

*Moving Ahead on*

# OCEAN GOVERNANCE

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*Roundtable Discussions*

*The Ocean Governance Study Group*



Analyses for Improved, Integrated  
Governance of Oceans and Coasts

*University of Delaware  
Lewes, Delaware  
April 9-13*

**1994**

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*Moving Ahead on*  
**OCEAN GOVERNANCE**

**ROUNDTABLE SUMMARIES**

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DISCUSSIONS AND SPECIAL ADDRESSES FROM THE 1994 OCEAN GOVERNANCE  
STUDY GROUP CONFERENCE HELD AT THE  
UNIVERSITY OF DELAWARE, LEWES, DELAWARE, APRIL 9-13, 1994

Edited by  
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University of Delaware

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and the Center for the Study of Marine Policy, University of Delaware

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## *Moving Ahead on Ocean Governance—Roundtable Summaries*

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More generally, support for the organizational and research activities of the Ocean Governance Study Group has been provided since 1991 by the Center for the Study of Marine Policy in the Graduate College of Marine Studies, University of Delaware (which serves as the Secretariat of the Study Group); the Delaware Sea Grant College Program; the William S. Richardson School of Law, University of Hawaii; the Hawaii Sea Grant College Program; the Boalt Hall School of Law, University of California, Berkeley; the California Sea Grant College Program; and the University of Massachusetts. The confidence and support of all these institutions and agencies are gratefully acknowledged. Special thanks are due to Dean Carolyn Thoroughgood, Graduate College of Marine Studies and Director of the Delaware Sea Grant College Program and to Richard Tarpley, Executive Director, Delaware Sea Grant College Program, for their support and encouragement. Dr. James J. Sullivan, Director of the California Sea Grant College program and Dr. Jack Davidson, Director of the Hawaii Sea Grant College Program have given invaluable personal support to the OGSG research effort from its inception.

Travel of participants to OGSG conferences and support of their individual and collaborative research projects has also been provided by the following Sea Grant Programs: California, Delaware, Florida, Hawaii, Louisiana, Maine, Massachusetts, Mississippi/Alabama, North Carolina, Oregon, Rhode Island, Texas, and Washington; these contributions are acknowledged with sincere thanks. Travel support of participants by the states of Oregon and Hawaii, the London School of Economics and Political Science, the University of California, Berkeley, the University of Maryland, the University of Massachusetts, the University of Southern California, the University of Washington, Pacific Basin Development Council, Western Governors' Association, the National Oceanic and Atmospheric Administration (National Ocean Service, National Marine Fisheries Service, Office of Ocean and Coastal Resource Management, Office of Resource Conservation and Assessment, Marine Sanctuaries and Reserves Division, and Office of Sustainable Development), Environmental Protection Agency, the Maritime Administration, the Department of State, U.S. Congress, the National Research Council, Coastal America, Department of Interior, Delaware Geological Survey, Delaware Department of Natural Resources and Environmental Control, Coastal States Organization, Ocean Advocates, Council on Ocean Law, National Fisheries Institute, Center for Marine Conservation, World Wildlife Fund is also gratefully acknowledged.

Thanks are owed to various federal, state-based, and intergovernmental organizations and agencies that have lent strong moral support and given specific advice in the course of OGSG efforts to address current issues in national and international oceans policies. Among them are: the Office of Ocean and Coastal Resource Management, NOAA, the Coastal States Organization, the Western Legislative Conference, the Western Governors' Association, the Pacific Basin Development Council and representatives from the Governments of Guam and the Commonwealth of the Northern Mariana Islands, the Hawaii Governor's Office of State Planning, and the Marine Board of the National Research Council.

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At the University of Delaware, special thanks are due to Professor Robert W. Knecht, member of the OGSG Steering Committee who has been involved creatively with all aspects of this undertaking, to Catherine Johnston, Office Manager of the Center for the Study of Marine Policy for her organizational assistance, and to Pam Donnelly of the Delaware Sea Grant College Program for her invaluable help in handling publication details. Many thanks are due, too, to the other colleagues on the OGSG Steering Committee, Harry N. Scheiber and David D. Caron, M. Casey Jarman and Jon M. Van Dyke, and Jack Archer and Richard Delaney for their continuing assistance and support.

Last, it is important to recognize that numerous members of the Study Group and its policy advisors, international advisors, and network members have most generously given of their financial as well as their intellectual resources on behalf of this common enterprise.

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*Purpose of this volume*

This volume is a companion publication to Moving Ahead on Ocean Governance: Summaries of Papers (1994) which contains summaries of some thirty papers presented at the third annual symposium of the Ocean Governance Study Group held at the University of Delaware, Lewes, Delaware, April 9 to 13, 1994.

The present volume brings together a number of special oral addresses made during the conference and materials related to two "Roundtable Discussions" that took place at the Lewes meeting: one on ways of redressing the current policy stalemates in offshore oil and gas development, the other on the potential enhancement of the ocean management dimension of the Coastal Zone Management Act.

A number of the papers presented at the Lewes conference are also being published in a special issue of Ocean and Coastal Management, as noted in the last section of this volume.

## Information About...

# The Ocean Governance Study Group

*The Ocean Governance Study Group was created in 1991 to reexamine the status of ocean governance in the United States and to develop management options for achieving responsible stewardship of our oceans and coasts. The Study Group is composed of 31 ocean policy experts from around the country; is led by an eight-person Steering Committee; and is assisted in its work by Policy Advisors drawn from Congress, the Administration, state governments, regional organizations, and national interest groups representing industry and environmental concerns, International advisors, and other interested individuals.*

*The basic premise of the Study Group is that to achieve full benefits for the American public from its oceans and coasts and to protect the choices of future generations, we must develop a new vision of ocean governance—a vision which looks at our ocean as a whole and not solely at its discrete parts. As other nations around the world, the U.S. must move toward more integrated, multipurpose, and area-based management of its ocean and coasts. The emphasis of the Group is on governance—the collective array of strategies, policies, and practices of national, state, and local governments, nongovernmental organizations, and the private sector to guide the use of ocean and coastal resources and space under national jurisdiction, to the edge of the 200-mile Exclusive Economic Zone.*

*In loose alliance, the scholars involved in the Study Group are involved in analytical studies of current and past governance practice, implications of forthcoming trends, development of policy options. The objective of the Group is to produce practical recommendations in the near- and medium-term guided by a long-range vision. The initial work program of the Study Group is outlined in its 1992 report Ocean Governance: A New Vision.*

*The Ocean Governance Study Group invites policy makers, state and federal ocean and coastal managers, other scholars, and business and environmental groups to join in the collective search for improved governance of the nation's oceans and coasts.*

*The Ocean Governance Study Group is led by an eight-person Steering Committee:*

*Biliana Cicin-Sain and Robert W. Knecht, University of Delaware;  
David D. Caron and Harry N. Scheiber, University of California at Berkeley;  
Jon M. Van Dyke and M. Casey Jarman, University of Hawaii;  
Jack H. Archer and Richard Delaney, University of Massachusetts, Boston.*

*The Center for the Study of Marine Policy at the University of Delaware has served as the Secretariat of The Ocean Governance Study Group since its inception in 1991, with the financial support of the Delaware Sea Grant College Program. The work of The Ocean Governance Study Group has been primarily supported by the institutions represented on the Steering Committee and by the following Sea Grant Programs: California, Delaware, Florida, Hawaii, Louisiana, Maine, Massachusetts, Mississippi-Alabama, North Carolina, Oregon, Rhode Island, Texas, and Washington. All of these contributions are gratefully acknowledged.*

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Jon W. Van Dyke,  
University of Hawaii

Jack Archer and  
Richard Delaney,  
University of Massachusetts,  
Boston

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# **CONFERENCE PROGRAM**

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*Conference Program*

THE 3rd ANNUAL SYMPOSIUM OF  
THE OCEAN GOVERNANCE STUDY GROUP

**MOVING AHEAD ON OCEAN GOVERNANCE:  
PRACTICAL APPLICATIONS GUIDED BY  
LONG-RANGE VISION**

APRIL 9-12, 1994  
LEWES, DELAWARE

The purpose of the 1994 meeting was to examine a range of issues associated with attaining sustainable development of the U.S. ocean and to seek practical solutions to the nation's ocean governance problems guided by a long-term vision, taking into account the interests of future generations and growing international interdependence. The meeting involved a mix of scholars and practitioners in the field.

**SUNDAY, APRIL 10, 1994**

**WELCOME AND INTRODUCTION**

**Biliana Cicin-Sain and Robert Knecht**, *Symposium Co-Chairs, Center for the Study of Marine Policy, University of Delaware*

**UNIVERSITY WELCOME**

**Carolyn Thoroughgood**, *Dean, Graduate College of Marine Studies, University of Delaware*

**Charles Epifanio**, *Associate Dean, Lewes campus host*

**Richard Tarpley**, *Executive Director, Delaware Sea Grant College Program*

**SESSION 1**

**DEVELOPING A NATIONAL STRATEGY FOR  
SUSTAINABLE DEVELOPMENT OF THE U.S. OCEAN**

*Goals, critical elements of a national ocean strategy, design of a code of stewardship ethics to govern use of the U.S. ocean. What can be done now to move toward area-based, multiple use ocean management?*

**Chair: John J. Carey**, *Deputy Associate Under Secretary, Department of Commerce, National Oceanic and Atmospheric Administration*

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**Presentations:**

**Biliana Cicin-Sain**, *Co-Director, Center for the Study of Marine Policy, University of Delaware,*  
**"A Framework for a National Ocean Strategy"**

**Jon M. Van Dyke**, *Professor, School of Law, University of Hawaii,*  
**"Putting Into Law a Code of Stewardship Ethics for Governing Activities in the U.S. Ocean"**

**John Bullard**, *Director, Sustainable Development Office, NOAA,*  
**"The Clinton Administration's View of Sustainable Development"**

**Charles Bookman**, *Ex. Dir., Marine Board, National Research Council,*  
**"Formulation of a National Ocean Strategy for the United States: A Proposal for an Initiative by the National Research Council"**

**Mary Barber**, *Science and Policy Associates, Washington, D.C.,*  
**"The Formation of a National Ocean Coalition"**

**Joan B. Yim**, *Deputy Administrator, U.S. Maritime Administration*  
**"Making Integrated National Policy: The Difficulties and the Benefits"**

**Robert W. Knecht**, *Professor, University of Delaware*  
**"A Consensual Approach to a National Ocean Strategy: How Far Can It Go?"**

**Commentaries:**

**Penny Dalton**, *Senior Staff, Senate Committee on Commerce, Science, and Transportation*

**Richard Gutting**, *VP, Government Relations, National Fisheries Institute*

**Lew Alexander**, *Professor Emeritus and Founder, Marine Affairs Program, University of Rhode Island*

**SESSION 2**

**INTERNATIONAL FACTORS AFFECTING OCEAN AND COASTAL GOVERNANCE**  
*Coming into force of the 1982 Law of the Sea Convention, post-UNCED implementation, international trade issues*

**Chair: Robert L. Friedheim**, *Director, School of International Relations, University of Southern California*

**Presentations:**

**Boyce Thorne-Miller**, *Director of Science, Ocean Advocates,*  
**"The Precautionary Approach in International Agreements on the Marine Environment"**

**Maureen Walker**, *Chief, Div. of Marine Law and Policy, Dept. of State,*  
**"U.S. Perspectives on Current International Negotiations"**

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**David D. Caron**, *Professor, Boalt Hall School of Law,  
University of California, Berkeley,*

**"The International Whaling Commission (IWC) and the North Atlantic Marine Mammal Control Organization (NAMMCO): The Institutional Risks of Coerced 'Greening' in a Consensual World"**

**Jon L. Jacobson**, *Professor of Law and Co-Director, Ocean and Coastal Law Center,  
University of Oregon,*

**"Implications for U.S. Coastal States of Potential U.S. Accession to the 1982 U.N. Convention on the Law of the Sea"**

**William T. Burke**, *Professor of Law, University of Washington School of  
Law and School of Marine Affairs,*

**"Perspectives on the United Nations Conference on Straddling and Highly Migratory Fishery Stocks"**

**Richard McLaughlin**, *Director, Mississippi-Alabama Sea Grant Legal  
Program, University of Mississippi Law Center*

**"Dispute Resolution in UNCLOS and the Loss of U.S. Trade Sanctions to Protect Dolphins, Whales, Sea Turtles, and Other Marine Living Resources"**

**Commentaries:**

**Gerard Mangone**, *H. Rodney Sharp University Research Professor,  
University of Delaware*

**Ronald P. Barston**, *Director, Marine Policy Programme, The London  
School of Economics and Political Science, London*

**Charles Higginson**, *Executive Director, Council on Ocean Law,  
Washington, D.C.*

**DINNER REMARKS**

**Honorable Christophe Tulou**, *Secretary, Delaware Department of Natural Resources and  
Environmental Control*

**MONDAY APRIL 11, 1994**

**SESSION 3**

**ASSESSMENT OF STATE OCEAN GOVERNANCE INITIATIVES**

*As is well known, a number of the coastal states have, in recent years taken initiatives to plan for and to manage ocean uses in both state waters and beyond. They have undertaken such initiatives both as single states and regionally, in association with neighboring states. Building on previous work (see, for example, special issue on ocean management in the coastal states in Coastal Management, 1991), this panel assesses what the states have done in ocean governance both individually and regionally, what difference have these initiatives made/will make? what has been the role of the federal government in these initiatives? what future directions are desirable both on the part of the coastal states and of the federal government?*

**Chair:** *W. Stanley Wilson, Assistant Administrator, National Ocean Service, NOAA*

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*Presentations:*

**Robert J. Bailey**, *Ocean Program Administrator, State of Oregon*  
**"Notes from the Field: Implications of Oregon's Ocean Program"**

**Brian Baird**, *Resources Agency, State of California*,  
**"California's Experience with the California Ocean Resources Management Act"**

**Michael K. Orbach**, *Professor, Duke University*,  
**"North Carolina's Ocean and Coastal Program: A Study in State-Federal Dynamics"**

**Dick Poirier**, *Planning Program Manager, Office of State Planning, Hawaii*,  
**"Ocean Resources Management in Hawaii: An Update"**

**Jerry B. Norris**, *Executive Director, Pacific Basin Development Council*  
**"The Special Ocean Governance Situation of the Island States: Hawaii and the American Flag Pacific Islands"**

**Marc J. Hershman**, *Director, School of Marine Affairs, University of Washington*,  
**"Ocean Management Policies and the Shift of Power to Subnational Units: Examples from the United States"**

*Commentaries:*

**Richard G. Hildreth**, *Professor and Co-Director, Ocean and Coastal Law Center, University of Oregon*

**Harry N. Scheiber**, *Stefan Riesenfeld Professor and Associate Dean, Boalt Hall School of Law, University of California, Berkeley*

**SESSION 4**

**ISSUES IN THE MANAGEMENT OF LIVING MARINE RESOURCES: THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT (MFCMA), THE MARINE MAMMAL PROTECTION ACT (MMPA) AND THE ENDANGERED SPECIES ACT (ESA)**

*This panel focuses on issues related to the reauthorization of these three major laws, with special attention on the interrelationships among them, and on options for reform in the current fisheries management regime*

**Chair:** *Nancy Foster, Deputy Director, National Marine Fisheries Service*

*Presentations:*

**Harry N. Scheiber**, *Stefan Riesenfeld Professor, Boalt Hall School of Law, University of California, Berkeley*, and **Chris Carr**, *Boalt Hall School of Law*  
**"A Historical Perspective on the Magnuson Act"**

**Richard G. Hildreth**, *Professor and Co-Director, Ocean and Coastal Law Center, University of Oregon*, and **M. Casey Jarman**, *Professor, William H. Richardson School of Law, University of Hawaii*,  
**"Incidental Take in Commercial Fisheries: Legislative and Regulatory Interaction"**

**Lauriston R. King**, *Dept. of Political Science, Texas A & M University*  
**"The Changing Political Environment for Fisheries: Options for Reform of the Magnuson Act"**

**Tim Eichenberg**, *Legal Counsel, Center for Marine Conservation,*  
**"The Endangered Species Act and 'Takings'"**

**Bonnie J. McCay**, *Professor, Department of Human Ecology, Cook College, Rutgers University*  
**"Privatization in Fisheries: Some Lessons From Experiences in the U.S. and Canada"**

**Commentaries:**

**Richard Gutting**, *VP, Government Relations, National Fisheries Institute*

**Earl Comstock**, *Professional Staff, Office of U.S. Senator Ted Stevens*

**Lee G. Anderson**, *Professor and Program Director, Marine Policy Program, University of Delaware*

**LUNCHEON REMARKS**

**Admiral James Watkins**, *President, Joint Oceanographic Institutions, former Secretary of Energy*  
**"A National Strategy for the Ocean Sciences"**

**SESSION 5**

**MAKING GOVERNMENT WORK BETTER: TOWARD MORE INTEGRATED AND MULTIPLE-USE COASTAL AND OCEAN MANAGEMENT**

*Challenges, approaches, methods, and comparative experiences in achieving multiple use management and greater interagency and intergovernmental cooperation*

**Chair: William Eichbaum**, *Vice President, World Wildlife Fund*

**Presentations:**

**Walter F. Clark**, *Staff Attorney, North Carolina State University Sea Grant Program,*  
**"Water-Use Planning and Zoning for the Coastal Ocean"**

**Alison Rieser**, *Professor of Law and Director, Marine Law Institute, University of Maine School of Law*  
**"Overcoming the 'Tyranny of Small Decisions': Managing Cumulative Effects in Coastal Decisionmaking"**

**Richard H. Burroughs**, *Professor, Marine Affairs Program, University of Rhode Island,*  
**"Non-point Source Pollution: Top Down or Bottom Up Controls"**

**Virginia Tippie**, *Director, Coastal America,* and **Norman T. Edwards**, *Deputy Director, Coastal America*  
**"Bringing the Agencies Together: The Coastal America Experience"**

**Mark Imperial**, *Marine Resources Specialist, Rhode Island Coastal Resources Management Council*, and **Timothy M. Hennessey**, *Professor of Political Science, University of Rhode Island*,  
**"Integration and Implementation: An Assessment of § 6217 of the 1990 Coastal Zone Act Reauthorization Amendments"**

**Commentaries:**

**Marian Mlay**, *Director, Ocean and Coastal Protection Division, EPA*

**George Parsons**, *Associate Professor, Marine Policy Program, University of Delaware*

**SESSION 6**

**WHAT CAN BE DONE TO FIX THE OFFSHORE OIL AND GAS PROGRAM? A  
ROUNDTABLE DISCUSSION**

*Of all U.S. programs dealing with the coastal ocean, the Outer Continental Shelf program has perhaps been the most controversial. It is also a program which can be characterized as in a state of "policy stalemate," in a kind of "standoff" situation which has pitted developers, environmentalists, government interests, and citizens in adversarial positions. The roundtable explored practical measures that could be implemented in the near and medium term future to redress the policy stalemate in the OCS program. One background paper (by Professor Lester) was distributed ahead of the meeting and presented at the symposium. All other roundtable participants were asked to provide a list of proposed "program fixes" and circulate these ahead of the meeting. Roundtable discussion was aimed at seeking a common ground among various positions.*

**Chair: Robert Armstrong**, *Assistant Secretary for Land, Water, U.S. Department of Interior*

**Presentation:**

**Charles Lester**, *Assistant Professor, Department of Political Science, University of Colorado, Boulder*,  
**"Rediscovering the Public Interest in the Outer Continental Shelf Lands"**

**Roundtable Participants:**

**Robert R. Jordan**, *Dir. and State Geologist, Delaware Geological Survey, (Chair, DOI/OCS Policy Committee)*

**Lisa Speer**, *Senior Policy Analyst, Natural Resources Defense Council*

**John Peschke**, *Independent Consultant, formerly Offshore Policy Coordinator, American Petroleum Institute*

**Thomas R. Kitsos**, *Chief Counsel, House Committee on Merchant Marine and Fisheries*

**Gary Magnuson**, *NOAA (DOI/OCS Policy Committee)*

**Jack Archer**, *University of Massachusetts*

**Donna Christie**, *Florida State University*

**Biliana Cicin-Sain**, *University of Delaware (DOI/OCS Scientific Committee)*

Robert Knecht, *University of Delaware*

David Slade, *Director, Coastal States Organization*

Don Boesch, *President, Center for Estuarine and Environmental Studies*

Richard Hildreth, *Professor of Law, University of Oregon*

Michael K. Orbach, *Chair, Marine Affairs Council, State of North Carolina*

#### DINNER REMARKS

Thomas R. Kitsos, *Chief Counsel, House Committee on Merchant Marine and Fisheries*

**SUNDAY, APRIL 12, 1994**

#### SESSION 7

#### MARINE PROTECTED AREAS AND OCEAN GOVERNANCE

*This session examined a number of the major experiences underway and proposed in managing large areas of the ocean as marine protected areas, focusing, in particular, on the use of innovative methodologies for multiple use management [such as zoning]. A major focus of the panel was to explore the linkages between marine protected areas and other forms of ocean governance in areas of national jurisdiction as well as in the high seas.*

*Chair: Francesca Cava, Chief, Sanctuaries and Reserves Division, NOAA*

#### *Presentations:*

**James W. Rote**, *Scientific Advisor, Office of Ocean and Coastal Resource Management, NOAA,*  
**"An Integrated Process for Developing a Water Quality Protection Plan for the Monterey Bay Area"**

**Maxine McCloskey**, *Member, Program Policy Committee, Defenders of Wildlife, and Vice-Chair, National Marine Committee, Sierra Club,*  
**"Protected Areas on the High Seas, and the Case for Marine Wilderness"**

**Daniel Suman**, *Assistant Professor, Division of Marine Affairs, Rosenstiel School of Marine and Atmospheric Sciences, Univ. of Miami,*  
**"The Florida Keys National Marine Sanctuary: Federal and State Interactions"**

**Jack A. Sobel**, *Director, Habitat Conservation, Center for Marine Conservation,*  
**"The Role of Marine Protected Areas and Ocean Governance in Protecting Biodiversity"**

**Charles Ehler**, *Director, Office of Ocean Resources Conservation and Assessment, NOAA,*  
**"Innovative Approaches Being Tested in the Florida Keys National Marine Sanctuary"**

#### *Commentaries:*

**Jon M. Van Dyke**, *Professor, School of Law, University of Hawaii*

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**TOUR OF THE UNIVERSITY OF DELAWARE'S  
HUGH R. SHARP MARINE STUDIES CAMPUS, LEWES.**

**BOAT TOUR**

Tour of the Delaware Bay aboard the 425-ton DELRIVER, an oil spill recovery vessel operated by the Delaware Bay and River Cooperative (DBRC).

**SESSION 8**

**ADDING OCEAN MANAGEMENT TO COASTAL MANAGEMENT:  
OPPORTUNITIES FOR CHANGE UNDER THE 1995 REAUTHORIZATION OF THE  
COASTAL ZONE MANAGEMENT ACT: A ROUNDTABLE DISCUSSION**

*Adding a more explicit "ocean" dimension to the Coastal Zone Management Act and providing a clear understanding of state and federal responsibilities in different areas of the U.S. offshore realm (state waters, extended territorial sea, Exclusive Economic Zone) is one option for reform of the existing ocean governance system. The 1995 reauthorization of the Act offers, as well, opportunities for reform of other aspects, such as the creation of stronger links between science and policy in the coastal ocean, and between CZM state programs and federal ocean programs (e.g., fisheries management, sanctuaries, National Estuary Program). Roundtable participants were asked to prepare short papers on these issues and to circulate these prior to the meeting.*

*Chair: Jeff Benoit, Director, Office of Ocean and Coastal Resource Management, NOAA*

**Roundtable Participants:**

*David Slade, Director, Coastal States Organization*

*James Souby, Director, Western Governors' Association*

*Robert Knecht, University of Delaware*

*Jerry B. Norris, Executive Director, Pacific Basin Development Council*

*Marc Hershman, University of Washington*

*Marian Mlay, EPA*

*Don Scavia, Director, Coastal Ocean Program, NOAA*

*Donna Christie, Florida State University*

**CLOSING SESSION**

**WHERE DO WE GO FROM HERE? NEXT STEPS IN THE CRAFTING OF A NATIONAL  
OCEAN STRATEGY**

*Selected participants reviewed the major themes presented in the symposium sessions, and pointed to next steps for both policy analysis and policy actions. Open discussion by all participants.*

**SUMMARY REFLECTIONS**

*Honorable Russell W. Peterson, former Governor of Delaware*

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# **SPECIAL ADDRESSES**

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**A NATIONAL OCEAN STRATEGY  
FOR THE UNITED STATES:  
AN AGENDA FOR ACTION**

By

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Marine Board reports have documented the growing national interest in utilizing ocean resources and space, and the corresponding requirement for wise management and conservation. These interests span those who operate ships on the sea, explore for and develop energy and minerals in and under the ocean, hunt for seafood or farm the sea, are concerned with the protection of shorelines and the construction and maintenance of coastal works and waterways, conduct science and provide oceanographic services and technology, seek to protect marine species and habitats; it also includes the vast army that seeks recreation and aesthetic enjoyment on, in and by the sea.

The challenges confronting those who would use and conserve the sea are the same ones found in other sectors of the nation's economy: the need to maintain a strong technology base, conflict between development and conservation interests, the importance of human resources and the shift to a global economy. Yet, the oceans differ from other sectors because the uses of the ocean have not been allocated by individual ownership interests, and because the oceans comprise a truly global system.

Despite growing recognition of the importance of the marine sphere to the nation's well-being, the policy structure for managing this important region is hampered by conflicting, and frequently parochial, objectives. The United States lacks a national plan or strategy for managing marine resources and uses of ocean space. This has created a situation of economic stagnation and political gridlock in many areas of marine activities. Single-purpose ocean laws neglect the effects of one resource or use on other resources and the environment, fail to assess cumulative impacts or sustainability, and, therefore, cannot provide a basis for conflict resolution. Conflicts between those seeking to utilize ocean resources and space for economic objectives and those concerned with environmental preservation have, in the lack of an overarching policy, relied on litigation as the primary mechanism for establishing priorities for ocean utilization. Significant societal and economic costs are incurred through case-by-case adjudication and associated delay.

Inconsistencies among federal, state, and local agencies exercising regulatory jurisdiction over marine activities lead to confusing and costly processes for utilization of

ocean space. In the absence of specific new federal initiatives to establish an integrated planning and management regime for ocean resources, a number of coastal states have found it necessary to develop local or regional policies and plans for regulating or encouraging activities in the ocean that impinge on their territorial waters and/or their coasts. Furthermore, the present lack of defined national policy for the ocean leads to inconsistencies between domestic regulations and the requirements of international agreements in fisheries and other ocean activities with international ramifications.

All of these factors lead to the view among many in the ocean community that the time is near when the United States should formulate new, integrated strategies for the management of the nation's ocean region and resources. A number of tentative steps have already been taken. Others are actively being discussed and considered:

- The ocean science community has urged new partnerships among scientists, government and industry, and continues to seek a positive framework and practical venue to develop these.

- Congressional hearings have recently been held on ocean technology in the United States, and at least one bill is circulating that would authorize national investment in ocean technology and opportunities. Moreover, there seems to be a quorum of Senators interested or at least willing to work on such subjects.
- Marine technologists developed innovative ideas and objectives for public private partnerships dubbed Ocean Enterprise. A more recent version of the ideas has received some congressional attention and is called National Ocean Resources Development Company. Some of these technologists have been submitting proposals to ARPA's Technology Reinvestment Program.
- Washington advocates as diverse as oil and gas, fisheries, and marine conservation have recently joined together to define and launch a new ocean coalition to promote awareness of the oceans and to discuss, develop and advocate practical programs and activities for the oceans.

Definition of national goals and plans for the ocean is a critical prerequisite to both economic investment and to sound environmental stewardship over the ocean. A strategy that establishes a predictable legal regime for ocean utilization activities would allay fears of rampant and destructive development on the one hand, or of environmental gridlock over future development on the other. This would create the possibility of a more reasonable, less adversarial approach to resolving conflicts.

Strategies are needed that (1) define national objectives for ocean utilization and preservation and (2)

establish governance mechanisms to appropriately allocate and resolve conflicts among competing users of ocean resources and space. Some of the pressing issues that need to be examined in this new light are offshore oil development (Northern California), fragile ecosystem protection (the Florida Keys), concerns about pollution (Boston Harbor and others), and fisheries management (New England). Strategies can most effectively be developed with a regional focus and through partnerships among federal, state, and local agencies.

The study of these problems and issues is more than an interesting and fulfilling academic exercise. The problems are real, the rewards for addressing them many. Those of us who are interested should rally behind several practical objectives.

#### NEAR-TERM OBJECTIVES (TWO YEARS)

- Congressional Hearings:
  - Health of U.S. Ocean Industries. These hearings would comprise a survey of current trends and events that are likely to mold the future of the nation's ocean endeavors.
  - Ocean Opportunities. Initiatives would be examined that hold significant promise for economic growth or environmental protection.
  - Policy and Governance Issues. Gaps, deficiencies and constraints in the web of federal policies and governance arrangements would be identified, and alternatives would be suggested for addressing them.

- National Ocean Technology Investment. A congressional mandate for focused technology investment through public-private partnerships.
- NOAA Organic Act (a comprehensive statutory expression of the mission, organization, basic policies and powers of the nation's ocean agency).

#### LONG-TERM OBJECTIVES (SEVEN YEARS)

- National Ocean Policy Assessment (Stratton Redux)
- White House Coordination and Direction for Ocean Programs
- Apply Multiple-Use Management to the Oceans

My organization, the Marine Board, is interested in fostering these developments. We propose to help by promoting a national dialogue on the need for national ocean strategies. This could take the form of a forum or roundtable, an ongoing means for representatives of federal and state government, industry and academia to gather periodically for the identification and discussion of issues of mutual concern. A forum would provide timely transfer of information among proponents, users and planners in industry, state and federal government, and academia. The networking that would result could lead to collaborative efforts to address problems in a multimedia context, and would promote timely development of innovative solutions and implementation of results.

The organizers of this meeting have assembled a splendid program. Perhaps you will let some of the ideas that I have highlighted today color the impressions you take home from this meeting. This is the right venue to begin to discuss the objectives that I have proposed.

## BUILDING A STRATEGIC ACTION PLAN FOR OCEAN SCIENCE AND TECHNOLOGY

By  
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and

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I would like to thank the Ocean Governance Study Group for this special opportunity to share some thoughts with you this afternoon. As a recent addition to the academic oceanographic community and with the perspective of one who was a longtime grateful user of the products of basic research in ocean and marine science during my 40 years in the Navy, I understand the essential importance of this work for the future health and well being of the United States as well as the rest of the world.

Unfortunately, policymakers at all levels of government, as well as the public at large, do not necessarily share this view. In fact, in an era when government investment in any activity is very carefully scrutinized and weighed against other potential government expenditures, this lack of understanding of the role oceans play in our evolving world could be devastating.

The world has undergone staggering changes in the last few years:

- Economic might instead of

military power is rapidly emerging as the driving force for assuring our future national security and health as a nation;

- Potential threats of global warming and other climate changes, environmental blight and loss of biological diversity dominating the debate among those who set our national research agenda;
- An overwhelmed public educational system, which even in the most prosperous of schools, is rapidly losing its competitive edge in readying our children for a rapidly changing new world order;
- Possible consequences of doubling the world's population in another 50 years and facing regional famines of epic proportions as national struggle and fail to feed their own people.

With these and other powerful and dynamic factors at work, we must ask ourselves: Have we as a community done what we need to do to ensure the oceans, our most

abundant natural resource, are effectively engaged in bringing their incredible powers to bear on relevant societal concerns? Are we satisfied that, we as a community, are properly positioned as a cohesive unit to be as responsive as we could be to these issues? I think not.

Several years ago, as Secretary of Energy, I learned that the department of Energy has responsibility, by law, for the carbon dioxide inventory from sources generated by energy production. I was also a member of the Committee on Earth and Environmental Sciences (CEES) which was then a subcommittee of the White House office of science and technology policy which prepared budgets linking federal agencies in an attach on climate change issues. Members of the CEES were assigned to prepare for U.S. participation in the United Nations Conference on Environment and Development, held in 1992. It may surprise you that during the entire 18 months which led up to the Conference, marine and ocean issues were rarely mentioned. I was amazed at the general lack of interest by national and international policymakers on the role of the oceans. The loss of biological diversity was defined as rain forest depletion-global change defined as temperature changes in the atmosphere. Somehow, the overwhelming role the oceans play

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\*The Joint Oceanographic Institutions, Inc. includes:

- University of California, Scripps Institution of Oceanography
- Columbia University, Lamont-Doherty Earth Observatory
- University of Hawaii, School of Ocean and Earth Science and Technology
- University of Miami, Rosenstiel School of Marine and Atmospheric Science
- University of Rhode Island, Graduate School of Oceanography
- Texas A&M University, College of Geosciences and Maritime Studies
- University of Texas, Institute for Geophysics
- University of Washington, College of Ocean and Fishery Sciences
- Woods Hole Oceanographic Institution

as the thermal and geochemical flywheel of our planetary environment had not been communicated effectively to decisionmakers. In fact, if there were any voice at all for the oceans, it was faint at best.

On the other hand, the National Academy of Sciences understood this situation well. As a result, the Ocean Studies Board of the National Research Council produced a major report about one year ago entitled, "Oceanography in the Next Decade: Building New Partnerships." In his introductory letter, Dr. Frank Press pointed out that the United States has been the world leader in ocean research, both in basic studies and in research on the ocean's practical influence on human activities. This work was largely carried out by partnerships between federal agencies and universities, yet the world in which these partnerships were created and sustained is changing rapidly. Dr. Press alluded to the fact that, "Major advances in understanding the ocean and in development of technologies for observing it have set the stage for much greater research achievements." But Press forcefully made the case that the costs of realizing such achievements had to be placed in the context of today's competing demands on federal funds wherein resources necessary to obtain this understanding would be increasingly scarce. In view of this conflict of need versus resources, the Ocean Studies Board recommended deliberate rejuvenation of our federal-academic partnerships to achieve a new balance between funding reality and the essential vitality in basic and applied ocean research.

In their report, the National Research Council sought to galvanize the many public and private institutions that have direct respon-

sibility for the health and welfare of ocean sciences. This call to action was framed within the context of national research programs designed to address societal concerns, including global change, biodiversity, environmental quality, economic competitiveness, national security, energy, and coastal hazards. A sense of urgency about ocean research is precipitated, according to the report, by human impacts on oceanic systems and the need for better understanding of the ocean's role in affecting global chemical, hydrological, and climate processes—how ocean systems work in terms of their biology, chemistry, geology, and physics. A better understanding should allow more informed policy decisions at federal, state and local levels. "Oceanography in the next decade" points out that research results "must be communicated effectively to policy makers," a significant weakness today.

Academic ocean science institutions are also challenged by the Academy's report to:

- "Find additional ways to achieve cohesiveness...and a sense of common scientific direction" and
- "Individually or through consortia, take a greater responsibility for the health of the field, including nationally important programs."

Complementary to these challenges by the National Academy to Academia regarding ocean science, your Ocean Governance Study Group picked up the extremely important allied challenge of "linking scholarly and policy-oriented studies to the task of developing a new vision of ocean governance in this critical period of environmental and developmental challenges." As an expected

signatory to both international conventions emanating from the 1992 United Nations convention on environment and development as well as to the United Nations Law of the Sea Convention, further catalyzed by the seemingly catastrophic depletion of global ocean fisheries, the sense of urgency you expressed in your excellent reports of the last two years is right on the mark.

While you are attending to ocean governance, the ten joint oceanographic institutions (JOI), in concert with nearly 50 other marine science institutions that make up the Council on Ocean Affairs (COA), are posturing themselves to develop a coordinated action-oriented strategy to address challenges of the National Research Council in their report of last year. In fact, in October, 1993, the JOI Board of Governors passed a resolution which embraced most of the NRC's report and pledged to embark on the recommended rejuvenated partnership mechanism to help achieve the desired ocean science community-to-federal cohesion.

As one consequence of adopting this resolution, we have met with heads of institutions other than our ten in JOI, and with the University Corporation for Atmospheric Research representatives to identify a more effective bond and unified role for ocean and atmospheric research. At our Fifth Annual Ocean Studies Forum held in Washington, D.C., March 7-9, 1994, we brought the leadership of Congress and the executive branch together with top scientists and administrators in atmospheric and ocean sciences to help foster a more integrated effort between public and private sectors within the atmospheric and ocean science community and, in turn, develop

the more unified voice we are challenged to achieve from this vital segment of our scientific establishment.

As an outcome of the ocean forum, the membership agreed to: organize interested parties into an effective advocacy coalition to support basic science research and to discuss with key policymakers strategies to support and expand research and educational activities in atmospheric and ocean sciences. This organizational move is expected to be formalized and announced within the next few weeks.

As represented by the majority of the oceanographic institutions represented by both JOI and COA today, we have accepted a heightened responsibility to help make sure that oceans gain critical public attention at all levels. We believe that ocean science has been left out of too many current public policy debates or relegated to a minor role, when it should be at the forefront. We believe that most everything about the oceans is of strategic value to the public—I say this to those who want to engage in the ongoing "Strategic" vs. "Generic" research debate.

Moreover, it was at this Ocean Studies Forum that the latest report by the Ocean Studies Board entitled, "The Ocean's Role in Global Change," was aired for the first time and at a Congressional hearing before the full Senate Energy and Natural Resources Committee. My recent discussions with the leadership in Congress convinced me of their enthusiastic and renewed interest in the oceans' role in the National Strategic Program definition and execution, particularly in light of the national commitment to challenges set by the Rio and other conventions. Congressional advocates for ocean science re-

search view the OSB reports as valuable tools for educating their colleagues about ongoing federal programs which need broad based support to continue in time of tight budgets.

Now before talking more about some specifics in our federal-to-academic partnership initiative, let me highlight another cultural obstacle in our path which represents a serious challenge to oceanographers as a community and indeed to scientists in general. There was a recent and thoughtful article written by Dr. Roland Schmitt, Chairman of the Governing Board of the American Institute of Physics, in the January, 1994 edition of "Physics Today." His article was entitled, Public Support of Science—Searching for Harmony." In it he sites four reasons why the public supports science. The first, he said, is:

"The desire to answer enduring, fundamental questions about the universe, nature and humankind, that is, the search for truth; second is the lure of a frontier to be conquered, the desire to be pioneers in keeping with our American ancestry; third is the utility of science, a feature that distinguishes the search for truth; and fourth is the immediate political appeal of many scientific projects and programs, having to do with the direct benefits to be obtained from executing them."

But then, Schmitt goes on to point out the inversion of priorities in his list of four, depending on vantage point—i.e., research scientist or politician. He says:

"For scientists, understanding is at the top. The greatest heroes of science are the likes of Darwin and Einstein—individuals who brought new truth to the world. Second on the list is pioneering. Scientists like

the idea that they are the frontierspersons of today...utility, important to many scientists, nevertheless, typically comes in third. And, of course, special benefits to political constituents come in last. Scientists do not reject this last factor, but most find it either a necessary evil or a slight embarrassment.

For politicians, the order is exactly reversed. Political attractiveness comes out on top. Utility follows close behind. Pioneering comes third, and understanding comes last."

So, bringing these diametrically opposed priorities into acceptable harmony; positioning our research community to be more effective in response to the dynamics of the times; developing a cohesive and integrated ocean research strategic action plan to allow us to speak with a more coherent voice for maximum impact on a variety of critically important and emerging national programs—all of this is our formidable challenge.

Ultimately, funds flow from politicians to scientists and a lack of appreciation for this fact can result in a fundamental impasse in communications. For a community as dependent on federal funding as oceanography is, such an impasse during a time of shrinking resources can be disastrous. It behooves the scientific community to search for more effective channels of communication with our political representatives. Dr. Schmitt is not alone in holding this view. Every congressional chairperson I met with in the last six months made this same point to me.

So, where does JOI stand now in attempting to carry out the challenge to academia made the National Research Council that I described earlier? Well, after

working with a variety of federal agencies and the leadership from a number of JOI and non-JOI academic oceanographic institutions, we are on the verge of establishing the first of a series of these new action-oriented partnerships with the U.S. Navy. I transmitted our formal proposal to the Navy about one month ago and expect their formal approval any day. Similar proposals are under preparation for submission to NSF/NOAA/NASA and other federal agencies with ocean science and technology missions.

A series of round-table made up of appropriate federal agencies (about 12 in number) and counterpoint academic representatives will be established to help construct working groups. The purpose of the working groups will to fully develop and articulate the mutually beneficial themes involving research, education or technology or any combination of these. Working groups will then produce draft agreements among interested participants. Immediately upon completion, these draft agreements will be subject to critical review by all participants, with the goal of producing a final agreement for signatures by the appropriate representatives.

The working groups will address issues to be developed in the partnership effort to include, as a minimum those outlined in the National Research Council's report on "Oceanography in the Next Decade," that is:

- Interinstitutional communications
- Joint responsibility for basic science and stable support of researchers
- Sharing of academic and federal resources
- Development of instrumentation
- Smooth transfer from research activities to operational measurements
- Data management and exchange
  - But also, topics of broad interest to both the academic community and the Navy in particular, in addition to those listed above might include:
- Education—how do we optimize communication and liaison between the research community and all levels of the society that support that community?
- Declassification—is it possible to gain greater access to geosat altimetry data, sosus data, seafloor bathymetry data, full GPS capability? What benefits and risks would such access pose for the Navy?
- Facilities and platforms (include IUSS)—can the Navy utilize UNOLS vessels for research purposes? How might SOSUS costs be reduced while still preserving continuous data access and ensuring long-term maintenance of the installed arrays?
- Dual use of Navy assets in the commercial and civilian sector—are there unidentified, but important research uses of certain nuclear submarines, SOSUS and other unique assets for societally relevant programs?
- Standardization of observational protocols—how do we ensure that increasingly complex ocean science data sets being collected globally at great expense are compatible enough to be used by the maximum number of researchers?
- How can access to those expensive data be ensured over as long a period as possible?

Overall goals of this process, which will hopefully involve all the relevant federal agencies, will be eventual aggregation of these partnership agreements into the beginnings of an integrated national strategic action plan for ocean science and technology by midyear 1995.

In conclusion, I've tried to make the case that: now is a critical time for a more unified voice on the exciting science of the oceans, to be heard and understood in a variety of national and international fora; now is the time for cohesiveness among federal and private institutions in preparing the sheet music for that unified voice; now is the time to define ourselves in the academic oceanographic community into important strategic objectives being adopted by both the Clinton Administration and Congressional leadership before someone else defines our strategic ocean science and technology action plan for us; and now is the time to move ahead forcefully on ocean governance and, as you said in announcing this symposium, "To develop options for achieving responsible stewardship of our oceans and coasts." Obviously, no one entity can do all of these things alone. A unified ocean community and our supporting federal agencies, coupled with business, industry, legal profession and other interested parties working in partnership with us, can permit oceans to assume more effectively their rightful role in helping lead America more gracefully through this period of dynamic change in so many important national and international programs of great strategic value. We cannot do it without the kind of work you are doing in ocean governance nor can we do it without the will of all of our institutions to meet the challenges I enunciated. I am con-

vinced we have the will and that we are now embarked on a crusade which can, if we govern it right, enrich humankind with a new understanding of the hope that resides in the ocean surrounding us. If we stay the course together, our crusade will be victorious.

## PERSPECTIVES ON A NATURAL SCIENCE FRAMEWORK FOR OCEAN GOVERNANCE

By  
**Donald Scavia**

*Director, NOAA Coastal Ocean Office*

There has been significant recent progress on moving coastal governance upstream through promoting watershed approaches in reauthorizing both the Coastal Zone Management Act and the Clean Water Act. However, while the community seems to have accepted the fact that watersheds impact estuaries, bays, and coastal areas that concept has only recently begun to be applied to the interactions among our bays and estuaries and the coastal ocean. To deal effectively with "whole systems," as many of the emerging policies intend, we must be defined to include those waters and ecosystems that are in the coastal ocean.

While an expanded view of ecosystem, rather than jurisdictional boundaries is being applied in many cases on land, it has not received enough scientific and policy attention offshore. This movement of coastal governance to include offshore contexts is both necessary and desirable because, for example, the coastal ocean is not always only on the receiving end of actions in the watershed, bays, and estuaries. Coastal waters can, in fact, influence the quality and characteristic of water and ecosystems in bays and estuaries. In addition, many marine species alternately spend significant portions of their life cycle in estuarine and coastal waters. Managing positively for the part of a species' life that it spends in the ocean can be reversed by lack of proper management for the part of the life history spent in the estuary, and vice versa. Furthermore, species, pollutants, and ecosystems don't recognize society's boundaries,

which are primarily land-based. This move of ocean governance to offshore will challenge both the science and management that deals with the coastal ocean and require a more sophisticated degree of integration than has existed before.

### **A Natural Science Perspective**

Most of the attention of the Ocean Governance Study Group to date has been logically focused on institutional arrangements for and about ocean management and about the need for a clearly defined and developed social and political science agenda that sheds light on these arrangements. However, one must ask the following two questions: Is the state of the natural sciences up to the task of supporting ocean governance? Will ocean managers of the future be capable of applying the new class of real-time, dynamic, and integrated scientific information that will be created?

In addressing these two questions, there are several critical areas where the science framework must be developed to support the movement toward ocean governance: cumulative effects assessment, environmental valuation, defining coastal ocean ecosystems and impacts, and understanding and predicting coastal ocean dynamics.

*Cumulative Effects Assessment and Environmental Valuation.* To move toward ocean management, we will need to look more comprehensively at actions on the land. The very notion of ocean governance requires evaluating multiple impacts in multiple sectors. There

has been some recent movement toward evaluating the effects of multiple stressors on aquatic ecosystems. The development of integrating approaches is a necessary break with tradition that could provide coastal management with a new paradigm for the coming century. We have supported an important effort to document current methodology and mechanisms for management of cumulative coastal environmental impacts. This effort is nearing completion and when published should provide managers and policy makers with a documentation of extant methods.

However, extant methods are not likely to be sufficient to fully protect coastal and ocean sustainability. It is encouraging to note that the science community appears ready and eager to work on this problem. For example, we recently released a funding announcement designed to support only one or two efforts to develop innovative methods to assess and predict cumulative effects. In a break from tradition, the announcement required proposers to describe mechanisms that will be used to ensure interactions between managers and scientists so that scientific findings and model outputs will provide answers to resource management questions and needs. This single call generated over sixty preproposals from both the academic community and state and Federal resource management agencies — many in coalitions. The community is ready to respond. We intend to increase support for this direction of study.

Another area where greater efforts are needed to move toward ocean governance is defining and managing sustainable use. A critical tool for negotiating the difference between what coastal ecosystems can sustain and the many conflicting public needs is environmental valuation. Through the development and application of valuation techniques we can improve the criteria upon which public choices and expenditure decisions are made and, hopefully, maintain ocean resources for future generations within the context of economic growth. We have inaugurated a series of regional environmental valuation seminars to acquaint non-economist resource managers with currently available environmental valuation techniques within the context of comprehensive coastal management. The growing demand for these seminars is further indication of the need for more social and economic data and information in coastal decision making.

**Defining Coastal Ocean Ecosystems and Impacts.** Just as one of the very first tasks in dealing with non-point source pollution from watershed perspectives was to define the physical boundaries of those watersheds, a need exists to define the comparable parameters of ocean ecosystems. However, in this case, it must be done from two perspectives. We must be able to define both the area of the coastal ocean that contains ecosystems that are affected by watershed changes and the area of the coastal ocean that, in turn, effects adjacent bays or estuaries and their resources. These two definitions can be quite different and can, in fact, change with time. The task is made all the more difficult because, unlike in the watershed, you can't map coastal ecosystems once and assume they

will stay put; the fundamentals of ecosystems that were developed primarily for terrestrial systems are not necessarily transferable to coastal ocean. While some work has been done on defining what have become known as Large Marine Ecosystems, there needs to be more work done to define coastal ecosystems at finer scales that are more relevant to actions at the state level.

Once we move toward defining these ecosystems, we must then develop ways to effectively monitor, assess, and ultimately predict change derived from human impacts — both in the ocean and on land. Some work has also begun in this area. Recent assessments of the impact of the Mississippi River (both during the Great Flood of 1993 and during more normal conditions) on coastal oceanographic conditions have added significantly to our ability to understand impacts of "mega"-watershed changes on the coastal ocean. Additionally, some coastal fisheries ecosystem studies, such as the current study of menhaden as they traverse the inlets of the Outer Banks and evaluation of the complex species interactions on Georges Bank, are moving us toward ecosystem monitoring, assessment, and prediction. These are only three examples and there are likely others, but, unfortunately, there are probably not ten more like them. To move credibly into ocean management there must be more.

**Understanding and Predicting Coastal Ocean Dynamics.** Another condition that makes providing a natural science framework for ocean governance difficult is that the coastal ocean is both critically three-dimensional and highly dynamic. For example, the area of the coastal ocean directly affected by an adjacent estuary could be

surface waters to the north one month and then deeper waters to the south the next. Also, there are likely times when the coastal ocean impacts an estuary directly, yet times when the estuary impacts coastal waters — and the switch can occur on daily, weekly, or seasonal time-frames! While these dynamics may appear to be an operational management nightmare, technology currently exists to monitor and forecast coastal ocean dynamics on those time and space scales and there are preliminary efforts within the Federal and academic science communities to develop such a coastal forecasting system.

There are, however, two important aspects to those efforts from the perspective of ocean resource management that need to be adequately addressed — one technical and one policy. From a technical standpoint, we must be able to implement appropriate observation and modeling systems to provide the basis for predicting the three-dimensional structure of the ocean, along with high-resolution winds, waves, currents, and material movement. Some progress has been made on developing and demonstrating a Great Lakes Forecast System and on testing the feasibility of an East Coast forecasting system. Most indications are that, with proper funding for observations and model testing, we can do appropriate coastal forecasting with reasonable skill. We are pushing forward on this task within NOAA and it is becoming an important priority among other agencies as well.

However, from a management policy perspective, considerable work will also have to be done to prepare managers to take advantage of this new class of information. A recent experience exemplifies this issue. We actually have a

precursor for a coastal forecasting capability — NOAA CoastWatch. CoastWatch provides near-real-time, satellite-based, sea surface temperature mapped products (nowcasts) to researchers and resource managers through regional nodes across the country. At one node, these products were used to evaluate the relationship between sea turtle distribution and surface water temperatures. During a period when a significant fishery was being regulated to protect coincident endangered turtles, CoastWatch imagery was used to reevaluate geographical restrictions that were placed on the fishery and relieve some restrictions while maintaining adequate protection for the turtles. By using near-real-time satellite-based temperature distributions and the previously-determined relationship between temperature and turtle distributions, the imagery allowed the commercial fishery to proceed and the turtles to be protected.

That's the good news. However, a residual issue indicates the difficulty the management community may face when trying to take advantage of new and more rapidly available data. While day-to-day or week-to-week knowledge of sea surface temperatures could have provided an opportunity to manage the fishery-turtle interaction in almost real time, the established management and regulatory apparatus could not be that responsive. There was a significant mismatch between our ability to observe and assess the dynamics of the environment and our ability to adjust regulations. While there may be valid reasons to build "sluggishness" into some management protocols, it became clear in this case that it would be very difficult (both operationally and politically) for the management apparatus to respond in the same

time frame commensurate with this new class of information.

As we move our focus offshore and we build capabilities to observe and forecast essential features in almost real time, we will also have to build management structures and policies that can take advantage of these capabilities. Management must be ready to make effective use of our scientific capabilities where they exist. In the short paragraphs above, it is suggested that specific areas of advancement from the natural sciences — cumulative effects assessment and prediction, environmental valuation, coastal ocean ecosystem definition and monitoring, and coastal ocean predictions — can and will provide additional support to managers and policy makers as they move toward ocean governance. However, new management and policy structures will likely have to be developed to take advantage of this new class of information.

While scientists continue to sharpen their tools and improve their understanding of the coastal ocean, managers must give increasing consideration to the time and space scales of information that will be available from the natural science community as we move toward having available fully three-dimensional and dynamic coastal-ocean-environment assessment and prediction.

**THE CLINTON ADMINISTRATION, THE 103RD CONGRESS, AND ENVIRONMENTAL POLICY:  
STRANGE THINGS ARE HAPPENING**

By  
**Thomas R. Kitsos<sup>1</sup>**  
*U.S. House of Representatives*

I want to begin—and end—my remarks this evening by referencing two old time comedians from long-ago T.V. shows; there may even be a few in this room who will recall them.

In Washington today, with respect to environmental policy and one of its subsets, ocean and coastal policy, I am reminded of an old Red Buttons routine and song — “STRANGE THINGS ARE HAPPENING!”

After 12 years of Republican Administrations, many of the senior Democratic Members of Congress (and many of their staff) thought that, to use Vice President Al Gore’s phrase when Governor Bill Clinton and he were elected in November, 1992, the subtle but distinct noise that you hear is the sound of gridlock breaking.

For those Members and staff interested in natural resources management, ocean and coastal policies, and environmental policy in general, and all the outside interest groups that have stakes in those policies, there was a feeling that not only gridlock, but the overt hostility of the Reagan years and the benign neutrality of the Bush years, would be reversed.

And so the 103rd Congress began with a reasonably high level of optimism among those, both inside and outside of Congress, interested in balanced but strengthened environmental policy and programs.

To be sure, the beginning of the new Administration was a mixed picture. In February, 1993, the President created the Office of Environmental Policy in the White House and proposed to elevate the Environmental Protection Agency (EPA) to cabinet status. These were generally viewed as positive moves.

But, as part of that same announcement, the President also proposed to abolish the Council on Environmental Quality (CEQ) and the Office of Environmental Quality — established in 1970 in the Executive Office of the President to implement the National Environmental Policy Act (NEPA) — and to transfer practically all of CEQ’s functions to the new Department of Environmental Protection. This caused bewilderment among NEPA aficionados because of the uncertainty of whether NEPA oversight could effectively be maintained by one agency over her sister agencies; this is a matter that is still playing itself out.

Then, only a short time later, the Administration seemed to back away from its reform of land management procedures and grazing fees in the West. This issue was caught up in the excruciatingly difficult politics of the first Clinton Budget resolution and, like the CEQ matter, remains an unresolved issue.

Despite the unevenness of those first few months of the new Administration, as some of the Congress-

sional committees with environmental and natural resource jurisdiction reviewed their legislative agenda for the 103rd Congress, there was still a sense that somehow everything was going to be all right.

In the House, the Energy and Commerce Committee under powerful Chairman John D. Dingell, the Natural Resources Committee under Chairman George Miller, the Public Works and Transportation Committee under new Chairman Norman Y. Mineta, and the Merchant Marine and Fisheries Committee under new Chairman Gerry E. Studds, collectively looked at those environmental programs that needed to be reauthorized this or next year —

Superfund

Safe Drinking Water Act

Clean Water Act

Marine Mammal Protection Act

Endangered Species Act

National Oceanic and Atmospheric Administration

Magnuson Fishery Conservation and Management Act

Coastal Zone Management Act, including the coastal non-point pollution program, (sec. 6217), and

National Sea Grant College Act

and looked upon this agenda as quite achievable, with the support of the Administration.

If these, or most of these, were enacted in the 103rd Congress —

<sup>1</sup>The views expressed in these remarks are solely those of the author and do not necessarily reflect the views of the Members of the Committee on Merchant Marine and Fisheries or the United States Congress.

along with a number of other smaller programs (the National Undersea Research Program, beach protection, structural changes in the refuge system, a marine biotechnology initiative) and the elevation of EPA, one could at least speak of the environmental record of the early 90's in the same breath, if not with the same reverence, as that of the early 70's. But, as legislative preparations, bill draftings, hearings, and markups began to take shape, some "strange things began to happen."

If you listened very carefully, you could hear some other sounds — not the partisan gridlock that resulted from the divided government of the last 12 years — but rather the sounds of a growing number of Members of Congress, from both parties, "grousing" about the costs of environmental regulation and the overreach of environmentalists and environmental law.

At first, most objective observers did not think too much of these "grousings". After all, even during the halcyon days of the environmental legislative agenda of the 70's, there were many Members of Congress who spoke in support of business and industry and who had sufficient political strength to temper the most extreme kinds of environmental and resource legislation.

Was not the 1990 fight over the Clean Air Act a classic example of a moderate Republican Administration, with relatively close ties to industry, engaged in intense and prolonged negotiations with a Democratic Congress to provide a tough, but workable compromise on Clean Air?

Well, maybe. However, in 1993, we soon would discover that something more was going on.

In March of the first year of the new Administration, Interior

Secretary Bruce Babbitt announced, as his "first priority", his intention to restructure and consolidate the scientific data gathering functions of his department into a National Biological Survey (NBS), analogous to the Geological Survey for geologic information. In his Earth Day address in April, President Clinton directed the department to create the NBS and legislation to do so was introduced the same day.

To most observers, institutionally separating scientific information responsibilities from biological resource management decisions sounded like a worthwhile idea. The legislation appeared to be innocuous, commendable, and presumably noncontroversial.

But, the Merchant Marine and Fisheries Committee began to hear allegations that this new NBS might lead to activities that would, or at least could, deprive individual landowners of the use of their private property in violation of the 5th Amendment's prohibition against "taking" without just compensation. The Committee also heard from some Members that the NBS was going to lead to more onerous and expensive regulations under the Endangered Species Act and other resource laws.

To a great extent, these issues were deflected in Committee because amendments on takings and pre-regulatory cost and risk assessments were not germane to what was essentially a non regulatory, scientific data gathering bill and the Chairman ruled them out of order.

When the Merchant Marine and Fisheries and Natural Resources Committees reported the NBS bill and took it to the floor of the House in October of last year, it had become controversial enough to warrant requesting a rule from the

Rules Committee. The Rules Committee in the House sets the procedures under which significant bills are debated and amended on the floor. The vote on the Rule on the NBS bill was 238-188, closer than one would expect on a bill of this nature.

When the House began to consider amendments, the very first was to prohibit the use of volunteers in the NBS. What was initially thought a rather inoffensive amendment, but one opposed by the Administration and Committee leadership, turned out to be the first loud shot across the bow by those with grave reservations about the bill and filled with surprisingly strong rhetoric about environmentalists and environmentalism.

The supporters of the amendment expressed serious concern about the use of volunteers because, they argued, such volunteers could be hired guns for those who may want to deprive landowners of the use of their property or members of environmental organizations with their own agendas; in effect, an "environmental gestapo" that will go on private property with suspicious motives. The amendment passed 217-212, surprising, perhaps, even its sponsors.

The next contentious amendment was one that required the written permission of land owners before NBS employees could enter their land to inventory biological species. The Administration and Committee leadership also opposed this amendment on the grounds that the identification of an owner was sometimes difficult because of multiple ownerships and lease and rental arrangements and argued that state laws on trespass should obtain. Supporters of the amendment, emboldened by their success on the volunteers amendment, cast

their arguments in the language of a private property takings issue and the amendment passed with close to a two to one margin, 309-115.

At that stage, the bill was pulled from the House floor for two weeks, in part, to give its sponsors and the Administration some time to regroup. The decision was made to go back to the floor, pass the best bill possible, and send it to the Senate. After a number of other amendments were accepted by voice vote, the bill passed 255-165, still a high level of opposition given the amendments that were added which arguably should have broadened its acceptability.

The story of the NBS bill sent a chill through the environmental community, a wake-up call to the Administration, and a warning signal to Committee Chairmen and many other Members.

A few months later, the message sent by those concerned about environmental regulation reached a crescendo when the House Committee on Government Operations, at the request of the Administration, attempted to bring the EPA cabinet bill to the floor. The Rules Committee had ordered a modified closed rule, ruling out of order (i.e. prohibiting the offering of) non-germane amendments that some Members had requested.

The debate on the Rule, in the Rules Committee and on the floor, focused on the decision by Rules not to allow amendments on what has been unfortunately called in some quarters — the “unholy trinity” — three policy themes that are being increasingly used, either individually or collectively, to constrain environmental regulations. These themes are:

- ◆ the uncompensated taking of private property under the 5th Amendment;

- ◆ unfunded mandates (the imposition of federal administrative and regulatory requirements without the concomitant fiscal resources to carry out such requirements); and
- ◆ cost-benefit risk assessments of regulatory impacts.

For the rule on the EPA cabinet bill, the most important element of the “trinity” was the request by some House Members to offer an amendment similar to one successfully offered (95-3 vote) by Senator Bennett Johnston (D. La.) to the Senate-passed EPA bill to require EPA to prepare cost-benefit risk assessments before promulgating any regulations. The Rule on the EPA Cabinet bill was defeated 191 yeas (185 Democrats, 6 Republicans) to 227 noes (60 Democrats voting no). The bill has been pulled for the time being.

What is going on? I will give you my observations and analysis but I suggest that everyone here give some thought to these changing trends in Washington.

When it comes to environmental laws and regulations, it strikes me that perhaps we have either solved — or at least showed good progress — in addressing some of our easier problems.

Twenty to 25 years ago, the need for, and the obvious benefits that would accrue from environmental regulations were apparent. The Cuyahoga River in Cleveland catching fire, fishkills off the Northeast coast, an offshore well blowout in Santa Barbara, a “dead sea” in the New York Bight, smokestacks belching black smoke, point sources discharging untreated effluent into our estuaries and rivers, and other similar “events” instilled environmental protection in our collective consciousness and placed it on the national political

agenda.

But today’s problems are far more difficult. The second generation of environmental problems, if I may characterize them that way, push at the margins of environmental protection and resource management and involve more dispersed sources of pollution, chronic effects and enigmatic causal relationships, such as global climate change, agriculture and urban runoffs, and man-made and natural alterations in species distributions.

Calculating the relationship of compliance costs to societal benefits is much more difficult and subtle. And, in general, as we push environmental regulations further to cover more risks, such regulations are usually — not always — but usually more expensive.

EPA data show that, in 1972, as initial Federal environmental requirements began to take effect, total capital outlays plus operating expenditures for pollution control amounted to about 1.5% of Gross Domestic Product (GDP). Currently, total pollution control expenditures are running at some 2% of GDP — a share that is projected to rise over the next two decades. This runs up against a growing concern about our ability to compete in the global economy, regional economic dislocations, and the Clinton campaign mantra: jobs! jobs! jobs!

What does all this mean for the ocean, coastal and fisheries policies about which you are interested and to which you have devoted your careers? I can say, without fear of contradiction, that I have no idea.

But, with respect to the 103rd Congress, I can tell you that —

- ◆ the Superfund reauthorization may not make it this year;
- ◆ the Endangered Species Act is

likely to be pulled from the legislative agenda;

- ◆ the stalemate on spotted owls and loggers in the Pacific northwest persists;
- ◆ the Safe Drinking Water Act is presently buried in congressional committees and floor action is highly uncertain;
- ◆ the reauthorization of the Clean Water Act is in doubt and, with it, continued funding of State Revolving Funds for wastewater treatment facilities and other cleanup measures;
- ◆ the nagging issue of wetland delineation, protection, and restoration continues to pit individual and corporate private property interests against conservationists with little light apparent at the end of the tunnel;
- ◆ we are currently struggling with the reauthorization of the Marine Mammal Protection Act;
- ◆ there is no clear policy development on OCS oil and gas development;
- ◆ the Magnuson Act Reauthorization is moving at glacial speed;
- ◆ the environmental community is pulling back on its earlier hopes for an ambitious legislative agenda and even talking about trying to kill some bills;
- ◆ budgets for environmental programs are up slightly across the government, but NOAA's ocean and coastal program budgets for Fiscal Year 1995 are generally flat (Sea Grant, CZM, and the coastal non-point program), except for some modest extra funding for fisheries and marine sanctuaries;
- ◆ the EPA Cabinet bill is dead for

the time being; - there is no resolution about what to do about CEQ; and

- ◆ the reauthorizations of CZM and Sea Grant next year in the 104th Congress are, at best, highly uncertain.

And that's the good news. The bad news is that the spending caps that have been agreed to by the President and the Congress will make expansion of and innovation in environmental law and policy extremely difficult to fund even if programmatic improvements and normal authorizations are enacted.

Funding for domestic discretionary programs — those health, scientific, natural resource management, social, public housing, energy-related, technological, agricultural, transportation, and environmental programs, and the hundreds of other national efforts that one normally thinks of as the "Federal Government" — is below Fiscal Year 1993 baseline outlays and will remain so for at least the next four years, through Fiscal Year 1998, resulting in a real total reduction of \$102 billion over that period.

The political landscape — the dialogue, rhetoric, and strategic calculations with respect to the second generation of environmental policies has changed, dramatically and suddenly, or so it seems. The growing movement to attack government regulations as violating the takings clause of the 5th Amendment is real and it has been joined by the unfunded mandate and cost-benefit risk assessment legs of the stool.

The extent to which this altered political landscape will persist and will affect national ocean and coastal programs is, of course, impossible to predict at this stage. But, I would add one further

cautionary note as you analyze this situation — a note about the institution of Congress itself.

In recent years, notwithstanding the arguments of term limits proponents, there has been tremendous turnover in Congress. I will not bore you with all the numbers of incumbents in the House who have retired or been defeated or are seeking other offices. But the one fact that you should bear in mind is this: in the 104th Congress, it is now apparent that at least 225 to 230 Members — or over half of the House of Representatives — will have been elected in the 1990's. In general, institutional memory in a legislative body is important; for a rather obscure policy arena as ocean and coastal law, it is critical. There are fewer and fewer Members who have the luxury of recalling why certain policies were promulgated. This, in combination with the new political landscape described earlier, makes prediction impossible and hope fragile.

## CONCLUSION

At a meeting last month in San Antonio, Texas, of the National Petroleum Refiners Association, the members of that Association heard an interesting description of the changing world economic picture, particularly the new trading system under GATT, from MIT economist, Lester Thurow.

At the conclusion of his remarks, Professor Thurow noted, as I will note in concluding my remarks this evening, that these are certainly interesting times. But he also pointed out that in China, it is a curse to wish someone "interesting times", because peace and comfort tend to be dull, while problems and outright calamities are often interesting.

Tonight, I do not necessarily wish "interesting times", as defined by the Chinese, on any of us, but I think that we are perhaps on the verge of a period that we will one day look back on and describe, in the words of that wonderful character on the old T.V. show "Laugh In" — as being "VERY INTERESTING."

## OUR OCEANS AND OUR LAND – ONE WHOLE

By  
**Honorable Russell W. Peterson**  
*former Governor of Delaware*

Thank you for inviting me to participate in this important symposium.

Although I am certainly no expert in your field, I have for 25 years been involved at the state, national and international levels in studies of the global environment including our oceans and their coastal zones. Such exposure has driven home to me the complexity of our biosphere and the interdependence and interconnections of all life with each other and with the air, water and land. This is especially apparent in the coastal zones where the oceans meet the land and where homo sapiens in ever greater numbers have come to enjoy the wonder and beauty and livelihood that these areas provide and in the process through overbuilding, reckless pollution and excessive harvesting have done much to destroy the magnet which attracted them.

Twenty three years ago we Delawareans blew the whistle on further industrialization of our coastal zone. We had the opportunity at the time to turn our remaining coastal zone over to massive industrialization by 13 oil companies, allied chemical companies and transportation companies, building huge artificial islands in Delaware Bay for storing oil, coal and iron ore. Powerful state, national and international interests encouraged by the U. S. Department of Commerce fought hard for this industrialization. But we the people of Delaware decided that the threat of such development to our natural environment was too high and we didn't want it. We created a Dela-

ware Coastal Zone and prohibited by statute any more heavy industry in that zone.

Over the years many attempts have been made in the legislature and in state and federal courts to weaken the law but none has been successful. At the same time public and private organizations have acquired ever more land in the coastal zone as parks and refuges setting it aside for future generations to enjoy. And the University of Delaware's College of Marine Studies campus here at Lewes was created and has grown and flourished, teaching us of the great value of our Coastal Zone, and standing as a sentinel against the ever present threat of potential exploiters to denigrate it.

Today our treasured Coastal Zone stands as a monument to the people of Delaware whose diligence and vigilance and stewardship have protected it.

You visitors have had the opportunity to visit parts of our coastal zone. Hope you have enjoyed it.

I have certainly enjoyed attending your impressive symposium dealing with our nation's huge ocean.

Your Ocean Governance Study Group has taken on a Herculean assignment of major import to the future quality of our coastal and ocean environments. As you work to better understand the nature of the national ocean and to define the best options for governing it, I hope you will keep in mind the great importance of teaching and motivating a large citizenry to provide

the support needed to implement the option that best serves the long term interest of the people.

I know that your Study group must avoid the political arena. But you know, as well as I, that powerful lobbyists representing the near term financial interests of potential exploiters of the oceans' resources will be there at decision making time to push their preferred option.

Of special concern today, is the heavily financed wise-use movement of logging, drilling, grazing, mining, and real estate interests to block regulations and rezoning by invoking the 5th Amendment of the U. S. Constitution which insures that private property will not be taken by government without just compensation. Currently federal legislation involving environmental regulations is being tied up by amendments which call for prior assessment of the compensation that government might be required to pay for reducing the market value of private property through regulations. 'Taking' bills or 'private property' bills have been introduced in 39 states. One has passed in Arizona where the people will vote by referendum in November whether or not to repeal the bill. The courts have over the years developed a legal history of approving compensation for only extreme takings such as taking a property for highway right of way, for constructing a public building or in the case of regulatory' takings' where the private property is rendered essentially useless by the regulation. Although it appears that the exploiters may be able to use the 'takings' issue to tie up regula-

tory legislation for some time, it is likely the legislatures and the courts will, except in the case of extreme takings, come down on the side of protecting the citizens' right to breathe clean air, drink clean water, protect endangered species, avoid hazardous waste, etc. These are very special interests of the people.

Public interest groups led by the environmental community are now organizing a major effort to oppose the 'takings' laws. I believe they will succeed. But you can bet that the exploiters of our natural resources will be back with something else to help them further their special interest of making a buck today. Saving the environment calls for eternal vigilance.

I have high confidence in the way your group is going about its study, giving high priority to the sustainability of the resources and to the interest of future generations. I was pleased to read that "the basic premise of the Study Group is that to achieve full benefits for the American public from its oceans and coasts and to protect the choices of future generations, we must develop a new vision of ocean governance a vision which looks at our ocean as a whole and not solely at its discrete parts."

This holistic approach to problem solving as you well know is fundamentally important. We can no longer steer our way into the future depending on miscellaneous signals emanating from a multitude of specialists each laboring in ever narrower fields. The real world involves the interaction of many forces, feedback from one on the other and the cumulative impact of near term actions on long range futures. The environmental movement has done much to foster holistic studies and the advent of computerized modeling has

facilitated working with their complexity.

Today most universities, if not all, have a strong minority of faculty and administrators who, like many of you here, understand the need for holistic studies. And, after years of in-house opposition, interdisciplinary programs now abound on campuses. But graduate training still focuses almost invariably on single disciplines students digging into ever narrower fields. And the dominant forces in the faculty and administration still insist upon this.

Now don't get me wrong, such super-specialization is important. It has done much to advance the state of knowledge and will do so in the future. But it seems to me that today universities would be well advised to also turn out some professional generalists experts trained in decision making in the real world. They would come in handy on projects such as yours.

For 20 years I have been trying unsuccessfully to convince universities to establish separate Colleges of Integrated Studies turning out Bachelors, Masters, and PhD's in integrated studies. It appears that this must await the advancement of more enlightened faculty to decision making positions.

Enough of that!

I have been impressed with the papers you have presented here. I have studied them all. This background coupled with my own experience tells me that an integrated plan for governing our nation's ocean needs to be area oriented and to involve all the stakeholders - federal, state, and local governments, users and regulators of the resources, non-government public interest organizations and future generations. The

two current area oriented programs, the Coastal Zone Management Program and the National Marine Sanctuary Program, have much to offer. The best of these programs should be incorporated in any future more comprehensive governance approach. The Coastal Zone Management Act furthers state planning and implementation, provides federal financial assistance and assures legal standing for state plans through the power of federal consistency review. The Marine Sanctuary Program, as well exemplified by the Monterey Bay Marine Sanctuary, demonstrates how all the stakeholders and authorities in an area can work together to manage the multitude of interconnected forces and interests involved in that limited area.

But overall, as you have emphasized, the United States has no policy or regulatory framework to govern activities in its vast ocean area. As Professor Biliiana Cicin-Sain has stated, "currently we have a fragmented situation with individual government entities pursuing their largely single purpose mandates."

Of further major significance to any would-be manager of our nation's ocean is that many of the forces that impact on the quality of the resources within the ocean come from outside: scourings from our fields and streets pouring pollutants, nutrients, silt and sewage into our estuaries; air borne contaminants raining down on the open seas; vessels from far and near dumping their wastes and sometimes their cargoes; ever more humans upstream each using ever more resources and emitting ever more discharges into the streams and air.

The populations along the coasts of California, Florida and the

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Gulf of Mexico have more than doubled in the past 30 years. At the same time the consumption of resources and the production of waste per person has also more than doubled. The tremendous environmental impact of this combination makes other causes of environmental degradation in the coastal areas small in comparison.

Any manager of a coastal and ocean area who wishes to protect the quality of the environment in his area needs to be well aware of the primacy of the population and consumption impacts and be empowered to seek ways of alleviating them. He might even do as former Gov. Tom McCall of Oregon did years ago, say to prospective newcomers, "Come visit us, but please don't stay."

Management of the U. S. ocean and coastal area also calls for a global perspective understanding of the impact of increased ultra violet radiation stemming from depletion of the stratospheric ozone layer, global warming from emission of greenhouse gases, hazards to migratory birds, fishes and marine mammals throughout their range, global growth in human population and in production of waste, alternative futures based on environmentally benign technology such as solar energy, and recognition that the United States committed itself at the Earth Summit in June 1992 to 'integrated management and sustainable development of coastal areas and the marine environments under its jurisdiction.

Thus, a comprehensive, integrated plan for governing the U.S. ocean requires a much broader perspective than that provided by any existing governmental entity. Furthermore, to be a fully integrated plan it should include terrestrial considerations as well.

I don't believe if we started from scratch to develop an integrated plan for governing our natural resources, we would establish two systems, one terrestrial and one marine, for managing, among other things, fish and wildlife, national parks and sanctuaries, endangered species, and oil and minerals development.

The Congress probably should change the name of the Department of the Interior to the Department of Natural Resources and give it responsibility for governing all natural resources, transferring thereto, among others, NOAA and the Forest Service. As an intermediate step prior to appropriately integrating the terrestrial and marine functions within the Department of Natural Resources, a new Division of Coastal and Ocean Affairs might be established within that Department with responsibility for, among others, the Coastal Zone Management Act, the Marine Sanctuary Program, the Marine Mammal Protection Act, the Magnuson Act, the Outer Continental Shelf, and the National Estuary Program.

I suggest this substantial and difficult-to-enact change in organization hoping it will encourage you to think about the ideal way to govern our natural resources. Don't worry about how hard it might be to enact it. First, let's get a good comprehensive, integrated plan. Then we can organize to make it happen.

Professor Robert Knecht has pointed out that during the past 3 decades we have seen lots of legislation enacted dealing with coasts and oceans but virtually all of it on a piecemeal basis because the politics of the days are piecemeal - single interest client groups dealing with a plethora of narrow-

interest congressional subcommittees and their specialized executive agency counterparts. "

He emphasized that what we now need is more integrated planning and a "national ocean strategy that reaches all significant actions affecting the oceans and coasts regardless of where they originate."

I recall how 24 years ago here in Delaware we converted a state government run by 142 autonomous commissions and agencies into a cabinet form of government with only 10 departments each headed by a Secretary who served at the pleasure of the Governor. After 50 years of failed attempts to change the government, the experts said it couldn't be done. But with a well thought out plan, leadership of the Governor, strong support of legislative leaders, involvement of the Commissions, and broad support from a well-informed community, we did it.

Major changes in how we govern our natural resources can be made on the federal level too. With a good plan, commitment by the President to sell it, strong community support, and a cooperative Congress, it can be done.

It is especially encouraging that environmentalists and other public interest groups are organizing to save our marine resources. A coalition of over 50 groups called the Marine Fish Conservation Network is promoting greater protection for marine ecosystems emphasizing conservation over harvesting. They are now focusing on reauthorization of the Magnuson Act.

The National Audubon Society is pushing its 'Living Oceans' program to develop around the country local and regional committees of ocean activists who will

identify crucial marine and coastal conservation issues in their areas and then work with land use planners and community leaders to address them.

The Natural Resources Defense Council is "launching one of the most comprehensive and aggressive environmental campaigns in its history. Their Ocean Protection Initiative will combine legal advocacy, scientific research and citizen action to advance solutions to the decline of the worlds' oceans.

This surge of involvement of environmental groups in ocean issues is highly important to moving ahead in ocean governance. In my view their combined efforts will lead to governmental action, but probably of the piecemeal variety, unless they can be sold on a comprehensive integrated plan.

Today we have in the White House leadership committed to protecting the global environment and to improving government efficiency and with a unique ability to teach and persuade.

These several factors taken together provide an unusual window of opportunity over the next few years for our government to enact legislation establishing the framework for a well integrated system of governance of our terrestrial and marine natural resources. Your Ocean Governance Study Group can help to show the way and to provide a blueprint around which the growing number of ocean supporters and activists can rally. Future generations will thank you for it.

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# **ROUNDTABLE DISCUSSIONS**

## ROUNDTABLE ON OFFSHORE OIL AND GAS DEVELOPMENT

### What Can Be Done to Fix the Offshore Oil and Gas Program?

#### *Editors' Introduction*

Of all the U.S. programs dealing with the coastal ocean, the Outer Continental Shelf Program (OCS) has perhaps been the most controversial. This is a program which has been characterized as in a state of "policy stalemate," in a kind of "standoff" situation which has pitted developers, environmentalists, government interests, and citizens in highly adversarial positions. Some of the causes for the controversies which have animated this program were examined at the conference in a paper by Charles Lester ("Rediscovering the Public Interest in the Outer Continental Shelf Lands," and by Thomas R. Kitsos in "Troubled Waters: A Half Dozen Reasons Why the Federal Offshore Oil and Gas Program is Failing: A Political Analysis," both in this volume.

The Roundtable Discussion brought together key federal officials charged with administering the OCS program, Congressional staff, representatives of state interests, oil industry and environmental group representatives, and academic experts in the subject to examine practical measures that could be implemented in the near and medium-term future to redress the policy stalemate in the OCS program. Roundtable participants were asked to provide and to discuss a range of "program fixes" which could work to overcome major opposition to the program.

Whereas only a couple of years ago, we would have characterized the political situation in this area as

in a "standoff" mode, what was remarkable in the discussions held at this Roundtable was a new spirit of compromise and willingness to negotiate manifested by all the major players—the federal agencies, the oil industry, and the environmental groups. Although there were differences in the "policy reform" packages proposed by various Roundtable participants, the same themes were echoed in just about all of the presentations, i.e.: the need for more devolution of decisionmaking authority to state and regional levels; negotiation and partnership and not confrontation; enactment of some form of revenue sharing to provide those most affected by offshore oil and gas development with an appropriate share of the benefits; harmonization of the oil and gas program with other ocean and coastal laws; and rationalization of the oil and gas program in the context of a comprehensive national energy policy.

Presented in the next section are materials provided by Roundtable participants, including: the two papers by Tom Kitsos and by Charles Lester outlining the root causes of the offshore oil controversy and offering prescriptions for policy improvement, the executive summary of a November 1993 report prepared by the Department of Interior OCS Policy Committee, **Moving Beyond Conflict to Consensus**, as well as a March 1994 review by Secretary Babbitt of this report, and informal commentaries or "talking points" prepared by Roundtable participants.

Other developments occurring subsequent to the Lewes conference have reinforced our impression that there may well be a window of opportunity for achieving long-lasting reform of the oil and gas program. One such instance is the recent announcement by the Department of Interior OCS Policy Committee (November 1994) of the creation of a regional mediation effort, involving all relevant stakeholders, to attempt to resolve long-standing disputes associated with OCS development in Alaska.

## TRoubLED WATERS: A HALF DOZEN REASONS WHY THE FEDERAL OFFSHORE OIL AND GAS PROGRAM IS FAILING — A POLITICAL ANALYSIS<sup>1</sup>

By  
**Thomas R. Kitsos**  
*House of Representatives*  
*U.S. Congress*

### Introduction and Background

One cannot help but note the irony of a panel entitled "Energy and Oceans Policy" meeting here in Key Largo, adjacent to the Florida Keys National Marine Sanctuary. This is currently the largest marine sanctuary in the United States, covering some 2700 square nautical miles. It was established by Congressional action; the legislation was signed by President Bush on November 16, 1990. Among its many provisions, the Florida Keys National Marine Sanctuary and Protection Act explicitly prohibits any offshore oil or gas activity.

And, just a little north and west of where we meet today, lie the so-called "South Florida leases". These 73 offshore leases were sold in the mid-1980's to nine companies for a total of some \$108 million. The leases have been under suspension for a number of years and the President has indicated that they may need to be canceled and bought back from the lessees.

From one perspective, this large body of water that encompasses the marine sanctuary and the south Florida leases, so near to us here

but so out-of-reach to the oil and gas industry, stands as a symbolic manifestation of the recent failure of the federal government's outer Continental Shelf (OCS) energy program. Because of this failure, it is increasingly likely that this program will be confined, until well into the next century, to the Gulf of Mexico west of Florida and most of Alaska.

This "confinement" is not limited simply to production (ignoring for a moment some rather modest development off southern California), but also to new leasing opportunities. In the Fiscal Year (FY) 1992 Department of the Interior Appropriations legislation (P.L. 102-154), all other areas of the OCS are put off limits to leasing.

While appropriation bills cover only one year, if history is any guide, the leasing moratoria contained in the FY 92 legislation will be rolled-over into the FY 93 appropriations bill for the Department. What started out in FY 82 as a rather innocuous amendment to the Interior Appropriations bill that put a leasing moratorium on 736,000 acres in four northern basins off

California, has snowballed each year to such an extent that the moratoria in the 1992 bill covered 472.2 million acres.

If the FY 93 Interior Appropriations bill does not include at least that same acreage, it will not be because of a changed position on the part of the Appropriations Committees or a significant portion of the Congress. Rather, it will be because the enactment of other law supersedes the necessity of these annual leasing moratoria.

If the Senate passes Senator Johnston's national energy bill (S. 1220) during the second session of the 102nd Congress, it is likely to include a multifaceted OCS title with provisions on revenue sharing, moratoria, and the cancellation and buyback of the Florida leases. If that happens, the committees in the House with jurisdiction over OCS development will want to position themselves for conference by fashioning their own version of OCS legislation.

In the House, the Committee on Merchant Marine and Fisheries and the Committee on Interior and Insular Affairs may develop bills that severely restrict leasing in most areas of the OCS. It is conceivable that such a restriction could extend to the year 2000, or even later. There is, in other words, a very real possibility that the annual leasing moratoria, which now extend to almost 470 million acres of the OCS, could be written into permanent law and cover not simply one year, but an entire decade.

<sup>1</sup>Editor's Note: This paper was presented by Mr. Kitsos at the 1992 Annual Seminar of the Center for Oceans Law and Policy, University of Virginia School of Law and published in the symposium proceedings (16 COLP Proceedings (1992)). It is being distributed with permission from the publisher.

#### Author's notes:

Please note the timing of the paper—the comprehensive energy bill had not yet passed the Senate and the House had not taken up H.R. 776. OCS legislative events of 1992, therefore, are only hinted at in this paper.

The views expressed in this paper are solely those of the author and do not necessarily reflect the views of the Members of the Committee on Merchant Marine and Fisheries or the United States Congress.

Additionally, although the present budget enforcement procedures in Congress do not readily lend themselves to additional buybacks of OCS leases, Members of Congress are hearing more and more from the residents of Alaska and North Carolina about the advisability of canceling 23 leases in Bristol Bay and over 20 leases near the Outer Banks. Recent estimates by the General Accounting Office (GAO) indicate that buying back the contentious leases off Florida, Bristol Bay, and North Carolina could exceed \$1 billion.

Why all this hostility to offshore energy development? Why the enmity and ill will by many in Congress to new leasing in frontier areas? The answer, of course, is complex, multidimensional, and far beyond what can be treated in this paper. Given time and space constraints, one key aspect will be analyzed: the executive branch of the federal government, the institution in our constitutional system that maintains jurisdiction over resources in the waters extending seaward of the states' submerged lands, has made a series of mistakes in carrying out its responsibilities under the outer Continental Shelf Lands Act (OCSLA). This paper will identify three specific "attitudinal" mistakes and an equal number of policy errors, the avoidance of any two or three of which could have arguably changed the program's present course.

— Attitudinal Mistakes —

**Singular Federal Control over the OCS:**

**Fostering an Adversarial Relationship with the States**

The struggle between the federal government and its constituent state governments over offshore jurisdiction is not new. From the drilling off wooden piers

in Santa Barbara in the late nineteenth century, to FDR's Secretary of the Interior Harold Ickes sudden awakening to the possible value of offshore oil in the mid-1930's, to Louisiana's extension of its seaward boundary to 27 miles in the late 1930's and subsequent grant of an OCS lease 30 miles off its coast in 1945, to a Supreme Court case (U.S. v. California in 1947 upholding the federal government's jurisdiction from the baseline out, to Truman vetoes of bills granting states some jurisdiction over their adjacent waters in the late 1940's, to the 1952 presidential campaign and Eisenhower's fulfillment of his pledge to the states by signing the 1953 Submerged Lands Act (SLA), to the enactment of the Outer Continental Shelf Lands Act less than three months after passage of the SLA, to the 1975 case of U.S. v. Maine upholding federal jurisdiction over the OCS, to the rewriting of the OCSLA in 1978, and, to that first moratoria rider on an appropriations bill in 1982, this intergovernmental conflict has had a long and rich history.

Yet it sometimes appears that the Department of the Interior (DOI), the executive agency assigned the responsibility of administering the OCSLA, remains bewitched, bothered, and occasionally bewildered by state opposition to OCS leasing and development. For inexplicable reasons, the agency appears to ignore history and this inherent jurisdictional conflict between the federal government and coastal states and, more importantly, eschews efforts to moderate this history by any meaningful attempts to establish more of a partnership with the states.

When the coastal states were given control over the first three miles seaward of the baseline under

the SLA of 1953, the assumption was that this battle between the states and the federal government was over. In point of fact, the struggle for control of our offshore resources, and the revenues derived therefrom, has never been resolved. The Department, rather than seeking resolution, has maintained a relatively consistent posture of "singular control" over the OCS.

In the mid-1980's, the Attorney General of California succinctly summed up the federal position with respect to the OCS: "... there lurks in these great federal agencies vestigial will to fight furiously to retain what they have come to think of as their lands, their revenues, and their plenary power over both of them." Although a legally sound position, singular control has led to three attitudinal mistakes by the federal government that have created enormous political problems for the OCS program.

**Attitudinal Mistake #1—The failure to acknowledge fully at least in the OCS policy area the power of state governments in our federal system.**

Although vastly overstated in the media, there is a type of "beltway" mentality in Washington that, on certain issues, tends to overlook the legal and political position of state governments in America's unique brand of federalism. Federalism, although hotly debated in Philadelphia in 1787, is a subject that can clear a room in minutes. But, with respect to an issue like OCS control, it remains critically important because of one central feature: the structure of Congress was designed, in part, to protect our system of federalism.

W. Brooke Graves, a longtime observer of the Congress and the theory and practice of federalism, wrote in 1964: "The Congress of the

United States, with representation in one chamber based upon population, and representation in the other based upon the individual states, was purposely constructed as an instrument of Federalism.”

In their own right, states have an impressive arsenal of zoning powers and other authorities to control land and water use decisions within their borders. OCS activities, at various points in the process, start from and end up within the boundaries of states. If one adds to their inherent authorities, the power that states can exercise in Congress, the bankruptcy of the singular control posture of the federal government with respect to the OCS becomes more evident.

Attitudinal Mistake # 2 - The failure or refusal to recognize the variability among states and regions: specifically that leasing in frontier areas of the OCS is not the same as leasing in the central and western Gulf of Mexico.

From 1954-1974, a period that begins when the Department of the Interior was first authorized to offer OCS leases to oil companies under the 1953 OCSLA and ends around the time of the first OPEC oil embargo, 32 federal offshore oil and gas lease sales were held. Of these, 28 were in the Gulf of Mexico and all but two were for tracts largely off the coast of Louisiana. For the first ten years of the federal program, 263 oil and gas wells were drilled off the coast of Louisiana, two off California, and one off Texas.

In effect, the early years of the federal OCS program were confined almost exclusively to the central Gulf of Mexico and, in particular, off the coast of Louisiana. Louisiana had already established a considerable infrastructure

for offshore development, having landed some 35 million barrels of oil by the time of the first federal sale in 1954.

The coastal economy of Louisiana, and to a lesser extent, Texas, evolved with the offshore oil and gas industry. To a considerable degree, the local economies became dependent on an aggressive federal (and state) leasing effort and a financially healthy industry. Based on these common goals, there was a symbiotic compatibility among the key actors involved in the OCS program: the Department of the Interior; the oil and gas production industry; the myriad offshore service and supply companies; and the State and its coastal communities. The industry was critical to the economic development of the area and, quite naturally, was integrated into the State's political system.

Importantly, this economic evolution occurred essentially before the Nation's environmental and safety consciousness had been raised. While the federal offshore oil and gas program was maturing, Louisiana's coastal economy developing, and the energy industry thriving, there was no National Environmental Policy Act (NEPA), no Coastal Zone Management Act (CZMA), no Clean Air and Clean Water Acts, no Resource Conservation and Recovery Act (RCRA), no Occupational Safety and Health Act (OSHA) and no Natural Gas Pipeline Safety Act. These and other federal laws would come later, primarily in the late 1960's and early 1970's. The OCSLA of 1953 was a comparatively brief law that essentially gave the Secretary of the Interior authority to lease tracts on the OCS but provided little or no direction about protecting the coastal environment or consulting with affected state governments.

Interestingly, a confluence of two competing forces occurred in the mid 1970's that resulted in major revisions-to the federal offshore statute. The emerging environmental movement was met head-on by the ramifications of the OPEC oil embargo of 1973. Visions in the public mind of the oiled beaches and birds of Santa Barbara were somewhat blurred by apparent shortages of fuel and long gas lines.

In response to the embargo, President Nixon ordered 10 million offshore acres leased for oil development in 1975 moving the program into so-called "frontier" areas of the OCS, those regions outside of the Gulf of Mexico. Many of the governors, mayors, county commissioners, citizen and environmental organizations, and fishing interests in the frontier areas petitioned the Congress to halt or slow down the Nixon (soon to be the Ford) OCS program. If that was not possible, they at least hoped that Congress could rewrite the OCSLA to incorporate environmental protection provisions, taking into account new federal laws like the CZMA and NEPA, and involve the states in the various stages of the leasing, exploration, and development processes. The 1978 amendments to the OCSLA were designed to address these and other issues not covered by the antiquated 1953 law.

It is instructive to review the key arguments made at that time by the frontier states against an accelerated offshore leasing program. First, there was concern that oil spills could lead to expensive cleanup, serious ecological damage and restoration costs, and direct and indirect costs to commercial and recreational fishing industries, tourism, coastal recreation, and property values. In addition, on the landward side of the coastal zone,

OCS operations could result in land preemptions for existing businesses, particularly the commercial fishing industry, wetlands loss, air and water pollution, and substantial population increases with a concomitant increase in infrastructure costs.

And, if one listened very carefully to the testimony of representatives of these interests at Congressional and agency hearings, one heard what could be described as a "way-of-life" plea — an assertion that the pristine and fragile coastal environment and, thus, the way of life in the community, would be forever changed by OCS development. And not for the better. In many frontier areas, in other words, the character and mix of the local coastal economy (tourism, fishing, residential and vacation beach front homes, and coastal recreation) were essentially established. Unlike in Louisiana, many public officials and citizens in frontier coastal communities perceived that they did not need, indeed they did not want, a new and potentially frightening industry that would bring in people and pollution and, when the oil was gone, leave little of value in its place.

Apparently, the federal government was not listening carefully. During the Nixon and Ford Administrations, the Department and the industry had vigorously opposed any amendments to the 1953 law and this opposition was well-known and publicized in coastal communities. Furthermore, the agency never extended itself to educate or reach out to the frontier communities and it was never willing to share some of the financial risks that public officials and private citizens in those communities foresaw from OCS development. Although President Carter

finally supported and signed the 1978 amendments, the Interior Department and many of her sister agencies were, to put it charitably, reluctantly brought into support of, and compliance with, the new law.

Lease sales were held off the mid-Atlantic, southern California, Georges Bank, Florida, and the south Atlantic planning areas but they were largely conducted in the same manner, with the same level of public notice, as sales off Louisiana. Leasing in new OCS areas was handled, in a very real sense, in a "business-as usual" fashion. Eventually, this unwillingness to address the unique concerns of the frontier states and coastal communities would damage the credibility of the federal program.

Attitudinal Mistake #3 - The failure to recognize the growing and substantial power of the coastal states-environmentalist coalition in opposition to offshore development, and the pursuit of an adversarial rather than a cooperative relationship with the coalition.

Since the late 1960's and the early 1970's, when there was an explosion of national environmental legislation enacted by Congress, the influence of environmental organizations has grown slowly but consistently. Some welcome this influence, some refuse to recognize it, others recognize but bristle at it, and recently still others assert that, in this recession, environmental influence is waning.

Although there has been a modest retrenchment in budget and staff in some "green" organizations, there is little evidence, at least on Capitol Hill, of a real diminution of environmental power. This is not to say that environmental organizations are all powerful or that they win every crucial legislative, regulatory, or policy battle. A

general observation is that they may lose as many battles as they win - but, importantly, environmental organizations are now engaged in practically every aspect of policy-making that in any way includes an environmental dimension — which covers just about everything government does!

From the mid-1970's through the 1980's and up to the present, opposition to the OCS program has galvanized and strengthened. In large measure, its strength has been centered in a political coalition of coastal states (outside the central and western Gulf of Mexico and Alaska) and environmental organizations.

It is not uncommon in Washington, and in the 50 state capitals, for political institutions and organizations to fight each other on a number of individual fronts but to come together in ad hoc coalitions when a commonality of interests is perceived. State governments and environmental organizations do not always agree on policy matters and there have been divergent views from each on a number of coastal policy issues, including certain aspects of the CZMA and water pollution enforcement problems. Yet the informal alliance of many of the coastal states and environmental organizations to fight offshore development has remained firm.

This firmness is assisted by an unexpected but interesting subcoalition within some states, based on disparate calculations of self-interest, that includes generally liberal environmentalists and more conservative beach front property owners. Although their respective motivations may be quite different, the synergistic effect of their anti-OCS positions is impressive.

Many national environmental organizations have state and local

chapters and the networking among environmentalists at all levels can be amazingly effective. Occasionally, new single interest organizations are formed locally to challenge OCS lease sales or development. They are normally integrated into the efforts of national organizations that lobby Congress and their local chapters that concentrate on state legislatures and local political bodies.

The Department of the Interior has appeared to be almost blindsided by the growing strength of the coastal state-environmentalist OCS coalition and seemingly unprepared to address its assertions or negotiate responsible compromises with it. Again, the singular control posture of the executive branch has led to a strictly adversarial relationship with the coalition and an apparent unwillingness to make many serious attempts to deal with it.

#### Major OCS Policy Errors

The three attitudinal mistakes evolving from the federal government's control over the OCS have directly led to a number of policy errors by the Reagan and Bush Administrations that have seriously exacerbated the problems of the OCS program. Three major errors in policy judgment will be identified, although numerous others could be mentioned.

#### Policy Error #1 - The failure to promulgate consistent offshore and coastal policies.

Within weeks of his inauguration, President Reagan selected James Watt to be his Secretary of the Interior. Shortly after his appointment, Secretary Watt announced that the OCS program was going to be opened up, full throttle. Practically the entire OCS (one billion acres) was going to be made available for bidding and

leasing would be areawide, not based on the more limited area nomination process carried out under the Carter Administration.

The deep concern of many frontier coastal states over this announcement was further heightened when, almost simultaneously, the new head of the Office of Management and Budget, David Stockman, developed the first Reagan budget which had as its centerpiece substantial domestic spending cuts. Among these cuts were the proposed termination of federal funding for the popular Coastal Zone Management program and the equally popular National Sea Grant College program. The Coastal Energy Impact Program (CEIP), a part of the CZMA designed to provide categorical grants and loans to coastal states to address the public service, public facility, and environmental impacts occasioned by OCS and other coastal energy activity, was to be killed. Other terminations and reductions were announced for a long list of ocean, coastal, and fisheries programs, most of them administered by the National Oceanic and Atmospheric Administration (NOAA).

Congress was immediately besieged by a broad array of coastal interests demanding that these inconsistent policies — opening up the OCS while eliminating many of the programs designed to protect the coastal zone — be reversed. Although unable to save CEIP, Congress did squeeze sufficient funding out of the shrinking domestic discretionary budget to keep CZM, Sea Grant, and most of the other NOAA programs afloat — barely.

But the budget front was not the only place in which the Reagan Administration chose to wage its OCS fight. It flirted with the idea of

“decertifying” the California CZM program until the state's bipartisan congressional delegation intervened. But Secretary Watt did take California (and effectively all coastal states) to court to argue that the federal consistency provision of the CZMA did not apply to Interior Department OCS lease sales. The federal consistency authority was provided by Congress to those coastal states that achieved an approved CZMA program to make certain that federal activities would not be inconsistent with those state programs. In 1984, the Administration won in the U.S. Supreme Court, by a 5-4 decision, and the OCS lease sale consistency authority of the states vanished. It was not until the 1990 reauthorization of the Coastal Zone Management Act that Congress was able to legislatively reverse the Court's decision.

Thus, the OCS and coastal agenda of the Reagan Administration was set in its first year — the gauntlet thrown down early in budgetary and policy proposals. The battle waged throughout the eighties between the Administration and the coastal states, environmentalists, and their supporters in Congress, was fierce and intense. The Department of the Interior pursued an aggressive leasing program and, although a number of sales were postponed or canceled for a variety of reasons, leasing did occur in some frontier areas. In addition to a concentration in the central and western Gulf of Mexico, sales were held for tracts off southern California, Alaska, the south and mid-Atlantic, and Florida.

The Reagan Administration can document an impressive level of acreage actually leased during its eight years in office — an annual average of 4.3 million acres compared to 1.3 million acres in the

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Carter years and 1.4 million acres during the last four years of the Nixon-Ford Administration. However, only some 10.5% of the total 34.7 million acres leased during the Reagan years were in the frontier areas most hostile to leasing and development, i.e., areas other than the central and western Gulf of Mexico and Alaska.

Meanwhile, the OCS coalition continued to grow in strength — in large measure as a direct response to Secretary Watt and his aggressive OCS policies — and the battles in Congress centered on the Appropriations Committee and bills to fund the Interior Department. The OCS leasing moratoria riders on the appropriations bills increased in the scope of acreage and planning areas covered. The FY 83 Interior bill included 35 million acres in moratoria status; the 1984 bill jumped to 52.2 million acres. Areas covered included California, the mid-Atlantic, the north-Atlantic, and a 20-30 mile buffer zone around much of Florida.

In the mid-80's, one of Watt's successors, Donald Hodel, began a lengthy series of meetings and negotiations with Members from the California Congressional delegation, but the negotiations were not successful and both sides agreed to deflect the issue until after the 1988 election. Since then, because of moratoria riders on appropriations bills, no sales have been held off California or any other frontier area other than Alaska. There has not been a sale off California since 1984.

Policy Error #2 - The failure to support in the 1980's. Congressionally-endorsed, state-supported, and House-passed OCS revenue sharing legislation.

In part, the historical battle over control of the resources of the OCS

has been about money. Even states that have supported offshore development have argued for decades that the federal government should share with them a portion of the bonus, rental, and royalty revenues received from OCS oil and gas activities. Since the first federal leases were offered in 1954, the U.S. Treasury has received over \$97 billion from all OCS operations. In the high production years of 1979-1984, the OCS represented the second largest source of revenue to the government, after federal income taxes.

During the 1953 conference committee between the House and Senate on the Outer Continental Shelf Lands Act, the most contentious issue was OCS revenue sharing. Throughout the 1960's and 1970's, the demand by Louisiana and Texas for a fair share of the offshore money was consistently and successfully opposed by various Administrations. When the Reagan Administration proposed its initial OCS and coastal policies in 1981, the Chairman of the House Merchant Marine and Fisheries Committee introduced the first of four OCS revenue sharing measures of the eighties.

OCS revenue sharing was based on a relatively simple premise: as a matter of sound public policy, the federal government should share a modest portion of its OCS money derived from the extraction of nonrenewable resources (oil and gas) with coastal states for the purpose of conserving and protecting renewable coastal resources (e.g., fisheries, land and water resources, wetlands).

Despite the growing budget deficits of the Reagan Administration and the strenuous opposition of OMB and the Departments of the Interior and Treasury, the House

passed the Committee on Merchant Marine and Fisheries' bills by increasingly large margins in 1982, 1983, and 1984. The 1984 bill was actually a conference report, but an Administration stimulated mini-filibuster in the Senate in the closing days of the 98th Congress killed the bill. In 1985, the House included an OCS revenue sharing title in the budget reconciliation bill but it was subsequently dropped in conference.

However, the 1985 budget bill carried an Administration supported provision that, for the first time, provided some OCS revenues directly to coastal states. Although it was not the conventional general OCS revenue sharing concept, covering all offshore acreage for specific coastal environmental uses, the "section 8(g)" settlement between the states and the federal government provided each state with 27 percent of the OCS revenues derived from tracts immediately adjacent to the state's submerged lands; for most states this meant federal leases located from 3 to 6 miles off their coast.

Named for the section in the OCSLA from which the settlement was derived, the successful 8(g) negotiations were based more on the federal government's need to reduce the budget deficit than a new philosophy of compensating states for the impacts from OCS development. Under the terms of the original section 8(g), revenues from the adjacent tracts, on which the Secretary and the Governor were unable to agree on a fair and equitable distribution, were to be put in escrow, pending a final settlement. By the mid-1980's, close to \$6 billion was in escrow. With the 8(g) agreement in the 1985 budget reconciliation conference, some \$4.5 billion was released to the federal treasury and \$1.4 billion

was distributed among six coastal states. The agreement also earmarked an additional \$650 million "owed" to the states to be paid out over the next 15 years and provided that 27 percent of all future revenues from the 8(g) tracts would be awarded to the adjacent states.

Since 1986, therefore, there has been an ongoing, albeit limited, OCS revenue sharing program that has benefited a few states with near-shore leasing and development. But there remains no program for the sharing of any revenues from beyond six miles, which is where the vast majority of tracts lie. And as technology makes deep water drilling more feasible, the 8(g) program becomes even less relevant to a majority of coastal states. Even Louisiana, which has received more 8(g) funds than any other state, brought a law suit last year (subsequently withdrawn) against the Interior Department to halt a planned sale until a larger share of the revenues was provided to the State.

The Administration has consistently opposed any form of general OCS revenue sharing. While trying to open up most of the OCS to leasing in the last decade, the Administration chose not to work with Congress to fashion an impact-assistance program which all coastal states supported. Rather, the Administration was singularly responsible for killing all such proposals.

This policy position has resulted in incalculable damage to the OCS program, not because providing money would "bribe" frontier states into accepting unwanted development, but rather because it removed any sense of risk-sharing by the federal government. Two parties in the OCS process are at risk under the present system; the companies that offer bonus bids to

win leases from which no oil or gas may be found and the affected coastal states and communities that will be impacted by oil spills and onshore environmental and infrastructure costs.

The federal government receives the bonus and rental money from the lessees whether or not oil or gas is found. Other than the 8(g) payments of 27 percent for near-shore tracts, all other funds remain in the Treasury with about \$850 million annually credited to the Land and Water Conservation Fund and \$150 million annually to the National Historic Preservation Fund.

Why is the concept of risk-sharing important for the program? When state and local public officials contemplate an OCS lease sale and possible development off their coast, many seem to engage in a type of cost-benefit analysis by asking the question: what's in it for my state or community? The projected costs may be enormous but the benefits are likely to be seen as non-existent. In effect, for many coastal state governors, county supervisors and commissioners, mayors and city managers, and coastal managers and planners, OCS development is perceived to be a zero sum game. A modest dose of revenue sharing would provide some level of parity in the calculations of public officials. On the other hand, no amount of revenue sharing is likely to induce local public officials to accept the risk of offshore development in environmentally sensitive or ecologically fragile areas or in communities in which the socioeconomic effects are perceived to be devastating.

Either stimulated by the recent Louisiana lawsuit or on its own, the Bush Administration has finally discovered this concept of parity. Within the last few months, it has

reversed decades of instinctive opposition to the sharing of OCS revenues with coastal states by releasing an impact-assistance proposal that would provide 12.5 percent of new OCS royalties to states within 200 miles of a producing tract. Although involving a very modest amount of money, at least in the early years, the Administration's proposal can be expected to be one of a number of revenue sharing concepts that may be before the Congress if the Senate energy bill passes this year.

Policy Error #3 - The June 26, 1990, Presidential Policy on the OCS - OR - not taking that policy to its logical conclusion.

In his FY 90 budget proposal, submitted to Congress in January 1989, President Bush indefinitely postponed pending OCS lease sales in southwest Florida and northern and southern California. The President also appointed a task force to examine the environmental issues involved in those three areas. As part of the task force's effort, a study by the National Research Council's Committee to Review the OCS Environmental Studies Program on the adequacy of environmental and socioeconomic data was also conducted.

The task force completed its work in January 1990, and six months later, the President announced a revised OCS policy. Among other directives, the new policy called for a moratorium until the year 2000 on leasing in the northern and central California planning areas, southern California (except for 87 tracts), southwest Florida, Georges Bank off New England, and Washington/Oregon. The latter two areas had not been part of the task force study. The Bush proposal also called for a process that could lead to the cancellation and buyback, with the

assistance of Florida, of 73 existing leases in south Florida.

It was a rather extraordinary announcement and change in policy for the Administration and an explicit acknowledgment that the OCS program was in trouble. In part, the Bush statement may have been affected by the political fallout from the EXXON VALDEZ oil spill in Alaska which occurred only six weeks after the presidential task force had been appointed. Although not an OCS accident, the largest spill in U.S. history permeated not only the rocks and shoreline of Prince William Sound, but the environmental politics of the White House and Capitol Hill.

Applause from Florida and California for the President's announcement could be heard, but it was muted. When an unexpected policy comes from an unexpected source, some look for loopholes. This was only an executive order and could be reversed by the President whenever he chose - maybe the policy should be codified in law. Wasn't the President doing this simply because of important gubernatorial elections in California and Florida in 1990 and when those are decided, or when the 1992 presidential election is over, might he try to reverse the policy on national security grounds? What about the 87 tracts in the Santa Maria basin and the Santa Barbara Channel? What about the northern area off the Gulf side of Florida, the panhandle region - would there be sales there in the next five year plan? Would the buyback of the Florida leases be dependent on the State making a major financial commitment? Certainly Florida made no bones about the fact that this was unlikely, so did that mean that the leases would not be canceled?

More important than the

grousing about the details and permanency of the Bush plan, was the outcry from those not included. A case in point is North Carolina. Governor Jim Martin, a former Member of Congress and a moderate-conservative Republican, wrote to the President one day after the OCS announcement and asked that his state be included in the moratorium.

Governor Martin, already dealing with the galvanized opposition along his state's coast to proposed drilling of a natural gas well by Mobil off the Outer Banks, also asked that the Mobil well be included in the moratorium.

Noting that he had always supported an adequate supply of oil and gas for the Nation, the Governor said, perhaps with tongue set firmly in cheek, "if the President has determined our reserves are ample, there is no need to include North Carolina as the only oil or gas drilling site on the entire East Coast."

With no move by the President to expand his moratoria evident, the FY 91 Interior Appropriations bill, for the first time, included an OCS leasing moratorium for a 50 mile buffer stretching from Rhode Island south to Maryland. This area had not been protected under the President's new policy but Congress embraced it in its ever growing moratoria coverage. North Carolina's concerns were taken care of by another law, the Outer Banks Protection Act, which the Chairman of the Committee on Merchant Marine and Fisheries, Representative Walter B. Jones whose congressional district includes the Outer Banks, added as an amendment to the Oil Pollution Act of 1990 (P.L. 101-380). The Outer Banks law not only prohibited new leasing off the state's coast but also delayed the approval of a drilling permit for the

Mobil well until environmental and socioeconomic information had been reviewed by a panel of scientists and the Interior Secretary certified to Congress that he had adequate information on which to make decisions under the OCSLA.

Voices from other states that had not been included in the President's ban could be heard in Washington making similar statements as the one by Governor Martin. By the time that hearings and deliberations on the FY 92 Interior Appropriations bill had been completed, the Congress essentially said, "... the hell with it; let's just extend the President's leasing moratoria protection to all OCS areas other than those where offshore development is acceptable and supported." The new bill expanded the leasing moratoria to entire planning areas along the Atlantic coast, all of the Gulf side of Florida, all of the planning areas along the Pacific coast, and the North Aleutian planning area in Alaska. Furthermore, no exploration plans or drilling permits could be approved for the 23 active leases in the North Aleutian area (Bristol Bay). All that is left for leasing is the area in the Gulf of Mexico west of the Eastern Gulf Planning Area and Alaska, other than Bristol Bay.

And what must be particularly disconcerting to the Administration, the Department, and the industry is that the FY 92 moratorium provision, which expanded the area covered from 283 million acres (in FY 91) to 468.6 million acres, was included in the bill almost without controversy or debate. It has become practically institutionalized in the congressional appropriations process.

In part, this may be because the June 1990 Bush policy gave legitimacy to the concept of a leasing moratorium on a planning area

basis which, up to that time, had been only a congressional initiative. Based on present estimates of undiscovered economically recoverable oil and gas, the President's moratoria would place off limits some 3.8 billion barrels (bb) of oil (16.6%) and 10.9 trillion cubic feet (tcf) of natural gas (12.7%). The congressional moratoria would add an additional 1.5 bb of oil (6.8%) and 12.1 tcf of gas (14.0%). The President, in other words, would restrict more than 2.5 times the amount of oil placed off limits in the FY92 congressional moratoria provision while the Congress would restrict only marginally more natural gas than the President.

The primary problem with the President's June, 1990, policy announcement was that it was a half a loaf. The politics of the OCS issue are such that the President really had only two viable options. He could have defended the procedures and policies of his Interior Department's administration of the offshore program, stressed its safety record, focused on jobs, noted the importance of domestic production, highlighted the balance-of-payment and environmental problems associated with foreign imports, and promised to provide some level of impact assistance and do a better job of integrating states and communities into the process. At the same time, some positive policy and budgetary statements from the White House about programs such as the CZMA, marine sanctuaries and other coastal environmental laws would have aided the President's defense of his Administration's OCS program.

Would this tactic have worked? Probably not, given the hardened positions among all parties involved. But, at least the President

would not have endorsed leasing moratoria until the year 2000 and given credibility—the concept of canceling and buying back leases, a potentially costly procedure authorized under law but never implemented. These proposals may come back to haunt the OCS program.

The President's other option was to acknowledge that the OCS program is in trouble by effectively but temporarily shutting it down in the areas of opposition. He could have explicitly recognized that the procedures under Outer Continental Shelf Lands Act are not working by extending his moratoria to all planning regions outside of the central/western Gulf of Mexico and Alaska. He could have publicly recognized the concerns of the coastal states-environmentalist coalition and the residents of all coastal communities and promised to conduct a full scale environmental studies program (cut back in the Reagan-Bush Administrations) to fill in the numerous information gaps identified by the National Research Council's report, a report commissioned by his own OCS Task Force.

Essentially, for the rest of this decade, the President could have called for the end of hostility on the OCS — peace, not war, offshore. Not only would this action have removed the OCS from the political agenda, it would have enhanced by orders of magnitude a key factor of critical importance to the oil and gas industry predictability. By concentrating the OCS program only in receptive areas of the country, industry officials could plan their exploration budgets for areas in which there is a reasonable expectation that development can go forward without political opposition. Onshore areas in the United States and foreign invest-

ments could be more fully explored. The frontier OCS of the U.S. could be held in a type of reserve for the next century.

Between now and then, the myriad environmental, socio-economic, and political issues that have acted as constraints on the OCS program could be comprehensively addressed. Critical to this calculus would be the substantial augmentation of the Environmental Studies program, on a planning area by planning area basis and accompanied by a rigorous peer review process. The purpose of such augmentation would be to make as certain as possible that the information on which the Interior Department makes its leasing decisions under the OCSLA is as complete as practicable and fully available to the coastal states and their citizens well in advance of any proposed sales.

The President did not choose either of these alternatives but rather a half way OCS policy that has satisfied practically no one. Exacerbating the problem was his National Energy Strategy (NES), released less than eight months after his OCS moratorium policy announcement, in which he emphasized developing domestic sources of energy and looked to the OCS (and onshore Alaska) as prime candidates for increased production without an equal and concomitant emphasis on conservation and alternative sources of energy. It is possible that, in the likely debate over comprehensive energy legislation later this year Congress may attempt to choose its own OCS policy alternative, thus forcing a decision on the President that he has so far avoided.

## Conclusion

Historically, the federal OCS program must be viewed as a success. While bringing in almost \$100 billion to the Treasury, it now accounts for 25 percent of the natural gas and 10 percent of the oil produced domestically. Globally, U.S. offshore production of oil accounts for only eight percent of all oil produced from the ocean, but approximately 38 percent of the world's offshore natural gas production. Government estimates of our remaining undiscovered reserves indicate that the OCS may hold about 24 percent of our future natural gas resources and 14 percent of oil.\*

In recent years, however, the OCS program has been one of the most politically contentious domestic resource management efforts on the federal books. Ironically, the institutional role of the federal government which gives it singular control over the OCS — a role it strenuously and successfully fought for from the mid-1930's - has led, in the view of many coastal states, to a pattern of paternalistic decisionmaking about permitted activities just beyond the submerged lands of those states. This view, whether fair or not, is commonly shared by many state and local officials in most of the frontier states and effectively communicated to their Congressional delegations.

In the jargon of the economist, it may be that the federal government has not done an adequate job of calculating the ratio of social costs to the value of offshore production. Clearly, there have been miscalculations about the political costs of moving into frontier areas, attributable largely to attitudinal problems that have led to serious policy errors. The failure on the part of the federal govern-

ment to seek more of a real partnership with the coastal states over OCS resources lies at the heart of the program's recent problems.

Finally, it must be noted that this paper has only focused on the failures of the federal government with respect to the administration of the OCS program. Because of its legal and jurisdictional role in leasing and monitoring offshore energy production, it is a critically important actor in the OCS game. But other institutions — Congress, coastal states and communities, environmental organizations, citizen groups, the oil and gas producers and offshore service industry, and others — all share in the responsibility to see that the program functions in a reasonable, responsible, and predictable manner. The fact is that none of the parties involved in the offshore management system have adequately addressed the problems of multiple use conflicts, nor the still outstanding question of equitability between the federal and coastal state governments, on the OCS.

## REDISCOVERING THE PUBLIC INTEREST IN THE OUTER CONTINENTAL SHELF LANDS

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### Introduction

The 1978 amendments to the Outer Continental Shelf Lands Act were designed to promote the expeditious yet environmentally-sound development of frontier OCS oil resources. The amended OCS program has failed to achieve its goal, however, and environmental, development, and government interests have reached a stalemate. There is now widespread agreement that the OCS program requires fundamental change in order to move beyond the contentious and debilitating conflict of the past 15 years.

This paper frames the OCS development dilemma as a problem of "rediscovering the public interest in the OCS lands." Section Two considers five frameworks for thinking about the public interest: republicanism, civic environmentalism, bioregionalism, ecosystem management, and reinventing government. Five principles of policy reform for achieving the public interest are then distilled from these frameworks. Section Three applies these principles to the structure and past implementation of the existing OCS program and argues for four OCS policy changes: (1) decentralization of development decisions to the four OCS regions; (2) establishment of regional decisionmaking bodies consisting of all of the major stakeholders in OCS

decisions; (3) allocation of the costs and benefits of OCS development to the regional decisionmaking bodies; and (4) institutionalization of a public mechanism for OCS exploration. These reforms are intended to establish and affirm the public character of OCS resource decisionmaking by enhancing public discourse and by placing control of key resource allocations within regional political and community settings.

### Discovering The Public Interest

Defining "the Public Interest" is difficult and controversial. Nonetheless, this section considers five frameworks for discussing the public interest in relation to themes of governance and environmental management.

#### Republicanism and Public Discourse

In contrast to Madisonian democracy, which emphasizes controlling the negative effects of factions, Republican or Jeffersonian theories of democracy emphasize strong public participation and engagement in the policy-making process in order to reach common definitions and solutions to public problems. Whereas the checks and balances approach of the Madisonian vision promotes "veto-politics", republicanism promotes public discourse and processes for consensus-building. Citizenship,

decentralized face-to-face problem-solving, and a belief that common citizens can rise above self-interest to discover the public interest are hallmarks of republicanism.

#### Civic Environmentalism

In his book *Civic Environmentalism*, DeWitt John proposes an alternative to the federal command and control "gorilla in the closet" model of environmental management.<sup>1</sup> Some of the primary characteristics of "civic environmentalism" are bottom-up public participation and formulation of environmental policy; integration of existing fragmented governmental authorities; and experimentation and adjustment of policies in response to scientific uncertainty. It stresses the importance of the "civic" dimension of public policy in order to more effectively balance environmental and economic values.

#### Bioregionalism

Bioregionalism is concerned with integrating the ecological aspects of a region with its economy, culture, education, and governance. It postulates the importance of regional ecologies and cultures, as well as the development of sustainable regional economies, material flows, etc. Like *Civic Environmentalism*, it believes bottom-up, decentralized structures of governance are critical to devel-

oping the public interest. It also believes that a sense of "place" is essential to our understandings of the public interest.

### **Ecosystem Management**

Ecosystem management is quickly emerging as the preferred method for protecting ecosystems and/or more effectively balancing multiple interests within ecosystems. Although there are many different approaches to ecosystem management, the Clinton Administration's policy articulates some of its general principles: (1) to manage along ecological rather than political or administrative boundaries; (2) to ensure coordination among Federal agencies, and increased collaboration with State, local, and tribal governments, the public, and Congress; (3) to use monitoring, assessment, and the best science available; and (4) to consider all natural and human components and their interactions.<sup>2</sup> The recent Department of Interior initiative for promoting decentralized ecosystem management of public grazing lands provides a potential institutional framework for translation to the OCS development arena.

### **Reinventing Government**

In *Reinventing Government*, Osborne and Gaebler set out ten principles for transforming the public sector and in particular, for responding to problems associated with centralized, bureaucratic organizations.<sup>3</sup> The Clinton/Gore administration has embraced several of these in its own "reinventing government" initiative. Some that are most relevant to discovering the public interest are decentralization and participation, empowering communities, mission-driven as opposed to rules-driven government, and anticipatory as opposed to reactive government.

### **Conclusion**

Together, the five perspectives on governance suggest five principles for better discovering the public interest: (1) establishment of decentralized, bottom-up decisionmaking; (2) promotion of public dialogue and consensus-building; (3) pursuit of flexible problem-solving at the regional and local level; (4) integration of fragmented federal, state, and local interests; (5) integration of regional political, economic, and environmental dimensions of social interaction.

### **The Public Interest and the OCS Program**

Over the last 15 years, the federal OCS program has not been implemented consistent with the principles developed above. In particular, implementation of the OCS leasing program has been (1) highly centralized (2) lacking in meaningful public participation; (3) bureaucratic at the federal and regional level; (4) undermined by institutional fragmentation and the incentives for conflict; (5) haunted by the asymmetric allocation of the costs and benefits; and (6) unable to deal with uncertainty effectively.<sup>4</sup> Rather than promoting problem-solving and consensus-building, the program has been characterized by veto-politics and deadlock. What concrete reforms might follow from the principles developed in Section II?

First, authority for OCS development decisions should be devolved to regional and/or subregional decisionmaking bodies. The proper scope of these bodies should flow from an ecological understanding of the coastal and marine environment. As discussed by the OCS Policy Committee's Subcommittee on Legislation, regional decisions should be binding on the

federal Department of Interior. In addition, regional bodies should comprise all of the significant stakeholders within the region or subregion. Finally, scientific studies and problem-solving should be well integrated into the planning and development decisions of the these regional bodies. The mission of reaching consensus and well-conceived strategies of decision, not rigid, predefined timetables, should establish timelines for implementation.

Second, efforts should be made to regionally integrate the costs and benefits of OCS development. At a minimum this would entail radical revenue-sharing on the benefits side. It is already widely perceived that the costs (environmental and social) of OCS development are borne by regions. Nonetheless, there must be a legitimate effort to integrate all potential values of OCS development. This would entail answering such questions as: to what extent does each region participate in generating its own sustainable supply of energy? To what extent are environmental benefits enjoyed by extra-regional interests? etc. Eventually, such an approach would entail both the decentralization of all relevant decisions related to the development of a bioregional, ecologically-managed system of governance and the integration of these decisions across bioregional or ecosystems.

Finally, the leasing and exploration phases of OCS development should be integrated to maintain the public character of the OCS development decision regime. The outer continental shelf lands are public lands, not private. As identified by the NRC and others, once federal OCS lands are leased to and subsequently explored by private oil development interests, there is a certain momentum in

favor of development if oil is discovered. The fear of such eventuality has played a significant role in pushing opposition to OCS development back to the leasing stage. To address this, public mechanisms of OCS exploration should be considered, such as the "federal oil and gas company" (FOGCO) idea that circulated during the 1970's OSCLA amendment process. Although controversial, the publicization of the exploration phase would promote true public decisionmaking concerning OCS development and promote the regional integration of OCS development costs and benefits.

### Conclusion

Current thinking on governance, the public interest, and the environment suggests numerous principles for developing more effective structures of democratic governance. Applying these to the OCS development dilemma yields some controversial proposals including the radical decentralization of decisionmaking authority, the promotion of truly participatory decisionmaking fora, integration of regional costs and benefits of OCS development, and the removal of the private sector bias in exploration and development decisions. It is quite possible that such reforms would lead to just as much conflict, litigation, and Congressional interference as we have seen thus far in the OCS program. Still, we will be better for having pursued new practices of governance consistent with the ideals of republicanism, civic and ecological integrity, and reinventing government, and certainly no worse off in terms of outcomes.

### Notes

1. Dewitt, John. *Civic Environmentalism: Alternatives to Regulation in States and Communities* (Washington, D.C., Congressional Quarterly Press, 1994).
2. Clinton Administration's Proposed FY 1994 Budget.
3. Osborne, David, and Ted Gaebler. *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector* (New York, Plume, 1993).

EXCERPT FROM  
**MOVING BEYOND CONFLICT TO CONSENSUS:  
REPORT OF THE DEPARTMENT OF INTERIOR OCS POLICY COMMITTEE'S SUBCOMMITTEE ON  
OUTER CONTINENTAL SHELF LEGISLATION**

(OCTOBER 1993)

**EXECUTIVE SUMMARY**

The federal Outer Continental Shelf (OCS) oil and gas program has provided significant benefits to the nation by helping to fulfill energy needs, contributing to economic well being, and providing an important source of revenues for the U.S. Treasury. The OCS program also entails a variety of environmental and socioeconomic impacts to the marine and coastal environment that primarily affect the coastal states and localities.

Owing to both the benefits and costs associated with the OCS program, there has been a great deal of controversy over the ownership and management of offshore oil and gas resources. Some of the controversy pre dates the inception of the federal program in 1954, as both the United States and individual coastal states vied for jurisdiction over the nation's offshore realm, with the federal government eventually gaining title to the great majority of the continental shelf. Additional controversy has arisen over the years as concerns about the program's environmental and socioeconomic impacts have increased.

Conflict and contention related to the OCS program have intensified over the past decade, in large part because of the federal executive branch's approach to managing the program under the existing legal and regulatory regime. The Department of the Interior and other federal agencies have prime

authority for OCS program decisions while states have a subordinate role. This regime has allowed the exercise of a hierarchical method of management on the part of the executive branch.

Since 1982, affected state and local governments have turned to the federal legislative branch to check the executive's authority by enacting annual appropriations legislation prohibiting the use of funds for OCS leasing and related activities. Such restrictions have played a substantial part in dampening the U.S. offshore industry's interest in participating in the federal OCS program. Overall, the prevailing controversies and the measures used to deal with them have seriously diminished the effectiveness of the federal OCS oil and gas program in helping to meet the Nation's energy needs.

The National Energy Policy Act of 1992 provides a comprehensive framework for managing the nation's energy future. Enactment of proposed OCS measures related to moratoria, lease cancellation and buyback, impact assistance and revenue sharing, incentives to industry, and environmental sciences review panels was considered. However, reflecting the great degree of conflict and resulting political polarization currently affecting the OCS oil and gas program—as well as the cost to the U.S. Treasury of impact assistance and lease buybacks—the conferees

from the House and Senate could not agree on the pertinent legislative provisions that were proposed, so all of those measures were removed from the bill that ultimately was signed into law. Subsequently, the OCS Policy Committee decided to conduct its own review of those legislative provisions in the broad context of the overall legal and regulatory regime governing the OCS program and chartered the Subcommittee on OCS Legislation for that purpose.

As a starting point, the Subcommittee undertook an independent and objective assessment of the history and current state of the OCS program. The Subcommittee concluded that there is a need to maintain an active OCS oil and gas program to continue to help in meeting the nation's energy requirements for the foreseeable future.

However, if the program is to proceed successfully out of its present state of conflict and controversy, a new paradigm of OCS decision making will be necessary.

A summary of the Subcommittee on OCS Legislation's findings and recommendations is presented below.

**Summary of Primary Recommendations**

Moratoria are a symptom of the federal government's past hierarchical approach to OCS decision making; the OCS process should be

modified to focus more on reaching consensus in order to obviate the need for moratoria; regional task forces should be established to build consensus on OCS leasing.

Calls for **lease cancellation and buyback** reflect the same problems underlying moratoria; specifically, with respect to the leases considered for buyback in the 1992 comprehensive energy legislation, the Subcommittee favors a prompt and suitable solution; generally, the Subcommittee believes that section 5 of the OCS Lands Act should be the sole means for considering an OCS lease for cancellation, and section 5 is not in need of amendment.

**Impact assistance and revenue sharing** measures should be enacted. Two alternatives are presented for providing impact assistance to coastal states, Great Lakes states, and U.S. Territories as well as coastal localities: one provides for allocating a portion of the present revenue stream; and the other provides for appropriating money annually for a trust fund to generate interest that would be distributed either through an entitlement or an annual appropriation mechanism. OCS revenues would be used to fund the regional task forces discussed above.

**Incentives to industry**—especially relating to royalty relief—should be considered further. Possible measures include: a program similar to the reduced royalty program applying to onshore stripper wells that would extend the producing life of OCS leases; full implementation of the initiatives announced by MMS in Fall 1992; and new legislation to give MMS the authority to provide royalty relief on all existing undeveloped leases. The Secretary should consider carefully measures such as S.318 which proposes a

deepwater royalty holiday as well as other possible incentives for both the mature shallow and frontier deepwater portions of the Gulf of Mexico. Existing technical restrictions as they apply to deepwater operations also should be analyzed with an eye toward reducing costs and risks.

**Environmental sciences review panels** should not be established because they would add an unnecessary layer of review to that of the Scientific Committee of the OCS Advisory Board. Instead, the existing MMS environmental studies program is in need of adequate funding, good science, and appropriate cooperation among MMS and other involved parties. Further, the MMS should develop a comprehensive, efficient, and accessible data management and dissemination system for the studies program.

### **Summary of Additional Recommendations**

The Subcommittee is aware that MMS is looking into alternatives to existing leasing policies and that the Department of Energy is undertaking an effort to develop a strategy to provide expanded opportunities for domestic oil and gas producers. The Subcommittee recommends that the results of those efforts be considered as they become available.

The Subcommittee finds it appropriate for the OCS Policy Committee to consider the findings and recommendations of an effort in progress by the National Research Council's Marine Board concerning the concept of a national multiple criteria decisionmaking regime for managing the resources of the U.S. Exclusive Economic Zone.

**DISCUSSION ON THE RECOMMENDATIONS OF THE REPORT OF THE OCS POLICY COMMITTEE'S SUBCOMMITTEE ON OCS LEGISLATION**

*(Correspondence from Secretary of Interior Bruce Babbitt, to Robert Jordan, Chairman, OCS Policy Committee, March 22, 1994)*

**Moratoria**

**Recommendation:** Regional task forces representing all OCS program stakeholders should be established to focus more on reaching consensus on OCS leasing decisions in an effort to obviate the need for moratoria.

**Discussion:** The Department of the Interior endorses the involvement of stakeholders in OCS program decisions, especially on a regional basis. We think such an approach is appropriate for certain areas of the OCS where a lack of consensus has led to congressional moratoria and similar impasses affecting the OCS program.

The Department already has initiated efforts aimed at resolving issues and conflicts related to existing leases in the Southern California and the Eastern Gulf of Mexico OCS Planning Areas. While the efforts we are undertaking differ in specifics and in the degree to which they have been formalized and developed, each represents an important opportunity to gain valuable information and experience that could form a basis for consensus-building initiatives related to other OCS areas and issues.

Specifically, the Minerals Management Service (MMS) is proceeding with the California Offshore Oil and Gas Energy Resources Study, which is a formally established cooperative effort involving the MMS Pacific Region Office, local and State government agencies, and the offshore industry that will address how, when, and

where activities on existing undeveloped Southern California leases might be permitted. Department and MMS officials have made preliminary contacts with the Governor of Florida and congressional representatives of that State to discuss issues related to natural gas exploration and development in the Destin Dome area off the Florida Panhandle.

The Department's policy concerning areas where the OCS program has generated controversy and impasse calls for resolving issues associated with existing leases before such areas would be considered for future leasing. The initiatives described above are in keeping with this policy. We hope that each will lead to consensus solutions and provide insight that will be of use in our future deliberations on other OCS areas and issues.

**Lease Cancellation and Buyback**

**Recommendation:** A prompt and suitable resolution should be attained for the leases that have been targeted for buyback and are subject to litigation. Generally, section 5 of the OCS Lands Act, as amended, should be the means for considering leases for cancellation and compensation, and section 5 is not in need of amendment at this time.

**Discussion:** While the Subcommittee's findings and recommendations on this important issue are appreciated, it would be inappropriate for the Department to comment on them due to the

pending litigation in the U.S. Court of Claims.

**Coastal Impact Assistance and Revenue Sharing**

**Recommendation:** A portion of the revenues derived from OCS program activities should be shared with coastal States, Great Lakes States, and U.S. Territories.

**Discussion:** The Department supports the concept of coastal impact assistance. We support the principles that were outlined in the Subcommittee's report: protecting coastal and marine resources, offsetting any impacts of the OCS program, and strengthening the Federal-State partnership.

However, there are a host of issues that need to be considered in developing an impact assistance program, including: whether State and/or local governments receive funds; the basis on which funding allocations would be determined; and whether allowable uses of funds should be designated. A critical issue in formulating an impact assistance program is the budget offsets required so that there is no net impact on the Federal Treasury. Any proposal, such as this one, would be competing with other priorities for scarce budget resources.

**Incentives to Industry**

**Recommendation:** Economic and technical incentives should be thoroughly analyzed and considered for implementation by the Department to encourage the U.S. oil and gas industry's continued participation in the OCS program.

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**Discussion:** Both the Department of the Interior, through MMS, and the Department of Energy (DOE) have ongoing efforts concerning the formulation and implementation of such initiatives. The MMS efforts are described immediately below as well as in the subsequent discussion of the Subcommittee's additional observations and recommendations concerning alternative leasing policies and industry incentives. The DOE Natural Gas and Oil Initiative also is described in that latter section.

The MMS has undertaken a number of efforts relevant to the Subcommittee's specific recommendations on royalty relief measures. Due to conditions such as field maturity, less than robust oil price expectations, and other factors, the MMS has received a number of requests for royalty reduction on existing leases. The existing applicable regulations are being reviewed, with the specifics of these Subcommittee recommendations emerging as possible considerations.

The Subcommittee recommends implementation of a royalty reduction program similar to the one in place for onshore stripper wells on Federal lands. The MMS is considering ways that such a program might be efficiently instituted and administered.

The Subcommittee recommends completing the implementation of regulatory and administrative initiatives announced by previous Secretary of the Interior Lujan on October 27, 1992. The MMS has taken steps to continue the analysis of those and other possible measures. On December 7, 1993, the MMS published in the Federal Register a call for public comment on general leasing policies in the Central and Western

Gulf of Mexico for the current 5-year program (this solicitation is discussed further under the additional recommendations addressed below). The MMS will be evaluating the comments and suggestions received as well as conducting in-house studies of bidding systems. In addition, an effort is underway to review and revise, as appropriate, the royalty rate relief policy on existing OCS leases. As a result, the process through which an applicant solicits royalty relief should be clarified and rendered less of an administrative burden. Also, the definition for deepwater lease classification will be reviewed in light of any comments received.

Further, the MMS is considering a regulatory change whereby a royalty rate of less than 12-1/2 percent might be specified on certain new leases. Such a regulatory change, if instituted, would provide additional flexibility for assigning a royalty rate (or royalty suspension) on new leases offered in OCS lease sales. Presently, the regulations pertaining to specific leases provide for royalty rates of not less than 12-1/2 percent.

Recent studies completed by the MMS have shown that current lease offerings are composed of increasing numbers of tracts that have been previously leased—many of which have been explored and drilled and some on which subeconomic reserves have been discovered. Reoffering those tracts at a lower lease-specific royalty rate may promote continued development, culminating in production. This cannot be accomplished under the current royalty policy. Furthermore, the MMS is evaluating whether certain leases in the Gulf of Mexico that have generated little or no interest in previous lease sales should be offered with a lower royalty rate or a royalty suspension.

With respect to the Subcommittee's recommendation on new legislation to broaden MMS authority to provide royalty relief on all existing but undeveloped leases, the MMS, at the request of congressional committee staff, is providing analytical support and suggestions to refine the details of certain bills initiated by the Senate and House of Representatives. The MMS has identified potential changes to such bills which would target incentives to those deepwater tracts in the Gulf of Mexico that most need relief and would increase production, national economic benefits, and Federal revenues.

The report also refers to tax incentives. Although there may be some identified tax considerations that may be appropriate incentives to spur OCS development—and the MMS has studied various tax-relief bills proposed by Congress—the Department has no jurisdiction in this area. Some tax incentives are included in the DOE Natural Gas and Oil Initiative discussed subsequently.

With respect to technical incentives, as noted in the report, the MMS is actively considering whether changes in operational regulations would be appropriate for deepwater projects and, if so, which might be most effective.

In summary, the Department is undertaking a major review of policies in light of the objectives of the OCS Lands Act and the current economic environment. Policies that may be excessively restrictive will receive scrutiny as to their implications to the OCS oil and gas program in view of changing economic conditions. This policy review will include many of the specifics noted in the Subcommittee's recommendations

as well as other aspects of the program.

### **Environmental Sciences Review Panels (ESRP's)**

**Recommendation:** Environmental Sciences Review Panels should not be established.

**Discussion:** The Department agrees with the Subcommittee's findings that the OCS program does not need additional formalized oversight of environmental studies and science to that already provided by the OCS Advisory Board's Scientific Committee. We concur that there is no need to establish a program of ESRP evaluations.

We agree that adequate funding of the Environmental Studies Program is essential to assuring that quality science underpins OCS decisions. The MMS will continue to develop cooperative efforts with other federal, State and local agencies, and such efforts will emphasize leveraged cost-sharing for research that is mutually beneficial. The National Biological Survey (NBS) provides the MMS with a new opportunity for collaboration and ability to ensure an ecosystem approach to marine resource management. The MMS and NBS are developing a Memorandum of Understanding to make sure that biological information needs for OCS decisions are satisfied.

In reference to the MMS using the information it generates to better inform the public, the MMS instituted the Area Evaluation and Decision Process for the consideration of leasing in the current 5-year program. This process includes greater attention to the adequacy of information for decisionmaking and is responsive to views of the potentially affected parties and adapted to resolving conflicts

among competing points of view.

The Department also agrees with the Subcommittee's observations regarding improving the management and dissemination of environmental studies information, as we consider it an invaluable resource for decisionmakers and researchers. In response to the need to make the information in these materials more widely available and easier to use, the studies program is currently undertaking a multi-year project to create a user friendly electronic text management system, the Environmental Studies Program Information System (ESPIS).

### **Alternative Leasing Policies and Industry Incentives**

**Recommendation:** Since efforts underway by the MMS and DOE parallel the work of the Subcommittee on OCS Legislation, the recommendations proposed by those efforts should be considered as they become available.

**Discussion:** Both the MMS and DOE efforts have made progress since the Subcommittee report was issued.

As mentioned above in the discussion of industry incentives, on December 7, 1993, the MMS published in the Federal Register a Call for Public Comment on general leasing policies in the Central and Western Gulf of Mexico for sales remaining under the current 5-year program. The response to this Call for Public Comment will be considered along with internal analyses of existing and alternative leasing policies for the Gulf of Mexico and other OCS planning areas. Neither the Department nor the MMS has made any decisions as to what changes, if any, are appropriate.

On December 9, 1993, DOE announced its Domestic Natural

Gas and Oil Initiative. The Initiative is aimed at boosting markets for domestic natural gas and oil while developing a long-term strategy to lessen America's dependence on foreign oil. The Initiative contains several elements:

- Review tax incentives to attract capital into the industry;
- Increase natural gas and oil production and environmental protection through the development and application of technology;
- Stimulate markets for natural gas; and
- Reduce the cost of regulation while maintaining environmental protection.

The Department of the Interior endorses the Initiative as another example of the Administration's commitment to developing better ways to use our energy resources, and we expect to play a major role in implementing proposals concerning the simplification of regulations and evaluation of production from Federal lands. In particular, the Initiative includes some action items that dovetail with those of the Subcommittee report, such as working with State and local stakeholders to resolve conflicts concerning the Department's leasing and development programs, and the development of incentive options for deepwater and marginal fields in the Gulf of Mexico.

We have already begun analyzing options for implementing the recommendations that pertain to the OCS, and after this analysis, further consultation with DOE, and consideration of responses to the Call for Public Comment, the Department and the MMS will decide what further actions might be appropriate.

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## **Multiple Criteria Decisionmaking**

**Subcommittee Recommendation:** The subcommittee finds it appropriate and consistent with the objective of regenerating the OCS oil and gas program for the OCS Policy Committee to consider findings and recommendations of the Marine Board and to take appropriate action.

**Discussion:** The Marine Board's proposal to develop through a partnership of stakeholders a national management strategy for the Exclusive Economic Zone (EEZ) that takes into account regional differences and concerns appears to be a worthy undertaking. Notwithstanding the substantial national benefits which the OCS oil and gas program has produced, it has generated costs to other EEZ stakeholders and has been a focus of controversy which, in itself, has been and continues to be expensive. Using a regional approach to conflict resolution also appears to be a sound strategy since conflicts over resource use can often be worked out most effectively at the State and local levels.

The Department is committed to developing strategies for the sustainable development of our Nation's natural resources and, for the OCS and EEZ, that would clearly have to be a collaborative effort among all major affected parties. The Secretary of the Interior is a member of the President's Council on Sustainable Development. Thus, the Department would be particularly interested in the relationship between extraction and transport of nonrenewable resources and the sustainability of the renewable resources of the EEZ. We would like to see any such recommendations from the OCS Policy Commit-

tee or the Marine Board which the Council could review.

Staff of the MMS attended the Marine Board's April forum and have discussed the proposal with them. We support the effort and will be following it closely. We hope the OCS Policy Committee also will monitor the Marine Board effort, as recommended by the Subcommittee, and we will make the staff of MMS available to assist in the dissemination of information for that purpose.

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**Roundtable Panelists – Informal Written Commentaries**

**R Gary Magnuson**

*NOAA and OCS Policy Committee*

**What Can Be Done to Fix the Offshore Oil and Gas Program?**

As a member of the Secretary of Interior's OCS Policy Committee and its Subcommittee on OCS Legislation, I associate myself with the basic tenet of the recommendations of the Subcommittee contained in its September 1993 report to the Secretary, "Moving Beyond Conflict to Consensus." However, for the purposes of this Symposium, I offer an additional recommendation for consideration by the Session Six Roundtable.

**Recommendation:** During the preparation of the OCS Leasing Program as required under Section 18 of the Outer Continental Shelf Lands Act, federal agencies which are invited by the Interior Secretary to make suggestions for the Program, will instead be required to do so by a Presidential Executive Order. Through this directive, all federal agencies with ocean resource and use responsibilities would submit appropriate information regarding the use of the sea and seabed, and relevant environmental and predictive data to the Secretary of the Interior. This information would then be included as part of the OCS Leasing Program in the form of a composite national ocean use base map. It is suggested that this relatively minor administrative process change could result in producing a useful ocean planning tool, leading to several ocean governance improvements: increased federal agency ocean planning collaboration, improved ocean use conflict resolution, and more readily understood ocean resource use

information for Program participants, decisionmakers and the public.

**Justification:** Whether one supports the federal OCS Leasing Program or not, the Program is one of the most significant ocean planning efforts by the federal government. Determining how this effort could be in some simple, workable way be improved to help set the stage for more comprehensive ocean governance initiatives, is a primary purpose of this roundtable contribution.

The recommendation is also consistent with the recently enacted provision (section 104) of the national marine sanctuary program reauthorization, which calls for new consultation requirements of federal agencies regarding the preparation of an environmental assessment of ocean discharges within or affecting an area designated a marine sanctuary.

It is suggested that to reduce the potential cost to the federal government to implement the recommendation, that it would be limited initially to one or two OCS planning areas. This would allow for the initiative to be evaluated before being applied nationally to all OCS planning areas.

The recommendation is offered in the spirit of "front loading" the OCS oil and gas leasing process. If during the course of this recommendation's implementation more complete ocean use and resource information is provided to OCS Leasing Program participants, state governments, and the general public, better leasing decisions can and should be expected. This may not be an easy process, but could lead to improved ocean use dispute

resolution and a more predictable, cost-efficient OCS Leasing Program.

The recommendation is timely and can be put into effect this Summer, as the Minerals Management Service begins to prepare the 1998-2003, 5-year OCS Leasing Program.

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**Lisa Speer**

*Natural Resources Defense Council  
and OCS Policy Committee*

**Some Recommended Changes to OCSLA**

**1. Long-term protection**

In our view, the conflict over the OCS program is largely the result of repeated attempts to permit leasing and drilling in areas where the consensus of the states involved and their elected representatives is that such activities should not go forward. In view of this, we believe that the most effective means of reducing conflict over the OCS program is to grant states long-term protection, much as President Bush did in June of 1990 when he protected the entire west coast, the North Atlantic and the Florida Keys from further leasing, and the Keys from drilling, for ten years. We have, therefore, recommended that the Congress and the Administration reaffirm President Bush's action and expand it to include other moratoria states that were inexplicably left out. These areas include but are not limited to the Mid- and South Atlantic states, Alaska's Bristol Bay, and Florida's Eastern Gulf of Mexico.

Such an action would not be inconsistent with the Administration's goal of focusing more heavily on natural gas as an energy source. This is because the

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overwhelming majority (more than 80%) of the nation's OCS gas is located in the Central and Western Gulf of Mexico, an area not subject to moratoria.<sup>1</sup> Indeed, the entire OCS outside the Central and Western Gulf contains less than 5% of the Interior Department's estimates.<sup>2</sup> Thus it is possible for the Administration to support long-term protection for these areas without sacrificing its commitment to natural gas.

For areas where OCS activity does proceed, a number of reforms to OCSLA are needed.

**2. Increase the roles of the states and local governments in lease sale decisions**

OCSLA was extensively amended in 1978 to give affected coastal states a greater role in OCS decisions and provide more of a balance in the OCS leasing program between development and environmental protection. In the sixteen years that have passed since the amendments were enacted, it has become abundantly clear that the Secretary retains virtually unbridled discretion over OCS decisions. Under Sections 18 and 19 of OCSLA, states have repeatedly tried to challenge the Secretary's continuous rejection of their recommendations to remove areas from consideration of the Five Year Program and in individual lease sales. Most of these challenges were unsuccessful due to the lack of statutory language forcing the Secretary to meaningfully address state concerns.<sup>3</sup> Faced with no means of participating meaningfully in OCS decisions, the states

and local governments have been forced to turn to Congress for relief in the form of appropriations moratoriums.

For those regions of the country where OCS activities proceed, states and local governments need to have meaningful role at the Five Year Program and the lease sale states. One way to achieve this would be to require the Secretary to accept a Governor's recommendations unless the Secretary finds that they were based on errors of fact or were arbitrarily or capriciously made.

**3. Buybacks**

The previous two Administrations' aggressive approaches to OCS leasing resulted in a number of areas leased that never should have been offered, including Alaska's Bristol Bay, the Florida Keys and Everglades regions and the area off Cape Hatteras. Correcting these mistakes is difficult, in part due to the exceedingly burdensome lease cancellation requirements in OCSLA. Recommended changes to the requirements in Section 5 governing cancellation of existing OCS leases include: reducing the time that a lease must be suspended prior to cancellation from five years to one year; making it clear that harm or serious threats to environmental resources of substantial value from OCS activities are grounds for cancellation; and providing for compensation in the form of credits against rents and royalties on future leases.

**4. Strengthen Section 19**

In addition to giving states a

more meaningful role in lease sale decisions, Section 19 needs substantive standards to govern the Secretary's decisions at the lease sale stage. The Secretary should be required to give equal weight to environmental protection and oil and gas development in determining the national interest and weighing that interest against the interests of the affected States. In addition, changes are needed to undo the current legal fiction that the lease sale is a relatively unimportant stage of the process.

The lease sale is a very significant stage in the process, perhaps the most significant decision point. As a practical matter, it entails a major commitment by both industry and government. Large amounts of money change hands and, in reality, once this has happened, it is very hard to undo the lease sale and deny permission for the latter exploration, development and production stages. It is unfair to all affected parties, including states, the industry and the public, not to take this step most seriously. Unfortunately, particularly since the U.S. Supreme Court's decision in *Secretary of the Interior v. California* 464 U.S. 312 (1984), in which the court characterized the lease as a mere paper transaction, lower courts have interpreted a need for compliance with OCSLA and other applicable laws (e.g., NEPA, ESA) at the lease sale stage more laxly than is merited. The requirements for subsequent approvals at the exploration, development and production stages, do not vitiate in any way the need for and desirability of the fullest compliance with OCSLA and other applicable laws at the lease sale stage.

**5. Environmental studies**

The House version of the national energy bill contained

<sup>1</sup> Proposed Final Program Decision Document at pages 7-22 through 7-29.

<sup>2</sup> *id.* and USGS/MMS, Estimates of Undiscovered Conventional Oil and Gas Resources in the United States at page 1.

<sup>3</sup> For example, in litigation brought by the State of Alaska challenging the first lease sale in Bristol Bay, the district court held that there was no deference owed to the Governor's recommendations under Section 19. This decision was upheld by the U.S. Court of Appeals for the Ninth Circuit and the United States Supreme Court declined to review that decision.

important reforms to the environmental studies process which we feel would help improve the information on which OCS decisions are based and thus help to reduce controversy.

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**Biliana Cicin-Sain**  
*University of Delaware*

### Some Thoughts on OCS Reform

Of all the U.S. ocean programs, the OCS program has witnessed the most marked swings in policy direction—oscillating between unmitigated development thrusts followed by the adoption of wholly conservationist measures. This is not in the “sustainable development” mode envisioned by UNCED.

When the OCSLAA was enacted in 1978 after years of difficult debate and negotiation, most parties thought that a delicate balance between protection and development and between national and state/local interests had been reached, and that a good decision making process had been set in place. This did not turn out to be the case as DOI leaders were able to exercise an untoward amount of administrative discretion.

While the current moratoria represent a predictable reaction to DOI stances and have achieved good purposes of protecting areas that needed protection, “backdoor management” through appropriations moratoria are not a good way to run a government program in the long run. Even though gains of protection have been made, what will happen to these when the next energy crisis hits? Unmitigated development again? In my view, the environmental groups should guard against being too happy with the political battles they have won

through the moratoria and take advantage now of a possible “window of opportunity” to reform the OCSLAA for the long run, through a more explicit division of authority between national and state levels and more explicit substantive environmental standards than contained in the 1978 OCSLAA amendments.

OCSLAA reform—reform is needed on the following aspects:

- ◆ reduction of administration discretion
- ◆ amendment of sections 18 and 19
- ◆ increase “real” participation by states and localities
- ◆ enact revenue sharing with strings attached, so that the monies are used for coastal/ocean management purposes (not in the way that 8G funds have been expended [see data in recent commentary by Beyeler in *Ocean and Coastal Management*]).
- ◆ develop better packages of mitigation measures to mitigate adverse impacts on other users and on states and localities
- ◆ look at range of mitigation measures used in other federalist systems (e.g., Canada, Australia), such as for example, guaranteeing X percentage of jobs to locals, enhancing other coastal resources, etc.)
- ◆ study and evaluate the range of innovative mitigation measures used in the offshore oil development experience in Central California. To what extent can/should these be applied in other OCS contexts in the U.S.?
- ◆ tie OCS development to broader area-based ocean governance, through:

- (1) regional-level area planning and decisionmaking, and
- (2) through revenues of development being returned to regions to fund ocean plans and management

- ◆ it does not appear that the studies recommended by the NRC are being carried out. What will happen when 1996 and 2000 come around?

In recent years, the DOI has tried to interpret public opposition as a problem in public relations and in “public perception and the use of risk management techniques.” This is not accurate, in my view. The root problem lies in profound differences in values and interests, not in misperceptions of the risks involved. It may be very difficult to change the differences in values in some communities and with some groups. But it is certainly more feasible to change the “interests calculus” and to provide better incentives for states and local communities to participate in and to mold the program. A public relations program will not achieve this, but genuine negotiation will.

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**Michael K. Orbach**

*Duke University Marine Laboratory*

### What Can Be Done to Fix the Offshore Oil and Gas Program?

- (1) Amend the OCSLA to include substantial revenue sharing and other true incentives for the states to enter into a partnership with the federal government in OCS activity.
  - (2) Regionalize the OCS process within MMS/Interior, to allow more flexibility in the policy and regulatory process.
  - (3) Strengthen the Environmental Studies Program within MMS/Interior, through enhanced
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partnerships and cooperative agreements between the federal government and state-based institutions.

- (4) Clarify the relationship among the major ocean use sectors in federal law (i.e., OCSLA, MFCMA, CZMA) and develop an overall planning (and zoning) concept for the U.S. EEZ in order that the preferred use (or non use) pattern of ocean space is clearly identified.
- (5) Promote the development of a national energy policy which stresses conservation and clearly and objectively weighs the nation's energy needs against the potentially available sources of energy. Once this is done, if offshore oil development is a viable, environmentally-responsible and cost effective alternative, develop a firm state-federal approach to such development under the EEZ planning concept in (4).

**Robert W. Knecht**  
*University of Delaware*

### "Partnership" As the Key to the OCS Stalemate

In my view, the federal oil and gas program went astray within a very few years of the enactment of the 1978 legislation creating the present regulatory regime. Congress effectively took control of the program back from the Interior Department through a series of annual funding moratorium decisions seriously constraining the ability of the Executive Branch to operate a rational program. Of course, Congress was reacting to protestations made by some of the coastal states, environmental groups and others concerning the way in which the program was

being run, especially some of the decisions made by then Secretary James Watt. It is worth asking what went awry? Why was the new OCS legislation set aside so soon? And why does the program remain in a virtual stalemate today?

I see the fundamental problem as the failure of the legislation to recognize that a true partnership—one characterized by equality and mutual respect—must exist in this kind of a program. The coastal state and its coastal communities must be seen as equal partners with the federal government if this program is to succeed. In my judgment, it is absolutely essential that the offshore oil and gas operations are closely linked in every way with the on shore processing and distribution facilities and the pipelines bringing the product ashore. This is, in reality, one system and it must be governed as a single system.

I believe that the following points are important in considering the nature of a workable governance arrangement:

- ◆ An equal voice for states and their coastal communities in OCS decision making which will probably mean higher environmental standards among other things.
- ◆ A sharing of governmental revenues between the federal government and the adjacent coastal states and their communities.
- ◆ Oil and gas development in federal waters should be harmonized with similar hydrocarbon development in adjacent state waters.
- ◆ Offshore oil development should be seen as a part of a comprehensive national energy program and not an end in itself.

In times past, the Interior Department oil and gas program often seemed to be characterized by a kind of technological arrogance—"we can drill anywhere safely." When this attitude is replaced by a sincere search for partnerships and a real willingness to listen, the stage will be set to move forward in this important ocean resource program area.

**Richard G. Hildreth**  
*University of Oregon*

### Federal-State Offshore Revenue Sharing Deserves Attention and Expansion<sup>1</sup>

Currently in the division of offshore revenues between the federal and coastal state governments, the division of state and federal authority offshore plays a very significant role. Within three nautical miles of the coast, resource revenues belong to the coastal state. Beyond three nautical miles on the outer continental shelf, the revenues are controlled by federal law. This comment is built on the experience to date under a particular section of federal law, section 8(g) of the Outer Continental Shelf Lands Act (OCSLA). Section 8(g) was added to the OCSLA in 1978. It mandated sharing of the revenues from tracts that included oil and gas pools underlying the federal state boundary three miles offshore. In 1986 Congress fixed a coastal state's share as 27 percent of all federal revenues from OCS tracts adjacent to the state within six nautical miles of shore. Revenue sharing under section 8(g) can

<sup>1</sup> Acknowledgment

This comment is based on the author's article, "Federal-State Revenue Sharing and Resource Management Under Outer Continental Shelf Lands Act Section 8(g)," which appeared in 17 *Coastal Management* 171-191 (1989).

involve some large sums of money. The states' 1.4 billion share of accumulated 8(g) funds was divided in 1986 as follows: Texas, \$425 million; Louisiana, \$640 million; Mississippi, \$14 million, Alabama, \$66 million; Florida \$30 thousand; California, \$338 million; and Alaska, \$51 million.

### **Section 8(g) and Federal-State Relations Offshore**

A 1986 amendment to OCSLA section 3(4) (b) describes 8(g) revenue sharing as providing "affected coastal states and localities with funds that may be used for mitigation of adverse economic and environmental effects related to the development" of OCS oil and gas resources. This theory was long urged by the coastal states as justifying federal-state sharing of OCS oil and gas revenues. For similar reasons, federal public lands revenues onshore are shared with state and local governments, so coastal states justifiably argue that interstate equity supports expansion of 8(g) revenue sharing throughout the OCS and the 200-mile exclusive economic zone (EEZ). Amended section 8(g) with its mandated 27 percent state share, based in part on OCS oil and gas development's impacts onshore, is quite similar to broader proposals for OCS oil and gas revenue sharing with the coastal states considered during the 1970's by Congress. The need for broader offshore revenue sharing derives in part from constitutional and statutory limitations on the ability of coastal states to tax OCS and EEZ resource development to cover public costs incurred onshore because of such development offshore beyond state boundaries. Thus I believe coastal state representatives are justified in using the 8(g) experience as a stepping stone to eventual expansion of federal-state revenue

sharing to other EEZ and OCS resources.

### **Revenue Sharing for OCS and EEZ Minerals**

The section 8(g) experience is very relevant to the question of federal-state revenue sharing with respect to hard minerals on the OCS or within the EEZ. Similar revenue sharing for hard minerals would aid the resolution of federal-state disputes, which can complicate the development of hard mineral as well as hydrocarbon deposits. Hard minerals are not a mobile resource and thus do not present the drainage problem that led to the enactment of original section 8(g). However, the onshore-impacts rationale supporting amended 8(g) applies in the hard mineral context and suggests revenue sharing ought to apply even without the drainage problem. Responding to these concerns, the proposed National Seabed Hard Minerals Act (H.R. 2440, 101st Cong., 1st Sess. 1989) would divide mineral revenues from federal waters 50-50 between the federal treasury and affected states. The state share would be allocated among affected states with a federally approved coastal zone management program (or making satisfactory progress on one) based on shoreline mileage and population, and to all affected states based on the quantities of hard minerals first landed and processed in them. Left out of H.R. 2440 and most other revenue sharing proposals are the inland states who benefit less directly from the OCS revenues going into the federal treasury. To gain their political support, proposals like S. 130 (94th Cong., 1st Sess. 1975), which would have split OCS oil and gas revenues 50-25-25 among the federal government, the coastal states adjacent to OCS development, and the other states, deserve

reconsideration. A little-discussed more radical alternative would be to bridge the three-mile line with such a revenue sharing scheme applicable to oil and gas and hard minerals development anywhere on the continental shelf or within the EEZ, including state waters in the territorial sea.

### **Recommended State Uses of Offshore Revenue Sharing Funds**

Currently there are no federal strings attached to state use of 8(g) funds, so state law governs their receipt and distribution at the state level. OCS revenue sharing funds are analogous to revenues from state submerged lands and can therefore be treated similarly. However, I would like to suggest several uses of 8(g) funds and related offshore revenues the states might receive in coming years that seem particularly appropriate: (1) state marine boundary mapping efforts (an important aid to the administration of offshore revenue sharing); (2) improved management of state tide and submerged lands; (3) commercial and recreational fisheries facilities, restoration, and mitigation; (4) state marine research and education efforts; and (5) regional interstate ocean management activities, such as interstate compacts regarding oil transportation and spill response and uniform regional minimum standards for offshore oil and gas development.

### **Federal-State Offshore Revenue Sharing**

On the West Coast, I would go even further and propose that the four West Coast states dedicate a percentage of the future 8(g) revenues and related offshore revenues they receive from the federal government to such interstate compact and coordination effort regarding Pacific Ocean

resources of interest to the states. The four West Coast states might even establish a Pacific Marine Resources Commission with a small professional staff supported with 8(g) and related revenues. Such uses of 8(g) revenues could be extended to supporting state participation in federal-state offshore coordination efforts such as the Pacific Northwest Offshore oil and Gas Task Force currently established with representatives from Washington, Oregon, Northwest Indian Tribes, and the Minerals Management Service, and the task force between Oregon and the Minerals Management Service regarding hard mineral placed deposits off southern Oregon. In addition, the enactment of legislation creating a National Oceans Policy Commission (H.R. 1171, 100th Cong., 1st Sess., Sept. 14, 1987 substitute version), or implementing the President's Territorial Sea Extension Proclamation (H.R. 1405, 101st Cong., 1st Sess.), would provide major opportunities for congressional and executive branch reassessments of intergovernmental relations offshore. The related problems of oil and gas and hard mineral deposits near the federal-state boundary, state taxation authority offshore, and resource sharing from offshore resource development could be thoroughly reviewed in light of the 8(g) experience and other relevant perspectives.

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# **CZMA ROUNDTABLE**

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**ADDING OCEAN MANAGEMENT TO COASTAL MANAGEMENT:  
OPPORTUNITIES FOR CHANGE UNDER THE 1995 REAUTHORIZATION  
OF THE COASTAL ZONE MANAGEMENT ACT: A ROUNDTABLE DISCUSSION**

*Editors' Introduction*

There was, in general, a consensus among panelists on this Roundtable on the need to strengthen the ocean dimension of the Coastal Zone Management Act (CZMA), but different perspectives were offered on how this goal might be accomplished.

While in the first decade of implementation of the CZMA, much of the emphasis of programs was on land management aspects and shoreline issues, in the past decade, a number of states have experimented with ocean planning and management, notably states such as Oregon, California, and Hawaii. There is a strong need, one panelist pointed out, to review these pioneer efforts carefully to ascertain what they have accomplished and to enable states to learn from comparative experience. Given the role played by multiple federal agencies in the coastal ocean, however, it is clear that ocean planning and management efforts by the states have to be carried out in a cooperative manner with federal entities. In this regard, new modes of interagency and intergovernmental collaboration must be developed, and OCRM at the national level is well positioned to play a role of catalyst in effecting such cooperation.

There is a need, too, to take the current state ocean planning efforts to the implementation stage and to, ultimately, give them the force of law, since in a number of cases, these efforts have solely been of a planning nature. Procedures for incorporating ocean plans into a

state's federally approved coastal plan need to be better developed.

Discussions at this Roundtable emphasized the diversity that exists in various regions of the U.S. coastal ocean, and the diversity in state perspectives, needs, and interests in the coastal ocean. This diversity means that uniform national approaches to ocean management may not be the most appropriate. Instead, some panelists argued, there is a need to develop a two-pronged approach: development of a stronger federal role in setting standards for ocean management and in catalyzing the cooperation of federal entities, coupled with federal incentives for regional ocean planning and management (to be done on a voluntary basis and depending on state needs and interests).

There was a range of opinions on how the ocean dimension of the CZMA could be enhanced, with speakers contrasting legislative versus administrative approaches. Legislative amendments discussed ranged from adding a new Title to the Act setting up an institutional mechanism for effecting federal interagency cooperation and providing grants to individual states and groups of states for ocean planning and management, to more minor tinkering of wording in existing sections of the Act. Others opted for working first at the administrative level, identifying, for example, specific geographic areas with a certain set of problems where attempts to achieve good ocean management could be made

on an experimental basis. Some cautioned about falling in a "6217 trap," i.e., establishing a new national requirement with sanctions and without adequate funding.

Emerging clearly from the Roundtable, thus, was the notion that, while agreeing that the ocean dimension of coastal management must be enhanced, further work was needed to define specific options and to build consensus around them. The materials below represent informal "talking points" prepared by various Roundtable panelists.

**Panelists' Commentaries**

**Jeff Benoit**  
NOAA/OCRM

**The Problems**

- ◆ Current management regime fragments...multiple Federal jurisdictions often with single-use mandates creates conflicting regulatory decisions.
- ◆ Lack of holistic approach to ecosystem management...does not support sustainable development principles.
- ◆ No national policy framework to provide clear goals or direction for decision makers.
- ◆ State authorities and mandates generally do not align with Federal counterparts. Uncertainty and conflicts result over state role in Federal waters (i.e., Federal consistency and Federal role in state waters (Sanctuaries).
- ◆ Existing CZMA viewed primarily from a land use-based perspective—ocean issues may require different mechanisms and solutions for the “commons.”
- ◆ Several states are beginning to develop Ocean Management Plans independently of each other...no national context.
- ◆ How do OCRM programs fit given the State/Federal partnership?

Increasing international issues and potential conflicts are rising that require nationally-based, or at least nationally negotiated, solutions and resolutions (pollution, transportation, sea level rise, global climate changes, fisheries decline, marine mammal protection, biodiversity, ecotourism, sustainable development, small islands, integrated coastal management,

ocean dumping, ocean cleanup of hazardous materials, etc.

**Opportunity**

There is clearly a need to better understand the relationship of multiple federal authorities to one another and, perhaps even more difficult, the relationship of state interests and authorities to those at the Federal level.

An opportunity exists to establish a new component to the CZMA for Ocean Governance that creates/both a national policy framework, using goals and principles, and a functional linkage within which existing authorities would operate. Once the national policy framework is established, regional ocean management plans would be developed as partnerships between state and Federal authorities. The Gulf of Maine provides a model that could be explored. (Make them interstate “compacts” through a restored CZM provision?). (But, where does this leave the Canadians in the Gulf of Maine? Perhaps follow existing International Joint Commission for the U.S. and Canada model?)

Once a regional plan is developed, state and federal actions and activities would be consistent with the plan. A regional “Conference” may be established as the governance planning body.

This concept builds on the CZM model...establish national goals and priorities (the framework), allow development of regional plans consistent with the national goals (similar to state CZM plans), and then require consistency with the plans.

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**Donna R. Christie**  
Florida State University

1. Why has ocean management not been more fully integrated into coastal management programs?
  - ◆ Federal program requirements have focused primarily on land use issues.
  - ◆ State coastal management programs have generally been administered by agencies with land use missions, e.g., coastal construction siting and permitting authority.
  - ◆ State authorities are much clearer on the landward side of the low water mark; not as much jurisdictional conflict and overlap with federal authorities.
  - ◆ Problems appeared closer and more immediate; solutions were more understandable, more accessible, more visible, and faster (e.g., renewal of an urban waterfront versus recovery of a fishery).
2. Where to start—upland uses affecting state ocean waters
  - ◆ Clearly within the jurisdiction and boundaries of state coastal zone programs.
  - ◆ Many ocean problems are closely linked to land use; the sources and relationships of problems are now beginning to be fairly well understood; e.g., both point and non-point source pollution; destruction of wetlands habitat for fisheries. Most states already have the administrative and legal infrastructure in place to begin incorporating broader

ocean protection goals into coastal siting, development, and permitting.

- ◆ Initial steps already being taken in last CZMA reauthorization (non-point source pollution); MFCMA (habitat considerations in FMPs); National Estuary Program. Need to use coastal management programs to better coordinate and focus programs under other legislation.
3. The next step—ocean uses and ocean resources management
- ◆ Problems related to ocean uses and ocean resource exploitation can be much more complicated, starting with more complicated federal/state jurisdictional problems. Requires a different approach, i.e., a cooperative management approach.
  - ◆ Ocean problems are not as highly “visible” as coastal land use problems; e.g., don’t see fishery depleting or corals slowly dying. (Oil development and immediate effects of an oil spill are examples of “visible” potential ocean problems that get more immediate attention.)
  - ◆ Because ocean “problems” often lack the visibility and immediacy to instigate action, ocean management programs must provide the visibility to do this. New direction of national marine sanctuaries program is a good example.

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**Jerry B. Norris**

*Pacific Basin Development Council*

Some Suggestions for Amendments to the Coastal Zone Management Act.

1. Amend Section 309 to include ocean resource management planning: This would be relatively easy to do and, in fact, you may not need to change the language at all. 308(7) list “Planning for the use of ocean resources” is already listed as one of the objectives. What might be required is some report language that says that, while the coastal zone is defined in the law [304(1)] as out to “the outer limit of State title and ownership under the Submerged Lands Act...,” it is the intent of Congress to allow coastal states, territories and commonwealths to plan for management beyond three miles. One may want to soften that further (but may not) by saying that it would be “cooperative management.”
2. Amend the Section 304(1) definition of “coastal zone” just for the islands. This may not be an easy sell, but one could see if Congress would accept language that says, “...The (coastal zone) extends, in Great Lakes waters, to the international boundary between the United States and Canada, in the insular areas of the United States, to the extent of the 200 nautical mile exclusive economic zone, and in other areas...” I think the chances of selling this one are one in a million, but one can ask...
3. Add an entirely new provision on ocean management. This might go into section 305A and could be titled, “experimental,” make if voluntary, and keep the

federal approval provisions of 305, and title it, “Ocean Management Program Development Grants.” The working could read almost exactly as the existing 305 reads. One would have to decide whether one wants to make a run at 306 or 306A funding language or not. As I read the existing 306A, it really doesn’t fit and to keep visibility a little bit low, one may want to get funding in under 309. One could also add a 306C provision.

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**Biliana Cicin-Sain**

*University of Delaware*

Some suggestions for Adding Ocean Management for Coastal Management.

In my short paper for this conference (in the 1994 Moving Ahead on Ocean Governance: Summary of Papers Volume), I argue that there are major problems in our ocean governance system and that major changes need to be made. In general, we need to: move toward area-based, multiple-use management, develop better capacity for proactive conflict resolution and anticipatory planning and management, and develop ways of harmonizing the actions of the federal ocean agencies and the actions of state and federal agencies.

Given the very extensive body of single-purpose ocean law that we have in place and the constituencies that support each of these, wholesale reform is unrealistic. Hence, we must search for opportunities for change to occur under existing laws and through established processes.

The reauthorization of CZMA in 1995 may offer such an opportunity for achieving significant reform in ocean governance involving

some, but not too much, institutional change.

In my short paper, I suggest a "strawman" for adding a new ocean title to the CZMA. My "strawman" is fairly ambitious and would be politically difficult, but not impossible, to achieve. Other, easier to achieve, measures along the same lines could be considered.

"Strawman" proposal: Adding new ocean title to CZMA that would:

- ◆ set forth a code of ethics for managing the ocean area under U.S. jurisdiction (0 to 200)
- ◆ create a new institution (akin to the Marine Mammal Commission) to provide national guidance and oversight
- ◆ create an interagency committee - council of federal ocean agencies - to harmonize federal actions on a continuing basis
- ◆ offer grants to the states (or groupings of states in regions) for regional ocean planning and management on a pilot and voluntary basis (as states will vary on their interest in and capacity for ocean planning and management). Such plans should build on other area-based programs, such as NEP, sanctuaries, and state CZM. Encourage incorporation of such plans under the CZM process to gain federal consistency powers and for other benefits.

Interested readers should consult the full text of the short paper in the accompanying 1994 Paper Summaries volume.

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**Robert W. Knecht**

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**Some Thoughts on the 1995 Reauthorization of the CZMA**

The FY 1995 reauthorization of the Coastal Zone Management Act offers a splendid opportunity for the United States to take the next step in coastal and ocean management. By 1995, we will have had 15 years of operational experience, on the average, with the 29 state and territorial CZM programs that are in place today. Since the first program was approved in 1977 until now, no state or territory has withdrawn from the national CZM program. Indeed, it can be said that during this time virtually all of the state efforts have been strengthened in one fashion or another. New state legislation has been enacted, regulations have been written or strengthened, the level of state funding has been increased, staffs have been enlarged and so on. And presently, four of the six states that had remained outside of the national effort, are now developing CZM programs under the provisions of the 1990 amendments to CZMA. Consequently, while there is still much work to be done to further strengthen many individual state programs, a firm foundation has been put in place—a foundation that can and should be built upon.

In considering how to construct an "ocean dimension" to CZM, several realities have to be taken into account. First, and perhaps foremost, there is a real need, in my judgment, for a process to be put in place that will lead when and as needed to the development and implementation of ocean resources management programs. Clearly, the time is right to begin to design that process.

Second, one has to appreciate the great differences in offshore

resources that exist along the U.S. shoreline and in the coastal ocean. It is not by chance that most, though not all, of the ongoing state ocean planning efforts are being done in the western states. The great wealth of resources seen off Alaska, the West Coast, and most of the Gulf, is not nearly as obvious off the Mid-Atlantic and Southeast Atlantic coasts. Beyond resource interest and concerns, island states and territories too, have a strong interest in the oceans encompassing them—oceans which are seen to play a critically vital role in the health and well-being of island populations.

These realities suggest to me that the ocean dimension that we fashion should have these characteristics:

- ◆ it should use the basic rationale of the CZM program, that is, it should be state and territorially focused with federal assistance and oversight;
- ◆ the legislation should be "enabling" but not mandatory, that is, it should permit interested states and territories to develop management programs for the extended territorial sea and/or the EEZ and set general standards for such programs;
- ◆ it should require a consistent, "seamless" approach to coastal zone management extending from the shoreland through the land-water interface and into the territorial sea and EEZ;
- ◆ it should include the presumption that the states and territories which develop nationally acceptable ocean resource management "extensions" to their CZM programs will eventually be able to incorporate these waters into their state and territorial boundaries;

- ◆ it should allow for a long transition period during which any revenues from existing leases (oil and gas, etc.) in such waters are gradually transferred from the federal to the state level of government.
- ◆ federal grants should be available to develop and implement such ocean resource management extensions to state CZM programs but not at the expense of the existing 306/309 Grant Assistance Program.

In closing, I believe that the fiscal year 1995 reauthorization is the right time and the right vehicle to begin to move in the direction of a more comprehensive coastal/ocean management program in the United States.

## **OCEAN GOVERNANCE STUDY GROUP PUBLICATIONS**

**OCEAN GOVERNANCE: A NEW VISION**, Edited by Biliانا Cicin-Sain (1992, Ocean Governance Study Group). This initial report of the Ocean Governance Study Group makes a case for the need for a fundamental reexamination of U.S. ocean policy, describes a number of problems and opportunities facing U.S. ocean policy, sets forth a broad research agenda for ocean governance, and describes the scope, purposes and ongoing work of the Ocean Governance Study Group.

The volume includes discussion of the following topics: *Research Agenda on Ocean Governance, Implications of the Earth Summit for Ocean and Coastal Governance, Principles for a Constitution for the U.S. Oceans, Learning from Other Nations, Caveats on "Integration" in Ocean and Coastal Management, Free Trade and Ocean Governance.*

**ISSUES IN OCEAN GOVERNANCE**, Edited by Harry Scheiber and David Caron (1993, Ocean Governance Study Group). This report presents summaries of the analyses presented at the January 1993 Conference of the Ocean Governance Study Group held at the University of California, Berkeley, addressing issues related to the changing international context of ocean governance, governing ocean space, intergovernmental relations in ocean governance, and case studies of multiple use conflicts.

The volume includes discussion of the following topics: *A Framework for Multiple-Use Ocean Governance for the United States, Implications of the Earth Summit for Ocean Governance, International Influences on the Goals and Principles of National Ocean Governance, Initiatives Affecting Ocean Governance in the Arctic, Ocean Governance and the North Sea, The Roles of Science in U.S. Marine Policy, Incidental Take and Commercial Fisheries: Legislative and Regulatory Interaction, Federalism and Offshore Oil, Marine Use Conflicts: The Case of Aquaculture, The Florida Keys National Marine Sanctuary, Reflections on the Political Implications of Current Ocean Governance Discussions in the U.S.: A Call To Action.*

**MOVING AHEAD ON OCEAN GOVERNANCE**, Edited by Biliانا Cicin-Sain and Lori L. Denno (1994, Ocean Governance Study Group). This report presents summaries of the analyses presented at the April 1994 Conference of the Ocean Governance Study Group held at the University of Delaware, Lewes, addressing issues related to sustainable development of the U.S. ocean.

The volume includes discussion of the following topics: *A Framework for a National Ocean Strategy, The Clinton Administration's View of Sustainable Development, NOAA's Office of Sustainable Development and Intergovernmental Affairs, Formulation of a National Ocean Strategy for the United States: A Proposal for an Initiative by the National Research Council, A Consensual Approach to a National Ocean Strategy: How Far Can It Go?, The Precautionary Approach in International Agreements on the Marine Environment, Implications for U.S. Coastal States of Potential U.S. Accession to the 1982 U.N. Convention on the Law of the Sea, The New Economic World Order: Pacific Perspectives, Ocean Management Policies and the Shift of Power to Subnational Units: Examples from the United States, Privatization in Fisheries: Lessons from Experiences in the U.S. and Canada, Non-point Source Pollution: Top Down or Bottom Up Controls, Integration and Implementation: An Assessment of Article 6217 of the 1990 Coastal Zone Act Reauthorization Amendments.*

**SPECIAL ISSUES IN INTERNATIONAL JOURNALS:** The work conducted by the Group is also published in the major journals in the field in cooperation with the journal Editors:

**Ocean Development and International Law (1993)**

"Implications of the Earth Summit for Ocean and Coastal Governance," Biliانا Cicin-Sain and Robert W. Knecht (U. of Delaware)

"Ocean Policy, Multiuse Management and the Cumulative Impact of Piecemeal Change: The Case of the United States Outer Continental Shelf," Lawrence Juda (U. of Rhode Island)

"Towards an Arctic Environmental Regime," David Caron (U. of California at Berkeley)

"U.S. Coastal States and the International Law of the Sea: A Commentary," Jon L. Jacobson (U. of Oregon)

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**Ocean and Coastal Management (1994)**

Special Issue Edited by Kem Lowry

*"Federalism and Offshore Oil," Charles Lester (U. of Colorado)*

*"Controversies in Ocean Governance: Dredging in Oakland Harbor," Robert Kagan (U. of California at Berkeley)*

*"Implications of the Trade-Environment Controversy," Richard McLaughlin (U. of Mississippi)*

*"International Aspects of Coastal Zone Management," Ronald Barston (London School of Economics)*

**Coastal Management (1994)**

*"Congress, Reform, and Oceans Policy," Joan Bondareff (U.S. Congress)*

*"The Monterey Bay National Marine Sanctuary: A Model for Ocean Management," James Rote (NOAA)*

*"Governance and Adaptive Management for Estuarine Ecosystems: The Case of Chesapeake Bay," Tim Hennessey (U. of Rhode Island)*

*"Some Newly Emerging Perspectives on the Governance of Ocean Resources," Robert W. Knecht (U. of Delaware)*

*"The Role of Science in U.S. Marine Policy: A Review Essay," Richard Hildreth (U. of Oregon)*

*"A National Ocean Governance Strategy for the United States is Needed Now," Biliana Cicin-Sain (U. of Delaware)*

**Ocean and Coastal Management (forthcoming 1995)**

Special Issue on Ocean Governance

*"Moving From Single-Purpose to Multiple-Purpose Ocean Management in the U.S.: Issues and Options," Biliana Cicin-Sain (U. of Delaware)*

*"Enforcing Principles of Ocean Stewardship," Jon Van Dyke (U. of Hawaii)*

*"Ocean Management in the U.S.: The Growing Power of Subnational Units," Marc Hershman (U. of Washington)*

*"Ocean Management by Coastal States: The Oregon Case," Robert Bailey (State of Oregon)*

*"On Variations in the Structure of Coastal Management Programs in the U.S. Coastal States," Robert W. Knecht (U. of Delaware)*

*"A Historical Perspective on the Magnuson Fishery Conservation and Management Act, 1974-1994," Harry Scheiber and Chris Carr (U. of California at Berkeley)*

*"Reconciling Regimes for Marine Mammal and Fisheries Management," Suzanne Ludicello (Center for Marine Conservation)*

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