⁸ the federal amendment also demonstrates the congressional intent that oil and gas resources be developed.

This comment is an examination of the extent to which California, via the California Coastal Act of 1976²⁹ [hereinafter referred to as the California Act], may participate in, and exercise control over, federal oil and gas leasing on the outer continental shelf adjacent to the California coastal zone.³⁰ The key to successful state participation in outer continental shelf

20. The Department of Commerce is responsible for coastal zone management coordination. 16 U.S.C. §1463 (Supp. III 1973) (amended 1976).

21. STAFF OF SENATE COMM. ON COMMERCE, 93 CONG., 2D SESS., OUTER CONTINENTAL SHELF OIL AND GAS LEASING OFF SOUTHERN CALIFORNIA: ANALYSIS OF ISSUES 4 (Comm. Print 1974) [hereinafter cited as SOUTHERN CALIFORNIA ANALYSIS].

22. See text accompanying notes 81-89 *infra*.

23. Some impacts are beneficial: (1) more jobs; (2) increased personal and corporate incomes; (3) increased tax base; and (4) better job opportunities and mobility. Other impacts are of an adverse nature, including: (1) additional costs of community services; (2) potential oil pollution; (3) environmental damage; and (4) decline in traditional employment. 15 C.F.R. §928.5 (1976).

24. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, 90 Stat. 1013 (amending 16 U.S.C. §1451 *et seq.* (Supp. III 1973)).

25. See S. REP. NO. 277, 94th Cong., 2d Sess. 1-2, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 2720-21.

26. The term "coastal energy activity" is defined to include "(i) Any outer Continental Shelf activity" (emphasis added). Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §3, 90 Stat. 1013 (amending 16 U.S.C. §1453 (Supp. III 1973)).

27. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1019 (amending 16 U.S.C. §1456(a) (Supp. III 1973)).

28. Grants are allocated to the states from the general treasury, not from outer continental shelf revenues, but the amount of the grant is determined by the level of offshore oil production and the amount of offshore oil landed in the adjacent coastal state. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1021; [1976] U.S. CODE CONG. & AD. NEWS 2720, 2744. Allocations to the state can be used to plan for the socio-economic effects of proposed energy activity; finance new or improved public facilities; prevent or repair environmental damage or refinance loans taken by the state or local government to prepare for anticipated impacts that do not materialize. 41 Fed. Reg. 46724 (1976).

29. SB 1277, CAL. STATS. 1976, c. 1330, at —. See *Review of Selected 1976 California Legislation*, 8 PAC. L.J. 351 (1977).

30. The question is not whether the state should participate in outer continental shelf development, but the extent of that participation. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 40.

decision-making is the continued cognizance that the federal Coastal Zone Management Act's requirement is for a state generated³¹ plan of coastal development, and not a state reaction to federal rule-making. Equally important is that state control of coastal zone development does not envision mere prohibitions against use,³² but rather a balanced program to develop the limited and degradable resources of the coastal zone.

OFFSHORE DEVELOPMENT AND COASTAL ZONE PLANNING:
THE CONFLICT

The stimulus of offshore oil and gas development necessarily causes increased demands on the land mass of the adjacent coastline.³³ It is therefore necessary to balance the pressures for industrial and residential growth with economic, environmental and aesthetic concerns. While the goals emphasized in the California Act closely parallel the stated purpose of the federal Coastal Zone Management Act of 1972, which is to encourage wise use of land and water resources,³⁴ the California interest, necessarily more parochial, also encompasses the broad range of cultural, historic and aesthetic values espoused by Californians.³⁵

The federal approach to coastal zone management must be viewed through the shadow cast by the "energy crises," a crises which causes pre-eminent concern for increased petroleum exploration and production from the outer continental shelf as a means of effecting the national interest in energy self-sufficiency.³⁶ Potentially 40 percent of the undiscovered oil and gas reserves of the nation are in the outer continental shelf,³⁷ and the best prospect for substantial increases in domestic oil and gas production is through the exploitation of these outer continental shelf resources.³⁸ Prospective oil and gas production justifies intensified exploration and drilling efforts offshore despite the attendant effects of offshore development onshore in the state coastal zone.³⁹

A single example illustrates the jurisdictional significance of the onshore

31. 16 U.S.C. §1451(h) (Supp. III 1973) (amended 1976).

32. Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 813 (1975); See also OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 166.

33. S. REP. NO. 277, 94 Cong., 2d Sess. 17, reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2737.

34. Compare CAL. PUB. RES. CODE §30001.5 with 16 U.S.C. §1452 (Supp. III 1973).

35. See CAL. PUB. RES. CODE §§30001, 30001.2, 30001.5; see generally CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION, CALIFORNIA COASTAL PLAN 5-18 (1975) [hereinafter cited as CALIFORNIA COASTAL PLAN].

36. In January, 1975, the President, by letter, informed Congress of his intention to propose legislation entitled The Energy Independence Act of 1975 to foster the goal of energy self-sufficiency for the nation. Letter from the President of the United States to the President of the Senate, Jan. 30, 1975, in 121 CONG. REC. §1421 (daily ed. Feb. 5, 1975).

37. OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 50 (Testimony of John Whitaker, Under Secretary of Interior).

38. Jackson, *Rational Development of Outer Continental Shelf Oil and Gas*, 54 ORE. L. REV. 567, 569 (1975).

39. See text accompanying notes 81-89 *infra*.

effects problem. Pipelines are the industry-preferred mode of transporting oil ashore from outer continental shelf production.⁴⁰ The pipelines commence on federally leased land and move shoreward via easements authorized by the Bureau of Land Management;⁴¹ but, at the three mile limit of state jurisdiction, they become subject to state coastal zone control.⁴² Thus, state restrictions could be placed on pipeline size, depth or location.⁴³ Furthermore, the cost reductions of straight line pipelines with direct access to shore could be negated by state regulations requiring circuitous routes to avoid specified coastal regions.⁴⁴ An oil company cannot be expected to expend huge sums of money⁴⁵ developing commercially producible oil, only to be thwarted in obtaining a return on its investment by the extra costs caused by the dichotomy of federal/state jurisdiction.⁴⁶ Since industry must operate on federal leases, the failure to resolve federal/state conflict will naturally engender attempts to circumvent state controls.⁴⁷ It would seem apparent that the federal goal of energy self-sufficiency for the nation would inevitably cause a federally supported industry move to overcome state coastal controls restricting the shoreward transportation of oil and gas.⁴⁸ The critical need for continued petroleum products while alternative energy sources are developed is a persuasive argument against any state restrictions

40. OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 55 (Testimony of Dr. Dayton H. Clewell, Senior Vice President Mobile Oil Corporation).

41. 43 C.F.R. §2883.0-3 (1970).

42. 16 U.S.C. §1453(a) (Supp. III 1973) (amended 1976). Presently, the United States territorial sea extends three miles from the coast. Indications abound, however, that the territorial sea will be extended. See generally Stevenson and Oxman, *Third United Nations Conference on the Law of the Sea: The 1974 Caracas Session*, 68 AMER. J. INT'L L. 1 (1975); Symposium, *Law of the Sea VII*, 12 SAN DIEGO L. REV. 491 (1975). Any change in the United States territorial sea will not mean an automatic extension of state offshore jurisdiction since the three mile limit is recognized explicitly in the Submerged Lands Act. 43 U.S.C. §1301(b) (1970).

43. For an example of possible state regulations, see CAL. PUB. RES. CODE §25450 *et. seq.* (1976) on pipeline construction prohibitions, discussed in *Review of Selected 1975 California Legislation*, 7 PAC. L.J. 470 (1976).

44. CAL. PUB. RES. CODE §25450.

45. Oil well costs hinge on the depth required to drill before producible oil is discovered. The following table shows well costs by depth in 1971:

0-5,000 feet	\$259,982
5-10,000 feet	\$385,759
10-15,000 feet	\$730,099
15-20,000 feet	\$1,209,800
20,000 feet	\$2,900,000

OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 69 (Testimony of Dr. James E. Cross, Director, Economics and Industry Affairs, Sun Oil Company).

46. Coastal regulations by the state can increase costs to industry through stringent technical controls on facilities in the coastal zone, or even make offshore development prohibitively expensive by bans on pipelines and onshore facilities. See Breedan, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107, 1121 (1976).

47. On February 17, 1977, a United States district court judge enjoined oil companies from operating on areas leased in August 1976 off the coasts of New Jersey and Delaware. The injunction was based on a finding that former Interior Secretary Kleppe had violated National Environmental Protection Act requirements in the lease sale. Coastal Zone Management Newsletter, Vol. 8, No. 8, at 2, Feb. 23, 1977. Interior Secretary Andrus has decided to appeal. Coastal Zone Management Newsletter, Vol. 8, No. 9, at 1, March 2, 1977.

48. Energy "self-sufficiency" is a strong argument for overriding state coastal regulations on the basis of national security requirements. See 16 U.S.C. §1456(c)(3) (Supp. III 1973) (amended 1976).

that would reduce access to petroleum resources.⁴⁹

The goal of the Department of Interior, under its authority as leasing agent for the outer continental shelf oil and gas lands,⁵⁰ is to develop that region in an orderly and timely fashion, while providing for environmental protection and receiving fair market value for mineral resources.⁵¹ Timely development, with the pervasive impetus of the "energy crises," means accelerated leasing and production programs.⁵² Thus, California must not regard the goals of energy development and coastal management as mutually exclusive. Rather, the state must involve itself in each phase⁵³ of offshore oil and gas development in order to assess the potential impacts on the coastal zone, and to direct that development toward protection of its resources. Such state involvement in offshore planning, however, conflicts with the Interior Department's view that the principal method of state participation in the development process is through the environmental impact statement.⁵⁴ Although the Department of Interior requires the filing of this statement prior to the leasing of outer continental shelf lands, the decision-making mechanism at this stage has proceeded beyond the point where the interests raised by the state can have any significant effect upon the proposed development scheme.⁵⁵

The procedure followed by the Department of Interior in leasing outer continental shelf submerged lands is composed of five distinct phases:⁵⁶ (1) preliminary exploration; (2) preleasing activities; (3) leasing; (4) exploration and production; and (5) transportation.

Preliminary exploration begins with general surveys performed by the United States Geologic Survey and the petroleum industry.⁵⁷ These are followed by a "call" for tract nominations, essentially an indication of oil industry interest in certain leasing locations.⁵⁸ The data relative to the potential productivity of individual tracts is speculative at this stage⁵⁹ and, therefore, inadequate to support predictions of future coastal impacts from the development.

49. Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 807 (1975).

50. 43 U.S.C. §1334 (1970).

51. *Hearings on Outer Continental Shelf Oil and Gas Extraction and Environmental, Economic and Social Impact upon the Coastal Zone Before the Senate Committee on Commerce*, 93rd Cong., 2d Sess. 44 (1974) (Testimony of Jared G. Carter, Deputy Under Secretary of Interior) [hereinafter cited as *Coastal Zone Impact*].

52. See SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 30.

53. *Coastal Zone Impact*, *supra* note 51, at 177 (Statement of Sen. John Tunney, California).

54. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 3. Also see notes 60-61 *infra* and accompanying text.

55. *Id.* See generally CALIFORNIA COASTAL PLAN, *supra* note 35, at 119-26.

56. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 17. For leasing regulations, see 43 C.F.R. §3300 *et seq.* (1976).

57. See 43 C.F.R. §3301.2 (1976); SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 17.

58. 43 C.F.R. §3301.3 (1976); *Coastal Zone Impact*, *supra* note 51, at 58.

59. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 39.

The most significant prelease activity is the requirement that the Department of the Interior develop an environmental impact statement regarding tract development in the outer continental shelf areas under consideration.⁶⁰ The state, as well as private organizations and individuals, are given the opportunity to include statements in this report.⁶¹

The leasing process is merely a procedural operation for lease by competitive bid.⁶² Since the preliminary exploration performed thus far is inadequate to determine the true value of the oil lands to be leased, industry estimates are the only real determinant of the market value of these leases.

After the outer continental shelf leases have been granted, intense production-oriented exploration is conducted by the lessees.⁶³ The information developed permits estimates of productivity of the discovery, well location, and design; further environmental impact reports may be required based upon the more comprehensive information gathered during the exploration stage.⁶⁴ The final stage, transportation, the process of bringing oil and gas ashore by tanker, lighter or pipeline, is the first direct link between the state coastal zone and offshore oil and gas production.⁶⁵

Under these Interior Department procedures, the state's participation is not acknowledged until the preleasing environmental impact statement is prepared—after the tract nominations have occurred.⁶⁶ Thus, California may only accept, or object to, predetermined lease locations, without the opportunity to evaluate other locations which would be more desirable within the state management program.⁶⁷ Furthermore, the superficial nature of the preliminary exploration does not provide sufficient data to evaluate onshore impacts of the offshore activity.⁶⁸ Since both the California Act and the federal Coastal Zone Management Act envision development and growth within the coastal program as the responsibility of the state, the state cannot merely react to this tract selection process;⁶⁹ the state must exert its control via the 1976 amendments to the Coastal Zone Management Act. These amendments to the federal act provide the opportunity for state participation in—rather than mere reaction to—leasing decisions over oil and gas developments on the outer continental shelf.⁷⁰

60. National Environmental Protection Act, 42 U.S.C. §4321 *et seq.* (1970); 43 C.F.R. §3301.3 (1976).

61. Southern California Analysis, *supra* note 21, at 21-22.

62. 43 C.F.R. §§3302.1-3302.7 (1976).

63. Pre-production exploration, including core drilling for geologic samples, is conducted to determine drilling locations and the potential productivity of the leased areas.

64. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 24.

65. *Id.* at 26.

66. See text accompanying notes 54-55 *supra*.

67. See text accompanying notes 171-174 *infra*.

68. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 4.

69. See text accompanying notes 137-139 *infra*.

70. Legislative history indicates that the 1976 amendment would guarantee state participation in energy facility siting, including offshore oil leases. S. REP. No. 277, 94th Cong., 2d Sess. 9, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 2720, 2728.

To comport, rather than conflict, with congressional delineation of the federal/state relationship in the coastal zone, state participatory thrusts into the outer continental shelf leasing process must: (1) not be merely dilatory;⁷¹ (2) adequately justify the local interest to be protected as among those coastal interests delineated by the federal act, so the state can rely on explicit congressional authorization;⁷² (3) adequately provide for the national interest in petroleum production,⁷³ and (4) reduce, not increase, bureaucratic "red tape" to avoid earning the animosity of industry.⁷⁴ While the state has no jurisdictional authority in the outer continental shelf, it does control the coastal areas where the support facilities necessary to offshore oil production will be located. To avoid preemption⁷⁵ by federal law, state regulations affecting offshore development must be rationally related to the state interest in maintaining the resources of the coastal region. The state must carefully avoid the potential conflicts with federal authority listed above or have its regulations overruled by the general federal supremacy.⁷⁶

With the amended federal act explicitly providing for state participation in decisions affecting its coastal zone, the question remains as to the scope and methodology of that participation.⁷⁷ Before considering the resolution of this question, however, it is necessary to understand the nature of the local onshore impacts of offshore oil development and the background of federal/state relations in this area.

ONSHORE IMPACTS OF OFFSHORE DEVELOPMENT

Onshore impacts from offshore oil and gas production are geographically unique.⁷⁸ They are dependent upon the level of productivity of the well site,

71. See text accompanying note 125 *supra*.

72. See text accompanying notes 246-247 *infra*.

73. 15 C.F.R. §923.15 (1976).

74. OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 56 (testimony of Dr. Dayton Clewell, Senior Vice-President, Mobil Oil Corporation).

75. The constitutional doctrines of preemption and supremacy are germane to any discussion of state coastal regulations that could impinge upon the federal outer continental shelf lease activity. The state regulations will be invalid if they place obstacles in the way of accomplishment of the federal purpose. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The state, therefore, must adhere to the congressional purpose in the Coastal Zone Management Act of 1972 that the traditional land use control of the state, 16 U.S.C. §1451(h) (Supp. III 1973), be enhanced by requiring federal activity affecting the coastal zone be consistent, where practicable, with the state coastal management program. 16 U.S.C. §1456(c)(1) (Supp. III 1973) (amended 1976). This federal act should preclude preemption as a general premise since, by congressional mandate, coastal management powers were to be in the state. Breedan, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107, 1148 (1976). See Note, *Pre-emption as a Preferential Ground: A New Canon of Construction*, 12 STAN. L. REV. 208, 221-22 (1959).

76. Discussion of the preemption and supremacy problems is beyond the scope of this comment. See generally Breedan, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107 (1976); Hershman & Fontenot, *Local Regulations of Pipeline Sitings and the Doctrines of Federal Pre-emption and Supremacy*, 36 LA. L. REV. 929 (1976).

77. 41 Fed. Reg. 42879 (1976).

78. I. WHITE, D. KASH, M. CHARTOCK, M. DEVINE, & R. LEONARD, NORTH SEA OIL AND GAS 134 (1973).

distance from shore, topographical features of the coast, marine currents and environment, and prior planning to absorb the effects of development.⁷⁹ These varied factors determining the onshore impacts afford the underlying justification for local control, as opposed to uniform national control,⁸⁰ of offshore development affecting the coastal zone.

The most conspicuous coastline threat is that of oil spills,⁸¹ although oil spills are actually but one facet of potential impact with which the coastal planner must contend. Moreover, the spill risk is significantly less from modern oil platforms than from tanker operations.⁸² The following categories of onshore impacts⁸³ are of greater significance in long-range coastal planning, although the potential catastrophic effect of oil spills should not be ignored.⁸⁴

Offshore activities affect the social and economic character of the adjacent coast. The state must provide increased local services for the industrial facilities which support offshore development.⁸⁵ These services deplete local treasuries before the developing industrial complexes provide any tax revenue.⁸⁶ In reaction to coastal developments, population growth and density changes occur, with attendant changes in the social and cultural makeup of the community.⁸⁷ The general environment of the area is modified by land use tradeoffs to encompass support facilities, to the derogation of aesthetic, recreational and public access demands.⁸⁸ The increase in oil related job opportunities and income, with a possible decline in traditional forms of employment, can alter the economic structure of an area, causing land and housing price inflation and different local demands for goods and services. When local activity decreases because of the exhaustion of

79. *Coastal Zone Impact*, *supra* note 51, at 36.

80. Where there is concurrent federal-state regulatory power, state regulations should not be preempted unless there is a need for uniform national regulation rather than local control of local needs. *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 319 (1851).

81. Californians became particularly sensitive to oil spill threats with the much publicized Santa Barbara Channel blowout of Union Oil's Platform A on January 28, 1969. For a general discussion see L. DYE, *BLOWOUT AT PLATFORM A* (1971). This led to greater concern for more stringent requirements on offshore oil development. See Comment, *The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act*, 10 NAT. RESOURCES J. 442, 449 (1970).

82. *Coastal Zone Impact*, *supra* note 51, at 27 (Statement of Russell Peterson, Chairman of the Council on Environmental Quality).

83. Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 818 (1975).

84. See CALIFORNIA COASTAL PLAN, *supra* note 35, at 36.

85. The community affected by increased offshore oil and gas development will need more roads, schools and housing for employees moving to the area as a result of the new industrial activity. Sewage, water, police and fire protection services will have to be enhanced to provide for the increased population. 1 COUNCIL ON ENVIRONMENTAL QUALITY, *OUTER CONTINENTAL SHELF OIL AND GAS—AN ENVIRONMENTAL ASSESSMENT* 121-22 (1974).

86. S. REP. NO. 277, 94th Cong., 2d Sess. 15, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 2720, 2734.

87. 15 C.F.R. §928.5(a)(4) (1976).

88. Onshore support facilities include staging areas for transporting equipment to the outer continental shelf, construction yards for drill equipment and port facilities. I. WHITE, D. KASH, M. CHARTOCK, M. DEVINE, & R. LEONARD, *NORTH SEA OIL AND GAS* 99 (1973).

offshore oil and gas resources, services and facilities must shrink to pre-development levels, or new industry must be attracted to support the increased services created during outer continental shelf production.⁸⁹

To prevent irreversible damage to coastal resources, the coastal planner must determine the carrying capacity⁹⁰ of coastal land—to know the inherent capacity of the land to support industrial development. This necessitates adequate and accurate exploratory information to determine the potential productivity of adjacent oil fields⁹¹ as well as the expertise to translate that information into a determination of the nature and extent of potential impacts. This type of coastal planning, by clear congressional mandate,⁹² is ultimately within the province of state and local government. Congress could not have intended to delegate coastal management responsibility to the state only to have the Department of Interior, by excluding the state from tract nomination decisions, deny the means to implement the programs so authorized.⁹³

The management of the coastal zone, given the significance of the impacts from offshore development, appears to justify the involvement of the state throughout the lease-production development process. Only with the information available from a complete involvement in the leasing process can California assess the nature and magnitude of coastal zone impacts.⁹⁴ Without a voice in the determination of outer continental shelf lease locations and permissible levels of activity, California's coastal planning will continue to be a reflex reaction to the demands of federally-determined offshore development.⁹⁵

HISTORY OF OUTER CONTINENTAL SHELF CONTROL

For 150 years prior to 1947, state ownership of submerged lands adjacent to the state coastline was presumed.⁹⁶ As late as 1933, Secretary of Interior Harold Ickes refused to consider applications for Pacific Ocean oil leases,

89. Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 820 (1975).

90. Carrying capacity of coastal land is determined by both the natural condition of the land, including fragile wildlife habitats, and institutional constraints in designing and supplying roads, water, sewage control and related services. D. GODSCHALK, F. PARKER & T. KNOCHE, *CARRYING CAPACITY: A BASIS FOR COASTAL PLANNING* 130-44 (1974).

91. The state needs adequate and timely planning information regarding the number and location of platforms, pipeline locations, proposed refineries and processing facilities, transportation and service requirements. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 4.

92. 16 U.S.C. §1451(h) (Supp. III 1973), as amended by Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §2, 90 Stat. 1013.

93. See Comment, *The Background of the Doctrine of the Continental Shelf and the Outer Continental Shelf Lands Act*, 10 NAT. RESOURCES J. 442, 492 (1970):

If (U.S.) coastal states do not have jurisdiction over areas that are of functional importance to them, they will be without the ability to coordinate and give priorities among all uses and resources that influence their coastal zone.

94. See text accompanying notes 207-209 *infra*.

95. CALIFORNIA COASTAL PLAN, *supra* note 35, at 110-12.

96. [1953] U.S. CODE CONG. & AD. NEWS 1385, 1417; see also Note, *States' Rights in the Outer Continental Shelf Denied by the U.S. Supreme Court*, 30 U. MIAMI L. REV. 203, 204 (1975).

reaffirming those decisions as properly within California jurisdiction.⁹⁷ In 1937, however, with the potential for increased revenue from offshore oil which was now technologically capable of being recovered, the Congress became interested in extending federal jurisdiction over the submerged lands adjacent to the coast of the United States.⁹⁸ Various legislative attempts to accomplish this extension of federal jurisdiction proved unsuccessful.⁹⁹

A. *The Foundation of Federal Outer Continental Shelf Jurisdiction*

In 1947, the United States Attorney General succeeded where Congress had failed and obtained recognition of federal jurisdiction over the seabed and subsoil of the continental shelf. In *United States v. California*,¹⁰⁰ the United States Supreme Court found a paramount federal right to the seabed and subsoil of the continental shelf on the basis of the sovereign's responsibility to provide for national defense and conduct international relations.¹⁰¹

California had been active in offshore oil development, having discovered oil in the Santa Barbara Channel as early as 1895, and having successfully exploited this find with a pier-borne oil rig in 1897.¹⁰² It was not until oil was recoverable from the continental shelf in commercial quantities, however, that the federal government had reason to raise the question of federal/state ownership.¹⁰³ The immediate effect of *United States v. California* was to divest the states of the potential revenue from offshore lease sales for the benefit of the central government. A "states rights" political movement, aroused by this divestiture, led to the Submerged Lands Act of 1953.¹⁰⁴ Pursuant to this act, Congress quitclaimed¹⁰⁵ to the coastal states the adjacent submerged lands up to the three-mile limit of the territorial sea.¹⁰⁶ This essentially preserved the pre-1947 status quo in offshore oil and gas development since the existing technology did not permit deep sea oil

97. [1953] U.S. CODE CONG. & AD. NEWS 1385, 1417.

98. *Hearings before the Senate Committee on the Judiciary*, NYE RESOLUTION, S.J. RES. 208, 75TH CONG., 3D SESS. (1938).

99. *Hearings before Subcommittee No. 4, House Committee on the Judiciary*, HOBBS AND O'CONNOR RESOLUTION, H.J. RES. 176 AND 181, 76TH CONG., 1ST SESS. (1939); *Hearings before the Senate Committee on Public Lands and Surveys*, NYE AND WALSH RESOLUTIONS, S.J. RES. 83 AND 92, 76TH CONG., 1ST SESS. (1939). In 1946, the state's rights to the offshore lands adjacent to its coast were reaffirmed in H.J. RES. 225, 92 CONG. REC. 9642, 10316 (1946). This action was vetoed by President Truman. 92 CONG. REC. 10660 (1946). In 1945, Truman had announced United States ownership of the continental shelf, foreshadowing his opposition to state control. *Presidential Proclamation 2667* of Sept. 8, 1945, 59 Stat. 884 (1945).

100. 332 U.S. 19 (1947).

101. *Id.* at 35.

102. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 9.

103. See [1953] U.S. CODE CONG. & AD. NEWS 1385, 1431-35.

104. 43 U.S.C. §1301 *et seq.* (1970).

105. Taylor, *Settlement of Disputes between Federal and State Governments Concerning Offshore Petroleum Resources: Accommodation or Adjudication?* 11 HARV. INT'L L.J. 358, 365 (1970).

106. 43 U.S.C. §1301(b) (1970) reads in part: "three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico" The reference to three marine leagues as a measure for states bordering the Gulf of Mexico is an historical anomaly dating from the entry of these states into the Union. A marine league is approximately three geographic miles.

production.¹⁰⁷

The jurisdictional limit of the Submerged Lands Act necessitated congressional provision for the potential development of the outer continental shelf.¹⁰⁸ Consequently, the Outer Continental Shelf Lands Act¹⁰⁹ was enacted concurrently with the Submerged Lands Act. The "bare bones" leasing authority¹¹⁰ in the Outer Continental Shelf Lands Act provided for the development of outer continental shelf mineral resources under regulations to be propounded by the Secretary of Interior.¹¹¹ The result of *United States v. California*, the Submerged Lands Act and the Outer Continental Shelf Lands Act was the creation of three offshore jurisdictional categories:¹¹² (1) Inland Water—the submerged land within the coastwise boundary of the adjacent state, over which the state exercises sovereignty as though it were part of the land mass;¹¹³ (2) Territorial Sea Submerged Lands—the area within three miles of the coast amenable to state sovereignty over seabed and subsoil operations, but encumbered with the international right of innocent passage and the federal rights in navigation, admiralty, commerce and defense,¹¹⁴ and (3) The Continental Shelf—the area seaward of the territorial waters and subject to further seaward expansion by federal action.¹¹⁵

B. Offshore Oil and Gas Development Since 1953

The first federal lease sale in the outer continental shelf off California was in 1963.¹¹⁶ Jurisdictional problems ensued where oil and gas fields lay partially in state and partially in federal jurisdiction. By 1967, only one of the 18 producing fields off California was wholly within federal jurisdiction.¹¹⁷ The obvious boundary dispute caused by oil and gas fields overlapping both federal and state jurisdictions was resolved in the second *United States v. California*¹¹⁸ case in 1965. This second *California* case established the method by which the boundary line between jurisdictions was to

107. See NATIONAL OCEAN POLICY STUDY, *supra* note 10, at 64.

108. See [1953] U.S. CODE CONG. & AD. NEWS 1385, 1397.

109. 43 U.S.C. §1331 *et seq.* (1970).

110. Senator Jackson categorizes the Outer Continental Shelf Lands Act as not propounding adequate guidelines to the leasing process followed by the Department of Interior. Jackson, *Rational Development of Outer Continental Shelf Oil and Gas*, 54 ORE. L. REV. 567, 571 (1975).

111. 43 U.S.C. §1334 (1970).

112. NATIONAL OCEAN POLICY STUDY, *supra* note 10, at 63; Taylor, *Settlement of Disputes between Federal and State Governments Concerning Offshore Petroleum Resources: Accommodation or Adjudication?* 11 HARV. INT'L L.J. 358, 358-59 (1970).

113. 43 U.S.C. §1311(a) (1970).

114. 43 U.S.C. §1314(a) (1970).

115. The outer continental shelf extends as far as the subsoil and seabed is exploitable for natural resources. Convention on the Continental Shelf, [1964] 15 U.S.T. 471 (pt. I), T.I.A.S. No. 5578, 499 U.N.T.S. 311, art. I. This could extend the international continental shelf beyond the geographic continental shelf through use of ships like the Hughes Glomar Explorer.

116. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 12.

117. *Id.* at 13.

118. 381 U.S. 139 (1965).

be drawn.¹¹⁹ By strictly conforming the definition of the coastline to that of the international Convention on the Territorial Sea and Contiguous Zone,¹²⁰ the three mile measurement to the limit of state submerged lands was based upon the actual indentations along the coast. California had argued instead for a coastline limit based upon a straight line connecting the most prominent projections of coastal land. This construction significantly diminished the offshore area within California jurisdiction, so that since 1966 almost all offshore leasing has been on federal lands.¹²¹

Because of the energy crises, offshore leasing by the federal government has been expedited, with the intent that all frontier areas be leased by 1978.¹²² Despite the then recently passed federal Coastal Zone Management Act, President Nixon announced in February 1973, without forewarning the coastal states, that ten million acres of outer continental shelf land would be offered for lease.¹²³ One and one-half million acres off the southern California coast were to be nominated.¹²⁴ Again forced to react to federal programs, without having commenced its own plan for coastal zone management, California attempted to delay the federal leasing.¹²⁵ The dilatory action taken by the state, however, even if temporarily successful, could not procure for California a voice in the leasing decision that would inevitably be made solely by the federal government.¹²⁶

In recognition of the dual federal/state stake¹²⁷ in the ultimate development of the outer continental shelf, the development of offshore resources should not be hindered. To foster both federal offshore development and state coastal control there should be a restructuring of the lease program,¹²⁸ in consonance with federal and state coastal management acts, to interpose state coastal management guidelines into federal lease decisions.

119. This case confined California's inland waters to a very narrow strip of water along the coast. *Id.* at 169-70.

120. [1964] 15 U.S.T. 1607, T.I.A.S. No. 5639, 516 U.N.T.S. 205.

121. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 12.

122. *Hearings Before the House Subcommittee on Appropriations*, 94th Cong. 1st Sess. 630 (1975) (Statement of Thomas Kleppe, Secretary of the Interior). Although this schedule was reaffirmed in January 1977, Secretary of Interior Andrus is delaying lease sales off Alaska, California and the Southern Atlantic coast until 1979 to give the states time "to better understand the impacts they must plan for." *Sacramento Bee*, May 18, 1977, at A22, col. 1.

123. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 14.

124. 39 Fed Reg. 4934 (1974).

125. California attempts to delay leasing included: an Assembly Resolution memorializing the President and Congress to permit state participation in lease decisions in federal submerged lands adjacent to California, *Assembly Joint Resolution 108*, April 18, 1974; memorializing the President and Congress to declare the outer continental shelf a national preserve, *Assembly Joint Resolution 122*, August 13, 1974; and *California v. Morton*, 404 F. Supp. 26 (1975), an action to prevent development off the southern California coast without further environmental impact statements (dismissed); see *Resolutions, California Coastal Zone Conservation Commission*, August 8, 1974; *Resolution No. 7938*, Council of the City of Santa Barbara, California, August 27, 1974; and *Resolution No. 7939*, Council of the City of Santa Barbara, California, August 27, 1974.

126. The Department of Interior refused to delay leasing until the California Coastal Plan was completed. See SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at vii.

127. Outer continental shelf development is necessary to the energy future of California as well as the rest of the nation, despite coastal zone impacts. See Whitney, *Siting of Energy Facilities in the Coastal Zone—A Critical Regulatory Hiatus*, 16 WM. & MARY L. REV. 805, 806 (1975).

128. NATIONAL OCEAN POLICY STUDY, *supra* note 10, at 79.

C. *The Coastal Zone Management Act of 1972*

The limits of the federal Coastal Zone Management Act of 1972 (Federal Act), the stated purpose of which is to foster state coastal planning,¹²⁹ will be tested in attempting to accommodate national and local interests affected by outer continental shelf development.¹³⁰ Under the Federal Act, a coastal plan can be implemented only by state action.¹³¹ Additionally, the peculiar characteristics of coastal regions require that federal coastal management coordination focus not on the wisdom of a state decision, but on whether the state process for implementing the program¹³² complies with the intent of the Federal Act.

The ability of the state to manage its coastal zone seems untenable without the authority to influence decisions which engender profound impacts on the coastal zone. Consequently, the most important impetus to state development of a comprehensive coastal plan is the consistency clause mandating that federal activities be conducted in a manner consistent with an approved¹³³ state coastal plan, where such activities are in, or significantly affect, the coastal zone.¹³⁴

The Department of Interior interpreted the consistency clause as inapplicable to offshore leasing decisions,¹³⁵ and confined state participation at the pre-lease stage to the required environmental impact statement.¹³⁶ The Department of Interior went even further and defined the call for tract nominations for oil and gas development as not being a leasing decision¹³⁷ and, therefore, not subject to coordination with the state.¹³⁸ This interpretation by the Department of Interior thwarts the intent of the Federal Act, for if the state is successfully bypassed at this early stage of the outer continental shelf leasing process, it cannot control onshore support locations and is again relegated to merely accepting federal priorities for land use. Moreover, if the state must wait until oil is being transported from a producing platform into the coastal zone before exerting state controls, the

129. 16 U.S.C. §1451(h) (Supp. III 1973) (amended 1976).

130. See SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at vii.

131. 16 U.S.C. §1452(b) (Supp. III 1973).

132. Statement made by President Nixon at the signing of the Coastal Zone Management Act of 1972. 8 WEEKLY COMP. OF PRES. DOC. 1583 (1972), cited in Weakley, *Introduction: How Should the Oregon Coast be Managed*, 54 ORE. L. REV. 4, 17 (1975).

133. Approval of the state coastal zone management program by the Secretary of Commerce is a pre-requisite to the operation of the requirement that federal activity be consistent with the state program. 16 U.S.C. §1454(d) (Supp. III 1973) (amended 1976). Procedures for approval are set forth in 15 C.F.R. §923 *et seq.* (1976).

134. 16 U.S.C. §1456(c) (Supp. III 1973), *as amended by Coastal Zone Management Act Amendments of 1976*, Pub. L. No. 94-370, §6, 90 Stat. 1018.

135. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 45.

136. See note 54 *supra*. Environmental evaluation is required from the Department of Interior prior to final tract selection for leasing. 43 C.F.R. §3301.4 (1976).

137. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 3-4. See 43 C.F.R. §3301.3 (1976) for tract nomination regulation.

138. Tract nominations require no federal permit or license and are viewed by the Interior Department as preliminary to the decision-making process, rather than a decision directly affecting the coastal zone. See 43 C.F.R. §3301.2 (1976); 16 U.S.C. §1456(c) (Supp. III 1973) (amended 1976).

burden of the socio-economic changes in providing staging areas and port facilities for production activity has already been encountered.¹³⁹ At that point the availability of oil for transport ashore would be a sufficient pragmatic argument to override state objections based on protecting its coastal zone in favor of increased quantities of domestic oil.

California had been unable to forestall federal leasing while it developed a coastal plan and examined the onshore impacts from accelerated outer continental shelf development.¹⁴⁰ The California Coastal Zone Conservation Commission,¹⁴¹ however, carefully examined energy alternatives and the effects of offshore oil development on the coastal zone. The resulting comprehensive series of energy findings and recommendations were included in the published preliminary plan.¹⁴² The basic California proposal requires disclosure of potential tract nominations, before an actual call, to allow the state to evaluate coastal zone impacts from the lease of various proposed tracts.¹⁴³ By requiring advance disclosure, the state's management criteria could be incorporated in the federal decision concerning which tracts to nominate. Practically, this proposition leads to a requirement that the state participate¹⁴⁴ in the lease process from the initial exploratory phase, since the Department of Interior does not develop the in-depth data necessary to evaluate coastal impacts.¹⁴⁵ Direct access to petroleum industry data regarding offshore potential would be necessary to evaluate the coastal impacts that could be expected from offshore development. It appears that separation of the exploration and the leasing processes would be essential if the compilation and analysis of the exploration data were to be used in the ultimate lease decision.¹⁴⁶

With the 1975 decision of *United States v. Maine*¹⁴⁷ affirming sole federal jurisdiction over outer continental shelf leasing, the narrow view of the Department of Interior concerning state participation in outer continental shelf development seems to have prevailed. Under *Maine* the states are apparently relegated to reacting to federal lease decisions in the outer continental shelf. The *Maine* decision must be read concomitantly with the

139. The early occurrence of socio-economic changes was recognized in the justification for rules implementing the Coastal Energy Impact Fund. 42 Fed. Reg. 1164 (1977).

140. See note 125 *supra*.

141. The California Coastal Zone Conservation Commission was created by the California Coastal Conservation Act of 1972 to, *inter alia*, study coastal zone needs and submit a report to the governor and legislature. CAL. PUB. RES. CODE §27001(b) (1972) (repealed 1977).

142. CALIFORNIA COASTAL PLAN, *supra* note 35.

143. See *id.* at 9, 16-18, 91-93, 117-27.

144. SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 41-42.

145. See text accompanying notes 207-208 *infra*.

146. Leases are presently granted prior to any exploratory drilling. See 43 C.F.R. §3302.5 (1976). If exploration and establishment of the nature of the lease areas were accomplished prior to leasing, the data necessary to assess coastal zone impacts from the development of a specific tract would be available. This data would form the basis for valid decisions regarding the consistency of the lease sale with the state coastal plan. See CALIFORNIA COASTAL PLAN, *supra* note 35, at 119-20.

147. 420 U.S. 515 (1975).

congressionally-recognized national interest in the coastal zone. While the state is without jurisdiction to exercise direct control over outer continental shelf decisions, the coastal interest is recognized by the Federal Act as a national interest of no less importance than oil and gas development. Through the application of the 1976 amendments¹⁴⁸ to the federal Coastal Zone Management Act, the state can participate in outer continental shelf decisions because of that amendment's explicit recognition of the effect of offshore development on the coastal zone.

D. Coastal Zone Management Act: 1976 Amendment

In the 1976 amendment to the Coastal Zone Management Act, Congress specifically designated outer continental shelf lease activity as an activity affecting the coastal zone.¹⁴⁹ This clarified the applicability of the consistency requirement¹⁵⁰ to the leasing decision and would thus seem to require state participation. Under the Interior Department's view of the decision-making process, however, this designation apparently does no more than activate the requirement that federal action be consistent with the state coastal plan at the preleasing stage of outer continental shelf development.¹⁵¹ At this stage, insufficient data is available to the state to allow the evaluation of the potential impacts from the already nominated tracts.¹⁵² Congress, however, has recognized that the coastal state, being more cognizant than the federal agencies of local exigencies, should make the basic decisions as to the particular coastal development¹⁵³ that will result from oil and gas activity. Therefore, state participation in the federal lease process prior to tract nomination appears necessary to coordinate federal activity with the policy decisions of the state regarding land use and development within the coastal zone.¹⁵⁴

The 1976 federal amendment also creates a fund to provide revenue, based on outer continental shelf development, to the coastal state for the amelioration of experienced or projected adverse impacts from oil and gas development.¹⁵⁵ The automatic nature¹⁵⁶ of these grants indicates congres-

148. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, 90 Stat. 1013.

149. Coastal Zone Management of 1976, Pub. L. No. 94-370, §3, 90 Stat. 1013-14 (amending 16 U.S.C. §1453 (Supp. III 1973)).

150. Coastal Zone Management Act of 1976, Pub. L. No. 94-370, §6, 90 Stat. 1018 (amending 16 U.S.C. §1456(c)(3) (Supp. III 1973)).

151. See text accompanying notes 60-61 *supra*.

152. S. REP. NO. 277, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2729.

153. H.C. REP. NO. 1298, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2772, 2773.

154. See S. REP. NO. 277, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2739-40.

155. Coastal Zone Management Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1027.

156. S. REP. NO. 277, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2721.

sional recognition of the inevitability of adverse impacts from offshore oil and gas development.¹⁵⁷ This fund is available to improve state planning¹⁵⁸ and would enable the state to provide meaningful coastal criteria to guide the federal lease decision. To ensure federal consistency with the state coastal act, the information developed by the state could then be applied, with state coastal plan criteria for onshore land use, to the federal lease decisions. A repository of information concerning impacts from offshore development could be readily available to the Department of Interior so that the effect of development on a specific tract could be ascertained.¹⁵⁹

The 1976 amendment reaffirms the primary objectives of the federal management act—that the coastal plan be state created and administered.¹⁶⁰ The amendment specifically requires that the Secretary of Commerce, as administrator of the Coastal Energy Impact Fund¹⁶¹ under the federal Coastal Zone Management Act, not intercede in state land and water use planning by hinging financial assistance to specific energy siting projects.¹⁶² This requirement of non-intercession prevents the Department of Commerce, as the federal agency responsible for coastal management coordination,¹⁶³ from using the allocation of planning funds as a lever to force the coastal state to accept a lesser degree of participation with the Department of Interior in outer continental shelf lease decisions.

CALIFORNIA COASTAL ACT OF 1976

The basic requirement of a coastal program is the development of a coastal land use plan, centered upon a land classification system, providing for the designation and protection of critical coastal areas.¹⁶⁴ The California Act, via regional and local organization,¹⁶⁵ uses locally-generated and state-approved usage rules¹⁶⁶ to prevent the incompatible development of coastal areas. The purpose of the California Act is not to prohibit use, but to develop the coastal zone in an orderly manner, so that a balance of land and water use is maintained that is supportable by coastal zone resources.¹⁶⁷ Those activities that require a “site on or adjacent to the sea,”¹⁶⁸ including

157. See Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1019; S. REP. NO. 277, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2745.

158. 42 Fed. Reg. 1164 (1977); see 42 Fed. Reg. 1174 (1977) (to be codified in 15 C.F.R. §931.2).

159. See text accompanying notes 213-217 *infra*.

160. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §2, 90 Stat. 1013 (amending 16 U.S.C. §1451 (Supp. III 1973)).

161. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1027.

162. S. REP. NO. 277, 94th Cong., 2d Sess., reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2750.

163. 16 U.S.C. §1456 (Supp. III 1973) (amended 1976).

164. Schoenbaum & Rosenberg, *The Legal Implementation of Coastal Zone Management: The North Carolina Model*, 1976 DUKE L. REV. 1, 2.

165. CAL. PUB. RES. CODE §30302.

166. CAL. PUB. RES. CODE §30004(a).

167. Compare CAL. PUB. RES. CODE §30001.2 with CAL. PUB. RES. CODE §30001.

168. CAL. PUB. RES. CODE §30101.

those supporting offshore oil and gas development,¹⁶⁹ are recognized as having priority in the planning process for coastal zone use.¹⁷⁰ The California Act, however, requires a complete evaluation of energy facilities before allowing their development,¹⁷¹ with specific conditions attached to oil and gas development.¹⁷²

Although the outer continental shelf is not within the state coastal zone,¹⁷³ the considerations for allowing coastal zone energy facility development are the same type of coastal zone impact considerations as will occur from offshore development.¹⁷⁴ If the federal lease program is to be consistent with the state coastal program, it must comply with state policy concerning these impact considerations. The lack of sufficient information to determine, for example, whether oil and gas development is consistent with geologic conditions at the well site, a determination required by the California Act,¹⁷⁵ illustrates the necessity for modification of the lease process to provide the data necessary to evaluate development prior to leasing.¹⁷⁶ Provisions to obtain this data would also require state participation through the state coastal commission as the single agency most readily able to evaluate conditions in a particular locale.¹⁷⁷ The state could then use the funding

169. CAL. PUB. RES. CODE §30001.2.

170. CAL. PUB. RES. CODE §30255.

171. CAL. PUB. RES. CODE §§30260-30264.

172. CAL. PUB. RES. CODE §30262 allows oil and gas development in accordance with §30260 only if the following conditions are met:

(a) The development is performed safely and consistent with the geologic conditions of the well site.

(b) New or expanded facilities related to such development are consolidated, to the maximum extent feasible and legally permissible, unless consolidation will have adverse environmental consequences and will not significantly reduce the number of producing wells, support facilities, or sites required to produce the reservoir economically and with minimal environmental impacts.

(c) Environmentally safe and feasible subsea completions are used when drilling platforms or islands would substantially degrade coastal visual qualities unless use of such structures will result in substantially less environmental risks.

(d) Platforms or islands will not be sited where a substantial hazard to vessel traffic might result from the facility or related operations, determined in consultation with the United States Coast Guard and the Army Corps of Engineers.

(e) Such development will not cause or contribute to subsidence hazards unless it is determined that repressuring operations will prevent damage from such subsidence.

(f) All oilfield brines are reinjected into oil-producing zones unless the Division of Oil and Gas of the Department of Conservation determines to do so would adversely affect production of the reservoirs and unless injection into other subsurface zones will reduce environmental risks and where adequate provision is made for the elimination of petroleum odors and water quality problems.

173. Compare 16 U.S.C. §1453(a) (Supp. III 1973) (amended 1976) with CAL. PUB. RES. CODE §30103 for similar federal and state definitions of the coastal zone with the seaward boundary corresponding to the three mile limit of the territorial sea. See text accompanying note 114 *supra*.

174. Compare text accompanying notes 99-106 *supra* with CAL. PUB. RES. CODE §§30250 *et seq.* 30260 *et seq.*

175. CAL. PUB. RES. CODE §30262(a).

176. See SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 56-57 (Letter from Melvin B. Lane, California Coastal Zone Conservation Commission); CALIFORNIA COASTAL PLAN, *supra* note 35, at 9.

177. Commission on Marine Science, ENGINEERING AND RESOURCES: OUR NATION AND THE SEA; A PLAN FOR NATIONAL ACTION 49-81 (1969). See CAL. PUB. RES. CODE §30330.

provided under the 1976 federal act amendment to develop the expertise and data resources necessary to evaluate potential outer continental shelf lease decisions.¹⁷⁸ This expertise would promote an efficient state coastal management process, and provide the Department of Interior with a local source of oil and gas information.¹⁷⁹

Of continuing concern to California's development of a qualified¹⁸⁰ plan under the federal Coastal Zone Management Act is the requirement that the plan adequately consider national interests. The national interest in offshore oil development¹⁸¹ is recognized in the California Act.¹⁸² This consideration of national interests is the necessary starting point in developing a joint decision-making procedure between the state and the Department of Interior. Failure to adequately consider energy requirements which are critical to the national economy would certainly lead to the overruling of any California regulations by federal action.¹⁸³

FEDERAL AGENCY REACTION TO THE 1976 AMENDMENT

The immensity of the federal bureaucracy tends to foster divergent opinions as to the implementation or intent of Congressional acts. The reactions

178. OCEANS AND ECONOMIC DEVELOPMENT, *supra* note 13, at 165; Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §9, 90 Stat. 1029.

179. The Department of Interior would have an information source other than the oil industry itself. See text accompanying note 58 *supra*.

180. To qualify for management development grants, a state coastal management program must include:

(1) An identification of the boundaries of the coastal zone subject to the management program.

(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(3) An inventory and designation of areas of particular concern within the coastal zone.

(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(6) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(7) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §4, 90 Stat. 1015-16 (amending 16 U.S.C. §1454 (Supp. III 1973)).

181. See generally CALIFORNIA COASTAL PLAN, *supra* note 35, at 16-18.

182. See CAL. PUB. RES. CODE §30001.2.

183. The Secretary of Commerce must be satisfied that the state plan provides for adequate consideration of the national interest in siting facilities. 16 U.S.C. §§1454(c), 1455(c)(8) (Supp. III 1973) (amended 1976).

of various federal agencies to a single piece of legislation can, therefore, be expected to be diverse, and often inconsistent. While the Federal Power Commission has proposed rules requiring applicants for the import-export of natural gas to show certification of compliance with the state coastal plan,¹⁸⁴ the Bureau of Land Management, without state consultation, announced another lease sale in the outer continental shelf.¹⁸⁵ Most significantly, the Office of Coastal Zone Management¹⁸⁶ of the Department of Commerce has published regulations regarding coastal state qualification for the Coastal Energy Impact Funds provided by the 1976 federal amendment.¹⁸⁷ Contrary to the legislative intent¹⁸⁸ of the federal amendment, the office of Coastal Zone Management requires prior scrutiny of the state's proposed use of these impact funds.¹⁸⁹ The amendment itself provides only for an audit of the funds used;¹⁹⁰ nowhere does the act authorize the Commerce Department, in reviewing the state allocations to evaluate the wisdom of state land and water use plans.¹⁹¹ Despite President Ford's strong endorsement¹⁹² of the 1976 amendment as a limitation on federal involvement in what should be state decisions regarding coastal management, the Office of Coastal Zone Management will use its own, federally-developed guidelines to determine how offshore development affects the state coastal zone.¹⁹³

The Department of Commerce indicated its lack of enthusiasm for coastal state participation at the tract nomination stage by providing for the allocation of planning funds on the basis of major license or permit applications for the construction of energy facilities.¹⁹⁴ The application for facility construction must obviously be subsequent to a determination of areas to be leased, even if they do precede the actual lease sale.¹⁹⁵ Meanwhile, the Department of Interior demonstrated the level of participation it will afford California in outer continental shelf decisions when it rejected the California

184. 41 Fed. Reg. 43198 (1976).

185. 41 Fed. Reg. 49892-93 (1976).

186. The Office of Coastal Zone Management was established in the Department of Commerce under the National Oceanic and Atmospheric Administration to coordinate state coastal zone management planning pursuant to the federal Coastal Zone Management Act of 1972. See 15 C.F.R. §903.1(b)(ii) (1976).

187. 42 Fed. Reg. 1164 (1977).

188. Coastal Zone Management Newsletter, Vol. 7, No. 35, Sept. 1, 1976, at 1.

189. 42 Fed. Reg. 1165 (1977).

190. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §11, 90 Stat. 1030 (amending 16 U.S.C. §1459 (Supp. III 1973)).

191. *But see* 42 Fed. Reg. 1176 (1977) (to be codified in 15 C.F.R. §931.25(c)(2)). The Secretary of Commerce, in evaluating allocations by the coastal state, intends to evaluate the wisdom of the state plans.

192. Coastal Zone Management Newsletter, Vol. 7, No. 30, July 28, 1976, at 1.

193. 42 Fed. Reg. 1165 (1976) (to be codified in 15 C.F.R. §931.46) establishes the federally-developed factors for determining state coastal zone needs caused by outer continental shelf oil and gas development. Allocations of Coastal Energy Impact Funds to the state are to be made according to these factors.

194. 42 Fed. Reg. 1166 (1977).

195. The Department of Commerce still maintains the view that the consistency clause be interpreted narrowly, with the state's input provided at the pre-lease stage environmental impact statement. 41 Fed. Reg. 42879 (1976).

proposal for regulations on training standards for offshore oil rig operators, and accepted instead the less stringent standards proposed by the American Petroleum Institute.¹⁹⁶

Despite the 1976 federal amendment, the Commerce Department continues to emphasize that the distinctive nature of the requirement of federal consistency with state coastal zone decisions requires full participation of affected federal agencies in state coastal decisions.¹⁹⁷ This participation was explicitly required by the federal act as passed in 1972.¹⁹⁸ The 1976 amendment does not appear to have been written because of an erosion of federal authority, but rather to provide for increased state participation in offshore decisions affecting the coastal zone.¹⁹⁹

The intention of the Secretary of Commerce to override state objections to offshore leasing not only on the basis of national interest but also upon a unilateral finding of consistency with the Federal Act,²⁰⁰ illustrates the intransigence of that federal agency. The Department of Commerce interprets the 1976 amendment as creating a supplemental fund to improve the state capability to meet impacts from rather than participate in federal activity in the outer continental shelf.²⁰¹ The federal agencies are still trying to hold the consistency requirement to their own narrow view, with no state participation in the lease process.²⁰² Through the federal amendment of 1976, Congress recognized the lack of coordination between federal agencies and the state regarding outer continental shelf leasing and coastal management.²⁰³ The resulting dilatory measures taken by the states to delay oil and gas development while coastal impacts were evaluated fostered neither the federal goal of domestic energy source development nor efficient state coastal planning. Federal and state goals can best be served by a system whereby the state is able to fully evaluate coastal impacts from the development of specific outer continental shelf tracts. The Department of Interior can use information generated by the state to select for development only those offshore tracts whose onshore impacts can be absorbed by provisions of the state coastal zone management plan.

196. 41 Fed. Reg. 48135 (1976).

197. 41 Fed. Reg. 42879 (1976).

198. See 16 U.S.C. §§1455(c)(1), 1456(b), 1455(c)(8) (Supp. III 1973) (amended 1976).

199. See H.C. REP. NO. 1298, 94th Cong., 2d Sess. 24, reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2772, 2773.

200. 41 Fed. Reg. 42890 (1976).

201. "Formula grants are available to assist state and local governments in meeting needs resulting primarily from outer continental shelf (OCS) energy activity." 42 Fed. Reg. 1164 (1977).

202. 41 Fed. Reg. 42879 (1976).

203. S. REP. NO. 277, 94th Cong., 2d Sess. 3, reprinted in [1976] U.S. CODE CONG. & AD. NEWS 2720, 2722.

METHODS FOR INCORPORATING STATE COASTAL ZONE CONSIDERATIONS
IN CONTINENTAL SHELF DECISIONS

The most direct method to incorporate state coastal zone management policies into outer continental shelf lease decisions would be for Congress to establish joint federal/state jurisdiction over offshore oil and gas development. The following methods, however, can be accomplished through changes in administrative procedures, without further legislative action.

A. Suggested Changes to the Federal Lease System

In order to ensure that federal offshore lease decisions adequately consider attendant coastal zone impacts, a change in the present lease procedure followed by the Department of Interior is required.²⁰⁴ The primary problem in reconciling offshore oil development with the state coastal plan is the absence of substantive coordination with the Department of Interior in the nomination, location and development of specific outer continental shelf oil and gas tracts.²⁰⁵ The present lease procedure fails to provide information to the state concerning platform location and size, pipeline requirements, processing facilities and transportation requirements. Yet, this information is necessary to the determination of coastal impacts from the various sites under consideration for oil and gas development.²⁰⁶

The correction conspicuously needed is a restructuring of the lease process to first provide coastal impact information,²⁰⁷ and then to use the evaluation of the impacts involved in determining the feasibility of developing specific oil tracts.²⁰⁸ The federal decision would then rest on solid projections of its effect on the coastal region, as determined by the state.²⁰⁹ Essentially, this would reverse the existing decision-making process. This change would eliminate the present necessity for the state to ameliorate whatever damages would occur from offshore activity that had already received federal authorization.²¹⁰

Prior to the actual awarding of production leases, exploration should be sufficiently complete to allow adequate preliminary evaluation of the availability and location of oil and gas resources.²¹¹ Thus, the federal goal of

204. See text accompanying note 54 *supra*.

205. Interior Department pre-lease activity should include substantial state participation, SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 3.

206. *Coastal Zone Impact*, *supra* note 51, at 127-28 (Testimony of Dr. Irwin A. White, Univ. of Oklahoma).

207. See SOUTHERN CALIFORNIA ANALYSIS, *supra* note 21, at 42.

208. This evaluation of impacts could be submitted as part of the resource evaluation done by the U.S. Geologic Survey, 43 C.F.R. §3301.2 (1976), to determine which offshore tracts to nominate for oil and gas leasing, 43 C.F.R. §3301.3 (1976).

209. CAL. PUB. RES. CODE §30262 delineates the factors the state will consider in determining the suitability of oil and gas development. See note 172 *supra*.

210. Coastal Zone Management Amendments of 1976, Pub. L. No. 94-370, §7, 90 Stat. 1020.

211. This information is necessary to the coastal zone planner since impacts will vary with the size of the field, number of wells, and overall offshore oil and gas production rate.

receiving full value for the resource would be fostered by more accurate estimates of the value of lease property. Additionally, the state can develop a valid coastal zone impact evaluation on the basis of statistically supportable projections of production levels.²¹² A shorter lead time to the commencement of exploratory drilling would occur by eliminating the prelease and lease phases of the outer continental shelf lease process.²¹³ With the use of Coastal Energy Impact Funding to develop the expertise to evaluate continental shelf data within the coastal state,²¹⁴ the previous use of dilatory tactics while examining environmental impact statements would be unnecessary.²¹⁵ Balanced California environmental and economic interests would then be available as an established coastal criteria affecting the calculus of the lease decisions.

By eliminating the present pre-exploration competitive bonus bid system,²¹⁶ industry would be freed from the burden of speculative expenditures. To further reduce costs, developers would be encouraged to consolidate exploratory projects. Appropriate compensation from the sale of production leases could be made to those companies that participated in the exploratory program, but were not permitted to produce.

The use of the Coastal Energy Impact Fund to establish a coastal zone criteria for offshore development would prevent the unavoidable losses in the coastal zone which require further funds to compensate for damages.²¹⁷ The present lack of coordination with federal agencies, coupled with the reluctance of the Department of Interior to allow increased state participation in lease decisions, does not appear to warrant the expectation of a warm reception for this type of cooperative federalism.²¹⁸ The state must, therefore, aggressively pursue a foothold in the decision-making process, but carefully avoid dilatory tactics that conflict with the lease authority and merely postpone a decision to be eventually made at the national level.²¹⁹

B. State Action within the Present Lease Framework

With the continued commitment of the federal government to outer continental shelf development, coastal impacts cannot be held in abeyance until the Department of Interior can be convinced to change its leasing procedure. Until that time the state must employ its federally recognized

212. CALIFORNIA COASTAL PLAN, *supra* note 35, at 123.

213. *Id.* at 119.

214. Research grants covering up to 80 percent of the research and training costs for coastal zone management are available under the Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §9, 90 Stat. 1029.

215. For examples of state dilatory tactics, see note 125 *supra*.

216. 43 C.F.R. §3302 (1976).

217. 42 Fed. Reg. 1182 (1977) (to be codified in 15 C.F.R. §§931.70-931.85).

218. Where state and federal efforts are coordinated in a complimentary framework for a common purpose, there is less chance of the state confronting federal preemption. *New York State Dept. of Social Services v. Dublino*, 413 U.S. 405, 421 (1973).

219. Hershman, *Achieving Federal-State Coordination in Coastal Resources Management* 16 WM. & MARY L. REV. 747, 750 (1975).

coastal management responsibility to prevent irreversible damage to the coastal zone. Under the California Act, permits are required for the coastal support facilities necessary to offshore development.²²⁰ These support facilities include the staging areas, port and construction facilities, and are not limited to post-production pipelines or tanker transportation.

The California Coastal Commission should promulgate regulations²²¹ requiring industry to submit offshore development data²²² prior to commencement of operations whenever that activity will cause coastal impacts.²²³ Denial of permits for onshore support facilities by finding that the proposed facility is inconsistent with the coastal plan²²⁴ whenever data is not provided would ensure compliance with this requirement. If necessary, enforcement procedures may be augmented by finding onshore impacts, where preliminary development data is not provided, to be a knowing violation of the California Act, giving rise to exemplary damages.²²⁵

Any requirement for, and evaluation of, offshore data by the state must be directed at the impacts on the coastal zone in order to remain within the intent of the federal Coastal Zone Management Act, and thus avoid conflict with the Interior Department's lease authority.²²⁶ The state regulation would draw from the petroleum industry the information that is now not available until the pre-production offshore development phase; that is, after leases have been awarded for specific tracts.²²⁷ In effect, such a requirement would force California into the lease process by requiring industry estimates of offshore development information prior to leasing, or risk being precluded from developing the necessary onshore support facilities. Then, with the 1976 federal amendment²²⁸ as support, the Interior Department's lease decisions would be required to be consistent with the California Coastal Commission findings as to the effect of those offshore tract developments on the coastal zone.²²⁹ The federal option of overriding the state coastal plan on the basis that lease impacts on the coastal zone are unforeseen circumstances²³⁰ of offshore development is negated by Congress' explicit recognition of the impacts of offshore oil development on the coastal region.²³¹ However, the potential power to override the coastal plan on the basis of the

220. CAL. PUB. RES. CODE §30601.

221. CAL. PUB. RES. CODE §30333.

222. See text accompanying note 57 *supra*.

223. Cf. Jackson, *Rational Development of Outer Continental Shelf Oil and Gas*, 54 ORE. L. REV. 567, 577-78 (1975). Jackson discusses legislation to require industry data be submitted to the Secretary of Interior.

224. CAL. PUB. RES. CODE §25526.

225. Exemplary damages for knowing violation of the California Coastal Act are provided for in CAL. PUB. RES. CODE §30822.

226. 43 U.S.C. §1334 (1970).

227. See text accompanying notes 63-64 *supra*.

228. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §3, 90 Stat. 1013.

229. 16 U.S.C. §1456(c) (Supp. III 1973) (amended 1976).

230. 41 Fed. Reg. 42880 (1976).

231. H.C. REP. NO. 1298, 94th Cong., 2d Sess. 23-24, *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 2772, 2773.

national interest in energy resource development is more subtle, and can be avoided by California only through the actual functioning of the state commission. The California Coastal Commission must show an adequate consideration for energy development²³² rather than an environmentalist bias against oil and gas production.²³³

A dispute at this point between the requirements of the California Act and the national interest as argued by the Department of Interior, would place the problem into the mediation process²³⁴ developed by the Secretary of Commerce. The federal agency's apparent inability to accept perceived limitations of its authority by state action would presumably result in a finding by the Commerce Department of an overriding national interest in oil development.²³⁵ Alternatively, a unilateral determination²³⁶ could be made by the Secretary of Commerce that the offshore program is consistent with the Coastal Zone Management Act and thus override the California objections. California then would have ten days to reject this determination and resort to litigation.²³⁷

The fundamental issue involved in litigation regarding the validity of California coastal regulations that impinge upon federal offshore leasing is the authority of California to control activity in the federal jurisdiction. In upholding the Florida Oil Spill Prevention and Pollution Control Act²³⁸ in *Askew v. American Waterways Operators, Inc.*,²³⁹ the Supreme Court found that the Federal Water Quality Improvement Act²⁴⁰ presupposes coordinated federal/state action to deal with pollution, and, therefore, allows state regulation.²⁴¹ *Askew* applied to the exercise of state police power within territorial waters,²⁴² but, by analogy, supports California regulation of activities affecting the coast under the federal Coastal Zone Management Act as amended in 1976. The amended act explicitly recognizes coordination of offshore oil development with the state coastal management plan.²⁴³

The Ninth Circuit Court of Appeals found in *California v. The Environmental Protection Agency*²⁴⁴ that federal agencies were not exempt from state permit requirements developed under the Federal Water Pollution

232. Coastal Zone Management Amendments of 1976, Pub. L. No. 94-370, §5, 90 Stat. 1018.

233. The California coastal program has already been criticized by Shiraz Kadeth of Pacific and Electric Co. as prohibiting development. Coastal Zone Management Newsletter, Vol. 7, No. 52, Dec. 29, 1976.

234. 15 C.F.R. §925.6 (1976).

235. See text accompanying notes 47-49 *supra*.

236. 41 Fed. Reg. 42890 (1976) (to be codified in 15 C.F.R. §921.7(b)(3)).

237. 41 Fed. Reg. 42888 (1976) (to be codified on 15 C.F.R. §921.5(m)).

238. FLA. STAT. ANN. §378.011 *et seq.* (West).

239. 411 U.S. 325 (1973).

240. 33 U.S.C. §1161 *et seq.* (1970).

241. 411 U.S. at 329.

242. *Id.* at 337.

243. See text accompanying notes 149-150 *supra*.

244. 511 F.2d 963 (1975), *cert. granted*, 95 S. Ct. 2655 (1975).

Control Act.²⁴⁵ The Supreme Court overruled this decision in June of 1976,²⁴⁶ but did so on the basis that the federal government is subject to state regulation "only when and to the extent that congressional authorization is clear and unambiguous."²⁴⁷ It is indisputable that Congress clearly submitted federal agencies to state regulation in the Coastal Zone Management Act,²⁴⁸ and recognized the correlation between oil and gas development on the continental shelf and that management program.²⁴⁹ The logical extension of *Askew* and *California v. The Environmental Protection Agency*, with the impetus of the 1976 federal amendment, is to uphold state enforcement of its participation in leasing decisions. State influence in outer continental shelf development would occur through regulations soundly based on the California interest in coastal zone management, and directed towards ensuring the consistency of federal decisions that affect the coastal zone.²⁵⁰

CONCLUSION

California's influence in decisions to develop oil and gas in the outer continental shelf adjacent to its coast requires a balance of economic, social, cultural and environmental policies. The California coastal program must be more broadly based and therefore more complex than merely an environmentalist program to preserve the coast. Development is not only foreseeable, but is also desirable to stimulate economic growth and provide the resources necessary to continue technological advances. Sufficient legislation²⁵¹ already exists to advance the orderly development of coastal resources and to provide for consideration of the competing and varied interests in the coastal region.

The advantage of coordinating federal offshore leasing with the state coastal plan is the benefit to each program. The coastal state can depend upon having sufficient information available regarding onshore impacts from offshore development to efficiently plan its coastal land use. Energy development programs can be pursued without adversely undermining other coastal resources. The state should become the on-scene repository of

245. 33 U.S.C. §§1251-1376 (Supp. III 1972).

246. 426 U.S. 200 (1976).

247. 426 U.S. 200, 211 (1976).

248. 16 U.S.C. §1456 (Supp. III 1973) (amended 1976).

249. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, §3, 90 Stat. 1013.

250. See Breedan, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107, 1121-22 (1976), who finds it clear that coastal land and water use controls are rationally related to the state interest and, therefore, because of the favored position of coastal control in the federal Coastal Zone Management Act, not preempted.

251. The proposed Federal Energy Agency would further delay oil and gas development while the new bureaucracy establishes its procedures. By submitting the major predevelopment decision making to the individual coastal state, only those procedures locally necessary for coastal zone protection would be required. The coastal developer knows with whom he must deal from the outset, and is closer to the political process of the state to prevent untoward encumbrances or delay. Excessive, rather than "insufficient," legislation is the general rule today.

information concerning the development potential of offshore tracts, enabling the Department of Interior to make more efficient and profitable resource development allocations. Industry productivity would be enhanced by providing the developer with an assessment of his obligations prior to costly offshore operations, while exploration would be promoted by eliminating the advance investment now required with speculative lease bids. Of greatest significance to the federal energy program is the elimination of the possibility that the state will advance dilatory measures to prevent offshore oil and gas development while the coastal zone effects are determined.

By taking the initiative via regulations designed to elicit offshore development information, California can establish a reasonable coastal zone management plan to absorb the attendant coastal zone impacts. This management plan would then serve as the basis for measuring the consistency of federal offshore lease decisions. Thus, California should endeavor to affect an accommodation of coastal zone and offshore oil and gas interests through the application of the California Coastal Act of 1976.

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