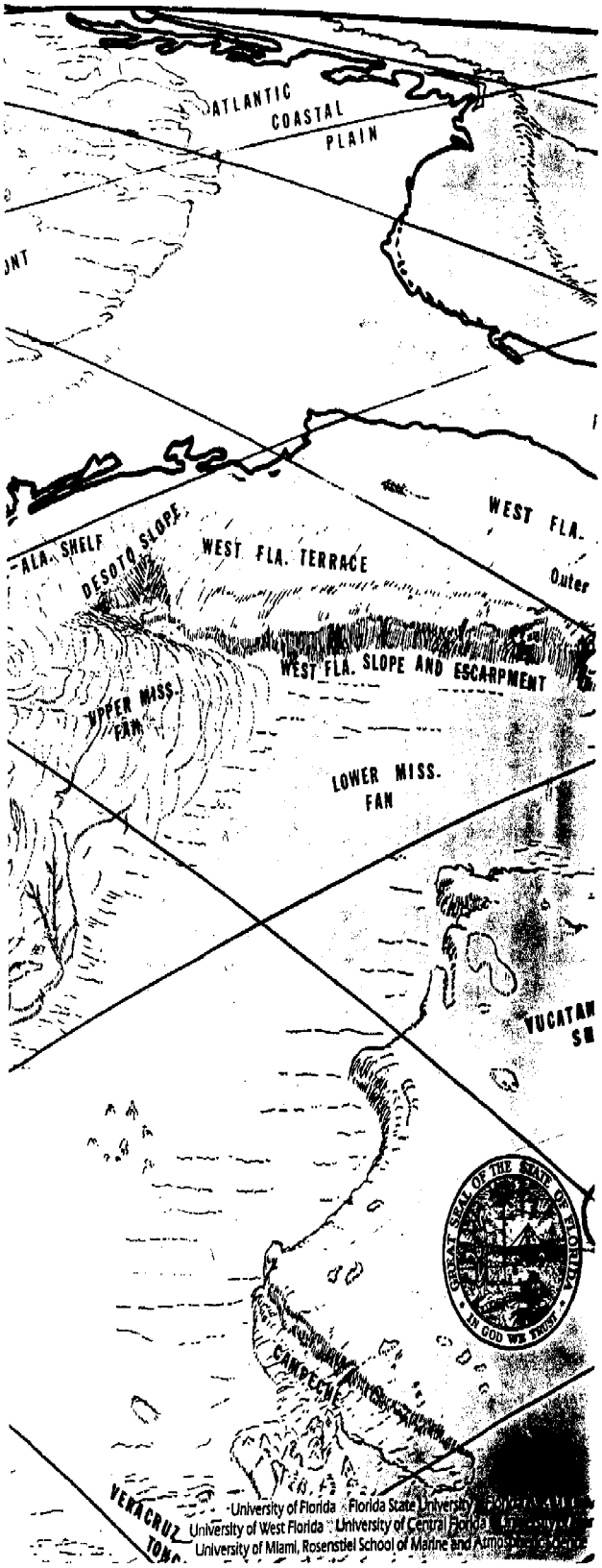
NOAA COASTAL SERVICES CENTER LIBRARY
3 6668 14108 9096

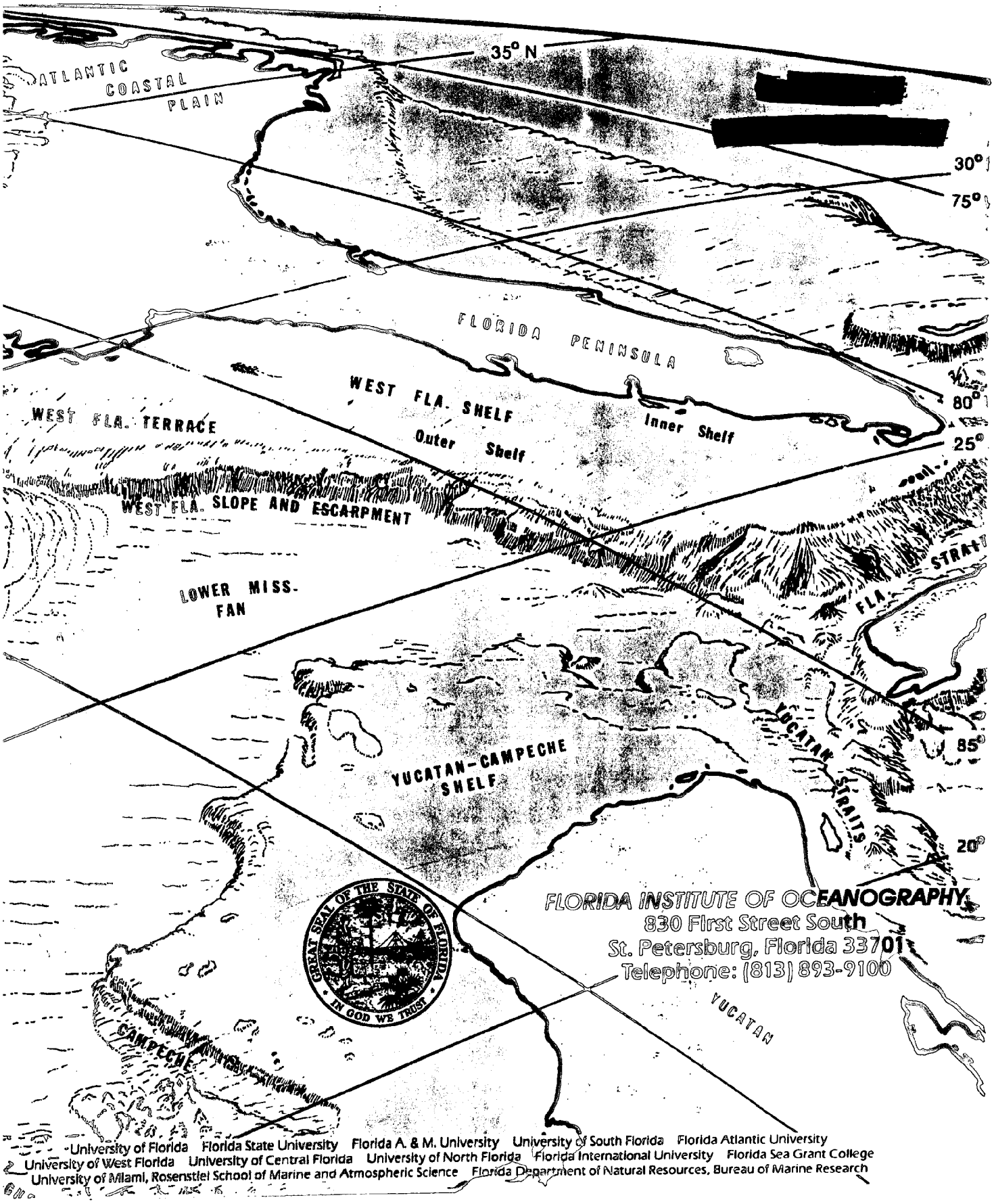
A Report on Oil and Gas Leasing in Florida Offshore Waters

HD
242.5
O34
1984

A Report on Oil and Gas Leasing Florida Offshore Waters



University of Florida · Florida State University
University of West Florida · University of Central Florida
University of Miami, Rosenstiel School of Marine and Atmospheric Science



FLORIDA INSTITUTE OF OCEANOGRAPHY
830 First Street South
St. Petersburg, Florida 33701
Telephone: (813) 893-9100

University of Florida Florida State University Florida A. & M. University University of South Florida Florida Atlantic University
University of West Florida University of Central Florida University of North Florida Florida International University Florida Sea Grant College
University of Miami, Rosenstiel School of Marine and Atmospheric Science Florida Department of Natural Resources, Bureau of Marine Research

HD242.5 O34 1984

US Department of Commerce
NOAA Services Center Library
2234 South Hobson Avenue
Charleston, SC 29405-2413

Oil and Gas Leasing in Florida Offshore Waters

Volume I

A Description of Florida's Existing Program and Recommendations for Revised Procedures

Prepared by:

Florida Institute of Oceanography

St. Petersburg, Florida

Financial support was provided by The Coastal Zone Management Act of 1972 as amended, administered at the Federal level by the Office of Ocean and Coastal Resource Management, National Oceanic & Atmospheric Administration and administered at the State Level by the Florida Department of Community Affairs, Division of Resource Planning and Management, Coastal Energy Impact Program.

October 15, 1984

TABLE OF CONTENTS
VOLUME I

		Page
	Acknowledgements	i
	Executive Summary	iii
	Glossary and Acronyms	viii
	List of Tables	xiv
	List of Figures	xv
I.	Introduction and Background	1
II.	Purpose of Project	4
III.	Preparation and Format of Report	5
IV.	Recommendations	8
	A. Introduction	9
	B. Policy Recommendations	13
	1. Formation of a Policy Advisory Group	14
	2. Development of an Offshore Comprehensive Leasing Program	17
	3. Development of a Pre-Leasing Environmental Study Program	20
	4. Restrictions On Offshore Lease Sales	22
	5. Mineral Leasing	22
	C. Program Recommendations	24
	1. Development of a Leasing Program Consistent With State Policy	25
	2. Establishment of a Leasing Advisory Board With Supporting Committees a. Technical Committee b. Environmental/Scientific Committee	29

TABLE OF CONTENTS
VOLUME I (cont'd)

Page

3. Recommended Charges to the Leasing Advisory Board . . . 31
   a. Resource Planning. 31
      (1) Establishment of Grid Patterns for Offshore Waters
      (2) Development of Planning Regions
   b. State and Local Jurisdiction Over Offshore Waters . 36
      (1) State Jurisdiction
      (2) Local Jurisdiction
   c. Environmental Study Program. 44
      (1) Implementation of the Study Program
      (2) Funding of the Study Program
   d. Revenues from Oil and Gas Leasing Program. . 49
   e. Operational Orders, Lease Stipulations, and Site Specific Environmental Impacts . . 54
4. Lease Procedures and Terms. 56

V. Florida's Oil and Gas Leasing Program

A. Statutory Authority. . . . . FL- 1
B. Philosophy of State Towards Leasing in State Waters. . FL- 2
C. History of Leasing Program . . . . . FL- 4
D. Delegation of Management Responsibilities for State Leasing Program. . FL-11
E. Geographic Description of State Territorial Waters . . FL-12
F. Local Jurisdictional Control Over State Waters FL-21
G. Oil and Gas Revenues Accruing to State FL-24
H. Environmental Controls and Regulations FL-27
I. Leasing Procedures FL-35
J. Relation of Leasing Program to Issuance of Permits . . FL-39
K. Mineral Leasing. FL-39

TABLE OF CONTENTS
VOLUME I (cont'd)

Page

L. The Socioeconomic and Physical Impact of Oil and Gas Leasing in Florida's Waters . FL-39

References FL-42

Appendices

A. Oil and Gas Leasing in Florida's Territorial Waters: State Laws

B. Florida Local Governments and Oil and Gas Leasing of State Territorial Waters

C. State of Florida Oil and Gas Lease Form

D. Onshore Impacts of Oil and Gas Activities in Florida State-Owned Coastal Water

E. Permit Requirements for Siting Onshore Facilities Related to Offshore Oil and Gas Activities: and Florida Legislation Affecting Offshore and Onshore Energy Development

F. Project Advisory Board

TABLE OF CONTENTS

VOLUME II

Page

Acknowledgements i

Executive Summary. iii

Glossary and Acronyms. viii

I. Introduction and Background. 1

II. Purpose of Project 4

III. Preparation and Format of Report 5

IV. Discussion and Summary 8

V. State Leasing Program 19

A. Alabama. . . . . AL 1-32

B. Alaska . . . . . AK 1-39

C. California . . . . . CA 1-41

D. Florida. . . . . FL 1-42

E. Louisiana. . . . . LA 1-31

F. Mississippi. . . . . MS 1-29

G. North Carolina . . . . . NC 1-21

H. South Carolina . . . . . SC 1-22

I. Texas. . . . . TX 1-36

Appendix A Annexation Procedures Used in Six Coastal States

ACKNOWLEDGEMENTS

The authors of this report are:

James W. Miller, Ph.D.
Associate Director
Florida Institute of Oceanography
St. Petersburg, Florida

and

Murice O. Rinkel
OCS Representative
State of Florida

The material on which the report is based was generously provided by many individuals and organizations. Guidance and advice was obtained from the Department of Community Affairs (DCA) Project Advisory Board (see Appendix F of Volume I) during the planning stages and during the preparation of the recommendations. Special thanks go to Mr. James Quinn, Mr. Terry Jernigan and Mr. Jeffrey L. Kiss of the Division of Resource Planning and Management, DCA; and Mrs. Patricia White, Bureau of State Lands Management, and Mr. Steve R. Windham, Bureau of Geology, of the Department of Natural Resources for their help throughout the project.

The reports on the oil and gas leasing programs of the other eight coastal states reviewed in Volume II were made possible only by the outstanding cooperation and assistance of the following individuals.

Alabama

. Department of Environmental Management
Mr. Joe B. Broadwater (Director)
Mr. Robert Cooner (Biologist)

. Department of Conservation and Natural
State Lands Division
Mr. Robert A. Macrory (Director)

. State Oil and Gas Board
Dr. Ernest A. Mancini (Supervisor)

Alaska

. Department of Natural
Resources
Division of Oil and Gas
Ms. Pam Rogers
Leasing Manager

. Department of Fish and Game
Habitat Division
Mr. John A. Clark (Director)

ACKNOWLEDGEMENTS
(cont'd)

California

. State Lands Commission
Ms. Claire R. Dedrick
(Executive Officer)
Division of Research and Planning
Mr. Dwight E. Sanders (Chief)
Mr. Allen D. Willard
Minerals Resources Engineer
Ms. Susan R. Livenick
Assoc. Mineral Resources Engineer

Louisiana

. Office of Mineral Resources
Mr. William E. Howe
Chief Engineer

Mississippi

. Bureau of Geology
Mineral Lease Division
Mr. John D. Kellis (Chief)

. Department of Wildlife Conservation
Bureau of Marine Resources
Mr. James S. Franks
(Staff Scientist)

North Carolina

. Department of Natural Resources and Community Development
Division of Earth Resources
Mr. Steve Conrad (Director)

. State of North Carolina
Center for Urban and Regional Studies
Mr. Charles Wyman
(Research Associate)

South Carolina

. Water Resources Commission
Mr. Camille Ransom, III (Director)
Mr. Paul S. League, (Attorney)
Ms. Gwen M. Euler
(Ground Water Geologist)

Texas

. General Land Office
Petroleum and Minerals Division
Mr. Jack M. Howard
(Geologist)

. Coastal Division Land Management
Mr. Michael H. McKann
(Environmental Quality Specialist)

. Parks and Wildlife Department
Mr. J. Rollin MacRae
Wetlands Permits Coordinator

EXECUTIVE SUMMARY

Recognizing that the increasing interest of industry in exploring Florida's Outer Continental Shelf could spread into state waters, the Florida Department of Community Affairs (DCA), in 1982, proposed that a comprehensive study be undertaken for the management of the potential oil and gas operations in state waters. As the first step in this program, a Coastal Energy Impact Program grant was awarded by DCA to the Florida Institute of Oceanography in May 1983. The purpose of this grant was to review Florida's existing leasing procedures as well as those of eight other coastal states and to incorporate the information obtained into specific policy and program recommendations to aid Florida officials in making decisions if they choose to develop and implement a long range oil and gas program in Florida waters.

The results of this study indicate that Florida's oil and gas leasing program is primarily oriented toward onshore operations. Statutory provisions, regulations, and policy for offshore leasing and operations are vague and sometimes contradictory. Even so, Florida law does provide a method for the leasing and development of state waters.

Given the current level of oil industry interest in federal OCS areas adjoining state waters, an active effort could be undertaken by industry to pursue this possibility. Under current circumstances this situation could very likely foster reactive decisions which could prove contrary to the protection of Florida's coastal and marine resources.

Adequate pre-lease planning and lease program development are essential in providing the data necessary to make prudent decisions. In this regard, the first and foremost concern throughout the development of this report has

been to provide specific recommendations in support of an envvironmental program which offers the maximum protection possible for Florida's resources if oil and gas are found and developed.

It is not the purpose of this document nor the intent of the sponsor or authors to recommend whether oil and gas operations should be encouraged in Florida waters. That determination is the statutory responsibility of the Governor and Cabinet acting as the Board of Trustees of the Internal Trust Fund.

The following program elements were analyzed for each of the nine states studied (including Florida): Philosophy of the state towards oil and gas development; the statutory authority for leasing; program management; the geographic description of territorial waters; the role of local government in offshore leasing; oil and gas revenues and their distribution; environmental controls and regulations; and leasing procedures. The basic Florida report was augmented by special reports on: existing oil and gas related statutes; the role of local government in offshore leasing, taxation, and annexation; and on the socioeconomic impact of oil and gas leasing.

The project report is divided into three volumes: Volume I - Florida's leasing program, the special reports, and the recommendations; Volume II - reports on all nine coastal states reviewed; and Volume III the recommendations. Each report also contains the introductory and background material.

The five policy and twenty program recommendations resulting from this study are summarized below. The basis for each recommendation is discussed in the main body of the recommendations section contained in Volumes I and III.

Policy Recommendations

1. Formation of Policy Advisory Group

   a. That the Board of Trustees of the Internal Improvement Trust Fund establish a policy for initiating an oil and gas environmental protection program in state territorial waters.

   b. That an ad hoc advisory committee be established to provide broad-based input to the Trustees in developing such policy.

2. Development of an Offshore Comprehensive Leasing Program

   That a comprehensive oil and gas leasing program be developed specifically for offshore waters to provide for more effective resource management safeguards, environmental protection, and obtaining just revenues for the state.

3. Development of a Pre-leasing Environmental Study Program

   - That a comprehensive long range pre-leasing study program supported with adequate funding and staff be initiated for the purpose of acquiring environmental data in state offshore waters showing potential for oil and gas development.

4. Restrictions on Offshore Lease Sales

   - That no oil and gas leasing takes place in Florida's territorial waters until such time as the necessary environmental data are obtained.

5. Mineral Leasing

   - That any minerals not defined as constituent products in the current oil and gas lease form in the State of Florida shall not be considered as part of an offshore oil and gas leasing program.

Program Recommendations

1. Development of Leasing Program Consistent with State Policy

a. That a Memorandum of Understanding be established between the Department of Natural Resources and the Department of Environmental Regulation pertaining to lease/permit programs for offshore oil and gas operations.

b. That all program recommendations which follow or are developed in the future be examined for consistency with the offshore oil and gas policy to be established by the Board of Trustees/Governor and Cabinet.

2. Establishment of a Leasing Advisory Board with Supporting Committees.

a. That a permanent offshore oil and gas Leasing Advisory Board be formed for the purpose of providing guidance to the Board of Trustees of the Internal Improvement Trust Fund with respect to the development and management of oil and gas operations in offshore state waters.

b. That an environmental/scientific committee and a technical committee be formed to serve as staff to the Leasing Advisory Board recommended in 2a.

3. Recommended Charges to the Leasing Advisory Board

3a.(1) That a grid pattern by laid out in Florida's territorial waters with initial leasing planning regions to be selected based on current OCS oil and gas activities.

3a.(2) That the state be divided into offshore planning areas for the purpose of determining excluded areas, avoidance areas, and leasing areas, within their respective grid patterns.

3b.(1) That Chapter 253 F.S. be amended to more specifically and thoroughly address oil and gas leasing in state offshore waters. Recommendations contained in this document should be given major emphasis in this process.

3b.(2) That the state clarify by statute the authority of coastal municipal governments to annex state offshore waters.

3c.(1)(a) That minimum environmental lease stipulations be established for each planning region identified (i.e. excluded, avoidance and leasing areas) based on the results of the environmental study program.

3c.(1)(b) That an offshore environmental resource management code system, similar to that now used in Texas, be examined for lease planning regions and for site specific stipulations in Florida.

3c.(2)(a) That an adequate funding source be developed to support the long term comprehensive environmental study programs required for exploration, development and production.

3c.(2)(b) That the necessary executive and legislative actions be taken to obtain the funds cited above from existing revenue.

Program Recommendations (cont'd)

3d(1) That the Rules of the Department of Natural Resources, section 15Q-15.08-(9)F.A.C., be amended to add the basis for calculating offshore royalty percentages. Instead of basing royalties on the distance from production, a flexible sliding scale method should be devised similar to that used in California and Alaska.

3d(2) That a revenue distribution program be initiated on a statutory basis designating approximately five percent (5%) and/or a maximum amount of the current uplands oil and gas severance tax for coastal and offshore environmental studies; for research on renewable energy sources; and to provide for revenue sharing with local governments likely to be affected by offshore oil and gas development.

3e(1) That a set of specific operating orders be referenced in each offshore oil and gas lease.

3e(2) That an offshore environmental enforcement and inspection program be established.

3e(3) That general environmental stipulations be developed for each planning region prior to each sale.

3e(4) That an agreement be established with the State of Alabama specifying the environmental stipulations to be used in common waters such as in Perdido Bay. Other potential interstate conflict issues also should be addressed.

4. Lease Procedures and Terms

That the recommended Leasing Advisory Board review existing onshore lease terms and procedures for compatibility and adaptability to an offshore oil and gas leasing program.

GLOSSARY AND ACRONYMS

Glossary

Applicant - Any person requesting the State to either issue a call for nominations for leasing or offer for lease minerals owned by the State.

Aquatic preserves - Submerged or tidal areas identified and designated by the Florida Legislature which have exceptional biological, aesthetic, educational, and/or scientific value, with the intent of setting them aside forever as preserves or sanctuaries for the benefit of future generations pursuant to Chapter 258, F.S.

Barrier islands - Thin, elongated, naturally formed islands, usually parallel to the shoreline, formed of unconsolidated sediments (mostly sand), separated from the mainland by natural bodies of water, including estuaries and wetlands.

Beach - Gently sloping areas of loose material (e.g. sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or land form, or to the line of vegetation.

Bid - The offer to pay a valuable consideration to obtain a mineral lease.

Bidder - Any person submitting a bid.

Block - A geographical area, as portrayed on an official BLM protraction diagram or leasing map, that contains approximately nine square miles (2,304 hectares or 5,760 acres).

Board of Trustees - Board of Trustees of the Internal Improvement Trust Fund (Florida, Governor and Cabinet).

Bonus - A sum of money offered or paid by a lessee to the State as consideration for the execution of a lease.

Coastal waters - Those waters surrounding the continent which exert a measurable influence on users of the land.

Coastal zone - Coastal waters and adjacent lands which exert a measurable influence on the uses of the sea. The zone extends onshore to the upper reaches of the tidal zone and adjacent shore areas.

Continental margin - A zone separating the emergent continents from the deep sea bottom.

Continental shelf - A broad, gently sloping, shallow feature extending from the shore to the continental slope.

Glossary (cont'd)

Delay rental - A payment offered or made by a lessee to the State, on a per mineral acre basis, annually during each year of the primary term of a mineral lease after the first year thereof, to delay commencement of drilling operations.

Designated environmental preservation areas - Gulf of Mexico shorefront areas which have been established for the quality and significance of their natural environments. They have been legislatively, administratively, or privately protected from the developmental influences of man and are managed solely for the preservation, understanding, and appreciation of their natural attributes. Included are National Parks and Preserves, National and State Wilderness Areas, National Marine and Estuarine Sanctuaries, National Natural Landmarks, Wildlife Sanctuaries, Florida Aquatic Preserves, and Environmentally Endangered Lands.

Development - Activities that take place following exploration for, discovery of, and delineation of minerals in commercially attractive quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities; and that are for the purpose of ultimately producing the minerals discovered.

Development of Regional Impact (DRI) - Any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county pursuant to Chapter 380, F.S.

Ecosystem - The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist.

Environmental impact statement - A statement required by the National Environmental Policy Act of 1969 (NEPA) in relation to any action significantly affecting the environment; a NEPA document.

Estuary - A natural body of water semi-enclosed by land, connected with the open ocean, and within which sea water is measurably diluted by fresh water derived from the land. The estuary includes: a) estuarine water; b) tidelands; c) tidal marshes; and d) submerged lands. Estuaries extend upstream as far as the waters contain a measurable quantity or percentage of sea water.

Exploration - The process of searching for minerals. Exploration activities include: a) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or infer the geologic conditions conducive to the accumulation of such minerals and (b) any drilling, except development drilling, whether on or off known geological structures. Exploration also includes the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling, after such a discovery, of any additional well that is needed to delineate a reservoir and to enable the lessee to determine whether to proceed with development and production.

Glossary (cont'd)

Gas - All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

Gas well - A well capable of producing gas from a gas pool or gas pools.

Habitat - A specific type of place that is occupied by an organism, a population, or a community.

Joint bid - A proposal whereby two or more bidders combine in submitting a bid for a mineral lease.

Field - An area within which hydrocarbons have been concentrated and trapped in economically producible quantities in one or more structural or stratigraphically related reservoirs.

Hydrocarbon - Any of a large class of organic compounds containing primarily carbon and hydrogen, comprising paraffins, olefins, members of the acetylene series, alicyclic hydrocarbons, and aromatic hydrocarbons, and occurring in many cases in petroleum, natural gas, coal, and bitumens.

Lease - A contract authorizing exploration for and development and production of minerals; the land covered by such a contract.

Lease royalty - A share of the production, or the proceeds thereof, specified in a lease as a fraction, percentage or fixed sum, payable to the State by the lessee.

Lease sale - The public opening of sealed bids made after competitive auction for leases granting companies or individuals the right to explore for and develop certain minerals within a defined period of time.

Local government - Any county or municipality or any special district or local government entity established pursuant to law which exercises regulatory authority over and grants development permits for land development pursuant to Chapter 163, F.S.

Marshes - Persistent emergent non-forested wetlands characterized by vegetation consisting predominantly of cordgrasses, rushes, and cattails.

Marine league - 3.45 statute miles.

Mean high water - The average height of the high tides over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the water after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

Mean high water line - The intersection of the local elevation of mean high water with the shore.

Glossary (cont'd)

Mineral - Oil, gas, and other minerals, both hydrocarbon and non hydrocarbon, unless otherwise specifically included, sand, clay, gravel, limestone, and coal.

Mineral acre - The equivalent of the full mineral interest in one acre of land.

Non-renewable resource: Those natural resources that, once used or exhausted, cannot be replaced. Commonly used with commodity type resources such as coal, petroleum, natural gas, etc.

Oil - Crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the pool.

Oil well - A well capable of producing oil from an oil pool or oil pools.

Outer Continental Shelf (OCS - All submerged lands that comprise the continental margin adjacent to the U.S. and seaward of state offshore lands. The OCS has been subject to Federal jurisdiction and control since enactment of the Submerged Lands Act (43 U.S.C. 1301 and 1302). Current national policy is provided in the Outer Continental Shelf Lands Act Amendments of 1978.

Petroleum - An oil, flammable bituminous liquid that occurs in many places in the upper strata of the earth, either in seepages or in reservoirs; essentially a complex mixture of hydrocarbons of different types with small amounts of other substances; any of various substances (as natural gas or shale oil) similar in composition to petroleum.

Pool - An underground reservoir containing a common accumulation of oil or gas or both.

Primary term - The initial period of oil and gas leases, can range from 2 to 20 years in coastal states.

Renewable resource - Those resources which, if managed, used, and harvested properly, can replenish themselves at a rate equal to the rate of consumption. They are usually biological or living resources.

Reserve estimate - An assessment of the portion of the identified oil or gas resource that can be economically extracted.

Reservoir - An accumulation of hydrocarbons that is separated from any other such accumulation.

Right-of-way - A legal right of passage over another person's land; the strip of land for which permission has been granted to build a pipeline and for normal maintenance thereafter.

Glossary (cont'd)

Seismic - Pertaining to, characteristic of, or produced by earthquakes or earth vibration; having to do with elastic waves in the earth.

Severance tax - A tax levied by the State upon a person or persons engaging or continuing to engage within a State in the business of producing or severing oil and gas from the soil or the waters, or from beneath the soil or the waters of the State for sale, transport, storage, profit, or for use.

Shut-in royalty - An amount specified in the lease to be paid for a time period also specified in the lease to hold the lease in force after a gas well has been completed capable of production in paying quantities, but which has been shut-in under provisions specified in the lease.

Shut-in well - A well that is capable of producing oil and/or gas but must remain shut-in until connected to a gathering system, pipeline or cleansing facility; or for some other reason.

Spoil islands - Artificial islands created with dredged material resulting from disposal of material created, resulting from, or as waste products of creating, maintaining, or deepening channels, harbors, ports, or other such projects.

Territorial sea - In Florida, for jurisdictional purposes, the ocean and seafloor area from mean low water seaward three nautical miles on the Atlantic Coast, and extending seaward three marine leagues on the Gulf Coast.

Wetlands - Areas periodically inundated or saturated by surface or groundwater and supporting predominantly vegetation typically adapted for life in saturated soil conditions.

Acronyms

ADNR	Alaska Department of Natural Resources
CEIP	Coastal Energy Impact Program
CZMA	Coastal Zone Management Act of 1972, as amended.
DCA	Department of Community Affairs (Florida)
DER	Department of Environmental Regulation (Florida)
DNR	Department of Natural Resources
DRI	Development of Regional Impact
EPA	Environmental Protection Agency
FAC	Florida Administrative Code

Glossary (cont'd)

FDNR	Florida Department of Natural Resources
FIO	Florida Institute of Oceanography
F.S.	Florida Statutes
LGCPA	Local Government Comprehensive Planning Act (Florida)
MHW	Mean high water
MMS	Minerals Management Service (Department of the Interior)
OCS	Outer Continental Shelf
OFCP	Office of Federal Coastal Programs (Florida)
OHW	Ordinary high water
SUS	State University System

LIST OF TABLES

		Page
Table 1	Coastal States Included in Review of Leasing Procedures	5
Table 2	Topical Outline for State Reports	7
Table 3	Distribution of State Oil and Gas Revenues	10
Table 4	Historical Summary of State Leasing Programs	18
Table 5	Florida Leaseholdings of Coastal Petroleum Company	19
Table 6	State Environmental Responsibilities and Policies	26
Table 7	Delegation of Management Responsibilities for State Leasing Program	27
Table 8	Geographical Description of State Territorial Waters	32
Table 9	Statutory and Vested Authority for State Oil and Gas Leasing Programs	37
Table 10	Authority of Local Governments to Annex State Territorial Waters	40
Table 11	State Revenues from Offshore Oil and Gas Operations	50
Table 12	State Leasing Procedures	57
Table 13	Summary of State Lease Terms	58

LIST OF FIGURES

		Page
Figure 1	Eastern Gulf of Mexico OCS Activity Active Leases	2
Figure 2	Organization of Leasing Advisory Board	30
Figure 3	State OCS Offshore Planning Regions	34

Introduction

I. Introduction and Background

In recent years the oil and gas industry has expressed interest in exploring for oil and gas in Florida offshore waters. Their interest has been primarily in the federal waters of the Outer Continental Shelf (OCS).

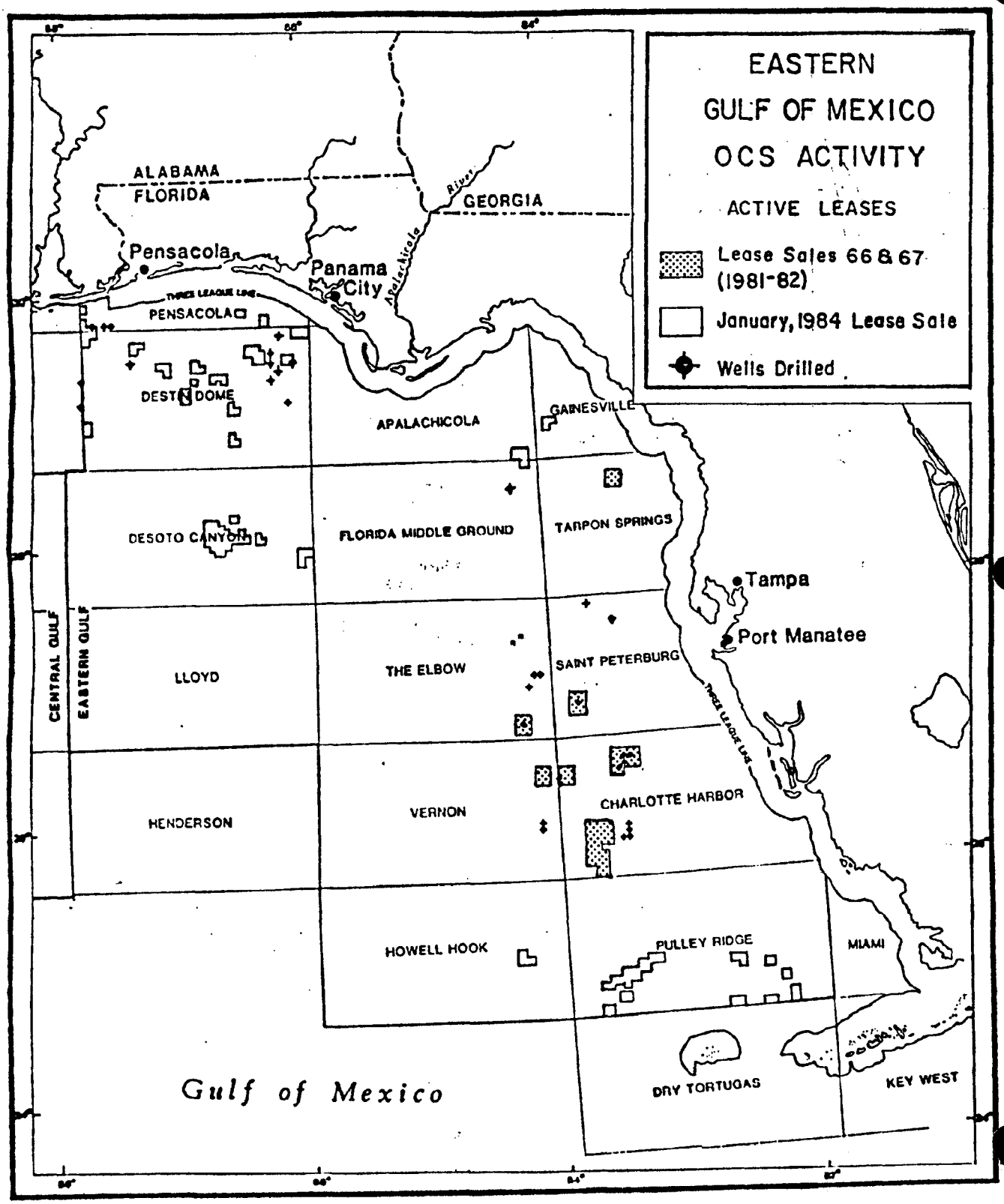
Blocks leased in past OCS Lease Sales along the coast of Florida indicate that formations offshore northwest and southwest Florida and along the continental slope may have hydrocarbon potential. Interestingly, these leased OCS blocks are parallel to onshore areas which represent the major producing oil and gas fields in the State (Figure 1).

In the January 1984 OCS Lease Sale, blocks were leased offshore northwest Florida which are within 3 miles of state territorial waters. Several companies already have applied to the Department of the Interior Minerals Management Service (MMS) for permits to drill exploration wells on blocks 14 to 40 miles from the coastline. Should there be a major discovery on these OCS blocks, it is likely that exploration interest could extend into state waters.

Historically, because the state's oil and gas operations have been primarily on shore, leasing procedures, permitting, and environmental concerns have been directed toward onshore operations. The environmental circumstances and conditions for offshore operations, however, differ substantially from those onshore. This fact has long been recognized by the Federal Government, and the coastal states examined in this study which have separate and distinct management procedures for onshore and offshore areas.

Given the increasing industry interest in OCS areas offshore Florida, and the probability that state waters may be targeted for exploration, the Office of Federal Coastal Programs (OFCP) within the Florida Department

FIGURE 1



SOURCE: U.S. Department of the Interior, Minerals Management Service

of Community Affairs (DCA) proposed a comprehensive study of oil and gas management procedures in state waters. The primary purpose of the proposed study was to develop measures for maximum protection of valuable coastal and marine resources in consideration of the potential for oil and gas development. The secondary purpose was to provide recommendations to ensure that the state receives adequate compensation for public resources if and when they are developed.

As the first step in pursuing this proposal, the OFCP, in cooperation with the Florida Department of Environmental Regulation and the Florida Department of Natural Resources (FDNR), prepared an outline to provide the framework for a comprehensive approach towards adapting existing onshore leasing/permitting procedures for use in state offshore waters. The project was designed to provide an analysis of leasing and permitting procedures, leading from the initial mapping of state waters to potential revenue distribution, and was to be accomplished in four phases:

Phase I - Mapping Lease Tracts
Phase II - Leasing Procedures
Phase III - Permit Procedures
Phase IV - Allocation of Revenue

Recognizing that these categories are not mutually exclusive, the DCA elected, as the first step in this program, to address leasing procedures (Phase II). In May 1983, a Coastal Energy Impact Program (CEIP) grant was awarded to the Florida Institute of Oceanography (FIO) to undertake the Phase II tasks of:

- defining existing rules, regulations, statutes, and procedures affecting leasing in state offshore waters;
- summarizing oil and gas leasing programs of selected coastal states;
- describing the interface of geographical boundaries between state and Federal offshore waters;

- reviewing county and local government statutes, rules, and regulations;
- reviewing Federal and state policies in regard to oil, gas, and mineral leasing; and
- drafting recommendations for a revised leasing program for state offshore waters to serve as a planning document for future policy decisions.

II. Purpose of Project

The purpose of the project and this report is to provide a working document, incorporating background information and specific recommendations, on which policy/management decisions can be based with respect to future oil and gas leasing in Florida's offshore waters. Conversely, it is not the purpose of this document nor the intent of the FIO to recommend whether oil or gas operations in Florida offshore waters should be permitted. The determination of whether oil and gas operations in Florida offshore waters should be approved is the responsibility of the Governor and Cabinet acting as the Board of Trustees of the Internal Improvement Trust Fund.

If oil and gas resources are discovered in commercial quantities in Florida's offshore waters, any program developed must be compatible with the protection of the coastal environment and the exploration and production of offshore oil and gas. With increasing activity in the Federal waters of the eastern Gulf of Mexico, now is the time to rationally and systematically develop a state offshore leasing program that will ensure adequate environmental protection as well as the potential financial benefits accruing to the state from offshore oil and gas revenues.

If it is decided at a future date to award additional leases in Florida offshore waters, the material in this report should provide useful guidance in the preparation of revised leasing procedures. To provide such guidance is the overall goal of the project and this report.

III. Preparation and Format of Report

The data in this report were obtained from interviews and meetings with Florida State officials, the DCA project advisory board (Appendix F), representatives from the other states selected for reviews shown in Table 1, Federal officials, and from a wealth of documents provided by all of the above.

The format shown in Table 2 was used for the report of each of the nine states reviewed in Volume II to facilitate the comparison and critique of their respective oil and gas leasing programs.

TABLE I

Coastal States Included in
Review of Leasing Procedures

Alabama	Louisiana
Alaska	Mississippi
California	North Carolina
Florida	South Carolina
	Texas

Three consultants contributed to the Florida report. Their contributions consisted of a review of state laws, the role of local governments in leasing, and the socioeconomic impact of offshore oil and gas activities. The complete reports of these consultants are included as Appendices A, B, and D, respectively, in this report (Volume I).

The draft of each state report reflecting its program was sent to selected state officials for review and comment. The final reports of the eight other states reviewed and the draft of the Florida report, together with Appendices, were sent to the members of the DCA project advisory board (Appendix F) prior to general distribution. Following insertion of comments received, the final draft of this report was distributed widely to state agencies and private organizations.

TABLE 2

TOPICAL OUTLINE FOR STATE REPORTS

A. Statutory Authority
   1. Vested Authority
   2. Members of Governing Body

B. Philosophy of State Towards Leasing in State Waters

C. History of Leasing Program
   1. Establishment of offshore leasing program
   2. Frequency distribution of leases by year
   3. Average geographic size of lease and related bidding data
   4. Example of prior lease sale schedule
   5. Revenues accruing to state

D. Delegation of Management Responsibilities for State Leasing Program
   1. Name of managing agency or department
   2. Agency responsibilities
   3. Organization chart of state agencies

E. Geographic Description of State Territorial Waters
   1. General description of state offshore boundaries
   2. Mapping and charting procedures used to define lease areas

F. Local Jurisdictional Control Over State Waters
   1. The role of counties and municipalities
   2. The role of port authorities
   3. Proprietary interests of local governments in submerged lands
   4. Home rule rights and the authority for local governments to annex offshore lands
   5. Effects of local government regulations on offshore operations subsequent to issuance of leases
   6. Ability of local governments to tax oil and gas facilities, properties or production through taxes on leasehold interests, equipment or by levying a severance tax

G. Oil and Gas Revenues Accruing to State
   1. Minimum royalties allowed by law
   2. Royalties prescribed for oil and gas leases

G. Oil and Gas Revenues Accruing to State (cont.)
   3. Rental per acre
   4. Delay rental payment
   5. Shut-in royalties
   6. Offset wells
   7. Pooled acreage
   8. Bonus consideration
   9. Severance tax
   10. State agency receiving royalties
   11. Distribution of Revenue within State

H. Environmental Controls and Regulations
   1. Responsible agencies
   2. Relation to leasing agency
   3. Environmental review process prior to issuing lease/permit
   4. Environmental stipulations
   5. Baseline environmental research
   6. Role of Corps of Engineers

I. Leasing Procedures
   1. Leasing Schedule
   2. Call or nominations for lease
   3. Fees
   4. Publication of calls for nominations and advertisements for leasing
   5. Bidding
   6. Terms of lease
   7. Handling of proprietary information

J. Relation of Leasing Program to Issuance of Permits

K. Mineral Leasing

L. The Socioeconomic and Physical Impact of Oil & Gas Leasing in Florida's Waters (Florida Report Only)

Recommendations

A. Introduction

The attitude towards offshore oil and gas activities in coastal states ranges from the strong pro-leasing states such as Louisiana, Texas, Alabama, and Alaska to the neutral position of South Carolina, to a conservative approach such as found in California. For example, the long term favorable offshore leasing attitude in Louisiana derives from the fact that almost one-third (approximately one billion dollars) of the state's annual revenue comes from oil and gas activities. A decrease of one dollar per barrel in the price of oil costs Louisiana $31 million in annual revenue. In Alabama, a single lease sale in 1981 produced a bonus revenue alone to the state of $449 million. Their most recent lease sale on August 14, 1984 resulted in bonus bids of $347.5 million for 18 leases.

In Texas, the public school fund receives $300 million annually which represents the interest accruing from invested oil and gas revenue. In Alaska, 90% of the state's revenue comes from oil and gas. These funds are being used to develop new state revenue sources and to support existing programs. The distribution of Alaska's oil and gas revenues are shown in Table 3 along with those of the other eight coastal states reviewed.

By contrast, without any offshore oil or gas production, Florida is justifiably concerned with the socioeconomic and environmental impact of future offshore oil and gas activities because of its reliance on tourism, retirement communities, and coastal recreational-based revenue. Florida's economy is based largely on its unique environment. Because the development

TABLE 3
DISTRIBUTION OF STATE OIL AND GAS REVENUES

	AGENCY COLLECTING REVENUES	ROYALTIES, RENTALS, AND BONUSES (100%)					SEVERANCE TAX (100%)	
		STATE LEVEL		LOCAL LEVEL		TOWARD ADMINISTRATION		
		AGENCY	%	AGENCY	%		AGENCY	%
FLORIDA	Department of Natural Resources	Internal Improvement Trust Fund	100%	None	0%	Granted from Internal Improvement Trust Fund	Department of Revenue	100%
							Oil and Gas Tax Trust Fund	To State/County of Production
ALABAMA	State Land Division, Department of Conservation and Natural Resources	State General Fund	90%	None		4	Dept. of Revenue	100%
		DCNR	10%				General Fund	
ALASKA	Department of Natural Resources	Various State Funds	100%	None	0%	None	None	
CALIFORNIA	State Lands Commission	State Treasury	100%	None[5]	0%	None	None	
LOUISIANA	Office of Mineral Resources, Department of Natural Resources	Bond Security Redemption Fund	90%[2]	County of Prod.	10%[2]	$15,000 to cover advertising costs	N.S.	
			100%[3]	None	0%[3]			
		Enhanced Mineral Income Trust	Balance	None	0%			
MISSISSIPPI	Mineral Lease Division, Department of Natural Resources	Min.Lease	0.5%	None	0%	.5% of Royalties, Rentals and bonuses to Mineral Lease Division	N.S.	
		Gulf and Wildlife Protection Fund	2%					
		State General Fund	97.5%					
NORTH CAROLINA	Department of Natural Resources	State Treasury	100%	None	0%	Granted Funds from Royalties, Rentals and bonuses	N.S.	
SOUTH CAROLINA	Water Resources Commission	State Treasury Special	100%	None	0%	Granted from Exploration Permit Monies	N.S.	
TEXAS	General Land Office	Permanent Public School Fund	100%	None	0%	.5% of Severance Taxes	Available School Fund	25%
							General Fund	75%

[1] N.S.: Not separate from royalties, rentals and bonuses.

[2] Directly from royalty funds to a maximum of $12.5 million.

[3] Directly from leases and bonuses to a maximum of $2.5 million.

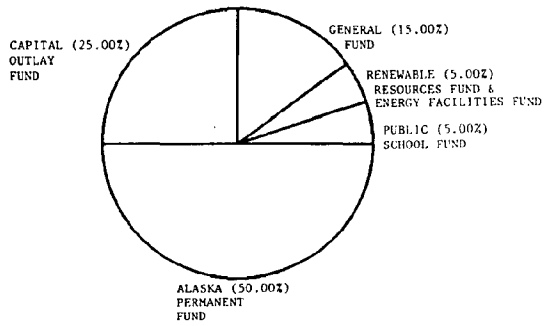
[4] Dependent on legislative appropriation.

[5] State Controller apportions 1% to local city or county.

* Data provided and reviewed by respective state officials.

* ALASKA

ROYALTIES, RENTAL AND BONUSES DISTRIBUTION



of the state has been concentrated at or near its seaward boundaries, any program that affects this environment should be preceded by a cost risk analysis to assure that the overall benefits of short term economic gains from sources such as oil and gas exceed potential deleterious long term economic or environmental effects. These effects can take the form of damaging a flourishing tourist industry, damaging the physical environment, over-stimulation of the economy, or a rapid depletion of non-renewable resources.

California and Alaska continue to face similar problems. Alaska particularly had a high dependence on the tourist industry until oil and gas was discovered and became a major source of revenue. In California, as a result of the Santa Barbara oil spill in 1969, with the accompanying environmental impact, offshore oil and gas leasing was halted until a new state policy, operational methods, and offshore procedures were developed.

In response to such challenges, Alaska and California are developing offshore oil and gas leasing policies and comprehensive offshore environmental programs that allow the determination of the cost risk involved with oil and gas activities. A detailed discussion of Alaska's and California's program is contained in Volume II. Based on these reports it is apparent that policy decisions have been made by these two states that with proper care, funding of environmental studies, and improved leasing procedures, oil and gas resources can be developed while simultaneously protecting their environmental resources.

The recommendations contained in this section of the report are divided into two major categories. The first category addresses policy

recommendations which attempt to lay out a strategy for developing and clarifying the state's position with regard to offshore oil and gas leasing.

The second category, program recommendations, describes recommended steps for implementing the policy recommendations. The program recommendations to be described are based on the assumption that the State of Florida will initiate a separate offshore oil and gas leasing program.

The format to be followed in this section provides a general title, comment/background information for each respective recommendation, and a concise recommendation.

B. POLICY RECOMMENDATIONS

Introduction

The five policy recommendations which follow address the basic mechanism and planning procedures necessary prior to implementation of any future oil and gas leasing program in Florida's offshore waters. They call for the initial policy decisions by the state, the development of comprehensive leasing and environmental program plans, and for restrictions on offshore activities until such plans are in place.

1. Formation of Policy Advisory Group

Comment

Prior to developing a comprehensive plan specifically for offshore oil and gas exploration, Florida needs to re-examine its present leasing policy. The review of Florida's existing statutes and planning documents undertaken for this report indicates confusion as to whether the state does or does not wish to support the development of oil and gas in state waters.

At the present time there is no clear, definitive state policy regarding leasing of offshore waters for oil and gas operations. Chapter 253.45-253.61 F.S., generally, describes the power and duties of the state with regard to state land management. Further, Chapter 253.47 F.S. and 253.51 F.S., specifically empower the Board of Trustees to sell or lease state submerged lands. Both Chapter 253 F.S. and F.A.C. 16Q-21, "Sovereignty Submerged Lands Management Rule", prescribe general procedures for the application and issuance of submerged land leases. General policy guidance is found in the State Lands Management Plan "to ensure maximum benefit and use" Chapter 253.07(7) F.S. of state-owned lands. Within this plan oil and

gas is addressed consistently within the context of minerals in general. Little treatment is given to a specific policy regarding offshore oil and gas leasing on submerged lands.

Further reference to energy resources can be found in Chapter 377.06 F.S. which establishes public policy for the conservation of oil and gas resources within the state with particular attention to rights of property owners, encouraging development of oil and gas sources, and safeguarding the health, property and public welfare of state citizens. Under this statute, the Florida Department of Natural Resources (FDNR) is empowered to adopt rules and regulations as may be necessary for the administration of this legislation, including the offshore waters of the State (Chapter 377.22 F.S.)

In general, the regulation of oil and gas in submerged lands is vested in two separate statutes, Chapters 253 and 377 F.S. with policy established by the State Lands Management Plan and the "Sovereignty Submerged Lands Management Rule". Each of these instruments provides a form of general guidance for submerged lands leasing. Under Chapter 253.45 F.S., ultimate authority is given to the Board of Trustees with primary administrative support provided by the Division of State Lands. For Chapter 377 F.S., the primary administrative support is provided by the Division of Resource Management of the FDNR.

Although there is a statutory basis that allows leasing of offshore waters and development of new offshore resources, the rules, regulations, and state policy are sufficiently complicated that the implementation of this policy is extremely difficult. The end result is that it isn't clear as to whether the State of Florida is supportive of offshore oil and gas development or not.

Based on the review of offshore oil and gas programs of other states, it has become clear that it is possible to have a leasing program in an environmentally sensitive region with proper protection for that environment. The situation in Florida is no exception. That is to say it should be entirely possible to develop an offshore oil and gas leasing program compatible with protection of the environment.

The development policy of Florida has not been concentrated on heavy industrial complexes such as has occurred in California and other gulf coastal states. Florida's policies have led to a heavy dependence on light industry, tourism, and retired communities. Even though it is possible to have an offshore program that protects the environment, the political climate of the state may not support it. Therefore, the question of whether an offshore leasing program should be developed is primarily a political decision. Such a policy decision must, however, look at the entire spectrum of oil and gas activities and not just the leasing portion of those operations. Without this policy decision, the implementation of the recommendations which follow cannot occur. A decision on an offshore policy must be formulated. To determine a policy on offshore leasing, the Board of Trustees should have a broad-based advisory group to provide guidance with respect to making a final policy decision. Based on the state's OCS experience, this group should have representation from the environmental community, industry, state and local governments, OCS representative, and a member at large. An Interagency Management Committee was formed in 1980 for the purpose of reviewing state policies and advising the Governor and Cabinet. If this Committee is sanctioned eventually by the Florida legislature, it might represent a vehicle for fulfilling this role.

Recommendation

1a. That the Board of Trustees of the Internal Improvement Trust Fund establish a policy for initiating an oil and gas environmental protection program in state territorial waters.

1b. That an ad hoc advisory committee be established to provide broad-based input to the Trustees in developing such policy and that this committee be supported with adequate funding and staff.

2. Development of an Offshore Comprehensive Leasing Program

Comment

Historically, interest in oil and gas exploration in Florida's offshore waters dates back to the early 1940's, as summarized in Table 4. This early historical interest resulted in large lease blocks as reflected in Table 5. These leases were modified in 1976 and will remain in effect until the year 2016.

An effective offshore oil and gas leasing program will require the development of a comprehensive plan. Accordingly, a five to ten year overall plan addressing potential oil and gas activities in Florida's territorial waters should be developed and continually updated, consistent with:

- The state policy.
- The already approved Conceptual State Lands Management Plan.
- Balanced public utilization.
- OCS oil and gas planned sales and exploration efforts.
- The state's position with regard to OCS leasing.
- Regional planning council goals.
- Revenue structure of the state.
- Flexibility to permit routine updating of the program.

The importance of having management plans for the use of state owned lands was emphasized by the Florida Senate Natural Resources and Conservation

TABLE 4

Historical Summary of State Leasing Programs*

	Leases			Wells		Production		Lease Sales Schedule
	First Offshore	Number Issued To Date	Average Size (Acres)	First Drilled	Number Drilled To Date	Initial Production Date	Current Status	(Frequency of Sales)
Florida	Early 1940's	19	? to 2.3 million	1945	29	Non-Producing	Non-Producing	N.E.[1]
Alabama	1950's	18[2]	4,150±[3]	1951-1952	<20	Non-Producing	None produced to date. First production will be 1987	N.E.
Alaska	1958	3,377	5,760	1898	No Data	1902	In Production	January, May & September each year
California	1929	59	2,668	1896	43,838[3]	1932	In Production	N.E.
Louisiana	1920	900 total 742 since 1960	1,000+	1901	18,506[4]	1928	In Production	Monthly
Mississippi	1982	2	2,880	None	0	Non-Producing	Non-Producing	N.E.
North Carolina	1944	5	5	1946	4 drilled offshore	Non-Producing	Non-Producing	N.E.
South Carolina	None	0	2,500[6]	None	0	Non-Producing	Non-Producing	N.E
Texas	1922	42[2]	640/1,440	1938	816[7]	1940	In Production	April and October each year

1. None established. 2. Currently leased. 3. Based on 1982 figures. 4. As of 1980. 5. Average @ 1976 sale several thousand acres. 6. Maximum acreage allowable. 7. Wells in currently leased fields.
* Data provided and reviewed by respective state officials.

TABLE 5

FLORIDA LEASEHOLDINGS *
OF THE
COASTAL PETROLEUM COMPANY**

LEASE #	LOCATION	ACREAGE (Million Acres)	PRODUCTION STATUS	RESIDUAL ROYALTY INTEREST (COASTAL PETROLEUM)		ROYALTY INTEREST OF STATE		WORKING INTEREST	
				OIL & GAS	MINERAL	OIL & GAS	MINERAL	OIL & GAS	MINERAL
248	Lake Okeechobee	0.45	N.P.[1]	0	0	1/8	1/10	100%	100%
	St. John's River and inland lakes	0.20	N.P.	6.25%	5%	0	0	0	0
224A, B	Appalachicola Bay to Naples								
	Inner Area: 0-4.36 miles from shore	2.30	N.P.	6.25%	5%	0	0	0	0
	Outer Area:	0.80	N.P.	0	0	1/8	1/10	100%	100%

* Total Lease Area = Approximately 3.7 Million Acres
Annual Lease Rental = $59,247.00
Lease Term = 40 Years Pursuant to Agreement dated January 6, 1976
Lease Expiration Date = January 6, 2016

** Source: Florida Department of Natural Resources

[1] N.P. = Non-Producing

Committee in a December 1979 management study on state owned lands. The study found that the Division of State Lands (FDNR) was very passive in terms of land management of state owned lands. The report stated that "without detailed plans and continuing supervision, the land is often subject to conversion, trespass, abuse, or underutilization as a state owned resource." A survey conducted by the Senate Committee revealed that only 5 of 11 agencies, who manage lands which have titles vested in the Board of Trustees, submitted evidence of a general plan or policy regarding real property management. Of the 185 parcels sampled, only 25 site specific detailed plans were furnished. The Committee report further stated that:

> "Through the issuance of leases or even management agreements, the board has simply delegated its authority to the using agency. The lack of an adequate inventory of state owned lands has created a potential setting of mismanagement based on neglect. . . . without some form of planning or policy making, land management can degenerate into ad hoc, directionless decision making which may not serve the public interest optimally." (Office of the Governor, Office of Planning and Budgeting, March 1982, "An Evaluation of the Department of Natural Resources State Lands Management Programs", p.38.)

Recommendation:

That a comprehensive oil and gas leasing program be developed specifically for offshore waters to provide for more effective resource management safeguards, environmental protection, and obtaining just revenues for the state.

3. Development of a Pre-leasing Environmental Study Program

Comment

Before activating an offshore oil and gas leasing program in state offshore waters, it will be necessary to acquire essential environmental data describing potential lease areas. There are many ongoing state and federally funded programs related to the impacts of oil and gas activities. There is, however, no long term comprehensive plan which ensures that data generated by

these studies will be interpreted and used within the context of a state offshore oil and gas program. Accordingly, the state should undertake a structured marine environmental studies program in support of F.A.C. 16Q-21.04(2)(K). Such a program could be implemented through the FDNR and the State University System (SUS).

Although there have been numerous literature surveys and compilations of environmental data by MMS and the state, additional data are available and should be entered into existing data banks. This updated data base could form the basis for developing a comprehensive long term plan for a mission-oriented environmental study program to generate data for offshore management decisions. The data, once organized, also would provide a preliminary basis for evaluating geographical areas which may be considered for oil and gas leasing. The state's analysis of OCS activities indicates that existing state environmental programs underway cannot generate the management information necessary for leasing in offshore waters. The importance of obtaining relevant environmental data prior to issuing offshore leases cannot be over-emphasized. In order to achieve this goal it will be necessary to begin collecting these data at least four to five years ahead of initiating any additional leases in offshore waters.

Data currently available suggest that oil and gas leasing interest in state-owned waters will most likely be focused in areas not presently leased in the offshore area of the West Florida Panhandle and off the Keys for the next decade. Scheduling of leasing in state waters should be keyed to geologic interpretations from upcoming drilling in the OCS and from yet-to-be-conducted industrial seismic investigations in state waters. Exploratory well completions in the OCS will be nearly in phase with the start of consideration for leasing in state waters and will coincide with the recommended 4-5 year environmental study program.

Recommendation:

That a comprehensive long range pre-leasing study program supported with adequate funding and staff be initiated for the purpose of acquiring environmental data in state offshore waters showing potential for oil and gas development.

4. Restrictions on Offshore Lease Sales

Comment

Examination of the oil and gas activities in other states indicates that without the proper environmental data to make leasing management decisions, environmental problems might be caused by oil and gas activities. It is the State of Florida's OCS policy that leasing should not occur in federal waters without adequate environmental data prior to the implementation of a leasing schedule. Similarly, in the territorial waters of the State of Florida, leasing should not occur prior to the acquisition of adequate environmental data. This recommendation is consistent with recommendations contained in the Coastal Energy Facilities Siting Study published in December, 1982 by the Tampa Bay Regional Planning Council.

Recommendation:

That no oil and gas leasing takes place in Florida's territorial waters until such time as the necessary environmental data are obtained.

5. Mineral Leasing

Comment

As stated in Chapter 253.45, F.S., "The Trustees may sell or lease any phosphate, earth, or clay, sand gravel, shell, mineral, metal, timber, or water, or any other substance similar to these resources, in, on, or under any land the title to which is vested in the State. The proceeds of such sales or leases are credited to the Board, department, or agency which has title or control of the land involved."

The leasing of the State's mineral interest has mostly been exclusive to oil and gas exploration and drilling. Very few mining leases have been granted mainly because the leasing of the State's exploitable resources has historically been triggered by private persons or groups who desire the right to the resources on specific parcels of state owned land. Another factor which has hindered leasing of the mineral interest is the lack of a comprehensive inventory and assessment of mineral interest leases. The inventory of mineral interests is nearly complete. Rather than leasing mineral interests, applications have been received for re-leasing or selling mineral interests primarily for phosphate mining operations. Applications have been scarce since the State has a real interest in these lands and desires to collect royalties on the mining operations (Office of the Governor, Office of Planning and Budgeting, March 1982, "An Evaluation of the Department of Natural Resources State Lands Management Program", p.33)

None of the states examined during the course of this study combined oil and gas leasing with mineral rights. The federal government also separates leasing of oil and gas from non-energy resources. At the present time in Florida, mineral leases are handled separately by the FDNR including the use of a separate lease form.

Considering the state's concern for its environment, it must be recognized that the environmental problems associated with the development of offshore non-energy mineral resources far exceed those potential ones associated with oil and gas.

Recommendation:

That any minerals not defined as constituent products in the current oil and gas lease form in the State of Florida shall not be considered as part of an offshore oil and gas leasing program.

Introduction

The foregoing pages contain policy recommendations essential for initiating an offshore oil and gas leasing program for Florida's territorial waters. On the assumption that a policy decision will be made to initiate a separate comprehensive leasing program for offshore waters, the following recommendations address major program elements and issues necessary for the implementation of that policy decision. They draw upon existing Florida law, the lessons learned from examining the oil and gas programs of other coastal states, and the unique requirements of the State of Florida.

1. Development of Leasing Program Consistent with State Policy

Comment

As shown in Tables 6 and 7, the management responsibilities for state environmental programs are distributed among two or more agencies in most states. Florida is no exception. It is accepted generally that the statutory authority and management structure necessary for environmental control of oil and gas operations in Florida currently is in place. A detailed discussion of Florida's existing environmental regulatory procedures is contained in the Florida report (Volume I).

Interviews with agency officials reveal that while the statutory responsibilities for leasing and permitting are well defined, there appears to be a need for closer cooperation between the FDNR and the Department of Environmental Regulation (DER) with respect to the implementation of environmental lease/permit procedures. This could be achieved, at least in part, by establishing a formal Memorandum of Understanding for offshore

TABLE 6

State Environmental Responsibilities and Policies*

	A Responsible Agency	B Leasing Agency	Relationship Between Agencies	Baseline Environmental Programs	Role of Corps of Engineers	Policy	Concerns
Florida	Dept. of Environmental Regulation	Dept. of Natural Resources	Formal agreement joint application process	N.S.P.[1] Independent research, regional, and site specific data collecting for permitting	Environmental permitting phase	Wide range of attitudes toward development	Adverse effects on tourism, environment, and community development
Alabama	Department of Environmental Management	Dept.of Conservation & Natural Resources	Formal "Memorandum of Agreement" but no clear understanding	N.S.P. State geological survey conducts in-house studies; most stipulations based on available data	No direct role in leasing process; does influence the permitting process	Strong support for exploration and development of oil and gas resources (especially with 1979 discovery of gas in Mobile Bay)	Although few state environmental restrictions, there is is a qualified zero discharge policy
Alaska	Dept. of Environmental Conservation	Dept. of Natural Resources	DEC is lead entity for dept. review of other state agency programs as they impact environmental quality	Dept. of Fish and Game conducts baseline and applied research re: oil and gas activities	Primarily concerned with dredge and fill permits	Wide range of attitudes toward development	Arctic area production effects on whale migration route and Eskimo-whale interaction
California	Shared[2]	State Lands Commission (SLC)	Memorandum's of Understanding	SLC and State Water Resources Board carry out baseline studies prior to development of an area	Primarily concerned with structures, dredge and fill permits	Very cautious development policy	Strong environmental, especially with state history of oil spills
Louisiana	Office of Conservation	Dept. of Natural Resources	No direct relationship	N.S.P.	Issues permits with respect to 404 clean water program	Strong economic and social support of continued oil and gas development	No environmental review prior to leasing, no shoreline buffer zone (drilling can occur anywhere
Mississippi	Dept. of Wildlife Conservation	Dept. of Natural Resources	Formal "Memorandum of Agreement" which facilitates cooperation	D.W.C. supports research for data base, integrates other data and develops guidelines	Issues dredge permits with respect to 404 clean water program	Preservationist policy tempered by need to develop resources	Buffer zones around environmentally sensitive areas
North Carolina	Dept. of Natural Resources & Community Development	Council of State	D.N.R.C.D. provides recommendations on oil & gas leasing	Coastal energy impact programs to chart estuarine resources	Issues permits with respect to 404 clean water program	No official policy on oil & gas leasing in state waters, statutes allow leasing if in best state interest	No general environmental stipulations addressing offshore oil and gas leasing (no current leases or drilling in state waters)
South Carolina	Water Resources Commission	State Budget & Control	Exclusive agent	Conducted through State wildlife and outside agency grants. No overall plans of funding offshore environmental research	Not Clear	Current attitude is neutral, no current plans for offshore drilling	Drilling platforms must be greater than 1 mile from beach
Texas	Parks and Wildlife Service	General Land Office	Informal cooperation through Governor's Office	N.S.P. Environmental leasing codes derived from previous experience, prior research programs, and scientific literature	Not directly involved in leasing process, serves as environmental permitting & enforcement arm of state	Strong support for continued oil and gas development with concern for environmental protection	Has developed series of environmental recommendation codes for lease tracts

1. No specific program for oil and gas leasing 2. Dept. of Resources, Dept. of Fish and Game, Minerals Management Service, National Marine Fisheries Service 3. Department of Health and Environmental Control *Data provided and reviewed by respective state officials.

TABLE 7 *

Delegation of Management Responsibilities for State Leasing Programs

		Lease Recommendation			Lease Sale Management	Lease Administration				Permit Authority			Environmental Regulation					
	Managing Agency or Department	Assess Public Interest	Tract Evaluations	Tract Selection		Maintain Records	Inspections	Interact With Other State Agencies	Monitor Production Activities	Oil and Gas Exploration	Drilling	Production	Impact Reports	Recommendations	Lease Conformity	Spill Management	Monitor Air and Water Quality (Environmental Permits)	Royalty Accounting
Florida	Department of Natural Resources	X	X	X	X	X	X	X	X		X			X	X	X		X
	Dept. of Environmental Regulation						X				X					X	X	
Alabama	Department of Conservation and Natural Resources	X	X	X	X	X		X	X					1		1	1	X
	State Oil and Gas Board					X	X	X		X	X	X						
	Department of Environmental Management							X			X			X	X		X	
Alaska	Department of Natural Resources	X	X	X	X	X	X	X	X	X			X	X				X
California	State Lands Commission	X	X	X	X	X		X	X	X	X	X	X	X		X	8,9	X
	Department of Conservation						X	X	X		X			X	X	X		
	Coastal Commission							X						X				
Louisiana	State Mineral Board		X	X	X	X	X	X	X	X	2		3		X		3	X
Mississippi	Department of Natural Resources	X	X	X	X	X		X	X	X					X			
	Department of Wildlife Conservation					X	X	X	X				X	X	X			
	State Oil and Gas Board							X			X	X			X		4	
North Carolina	Department of Natural Resources and Community Development	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	
	Department of Administration																	
South Carolina	Water Resources Commission	X	X	X	X	X	X	X	X	X	X	X	X	X	X		7	
Texas	General Land Office	X	X	X	X	X	X	X	X	X	5	5		X	X		6	X

1. Department of Environmental Management 2. Office of Conservation. 3. Department of Natural Resources
4. Bureau of Pollution Control 5. Director State Railroad Commission 6. Corps of Engineers
7. Department of Health and Environmental Control 8. Air Quality - Local Air Pollution Control District
9. Water Quality - Regional Water Quality Control Board
*Data provided and reviewed by respective state officials.

oil and gas operations. A major objective of such an agreement would be to identify the necessary environmental stipulations and controls prior to the award of offshore leases. Such an arrangement has been initiated successfully in other coastal states. It also would be consistent with the recommendation made by the Governor's Office of Planning and Budgeting in March 1982 in a report entitled "An Evaluation of the Department of Natural Resources State Lands Management Program" that "The DER and DNR should develop a formal Interagency Memorandum of Agreement which specifies how the state lands management program and the dredge and fill permitting program will be coordinated".

It has been recommended previously that Florida establish a comprehensive state policy for offshore oil and gas leasing. When the state does develop such a policy together with the recommended management plans, the program recommendations which follow should be reviewed for compliance with these newly developed policies and plans.

Recommendations:

1a That a Memorandum of Understanding be established between the Department of Natural Resources and the Department of Environmental Regulation pertaining to lease/permit programs for offshore oil and gas operations.

1b That all program recommendations which follow or are developed in the future be examined for consistency with the offshore oil and gas policy to be established by the Board of Trustees/Governor and Cabinet.

322. Establishment of a Leasing Advisory Board with Supporting Committees

Comment

The decision-making body for offshore oil and gas operations is the Board of Trustees of the Internal Improvement Trust Fund. In support of the Board of Trustees, an offshore oil and gas Leasing Advisory Board should be established with two subcommittees for the purpose of guiding the development and implementation of Florida's offshore oil and gas program. Specifically, an environmental/scientific committee should be established to advise on environmental studies and their management, and a technical committee should be formed to provide planning input on proposed lease areas, lease sales, and acceptance of bids.

The Leasing Advisory Board should consist of representatives from organizations such as: the legislature, the environmental community, industry, local governments, regional planning councils, OCS representative, fishing industry, and a delegate at large.

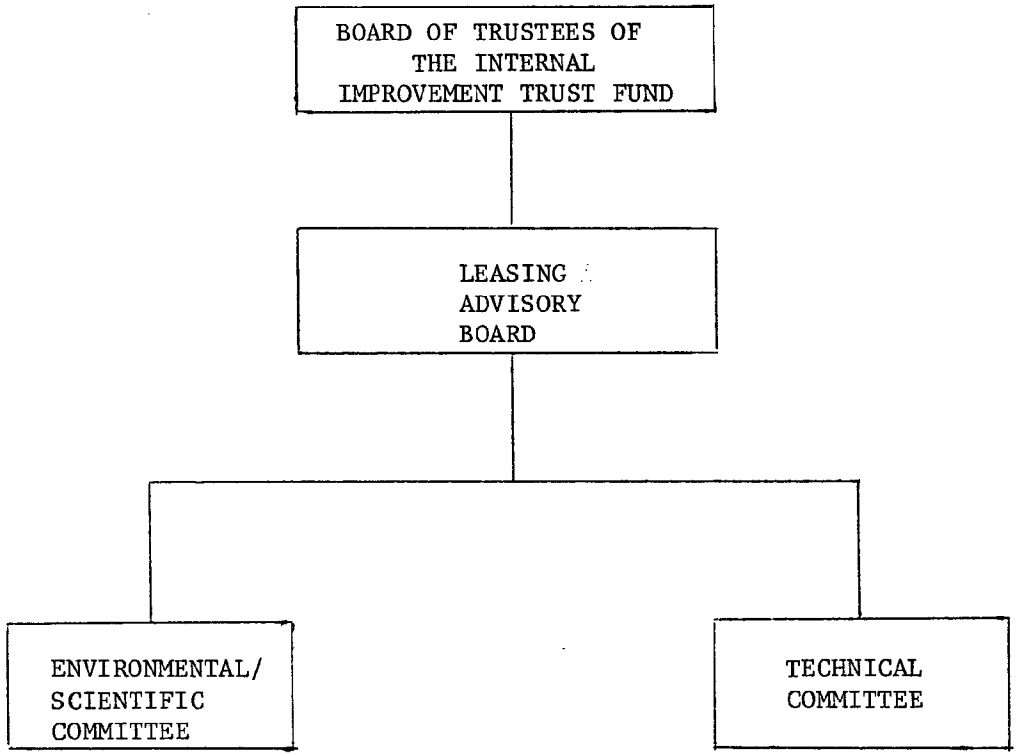
The environmental/scientific committee should include representatives from the DNR, the DER, the SUS, the State Department of Fish and Wildlife, the OCS, and a member at large.

The technical committee should include representatives from organizations such as: the FDNR, the DER, Department of Commerce (DOC), the Department of Community Affairs (DCA), the Office of the Attorney General, the oil and gas industry, and a member at large.

The chairmen of each of the two subcommittees should serve as ex-officio members of the Leasing Advisory Board. Figure 2 depicts the organization of the Leasing Advisory Board and the two subcommittees.

FIGURE 2

ORGANIZATION OF LEASING ADVISORY BOARD



Recommendations:

2a That a permanent offshore oil and gas Leasing Advisory Board be formed for the purpose of providing guidance to the Board of Trustees of the Internal Improvement Trust Fund with respect to the development and management of oil and gas operations in offshore state waters.

2b That an environmental/scientific committee and a technical committee be formed to serve as staff to the Leasing Advisory Board recommended in 2a.

3. Recommended Charges to the Leasing Advisory Board

The Leasing Advisory Board must consider a number of factors to ensure adequate environmental protection for Florida's waters in the event that oil and gas leasing takes place in the future. The following are charges that should be considered at the outset.

Comment

a. Resource Planning

(1) Establishment of Grid Patterns for Offshore Waters

Comment:

A detailed geographical description of Florida's territorial waters is contained in the Florida report (Volume I). Second only to Alaska in length of coastal shoreline, Florida has the most diverse characteristics of the Gulf coastal states as seen in Table 8. It also is seen in Table 8 that Florida is the only coastal state reviewed, other than South Carolina, that has not laid out offshore lease blocks.

TABLE 8
GEOGRAPHICAL DESCRIPTION OF STATE TERRITORIAL WATERS *

	COASTLINE[1] LENGTH (MILES)		NUMBER OF FRONTING COUNTIES	BOUNDARY DISPUTES	SEAWARD TERRITORIAL BOUNDARY	DEFINED LEASE AREAS	COASTAL DESCRIPTION					
	LINEAR	TIDAL					BARRIER ISLAND	REEFS	ESTU-ARIES	MARSH	BEACH	ROCKY SHORE
FLORIDA	1,350	8,426	33	None although OCS-state boundaries have not been legally identified in Atlantic	3 nautical miles in Atlantic; 3 marine leagues (10.35 statute miles) in Gulf	No	X	X	X	X	X	
ALABAMA	52	607	2	Legal Boundary w/Mississippi not firmly established	3 nautical miles	Yes	X		X	X	X	
ALASKA	6,640	33,904	24	State and Federal Jurisdiction in Dispute	3 nautical miles	Yes	X		X		X	X
CALIFORNIA	840	3,427	18 inc. San Fran Bay	None	3 nautical miles	No	X		X	X	X	X
LOUISIANA	397	7,721	11	Mississippi Boundary In Dispute	3 nautical miles	Yes				X	X	
MISSISSIPPI	44	359	3	Alabama & Louisiana Boundaries in Dispute	3 nautical miles	Yes	X		X	X	X	
NORTH CAROLINA	301	3,375	8	None	3 nautical miles	Yes	X		X	X	X	
SOUTH CAROLINA	187	2,876	8	Georgia Boundary In Dispute	3 nautical miles	No	X		X	X	X	
TEXAS	367	3,359	12	State & Federal Jurisdiction in Dispute	3 marine leagues (10.35 nautical miles)	Yes	X		X	X	X	

* Data provided and reviewed by respective state officials.

[1]from: Information Please Almanac, 1983
A & W Publishers, Inc., N.Y.

To facilitate long range planning, the development of an environmental studies program, and the protection of marine resources, it is important that steps be taken to establish an offshore grid system in Florida's waters. As described in the Florida report (Volume I), the Governor and Cabinet have approved an extension of the Federal OCS grid lines into state waters with a superimposed 1000 meter block size. These blocks should be numbered sequentially to avoid a piecemeal block numbering lease-by-lease approach as has occurred in the past. This would serve both to delineate areas in which leases might be awarded and to identify those areas excluded from leasing considerations. Mapping should begin as soon as possible for west Florida offshore areas because of current OCS leasing activities.

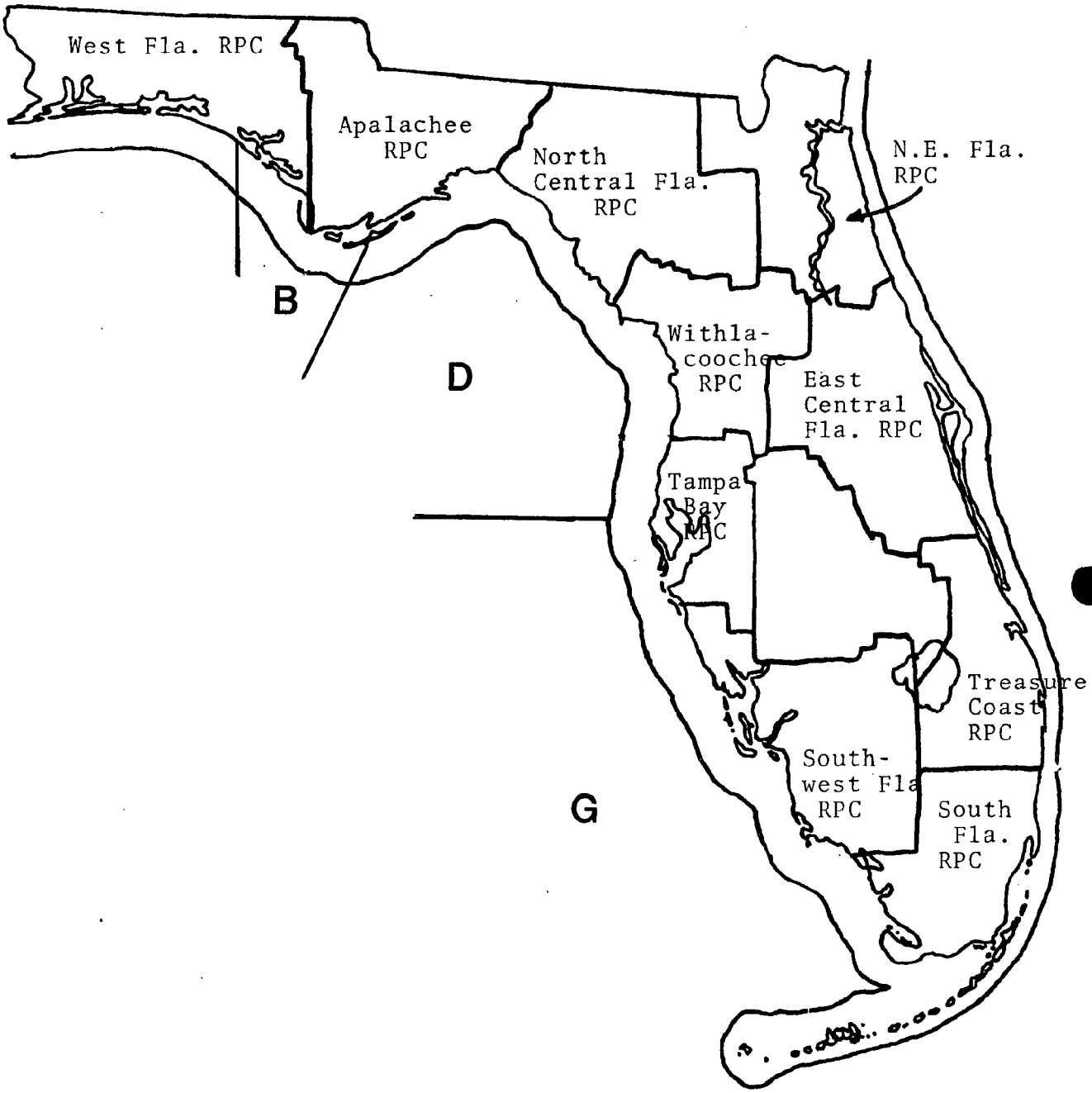
(2) Development of Planning Regions

Florida's offshore territorial waters should be divided into lease planning regions. In selecting these planning regions a number of factors should be taken into consideration such as: environmentally similar areas in which general environmental stipulations can be applied during lease sales; onshore site facilities which have been identified by the regional planning councils; and political considerations.

The state has identified in its OCS deliberations environmentally similar areas as shown in Figure 3. It will be noted that these regional planning areas do not agree exactly with the existing Regional Planning Council Areas for

Figure 3

State OCS Offshore Planning Regions
and Regional Planning Council Areas of Florida



the State of Florida. Within these planning regions, blocks or parts of blocks could be excluded based on the following:

Exclusion Area (drilling prohibited by law)

- 1 mile of shoreline;
- aquatic preserves;
- 1 mile of local, state, or federal park or wildlife preserve;
- freshwater lakes, rivers or streams;
- bays or estuaries;
- areas requiring local government consent.

Avoidance Area - (area of known but perhaps undocumented or suspected environmental, historic, resource, or economic value.)

- coral reefs;
- live bottoms;
- nursery areas, especially for endangered species;
- seagrass beds;
- shipwreck sites;
- rookeries;
- turtle nesting areas;
- marine breeding grounds;
- military use areas;
- navigation safety areas;

Avoidance areas should be considered for leasing only after a thorough data analysis resulting from the environmental study program has been completed. These

analyses may result in recommendations for Exclusion Area, or require stringent environmental safeguards as part of the lease stipulations.

Leasing Areas - remaining areas within a lease planning area not identified as Exclusion or Avoidance in which nominations for lease may be made.

Recommendations:

3a(1) That a grid pattern be laid out in Florida's territorial waters with initial leasing planning regions to be selected based on current OCS oil and gas activities.

Recommendation:

3a(2) That the state be divided into offshore planning areas for the purpose of determining excluded areas, avoidance areas, and leasing areas, within their respective grid patterns.

b. State and Local Jurisdiction Over Offshore Waters

(1) State Jurisdiction

Comment:

As can be seen in Table 9, in coastal states the statutory authority for leasing and managing submerged lands may be vested in bodies of elected or appointed officials, or in a single appointed official. Of the nine coastal states reviewed, Florida, with its seven-member elected Board of Trustees of the Internal Improvement Trust Fund and constitutionally-based public interest standard, appears to

TABLE 9
STATUTORY AND VESTED AUTHORITY FOR STATE
OIL AND GAS LEASING PROGRAMS

STATE	STATUTE NUMBER	GOVERNING BODY		
		NAME	APPOINTED (A) ELECTED (E)	NUMBER OF MEMBERS
FLORIDA	Chapter 253, 253.03 (1) 1982 Supplement	Board of Trustees of the Internal Improvement Trust Fund	E	7
ALABAMA	Alabama Code §9-17-60 to §9-17-62	None - Leasing Authority held by Commissioner of Conservation and Natural Resources	A	-
ALASKA	Alaska Statute 38.05	None - Leasing Authority held by Commissioner of Natural Resources	A	-
CALIFORNIA	Public Resources Code, Div. 6, Part 1, Chpt. 4, Article 1, 6301	State Lands Commission	A,E[1]	3
LOUISIANA	Louisiana Code, Title 30, Section 124	State Mineral Board	A	9[2]
MISSISSIPPI	Mississippi Code Ann. §§29-7-1 et seq. (1972 and supp. 1982)	Commission on Natural Resources	A	7
NORTH CAROLINA	General Statutes §146-8	Depart. of Admin., Dept. Nat. Res. & Community Devel., the Governor and Council of State	E	10
SOUTH CAROLINA	South Carolina Code §48-43-390	State Budget and Control Board	E[4]	5
TEXAS	Texas Code Chptr. 52, subchptr. A, §52.04	School Land Board	A,E[3]	3

1 The Commission consists of the State Controller and the Lieutenant Governor (elected) and the State Director of Finance (appointed).
2 Additionally, the Governor and the Secretary of the Department of Natural Resources serve as ex-officio members.
3 The Board consists of the elected Commissioner of the General Land Office and 2 appointed citizens, one by the Governor and one by the Commissioner.
4 The Board consists of 5 ex-officio members: Governor, Treasurer, Comptroller General, Chairman of Senate Finance Committee, Chairman of House Ways and Means Committee.
* Data provided and reviewed by respective state officials.

offer good protection in the use of state submerged lands. The Board of Trustee's authority to control Florida's sovereignty tidal lands, however, is tempered with the requirement that all sovereignty land's management decisions conform to the public interest standard contained in Article X, Section II, of Florida's Constitution. With respect to oil and gas leases, the Board of Trustees has adopted an even more stringent standard, requiring that leases be approved only when certain specified environmental constraints are satisfied. A detailed discussion of the above responsibilities of the Board of Trustees and of Florida's public interest standard is included in Appendix A, of the Florida report (Volume I).

Chapter 253.47 F.S. empowers the Trustees to lease offshore lands under conditions similar to onshore leasing. Given the fact that Florida's current oil and gas leasing legislation/policy has been oriented primarily towards onshore activities, consideration should be given to offshore lands as a spearate entity. The difference in the offshore and onshore areas is clearly acknowledged at the federal level based on the environmental, management, and legal aspects appropriate to each area. The state should follow this example by developing distinct offshore lands legislation for oil and gas operations.

Recommendation:

3b(1) That Chapter 253 F.S. be amended to more specifically and thoroughly address oil and gas leasing in state offshore waters. Recommendations contained in this document should be given major emphasis in this process.

(2) Local Jurisdiction

Comment:

Local governments can exert control over activities in state waters in several ways including annexation, taxation, regulation (police power), and through statutes and local ordinances affecting leasing. Each of these controls is discussed in detail in Appendix B of the Florida report (Volume I).

While the manner in which taxes are levied and police power applied is established clearly by statute and by precedence, the authority of municipalities to extend their boundaries into state waters is not clear. Table 10 summarizes the annexation authority of seven coastal states. It is seen that annexation is handled quite differently among these states, ranging from clear cut rules in Texas and California to the absence of rules at all in Alabama and Mississippi and, for the most part, Florida. Because of the complexities involved in the annexation of state waters, it is an issue that Florida should address well in advance of anticipated offshore oil and gas leasing.

TABLE 10

Authority of Local Governments to Annex State Territorial Waters*

	County	Municipality
Florida	Jurisdiction includes state waters; no statutory annexation authority	Only by legislative enactment consistent with "Municipal Annexation or Contraction Act." No case history exists.
Alabama	Jurisdiction includes state waters - although not defined by statute	Not addressed in constitution
Alaska	Jurisdiction includes state waters within burrough boundaries	Controlled by state appointed "Local Boundary Commission" established by statute
California	Jurisdiction includes state waters - defined by statute	Established statutes permit cities to annex state waters with approval of State Lands Commission
Louisiana	Jurisdiction of parishes includes state waters	Statutes do not address - can be done by petition and election or by petition and ordinance
Mississippi	Constitution still claims that state and county jurisdiction extends 6 leagues gulfward	Not addressed in constitution - contained in city charters - No case history
North Carolina	Jurisdiction includes all estuarine waters within county boundaries, waters seaward of barrier islands are not included.	Not addressed.
South Carolina	Tidelands are presumed owned by the state although cities may assert some proprietary interests and annex or tax submerged lands if oil or gas is developed.	See explanation under county.
Texas	Jurisdiction includes state waters	General law, cities can extend 1 mile, home rule cities 3.5 miles gulfward

* Data provided and reviewed by respective state officials.

As discussed in Appendix B of the Florida Report (Volume I), three possibilities exist for uniformly managing municipal annexation of coastal waters. First, the legislature may do nothing and allow annexations of territorial waters to proceed under the existing Florida Statute Chapter 171. Such annexations would meet many problems and could be litigated for years to come.

Second, the legislature could unilaterally establish municipal boundaries by fixing the water boundary for each coastal city. Any attempts further to annex state territorial waters could be prohibited. This method would require city-by-city implementation, since the current jurisdiction of each coastal city differs.

Finally, the legislature could enact a new statute designed to accommodate annexations of territorial waters. This alternative involves weighing many policy considerations, primarily whether it is wise to allow such annexations at all. Criteria for annexing lands would have to be selected carefully. However, with growth within the state accepted as inevitable, and with industrial developments taking place at an ever increasing rate within Florida's territorial waters, the state should determine whether coastal cities should be allowed to grow both inward and outward to accommodate new technologies and needs of the citizens.

Coastal local governments in Florida also have broad powers to control whether the state can issue oil and gas

leases in specified areas. Chapter 253.61 F.S., enacted in 1945, gives local municipalities and counties a veto power if the proposed lease lies within certain geographic and political boundaries. The statute does not, however, clearly define the areas over which such power can be exercised. Some parts of the statute are ambiguous; other parts are almost incomprehensible. There have been no reported court decisions to aid interpretation. The only authority interpreting the statute is a 1958 opinion by the Attorney General of Florida, which analyzes a tangential point and is thus of little assistance. In summary, if Florida is to meet the combined needs of coastal management and resource development, it must clearly identify the interactive rules of state and local governments with respect to oil and gas activities in offshore waters. For additional discussion of these issues see Appendix B of the Florida report (Volume I).

Although not defined within the study objectives of this project, annexation and revenue issues are bound inextricably to the leasing process. Not only do they impact on specific terms of the oil and gas lease form itself, but they must be resolved to allow the state to develop a more cohesive offshore leasing policy and to provide industry with hard data on which to base future decisions on undertaking oil and gas operations in Florida waters. Further, a clearly identified role of local governments should ensure a more cooperative approach and enhance the quality of the tough decisions

related to environmental issues that will be faced in the coming years. This could be accomplished either through provisions in the previously proposed submerged land legislation, through Chapter 171 F.S. "Municipal Annexation or Contraction Act", through revisions in Florida Statutes Chapters 125 - "County Government" or 166 - "Municipalities", or through the creation of a new statute.

A convenient way of handling issues associated with annexation of state waters has been devised by the State of Alaska. The Alaskan Constitution provides for the establishment of a Local Boundary Commission in the executive branch of the state government. It consists of five members appointed by the Governor for overlapping five year terms. The Commission is empowered to consider proposed changes to local government boundaries. This section of the constitution establishes two methods of local boundary alteration: 1) through direct action of the Local Boundary Commission subject to legislative disapproval; and, 2) through establishment, by the Commission, of procedures for the adjustment of boundaries by local action. The Local Boundary Commission is a unique feature of Alaskan Law. The framers of Alaska's Constitution intended to provide an objective administrative body to make state-level decisions regarding local boundary changes in order to avoid the chance that a small, self-interest group might prevent boundary changes otherwise in the public interest. A detailed discussion of Alaska's Local Boundary Commission is contained in Appendix B (Volume II).

Recommendations:

3b(2) That the state clarify by statute the authority of coastal municipal governments to annex state offshore waters.

c. Environmental Study Program

(1) Implementation of the Study Program

The need for initiating an offshore oil and gas environmental study program was discussed previously. The implementation of the results of such a program to protect the Florida's marine resources will play an important part in the development of the leasing program. For example, it could form the basis for the identification and mapping of exclusion areas, avoidance areas and leasing areas as described previously. Further, it could form the basis for lease stipulations which can be applied to specific sales within planning regions. The results of the study program also will form the basis for informing industry, during the pre-leasing phase, of requirements which they should consider in preparing their response to the leasing schedule.

Texas has an excellent system of providing information on environmental restrictions to potential lessees. Lease sales are announced through a Notice for Bids booklet, which contains a description of the land tracts offered for lease and a request for bids. Since 1972, the booklet also has contained environmental codes pertaining to submerged blocks located in bays, estuaries, and the Gulf of Mexico. These

codes inform potential lessees of the concerns of certain state and federal agencies that might constrain oil and natural gas operations.

Each submerged block nominated for lease sale is assigned one or more two-letter environmental codes. The codes are suggested guidelines for the conduct of activities within the tracts and are designed primarily to encourage the protection of biologically sensitive areas. Codes include restrictions and precautionary measures to minimize adverse impacts from drilling, dredging, spoiling, and associated activities.

The coding process accomplishes three goals. First, the codes suggest operating procedures that encourage the protection of sensitive natural resources. Second, the codes assist potential bidders and lessees in developing plans that are likely to receive more expeditious approval from state and federal agencies. Third, the codes provide greater predictability in the leasing process by somewhat reducing the uncertainties associated with the development of state-owned submerged land. This system is described in detail in the Texas report contained in Volume II.

Alaska also has a plan specifying environmental stipulations to provide safeguards for protection of the marine environment. This plan, which is managed by the Alaska Department of Natural Resources (ADNR), requires that maps and explanations of the sequence and scheduling of operations be prepared, that the projected use requirements associated with

proposed operations be identified, that a document be prepared describing how the operating procedures have been designed to minimize adverse effects on other resources as well as historical and archaeological sites, and finally, plans be made for rehabilitating the lease area following the production phase.

Although Florida does not have sufficient offshore environmental data to establish specific block environmental codes, the establishment of a code system for the recommended lease planning regions at this time will provide a framework into which data obtained from the recommended environmental studies could be placed. The environmental stipulations and codes should be developed for lease planning regions by recognized experts in the relevant scientific disciplines over the next 4 to 5 years based on existing data and the results of the recommended environmental study program.

A set of specific minimum criteria similar to the state's policy on OCS leasing should be established as environmental stipulations for the leasing program. These stipulations would be considered as minimum criteria in each lease planning region and would not preclude additional stipulations as determined necessary by site-specific characteristics. Such stipulations should be circulated by the State Planning and Development Clearinghouse (Office of the Governor) and/or a select committee of technical experts. In this regard, the federal system of interagency review, environmental stipulations, and operating orders should be considered.

Recommendations:

3c(1)(a) That minimum environmental lease stipulations be established for each planning region identified in recommendation 3a(1) and based on the results of the environmental study program.

3c(1)(b) That an offshore environmental resource management code system, similar to that now used in Texas, be examined for lease planning regions and for site specific stipulations in Florida.

c(2) Funding of the Study Program

In environmentally sensitive states such as Alaska and California, the need for pre-leasing environmental studies has been recognized. Although Alaska does not have an environmental research program devoted solely to gathering data related to offshore oil and gas development, it has a comprehensive plan designed to generate such data. For example, approximately $150,000 a year is provided to the Alaska Department of Fish and Game by the ADNR for conducting literature searches and preparing environmental analyses of proposed state oil and gas lease sales.

The Minerals Management Service (MMS), the National Marine Fisheries Service (NMFS), and the North Pacific Fisheries Management Council have funded, through the state, environmental studies in offshore waters, the results of which have been used for making management decisions. These data also have been applied to the decision processes for Alaskan oil and gas sales.

California, while not having an environmental research program dedicated to its offshore oil and gas operations, has stipulations in the lease based on available data on the lease area. For example, "Notwithstanding any other provision of law to the contrary, no leases shall be let for the extraction of oil and gas from coastal tidelands or submerged lands in state waters within the Santa Barbara Channel unless the commission determines that such a lease will not result in the see page or spillage of oil (either by finding that safety and containment devices to be used are sufficient to prevent such seepage or spillage or that no seepage or spillage would result in any event) or in the destruction of scenic or aesthetic values" (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 4, 6870). Further details of California's program are contained in Volume II.

Since Florida does not have an ongoing offshore leasing program generating revenue, which could be applied to an offshore environmental study program, the recommendations made in the policy section will require some form of front-end financing. Examples of sources from which such financing could be obtained include direct funding from the legislature similar to that in the Alaska DNR, a percentage of the severance taxes derived from the present onshore oil and gas production, or from the state's oil spill contingency fund. The latter two would require a change in the existing statutes. The Leasing Advisory Board should be charged with examining these three sources as well as other appropriate sources of funds.

Once an offshore leasing program is in existence and generating revenue through bonuses, royalties, and rentals, the funding of the environmental study program could be obtained from these sources. It should be realized, however, that a continuous source of funding must be available without regard to the fluctuations in the revenues produced from sales if a viable environmental study program is to be maintained.

Recommendation:

3c(2)(a) That an adequate funding source be developed to support the long term comprehensive environmental study programs required for exploration, development and production.

3c(2)(b) That the necessary executive and legislative actions be taken to obtain the funds cited in recommendation 3c(2)(a) from existing revenue.

d. Revenues from Oil and Gas Leasing Program

Comment:

Table 11 summarizes revenues received from oil and gas operations in the nine states reviewed. In general, Florida's oil and gas revenue structure with regard to royalties, bonuses, rentals, and severance taxes is consistent with those of other states. There are, however, some areas in which Florida's oil and gas revenue system might be productively modified.

Florida's current method of determining royalties is designed for onshore oil and gas production. Rather than using the distance from production as a basis for establishing

TABLE 11

State Revenues From Offshore Oil and Gas Operations

	Royalties			Rentals		Bonus (Cash) Consideration	Severance Tax	
	Minimum	Typical	Shut-in	Rate (per acre)	Delay (per acre)		Gas	Oil
Florida	1/8	1/8-1/4 Getty 1968 lease 1/8	twice annual rental rate ($1,200) minimum	$3.50 per acre first 2 yrs increase @ .50/yr. after 2nd year	N.E.[1]	determined by competitive bidding	5%[2]	8%[2,3]
Alabama[4]	set at each lease sale	1/6-1/4	twice annual rental rate	$5	twice annual rental rate	Determined for ea. lease sale $100/ $200/acre min. 1982 avg. bonus = $2406 per acre	8%[5]	8%[5]
Alaska[4]	12.5%[7]	20%	N.E.	1st yr-$1 2nd yr-$1.50 3rd yr-$2 4th yr-$2.50 5th yr-$3 fixed	rate in effect during year of abandonment is maintained	determined for each lease sale	greater of 10% gross value or $.064 per 1000 ft^3	12.25%[8]
California	16 2/3%	20%	Average of 3-year production	usually $1.00/acre/yr	Rarely used	determined by competitive bidding	None	None
Louisiana	1/8	25-30%	$25/acre/6mo. ($500 minimum)	none if in production	1/2 bonus	determined by competitive bidding	7¢ MCF	12.5%[9]
Mississippi	3/16	20%	twice delay rental	N.E.	$5 ($2 minimum)	specified each sale	6%	6%
North Carolina	N.E.	1/6	$1/acre/yr(1st3yr) $2 " (4th,5th) $3 " (after)	N.E.	N.E.	N.E.	$.0006/ 1000$ft^3$	$.005/ barrel
South Carolina	1/6	N.E	N.E	N.E	N.E	N.E.	N.E.	N.E.
Texas	1/8	1/4	twice annual rental rate ($1200 min)	None if productive	individually determined $10.00/G.O.M. $ 5.00/other land	fixed separately with each tract[10]	7.5%	greater of 4.6% or 4.6¢/barrel

1. None established 2. Tax @ wellhead. Due to high sulphur content, severance tax is determined by subtracting interim processing costs between wellhead and final sale from final sale value. 3. Tax @ wellhead. For small wells (less than 100 barrels per day) tax for oil is 5% @ the wellhead. 4. 1981 amounts 5. Except @ wells producing 25 barrels or less of oil or 200,000 ft^3 (see *3) or less of gas per day (levied at 4%) or offshore production @ depths greater than 18,000 ft below mean sea level (levied @ 6%) 6. Leasing method may vary with each sale. 7. In special circumstances, be reduced to 5%. 8. Escalates to 15% after 5 yrs. 9. Lower for less capable wells. (6.25 and 3.125%) 10. Does not include a $100 nomination fee.
*Data provided and reviewed by respective state officials.

royalties, a more flexible method would be a sliding scale or options such as those used in California or Alaska (see Volume II).

For example, in Alaska the Commissioner of Natural Resources (ADNR) determines the leasing method to be used for each sale. The leasing method selected addresses factors such as whether royalties are fixed, bonuses are fixed, profit sharing is used, volume of production, etc. Examples of combinations of these factors are as follows:

- a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;
- a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease or a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;
- a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;
- a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;
- a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;
- a cash bonus with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease; and
- a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease."

The commissioner of the ADNR also can choose to select a sliding scale royalty if more advantageous to the state.

The distribution of revenue is another area in which improvement may be possible. Because of the sensitive nature of Florida's coast, there will be active involvement in the development of any future offshore and onshore oil and gas operations by local governments and private organizations. In addition to participating in the decision-making process involving environmental issues, local constituencies should expect to share in the proceeds resulting from offshore oil and gas operations. At the present time, although counties receive a portion of oil and gas severance taxes, municipalities do not. This issue is discussed in detail in Appendix B of the Florida report (Volumes I and II).

Revenue sharing, including that generated by leasing, rentals, royalties, as well as severance taxes, could take the form of grants provided to local governments affected by offshore operations use of such funds in specific environmental and educational programs including studies on renewable energy sources, and/or through land purchase programs within the Internal Improvement Trust Fund. Revenue sharing with municipalities would be consistent with the state's position with respect to OCS revenue sharing with the states.

Table 3 summarized the distribution of oil and gas revenues in the nine states reviewed. As shown, Alaska divides its revenues into five areas including a Resources and Energy Facilities Fund.

In California, with the exception of revenues derived from state school lands, and other special sources, all oil and gas revenues are deposited into the State Treasury. It should be pointed out that California has no oil and gas severance tax. The distribution of these funds throughout the state is in accordance with priorities prescribed in the Public Resources Code (a process referred to as subvention). In addition, the State Controller annually apportions one percent of the revenues paid to the state under Article 4 of the Public Resources Code to each city or county having within its boundaries ungranted tide and submerged lands or such other tide and submerged lands granted to it by the state in which the state has reserved the rights to the mineral deposits contained therein. The total amount apportioned to each city or county in each year may not exceed $75,000 per mile, or fraction of a mile, of ocean frontage within and owned or operated as a park by a city or county and leased by the State Lands Commission for the production of oil, gas and other hydrocarbons, and only in those cases where such ocean frontage is available to the public free of charge for recreational purposes. Any city which is fronted, in whole or in part, by a state and gas lease and which owns or operates a public recreational beach on the ocean is qualified to receive an apportionment.

A revised revenue sharing program in Florida not only would allow the implementation of the much needed offshore

environmental studies, but could stimulate local participation in continual long-term planning for future oil and gas operations in state waters by establishing at the outset that municipalities will have a role in development and will benefit directly from offshore operations.

Recommendations:

3d(1) That the Rules of the Department of Natural Resources, section 15Q-15.08-(9)F.A.C., be amended to add the basis for calculating offshore royalty percentages. Instead of basing royalties on the distance from production, a flexible sliding scale method should be devised similar to that used in California and Alaska.

3d(2) That a revenue distribution program be initiated on a statutory basis designating approximately five percent (5%) and/or a maximum amount of the current uplands oil and gas severance tax for coastal and offshore environmental studies; for research on renewable energy sources; and to provide for revenue sharing with local governments likely to be affected by offshore oil and gas development.

3e. Operational Orders, Lease Stipulations, and Site Specific Environmental Impacts

Comments:

Operational orders for exploration and drilling should be specified clearly in the notice to lessees as is done in the OCS sales. The proposed technical committee of the Leasing Advisory Board should establish such offshore operational orders. It is suggested that OCS

operational orders be reviewed which have been developed for safety and protection of the environment and for adaptability to the offshore waters of the State of Florida.

No environmental regulatory system is complete without an effective enforcement program. Problems with the lack of an inspection system have been experienced in Alabama where operational orders have been specified but not followed by the operators. Enforcement and on-site inspection could be accomplished through: 1) stationing a full-time state inspector on each exploration/development drilling unit or 2) training at least 1 officer from each Marine Patrol region as an oil and gas safety inspector. Although the full-time inspector probably would be the more effective method, Marine Patrol resources already are in place and would require the least adjustment and new costs. Unscheduled spot checks could be conducted as part of an officer's normal patrol. Inspections would focus on safety and pollution control and could be supplemented by other technical experts as necessary.

In general, the key to an effective lease/permit program is to establish the rules up front so that the state can clearly identify the necessary environmental stipulations and a method for enforcing them. At the same time, industry will become fully cognizant of the state's requirements in each planning region and can plan their exploration and development accordingly. The scientific and technical committees of the Leasing Advisory Board should develop general environmental stipulations for the lease planning regions for each sale.

Where there are common waters, such as the Florida/Alabama border in Perdido Bay, and State/OCS boundaries, compatible environmental

stipulations meeting the requirements and procedures of each state will have to be established in concert with Alabama and Federal representatives.

Although beyond the scope of this study, it should be made clear in the notice to lessees in each sale that additional site specific environmental stipulations or operational orders may be applied to a lease block during the permitting process. Every effort should be made, however, to minimize the number of additional stipulations so as to reduce costs, lease/permit time, and litigation.

Recommendations:

3e(1) That a set of specific operating orders be referenced in each offshore oil and gas lease.

3e(2) That an offshore environmental enforcement and inspection program be established.

3e(3) That general environmental stipulations be developed for each planning region prior to each sale.

3e(4) That an agreement be established with the State of Alabama specifying the environmental stipulations to be used in common waters such as in Perdido Bay. Other potential interstate conflict issues also should be addressed.

4. Lease Procedures and Terms

Tables 12 and 13 summarize the lease terms and relevant procedures for the nine coastal states reviewed. It is seen here that, for the

TABLE 12 *
STATE LEASING PROCEDURES

	RESPONSIBLE AGENCY	LEASE INITIATOR	LEASE SCHEDULE		ADVERTISEMENT			BIDS
			BETWEEN SALES	BETWEEN SALE AND AWARD	NOTICE PRIOR TO SALE	MEDIA	FEES	AWARD BASIS
FLORIDA	Department of Natural Resources	Potential lessee	N.E.[1]	2	5 weeks	Leon County newspapers and newspaper in county of lease	$200 non-refundable processing fee	On high bonus
ALABAMA	Department of Conservation and Natural Resources	Private person, Commissioner, head of leasing agency, or Governor.	1 Yr.[3]	5 days	2 months	The Montgomery Advertiser, and newspaper in county of lease	Parties requesting lease advertisement must pay for same	Most advantageous to state
ALASKA	Department of Natural Resources	Department of Natural Resources	4 months	Varies with timing of bonus and rental payments	2 months	Statewide newspaper; public service announcements on electronic media; posting in area; & other available methods	Bid deposit of 20% of cash bonus	May vary with bidding method used
CALIFORNIA	State Lands Commission	State Lands Commission or industry	N.E.	N.E.	2 months	Statewide newspaper and newspaper of county of production	Various[4] fees required	May vary with bidding method used
LOUISIANA	Department of Natural Resources	Qualified individuals (including representatives of foreign countries)	1 month		60 days	Official journal of the state and parish where lands are located	$300 deposit[5] with lease application	Most advantageous to state
MISSISSIPPI	Department of Natural Resources	Private person, firm, or state commission	One sale held to date (7/8/82)[1]	1	60 days	Southeastern Oil Review, a newspaper in county of lease, and a Jackson newspaper	Prepaid fee per tract; bids to cover publication expenses	Most advantageous to state
NORTH CAROLINA[6]	Department of Natural Resources and Community Development	Private person, firm, or corporation	N.E.	N.E.	-	-	N.E.	-
SOUTH CAROLINA	Water Resources Commission	Private person, industry, or Commissioner	N.E.	20 days	At least 25 days prior to bid submission	Statewide newspaper and newspaper of county of production	N.E.	On high bonus
TEXAS	State General Land Office	Industry or private person nominates tracts	6 months	Generally on sale date	At least 30 days	State distributes printed lists of tracts - 25-30 state newspapers advertise sale	$100 nomination fee	High bonus/ High royalty

1 No schedule established
2 15 weeks between nomination request and award
3 May vary greatly - current figure given
4 $25 filing fee plus processing fee, guarantee deposit, insurance, a native declaration fee, environmental impact report and consultation fee
5 Refundable with lease bid
6 All leasing procedures currently under revision
* Data provided and reviewed by respective state officials.

TABLE 13*

SUMMARY OF STATE LEASE TERMS

	Title Guarantee	Length Initial	Length Extensions	Transfer	Work Cessation Stop Production	Handling of Proprietary Information
Florida	No guarantee of clear title	5 years[1]	Lease in force as long as operations are carried out or production continues	Written consent of lessor	60 days to resume production or make rental payments	Excise tax, production processes, and geophysical data held confidential, drilling data held for 90 days on operator requests All else public record.
Alabama	No guarantee of clear title	Established in invitation to bid, usual is 5 years	1 year with rental payments	Written approval of Commissioner of conservation and natural resources needed	90 days to drill or produce oil & gas	Well data kept confidential for 6 years upon written request of operator
Alaska	No guarantee of clear title	5-10 years	Lease in force[2] as long as drilling, producing, reworking within 60 days	Permission of Commissioner needed	6 months to produce, drill, or rework	Confidentiality upon request, no time limit
California	Lessee has exclusive rights to drill, prospect or produce hydrocarbons. Others can conduct geological/geophysical surveys.	20 years	None allowed	Permission of Commission needed	6 months to conduct operations to restore production	Permittee and lessee written consent needed to inspect production. Data kept confidential by state.
Louisiana	No guarantee of clear title	5 years		State approval needed	90 days to produce, drill or make rental payments	Required data and information supplied by lessee held in confidence
Mississippi	No guarantee of clear title	5 years in Gulf, 3 years elsewhere	Lease in force as long as production, drilling or reworking continues	Prior written notice to state needed	90 days to resume work or make rental payment	Mineral exploration data kept confidential for 10 years. Disclosure is a misdeameanor.
North Carolina	Lessee holds exclusive rights for $1, title to minerals remains with state until excavation	2 year[3]	2 year[4,5] (10 year limit)	Permission Dept Administration, Dept. of Nat. Resources and Community Development needed	N.E.[6]	Geo-physical and well log log records kept confidential for 1 - 2 years.
South Carolina	No leasing to date, no provision in statutes	5 year	Yr. to yr. with drilling or production	Not addressed in state code	N.E.	Required well logs, samples, surveys, and reports confidential for 1 year
Texas	No guarantee of clear title	5 years in Gulf, 3 years elsewhere	1 yr period for 5 yr. if shut-in royalty paid	Lessee may sell, relinquish or give a lien to qualified person	60 days[7] if lessee reworks or commences drilling	Reserve estimates, sale, processing data held in confidence until lessee releases

1. Board of Trustees may authorize to 10 years. 2. Upon extension, lease rental may increase up to 150% of previous rental. 3. 1976 lease. 4. If test wells are drilled where footage not less than 20,000 feet within 2 years. 5. 90 day grace period if less than 20,000 feet drilled in any 2 years, but work is underway at end of period. 6. Procedures not established. 7. With a dryhole, a delay rental payment within 60 days [illegible] necessary to keep lease. * Data provided and reviewed by respective s[illegible] officials.

most part, the procedures currently in use for the onshore Florida oil and gas leasing program are consistent with those used in the other states. If an offshore oil and gas program for Florida is developed, the existing lease terms should be reviewed to assure their applicability to the offshore program. Specific issues that should be addressed include the length of the primary term, drilling instructions, rental fees, the state's power to inspect records and facilities, royalties, the determination of reserve estimates, pooling and unitization, pollution, site security, and the manner in which proprietary information is handled. Each of these lease terms will be affected by the overall policy of the state, the comprehensive leasing program plan to be developed, the extent of oil and gas to be discovered in state offshore waters, and the demand for oil and gas.

The Leasing Advisory Board should charge the technical committee with reviewing lease terms of the existing onshore leasing program and to recommend changes in these terms necessary to ensure that Florida's offshore oil and gas resources are explored, developed, and produced in a manner most beneficial to the state while at the same time providing an incentive to private industry to develop the resources in a manner consistent with state policy.

Recommendation:

4. That the recommended Leasing Advisory Board review existing onshore lease terms and procedures for compatibility and adaptability to an offshore oil and gas leasing program.

Florida Leasing

STATE OF FLORIDA

OIL AND GAS LEASING PROGRAM

1984

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	1
B. Philosophy of State Towards Leasing in State Waters	2
C. History of Leasing Program	4
D. Delegation of Management Responsibilities for State Leasing Program	11
E. Geographic Description of State Territorial Waters	12
F. Local Jurisdictional Control Over State Waters	21
G. Oil and Gas Revenues Accruing to State	24
H. Environmental Controls and Regulations	27
I. Leasing Procedures	35
J. Relation of Leasing Program to Issuance of Permits	39
K. Mineral Leasing	39
L. The Socioeconomic and Physical Impact of Oil and Gas Leasing in Florida's Waters	39
References	42

Appendices

A. Oil and Gas Leasing in Florida's Territorial Waters: State Laws

B. Florida Local Governments and Oil and Gas Leasing of State Territorial Waters

C. State of Florida Oil and Gas Lease Form and Steps for Lease Processing

D. Onshore Impacts of Oil and Gas Activities in Florida State-Owned Coastal Water

E. Permit Requirements for Siting Onshore Facilities Related to Offshore Oil and Gas Activities: and Florida Legislation Affecting Offshore and Onshore Energy Development

LIST OF TABLES AND FIGURES

Description		Page
Table 1	Wells Located in Submerged Water Bottoms and Offshore - State of Florida	6
Table 2	Oil and Gas Leases Issued for Exploration in Florida Territorial Waters	10
Figure 1	Florida Offshore Leaseholdings of Coastal Petroleum Company	8
Figure 2	Florida State Agencies Involved with Oil and Gas Lease/Permit Program	13
Figure 3	Supplemental Official OCS 8-G Block Diagram	20
Figure 4	Florida State and Federal Coastal Jurisdictions	31
Figure 5	Oil and Gas Lease Administrative Flow Chart	40

A. Statutory Authority

1. Vested Authority

The basic authority for leasing lands owned by the State of Florida is vested in the Board of Trustees of the Internal Improvement Trust Fund (hereinafter the Trustees). This authority is contained in Chapter 253, §253.03(1), F.S., 1982 Supplement. "The Board of Trustees of the Internal Improvement Trust Fund of the state is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards, or commissions,---"

"---Lands vested in the Board of Trustees of the Internal Improvement Trust Fund shall be deemed to be:

a) All swamp and overflowed lands held by the state, or which may hereafter inure to said state;

b) All lands owned by the state by right of its sovereignty;

c) All internal improvement lands proper;

d) All tidal lands;

e) All lands covered by shallow water of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;

f) All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for road and canal rights-of-way;

g) All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, excluding lands held for road and canal rights-of-way or spoil areas or borrow pits or any land, title to which is vested or may become vested in any port authority; flood control district, water management district, or navigation district or agency created by any general or special act."

The authority of the Trustees to administer state lands is delineated further in Chapter 253.03(7), F.S. "The Board of Trustees is hereby authorized and directed to administer all state-owned lands and shall be

responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management and disposition of state-owned lands so as to ensure maximum benefit and use. The Board of trustees of the Internal Improvement Trust Fund shall adopt rules and regulations necessary to carry out the purposes of this act as herein set forth."

The procedures and policies involved in implementing these responsibilities are discussed in detail in Appendix A (Volume I).

2. Members of Governing Body

The Board of Trustees of the Internal Improvement Trust Fund (also known as the Governor and Cabinet) is a body of seven elected officials: the Governor, the Commissioners of Education, Agriculture, Insurance, the Secretary of State, the Comptroller, and the Attorney General. Appendix A (Volume I) contains detailed descriptions of the responsibilities, policies, and administrative procedures of the Trustees with respect to oil and gas leasing in state waters.

B. Philosophy of State Towards Leasing in State Waters

Florida, because of both the extent and nature of it's coastal geography, has reason to be concerned with precipitous development of its shoreline and offshore regions more than other coastal states. These facts, viewed within the context of the state's dependence upon tourism and coastal recreational activity, has understandably resulted in a cautious and conservative attitude with respect to oil, gas and mineral development in offshore waters. This concern, however, is long standing and has a constitutional basis expressed as a public interest standard.

All sovereignty lands management decisions must conform to the public interest standard in Article X, Section 11 of Florida's constitution:

"The title to lands under navigable water...is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest." (emphasis added)

The Trustees have adopted an even more stringent standard for oil and gas leases. Section 16Q-21.04(2) (k), F.A.C. provides that:

"Oil and gas leases on state-owned submerged lands shall be approved only...upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation, and national security." (emphasis added)

This emphasis on serving the public interest is consistent with the legislative goals of conserving Florida's oil and gas resources described in Chapter 377.06 F.S. as follows:

"It is hereby declared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made therefrom, to encourage the continuous and economic supply of the demand therefore; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all

purposes indicated by the provisions herein..." (Florida Coastal Management Program, Final Environmental Impact Statement, Department of Environmental Regulation).

The overall philosophy of Florida, with respect to land and resource development, has been expressed as the maximum benefit and use or as a balanced public utilization of land resources, which can be summed up as follows:

a. Encourage detailed inventories and evaluation of state-owned mineral resources.

b. Control management activities on state-owned land that would preclude or seriously impair the ability to extract significant mineral resources.

c. Allow extraction of state-owned mineral resources in environmentally sensitive areas only upon demonstration that the extraction is of overriding public importance, that all reasonable steps will be taken to minimize adverse environmental impacts, and that there are no reasonable alternatives.

d. Discourage all future releases of state-owned mineral reservations, excepting right-of-entry and exploration.

e. Require that all state-owned lands subjected to mining be reclaimed or restored and left in such condition so as to maximize future public uses and values. (Board of Trustees of the Internal Improvement Trust Fund 1981)

A detailed description and analysis of the Public Interest Standard, and its basis, and a review of the State Lands Management Plan is contained in Appendix A (Volume I).

C. History of Leasing Program

1. Establishment of Offshore Leasing Program

Hydrocarbons never have been produced commercially from Florida's territorial waters although there have been a number of exploratory efforts along the Gulf coast. Table 1 lists 29 wildcat exploratory wells drilled

since 1945. It should be noted that this number includes several wells that were drilled on leases acquired under Federal OCS Lease Sale 5, in 1959, the area that the Supreme Court subsequently has ruled belongs to Florida. The last exploration well was drilled, plugged, and abandoned in 1968 with the exception of the Getty well in Santa Rosa County. Although this latter lease was issued to Young, Anderson, and Beall in 1968 and assigned to Getty in 1970 (see Table 1), the final environmental permit was not issued by the Corps of Engineers until March 1983. The well was spudded in June 1983 and subsequently plugged and abandoned later that same year.

An interesting situation exists with respect to existing offshore leases in Florida waters. Coastal Petroleum Company (a subsidiary of Coastal Caribbean Oils and Minerals Ltd, a Bermuda Corporation) owns three leases encompassing approximately 3.7 million acres of submerged lands along Florida's Gulf Coast and under certain lakes and rivers (Coastal Caribbean Oils and Minerals Ltd. 1984) These lease holdings are shown in Figure 1.

The two Gulf Coast leases, 224-A and 224-B, follow the coastline from Apalachicola Bay to a point six miles south of Naples, a distance of 425 statute miles. These leases are divided into two separate areas, as described below.

The Inner Area, shown on Figure 1, includes tidal estuaries and bays, and extends 4.36 miles from the shoreline to cover approximately 2.3 million acres. Within this area, Coastal has a 6.25 percent residual royalty interest on the wellhead value of any oil or gas found--payable in cash or in kind, at Coastal's option--as well as a 5 percent royalty interest on the production or market value of any minerals. The Offshore Area, also shown on Figure 1, is a three-mile-wide belt that extends from 7.36 to 10.36 miles from the shoreline, covering more than 800,000 acres and bordering federal offshore acreage.

Table 1

WELLS LOCATED IN SUBMERGED
WATER BOTTOMS AND OFFSHORE
STATE OF FLORIDA

County	Operator	Well	Name	Date
*Bay	Magnolia Petr.	1	St. Blk 4-B	4-45
*Charlotte	Mobil Oil	1	St. Lse 224-B	3-67
+Citrus	Mobil Oil	1	St. Lse 224-A	11-67
+Collier	La. Land & Exp.	1	St. Of Fla. 16-2	11-72
*Franklin	Calf. Co/Coastal	1	St. Lse 224-A	?
+Franklin	Calf. Co/Coastal	2	St. Lse 224-A	11-60
+Franklin	Coastal Carr. Oil	A-1	St. Lse 244	10-59
+Franklin	Magnolia Petr.	1	St. Blk #5-B	5-47
*Franklin	Magnolia Petr.	A-1	St. Blk #5-B	6-47
Franklin	Mobil Oil	1	St. Lse 224-A	4-68
Lee	Calf. Co./Coastal	1	St. Lse 224-B	9-60
Lee	Calf. Co./Coastal	2	St. Lse 224-B	8-61
Levy	Mobil Oil	B-1	St. Lse 224-A	11-67
*Monroe	California Co.	1	St. Lse 10-11	9-59
Monroe	California Co.	2	St. Lse 10-11 (Marq. Area)	1-61
Monroe	California Co.	3	St. Lse 1011	11-61
Monroe	Calf. Co./Gulf	1	OCS Lse 0672,Blk 44	11-60

Table 1 (cont)

County	Operator	Well	Name	Date
Monroe	Commonwealth	1	St. Lse 362	4-55
*Monroe	Gulf	1	St. Lse 373	11-45
*Monroe	Gulf	1	St. Lse 374	10-46
Monroe	Gulf/Calf. Co.	1	Marq. OCS BLK 28	1-60
Monroe	Gulf/Calf. Co.	1	Marq. OCS BLK 46	7-61
+Monroe	Gulf	1	St. of Fla. 826-G	4-55
Monroe	Gulf	1	St. of Fla. 826-Y	2-59
+Monroe	O.D. Robinson/ Republic Oil	1	St. (Barnes Sound)	2-45 2-46
Pinellas	Calf. Co./Coastal	3	St. 224-B	2-63
Santa Rosa	Humble	1	St. Lse 833	9-56
*Offshore	California Co.	1	OCS-Lse 0674	12-60
Santa Rosa	Getty	1	St. of Fla.2338 (Originally issued to Young, Anderson and Beall on 7/9/68)	3-70

TOTAL WELLS DRILLED 29

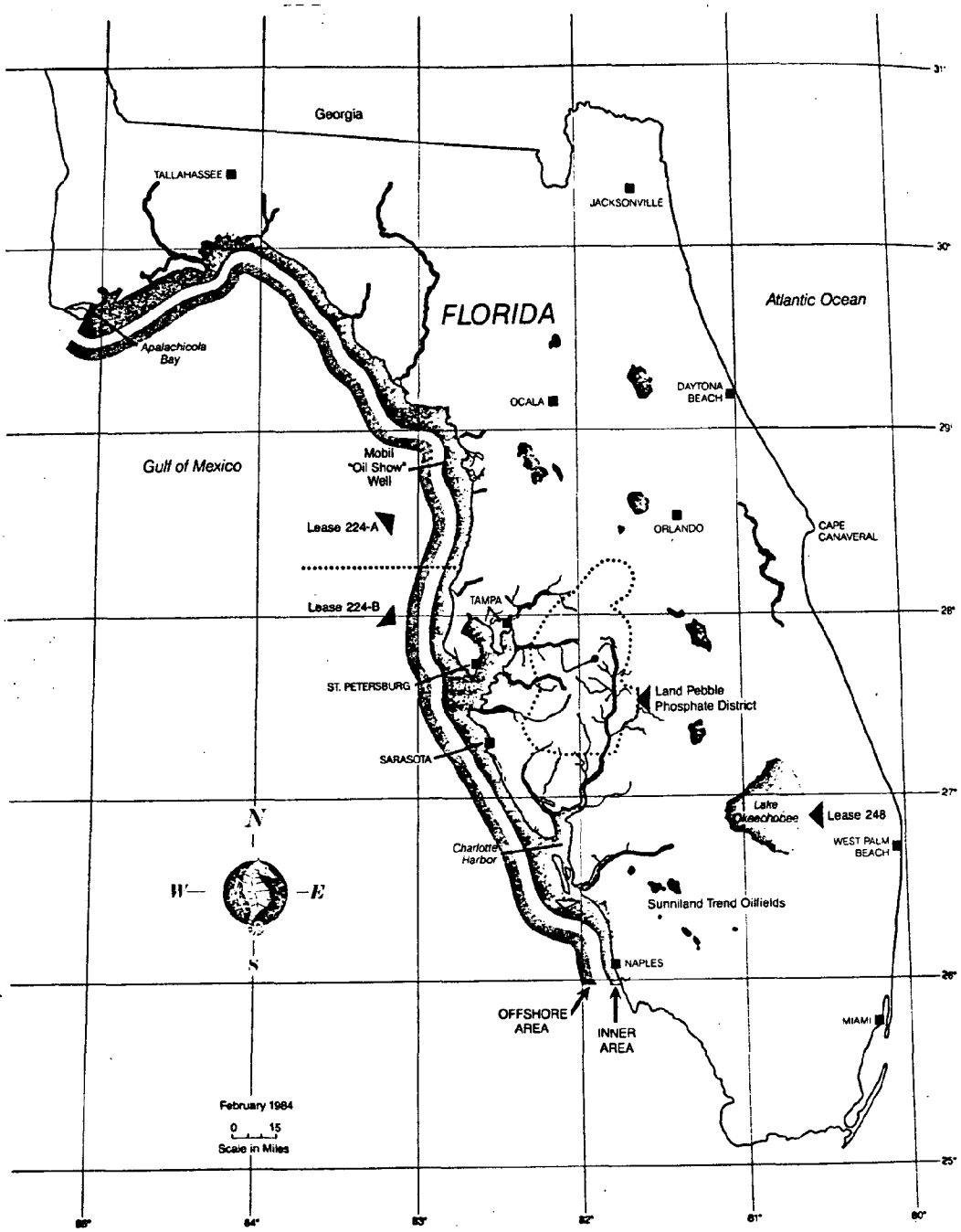
* May be onshore

\+ Does not appear on state map

(Source: Bureau of Geology
Department of Natural Resources)

Figure 1

Florida Offshore Leaseholdings of
Coastal Petroleum Company



(Source: 1983 Annual Report Coastal Caribbean Oils and Minerals, Ltd.)

The third lease, 248, covers the 450,000-acre tract beneath Lake Okeechobee. Although Coastal has a working interest in the Okeechobee acreage (100 percent as to minerals), it has agreed not to conduct any exploration, drilling, or mining operations in this area without the prior approval of the State of Florida. Lease 248 also covers an additional 200,000 acres beneath certain other inland lakes and the St. John's River. On this acreage, Coastal has the same royalty interests as within the aforementioned inshore area.

The three leases--which were granted to Coastal's predecessors company by the State of Florida in the early 1940's--require the payment of annual rentals totaling $59,247. The current lease, renegotiated in 1976, expires on January 6, 2016. However, if any oil, gas, or minerals are being produced in economically sustainable quantities at the expiration of the lease term, such production will be allowed to continue until it becomes uneconomic. At present, all three of the leases are nonproducing. (Coastal Caribbean Oils and Minerals, Ltd 1984). Additional details of these early offshore Florida leases are contained in Appendix D (Volume I).

2. Frequency Distribution of Leases by Year

A total of 19 oil and gas leases have been issued for exploration in Florida's territorial waters. These leases, which were granted between the early 1940's and 1972, are summarized in Table 2.

3. Average Geographic Size of Lease and Related Bidding Data

The size of lease ranged from a few thousand acres to the enormous 2.3 million acre lease held by Coastal Petroleum Company discussed previously. The Getty lease originally issued in 1968 was 47,932 acres.

Table 2

OIL AND GAS LEASES
ISSUED FOR EXPLORATION IN
FLORIDA TERRITORIAL WATERS

Year	Operator	No. Leases	Lease No.
Early 1940's	Coastal Petroleum	3	224-A 224-B 248
1945	Magnolia Petroleum Gulf Oil	1 1	4-B 373
1945	O.D. Robinson/ Republic Oil	1	Barnes Sound
1946	O.D. Robinson/ Republic Oil	1	Barnes Sound
1946	Gulf Oil	1	374
1947	Magnolia Petroleum	1	5-B
1955	Commonwealth Gulf Oil	1 1	362 826-G
1956	Humble Oil	1	833
1959	Gulf Oil Calif. Co. Coastal Petroleum	1 1 1	826-Y 10-11 244
1960	Calif. Co./Coastal Pet. Calif. Co./Coastal Pet.	1 1	224-B 224-A
1968	Young, Anderson, Beall	1	2338
1970	#2338 Transferred to Getty Oil	—	
1972	La. Land and Exp.	1	1 16-2
	TOTAL	19	

4. Example of Prior Lease Sale Schedule

Lease sale schedules have not been established in Florida.

5. Revenues Accruing to State

Because oil or gas has not been produced commercially in Florida's territorial waters, no revenues have accrued to the state except bonus and rental fees. The only active offshore oil and gas leases are those of Coastal Petroleum and Getty Oil Company, resulting in total annual rentals of $70,271.36.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of Managing Agency or Department

The implementation of the trust and fiduciary responsibilities with respect to the administration, management, and disposition of Florida sovereignty lands has been assigned by the Board of Trustees of the Internal Improvement Trust Fund to the Florida Department of Natural Resources (FDNR).

2. Agency Responsibilities

The general responsibilities of the FDNR as defined in Chapter 16Q-21.01 (March 27, 1982) Chapter Rules of the Department of Natural Resources include:

1) Aid in fulfilling the trust and fiduciary responsibilities of the Board of Trustees of the Internal Improvement Trust Fund for the administration, management, and disposition of sovereignty lands;

2) Insure maximum benefit and use of sovereignty lands for all the citizens of Florida;

3) Manage, protect, and enhance sovereignty lands so that the public may continue to enjoy traditional uses including, but not limited to, navigation, fishing and swimming;

4) Manage and provide maximum protection for all sovereignty lands especially those important to public drinking water supply, shellfish harvesting, public recreation, and fish and wildlife propagation and management;

5) Insure that all public and private activities on sovereignty lands which generate revenues or exclude traditional public uses provide just compensation for such privileges; and,

6) Aid in the implementation of the State Lands Management Plan

3. Organization Chart of State Agencies

The state agencies involved directly or indirectly with oil and gas leasing in Florida are shown in Figure 2. The interaction of the DNR and the Department of Environmental Regulation is discussed in detail in a report prepared by the Office of the Governor in 1982 (see references).

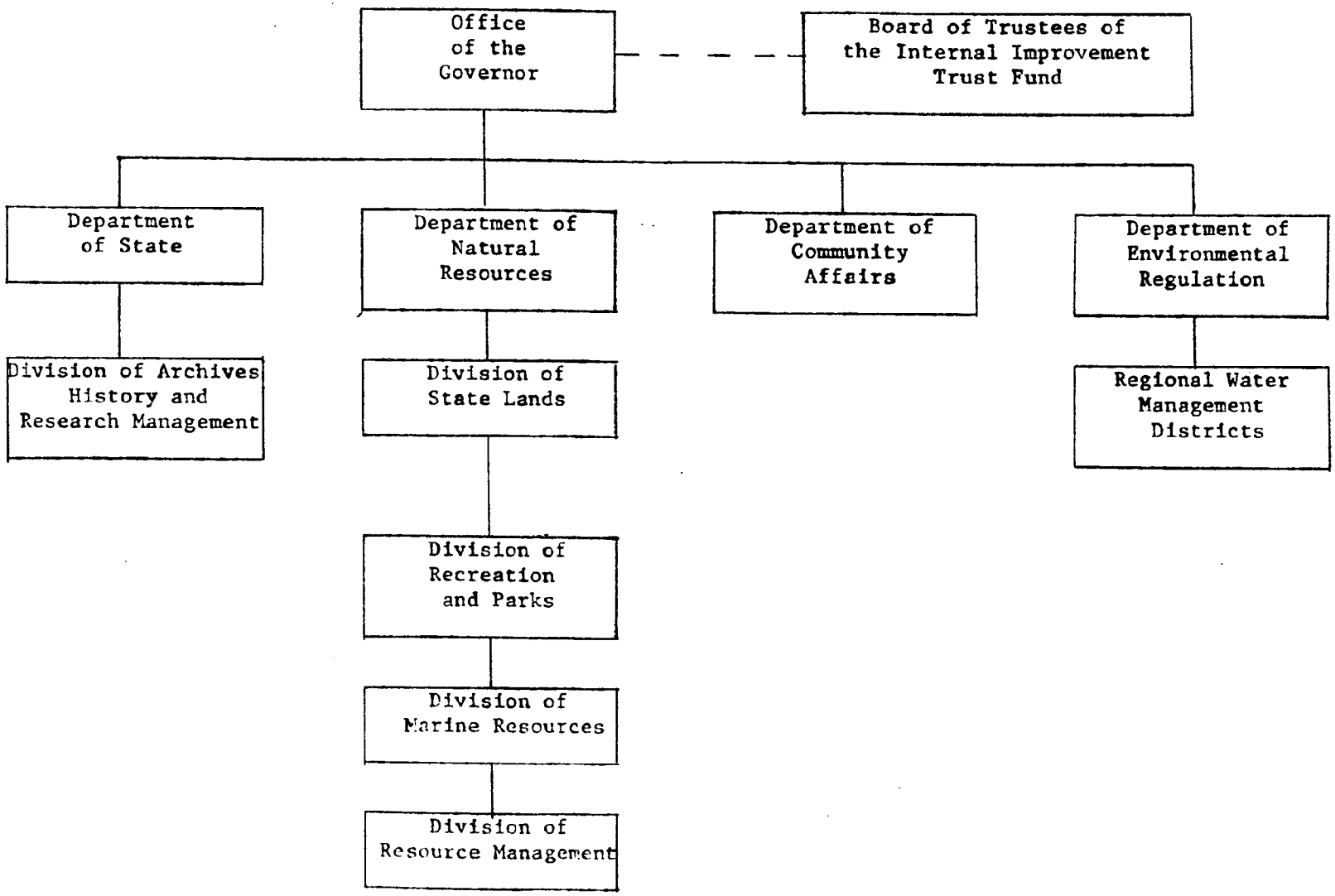
E. Geographic Description of State Territorial Waters

1. General Description of State Offshore Boundaries

Florida has the longest coastline in the continental United States, its 33 coastal counties stretching 1350 miles from the Alabama border to the Georgia coast. The following discussion of Florida's boundaries was taken from Section II of the Florida Coastal Management Program Plan (NOAA OCZM 1981). "Section 305(b)(1) of the federal Coastal Zone Management Act (CZMA) of 1972 requires that a state management program identify the boundary of the coastal zone which is subject to the management program. There are four elements to a state's coastal boundary: the inland boundary, excluded areas, the seaward boundary, and interstate boundaries. Based upon the geography of Florida and the legal basis for the state program, the entire state is proposed to be included within the coastal zone, (except for lands owned,

Figure 2

Florida State Agencies Involved With
Oil and Gas Lease/Permit Program



leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents). Also excluded are lands of the Seminole Indian Tribe."

"Geographically, Florida has low land elevation, a generally high water table, and an extensive coastline with many rivers emptying into coastal waters. Few places in Florida are more than seventy miles from either the Atlantic Ocean or the Gulf of Mexico. The result is an interrelationship between the land and coastal waters which makes it difficult, if not impossible, to establish a scientifically supportable boundary which would exclude inland areas having no significant effect on coastal waters.

The Florida Legislature has directed that the Coastal Management Program be based upon existing laws and regulations; Chapter 380.21(2), F.S. No new regulatory scheme is being proposed or created by the state coastal management program. The laws and regulations upon which the state's program is based, are laws of statewide applicability. Consequently, the establishment of a coastal boundary line including less than the entire state would give the erroneous appearance that a new regulatory scheme had been created for a portion of the state and would lead to needless public confusion. However, for the purposes of administration of funding to local governments pursuant to Section 307 of the CZMA, the boundary of the program is limited to coastal counties. The following is a description of the seaward and interstate boundaries.

The United States Supreme Court has recognized that Florida has jurisdiction over submerged land to a distance of three marine leagues, or approximately 10.35 statute miles in the Gulf (U.S. vs. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 364 U.S. 502, 81 S. Ct. 258, 5 L. Ed. 2nd. 247, 1960). However, the Federal Coastal Zone Management Act

defines the seaward extent of the coastal zone as the outer limit of the U.S. territorial sea, currently three nautical miles. Thus, for the purposes of the Florida Coastal Management Program only, the seaward limit of three nautical miles represents the area within which the state's management program may be authorized and financed through CZMA Section 306 funds. This seaward boundary does not in any way alter the state's claim to ownership of all land and waters to a distance of 10.35 statute miles.

The seaward boundary in the Atlantic is the same as the U.S. territorial sea definition, i.e. three nautical miles. These limits are irrespective of any other claims Florida may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the operation of the Fisheries Conservation and Management Act of 1976.

The western lateral boundary of Florida's Coastal Management Program is defined by the adjudicated boundary between Florida and Alabama. The coastal zone boundary in Alabama is the 10' MSL contour in Mobile and Baldwin Counties. The northern lateral boundary of the state's coastal program is the adjudicated boundary between Florida and Alabama as well as Florida and Georgia. The coastal zone boundary in Georgia is an area averaging about 20 miles inland within portions of six coastal counties. Each state, with the development of its own coastal management program, has consulted with one another to ensure compatibility between each state's respective boundary designations." (NOAA Office of Coastal Zone Management, 1981, pp. II-10 to II-11.)

"The mean high water line means the intersection of the local elevation of mean high water with the shore. The mean high water line along the shore of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the State of Florida in its

sovereign capacity and the uplands subject to private ownership." (FDNR Rules 16-21.03(22), 1982.)

"Mean high water means the average height of the high tides over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the water after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value." (FDNR Rules 16-21.03(21), 1982). Within these boundaries lie Florida's sovereignty lands which are defined in the Rules of FDNR, Chapter 16-21 as:"those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, under navigable fresh and salt waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated."A detailed discussion of Florida's sovereignty lands management policies is contained in Appendix A (Volume I).

With respect to the leasing of state-owned submerged lands, oil, gas, and other petroleum leases can be issued only when the proposed lease area is at least one mile seaward of the outer coastline of Florida as defined in United States v. Florida, 425 U.S. 791, 48L, Ed., 2nd 388, 96 S. Ct. 1840, upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been considered thoroughly, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation and national security. (DNR Rules Chapter 16Q-21, §21.04, 2, (k), 1982.) Thus, on Florida's Atlantic Coast, a potential two-mile leasing zone extends from one to three nautical miles offshore while on the Gulf coast the leasing zone is a nine mile strip extending from one to 10.35 statute miles offshore.

In addition to its length, Florida's coastal region offers a wider variety of environmental characteristics than any other state.
The East Florida section is a young marine plain of very low relief characterized by sandhills, swamps, sinks, and lakes. Few streams drain in this lowland area. The underlying sedimentary strata recently have been raised above sea level and the coastline is a typical shoreline of emergence, characterized by an extensive series of nearly continuous barrier islands extending from Daytona Beach to Biscayne Bay.

Barrier islands also are a common landform along the Gulf Coast. These islands consist of sand and other loose sediments that have been and continue to be transported by wind and water action. Florida has 80 barrier islands covering a total of 467,710 acres. Brackish, relatively quiet bays and estuaries lie between the barrier islands and the mainland. The waters in these bays and estuaries, a blend of the terrestrial-freshwater systems of the mainland and the saltwater system of the ocean, are among the richest ecosystems known.

One of the characteristic features of barrier islands is their instability. Because the islands are composed of unconsolidated and shifting sands, they migrate along the coast in response to littoral currents as well as a gradually rising sea level. As such, they do not readily support construction of permanent structures or pipelines. The movement of sand under and around a pipeline can cause the line to sag, bend, and perhaps rupture. A line that was buried may in time, become exposed.

2. Mapping and Charting Procedures Used to Define Lease Areas

The state boundaries are defined in the Florida Constitution, Article II, Section 1(a).

"(a) The state boundaries are: Begin at the mouth of the Perdido River, which for the purposes of this description is defined as the point where latitude 30°16'53" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°17'02" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°18'00" north and longitude 87°27'08" west intersect; thence to the point where the center line of the Intracoastal Canal (as the same existed on June 12, 1953) and longitude 87°27'00" west intersect; the same being in the middle of the Perdido River; thence up the middle of the Perdido River to the point where it intersects the south boundary of the State of Alabama, being also the point of intersection of the middle of the Perdido River with latitude 31°00'00" north; thence east, along the south boundary line of the State of Alabama, the same being latitude 31°00'00" north to the middle of the Chattahoochee River, thence down the middle of said river to its confluence with the Flint River, thence in a straight line to the head of the St. Marys River; thence down the middle of said river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance; thence in a southerly direction along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline and three leagues distant from the Gulf of Mexico coastline, whichever is greater, to and through the Straits of Florida and westerly, including the Florida reefs, to a point due south of and three leagues from the southernmost point of the Marquesas Keys; thence westerly along a straight line to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands; thence westerly, northerly and easterly along the arc of a curve three leagues distant from Loggerhead Key to a point due north of Loggerhead Key; thence northeast along a straight

line to a point three leagues from the coastline of Florida; thence northerly and westerly three leagues distant from the coastline to a point west of the mouth of the Perdido River three leagues from the coastline as measured on a line bearing south 0°01'00" west from the point of beginning; thence northerly along said line to the point of beginning. The State of Florida shall also include any additional territory within the United States adjacent to the Peninsula of Florida lying south of the St. Marys River, east of the Perdido River, and south of the States of Alabama and Georgia.

(b) The coastal boundaries may be extended by statute to the limits permitted by the laws of the United States or international law."

The plane coordinate system used in Florida is based on two conformal projections. The northern part of the State uses a Lambert conic projection with two standard parallels and the southern part has a transverse Mercator projection with two zones, using a reduced scale for the central meridian of each zone (U.S. Department of Commerce 1951).

Lease blocks have not been laid out in Florida's territorial waters. A method for laying out the blocks, however, was submitted by the Florida Department of Natural Resources and approved by the Governor and Cabinet in 1981. The Universal Transverse Mercator projection system was used with a 1,000 meter grid size. The resulting block network will in effect be a continuation of the lease block system used by the Federal government on the Outer Continental Shelf. Where state lease blocks meet Federal lands, the boundaries have been delineated for Florida's West Coast using satellite based data and drawn on OCS block diagrams prepared by the Department of Interior, Minerals Management Service. Figure 3 is an example of an OCS block diagram. The federally prepared block diagrams as shown in Figure 3 were approved by the State of Florida in late 1983. Comparable boundaries have not been agreed upon for Florida's Atlantic Coast.

SALE NO. 79

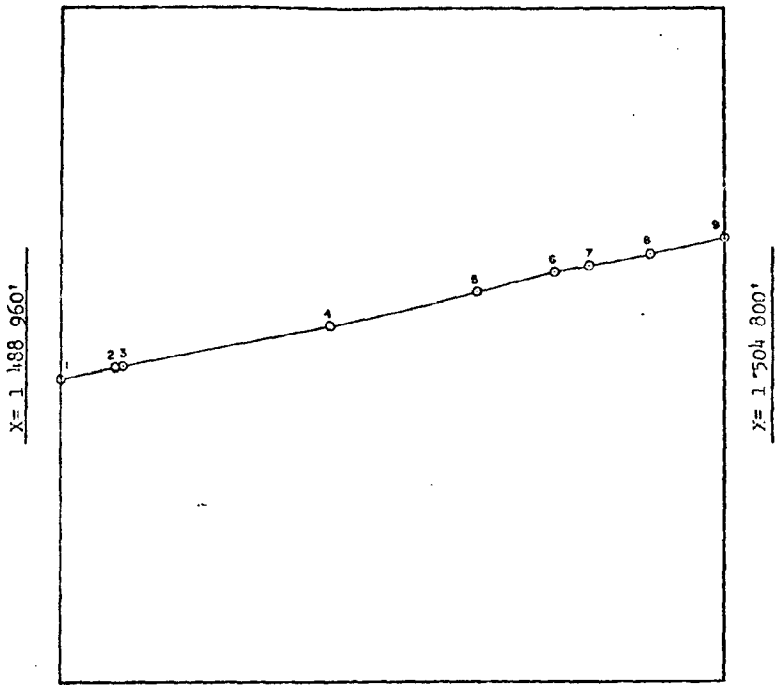
☐ FED.-STATE SEAWARD BDY.
RADIUS 54 684.93'

☐ 3-G BOUNDARY
RADIUS

SUPPLEMENTAL OFFICIAL OCS 8-G BLOCK DIAGRAM

OPD NAME Pensacola
OPD NO. EH 16-5
BLOCK NO. 843
OCS LEASE NO.
STATE LEASE NO.

Y= 10 945 440'



Y= 10 929 600'

INTERSECTIONS

	X	Y
1	1 488 960.00'	10 936 730.44'
2	1 490 237.46'	10 936 975.68'
3	1 490 442.45'	10 937 015.44'
4	1 495 362.18'	10 937 979.40'
5	1 498 868.74'	10 938 786.31'
6	1 500 735.56'	10 939 283.00'
7	1 501 553.65'	10 939 431.08'
8	1 503 022.14'	10 939 718.66'
9	1 504 800.00'	10 940 092.16'

ARC CENTERS

	X	Y
*1-2	1 475 446.31'	10 989 [illegible]
2-3	1 479 927.56'	10 990 679.64'
*3-4	1 479 927.56'	10 990 679.64'
4-5	1 484 847.29'	10 991 643.90'
*5-6	1 484 847.29'	10 991 643.90'
*6-7	1 488 523.17'	10 992 692.35'
7-8	1 491 779.10'	10 993 235.35'
*8-9	1 491 779.10'	10 993 235.35'

*TANGENT SECTIONS

FEDERAL AREA _____ % STATE AREA 2570.80 ac % OG AREA 3189.20 ac % DISPUTED AREA _____ %

COMPUTATIONS BY PW DATE 5 2 83
DRAFTED BY JH DATE 5-12-83
CHECKED BY [illegible] DATE 5-23-83

FOR THE DIRECTOR
DATE 6/3/83

FOR THE STATE
DATE

FL-20

UNITED STATES DEPARTMENT OF INTERIOR
MINERALS MANAGEMENT SERVICE

F. Local Jurisdictional Control Over State Waters

A special report containing a detailed analysis of the role of local governments in the leasing of state offshore waters for oil and gas operations has been prepared by the Center for Governmental Responsibility, University of Florida, College of Law, and is contained in Appendix B (Volume I). It is recommended that readers wishing to understand the legal status of issues involving annexation actions by local governments and the impact of such actions on offshore activities carefully review this document. Basically, Chapter 171, F.S., entitled "Municipal Annexation or Contraction Act", does not address the annexation of territorial waters. While there are conditions under which territorial waters conceivably could be annexed, there are no Florida cases examining the scope of a municipality's power to annex such areas.

The U.S. Constitution, the Florida Constitution, and the Florida Statutes, as well as a large body of case law govern municipal annexations in Florida. The Florida Constitution, Article VIII, Section 2(a), (c), contemplates municipal annexation of unincorporated territory as provided by general or special law. Annexation law is built on the premise that the power to change municipal boundaries, establish municipalities outright, or expressly prohibit municipal expansion is solely a legislative power. The legislature may exercise the power directly or may delegate the power to municipalities.

The legislature's power, however, is not unlimited. The legislature must observe constitutional limitations or courts will intervene. The principle limitation is that municipal boundaries may not be extended solely to increase tax revenues. Annexation for that purpose is a flagrant abuse of

authority amounting to a taking without just compensation. In essence, the legal ramifications of annexation, taxation, and/or control of state waters by local governments is unclear. While annexation laws exist, they may have to be reinterpreted or modified in preparation for offshore activities in state waters. Appendix B also analyzes the annexation laws of other coastal states with respect to offshore territorial waters. A review of this material will provide the reader with further insight into the problems and the benefits to be gained by such laws.

Local governments can greatly influence offshore oil and gas activites regardless of annexation laws. As pointed out in Section IV of Appendix B (Volume I), the Local Government Comprehensive Planning Act (LGCPA), Chapter 163, F.S. requires counties and municipalities to prepare, adopt, and amend comprehensive plans to guide local development. An excellent summary of the potential impact of this Act is presented in the South Florida Regional Planning Council 1983 report OCS Facility Siting Study.

Once adopted by the local governing body (163.190(2)), the Act requires that "all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with the adopted comprehensive plan or element or portion thereof," F.S. (163.3194(1). That is, once adopted, no development order may be issued, no capital expenditure made, no governmental action related to land use taken, that is inconsistent with the comprehensive plan. Adoption of the comprehensive plan thus obligates local governments to:

- Bring existing zoning ordinances into conformity with the future land use plan element.
- Revise or initiate land development regulations to conform with the plan.

- Disapprove development applications that are inconsistent with the comprehensive plan.

The consistency requirement of the LGCPA, 163.3194(1), F.S., gives the comprehensive plan a unique legal status, subordinating zoning regulations to the comprehensive plan. The few legal signals so far indicate strong acceptance of the plan's primacy. Although the South Florida report is aimed primarily at OCS activities, the same concerns and actions pertain to oil and gas development in state territorial waters. The report states further: "Tools that allow local governments to encourage, discourage, and regulate onshore OCS-related facilities include the following: (Remembering that coastal zone controls must be reasonable and national needs must be considered).

1. Counties and municipalities have what is in effect a veto power over State leasing of adjacent or nearby submerged lands. This is particularly relevant to pipeline landfalls and water-dependent facilities. There are significant exceptions and conditions based on Chapter 253, F.S.

2. The local Comprehensive Plan can be amended to reflect and incorporate local policies regarding OCS-related activities. Only Broward County directly and clearly addresses the Impacts of offshore energy development (part 1-3) of the Coastal Zone Protection Element). However, the policy guidelines hinge on imprecise words such as "guide" and "encourage."

3. Local land development regulations can be written to specifically regulate or discourage onshore OCS-related development by limiting certain uses in specific districts, not zoning any land for OCS-type industry, or imposing strict regulations a specific use even if permitted and zoned. Such regulations include height, size, setback, aesthetic, and safety requirements as well as air and noise performance standards. Subdivision regulations and platting requirements can also exert local control as can building, plumbing, electrical, gas, fire, safety, and sanitary codes, if written to deal with specific characteristics of particular OCS-related facilities.

4. The Development of Regional impact process can be used to evaluate petroleum storage facilities located within 1000 feet of any navigable water with a storage capacity of more than 50,000 barrels, or any industrial manufacturing or processing plant that is determined to be a Development of Regional Impact (DRI). The conditions imposed in the local government's DRI development order control facility siting.

5. Through taxation and spending measures, local governments may encourage and direct the facility siting.

6. Local governments may enact local air, noise, odor, and water pollution controls that either limit or encourage siting of certain facilities. The controls must be as strict or more strict than State or Federal regulations in order to be valid and avoid conflict with State or Federal regulations.

7. Port authorities, whether established as separate entities or operated by or in conjunction with local governments, can have a significant effect on marine-dependent OCS-related facilities through port regulations or tariffs, safety regulations, liability insurance requirements, and fire regulations.

8. Local governments may establish historic preservation districts which could discourage development in these areas."

G. Oil and Gas Revenues Accruing to State

1. Minimum Royalties Allowed by Law

Minimum royalties for oil and gas in Florida are 1/8 of gross production. During any year beginning with the anniversary date of a lease, if the lease is maintained by production, the royalties paid to Lessor in no event can be less than an amount equal to the total annual rental, otherwise, an amount must be paid equal to the total annual rental, less the amount of royalties paid during the preceding year (State of Florida 1982a).

2. Royalties Prescribed for Oil and Gas Leases

Because oil or gas has not been produced in Florida's territorial waters, royalties have not been generated from this source. Royalty payments from upland oil and gas fields are described beginning on page 13 of Appendix A (Volume I).

3. Rental per Acre

Rental payments are established prior to advertising for a lease sale and are specified in the lease agreement. No rental is due if lands are developed for oil or gas or if a well has been commenced in good faith to secure production in paying quantities. The details of the manner in which rental rates are set is described on pages 14-15 of Appendix A (Volume I).

4. Delay Rental Payment

Florida oil and gas leases establish an annual rental fee but do not have a delay rental clause.

5. Shut-in Royalties

As stated in Florida's Oil and Gas lease "If, at the expiration of the primary term or at any time thereafter, there is located on the leased premises a well or wells capable of producing oil or gas in paying quantities and such oil or gas is not otherwise produced due to pending development of a satisfactory market outlet or lack of suitable production facilities and this lease is not otherwise being maintained in force and effect, Lessee shall pay as royalty a sum of money equal to double the annual rental provided for in this lease but in no event to be less than $1,200.00 per annum for each well capable of producing oil or gas in paying quantities;---." Further details regarding the handling of shut-in royalties are contained on page 8 of Appendix C and on pages 15 and 16 of Appendix A (Volume I).

6. Offset Wells

As stated in Florida's Oil and Gas Lease "in the event production in paying quantities should be brought in on adjacent land draining the leased

premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances at such locations required by spacing regulations adopted by the State of Florida, Department of Natural Resources."

7. Pooled Acreage

The statutory basis for authorizing pooling or unitization of leased premises is discussed on page 16 of Appendix A (Volume I).

The Florida Oil and Gas Lease addresses royalty aspects in greater detail. " Operations for drilling, reworking or production on any part of a unitized unit composed in whole or in part of the land covered hereby shall be considered as operations for drilling, reworking or production on land covered by this lease and the entire acreage constituting such unit or units shall be treated for all purposes as if the same were included in this lease, except that in lieu of the royalties elsewhere herein specified, Lessor shall receive on production from each of such units the proportion of the royalties herein stipulated that the amount of Lessor's ownership in the mineral interest in the acreage placed in the particular unit involved bears to the entirety of the mineral interest in such unit."

8. Bonus Consideration

In Florida, the amount of the bonus required for a lease sale is not set by the state. In effect, because both the rental and royalty levels are established by state statute, the lease award is made to the bidder offering the highest cash bonus. Details of the statutory requirements relating to the bonus consideration are contained on pages 4 and 5 of Appendix A (Volume I).

9. Severance Tax

Severance in Florida for ordinary oil production is 8% of value at the wellhead. For small wells (less than 100 barrels per day) the tax for oil is 5% at the wellhead. Severance tax for gas at the wellhead also is 5%. Because oil and gas produced in Florida is so sour (high sulfur content) that it is actually lethal, no one will buy it at the wellhead. The amount of severance tax due therefore is determined by starting with the final sale value and subtracting the interim processing costs between wellhead and final sale (Parramore 1984).

10. State Agency Receiving Royalties

Royalties are paid to the Department of Natural Resources.

11. Distribution of Revenue Within State

The distribution of oil and gas revenues within the state is established by statute and is described on pages 6-8 in Appendix A (Volume I).

H. Environmental Controls and Regulations

1. Responsible Agencies

The Florida Department of Natural Resources (FDNR) is solely responsible for leasing of all state lands as the administrative arm of the Board of Trustees of the Internal Improvement Trust Fund. While other state agencies are not involved directly in the leasing process some play a critical role in the permitting following the award of a lease. This role is addressed in the FDNR 1982 (Section 16Q-21.04(2c)):

"The Department of Environmental Regulation biological assessments and reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use sovereignty lands. Any such reports sent to the department in a timely manner shall be considered."

Environmental parameters and the agencies responsible for their management are as follows:

Air Quality

Florida's air quality program is administered by the Department of Environmental Regulation (DER) pursuant to Chapter 403, F.S. (the Florida Air and Water Pollution Control Act) and the 1977 Federal Clean Air Act. The Environmental Protection Agency (EPA) administers the Clean Air Act at the federal level, while DER is the implementing agency at the state level. These two acts provide the authority for DER to establish ambient air quality standards and emission standards to protection or upgrade air quality. DER has established State Ambient Air Quality Standards for six major pollutants: nitrogen dioxide, carbon monoxide, ozone, sulfur dioxide, lead, and total suspended particulate. All sources of air pollution, whether existing, modified, or new must comply with Chapter 17-2, F.A.C., which sets standards for allowable emissions.

To achieve and maintain national (and State) ambient air quality standards, DER developed an air implemention plan in 1972. This plan has been quite successful in helping Florida to attain the six ambient standards; Florida does not have a persistent, serious problem with any of these major pollutants. Several of Florida's urban areas have exceeded the standards at one time or another, but in general pollutant levels have been well below the State or national standards. Some of Florida's ambient air quality standards are stricter than those of the Federal Government.

DER is responsible for issuing permits for the construction or operation of all air pollution sources. Power plants, phosphate plants, pulp and paper mills are examples of industrial facilities that require emission permits (State of Florida 1983).

Water Quality

The Department of Environmental Regulation also is responsible for maintaining water quality on state lands and in state waters.

"These waters of the state are rivers, streams and their tributaries, bayous, sounds, estuaries and bays and their natural tributaries, most natural lakes and the Atlantic Ocean and Gulf of Mexico to the seaward limit of the state's territorial boundaries. Waters owned entirely by one person other than the state are included only with regard to possible discharge on other property or water. If there is a connection, then a permit may be required---."

"DER controls the permitting of dredge and fill activities under Chapters 253 and 403, F.S. Chapter 253 F.S. is limited to areas below the Mean High Water (MHW) saltwater and Ordinary High Water (OHW) freshwater line. This statute ensures wildlife consideration by authorizing permits only when it "will not interfere with the conservation of fish, marine and wildlife or other natural resources to such an extent as to be contrary to the public interest."

Chapter 403 F.S., on the other hand, applies to areas above and below the MHW and OHW lines. Its coverage includes most lakes in Florida and a large percentage of freshwater wetlands. Heretofore, interpretations of Chapter 403 F.S.have precluded the direct consideration of fish and wildlife as a parameter for water quality permitting---" (State of Florida 1982b).

2. Relation to Leasing Agency

Recent attempts have been made within the state to streamline activities related to oil and gas leasing and the subsequent permitting procedures. While formal memorandums of understanding have not been drawn up, a joint application process was established in 1982 to expedite selected activities in Florida waters (State of Florida 1982b). This improved permitting procedure involved the cooperation of the DER, the DNR and the Corps of Engineers.

3. Environmental Review Process Prior to Issuing Lease/Permit

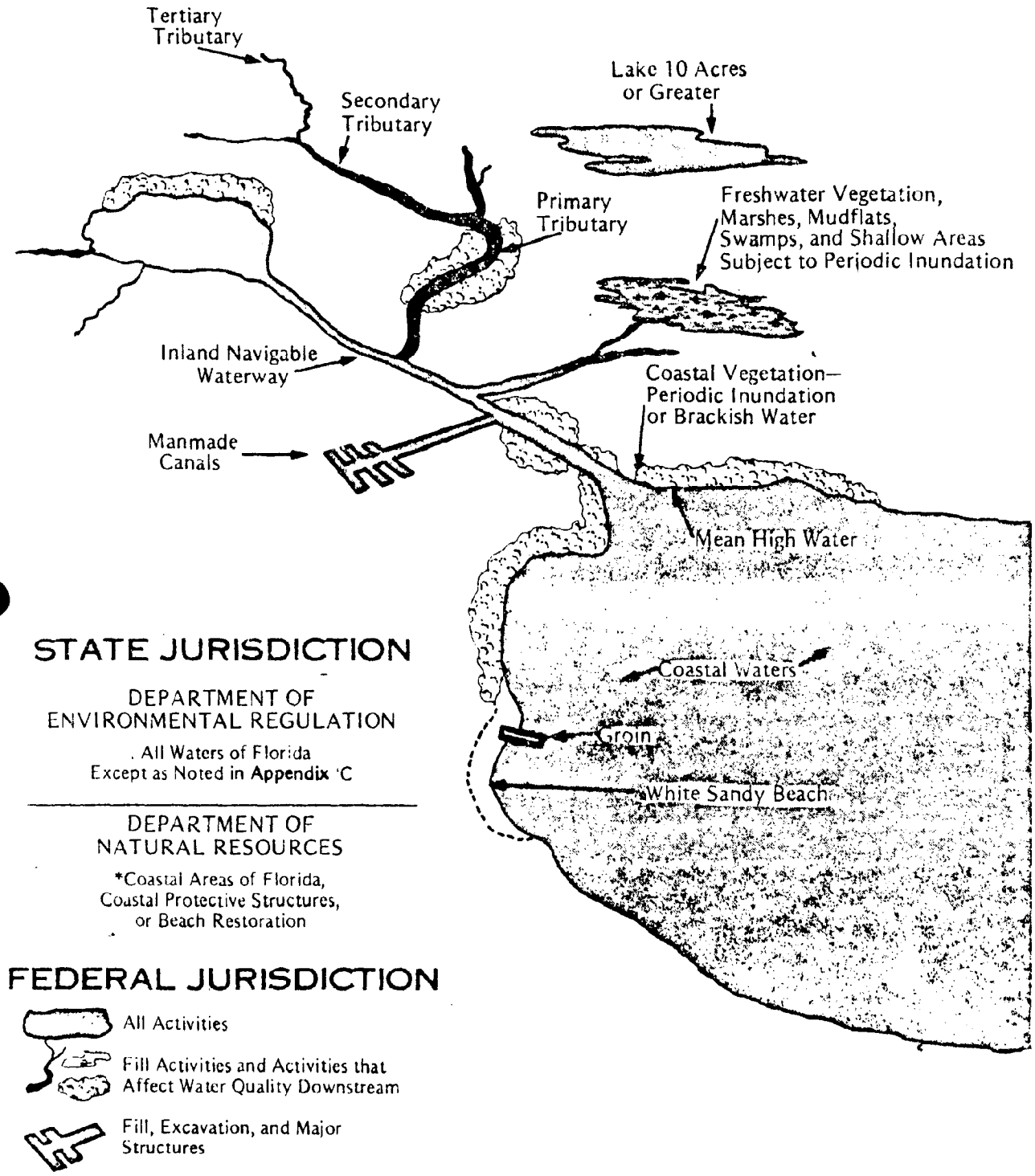
A formal environmental review process prior to issuing oil and gas leases in Florida's offshore waters has not been established. Rather, the environmental review occurs during the permitting phase. The administrative and application procedures for obtaining environmental permits is described in the Joint Application Pamphlet (State of Florida 1982b). Appendix E 1.2,a.(2) of that pamphlet states "Unless specifically exempted, all dredging and filling activities which are to be conducted in or connected directly to waters of the state or which are connected via an excavated water body or series of excavated water bodies to certain waters of the state require permits (see Figure 4).

The purpose of the Joint Application Pamphlet is to furnish information on permit programs and instructions for submitting an application to the U.S. Department of Army, Corps of Engineers (Corps), the State of Florida Department of Environmental Regulation (DER), and the State of Florida Department of Natural Resources (FDNR) for work in the waters of the state.

Federal and state laws prohibit certain activities unless authorized by permit. These laws include the River and Harbor Act of 1899; the Federal

FIGURE 4

Florida State and Federal
Coastal Jurisdictions



(State of Florida Joint Application for Permit, .Dredge .Fill .Structures)

Water Pollution Control Act Amendments of 1972, as amended by Clean Water Act of 1977; the Marine Protection, Research and Sanctuaries Act of 1972; and Chapters 161, 253, 258, and 403, F.S. In addition, other laws are directly related to the procedures for processing permit applications. These include the Fish and Wildlife Coordination Act of 1958, the National Environmental Policy Act of 1969, and Chapter 120, F.S. Rules and regulations governing the Department of the Army permit programs are listed in Title 33, Section 209.120 of the Code of Federal Regulations. Those governing the Department of Environmental Regulation are listed in Florida Administrative Code Rule 17, while those governing the Department of Natural Resources, Bureau of Beaches and Shores and Bureau of State Lands are listed in Florida Administrative Code Rule 16 (Appendix E).

Appendix A of the Joint Application Pamphlet addresses the information requirements of the Board of Trustees of the Internal Improvement Trust Fund. The purpose of this appendix is to list the information required by the Board to obtain a letter of consent, submerged land lease, easement, or other form of consent sought pursuant to Chapter 253.77, F.S. Copies of Florida Administrative Code Rules 16Q-21 (Sovereignty Submerged Lands Management Rule), 16Q-20 (Florida Aquatic Preserve Rule) and 16Q-18 (Biscayne Bay Aquatic Preserve Rule) of the Department of Natural Resources, showing the more detailed requirements, and criteria for approval are available upon request. A copy of an application submitted to the Department of Environmental Regulation satisfies many of the information items required by the above rules and will be forwarded to DNR. The Bureau of State Lands Management will review the application for compliance with the administrative rules of the Department of Natural Resources. Additional information will be requested if needed. Exemption from Department of Environmental Regulation

permitting requirements does not relieve anyone using state-owned lands from soliciting consent or other authorization from Department of Natural Resources unless specifically exempt under Florida Administrative Code Rule 16Q-21.

4. Environmental Stipulations

The Florida Oil and Gas Lease addresses environmental stipulations in a general way in Section 14(A), "Pollution and Site Security."

"The Lessee shall be liable for land or water pollution resulting from the drilling for or production of products pursuant to this lease. The Lessee shall be liable for any damage to aquatic or marine life, wildlife, birds, and any public or private property, both real and personal due to Lessee's operations pursuant to this lease. The Lessee shall not allow any extraneous matter to enter or damage any mineral or freshwater bearing formation. Provided, however, this covenant of absolute liability shall not apply if the Lessee establishes that the prohibited discharge or other polluting condition was the result of any of the following:

(1) an act of war; or

(2) an act of government, either federal, state or local; or

(3) an act of God, which shall be construed to mean an unforeseeable act exclusively occasioned by the violence of nature without the intervention of any human agency; or of nature without the intervention of any human agency; or

(4) acts of disinterested third parties who are neither employed by or agents of the Lessee."

The environmental responsibilities of the lessee are addressed further in the lease in Section 18(E) with regard to the requirement for a surety bond.

"Prior to the time that the Lessee mines, drills or extracts in any manner, petroleum, petroleum products, gas, sulphur or any other mineral from

the land covered hereby, Lessee shall deposit with the Lessor a surety bond in the amount of $50,000 from a surety company authorized to do business in the State of Florida. The bond shall serve as security and is to be forfeited to the Lessor to pay for any damage caused by mining or drilling operations of the Lessee. Damages as used this section shall include, but not be limited to, air and water pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the State of Florida."

While environmental issues are cited in a general way in the Oil and Gas Lease, there are more specific environmentally related stipulations contained in Florida statutes. These stipulations along with relevant administrative requirements are discussed in Appendix A (Volume 1) pages 18-24. Further stipulations are found in the State Lands Management Plan adopted by the Board of Trustees of the Internal Improvement Trust Fund in March 1981 (Appendix A, Volume I, pages 33-49).

The impact of these permitting requirements and stipulations, and their interpretation by State officials, was reflected in the numerous stringent clauses in the only permit for oil and gas drilling in Florida's waters since 1968. This permit, issued to Getty Oil Company (for exploration in East Bay, Santa Rosa County) in November 1982 followed by the Corps of Engineer's permit in March 1983 was in effect a zero-discharge policy. This policy required a major effort on Getty's part to comply as indicated in the following statement.

"Getty Oil Company has committed 16 persons per shift to the task of protecting East Bay. Three boats were purchased for use by crews: to monitor the environment of East Bay land surrounding areas during drilling operations; to maintain the specially-required equipment such as the Oil

Fence, and to perform routine housekeeping chores inside the 12-acre area. In addition, consultants have been hired to audit the environmental monitoring and environmental compliance of the East Bay Project." (Getty Oil Company 1983).

5. Baseline Environmental Research

There is a considerable amount of research in the Gulf of Mexico conducted by scientists from academic, state, and private organizations. Funding is derived from private sources, federal grants for basic and/or applied research, or from state agency budgets to permit the fulfillment of statutory responsibilities. As with most other coastal states, Florida does not have a funded program dedicated to obtaining baseline data in support of future offshore oil and gas activities. Regional and site specific environmental data are collected, however, as required to support the application for permits for offshore development, As these data are made available, a body of knowledge is accumulating which will have a direct impact on our ability to make intelligent management decisions about future oil and gas development in Florida's waters.

6. Role of Corps of Engineers

See Section H-3 of this report.

I. Leasing Procedures

1. Leasing Schedule

Florida has no schedule for offshore oil and gas lease sales.

2. Call or Nominations for Lease

Oil and gas leases usually are offered in response to a nomination (proposal) for a lease from a potential lessee. See Appendix A, Volume I, pages 2-3 for details.

3. Fees

A $200 non-refundable processing fee must accompany a nomination.

4. Publication of Calls for Nominations and Adverisements for Leasing

See Appendix A, Volume I, pages 3-4.

5. Bidding

All oil and gas leases in Florida are by sealed bids and competitive bidding. See Appendix A, Volume I, pages 4-5 for details.

6. Terms of Lease

-Title

The lease grants exclusive rights to: investigate, explore, prospect and drill for discovery and production of "oil, gas, sulphur, carbon black, carbon dioxide, other liquid hydrocarbons, salt and/or brines and any other miscellaneous constituent products produced. See Appendix A, Volume I, pages 20-24 for details.

-Length of Lease

The current Florida oil and gas lease establishes a primary term of five years although Section 253.55, F.S. authorizes the Board of Trustees to issue leases for primary terms up to 10 years. See Appendix A, Volume I, pages 24-26 for details.

-Extension of Lease

Leases can be extended under a variety of conditions as specified in Appendix A, Volume I, pages 24-28.

-Transfer of Lease

Leases can be assigned in whole or in part with the written permission of the Lessor. Liability rests with the owner of the lease and in the event of segregated ownership, liability is apportioned accordingly.

-Compliance With Rules and Regulations

The Lessee is required to comply with all current and future statutes, rules and regulations of the U.S. Government and the State of Florida. See Appendix A, pages 27-29 for a discussion of the resolution of conflicting laws affecting compliance.

-Cessation of Work

See Appendix A "Terms of Lease" pages 24-28 and Appendix C, Volume I, for a detailed discussion.

7. Handling of Proprietary Information

In general, Florida's Public Records Law provides that all public records may be examined "by any person---at reasonable times, under reasonable conditions---" unless an exemption is provided by law, (Section 119.07, F.S.). A detailed discussion of the management of proprietary data is included in Appendix A, Volume I, pages 82-83.

The 15 steps required for processing an oil and gas lease in Florida can be summarized as follows:

1. Request to Nominate.

Applications for nominations for the lease of sovereignty lands in which the State of Florida holds an interest in the petroleum or petroleum products shall include the following:

a. Name and address of the applicant or nominee;

b. Legal description of the parcel sought including the surface acreage; this description may utilize the submerged land blocks approved by the Board of Trustees on March 17, 1981;

c. Identification of the state agency vested with the ownership of the petroleum products;

d. Percentage of the petroleum interests held by the State;

e. Identification of any municipal corporation in which all or part of the parcel sought is located or within 10 miles thereof;

f. Identification of any improved beach outside a municipal corporation or lands in the tidal waters of the State of Florida abutting on or immediately adjacent to any improved beach in which all or part of the parcel sought is located or is within 3 miles thereof, and

g. A $200.00 non-refundable processing fee.

2. Letter of acknowledgement sent to applicant by DNR, Bureau of State Lands Management.

3. Title requested from the Title Section of Bureau of State Lands Management by Uplands Leasing office.

4. Request sent to State Departments of Transportation or Agriculture for permission. Agency may specify stipulations to be put in lease.

5. Application sent to Bureau of Geology for review. They make recommendations on geological structure based on available data. Special site visits are not made. The Bureau of Geology report serves as the basis for establishment of royalties by DNR based on proximity to dry holes, producing wells, etc. Formal approval by the Bureau of Geology is not required.

6. Forwarded to uplands office of Bureau of State Lands Management for review of land restrictions, local government regulations and related statutory and legal aspects.

7. List of owners within 500 feet of lease site is obtained from applicant if not already submitted with application. List is based on county tax records.

8. Application agendaed for permission to advertise by delegation of authority by Board of Trustees to the Executive Director of the DNR.

9. Approved lease form is designated prior to advertising. Standard form is used.

10. Advertisements are executed as specified in Chapters 253.115 and 253.52, F.S.

11. Lease date is set by Bureau of State Lands Management.

12. Bidders are notified of lease sale date.

13. Bids submitted by applicant must be sealed and accompanied by certified check.

14. Public lease sale is held on specified date in the manner prescribed in Chapters 253.53, 253.54 and 253.55, F.S.

15. Selected bidder is notified by Bureau of State Lands Management.

A flow chart summarizing the above lease process is shown in Figure 5.

J. Relation of Leasing Program to Issuance of Permits

Issues involving the interrelationships of leasing and permitting are discussed in detail in Section H. and in Appendix E, Volume I.

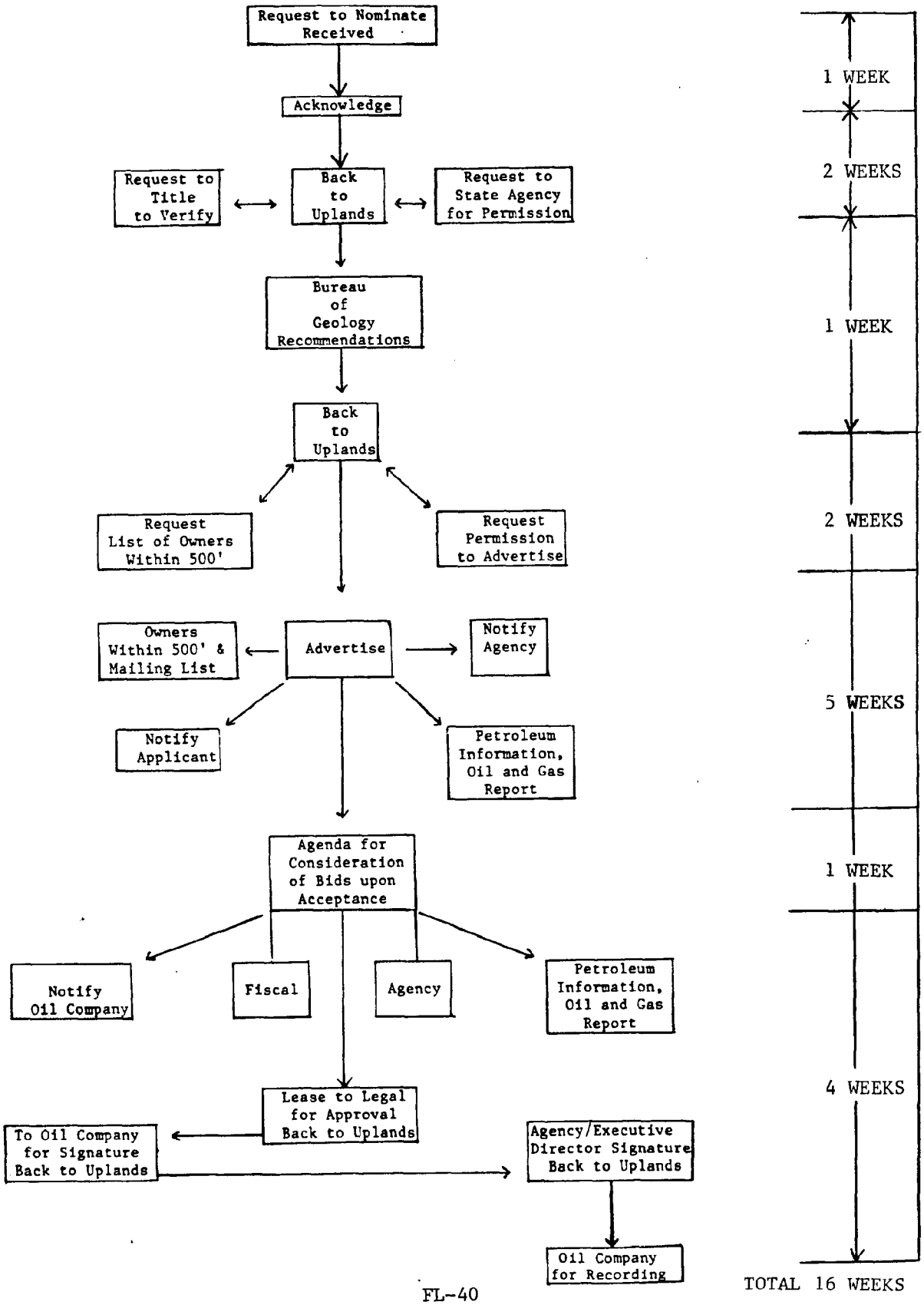
K. Mineral Leasing

Non oil and gas mineral leasing in Florida also is handled by the Bureau of State Lands Management of DNR. At the present time, there are rock mining and sand and gravel leases. A different lease form is used for such leases than for oil and gas and lease sales are held separately.

L. The Socioeconomic and Physical Impact of Oil and Gas Leasing in Florida's Waters

Numerous studies have been performed over the years to assess the impact of offshore oil and gas activities on the coastal regions of the United States. In anticipation of such activities in the eastern Gulf of Mexico,

FIGURE 5
OIL AND GAS LEASE
ADMINISTRATIVE FLOW CHART



the Florida Department of Community Affairs recently has supported studies by seven Florida Regional Planning Councils to determine local and regional effects of oil and gas operations on Florida's coastal zone. Although the impetus for conducting these studies was the potential development in nearby Federal waters, the results will apply equally well in the event that oil and gas exploration and production occurs in state offshore waters.

Because of the voluminous nature of these reports, it is not possible to discuss each in detail. Rather, a special report prepared by T.A. Herbert and Associates, addressing the main issues, is contained in Appendix D, Volume I. Examples of areas covered are local employment, shore side space requirements, dollar impact, transportation, required services, and historical data affecting each of these parameters.

Also contained in Appendix D are the summaries, conclusions, and recommendations of the four Regional Planning Councils facing on or near the Gulf of Mexico. It is recommended that the reader review these summaries for a better understanding of the socioeconomic issues as viewed by local governments.

REFERENCES

Board of Trustees of the Internal Improvement Trust Fund (1981) Conceptual State Lands Management Plan. Prepared by the Bureau of State Lands Management, Department of Natural Resources, Tallahassee, Florida.

Coastal Caribbean Oils and Minerals, Ltd. (1984) 1983 Annual Report. Hamilton Bermuda.

Florida Department of Natural Resources (1982) Rules - Chapter 16Q-21, Sovereignty Submerged Lands Management, Tallahassee, Florida.

Getty Oil Company (1983) East Bay Project Tour Guide. Southern Exploration and Production Division.

NOAA, Office of Coastal Zone Management (OCZM) (1981) The Florida Coastal Management Program Draft Environmental Impact Statement. Prepared jointly with Florida Office of Coastal Zone Management and the Florida Department of Environmental Regulation, Tallahassee, Florida.

Office of the Governor (1982) An Evaluation of the Department of Natural Resources State Lands Management Program. Office of Planning and Budgeting, Tallahassee, Florida.

Parramore, J. (1984) Personal Communication. Florida Department of Revenue, Tallahassee, Florida.

South Florida Regional Planning Council (1983) OCS Facility Siting Study. Hollywood, Florida.

State of Florida (1982a) Oil and Gas Lease. Florida Department of Natural Resources, Tallahassee, Florida.

State of Florida (1982b) Joint Application for Permit, Drill, Fill Structures. U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, Florida Department of Natural Resources. Tallahassee, Florida.

State of Florida (1983) Natural Resources/Recreation Policy Guides Workshop Draft. Office of Planning and Budgeting, Executive Office of the Governor, Tallahassee, Florida.

Tampa Bay Regional Planning Council (1982) Coastal Energy Facilities Siting Study. St. Petersburg, Florida.

U.S. Department of Commerce (1951) Plane Coordinate Projection Tables. Florida Coast and Geodetic Survey, Special Publication No. 255, Washington, D.C.

West Florida Regional Planning Council (1983) Regional Outer Continental Shelf Onshore Facilities Siting Study for West Florida. Pensacola, Florida.

Appendices

APPENDIX A

Oil and Gas Leasing in Florida's Territorial Waters: State Laws

Prepared by
Debra A. Swim
Attorney
Office of the Governor
Tallahassee, Florida

1984

TABLE OF CONTENTS

Page

Introduction.....1

I. Procedures.....2

A. Lease Offering.....2

B. Lease Form.....3

C. Advertisement for Bids.....3

D. Consideration of Bids.....4

E. Reports Required.....6

F. Disposition of Proceeds from Oil and Gas Leasing Activities.....6

II. Standards.....8

A. The Public Interest Standard.....9

B. Sovereignty Lands Management Policies.....13

1. Oil and Gas Leasing Policies.....13

a. Royalties.....13
b. Rentals.....14
c. Payment in Lieu of Royalties.....15
d. Cash Consideration.....16
e. Pooling and Unitization.....16
f. Bonds/Responsibility of Bidder.....17
g. Liability.....17
h. Areas Excluded from Leasing.....18
i. Operations.....20
j. Term of Lease.....24
k. Force Majeure.....27
l. Conflicting Laws.....27

2. General State Lands Management Policy.....28

a. The Sovereignty Lands Management Rule.....29
b. The State Lands Management Plan.....33

Conclusion for Section II.....49

Footnotes for Sections I and II.....51

III. Development of Oil and Gas Resources:
State Laws.....63

Introduction.....63

Chapter 161, Florida Statutes.....64

Chapter 163, Florida Statutes.....64

Chapter 253, Florida Statutes.....65

Chapter 258, Florida Statutes.....66

Chapter 267, Florida Statutes.....67

Chapter 370, Florida Statutes.....68

Chapter 373, Florida Statutes.....69

Chapter 376, Florida Statutes.....69

Chapter 377, Florida Statutes.....71

Chapter 380, Florida Statutes.....72

Chapter 403, Florida Statutes.....75

Footnotes for Section III.....77

IV. The Consistency Provisions of the Coastal
Zone Management Act.....79

V. State Policy Regarding Oil and Gas Leasing
in State Waters and Federal Consistency.....81

VI. Public Access to Proprietary Oil and Gas
Resource Data Held by the State.....82

Footnotes for Sections IV, V, and VI.....84

INTRODUCTION

When Florida became a state in 1845, title to navigable ocean waters,[1] the land beneath them, and the foreshores (that had not been conveyed by previous sovereigns) was vested in the State.[2] These areas are known as sovereignty tidal lands. Title to sovereignty tidal lands is vested in the Trustees of the Internal Improvement Trust Fund[3] (hereinafter the Trustees). The Trustees (also known as the Governor and Cabinet) are a body of seven elected officials: the Governor, the Commissioners of Education, Agriculture, Insurance, the Secretary of State, the Comptroller, and the Attorney General.

Disposal of any interest in sovereignty lands, whether by sale, lease, or otherwise must be by vote of at least five of the seven Trustees.[4] Staff responsibility for sovereignty lands management rests with the Department of Natural Resources (DNR). Within the DNR the land management program is administered by the Bureau of State Lands within the Division of State Lands.[5]

All sovereignty lands management decisions must conform to the public interest standard established by Florida's constitution, statutes and rules. In addition, standards for oil and gas leasing have been adopted. Both the public interest standard and the oil and gas leasing standards are

discussed in Section II. The following section explains the procedural mandates for oil and gas leasing on sovereignty tidal lands as established by statute or rule. Section III will briefly discuss laws which influence post-lease activities. Section IV describes the federal consistency requirements of the Coastal Zone Management Act. Lastly, the impact of Florida's "Sunshine Laws" upon the release of proprietary information in the oil and gas leasing process is discussed in Section V.

I. PROCEDURES

The following discusses six procedural mandates regarding oil and gas leasing established by Chapter 253, F.S., or by rules or policies adopted by the Trustees. More substantive directives are discussed in Section II.

1. <u>The Trustees shall offer oil and gas leases in such parcels as it may designate, whenever, in their opinion, there is demand for such leases.</u>[6]

The Trustees have delegated authority to determine when to offer leases to the Executive Director of the Department of Natural Resources. Department practice is to offer oil and gas leases after application or nomination[7] has been filed. An application or nomination must contain the following:[8]

1) name and address of applicant or nominee,

2) legal description of the parcel sought, including surface acreage; this description

may use the submerged land blocks approved by the Trustees March 17, 1981;[9]

3) identification of the state agency vested with ownership of the petroleum products;

4) percentage of petroleum interest held by the state;

5) identification of any municipality in which all or part of parcel sought is located or within three (or ten[10]) miles thereof;

6) identification of any improved beach[11] outside a municipal corporation or lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach in which all or part of the parcel sought is located or within three miles thereof, and

7) a $200 non-refundable processing fee.[12]

2. <u>The lease form must be prescribed prior to advertising for bids</u>.[13]

Lease terms are discussed in Section III. Certain lease terms are required by statute. Other lease terms are within the Trustee's discretion (guided by applicable provisions of Florida's constitution, statutes, regulations, and policies).

A lease form has been approved by the Trustees. Some terms in this lease form are more appropriate for uplands rather than submerged land leases.[14]

3. <u>Oil and gas leases shall be executed only after notification by publication, and, in some instances, a public hearing</u>.[15]

Notice must be published in a newspaper of general circulation in Leon County or in the vicinity of lands to

be offered[16] no less than once a week for four consecutive weeks. The last publication must be no sooner than five days in advance of sale. Notification must include: the date, time, and place at which bids will be opened and considered;[17] description of the area offered for lease; and a statement indicating the availability of the lease form. Copies of such notice must also be sent by certified or registered mail to each owner of land lying within 500 feet of the land proposed for lease. An example of such notification is included as Attachment A.

If the area proposed for lease is: 1) within three miles of an incorporated municipality, or 2) within three miles of an improved beach,[18] a public hearing must be held. At least one week prior to such hearing notice must be published in a newspaper in the vicinity of the lands to be offered. Copies of such notice must be sent by certified or registered mail to each owner of land lying within 500 feet of the land proposed for lease.

The Trustees may withdraw all or part of land offered if, after public hearing or comments, they consider leasing such lands to be contrary to the public welfare.

4. <u>All leases shall be by sealed bids and competitive bidding</u>.[19]

Applicants shall submit sealed bids by the date and

time specified in the notification.[20] All bids shall include a certified statement as to the bidder's state lease holdings[21] and be accompanied by a cashier's check or certified check. Chapter 253[22] requires the check to be for the amount of cash consideration[23] and be payable to the state agency which holds title to or controls the land offered for lease. Pursuant to Sections 16Q-15.08(2) and 16Q-21.08(3)(b), F.A.C., such check must include the rental payment for the first year's lease, in addition to the cash consideration and be made payable to the Department of Natural Resources. Checks are returned to unsuccessful bidders upon rejection.

The statutory section entitled "Competitive Bidding" provides:

> On the date and at the hour specified in the advertisement of sale the Trustees shall, at a public meeting, open and consider any and all bids previously submitted...and, in the discretion of the Trustees, award the lease to the highest and best bidder...provided, that if, in the judgment of the Trustees, the bids submitted do not represent the fair value of such lease, or leases, or the execution of same is contrary to the public welfare, or the responsibility of the bidder has not been established to its satisfaction,[24] or for <u>any other reason</u>, it may...reject said bids, give notice and call for new or other bids, or withdraw said land from the market. If several distinct...parcels...can be separately considered, then...the board may so consider them, but, if they cannot be so considered, then the rejection for any cause of the highest and best bid shall result in the rejection of all bids.[25] (emphasis added)

No bids have been separately considered to date.[26]

5. Lessees shall submit an annual notarized report.[27]

The Trustees must require an annual status report from all lessees. The report must include the number of holes drilled, the dates, depths and results of drilling operations and a financial report of moneys paid over to the state, if any. The Trustees may require reasonable additional information, as may be necessary, for a better understanding of the operation under lease. However information as to work product, trade secrets, or methods of operation not commonly shared with a leasing agency need not be divulged. Failure to submit the report within ninety days following the anniversary date of the lease may be grounds for revoking the lease.

The lease form approved by the Trustees provides: 1) the State may "examine, for term of lease, including any extensions, plus 3 years,[28] the records pertaining to computation of royalties and to the production, transportation, processing, disposition, sale and marketing of...products produced";[29] and 2) a log of each well drilled must be filed upon completion or abandonment.[30]

6. Proceeds from leasing are deposited in the Internal Improvement Trust Fund. Proceeds from oil and gas severance tax are credited to the Conservation and Recreation Lands Fund and the General Revenue Fund. Proceeds from the excise tax on terminal facility operators are credited to the Coastal Protection Trust Fund.

Proceeds from leasing (royalties, rentals, cash consideration, etc.) are deposited in the Internal Improvement Trust Fund. Moneys from this fund are used for acquisition, management, administration, protection, and conservation of state-owned lands.[31]

Fifty percent of the proceeds from the excise tax on the severance of oil and gas (pursuant to Sections 211.02(1)(a) and (c), F.S.) are credited to the Conservation and Recreation Lands Trust Fund. If the funds credited exceed $20 million for the fiscal year, the excess is transferred to the General Revenue Fund. The major portion of this fund is used to acquire lands for conservation or recreation purposes. Smaller allocations may be made to develop and maintain a natural areas inventory and for management of lands acquired by trust funds.[32]

All proceeds from excise taxes, registration fees, penalties, judgments, and other fees and charges related to Chapter 376, F.S., Pollutant Spill Prevention and Control, are credited to the Coastal Petroleum Trust Fund. Moneys from this fund are used for a variety of purposes, including: 1) abatement of oil spill pollution hazards; 2) cleanup of natural resources damage by discharge of oil spill pollutants (excluding liquified petroleum gases); 3) acquisition of spoil disposal sites; and 4) funding for the Water Quality Assurance Trust Fund (for hazardous

waste management).[33]

II. STANDARDS

All sovereignty lands management policy, whether enacted by the legislature, adopted by the Trustees in a DNR rule, or expressed as a lease term, must conform to the public interest standard set forth in Florida's constitution, statutes, rules, and court decisions. Florida Statutes and rules also establish a variety of policies which influence oil and leasing of sovereignty lands. Section A will discuss the public interest standard. Section B describes specific and general standards regarding oil and gas leasing of sovereignty lands as established by statute, rule or policy.

A. The Public Interest Standard.

All sovereignty lands management decisions must conform to the public interest standard in Article X, Section 11 of Florida's constitution:

> The title to lands under navigable water...is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when <u>in the public interest</u>. Private use of portions of such lands may be authorized by law, but only when <u>not contrary to the public interest</u>. (emphasis added)

The constitution's public interest standard is also found in Chapter 253. The Chapter vests sovereignty lands title in the Trustees[34] and provides:

> All sovereignty lands...shall continue to be held in trust for the use and benefit of the people of the State pursuant to Section 7, Article II,[35] and Section 11, Article X of the State Constitution.[36]

As the above provisions indicate, leases of sovereignty lands must be "not contrary to the public interest." However the Trustees have adopted a more stringent standard for oil and gas leases. Section 16Q-21.04(2)(k), F.A.C. provides that:

> Oil and gas leases on state-owned submerged lands shall be approved only...upon adequate demonstration that the proposed activity is <u>in the public interest,</u>[37] that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation, and national security. (emphasis added)

The rules define the public interest as:

> Demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.[38]

The public interest standard stems from the Public Trust Doctrine.[39] The Doctrine is a legal principle, rooted in Roman law and developed by years of court decisions. The principle provides that "Sovereignty lands are held by the sovereign in trust for the use and benefit of the public." The public trust principle arose because of the history of sovereignty lands ownership. Under Roman law the ocean and the shores were regarded as res communes, common property, incapable of private ownership. Title to such common lands was vested in the sovereign for the use and benefit of the public. As in every trust relationship the trustee owed a high fiduciary responsibility to the beneficiaries of the trust. The sovereign must manage trust properties so as to protect the public interest in such lands.

The pattern of ownership and fiduciary relationship established by the Public Trust Doctrine continue today. Because sovereignty lands were acquired as incident to sovereignty, not by purchase or other means, their management must conform to the public interest standard. The public interest standard is more than an affirmation of the general principle that public lands must be managed to effectuate public purposes. The public purpose standard merely requires the presence of one purpose which

could be characterized as public.[40] The public interest standard involves the higher fiduciary responsibility, established by the Public Trust Doctrine, to protect the public's interest in sovereignty lands. As described by Florida's First District Court of Appeal:

> (The) Trustees are charged with the responsibility of preserving the navigable waters of this state...for the benefit of...all the people of Florida. Theirs is the duty of taking a broad and objective view of all matters under their jurisdiction which might adversely affect the public interest and of reaching their decisions in a manner consistent with the greatest good for the greatest number.[41]

To comply with the public trust standard the trustees must consider and balance a variety of public purposes in accordance with current public needs.

The public interest in sovereignty lands has changed over the years. In the late 19th and early 20th centuries Florida encouraged the filling of sovereignty lands. Submerged lands were given away to encourage immigration and agriculture.[42] Since 1957, as a result of increasing environmental awareness, a permit is required to dredge or fill on sovereignty lands. Environmental impacts are evaluated and satisfactorily mitigated or the permit is denied.[43] Because public needs do change with time the public interest standard is a flexible concept. Historically the courts have emphasized protection of such traditional public uses

of sovereignty lands as navigation, commerce, and recreation.[44] Modern court decisions also protect the public interest in the environmental, social, and economic values of sovereignty lands.[45]

In order to accommodate the changing nature of the public interest determinations, the Trustees are accorded broad discretion in sovereignty lands management decisions. Such decisions are entitled to a "presumption of correctness" by the courts. As stated by the Florida Supreme Court:

> The Trustees of the Internal Improvement Trust Fund are...constitutional officers of the executive branch of government. If we are ever to apply the rule that public officials will be presumed to do their duty, it would...be most appropriate in this instance.[46]

Even if a court thought a management policy unwise, the Trustees' decisions would not be overturned unless it could be termed "arbitrary and capricious" or "a clear abuse of discretion."[47] Research reveals no instance in which a sovereignty lands management policy was reversed for violation of the public interest standard. However, two Supreme Court cases noted in dicta[48] that legislative grants of exclusive rights to propagate and harvest sponges or oysters "without reservation, compensation, or consideration, is not contemplated by the public nature and purposes of the title of the state

to such lands which was conveyed as a sovereign right upon the admission of Florida into the Union."[49]

B. Sovereignty Lands Management Policies

Pursuant to the responsibility to protect the public interest in sovereignty tidal lands a variety of directives relevent to oil and gas leasing have been adopted by rule or statute. The following section discusses directives specifically applicable to oil and gas leasing. Section 2 sets forth general sovereignty lands management policies which may influence oil and gas leasing decisions.

1. Oil and Gas Leasing Standards

The following standards are established by statute or rule. Additional lease terms or policy may be adopted so long as not inconsistent with the public interest standards.

Royalties

Chapter 253, F.S., mandates that royalties never be less than one-eighth of gross production.[50] The DNR rules[51] adopted by the Trustees establish royalties per proximity to production. Royalties are 1/4 in sections less than one mile from production. If there is an intervening dry hole[52] royalties drop to 1/5. Royalties are also 1/5 in

sections between one and three miles from production unless there is an intervening dry hole in which case they drop to 1/4. For sections more than three miles from production royalties are 1/6. If there is doubt as to the location of production because of multiple wells, the higher royalty will apply. A chart Attachment B has been adopted to aid in determination of royalties. The lease approved by the Trustees grants the State the option to receive either 1/6 of the gross production each month or the value of the State's part of gross production (set by the greater of one of four calculations).[53]

Chapter 253, F.S., provides that royalties may be in-kind or in value.[54] The lease provides that the State may opt to have all royalties be made in-kind.[55]

Both Chapter 253, F.S., and the lease require deduction of oil and gas reasonably used for production prior to calculating royalties.[56] The lease also provides that all royalties are "without deduction for taxes or the cost of...making the products produced hereunder ready for sale or use..."[57] Purusant to Section V of the lease, royalties cannot be less than annual rental.

Rentals

Pursuant to Chapter 253, F.S., a definite rental rate must be set prior to advertising for lease.[58] The rental rate must increase annually after the first two

years. No rental is due if lands are "developed for oil and gas" or if a "well has been commenced in good faith to secure production in paying quantities".[59]

The lease establishes an annual rental fee of $3.50 per net mineral acre, increasing $.50 per net mineral acre annually after the second year.[60] No rent is owed for a section: 1) with a drilled well or 2) upon which production in paying quantities has been obtained or 3) upon which drilling or reworking operations have been conducted in good faith within thirty days preceeding the rental due date.[61]

Payment In Lieu Of Royalties

Chapter 253, F.S., authorizes the Trustees to establish payments in lieu of royalties for "shut-in" wells,[62] so long as the shut-in period is no longer than 48 months from date of completion.[63]

The lease provides that a payment equal to double the annual rental but in no event less than $1,200.00 per annum for each "shut-in" well will extend the lease for one year. Such extensions may be obtained under similar circumstances and 3 one year periods. If, however: 1) oil or gas is sold and delivered in paying quantities from a well within 6,500 feet of the "shut-in" premises and completed in the same producing reservoir, or 2) drainage is occurring, then the right to further extend

the lease by payment in lieu of royalty ceases. In such instance the lease will remain effective until the end of any one-year period for which the "shut-in" royalty has been paid and may be extended by payment of a compensatory royalty. Such extension shall not exceed four years from expiration of the primary term.[64]

Cash Consideration

Chapter 253, F.S., provides that a cash consideration, in addition to rental and royalty, must be required, said consideration being the bid.[65] The lease provides that the cash consideration received from the bid is the lease consideration, and shall not be allocated as a rental for the period.[66]

Pooling and Unitization

Chapter 253, F.S., authorizes the Trustees to provide for pooling or unitizing the leased premises.[67] The lease gives the lessee the right to pool or combine the acreage covered by the lease or any parts thereof, whether State, Federal, or privately owned land, when reasonably necessary to conform with drilling units established by the Department of Natural Resources or to conform to any unitization or integration order issued by the Department.[68]

Bonds/Responsibility of Bidder

Chapter 253, F.S., directs the Trustees to establish, to their satisfaction, the responsibility of the bidder.[69] Both Chapter 253, F.S., and the lease require a surety or property bond prior to conducting any drilling. The surety bond must be from a company authorized to do business in Florida.[70] The lease requires a surety bond from a Florida company but does not mention a property bond.[71] In setting the bond the Trustees must consider the extent of possible damages,[72] with special attention to operations in waters of the State.

Liability

Section 14 of the lease provides that the lessee is liable for land or water pollution and damage to wildlife or property resulting from operations. Absolute liability does not apply if pollution or damage is a result of an act of war, government, God,[73] or a disinterested third party.[74]

The lease also provides that the lessee will "investigate...and hold and save harmless...the State...from any and all claims, actions, law suits and demands of any kind or nature arising out of this lease."[75]

Areas Excluded From Leasing

The following areas may not be leased unless stated conditions, if any, are met:

- Section 253.61, F.S., prohibits the issuance of oil and gas leases, without a resolution of consent from the appropriate municipality, in the following areas:

  1) within the limits of an incorporated municipality;

  2) on areas within the tidal waters of the state which are:

     - abutting or immediately adjacent to the corporate limits of a municipality;

     - abutting or immediately adjacent to any improved beach;[76] or

     - within 3 miles (extending from Mean High Tide Line) of a municipality, or an improved beach.[77]

  3) on an improved beach outside an incorporated municipality.[78]

- Section 253.47, F.S., prohibits conveyance of the right to "drill...or...place permanent or stationary obstruction...within 1/4 of one mile of the lands of any up-land owner, without first having the written consent of such up-land owner."

- The sovereignty lands management rule adopted by the Trustees prohibits oil and gas leasing in areas less than "one mile seaward of the outer coastline as

defined in United States v. Florida, 425 U.S. 791 (1840)[79] ...unless the lease stipulates that any drilling will be conducted from outside said area."[80]

- No lease may be issued without approval of state agency holding title.[81]

- No "mineral"[82] lease may be issued "on hard-surfaced beaches that are used for bathing or driving and areas contiguous thereto out to a mean low-water depth of 3 feet..."[83]

It is important to note that, pursuant to post-lease permitting or regulatory requirements[84] lessee activities may be further prohibited or conditioned. Specific drilling restrictions include:

- No drilling of oil or gas wells is allowed within areas designated as Aquatic Preserves. Leases which permit drilling from outside the preserve may be executed.[85]

- No oil and gas drilling structure may be constructed within one mile of the seaward boundary of any state, local, or federal park, or aquatic or wild-life preserve.[86]

- No drilling structure may be constructed on the surface of a freshwater lake, river or stream, or a bay or estuary.[87]

Operations

Section 253.45(2) F.S., requires leases for "phosphate, earth or clay, sand, gravel, shell, mineral,[88] metal, timber or water, or any other substance similar the foregoing..." to "specify...in clear and precise terms, the particular minerals for which the lessee is permitted to drill or mine and the manner in which same may be extracted." The lease grants exclusive rights to: investigate, explore, prospect and drill for discovery and production of "oil, gas, sulphur, carbon black, carbon dioxide, other liquid hydrocarbons, salt and/or brines and any other miscellaneous constituent products produced."[89]

The following statutory and lease provisions relate to drilling operations:

- All drilling must be conducted" in an efficient, dilligent, and workmanlike manner, and in accordance with the best practice, to a depth of six thousand[90] feet before the abandonment thereof, unless oil or gas has been found in paying quantities at a lesser depth."[91]

- Test well operations[92] must be conducted "in good faith...to discover and...develop...land for the production of oil and gas, until such well is completed or abandoned."[93]

- Seismic shot holes must be drilled sufficiently deep to prevent undue surface cratering and consequent damage to surrounding vegetation and wildlife.[94]

- If production in paying quantities is brought in on adjacent land draining the leased premises, the lessee must drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances at such locations required by the spacing regulations adopted by DNR.[95]

- A log of each well drilled shall be filed with the Oil and Gas Administrator within 30 days of completion or abandonment.[96]

- A plan for site security of each producing well must be filed for DNR's approval within 10 days of production.[97] Lessee must report to the DNR any breaches of site security within 48 hours of its discovery.[98]

- The lessee must report all spills or leakage of petroleum products, or other waste material to the DNR. Any such spill leakage which cannot be immediately controlled must be reported immediately to appropriate state and federal agencies.[99]

- The lessee must provide seals and locks for all oil access points on the leased premises.[100]

- The lessee must provide, to all product trans-

porters, a run ticket and/or bill of lading which shows quantities, the shipper and the cosignee.[101]

Other operational lease or statutory provisions include:

- The lessee shall not allow any extraneous matter to enter or damage any mineral or freshwater bearing formation.[102]

- The lease must convey rights of ingress and egress to, from, and over the leased area.[103] However the right to enter upon private property without the owner's previous consent may not be conveyed.[104]

- Chapter 253 requires the lease to convey "the right to construct and maintain on and over (the leased property) in such manner as not to obstruct transportation, any structures, tanks, docks, stations and other equipment, as may be required for the proper development of such leases and the purposes for which same are made."[105] The lease authorizes the lessee to lay pipelines, build roads, tanks, power lines and power stations, communications equipment and other structures and equipment necessary to produce, save, take care of, treat, transport and own the lease products.[106]

- If the lease is for more than 640 acres, the lessee may house "employees engaged in operations for

drilling and/or production and handling" on the premises.[107]

- Geophysical exploration is authorized after notice to the DNR and mitigation of impacts on endangered species of vegetation or wildlife. The lessee must take all reasonable precautions to prevent the starting of fires in areas of geophysical operations.[108]

- The lessee must, "in a timely manner" file "a schematic of approved pipe layouts, including all oil access points, from the actual well-head to the field plant and/or tank," with the DNR.[109] The State may require the lessee to "bury all pipelines four feet below the surface.[110]

- The lessee must file a notarized status report in accordance with Section 253.511, F.S .[111]

- The State is authorized to examine records pertaining to the computation of royalties and to the production, transportation, disposition, sale and marketing of lease products for the lease term including extensions plus 3 years.[112] The lessee must maintain such records for this same period and, upon the State's request for royalty purposes, for 2 additional years.

- The State is authorized to check meter, gauges, and measuring devices used by lessee and to require certificates of calibration accuracy.[113]

- The lessee has the right to remove equipment within a reasonable time after expiration of the lease.[114]

- The lessee must restore the property to its former condition as far as practicable upon the conclusion of drilling or other operations.[115]

Term of Lease

Section 253.55, F.S., and the State Lands Management Plan provide that the primary lease term is not to exceed 10 years. The lease establishes a primary term of 5 years.[116] The lease remains in effect for the primary term and as long thereafter as: 1) operations are being carried on in good faith, in a workmanlike and diligent manner, with no cessation of more than 30 consecutive days or, 2) lease products are being produced in paying quantities.[117]

If production is obtained and then ceases within the primary term, the lease will remain in force if: 1) rentals are paid, or 2) operations for drilling or reworking are commenced on or before the rental payment date next ensuing sixty days after cessation of production.[118] If productions ceases after the primary term, the lease remains in force if: 1) operations for drilling or reworking are commenced on or before sixty days after cessation of production, and 2) such operations are con-

ducted with no cessation of more than thirty consecutive days, and 3) production is achieved within a reasonable time. In such instance the lease remains in effect so long as there is production in paying quantities.[119]

If production is not obtained the lease will remain in force after the primary term if: 1) drilling operations are underway but production has not been obtained, and 2) lessee files a written application for extension, accompanied by a payment of $5 per acre before expiration of the primary term. In such instance the lease will be extended for a thirty day period and so long thereafter as production in paying quantities continues. If such production does not occur the lease may (if the above conditions are met) be extended for additional thirty day periods up to a total of 390 days.[120]

The lease or portions thereof, is void if test wells described below are not drilled. Operations for drilling must be commenced and completed so that: 1) at least one test well is drilled within the first 2 1/2 years of the primary term, and 2) at least one additional test well is drilled in each succeeding year period of the term until the total number of wells drilled is equal to half the number of sections embraced in the lease. The lessee must file a

written declaration at time of drilling describing the two sections of land to which such well shall apply.[121]

The lease is subject to forfeiture if the lessee:

- fails or refuses to pay rental or royalty due;
- knowingly makes a false report concerning productions, royalty or drilling;
- fails or refuses to drill any offset well as required by law;
- knowingly violates any material provision of the lease...such provisions would include, but are not limited to the following:
  - the lesses must, at all times[122] be either: 1) conducting drilling or reworking operations without cessation of more than 30 days or, 2) producing lease products in paying quantities;[123]
  - the status report required by Section 253.511, F.S., and Section 18(D) of the lease must be filed annually;
  - the requirements of State, federal, and local must be met,[124] and
  - the lessee must correct site security deficiency after written notice thereof;[125]
- refuses the proper authority access to records pertaining to operations under the lease; or
- fails or refuses to furnish the log of any well as provided herein; and

lessee fails to take reasonable action to remedy any such default within 30 days after written notice from lessor.[126]

Force Majeure

If, despite good faith effort, lessee cannot comply with any lease term, due to "war, rebellion, riots, strikes, act of God including but not limited to storms, floods, washouts, landslides, and lightening or any laws, acts, orders, rules regulations or demands of governmental authority", then: 1) lessee's obligation to comply with such covenant is suspended; 2) lessee will not be liable for damages for failure to comply with such covenant, and; 3) the lease will be extended for as long as the lessee cannot, despite reasonable diligence, conduct drilling, reworking, or production operations. Rental payments for the primary or extended term are not suspended.[127]

Conflicting Laws

Section 253.60, F.S., provides that:

> The development of the lands leased by the Trustees for the production of gas therefrom shall be in accord with the laws of Florida relating to conservation and control and, if herein is found any conflict with those laws, such laws relating to conservation and control shall prevail.

The lease provides that:

- Should there by any conflict in any of the provisions of this lease with the law governing the issuance and operation of leases on the area herein described...the provision of such law shall be written into this lease and shall control,[128]

- all (lease) terms...expressed or implied...shall be subject to all Federal and State laws, exective orders, rules, or regulations, in force at this time or which may be promulgated, enacted and enforced in the future,[129]

- the lessee shall comply with all current and future statutes, rules and regulations of the United States Government, its agencies and the State of Florida, its agencies and political subdivisions.[130]

The lease grants the exclusive right to apply for permits to conduct exploration, development, or production activites, but cannot assure that such permits will be granted. Permitting may be difficult if such activities impact areas or resources designated for special protection under state or federal laws.[131] Any revisions to the state laws regulating leasing of sovereignty tidal lands should ensure that restrictions on post-lease activities are, to the maximum extent practicable, established prior to lease execution.

2. General State Lands Management Policies

Pursuant to statutory authority[132] and their responsibility to protect the public's interest in sovereignty lands, the Trustees have established sovereignty lands management policies. These policies are contained in the Sovereignty Lands Management Rule[133] and the State Lands Management Plan.[134] The following lists policies from these documents which relate to oil and gas leasing

activities on sovereignty tidal lands. These policies should form the basis for decisions as to which areas to offer for lease, or what stipulations to include in the lease. Some policies on the list may be more appropriate for post-lease permitting decisions.

2. The Sovereignty Submerged Lands Management Rule.[135]

The Sovereignty Lands Management Rule was first adopted by the Trustees in March, 1982. The purposes and the Management Policies, Standards and Criteria established by the rule are stated as follows.

The intent and purpose of the Sovereignty Lands Management Rule is:

> 1) to aid in fulfilling the trust and fiduciary responsibilities of the... Trustees...for the administration, management, and disposition of sovereignty lands;
>
> 2) to insure maximum benefit and use of sovereignty lands for all Florida citizens;
>
> 3) to manage, protect and enhance sovereignty lands so that the public may continue to enjoy traditional uses, including but not limited to navigation, swimming, and fishing;
>
> 4) to manage and provide maximum protection for all sovereignty lands, especially those important to public drinking water supply, shellfish harvesting, public recreation, fish and wildlife propagation & management;

5) to ensure that all public and private activities on sovereignty lands which generate revenues or exclude traditional public uses provide just compensation for such privileges; and

6) to aid in the implementation of the State Lands Management Plan.[136]

The rule establishes two catagories of management policies, standards, and criteria which are to be used to determine "whether to approve, approve with conditions or modifications, or deny, all requests for activities on sovereignty lands."[137] These catagories are "general proprietary" and "resource management".

General proprietary standards[138] are stated as follows:

- "For approval, all activities on sovereignty lands must be not contrary to the public interest, except for sales which must be in the public interest.

- All leases, easements, deeds or other forms of approval for sovereignty land activities shall contain such terms, conditions, or restrictions as deemed necessary to protect and manage sovereignty lands.

- Equitable compensation shall be required for leases and easements which generate revenues, monies or profits for the user or that limit or preempt general public use. Public utilities and state or other governmental agencies exempted by law shall be excepted from this requirement.

- Activities on sovereignty lands shall be limited to water dependent activities[139] only unless the board determines that it is in the public interest to allow an exception as determined by a case by case evaluation.

- Stilt houses, boathouses with living quarters, or other such residential structures shall be prohibited on sovereignty lands.

- The State Lands Management Plan shall be considered and utilized in developing recommendations for all activities on sovereignty lands."

Resource Management Policies[140] are stated as follows:

- "All sovereignty lands shall be considered single use lands and shall be managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses such as fishing, boating, and swimming.[141] Compatible secondary purposes and uses which will not detract from or interfere with the primary purpose may be allowed.

- Activities which would result in significant adverse impacts to sovereignty lands and associated resources shall not be approved unless there is no reasonable alternative and adequate mitigation is proposed.

- The Department of Environmental Regulation biological assessments and reports by other agencies with related statutory, management, or regulatory authority

may be considered in evaluating specific requests to use sovereignty lands. Any such reports sent to the department in a timely manner shall be considered.

- Activities shall be designed to minimize or eliminate any cutting, removal, or destruction of wetland vegetation (as listed in Section 17-4.02(17), Florida Administrative Code) on sovereignty lands.

- Severance of materials from sovereignty lands shall be approved only if the proposed dredging is the minimum amount necessary to accomplish the stated purpose and is designed to minimize the need for maintenance dredging.

- Severance of materials for the primary purpose of providing upland fill shall not be approved unless no other reasonable source of materials is available or the activity is determined to be in the public interest.

- Activities on sovereignty lands shall be designed to minimize or eliminate adverse impact on fish and wildlife habitat. Special attention and consideration shall be given to endangered and threatened species habitat.

- Oil and gas drilling leases on state-owned submerged lands shall be approved only when the proposed lease area is at least one mile seaward of the outer coast-

line of Florida as defined in United States v. Florida, 425 U.S. 791 (1840), upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation, and national security. Drilling leases may be issued in the prohibited area if said lease stipulates that any drilling shall be conducted from outside said area."

The State Lands Management Plan.

Section 253.03(7), F.S., directs the Trustees to create "an overall and comprehensive plan of development concerning the acquisition, management and disposition of state-owned lands so as to insure maximum benefit and use." The Trustees adopted the State Lands Management Plan, pursuant to this statutory mandate, in March, 1981. The Plan establishes a comprehensive set of goals, objectives and policies which govern all lands owned by the State. A selected listing of those Plan segments relevant to development of a program for oil and gas leasing follows.

Goals and objectives established by the plan include:

- "Achieve full proprietary responsibility for the management of lands vested in the...Trustees."

In order to assure "maximum benefit and use" state lands "should be managed with recognition that land is a resource, not a commodity (and) treated with equal or greater proprietary respect than that usually afforded to privately owned lands."[142]

- "Achieve internal program consistency in the management of state lands."[143]

- "Develop a state lands management program that provides a parcel-specific determination of "maximum benefit and use."[144]

Maximum benefit and use is interpreted to mean "balanced public utilization". The term "balanced public utilization implies that parcel-specific management decisions are predicted upon a broad array of factors, including environmental constraints, economics, recreation, sociological and aesthetics."[145]

- "Use a planning process that allows for input from affected state agencies, local government, and the general public."[146]

The Plan also establishes "Resource Element" and "Program Element" policies. These policies are intended to "form the framework into which will be inserted more detailed parcel specific policies."[147] Resource Element

policies include the following:

Archaeological and Historical Resources

- "Coordinate all proposals for changes in...the use of state lands, with the Division of Archives, History and Records Management, in order to mitigate potential damage or disturbance of, or to preserve, archaeological and historical sites and properties.

- Encourage the systematic location and evaluation of all significant archaeological and historical sites on state lands.

- Prohibit the disturbance of archaeological and historical sites on state lands, unless prior authorization has been obtained from the Division of Archives, History and Records Management."[148]

Water Resources (Quality and Quantity)

- "Coordinate state lands...planning and management with water management programs to insure the long-range maintenance and improvement of water quality and quantity.
- Manage state lands in a manner that provides maximum protection for the waters of the State, especially those used for public drinking water supply, shellfish

harvesting, public recreation, and fish and wildlife propagation and management.

- Require, at a minimum, that management activities on state lands comply with State water quality standards and classifications and their intent."[149]

Fish and Wildlife Resources

- "Where significant fish and wildlife habitat exists, encourage those management activities which maintain a natural diversity of habitats and a balanced fish and wildlife population.
- Coordinate proposed management activities potentially affecting significant tracts of fish and wildlife habitat with the Game and Fresh Water Fish Commission.
- Encourage the public use, either consumptive or non-consumptive, of the fish and wildlife resources on state lands where compatible with management goals."

Endangered Species

- "Provide for the continued protection of threatened and endangered species habitat on state lands.
- Encourage the location, identification, and protection of presently unknown areas of threatened and endangered species habitat located on state lands.
- To minimize adverse effects, coordinate proposed

management activities involving endangered plants and animals with the Division of Forestry and Plant Industry, Florida Department of Agriculture and Consumer Services and the Game and Fresh Water Fish Commission.

- Encourage the re-establishment and restoration of endangered species and habitat."[150]

Beaches and Dunes

- "Encourage management activities that will ensure continued protection of the physical and environmental integrity of state owned beaches and dunes.
- Encourage the non-structural use of state owned beaches and dunes for purposes of public recreation."[151]

Natural Hazard Areas

"Examples of natural hazard areas include river flood plains, the 100 year hurricane flood zone, barrier islands, and areas with active sinkhole potential." Policies include:

- "Control the use and construction of public buildings and other structures within state-owned natural hazard areas to insure both structural integrity, resource protection, and public safety.
- Encourage the utilization of natural hazard areas for non-structural purposes (e.g. timber production,

recreation)."[152]

Submerged Grass Beds

- "Encourage the location and evaluation of submerged grass beds in state ownership.
- Control the use of submerged lands to maintain essentially natural conditions and protect the values and functions of submerged grass beds.
- Prohibit development activities that adversely impact significant beds of submerged grasses, unless determined to be of overriding public importance with no reasonable alternatives, and adequate mitigation measures are included."[153]

Swamps Marshes and Other Wetlands

- "Require management activities on state-owned lands to protect wetlands and to maintain essentially natural conditions.
- Encourage the re-establishment of previously modified wetlands in state ownership, where practical.
- Prohibit the draining of wetlands on state-owned lands for agricultural, forestry, and other purposes.
- Discourage the removal of natural shoreline vegetation."[154]

Mineral Resources, Including Oil and Gas

- "Encourage detailed inventories and evaluation of state-owned mineral resources.
- Control management activities on state-owned land that would preclude or seriously impair the ability to extract significant mineral resources.
- Allow extraction of state-owned mineral resources in environmentally sensitive areas only upon demonstration that the extraction is of overriding public importance, that all reasonable steps will be taken to minimize adverse environmental impacts, and that there are no reasonable alternatives.
- Discourage all future releases of state-owned mineral reservations, excepting right-of-entry and exploration.
- Require that all state-owned lands subjected to mining be reclaimed or restored and left in such condition so as to maximize future public uses and values."[155]

Unique Natural Features

"This is a generalized resource category designed to accommodate certain natural areas and features. The primary public significance of these features is that they are uncommon in Florida. Unique natural features include such things as coral reefs, scenic vistas, exceptional

vegetation and habitat areas, scenic natural rivers, coquina outcrops and bird rookeries." Policies include:

- Encourage the location and evaluation of unique natural features on state-owned lands.
- Require management activities on state-owned lands to avoid adverse impacts on unique natural features.
- Encourage public utilization of unique natural areas consistent with the protection of the natural values and functions.
- Protect, maintain and, where necessary, restore unique natural features on state-owned lands."[156]

Outstanding Native Florida Landscapes

"Outstanding native Florida landscapes contain relatively unaltered flora, fauna, and geologic conditions, and preservation from the adverse influences of human activity will permit the biophysical systems to function and interact naturally. During the management evaluation process, state lands would be analyzed to identify those areas which 1) contain outstanding, or the only remaining, examples of Florida landscapes and 2) are of a size and configuration that allow natural processes to be the dominant management tools. Ideally, it should be possible to buffer them from intensive land use areas." Specific

policies are to:

- "Preserve examples of natural ecosystems on state-owned land.
- Preserve the full range of genetic diversity in native plant and animal populations.
- Encourage collection of baseline data on natural ecosystems which will aid in detecting environmental changes that result from human activity.
- Provide research and educational opportunities for scientists and advanced students within the framework of a planned research program on applicable state-owned land.
- Recognizing that little of Florida can be considered pristine, outstanding native Florida landscapes must be areas where natural systems predominate or where restoration of the native systems is economically and ecologically feasible."[157]

Program Element policies relevent to oil and gas leasing include:

Sale or Release of Reserved Title Interest (Minerals)

- "Encourage public recognition of the fact that reserved title interests in real property represent commodities of value.
- Discourage future releases or subordination of reserved title interests held by the Trustees, unless de-

termined to be not contrary to the public interest and in exchange for just compensation.

- Encourage the inclusion of reserved title interests (i.e. reserved mineral interests) in the state lands management program, and subject these reserved interests to the same management criteria applicable to state-owned lands, consistent with the degree of state title control."[158]

Management Agreements and Leases

- "Prohibit the issuance of 99-year or other long-term leases on state-owned lands, unless a specific need can be demonstrated for such duration.
- Limit the duration of leases, agreements or other instruments authorizing the use of state-owned lands to a period that is not greater than is necessary to provide for the reasonable use of the land for the existing or planned life cycle or ammortization of the improvements.
- Require thorough management evaluations of all state-owned lands that are subject to lease requests, prior to issuance of leases or other similar instruments.
- Encourage the use of management agreements in lieu of leases, whenever practical.
- Require the inclusion of specific management requirements and responsibilities in each management agree-

ment, lease or similar instrument issued by the Trustees.

- Actively pursue the termination of all outstanding leases that do not conform to the original management objectives contained in these leases.
- Prohibit the lessee of state-owned lands from issuing subleases, easements, assignments, and other instruments affecting condition of title, without prior approval of the Trustees.
- Ensure that all financial, structural and other liabilities accruing to a parcel of state-owned land during the lease period become the sole responsibility of the lessee, unless it is determined that said liabilities are unrelated to the actions of the lessee.
- Encourage the identification and marking of boundaries of all upland parcels of state-owned lands to allow orderly and effective management."[159]

Submerged Land Leases

- "All submerged lands shall be considered single-use lands and shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife and public recreation, including hunting and fishing where deemed appropriate by the managing agency.

- Require that all proposed private or public uses of state-owned submerged land for profit be subject to Trustee action, and that just compensation be paid in return for this exclusionary privilege, using economic principles such as percentages of the assessed unimproved upland property value.
- Require management consistency evaluations prior to Board action on any state-owned submerged land lease.
- Discourage, to the extent practicable, all private, exclusionary uses of state-onwed submerged lands.
- Issue oil, gas, and other petroleum drilling leases on state-owned submerged lands only when the proposed lease area is at least one mile seaward of the outer coastline of Florida as defined in United States v. Florida, 425 U.S. 791, 48 L. Ed. 2d 388, 96 S. Ct. (1840), upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation and national security.
- Maintain an inventory of all state-owned submerged land title encumbrances.

- Require that the use of state-owned submerged lands be restricted to water-dependent activities, unless the Board specifically determines that a greater public purpose would be served by allowing expections to the contrary, as determined by a case-by-case evaluation.
- Require that specific management consideration be given to the use of state-owned submerged lands within aquatic preserves, as defined by Chapter 258, Florida Statutes.
- Ensure that all activities on state-owned submerged lands avoid adverse impacts upon other authorized uses of submerged lands.
- Develop a uniform system of subdividing the state-owned submerged lands into easily described parcels to allow the development of an inventory and provide for the management of such activities as offshore oil and gas leasing.[160]

Leasing of the State's Mineral Interest

- "Encourage the timely development of accurate mineral resource inventories and evaluations for all state-owned lands.
- Encourage the establishment of an exploration lease program, covering all minerals, that will assist the

Board in assessing future management directions and needs.

- Consider the active exploitation of mineral resources on state-owned lands when determined to be consistent with market economics, projected mineral reserve requirements, present and projected public land use needs, environmental acceptability, and other public interest factors.
- Encourage public recognition that state-owned mineral interests and resources are commodities of value, and should be managed accordingly.
- Discourage extensive, permanent structural development on state-owned lands possessing known commercial mineral potential so as not to unnecessarily preempt recovery and utilization of the mineral resource."[161]

Aquatic Preserves

- "No sale, lease or transfer of state-owned submerged lands within aquatic preserves shall be approved unless it is in the public interest.
- There shall be no drilling of gas or oil wells within any aquatic preserve.
- There shall be no dredging of state-owned lands within aquatic preserves for the purpose of providing upland fill.

- There shall be no dredging or filling of submerged lands within aquatic preserves except minimum dredging and spoiling as may be necessary for the following activities:
  - i) public navigation projects;
  - ii) maintenance of existing navigation channels;
  - iii) creation and maintenance of marinas, piers, docks and their attendant navigation channels;
  - iv) public utility installation or expansion;
  - v) installation and maintenance of fuel transportation facilities, and
  - vi) alterations necessary to enhance the quality or utility of the preserve or the public health generally.
- No structures shall be erected within a preserve except:
  - a) private docks for reasonable ingress and egress of riparian owners;
  - b) commercial docking facilities shown to be not contrary to the use or management criteria of the preserve, and
  - c) shore protection structures, approved navigational aides, or public utility crossings for which dredging and filling is authorized.
- No wastes or effluents which substantially inhibit the

accomplishment of the purposes of the Aquatic Preserve Acts shall be discharged into an aquatic preserve.

- Management of human activities within aquatic preserves will not unreasonably interfere with traditional public uses such as fishing, boating and swimming.
- Management of aquatic preserves shall not infringe upon the traditional rights of riparian land owners within or adjacent to an aquatic preserve.
- Other uses of an aquatic preserve may only be approved subsequent to a formal finding of compatability with the purpose of the Aquatic Preserve Acts and rules, and of the type designation of the preserve in question."[162]

Compensation for the Use of State-Owned Lands

- "The Board shall require equitable compensation when the use of state-owned lands by private or public entities, except for state agencies exempted by law, generates revenue or profits for the user, or general public use is limited or preempted.
- To the extent practical, the Board should use principles of private enterprise in establishing fee schedules or other methods for ensuring just compensation.
- The Board shall require a reasonable return for any pri-

vate use authorized by lease, easement or other use agreement. The structure for the formula for assuring a reasonable return may vary depending on circumstances and may include a flat fee per time unit, per area of quantity unit, a percentage of the assessed upland property value, a royalty fee or some other form of compensation or combination thereof.

- The Board shall require the periodic reassessment of the terms and conditions of all leases, easements and use agreements that exceed one year to insure a continued equitable rate of compensation."[163]

CONCLUSION

Title to navigable ocean waters, the land beneath them, and the foreshores, is held in trust by the Trustees of the Internal Improvement Trust Fund for the benefit of the public. These areas are known as sovereignty tidal lands.

Decisions such as which offshore areas to offer for lease, and which terms or stipulations to include in the lease must be "not contrary to the public interest".[164] The public interest standard is more than an affirmation of the general principle that public lands must be used for a public purpose. The public interest standard involves

the higher fiduciary responsibility, established by the Public Trust Doctrine, to protect the public's interest in sovereignty lands. To meet the public interest standard, the Trustees must consider and balance a variety of environmental, economic, and social factors in accordance with changing public needs. So long as the Trustees have considered and balanced relevant factors, their public interest determination is accorded broad discretion by the courts.

In accordance with the public interest standard, procedures and standards for leasing sovereignty lands have been established by the Legislature or the Trustees. Six procedural mandates are listed in Section I. More substantive directives are discussed in Section II. Those substantive directives specifically applicable to oil and gas leasing are discussed in Subsection B. General sovereignty lands management directives relevant to offshore oil and gas leasing activities are listed in Subsection C. These policies should form the basis for a program for oil and gas leasing in Florida's territorial waters.

FOOTNOTES FOR SECTIONS I AND II

[1] Florida has a seaward boundary of three marine leagues, or approximately 10.35 statute miles in the Gulf and three nautical miles in the Atlantic, United States v. Louisiana, Texas, Mississippi, Alabama, and Florida, 364 U.S. 502 (1960).

[2] Martin v. Busch, 112 So 274 (Fla. 1927).

[3] Sections 253.001 and 253.112, F.S.

[4] Section 253.02(2), F.S.

[5] Section 253.002, F.S.

[6] Section 253.52, F.S.

[7] A nomination is "a proposal for an oil and gas lease," Section 16Q-21.03(23), F.A.C.

[8] Sections 16Q-15.08 and 16Q-21.08, F.A.C.

[9] The reference to submerged land blocks is contained in Section 16Q-21.08, F.A.C. but not in Section 15Q-15.08, F.A.C.

[10] Section 16Q-15.08, F.A.C. states three miles, Section 16Q-21.08, F.A.C. states ten miles.

[11] An "improved beach outside a municipal corporation" is "any beach adjacent to or abutting tidal waters of the state having not less than 10 hotels, apartment buildings, residences, or other structures for residential purposes on or to any given miles of beach," Sections 253.61(2) and 377.24(8), F.S.

[12] A fee is required by Section 21.08(3), F.A.C., but not by Section 15.08, F.A.C.

13
Section 253.52, F.S.

14
Interview with Tom Herbert, consultant for Getty Oil, Inc., December 1, 1983.

15
Sections 253.115 and 253.52, F.S.

16
Current practice is to publish notice in the Tallahassee Democrat. Interview with Pat White, Operations Section, Bureau of State Lands Management, Division of State Lands, Department of Natural Resources, December 2, 1983.

17
Current practice is to schedule consideration of bids at a meeting of the Governor and Cabinet.

18
An improved beach is "any beach...having not less than 10 hotels, apartment buildings, residences, or other structures for residential purposes on or to any given miles of beach," Sections 253.61(2), and 377.24(8), F.S.

19
Sections 253.45, 253.53, and 253.54, F.S.; Sections 16Q-15.08 and 16Q-21.08, F.A.C.

20
No bid submitted subsequent to specified time will be considered, Section 253.53, F.S.

21
Section 253.512, F.S. and Sections 16Q-15.08 and 16Q-21.08, F.A.C.

22
Section 253.53, F.S.

23
Cash consideration is the amount offered in addition to fixed charges (i.e., royalties, rentals) established in the lease form.

24
The Trustees shall establish the responsibility of the bidder to their satisfaction prior to accepting any bid or assignment, Section 253.56, F.S.

25
Section, 253.54, F.S.

26
Interview with Pat White, Operations Section, Bureau of State Lands Management, Division of State Lands, Department of Natural Resources, December 2, 1983.

27
Section 253.511, F.S.; Lease, Section 18(D).

28
Section 7(C) of the lease provides that lessees obligation to keep such records is extended for two years (after the additional three year extension) upon lessor's request for examination of records for royalty purposes.

29
A partial listing of specific records which the Trustees are authorized to examine is included in Section 7(A) of the lease.

30
Lease, Section 12.

31
Section 253.001, F.S. But see Section 253.45, F.S. which provides that proceeds from mineral leasing on state lands are to be credited to the agency which has title or control of the land involved. See also, footnote 88.

32
Section 253.023, F.S.

33
Sections 376.11, 376.32, and 376.60, F.S.

34
Sections 253.001 and 253.112, F.S.

35
Article II, Section 7 of Florida's Constitution provides that: "It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise."

36
Section 253.001, F.S.; See also, Section 16Q-21.04(1)(a), F.A.C.

37
Leases in Aquatic Preserves must also be "in the public interest", Section 258.42(1), F.S.

38
Section 16Q-21.03(26), F.A.C.

39
As stated by the Supreme Court of Florida: "When the (public interest standard) was adopted as part of the 1968 constitution, it gave constitutional dimensions to the common law doctrine applicable in the state that the bed of navigable waters are held in trust for the people," Weller v. Askew, 363 So. 2d 1091, at 1094 (Fla. 1978) citing Broward v. Maybry, 58 Fla. 398 (1909).

40
The public purpose standard may be at issue when government grants urban development bonds to a private entity.

41
Yonge v. Askew, 293 So. 2d 395, at 400 (1st DCA 1974).

42
The Riparian Act of 1856, The Butler Act of 1921.

43
Section 253.123, F.S. See also, Yonge v. Askew, 293 So. 2d 395 (1st DCA 1974), and Farrigia v. Frederick, 344 So. 2d 921 (1st DCA 1977).

44
See e.g., Martin v. Waddel, 41 U.S. 367 (1842); Illinois Central Railroad v. Illinois, 146 U.S. 389 (1892); Shively v. Bovley, 152 U.S. 1 (1894), State v. Black River Phosphate Co., 13 So. 2d 640 Fla.(1893).

45
See, e.g. Perky Properties v. Felton, 151 So. 892 (Fla. 1934); Yonge v. Askew, 293 So. 2d 395 (1st DCA 1974); Farrugia v. Frederick, 344 So. 2d 921 (1st DCA 1977); Weller v. Askew, 363 So. 2d 1091 (Fla. 1978).

46
Hayes v. Bowman, 91 So. 2d 795, at 802 (Fla. 1957); quoted in Yonge v. Askew, supra, at 401. Accord, Farrugia v. Frederick, supra, at 923.

47
Hayes v. Bowman, supra, at 802; Yonge v. Askew, supra, at 401.

48
Dicta are expressions in court opinions which are not necessary to support the decision and thus do not represent binding precedent.

49
Perky Properties, Inc. v. Felton, 151 So. 892, at 895 (Fla. 1934); Bryant v. Lovett, 201 So. 2d 720, at 724 (Fla. 1967).

50
Section 253.53, F.S.

51
Section 15Q-15.08(4)-(9).

52
An intervening dry hole exists when a site has been drilled "at least to the depth of production or stratigraphic equivalent of the well proposed for the lease area," Section 15Q-15.08(7), F.A.C.

53
Lease, Sections 5(A)-(D).

54
Section 253.53, F.S.

55
Lease, Section 5(F).

56
Section 253.57, F.S.; Lease, Section 5(D).

57
Lease, Section 5(E).

58
Section 253.53, F.S.

59
Section 253.53, F.S.

60
The force majeure clause may prevent such rent increase, Lease, Section 16.

61
Lease, Section 3.

62
Shut-in wells are those which are capable of production in paying quantities but are, due to market conditions lack of production facilities, or closed temporarily.

63
Section 253.53, F.S.

64
Lease, Section 9.

65
Section 253.53, F.S.

66
Lease, Section 3(E).

67
Section 253.53, F.S.

68
Lease, Section 13

69
Section 253.56, F.S.

70
Section 253.571, F.S.; Lease, Section 18(E).

71
Lease, Section 18(E).

72
Damages are defined as air and water pollution, destruction of wildlife or marine productivity, or any impairment of the health and general welfare of state citizens, Section 253.571, F.S.; Lease, Section 18(E).

73
An act of God is "an unforeseeable act exclusively occasioned by the violence of nature without the intervention of any human agency, Lease, Section 14.

74
A disinterested third party is any party who is neither employed by nor agent of the lessee, Lease, Section 14.

75
Lease, Section 18(F).

76
An improved beach is defined as "any beach...having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes on or to any given miles of such beach." Sections 253.61(2) and 377.24(8), F.S.

77
Ibid.

78
An improved beach "outside an incorporated municipality" is "any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given miles of such beach," Sections 253.61(2), 377.24(8), F.S.

79
The United States Supreme Court defined coastline, for purposes of establishing Federal/State ocean boundaries, as: "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea." Note also, footnote 1.

80
Section 16Q-21.04(2)(k); Lease, Section 1(E); See, also Section 377.242, F.S.

81
Section 253.45, F.S.

82
Chapter 253.45, F.S., See footnote 88.

83
Chpater 253.45, F.S.

84
Certain statutes, such as Chapters 253, 258, 267, 288, 370, 372, 376, 380, and 403, F.S. require permits or establish standards which may restrict post lease activities on sovereignty lands.

85
Section 258.42(3)(c), F.S.

86
Section 377.242, F.S.

87
Section 377.242, F.S.

88 Oil and gas appear to meet the definition of mineral. However, for the purposes of Chapter 211, F.S. severance tax, the Trustees determined that peat was not a mineral.

89 Lease, p. 1.

90 Deeper drilling may be authorized on a case by case basis pursuant to Section 2 of the lease.

91 Section 253.53, F.S.; Lease, Section 2.

92 Those test wells required by Section 253.55, F.S. and Lease, Section (1)(C).

93 Sections 253.53 and 253.55, F.S.; Lease, Sections (1) and (2).

94 Lease, Section 18(I).

95 Lease, Section 11.

96 Lease, Section 12.

97 Lease, Section 14(C).

98 Lease, Section 14(D).

99 Lease, Section 14(B).

100 Lease, Section 14(C)(2).

101 Lease, Section 14(C)(3).

102 Lease, Section 14(A).

103 Section 253.47, F.S.

104
Section 253.47, F.S.

105
Section 253.47, F.S.; Lease p. 1.

106
Lease, "Therefore clause," p.1

107
Lease, "Therefore clause," p.1

108
Lease, Section 18(G)(H) and (J); See, also Section 377.2408, F.S.

109
Lease, Section 14(C)(1).

110
Lease, Section 10.

111
Lease, Section 18(D); See text accompanying footnote 27.

112
Lease, Section 7(A).

113
Lease, Section 7(B).

114
Lease, Section 10.

115
Lease, Section 10.

116
Lease, Section 1.

117
Section 253.55, F.S.; Lease, Section 1.

118
Section 253.55, F.S.; Lease, Section (1)(B).

119
Section 253.55, F.S.; Lease, Section (1)(C).

120
Lease, Section 4.

121
Section 253.55, F.S.; Lease, Section (2)(A).

122
The force majeure clause may excuse this requirement.

123
Section 253.55, F.S.; Lease, Section 2(B).

124
Lease, Section 18(K).

125
Lease, Section 14(C).

126
Lease, Section 17.

127
Lease, Section 16.

128
Lease, Section 18(A).

129
Lease, Section 18(C).

130
Lease, Section 18(K).

131
For example, state laws establish special protection for areas or resources designated as: 1) Outstanding Florida Waters or Class Two waters pursuant to Chapter 403, F.S.; 2) Aquatic Preserves pursuant to Chapter 258, F.S.; 3) An "Area of Critical State Concern" pursuant to Chapter 380, F.S.; 4) Endangered or threatened species protected pursuant to Chapters 370 and 372, F.S.; or 5) Historical or archeological resources protected pursuant to Chapter 267, F.S. Other state laws that may influence post-lease activities include: Chapter 376, F.S., Pollutant Spill Prevention and Control; Chapter 377, F.S., Regulation of Oil and Gas Resources; and Chapter 380, F.S., Developments of Regional Impact.

132
Sections 253.03, 253.51, and 258.41, F.S.

133
Section 16Q-21, F.A.C.

134
The State Lands Management Plan was adopted by the Trustees, pursuant to Section 253.03(7), F.S. in March 1981.

135
Section 16Q-21, F.A.C.

136
Section 16Q-21.01, F.S.

137
Section 16Q-21.04, F.A.C.

138
A water dependent activity is one which can "only be conducted on, in, over, or adjacent to water areas because the activity requires direct access to the water body or sovereignty lands for transportation, recreation, energy production or transmission, or source of water, and where the use of the water or sovereignty lands is an integral part of the activity," Section 16Q-21.03(37), F.A.C.

139
Section 16Q-21.04(1), F.A.C.

140
This standard stems from Section 253.034(1)(a), F.S. Section 253.034(6) provides that the "section shall not be construed so as to affect: (a) other provisions of this Chapter relating to oil, gas, or mineral resources (or); (b) the exclusive use of state-owned land subject to a lease...executed by the...Trustees...leasing state-owned land for private uses and purposes."

141
Section 16Q-21.04(2)(a)-(d), (g)-(i) and (k).

142
State Lands Management Plan, Goals, p.5

143
State Lands Management Plan, Goals, Section B.

144
State Lands Management Plan, Goals, Section C.

145
Ibid.

146
State Lands Management Plan, Objectives, Section F.

147
State Lands Management Plan, p. 13.

148
State Lands Management Plan, Section C, Policies 1-3.

149
State Lands Management Plan, Section D, Policies 1, 6, and 9.

150
State Lands Management Plan, Section F, Policies 1-4.

151
State Lands Management Plan, Section G, Policies 1-2.

152
State Lands Management Plan, Section H, Policies 1-2.

153
State Lands Management Plan, Section I, Policies 1-3.

154
State Lands Management Plan, Section J, Policies 1-4.

155
State Lands Management Plan, Section K, Policies 1-5.

156
State Lands Management Plan, Section L, Policies 1-4.

157
State Lands Management Plan, Section M, Policies 1-5.

158
State Lands Management Plan, Section C, Policies 1-3.

159
State Lands Management Plan, Section E, Policies 1-10.

160
State Lands Management Plan, Section F, Policies 1-7; 10-12.

161
State Lands Management Plan, Section H, Policies 1-4, 6.

162
State Lands Management Plan, Section L, Policies 1, 3-10.

163
State Lands Management Plan, Section O, Policies 1-5.

164
Section 16Q-21.04(1) (a), F.A.C. Note that the Constitution and Section 253.001, F.S., require leasing of sovereignty lands to be "not contrary to the public interest."

III. Development of Oil and Gas Resources: State Laws

INTRODUCTION

An offshore oil and gas lease grants exclusive rights to apply for permits necessary to develop oil and gas resources of the leased area. Such a lease does not, however, guarantee the issuance of permits necessary to develop said resources either on or off the leased area. Post-lease oil and gas development activities may occur offshore, such as exploratory drilling or onshore such as a refinery. The following briefly describes state laws which may influence the post-lease development of oil and gas resources.

CHAPTER 161
BEACH AND SHORE PRESERVATION

Administering Agency

The Florida Department of Natural Resources, Division of Beaches and Shores (DNR).

Purpose/Policy

To protect the beach-dune system and adjacent properties.

Chapter 161 requires a permit for: 1) excavation or construction seaward of the established Coastal Construction Control Line;[1] and 2) shore protection activities other than deposition or removal of beach material.[2]

****

CHAPTER 163
LOCAL GOVERNMENT COMPREHENSIVE PLANNING

Administering Agency

The Florida Department of Community Affairs (DCA) and Local Governments.

Purpose/Policy

To encourage the most appropriate use of land, water and resources through comprehensive planning by local governments.[3]

Sections 163.3161 through 163.3211, Florida Statutes require local governments to prepare, adopt, and implement comprehensive plans to guide future development. The plan must contain elements set forth in Section 163.3177, Florida Statutes. Each plan element must be consistent with other elements.[4] After plan or element adoption, all development must be consistent with the plan or element.[5]

****

CHAPTER 253
STATE LANDS

Administering Agency

The Florida Departments of Natural Resources and Environmental Regulation (DNR and DER).

Purpose/Policy

To manage state lands so as to assure maximum benefit and use.

State Lands include all sovereignty lands and, with certain exceptions, all state owned lands. Sovereignty lands include tidal lands, islands, sand bars and lands under navigable waters, whether fresh or salt, which Florida gained title to upon Statehood. State owned lands include state parks, environmentally endangered lands, reservations, internal improvement lands, certain swamp and overflowed lands,

and other lands that have accrued to the state from various sources.

Dredging and filling of State lands require a permit from the DER.[6] All other uses of State lands (including pipelines, leases, and easements) must be approved by the DNR and the Governor and Cabinet.

****

CHAPTER 258
AQUATIC PRESERVES

Administering Agency

The Florida Department of Natural Resources, Division of Recreation and Parks (DNR).

Purpose/Policy

To maintain natural or existing conditions of Aquatic Preserves.

The Florida Aquatic Preserves Act, Sections 258.35 through 258.45 Florida Statutes, establishes certain areas of state-owned or sovereignty submerged land and associated waters, having exceptional biological, aesthetic and scientific values, as aquatic preserves to be maintained essentially in their natural or existing condition. Rules for managing aquatic

preserves are established in Chapter 16Q, F.A.C. and by preserve specific management plans. In that aquatic preserves involve State lands, aquatic preserve statutes, rules and management plans are considered complementary to State lands management pursuant to Chapter 253, Florida Statutes.

Sale, lease, or transfer of preserve lands must be "in the public interest".[8] In addition, the Florida Aquatic Preserves Act limits or conditions certain activities within aquatic preserves.[9] Included among these is a prohibition on drilling gas or oil wells within Aquatic Preserves. Drilling from outside the preserve to explore for oil and gas within the preserve may be permitted if other conditions are met.

****

CHAPTER 267
FLORIDA ARCHIVES & HISTORY ACT

Administering Agency

The Department of State, Division of Archives, History, and Records Management (DOS).

Purpose/Policy

To preserve and protect sites of historical, architectural, or archaeological significance.

Chapter 267 establishes penalties for destruction or alteration of archaeological and historic resources on State

lands.[10] In addition, the Division provides technical assistance to State permitting agencies regarding historical preservation.

****

CHAPTER 370
SALTWATER LIVING RESOURCES

Administering Agency

The Florida Department of Natural Resources, Division of Marine Resources (DNR).

Policy/Purpose

To manage marine resources in the interest of all people of the State and to produce maximum sustainable yield consistent with the preservation and protection of the breeding stock.[11]

Chapter 370 regulates the taking and selling of a variety of marine fisheries. Section 370.12 prohibits the taking or molestation of marine turtles, nests and eggs, manatees, porpoises. Section 370.114 prohibits the taking or destruction of certain marine corals and seafans. The Chapter also provides penalties for violations.

CHAPTER 373
WATER RESOURCES

Administering Agencies

The Florida Department of Environmental Regulation (DER) and Regional Water Management Districts (WMD).

Purpose/Policy

To manage water resources so as to ensure the most beneficial use.

Chapter 373 regulates drilling and use of water wells and, in certain instances, the management and storage of surface waters. A permit from the appropriate regional water management district is required to construct, repair, or abandon a water well. Further permit requirements may vary in each of the five Water Management Districts.

****

CHAPTER 376
POLLUTANT DISCHARGE PREVENTION AND CONTROL

Administering Agencies

The Florida Departments of Natural Resources and Environmental Regulation (DNR and DER).

Purpose/Policy

To protect the recreational use of Florida's seacoast and the quality of inland waters from petroleum product pollutants.[12]

Chapter 376 regulates: 1) the transportation, and clean up of pollutants (Pollutants are defined as "oil of any kind, gasoline, pesticides, amonia, chlorine and their derivatives, excluding liquified petroleum gas.)[13]; 2) terminal facilities and associated vessels[14] (A terminal facility is any waterfront or offshore facility, including directly associated pipelines and other appurtenances, that in the normal course of business has the capability to drill for, pump, store, handle, transfer, process or refine pollutants either over or under coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast.)[15], and 3) under or above ground facilities.[16] (Facility means any non-residential location containing certain stationary tank or tanks, with more than 550 gallon storage capacity, which contain pollutants.)[17]

The Chapter prohibits: 1) pollution of coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast.[18] (Pollution is defined as "the presence in the outdoor atmosphere or waters of the State of any one or more substances or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation)[19]; and 2) discharge of refined petroleum

products on any waters or lands of the State.[20] A non-lapsing revolving fund,[21] to cover the costs of cleaning a pollutant discharge, is created through exise taxes paid by operators. Violators are liable to the fund for certain abatement and cleanup costs.

****

CHAPTER 377
OIL AND GAS RESOURCES

Administering Agency

The Florida Department of Natural Resources, Division of Resource Management, Bureau of Geology (DNR).

Purpose/Policy

To conserve the State's oil and gas resources while controlling their development.

Chapter 377 authorizes the DNR to regulate all phases of discovery and development of petroleum products, both on and offshore.[22]

Program coverage includes spacing, drilling, abandonment, control and management of wells, geological explorations, production facilities, pipelines and transporters, pollution and waste disposal, reports of operations, and notification of fire and blow-outs.[23] Drilling is conditioned or prohibited in certain instances.[24] "Waste" and "pollution" are prohibited.[25]

CHAPTER 380
ENVIRONMENTAL LAND AND WATER MANAGEMENT

Administering Agency

The Florida Department of Community Affairs (DCA).

Purpose/Policy

To protect Florida's natural resources, insure a water management system that will reverse deterioration of water quality and to adequately plan for and guide growth and development by establishing State land and water management policies to guide and coordinate local decisions.

Chapter 380 encompasses two major programmatic areas, Developments of Regional Impact (DRI) and Areas of Critical State Concern (ACSC). The DRI program establishes procedural and substantive requirements to assure that land development decisions consider regional impacts. The ACSC program regulates development in areas where unsuitable development would endanger resources of regional or statewide significance.

A DRI is "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[26] Certain types of development, including petroleum storage facilities, industrial plants, and port facilities, are presumed to be DRI's if they meet threshold criteria specified in Florida Administrative Code Chapter 27F-2.

The rule, however, only creates a presumption. Projects not listed or which do not meet threshold criteria may, nevertheless, be DRI's when facts support a finding that the project meets the statutory definition. If there is doubt as to whether a proposed activity is a DRI or has vested rights, a binding letter may be requested by submitting appropriate forms to the DCA.

If a proposed activity is a DRI, has no vested rights, and impacts an area which has zoning or subdivision regulations, it must be processed in accordance with procedures set forth in Chapter 380 and implementing rules. Essential features of the DRI review process include:

1) a preapplication conference is conducted,
2) an Application for Development Approval (ADA) is submitted to the appropriate regional planning council, local government and the Bureau of Land and Water Management,
3) the regional council submits a report and recommendations to the appropriate local government, a public hearing on the application is held, and
4) the local government issues an order approving, approving with conditions, or denying the development.

In evaluating DRI's, the following will be considered:

1) impact upon the environment and natural resources of the region,
2) impact on the economy of the region,

3) efficient use or undue burden on water, sewer, solid waste disposal, or other necessary public facilities,

4) efficient use or undue burden on public transportation facilities,

5) effect on ability of people to find adequate housing reasonably accessible to their places of employment,

6) criteria for determining regional impact adopted by the appropriate regional planning council,

7) interference or compatibility with objectives of adopted state land development plan applicable to the area, and

8) consistency with local land development regulations.

An Area of Critical State Concern (ACSC) may be designated by the Governor and Cabinet, upon the recommendation of the DCA. Designation may be made for areas with significant environmental resources, historical resources or sites, or areas affected by an existing or proposed major public facility. When the Governor and Cabinet designate an ACSC they also adopt by rule principles for guiding development in that area. The local government of the ACSC must adopt land development rules in compliance with those principles, which the DCA then approves by rule. Areas which have been designated as ACSC's are the Big Cypress Swamp, the Green Swamp and the Florida Keys.[27]

Prior to recommending an area as an ACSC a resource planning and management committee for the area under study

by the DCA is appointed by the Governor. The committee's objective is to organize a voluntary resource planning and management program for the area. The committee must report to the DCA within 6 months but may remain in existence longer than that period. Resource planning and management committees have been established for Charlotte Harbor, Hutchinson Island, Suwannee River,[28] Northwest Florida Coast, and East Everglades/ Everglades National Park.[29]

****

CHAPTER 403
ENVIRONMENTAL CONTROL

Administering Agency

The Florida Department of Environmental Regulation (DER).

Purpose/Policy

To prevent, abate, and control air and water pollution.

Chapter 403 establishes a variety of programs regulating air pollution, water pollution and industrial, domestic, hazardous, and solid waste.

A permit is required to construct, operate, maintain, expand or modify an installation which may reasonably be expected to be a source of pollution.[30] Pollution is defined as "the presence in the outdoor atmosphere or waters of the State of any substances, contaminants, noise, or man-made or man-induced alteration of chemical, physical, biological or

radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, or animal or plant life, or property, or unreasonably interfere with the enjoyment of life or property, including outdoor recreation".[31] An installation is defined as "any structure, equipment, facility, or appurtenances thereto, or operation which may emit air or water contaminants in quantities prohibited by Department rules". This may include ditches, canals, buildings, discharge pipes, and fill deposits, among other things.[32] Permits are issued if the applicant "affirmatively provides the department with reasonable assurance...that the...installation will not... cause pollution in contravention of department standards or rules."[33]

An activity need not, however, be stationary, or an installation to be subject to DER jurisdiction. Section 403.161, Florida Statutes prohibits pollution, as defined above, except in accordance with a DER permit. In addition to the general prohibition of pollution, Section 403.088, Florida Statutes prohibits "discharge of wastes to state waters which, by themselves or in combination with other wastes, reduce the quality of those receiving waters below the classification established for them."

FOOTNOTES FOR SECTION III

[1] Sections 161.052-161.053, Florida Statutes.

[2] Sections 161.041-161.042, Florida Statutes.

[3] Section 163.3161, Florida Statutes.

[4] Section 163.3177, Florida Statutes.

[5] Section 163.3194, Florida Statutes.

[6] Sections 253.123 and 253.124, Florida Statutes.

[7] Section 253.1245, Florida Statutes.

[8] Section 258.42, Florida Statutes.

[9] Section 258.42, Florida Statutes.

[10] Section 267.13, Florida Statutes.

[11] Section 370.02(2), Florida Statutes.

[12] Sections 376.021 and 376.30, Florida Statutes.

[13] Sections 376.021(2) and 376.301(10), Florida Statutes.

[14] Section 376.06, Florida Statutes.

[15] Section 376.02(15), Florida Statutes.

[16] Sections 376.30-376.315, Florida Statutes.

[17] Section 376.301(4), Florida Statutes.

[18] Section 376.041, Florida Statutes.

Footnotes con't.

[19] Section 376.031(13), Florida Statutes.

[20] Section 376.302, Florida Statutes.

[21] The Florida Coastal Protection Trust Fund, and The Water Quality Assurance Trust Fund, Sections 376.11 and 376.307, Florida Statutes.

[22] Statutory provisions are often weighted toward onshore activities. See, e.g. Section 377.22, Florida Statutes.

[23] Sections 377.24, 377.241-377.243, 377.25-377.28, 377.40, Florida Statutes.

[24] See my previous report, Footnotes 86-87 and associated text.

[25] Waste is defined in Section 377.20, Florida Statutes. Pollution is defined in Section 377.371, Florida Statutes.

[26] Section 380.06, Florida Statutes.

[27] Sections 380.055, 380.0551, 380.0552, Florida Statutes.

[28] Resource Management Plans have been adopted for these three areas.

[29] Resource Management Plans are being developed for these two areas.

[30] Section 403.087, Florida Statutes.

[31] Section 403.031(2), Florida Statutes.

[32] Section 403.031(8), Florida Statutes.

[33] Section 17-4.03, F.A.C.

IV. The Consistency Provisions of the Coastal Zone Management Act

The consistency provisions of the Coastal Zone Management Act (CZMA) identify the point or points at which coastal states may influence the federal OCS oil and gas leasing process through their Coastal Management Program. Until a recent U.S. Supreme Court decision, the Department of Interior's pre-leasing and post-leasing decisions were both evaluated for consistency with state Coastal Management Programs (CMP). Pre-leasing consistency review was conducted pursuant to Section 307(c)(1) of the CZMA. Post-lease consistency review continues to be conducted pursuant to Section 307(c)(3).

Section 307(c)(1) of the Coastal Zone Management Act (CAMA), 16 U.S.C. 1456(c)(1) provides:

> Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable,[1] consistent with approved state management programs.

Neither the CZMA nor the implementing federal regulations define the phrase "directly affecting the coastal zone". However in Interior v. California, ___ U.S. ____, 104 S. Ct. 656 (1984), the U.S. Supreme Court held that the Department of Interior's decision to offer OCS oil and gas leases did not directly affect California's coastal zone and thus was not subject to the CZMA's consistency requirement. In

response to the Supreme Court decision, Congress is considering legislation that would require Interior's leasing decisions to be consistent with state coastal management plans.

While Interior's leasing decision is not currently subject to the CZMA consistency provisions, Interior's post-lease permitting decisions are to be reviewed for consistency. Section 307 (c)(3)(B) of the CZMA, 16 U.S.C. 1456(c)(3)(B) provides:

> After the management program of any coastal state has been approved... any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act....Shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program.

Unless the state concurs with the above described consistency certification, or the Secretary of Interior finds that the activity is "consistent with the objectives of the CZMA or otherwise necessary in the interests of national security", no federal permit may be granted "for any activity described in detail in such plan" 16 U.S.C. 1456 (c)(3)(B). There have been no court decisions regarding this statutory provision to date.

V. State Policy Regarding Oil and Gas Leasing in State Waters and Federal Consistency

The CZMA thus requires plans for exploration, development and production of OCS areas leased by Interior to be consistent with Florida's federally approved Coastal Management Program(CMP). In addition, should bills currently under consideration by Congress become law, the CZMA would require Interior's leasing decision to be consistent to the maximum extent practicable with Florida's CMP. Florida's CMP is made up of 20 state statutes. At least ten of these statutes establish policy for oil and gas leasing and post lease permitting in state waters.[2] Because it is these laws with which consistency may be required any amendments to them will establish state policies for leasing and development of OCS resources adjacent to state waters as well as for resources in state waters. For this reason any program for oil and gas leasing and development in state waters should contain specific OCS management policies, especially where OCS activities warrant special treatment. Lastly, in order for the CZMA consistency provisions to apply, amendments to CMP statutes must be submitted to the National Oceanic and Atmospheric Administration for approval as amendments to Florida's CMP.

VI. Public Access to Proprietary Oil and Gas Resource Data Held by the State

Florida's Public Records Law provides that all public records may be examined "by any person...at reasonable times, under reasonable condition..." unless an exemption is provided by law, Section 119.07, F.S. Public records include:

> ...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, Section 119.011(1), F.S.

Agency is defined as:

> any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created...by law and any other public or private agency...acting on behalf of any public agency, Section 119.011(2),F.S.

The courts have generally avoided restrictive intrepretations of Chapter 119,F.S. Thus, as a general principle, every document which: 1) meets the foregoing definition of public records; 2) is intended to perpetrate, communicate, or formalize knowledge of some type;[3] is open to public inspection unless a specific statutory provision exempts those records from disclosure.[4]

Oil and gas resource data acquired by the state pursuant to the leasing and development process would, in most instances, be considered a public record. Four statutory exemptions to

disclosure exist. Section 377.22(2)(h) F.S., provides that required drilling operation reports may be held confidential at the request of the operator for 90 days after completion of a well and, at the option of the Division of Resource Management, for a longer period. Section 377.2408(3) F.S., provides that information in applications to conduct geophysical operations as to "location and other anticompetitive matter shall be kept confidential...and shall not be released to the public without the consent" of the applicant. Third, Department of Revenue Records regarding excise taxes on Chapter 376, F.S. terminal facility operators is not accessible to the general public, Sections 376.11(4)(e) F.S. and 376.307 (5)(e) F.S. Lastly, as regards Chapter 403, F.S. permits, "any information, other than effluent data, relating to secret processes, methods of manufacture or production which may be required...or discovered by inspection or investigation... shall be kept confidential" by the Department of Environmental Regulation.[5] Unless one of the foregoing statutory exemptions apply, oil and gas resource data in state files which meets Chapter 119's, F.S. definition of public records must be disclosed.

FOOTNOTES FOR SECTIONS IV, V AND VI

[1] The implementing federal regulations provide that:

> The term 'consistent to the maximum extent practicable' describes the requirement for federal activities including development projects directly affecting the coastal zone of states with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon requirements of existing law applicable to the Federal agency's operations. 15 C.F.R. 930.32

[2] Chapters 161, 253, 258, 267, 370, 373, 376, 377, 380, 403, F.S.

[3] Shevin v. Bryron, Harless, Schaffer, Reid and Associates, 379 So.2d 633 (Fla.1980)

[4] Wait v. Florida Power & Light Co., 372 So.2d 420 (Fla.1979)

[5] Section 403.111, F.S. Note that the confidentiality does not prevent use of such records in judicial proceedings.

Attachment A

INFORMATION COPY

TALLAHASSEE FLORIDA

INVITATION TO BID FOR A STATE OIL AND GAS DRILLING LEASE

NOTICE is hereby given that the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida will, pursuant to Sections 253.47 through 253.61, inclusive, Florida Statutes, offer for sale and receive competitive sealed bids for a State Drilling Lease covering the petroleum interest of the State of Florida in the following described land located in Santa Rosa and Okaloosa Counties, Florida, to wit:

LEASE NO: 3317-F

Blackwater River State Forest Section 30, Township 6 North, Range 25 West, Okaloosa County; portions of Sections 1, 2 and 3, Township 5 North, Range 26 West, and portions of Sections 25, 26, 27, 28, 33, 34, 35 and 36, Township 6 North, Range 26 West, Santa Rosa County. 5,606.55 surface acres, 1,401.6375 net mineral acres.

The Board of Trustees of the Internal Improvement Trust Fund has determined that the lease shall require royalty payment of one sixth in kind or in value for oil and gas produced from said lands an annual rental of $3.50 per net mineral acre annually for the first two years, increasing by 50¢ a year thereafter for the area described above. Lease will require at least one test well be drilled every two and one-half years of the lease; each test well to be drilled to a depth of 6,000 feet, or deep enough to test the Smackover/Norphelt formation, whichever is deeper. The primary term of the lease will be five (5) years. A surety bond of $50,000 will be required prior to drilling operations.

The bidding will be on the basis of cash consideration for the lease, the amount of which cash consideration shall include the offer of rental for the first year at the rate stated above. Copy of the lease form is available for inspection in the Bureau of State Land Mangement, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303. The successful bidder will be required to pay all cost of legal advertisement in connection with this lease sale. All bids must be in a sealed envelope marked SEALED BID - STATE OIL AND GAS LEASE - SANTA ROSA AND OKALOOSA COUNTIES, showing lease number and date of sale, and accompanied by certified or cashier's check made payable to the Department of Natural Resources, Bureau of State Lands Management, for the full amount of the cash consideration offered as the bid.

Each bidder shall include as part of the bid a certified statement as to any lease holdings regarding oil, gas, or minerals the bidder has which were granted by the State or any agency of the State. Such statement shall also include number and indentification of such leases issued and the State agency which issued the lease or leases.

This notice is also published in compliance with Section 253.115, Florida Statutes. Written objections concerning the proposed lease shall be filed with Mr. Ted Forsgren, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303, within thirty (30) days after the date of the first publication of this notice.

Sealed bids shall be filed in the Bureau of State Lands Management, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303, in advance of the sale date hereinafter stated. The sealed bids will be opened and read at the public meeting of the Board of Trustees of the Internal Improvement Trust Fund on December 13, 1983, at 9:00 a.m., E.S.T., in Tallahassee, Florida. The Board reserves the right to reject any bid.

BY ORDER of the Board of Trustees of the Internal Improvement Trust Fund.

Bob Graham, Governor

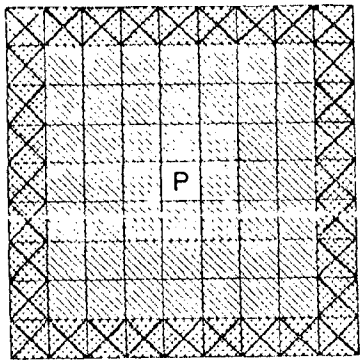
ATTEST: Elton J. Gissendanner,
Executive Director

ATTACHMENT B

Method of Defining Royalty Payments

16Q-15.08 Oil and Gas Leases.

ROYALTY AREAS DEFINED
EXHIBIT A



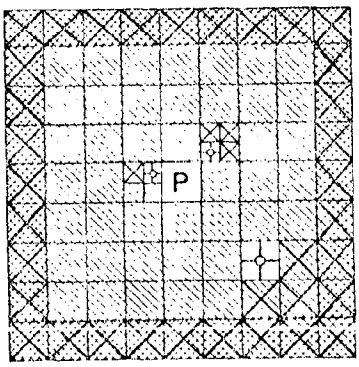
SECTIONS

1/6 ROYALTY

1/5 ROYALTY

1/4 ROYALTY

P HYDROCARBON PRODUCTION



1/4 ROYALTY CONDEMMED TO 1/5 BY INTERVENING DRY HOLE

1/5 ROYALTY CONDEMMED TO 1/6 BY INTERVENING DRY HOLE

Editorial Note: *This chart, which was inadvertently omitted from the bound volume, is set out above.*

APPENDIX B

Florida Local Governments and Oil and Gas Leasing of State Territorial Waters

Prepared by

Principal Investigator

Richard Hamann

and

Research Assistant

George Gramling

The Center for Governmental Responsibility
University of Florida College of Law
Gainesville, Florida

1984

Table of Contents

	Page
Part I. Local Government Boundaries and Annexation of Florida's Territorial Waters	1
A. County Boundaries	2
B. Municipal Boundaries and Annexations	3
1. Introduction	3
2. Municipal Boundaries	4
3. Annexation	5
a. Sources of Law Governing Annexation in Florida	5
b. Florida's Annexation Statute	6
c. Voluntary Annexation	7
d. Non-Voluntary Annexation	8
e. Character of Land Annexed	10
f. Problems with the Florida Annexation Statute as Applied to Terrirorial Waters	12
g. Potential Annexation Reform	19
Footnotes	19
Part II. Annexation Procedures Used In Coastal States Other Than Florida	27
Introduction	28
I. Alaska	28
A. Types of Municipalities	28
1. Boroughs	28
2. City Boundaries	29

Table of Contents

	Page
B. Alaska's Annexation Statute	30
1. State Initiated Annexations	31
2. Local Annexations	32
3. Step Annexation	34
4. Tidelands Acquisition	35
Footnotes	36
II. California	40
A. Boundaries	40
1. State	40
2. Counties	40
3. Cities	40
B. California's Annexation Statute	40
1. Annexation of Submerged Lands	41
Footnotes	42
III. Texas	44
Introduction	44
A. Boundaries and Annexation	44
1. State	44
2. Counties	44
3. Municipalities	45
Footnotes	46
IV. Louisiana	47
A. Boundaries	47
1. State	47
2. Counties	47
3. Municipalities	48

Table of Contents

		Page
	B. Louisiana's Annexation Statutes	48
	1. Annexation by Petition and Election	48
	2. Annexation by Petition and Ordinance	49
	Footnotes	49
V.	Mississippi	52
	A. Boundaries	52
	1. Counties	52
	2. Municipal Boundaries	53
	3. Port Authorities	53
	B. Mississippi's Annexation Statute	53
	Footnotes	56
VI.	Alabama	60
	A. Boundaries	60
	1. State Boundaries	60
	2. County Boundaries	60
	3. Municipalities	61
	B. Alabama's Annexation Statute	61
	1. Annexation Generally	61
	2. Annexations of Territory By Cities of 2,000 Inhabitants or More	62
	3. Annexation of Territory Containing 25,000 Inhabitants or More	63
	C. Conclusion	63
	Footnotes	63

Table of Contents

	Page
Part III. Local Government Taxation	65
Introduction	66
A. Severance Tax on Oil and Gas	66
B. Ad Valorem Property Taxes	67
1. County	67
2. Municipalities	71
C. Taxation of Leasehold Interests	72
Footnotes	72
Part IV. Local Regulation of Oil and Gas Production Activities	77
A. Introduction: The Police Power	78
B. Delegation to Local Governments of State Home Rule Authority to Exercise the Police Power	78
1. Municipal Home Rule Authority	79
2. Charter County Home Rule Authority	80
3. Non-Charter County Home Rule Authority	81
C. Specific Grants of Authority	83
1. Comprehensive Land Use Planning and Regulation	83
2. Local Pollution Control Programs	86
3. State Preemption of Local Regulation	87
Footnotes	88

Table of Contents

	Page
Part V. Local Control of State Leasing	92
Footnotes	100
Diagrams	102

Part I.

Local Government Boundaries and Annexation Of Florida's Territorial Waters

A. County Boundaries

The Florida Constitution requires that the entire state be divided into counties.[1] This provision implies that the boundaries of coastal counties would extend offshore to the limits of state jurisdiction. In addition, a legal description for each county is set forth in Chapter 7 of the Florida Statutes. The twelve Atlantic coastal counties include: Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River, Brevard, Volusia, Flagler, St. Johns, Duval and Nassau. These counties' legal descriptions typically define the counties' jurisdiction to include the "waters of the Atlantic Ocean within the jurisdiction of the State of Florida."[2] The 21 Gulf coastal counties include: Escambia, Okaloosa, Walton, Bay, Gulf, Franklin, Wakulla, Jefferson, Taylor, Dixie, Levy, Citrus, Hernando, Pasco, Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee and Collier. The legal descriptions for each of these counties typically include "the waters of the Gulf of Mexico within the jurisdiction of the State of Florida". There are some immaterial differences in language. For example, Monroe County, which fronts on both the Atlantic and the Gulf of Mexico, is defined by omission to include "so much of the State of Florida as is situated south of the County of Collier and west or south of the County of Dade".[13]

Although boundaries between counties are usually defined by reference to the Universal Transverse Mercator grid,[4] some boundaries are defined by reference to physical landforms subject to shifting by natural forces. For example, "the northernmost shore of Mullet Key" defines the boundary between Pinellas and Hillsborough Counties.[5] The "thread of the Suwannee River" divides Levy and Dixie Counties.[6]

Ordinarily, the territorial limits of a state extend three miles offshore.[7] This jurisdictional rule applies along the Atlantic coast of Florida. Florida's seaward boundary on the Gulf of Mexico, however, is not three miles from the shoreline, but three marine leagues (10.5 miles).[8] The Florida Constitution of 1885 fixed the state's western boundary at three marine leagues. Later, the U.S. Supreme Court affirmed Florida's three marine league limit in United States v. Florida.[9] The court noted that Congress' approval of the 1885 Florida Constitution, in effect, granted these lands to the state.

Because the entire state is divided into counties, there are no statutory provisions relating to county annexation of territory. The Florida Legislature, though, can change county boundaries.[10]

B. Municipal Boundaries and Annexations

1. Introduction

There are no Florida cases examining the scope of a municipality's power to annex territorial coastal waters of the state. The reason for this seems to be that in the past there was insufficient urban and industrial activity in these waters to make annexation worthwhile, or even thinkable. Now, however, the territorial waters, once void of development save the extremely mobile fishing industry, are host to an ever-increasing number of oil and gas facilities, offshore power plants, shipping and deepwater ports, and people to operate each of these.[11]

The onshore impact of offshore development to both the local and state economy as well as to the extremely delicate coastal environment

is great.[12] Although coastal counties and municipalities currently play some role in influencing the extent of offshore development, coastal municipalities may in the future seek to expand their influence. Annexation presents a mechanism by which a coastal city's power to control offshore development may be enlarged to more closely parallel the developer's power to use the municipality's resources and to affect its citizenry. Annexation of territorial water could increase the municipal tax base and thereby increase local revenues.[13] Annexation would also extend municipal regulatory power offshore.

This discussion explores the possibility of municipal annexation of territorial waters and examines problems with the existing law for regulating annexations. Proposals are given for regulating possible attempts by municipalities to annex territorial waters.

2. Municipal Boundaries

Municipalities derive their power from the state.[14] The jurisdiction of each municipality, which is established either in its charter or by special legislative act, may extend to submerged lands owned by the state.[15] A multitude of special acts and municipal charters control municipal authority. Thus, it is difficult to generalize about the scope of municipal authority over territorial waters beyond the line of mean high water.[16] Coastal boundaries for each municipality are different. For example, although Daytona Beach's jurisdiction extends two miles into the Atlantic,[17] Key West's police powers extend only three hundred feet into the tidal waters adjacent to its corporate limits.[18] The legal description of each coastal municipality's boundary must, therefore, be individually researched.[19]

No comprehensive source exists containing all coastal cities' boundaries. A current description of a city's boundary lines can be ferreted out from a number of sources. The best method for determining where boundaries lie is to consult the city or town clerk's office for any city involved.

The city clerk should have the most current and accurate records of the city's boundaries. Although every Florida city is required by law to record each annexation or contraction with the Department of State,[20] the annexations are sometimes not filed.[21] Thus, the Department of State's records may not include complete information. Also, since the Department of State's Bureau of Laws merely files the recorded annexations, this department cannot supply integrated maps or legal descriptions of a municipality's total corporate limits.

An alternative source to consult for current legal descriptions of a municipality's limits is the county tax assessor for the county in which the city is located.[22] A comprehensive investigation of a municipality's limits should include both the clerk's records and the records of the tax assessor.

3. Annexation

a. Sources of Law Governing Annexation in Florida[23]

The U.S. constitution,[24] the Florida Constitution[25] and the Florida Statutes[26] as well as a large body of case law govern municipal annexations in Florida. The Florida Constitution, Article VIII, Section 2(a), (c), contemplates municipal annexation of unincorporated territory as provided by general or special law.[27] Annexation law is

built on the premise that the power to change municipal boundaries, establish municipalities outright, or expressly prohibit municipal expansion is solely a legislative power.[28] The legislature may exercise the power directly or may delegate the power to municipalities.

The legislature's power, however, is not unlimited. The legislature must observe constitutional limitations or courts will intervene.[29] The principle limitation is that municipal boundaries may not be extended solely to increase tax revenues. Annexation for that purpose is a flagrant abuse of authority amounting to a taking without just compensation.[30]

b. Florida's Annexation Statute

A municipal corporation has no power to extend its boundaries in a manner other than that provided by legislative enactment. Chapter 171, Florida Statutes is called the "Municipal Annexation or Contraction Act," and contains the general law regarding all annexations in Florida. The act declares that the provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974 are repealed.[33] Not repealed, however, are any provisions of special law which prohibit annexation of territory that is separated from the annexing municipality by a body of water or watercourse.[34]

The purposes of chapter 171 are to set forth procedures for adjusting the boundaries of municipalities through annexations or contractions of corporate limits and to set forth criteria for determining when annexations or contractions may take place.[35] The act

seeks to provide sound urban development and accomodation to growth;[36] establish standards throughout the state for the adjustment of municipal boundaries;[37] insure the efficient provision of urban services to areas that become urban in character;[38] and insure that areas are not annexed unless municipal services can be provided to those areas.[39] In order for an annexation proceeding to be valid under this act, the annexation must take place within the boundaries of a single county.[40] Chapter 171 authorizes two methods of annexation: voluntary and involuntary annexation.

c. Voluntary Annexation

Under the procedure established for voluntary annexation, the owner of real property in an unincorporated area of the county which is contiguous[41] to a municipality and reasonably compact,[42] can petition for annexation.[43] The petition must bear the signatures of 100% of the area's landowners.[44] The city is required to publish a proposed annexation ordinance once weekly in a local newspaper, for four consecutive weeks prior to adoption of the ordinance.[45] This procedure may not be used in Dade County[46] nor may it be used in any other county whose charter provides an exclusive method of annexation.[47]

No enclaves may result from use of the voluntary annexation procedure.[48] The term "enclave" is not defined anywhere in chapter 171. Enclave, as defined by the Florida Attorney General means "islands of municipal territory in the unincorporated territory of a county rather than unincorporated pockets nestled within a city.[49] The prohibition against the creation of enclaves does not appear to be a serious limitation on voluntary annexations.[50]

An exception to the requirement of a referendum exists where the annexation is voluntary. The owner or owners of the property to be annexed may petition the municipality for annexation. This method of annexation was obviously intended to allow private land owners to petition for inclusion within the municipality. It might apply, though, to allow annexation of submerged lands owned by the state. The Board, as trustee of the submerged property, could voluntarily petition a municipality to annex a parcel of territorial water. An issue that might arise is whether such a request is consistent with the Board's trust responsibilities. Chapter 253, Florida Statutes vests sovereignty lands title in the Board and provides:

> "All sovereignty lands...shall continue to be held in trust for the use and benefit of the people of the state pursuant to Section 7, Article II, and Section II, Article X of the State Constitution."[51]

Arguably, the Board might be assisted in protecting public trust interests through incorporation of offshore lands and subsequent extension of municipal services and regulatory authority. In any event, the courts have given the Board broad discretion in the exercise of public trust responsibilities. Board decisions are, for example, entitled to a "presumption of correctness" by the courts.[52]

d. Non-Voluntary Annexation

Non-voluntary annexation under chapter 171 may be used to overcome the objection of land owners to being annexed.[53] Under this method, the city first prepares a plan outline the services to be bestowed on the annexed area.[54] The plan must contain:

1) A map of the municipality and adjacent territory showing present and proposed boundaries;[55]

2) Present major trunk water mains and sewer interceptors and outfalls;[56]

3) A statement certifying that the area to be annexed meets the criteria in Section 171.043 (urban use);[57]

4) A statement setting forth plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.[58]

Such plans shall:

1) Provide for extending urban services except as otherwise provided herein to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;[59]

2) Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in the area to be annexed will be able to secure public water and sewer service according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions;[60]

3) Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.[61]

The Department of Veteran and Community Affairs must lend its technical assistance to any municipality preparing for annexation.[62] A copy of the plan must be filed with the board of county commissioners.[63]

Following preparation of the plan, the city adopts a nonemergency annexation order which is contingent upon passage by separate

referenda both in the municipality and in the area to be annexed.[64] The city then arranges for a referendum to take place no sooner than 30 days after final adoption of the ordinance.[65] Once weekly during the four weeks prior to the referendum, the city must publish notice of the referendum and a general description of the area proposed for annexation in a newspaper of general circulation.[66] If separate majorities of those voting in each area approve the proposed annexation, it takes effect according to the specified schedule in the ordinance.[67]

e. Character of Land Annexed

Three major restrictions exist on the use of the non-voluntary annexation procedure.[68] First, the area to be annexed may not contain land located within another county's boundaries.[69] Second, the area must meet certain general criteria: it must be contiguous to the municipality's boundaries at the time annexation is begun, and it must be reasonably compact.[70] Third, the area must also meet the criteria of either of the following two subsections.[71]

1. Part or all of the area to be annexed must be developed for urban purposes.[72] Urban purposes means:
   (a) it has a total resident population equal to at least two persons per acre of land include within its boundaries;[73] OR
   (b) it has a total resident population equal to at least one person per acre and is subdivided into lots so that at least 60% of the total number of lots are one acre or less in size;[74] OR

(c) it is so developed that at least 60% of the total number of lots and tracts in the area at the time of annexation are used for urban purposes, and it is subdivided into lots and tracts so that at least 60% of the total acreage, not counting the acreage used at the time of annexation for non-residential urban purposes, consists of lots and tracts 5 acres or less in size;[75]

2. In addition to the area developed for urban purposes, a municipality may include in the area to be annexed any area which does not meet the requirements above if such either:

(a) lies between the municipal boundary and an area developed for urban purposes, so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipality without extending services or water or sewer lines through such sparsely developed area;[76] OR

(b) is adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (2) of the Act.[77]

The purpose of this last section is to permit municipal governing bodies to extend the corporate limits to include all nearby areas developed for urban purposes. Where necessary, this section allows annexation to include areas which, at the time of annexation are not yet developed for urban purposes but whose future probable use is urban and which constitute a necessary land connection between the

municipality and areas developed for urban purposes, or between two or more areas developed for urban purposes.[78]

f. Problems with the Florida Annexation Statute As Applied to Territorial Waters

Florida's "Municipal Annexation or Contraction" statute was not intended to apply to annexations of coastal waters. Hence, attempting to conform the statute's procedural and substantive requirements to an annexation of state territorial waters meets with many difficulties. Although the Act's purposes of insuring "sound urban development and accomodation to growth"[79] arguably justify giving the municipality power to annex offshore areas of development, the Act requires much more of a municipality seeking to incorporate sparsely settled lands.

As a prerequisite to any annexation, the governing body must prepare a report setting forth plans to provide "urban services" to the area. The report is to include maps of major trunk water mains and sewer interceptors, and a statement setting forth the plans of the municipality for extending to the area each major municipal service performed within the municipality at the time of annexation. Obviously, these requirements are not aimed at offshore oil rigs. Oil rigs can be dependent upon adjacent coastal lands for many basic necessities.[80] In the normal course of construction and operation an offshore oil rig demands land, water, and electrical power. These services may be supplied from an adjacent municipality. Supplies and services may also come from other municipalities, counties, unincorporated areas or states. In return, the oil rig may contribute air and water pollution, aesthetic unpleasantness and noise

pollution to the coastal city. Oil and gas are often pumped onshore for processing. Overall, though, very few traditional urban services can be extended to an offshore oil rig.

An argument can be made that Chapter 171 authorizes annexations of territorial waters under certain circumstances. The statute requires that the area to be annexed meet specified general standards and either of a set of two additional alternative requirements. First, the total area to be annexed must be contiguous to the city's boundaries and contained within a single county. Territorial waters could meet the contiguity requirement. The first alternative additional requirement is that part or all of the area to be annexed must be developed for urban purposes. The urban purpose requirement can be met by a showing of either the area's population or potential use. Since there is no population at sea presently, this requirement could not be a basis for annexation. The potential use method of showing urban purposes requires that, at the time of annexation, at least 60% of the total area be used for urban purposes,[81] defined in Section 171.031(10) to include industrial and commercial purposes. Not only must 60% of the area already be in use, but the area to be annexed must consist of tracts and lots five acres or less in size. Since most of the state's territorial waters cover submerged lands which have never been subdivided into lots or tracts, it is unlikely that a municipality could prove that the area to be annexed met any of the above requirements.

However, under the second additional alternative requirement a municipality may include in the area to be annexed an area which, for

either of two reasons, does not meet the above first alternative requirement. First, if the area lies between the municipal boundary and an area already developed for urban purposes, so that without extending services (water, sewer, etc.) through the sparsely developed area, the urban purpose could not be served, this sparsely developed area may be annexed. This requirement might conceivably allow annexation of waters between an offshore oil rig and the coastal city's boundary. Meeting the requirement appears to depend, though, on an intent to extend municipal utility services to offshore facilities.

Also under the second additional alternative requirement, a municipality may annex an area which is adjacent, on at least 60% of its external boundary, to any combination of the municipal boundary and the boundary of the area already developed for urban purposes. This requirement could arguably be met by a municipality seeking to annex territorial waters.

The stated purpose of this second alternative is to permit municipal governments to extend corporate limits to include all nearby areas developed for urban purposes, and, where necessary, to include areas which at the time of annexation are not yet developed for urban purposes, whose future probable use is urban and which constitute necessary land connections between the municipality and areas developed for urban purposes. Allowing annexations where the future use will probably be urban in nature anticipates inevitable municipal growth and predicts technological advancements which might make presently uninhabitable lands habitable. The provision supports a good argument for the application of the statute to annexations of terri-

torial waters leased, or likely to be leased, for natural resources development.

However, the municipality is also subject to the general rule that to annex large areas of land there must be a present showing of population, industrialization, or similar need to justify the annexation.[82] Factors that tend to support the inclusion are: 1) the furnishing of utilities to the residents in the area to be annexed; 2) the trend toward urban development; 3) the platting into lots and streets of the area; and 4) most importantly, the city's need for the area.[83]

The city's growth and expansion needs are paramount considerations when determining the validity of an annexation. In Bower v. City of Tampa, the city annexed unimproved, uninhabited tidal shore property which was mostly under water.[84] The property was located between the fringe boundaries of the city of Tampa and the bulkhead line of upper old Tampa Bay.[85] The court said that although the property was within the territorial limits of the city, it was not within the corporate limits, the property being separate from the city land area by 2,000 feet of water and a state road.[86] The Second District Court of Appeal specifically rejected the landowner's argument that the annexation was improper because the land did not receive municipal benefits.[87] According to the court, municipal services such as sewer, water, sidewalks, streets and fire protection are not the only services to be considered.[88] The court reasoned that because the area was patrolled by police boats and helicopters, subject to the city's power to enjoin discharges into local waters, and subject to the

city's power to veto dredging or filling permits, the requirement that the area to be annexed be supplied with municipal services was met.[89]

The court's reasoning arguably justifies annexation of territorial waters containing oil leased lands. The Bower court specifically approved the annexation on the theory that the probability of future development was enough to satisfy the requirement that the area be amenable to municipal benefits.[90] A distinction should be drawn, however, between wetlands and shallow, submerged lands easily made habitable through dredging and filling, and areas located far offshore. The Bower court's approval of an annexation of swamp land relied on the fact that technology was available to make the land habitable. Annexations of offshore lands, however, may not be as readily approved by the courts, since these areas seem unlikely to support urban concentrations of people or industry in the foreseeable future.

Perhaps the central issue of this discussion is whether any court would approve an annexation of uninhabited, relatively undeveloped territorial waters. In addition to the Bower court's reasoning, which arguably supports such annexations, the Florida Supreme Court in a similar case indicated that the predictability of future municipal growth and development justify annexation of rural or unserviced lands. In Gillette v. City of Tampa, the land involved was rural, swampy and undeveloped.[91] However, the court took judicial notice of the growth and increase in population of the city of Tampa.

> "We are not persuaded that the fact that some of the area is swampy makes it unfit for urban use. In this machine age, and with the modern and highly specialized methods of filling and dredging, there are few areas which cannot be adapted to residential or industrial use where there is a community demand for expansion.[92]

While it appears to have adopted a rule that future municipal needs and land uses may justify annexation, the Supreme Court has not expressly receded from the general rule in State ex. rel. Ervin v. City of Oakland Park.[93] Lands may not be annexed for the sole purpose of taxing them. In Oakland Park, the court found that potential growth and development of an urban area was not sufficient to support annexation that occurred for revenue purposes only.[94] According to the District Court of Appeal in Bower, though, the reasoning and policy considerations supporting the decision in Oakland Park are no longer applicable in light of more modern cases.[95] For example, in City of Fort Lauderdale v. Town of Hacienda Village,[96] the Supreme Court specifically stated that the Legislature is empowered to fix boundaries to accommodate future growth of a municipality, reasoning as follows:

> "The urbanization of the state is evidenced by the extensive development of metropolitan areas in the environs of large cities. This condition not only justifies but, in many instances, actually requires a long range legislative perspective in planning the orderly development of these metropolitan areas."[97]

Long range legislative planning for orderly development may also justify annexations of undeveloped territorial waters in contemplation of future offshore development or municipal growth.

Since title to the submerged lands lying beneath the state's navigable waters is vested in the state, various problems arise regarding the statute's referendum requirements. Although the

legislature may authorize annexation without the landowners consent, in typical annexations under the Act involving land owned by individuals, a referendum is required. Following final adoption of the proposed annexation by the municipal government, the proposal is submitted to a separate vote of the registered electors of the municipality and of the area proposed to be annexed. If there is a separate majority vote in favor of annexation in both the city and in the area to be annexed, the annexation becomes effective on the date specified. If the annexation is defeated, the area proposed to be annexed cannot be subjected to an annexation ordinance by that municipality for a two year period from the date of referendum.

The problem with the referendum requirement is that the area to be annexed (state territorial waters) is mostly owned by the state itself. Hence, there are no residents present to vote either in favor of, or against, a hypothetical annexation. Under Chapter 253.03(1), Florida Statutes, the Board of Trustees of the Internal Improvement Trust Fund (seven members) is vested with the "acquisition, administration, management, control, supervision, conservation, protection and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards or commissions."[98] Although a referendum could not occur among private landowners of territorial submerged lands (since there are none), a referendum might arguably be conducted among the seven member Board of Trustees of the Internal Improvement Trust Fund (hereinafter the Board). Since the members of the Board are not registered electors of the area to be annexed, however, this argument appears to have little merit.

g. Potential Annexation Reform

Three possibilities exist for uniformly managing municipal annexation of coastal waters. First, the legislature may do nothing and allow annexations of territorial waters to proceed under the existing Florida statute, Chapter 171. Such an annexation would meet the many problems described above and could be litigated for many years.

Second, the legislature could unilaterally establish municipal boundaries by fixing the water boundary for each coastal city. Any attempts to further annex state territorial waters could be prohibited. This method would require city by city implementation, since the current jurisdiction of each coastal city differs.

Finally, the legislature could enact a new statute designed to accommodate annexations of territorial waters. This alternative involves weighing many policy considerations, primarily whether it is wise to allow such annexations at all. Criteria for annexing lands would have to be carefully selected. However, with growth within the state accepted as inevitable, and with industrial developments taking place at an ever increasing rate within Florida's territorial waters, it seems logical that the coastal city should be allowed to grow both inward and outward to accommodate new technologies and needs of the citizens.

Footnotes

1. FLA. CONST. art. VIII, section 1(a) (1969). See, Lipscomb v. Gialourakis, 101 Fla. 1130; 133 So. 104 (1931).

2. See e.g., FLA. STAT. ch. 7.58 (1983).

3. See, FLA. STAT. ch. 7.44 (1983).

4. See e.g., FLA. STAT. ch. 7.11 (establishes the northern boundary line of Collier County as westerly extension of the north line of township forty-eight south to the western boundary of the State of Florida).

5. FLA. STAT. ch. 7.29 (1983).

6. Id. ch. 7.38.

7. United States v. Florida, 363 U.S. 121; 80 S.Ct. 1026 (1960).

8. Id. See also, Lipscomb v. Gialourakis, 101 Fla. 1130; 133 So. 104 (1931).

9. 363 U.S. 121; 80 S.Ct. 1026 (1960).

10. FLA. CONST. art. VIII, section 1(a) (1964) (provides that counties may be changed by law); See also, Re Executive Communication, 14 Fla. 320 (1873) (interpreting art. VIII Section 2 of former 1868 Constitution which provided all counties remain as organized unless changed by a two-thirds vote of both houses of the legislature).

11. Woodson, Corbett and Tannen, Onshore Impact of Offshore Energy Development, 31 U.FLA.L.REV. 284 (1979).

12. Id.

13. However, Florida cases clearly establish that a municipality may not annex large, uninhabited areas of land solely for the purpose of raising tax revenues. Davis v. Stewart, 120 So.2d 335 (Fla. 1929).

14. FLA. CONST. art. VIII, section 2(b). See also FLA. STAT. §166.021 (1983).

15. FLA. CONST. art. VIII, section 2; Fla. Stat. ch. 171 (1983).

16. Woodson, supra note 11, at 286.

17. See, e.g., DAYTONA BEACH, FLA., CHARTER pt. A, §2 (1971).

18. Woodson, supra note 11, at 296. See also, Id. at n. 18. citing, KEY WEST, FLA., CHARTER ch. A, art. I, §9 (1975).

19. Telephone interview with Mr. Brian Scott, Geography Division, U.S. Census Bureau, Washington, D.C. 20333. Although the census bureau prepares maps outlining each municipality's boundary, the maps are based on unverified

census information contributed by each local authority. Presently, the U.S. Government Survey is working on digitizing these maps. That is, the present boundaries of each municipality with 5,000 or more population, are being computerized. Florida will be the first state to become digitized. This does not mean, however, that the maps of the U.S. Census Bureau will be in any way more accurate than maps presently available. The only method of insuring the exact location of any municipality's boundaries is to individually research the legal boundaries for each city.

20. FLA. STAT. ch. 171.091 (1983). "Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. Id.

21. The Florida Bureau of Laws files all annexations which are submitted by municipalities. The Bureau, however, does not enforce the reporting requirement contained in the Act. See supra, note 20. Thus, the obligation to file annexations is left to the discretion of local officials, with no subsequent check up done by any state authority.

22. Advise of Dr. J. Armstrong, University of Florida Map Library. The county tax assessors keep current legal descriptions for all municipalities within their jurisdiction. The corporate limits are recorded using the traditional range and township descriptions.

23. For an excellent discussion of this subject see, FLORIDA ADVISORY COUNCIL ON INTERGOVERNMENTAL AFFAIRS; ANNEXATION IN FLORIDA: ISSUES AND OPTIONS; (August, 1983), (hereinafter FAC Report).

24. The Federal constitutional cases dealing with annexations have primarily focused on protecting the right to vote. See, The Right to Vote in Municipal Annexations, 88 HARV. L. REV. 1579 (1975).

25. Regarding annexations, Article VIII, section 2(c) of the Florida Constitution states: "municipal annexation of unincorporated territory, merger of municipalities, and exercise of extraterritorial powers by municipalities shall be as provided by general or special law." Id.

26. FLA. STAT. ch. 171. (1983).

27. See supra, note 15.

28. See, e.g., MacGuyer v. Tampa, 89 Fla. 138, 103 So. 418 (1925); Auberndale v. Adams Packing Asso., 171 So.2d 161 (Fla. 1965); Bower v. Tampa, 316 So.2d 570 (Fla. 2d DCA,

1975).

29. See, e.g., Davis v. Stewart, 97 Fla. 69; 120 So. 335 (Fla. 1928) (legislature may not extend municipal boundaries solely to increase tax revenues).

30. Id. See also, Gillete v. Tampa, 57 So.2d 27 (Fla. 1952).

31. Davis v. Stewart, 120 So. 335 (Fla. 1928).

32. Johnson v. Sarasota, 109 So. 473 (Fla. 1926); Davis v. Clearwater, 139 So. 377, aff'd 146 So. 836 (Fla. 1932).

33. FLA. STAT. ch. 171.022(2) (1983). "The provisions of any special act or municipal charter relating to the adjusting of municipal boundaries in effect on October 1, 1974, are repealed except as otherwise provided herein." Id.

34. Id. ch. 171.0413(4) (1983).

35. FLA. STAT. ch. 171.021 (1983).

36. Id. ch. 171 .021(1).

37. Id. ch. 171 .021(2).

38. Id. ch. 171 .021(3).

39. Id. ch. 171 .021(4).

40. Id. ch. 171.045.

41. Defined in FLA. STAT. ch. §171.031(11).

> (11) "Contiguous" means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The separation of the territory sought to be annexed from the annexing municipality by a right-of-way for a highway, road, railroad, canal, or utility or by a body of water, a watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, shall not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inha-

bitants from fully associating and trading with each other, socially and economically. However, nothing herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity; and when any provision or provisions of special law or laws prohibit the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act.

42. Id.

(12) "Compactness" means concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any country in the state shall be designed in such a manner as to ensure that the area shall be reasonably compact.

43. Id. ch. 171.044(1) (1983).

44. Id. ch. 171 .044(2).

45. Id.

46. FAC REPORT, supra note 23, at 101. Special act annexations are constitutionally prohibited in Dade county as are local bills of all types. Id. Two reasons exist for this, both of which result from the inclusion of the Dade charter in the state constitution. Id. First, the charter and the constitution both contain a prohibition against acts affecting only Dade county. Id. citing Article VIII, section 11(5), (6), Florida Constitution of 1885 (incorporated by reference in Article VIII, section 6(c) of the present constitution). Second, the Dade county charter contains a provision that governs municipal annexations in the county. FAC REPORT, supra at n. 15. Courts have held that the the exclusive means by which annexations may be accomplished in Dade county. Id. at no. 16, citing, City of Sweetwater v. Dade County, 343 So.2d 953 (1977 3d DCA). Therefore, absent a change in the state constitution, any changes made by the legislature in the statute pertaining to annexation (FLA. STAT. ch. 171) will not affect Dade County. Id.

47. FLA. STAT. ch. 171.044(4) (1983). To date, no counties other than Dade are affected by this provision.

48. Id. §171 .044(5).

49. See ATTY. GEN. OP. 080-84, Sept. 30, 1980.

50. FAC REPORT, supra note 23, at 106.

51. Id.

52. The Florida Supreme Court stated:

> "The Trustees of the Internal Improvement Trust Fund are...constitutional offices of the executive branch of government. If we are ever to apply the rule that public officials will be presumed to do their duty, it would...be most appropriate in this instance." Hayes v. Bowman, 91 So.2d at 802 (Fla. 1957); quoted in Yonge v. Askew, 293 So.2d 395 (1st DCA 1974). Accord, Farrugia v. Frederick, 344 So.2d 921 (1st DCA 1977).

Never has a Board's decision concerning sovereignty lands management been reversed by a court for violation of the public interest standard. See Swim, OIL AND GAS LEASING IN FLORIDA'S TERRITORIAL WATERS: STATE LAWS (report to the Center for Governmental Responsibility, Gainesville, Florida), at 12.

53. Id.

54. FLA. STAT. ch. 171.042(1) (1983).

55. Id. §171 .042(1)(a).

56. Id.

57. Id. §171 .042(1)(b).

58. Id. §171 .042(1)(c).

59. Id. §171 .042(1)(c)1.

60. Id. §171 .042(1)(c)2.

61. Id. §171 .042(1)(c)4.

62. Id. §171 .042(2).

63. Id. §171 .042(3).

64. FLA. STAT. ch. 171.0413(1) (1983).

65. Id. §171 .0413(2)(a).

66. Id. §171 .0413(2)(b).

(4) "Newspaper of general circulation" means a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but, does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising. Id.

67. Id. §171 .0413(2)(c).

68. See, FAC REPORT, supra note 23, at 107.

69. FLA. STAT. ch. 171.043(1) (1983).

70. Id.

71. Id. §171 .043.

72. Id. §171 .043(2).

73. Id. §171 .043(2)(a).

74. Id. §171 .043(2)(b).

75. Id. §171 .043(2)(c).

76. Id. §171 .043(3)(a).

77. Id. §171 .043(3)(b).

78. Id.

79. Id. §171 .021(1), .021(2).

80. See Woodson, supra note 11, at 287-297.

81. Urban purposes in this context means that land is used intensively for residential, commercial, industrial, institutional, and governmental purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas.

82. See, Gillette v. Tampa, 57 So.2d 27 (Fla. 1957).

83. Id.

84. Bower v. Tampa, 316 So.2d at 571; (Fla. 2d DCA 1975).

85. Id.

86. Id.

87. Id. at 572.

88. Id. at 571.

89. Id.

90. Id. at 573.

91. 57 So.2d at 28; (Fla. 1952).

92. Id. at 29.

93. Ervin v. City of Oakland Park, 42 So.2d 270 (Fla. 1949).

94. Id. at 272.

95. Bower v. Tampa, 316 So.2d at 573.

96. 172 So.2d at 452; (Fla. 1965).

97. Id.

98. FLA. STAT. ch. 253.03(1) (1983).

Part II.

Annexation Procedures Used in Coastal States Other Than Florida

Introduction

This section will analyze the annexation methods used by other coastal states which lease offshore waters for mineral development. The annexation laws of Alabama, Mississippi, Louisiana, Texas, California, and Alaska are surveyed. For reasons such as differing population densities, rates of growth, and amounts of offshore activity, some states' annexation laws are more sophisticated than the laws of other states.

I. Alaska

A. Types of Municipalities

1. Boroughs

Alaska differs from every other state by the way in which it is divided into political subdivisions. Alaska has never had any counties, such as are found in most other states. Somewhat similar to counties, however, are the state's largest political subdivisions, boroughs.[1] A borough may contain one or more cities as well as unincorporated territory. Alaska is presently divided into ten boroughs.[2] New boroughs may also be formed. In order to incorporate as a borough, however, an area must meet certain requirements regarding population, natural geography, economy, and transportation.[3]

A borough may be categorized as first, second, or third class and the powers of a borough depend on its classification.[4] Boroughs are governed by either home rule or general law.[5] Only first class boroughs which have adopted home rule charters are governed by home rule.[6]

The Alaska Constitution, Article X, Section 3, requires that the entire state be divided into boroughs, organized or unorganized.[7] Article XII, Section 1, of the Constitution extends the State's boundaries over "all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of the constitution by the people of Alaska."[8] Nothing in either the Alaska Constitution nor the Alaska statutes specifically delineates the geographical jurisdiction of a borough. However, since the entire state is required to be divided into boroughs, it follows that the borough's jurisdiction extends over territorial waters within its boundaries.

Another type of local government in Alaska is the city. Article X, Section 7 of the Alaska Constitution provides for incorporation of cities as prescribed by law.[9] Alaska statutes, Title 29 contains the law pertaining to municipal government, including annexation. Like boroughs, cities are either governed by home rule or general law.[10] Cities may be either first class or second class, but only first class cities may adopt home rule.[11] A first class city must have 400 or more permanent residents.[12]

2. City Boundaries

The creation of municipalities and the establishment of their boundaries is a legislative function.[13] The power of the legislature to adopt methods for changing or establishing these boundaries derives from Article X, Section 12, of the Alaska Constitution.

The Constitution also provides for the establishment of a local boundary commission in the executive branch of the state government.[14]

The commission may consider proposed changes to local government boundaries.[15] This section of the constitution establishes two methods of local boundary alteration: 1) by direct action of the local boundary commission subject to legislative disapproval, and 2) by establishment by the commission of procedures for the adjustment of boundaries by local action.[16] The local Boundary Commission is a unique feature of Alaskan Law. The framers of Alaska's Constitution intended to provide an objective administrative body to make state level decisions regarding local boundary changes, in order to avoid the chance that a small, self-interested group might prevent boundary changes otherwise in the public interest.[17]

B. Alaska's Annexation Statutes

Currently two statutes govern municipal expansion[18] and an additional statute governs conveyances of tidelands to municipalities.[19] The statute governing municipal expansion by local action is Chapter 29.68.010. Expansion by state action is governed by Chapter 44.47.583. The Alaskan Constitution provides for legislative veto over any of the Local Boundary Commission's proposals.[20] Neither the statutes nor constitution specifically address annexations of territorial waters. The Alaska statute which comes nearest to allowing municipal control over adjacent state waters is Chapter 38.05.320. This statute is not an annexation statute but is instead intended to allow conveyances of tidelands to municipalities, apparently for dredge and fill developments.

1. State Initiated Annexations

The Local Boundary Commission consists of five members appointed by the Governor for overlapping five year terms.[21] The Commission must:

1) make studies of local government boundary problems;[22]
2) develop proposed standards and procedures for changing local boundary lines;[23]
3) consider a local government boundary change requested of it by the legislature, the Commissioner of Community and Regional Affairs, or a political subdivision of the state;[24] and
4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed, and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.[25]

The local boundary commission may:

1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services;[26] and
2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes,

including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.[27]

2. Local Annexations

The method by which a local municipality, either city or borough, may change its boundaries is codified in Alaska Statutes, Section 29.68.010, and in the Alaska Administrative Code, Section 15.010. The statute provides that:

1) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.[28]

2) In addition to the regulations governing annexation by local action adopted under Section 44.19.260, [renumbered as (44.47.565)], the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include:[29]

(a) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;[30]

(b) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval;[31] and

(c) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.[32]

3) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.[33]

The development of standards to guide municipal annexations is a precondition to the commission's exercise of its discretion under subsection (b) of the statute.[34] Three purposes underlie the statutory requirement of annexation standards.[35] First, such standards expose the basic decision-making processes of the commission to public view and thus subject commission action to broad corrective legislation.[36] Second, the standards guide local governments in preparing proposals and making annexation decisions.[37] Third, annexation standards objectify the criteria of decision making and delineate the battleground for a public hearing.[38]

In Port Valdez Co. v. City of Valdez,[39] the Alaska Supreme Court addressed the Local Boundary Commission's failure to promulgate stan-

dards for annexation required by the statute.[40] The City of Valdez annexed the entire port area including land owned by the Port Valdez Company.[41] The annexation was challenged on the ground that the Boundary Commission had not developed any standards to regulate or restrict the city's annexation.[42] The Alaska Supreme Court noted that failure to promulgate standards made any annexation voidable and prima facie illegal.[43] The court had reached the same conclusion three years earlier in a similar instance of the Boundary Commission's failure to promulgate standards and procedures.[44] Thus, until the Commission develops standards, which research reveals it has yet to do, any annexation might be voidable on this ground.

3. Step Annexation

Step annexation is a term which describes the gradual assimilation of adjacent territory by a municipality.[45] It is an alternative to immediate annexation in situations where such annexation would be premature.[46] This method of annexation may be most suited to attempted annexations of large, uninhabited areas of water. Florida law contains no parallel. Ordinarily, a step annexation is commenced by a municipality's petition specifically requesting the step annexation alternative.[47] However, the Local Boundary Commission could require a municipality to use the step method.[48] Presumably, a municipality's attempt to directly annex large tracts of vacant ocean, simply for the purpose of taxing oil leases, could be regulated by requiring the municipality to annex only small, developed tracts one at a time.

4. Tidelands Acquisition

The Alaska Annexation statutes does not address municipal annexation of offshore oil fields or territorial waters. However, under the Alaska Land Act,[49] enacted in accordance with the Alaska Constitution, Article VIII, Section 10, home rule cities and first class cities incorporated on or before April 1, 1964, may apply for conveyance of all lands extending seaward from the mean high tide line, to either the pierhead line or harbor line.[50] If there is no pierhead or harbor line established, the city may petition for submerged land up to any line, subject to approval by the Director and Commissioner of the Division of Lands.[51] The tidelands are conveyed to the municipality subject to the rights of occupants existing on the land at the time the petition is made to purchase the land.[52] Where no occupant has a preference right to the submerged lands, the municipality may lease or sell the land which is conveyed to it and may impose terms or conditions upon it.[53]

Apparently this act was created for the purpose of allowing the municipality to dredge and fill the immediate adjacent waters.[54] However, the Act does not define tidelands, which arguably include all waters seaward of the line of mean high water. The statute by its terms does, however, restrict conveyances to "tidelands and submerged lands suitable for occupation and development without unreasonable interference with navigation."[55] It is therefore questionable whether the statute would allow conveyance to a municipality of vacant, uninhabited submerged lands.

Footnotes

1. See, Walters v. Cease, 388 P.2d 263 (Alaska, 1964).

2. The ten boroughs are: Ketchikan Gateway Borough, Kodiak Island Borough, Matanuska-Sustina Borough, North Slope Borough, Sitka Borough, Bristol Bay Borough, Fairbanks North Star Borough, Haines Borough, Juneau Borough, and Kenai Peninsula Borough.

3. See, Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (ATaska 1974). See also, ALASKA STAT. §29.18.030 (1983).

4. ALASKA CONST. art. X, section 11, (1959) provides: "A home rule borough or city may exercize all legislative powers not prohibited by law or by charter."

5. See, ALASKA STAT. §29.08.020 (1983), which states:

   "A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city."

6. ALASKA STAT. §29.08.01 (1983).

7. Unorganized boroughs are discussed in article X, section 6, of the ALASKA CONSTITUTION which provides:

   "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility."...

8. ALASKA CONST. art. X, section 1, (1959).

9. See, ALASKA CONST. art. X, section 7, (1959).

   > Cities shall be incorporated in a manner prescribed by law and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law. Id.

10. ALASKA STAT. §29.08.01 (1983).

11. ALASKA STAT. §29.18.010 (1983).

12. Id.

13. See, Town of Fairbanks v. Barrock, 282 F. 417 (9th Cir. 1922); In re Annexation to City of Anchorage, 146 F. Supp. 98 (D. Alas. 1956).

14. ALASKA CONST. art X, section 12, (1959).

15. ALASKA STAT. §44.47.567(b)(1) (1983); Id. §29.68.010.

16. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

17. Id. See, City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska 1971). Of course, this philosophy is opposite that of many other states, such as Florida. Florida's annexation statute does not provide for central decision making by a board or state agency. Instead, Florida allows each municipality to decide for itself, by referenda, whether to enlarge or contract. See, FLA. STAT. ch. 171 (1983).

18. ALASKA STAT. §29.68.010 (1983); Id. §44.47.583 (1983).

19. Id. §38.05.320 (1983).

20. ALASKA CONST., art X, section 12, (1959); See, United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

21. ALASKA STAT. §44.47.565 (1983).

22. Id. at 44.47.567(1).

23. Id. at .567(2).

24. Id. at .567(3).

25. Id. at .567(4).

26. Id. at .567(b)(1).

27. Id. at .567(b)(2).

28. ALASKA STAT. §29.68.010(a) (1983).

29. Id. at .010(b).

30. Id. at .010(b)(1).

31. Id. at .010(b)(2).

32. Id. at .010(b)(3).

33. Id. at .010(c).

34. See, United States Smelting, Ref. & Mining Co. v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971); Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., 516 P.2d 408 (Alaska 1973).

35. See, Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (1974).

36. Id.

37. Id.

38. Id.

39. Id.

40. Id. at 1148.

41. Id.

42. Id. at 1150.

43. Id.

44. See supra note 20.

45. Supra note 35, at 1151.

46. Id.

47. Id.

48. Id.

49. ALASKA STAT. §38.05.320 (1983).

50. Id. at .320(b).

51. Id.

52. Id.

53. Id. at .320(7).

54. Alaska's tidelands regulation has a long legislative history. The steps in the legislative history are the 1957 Act passed by the Territorial Legislature (ch. 184, SLA 1957); the 1957 federal Tidelands Act passed by Congress (Pub. L. 85-303, 71 Stat. 623, 48 U.S.C. §§455-455c); the 1959 Act passed by the Alaska State Legislature (ch. 169, SLA 1959); a 1960 formal Attorney General's opinion (1960 OP. ATTY. GEN. No. 13); the 1964 amendments to the 1959 Act (ch. 81, SLA 1964).

55. ALASKA STAT. §38.05.320 (1983). But see, State Dept. of Nat. Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981) (this Act to be liberally construed in favor of conveying waters to municipality).

II. California

A. Boundaries

1. State

The State of California, in its sovereign capacity, possesses legal title to: 1) tidelands, i.e., the area situated between the ocean's low and high water marks on the shoreline; 2) submerged lands up to three geographical miles from the coastline, and 3) the beds of navigable streams and lakes.[1]

2. Counties

The Fifteen California counties which border on the Pacific Ocean are: San Diego, Orange, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Francisco, Santa Cruz, San Mateo, Marin, Sonoma, Mendocino, Humbolt, and Del Norte.

The state is required to be divided into counties by statute.[2] The boundaries for each California county are individually defined in the California Government Code.[3] Like the State's oceanward boundary, each coastal county's boundary lies three miles off its coastline, as defined by statutes.[4]

3. Cities

City boundaries may extend into the Pacific Ocean, subject to the annexation restrictions over submerged lands, discussed *infra*.

B. California's Annexation Statute

With over 50 cities along its coast, California, like Florida, has a substantial interest in long-range management of submerged

lands. Unlike Florida, however, California has enacted laws specifically aimed at offshore municipal annexation. California has affimatively banned annexations or incorporations of State owned tidelands or submerged lands, without the approval of the State Lands Commission.

1. Annexation of Submerged Lands

California has enacted at least two statutes which restrict municipal annexations or incorporations of submerged or tide lands. The earliest statute, enacted in 1963 and still applicable, geographically restricted the area which could be annexed to lands within the seaward extensions of the city's existing land boundaries.[5] The statute also precluded any annexation without approval by the State Lands Commission.[6] The more recent tidelands annexation statute, enacted in 1977, does not create additional substantive requirements.[7] Rather, the newer statute merely re-words the former statute, without repealing it.[8] No court has yet considered California's tidelands annexation statutes.

The statutory requirements for annexation of submerged land are as follows:

1. No tidelands or submerged lands owned by the state or by its grantees in trust may be annexed to, or incorporated into, a city without the approval of the State Lands Commission.[9]
2. The city must file a map with the Commission showing proposed new boundaries.[10]
3. The State Lands Commission may approve or disapprove any or

all portions of the boundary proposal.[11] The Commission must require, where feasible, the city's extension of its boundaries to be at right angles to the shoreline.[12] The Commission may, however, allow irregular boundaries if necessary.[13]

4. The Commission has 45 days to decide whether to approve the annexation.[14]

5. The Commission's decision is final and conclusive.[15] Failure of the Commission to report their conclusion within 45 days is deemed approval of the annexation.[16]

Footnotes

1. REPORT ON THE USE, DEVELOPMENT, AND ADMINISTRATION OF GRANTED TIDELANDS AND SUBMERGED LANDS, State Lands Commission of California 1 (January, 1976). "By enactment of the Submerged Lands Act of 1953 (43 USC §1301) the United States relinquished to the coastal states all of its rights in all lands beneath navigable waters within a three mile limit and, in excess of that limit, within state boundaries as they existed at the time a state became a member of the Union, or as theretofore approved by Congress. The limit of the grant was three leagues." United States v. Louisiana, 363 U.S. 1 (1960). See, CALIF. CONST. art. XXI, section 1 (1849). ("...thence running west along said boundary line to the Pacific Ocean, and extending therein three English miles...") Id. See, CAL. GOV. CODE §170 (West 1980 & Supp. 1984) which provides: "the boundary...runs and has in the past run three English nautical miles oceanward...and adjacent to the mainland."

2. CAL. GOV. CODE §23001 (West 1980).

3. See, CAL. GOV. CODE §23108 (Del Norte); §23112 (Humboldt); §23119 (Los Angeles); §23121 (Marin); §23123 (Mendocino); §23127 (Monterey); §23130 (Orange); §23137 (San Diego); §23138 (San Francisco city and county); §23140 (San Luis Obispo); §23141 (San Mateo); §23142 (Santa Barbara); §23144 (Santa Cruz); §23149 (Sonoma); §23156 (Ventura) (West 1980 & Supp. 1984).

4. See e.g., CAL. GOV. CODE §23108 (Del Norte County) (West 1980) providing: "The boundaries of Del Norte County are as follows: ...beginning at a point in the Pacific Ocean...three miles from shore." Id.

5. CAL. GOV. CODE §35014 (West 1980).

6. Id.

7. CAL. GOV. CODE §35009 (Supp. 1984).

8. Id.

9. Id. §35009.

10. Id.

11. Id.

12. Id.

13. Id.

14. Id.

15. Id.

16. Id.

III. Texas

Introduction

The annexation law of Texas has evolved further than any other state discussed in this article. Not only has Texas updated the statutory law to reflect Supreme Court decisions regarding its boundaries, it has also enacted comprehensive legislation to regulate municipal annexation of submerged lands.

A. Boundaries and Annexation

1. State

The gulfward boundary of Texas was determined by the United States Supreme Court in Texas v. Louisiana in 1976.[1] The State of Texas has full sovereignty over the water, beds and shores, and arms of the Gulf of Mexico up the three marine leagues from its coastline.[2] This sovereignty is subject only to the United States' power to regulate foreign and interstate commerce under Article 1, Section 8 of the United States Constitution, and the United States' power over maritime and admiralty jurisdiction under Article III, Section 2 of the United States Constitution.[3]

2. Counties

The twelve coastal counties in Texas are: Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, Calhoun, Matagorda, Brazoria, Galveston, Chambers, and Jefferson. The gulfward boundary of each coastal county is three marine leagues.[4] The area in the extended boundaries of the counties is part of the public free school land and

is subject to constitutional and statutory provisions pertaining to use, sale, lease and distribution.[5]

3. Municipalities

Texas has enacted statutes directly limiting the gulfward extent of municipalities, and prohibiting annexations of submerged lands beyond a certain limit.[6] Texas has two types of cities: general law cities and home rule cities. Recent statutory changes and court decisions have made the present status of Texas law difficult to ascertain.

The background of Texas annexation law explains how the present gulfward annexation limits evolved. Prior to June 19, 1983, the gulfward boundaries of general law cities were limited to one mile from the coastline.[7] Home rule cities, however, were permitted to extend their boundaries 10.45 miles gulfward.[8] Fearing that home rule taxation and annexation of submerged land oil leases would encourage oil companies to relocate outside the state's boundaries in federal waters, the Texas legislature enacted what is now the law regarding submerged land annexations.[9] Presently, the boundaries of general law cities are limited to one mile gulfward from the coastline.[10] Home rule cities may extend their boundaries no more than one marine league (3.48 miles) into the Gulf.[11] Although at least one home rule city, Port Arthur, had, prior to enactment of the new annexation limits, extended is boundaries 10.5 miles gulfward, the statute voided the boundary beyond one marine league from the coastline.[12]

The new Texas law continues to allow coastal municipalities to tax oil leases within their Gulf boundaries, but only up to one mile in the case of general law cities or one league for home rule cities.[13]

Footnotes

1. 426 U.S. 465 (1976). See, U.S. v. Louisiana, 363 U.S. at 84 (1960); TEX. NAT. RES. CODE ANN. §11.1012 (Vernon 1983).

2. Id.

3. Id.

4. See, TEX. NAT. RES. CODE ANN. §11.013 (Vernon Supp. 1982).

5. Id. The revenues derived from submerged lands leases within state waters are used to support public schools in Texas.

6. The general annexation statute in use in Texas is not relevant for purposes of this discussion. See, TEX. REV. CIV. STAT. ANN. art. 970a (Vernon 1963 & Supp. 1983).

7. See TEX. NAT. RES. CODE ANN. §11.013(c) (Vernon Supp. 1982). "The gulfward boundaries of any city, town or village created and operating under the general laws of the State of Texas shall not be established or extended by incorporation or annexation more than 5,280 feet gulfward beyond the coastline..." Id.

8. Cf. TEX. NAT. RES. CODE ANN. §11.0131 (Vernon 1981) (emergency moratorium on home rule annexations more than one mile from coastline; expired October 1, 1983).

9. Senate Bill 551, enacted June 19, 1983, amending TEX. NAT. RES. CODE ANN. §11.0131(b), (c), and (d) (Vernon 1963 & Supp. 1982).

10. See supra note 7.

11. See supra note 9.

12. Id.

13. Id.

IV. Louisiana

A. Boundaries

1. State

The state's gulfward boundary was established in United States v. Louisiana,[1] by the United States Supreme Court. Although Louisiana, like Mississippi and Alabama, had previously claimed a boundary three marine leagues into the Gulf,[2] the Court rejected this argument and held that Louisiana's boundary extended only three geographic miles from its coastline.[3] Louisiana's constitutional and statutory provisions,[4] claiming a three marine league limit, are therefore superceded.

2. Counties

Louisiana's counties are called parishes. The eleven parishes which border on the Gulf of Mexico are: Cameron, Vermillion, Iberia, St. Mary, Terrebonne, Lafourche, Jefferson, Plaquemines, Bernard, Orleans, and St. Tammany.

Louisiana statutes provide that the gulfward boundary of coastal parishes "extend coextensively with the gulfward boundary of the State of Louisiana."[5] Since the state's gulfward boundary lies three geographical miles from the coastline, the Gulf parishes' boundaries also extend to this limit.

3. Municipalities

There is no method for determining the gulfward extent of coastal cities' boundaries other than to investigate each city's charter and laws.[6]

B. Louisiana's Annexation Statutes[7]

Two methods of annexation are available to a municipality in Louisiana. First, a municipality may extend its corporate limits by means of petition and election.[8] A second method is by means of petition and ordinance.[9] Additionally, if the territory to be annexed is owned by a public body, such as the state, a municipality may annex the area upon petition to the public body, without complying with otherwise required procedures of advertisement, petition by residents or public hearing.[10] Louisiana's annexation law, like the laws of Florida, Alabama, Alaska, and Mississippi do not specifically address annexations of coastal waters. However, the statute on its face would not prevent municipal annexation of offshore lands.

1. Annexation by Petition and Election[11]

This method is employed by owners of an adjacent area seeking to become part of the city.[12] One-third of the land owners in the area lying contiguous to the city (excepting New Orleans) may request the city to annex the area.[13] The petition must contain a map or plat outlining the area to be annexed.[14] The plat is permanently recorded in the official records of the town.[15]

After the petition has been filed, the city officials may order an election to be held by the qualified electors residing in the area

proposed for annexation.[16] If the majority of voters vote in favor of annexation, the city officials may then order a second election to be held by the qualified electors residing in the city itself.[17] If a majority of the city's voters vote in favor of the proposed annexation, the area is annexed to the city by proclamation.[18]

2. Annexation by Petition and Ordinance[19]

This method allows a municipality (excepting New Orleans) to annex territory through passage of local ordinances.[20] The ordinance is valid, however, only when a petition has previously been filed requesting annexation, signed by a certain percentage of the residents in the area to be annexed.[21] If there are no registered voters residing in the area proposed for annexation, then the requirement for a majority of the registered voters on the petition does not apply.[22]

Subject to the requirement that the annexation be reasonable, Louisiana statutes do not prohibit annexations of unoccupied, rural lands. One of the major considerations in determining the reasonableness of an annexation proposal is whether the city needs the area for future growth.[23] Assuming a municipality could demonstrate a reasonable need for offshore waters, the Louisiana statute on its face would allow such an annexation.

Footnotes

1. 363 U.S. 1 (1960).

2. 363 U.S. at 79.

3. Id. For an interesting discussion of Louisiana's boundaries see, Stockwell, The Boundaries of the State of Louisiana, 42 LA. L. REV. 1043 (1982).

4. See e.g., LA. REV. STAT. ANN. §49:1 (1954 & Supp. 1983) "The historic gulfward boundary of the state of Louisiana extends a distance of 3 marine leagues from coast." Id.

5. LA. REV. STAT. ANN. §49:6 (1954 & Supp. 1983).

6. See, LA. REV. STAT. ANN. §33:178 (Supp. 1984) (must file boundary changes with clerk of the district court of parish in which city is located).

7. LA. REV. STAT. ANN. §33:141-180 (1950 & Supp. 1984).

8. Id. §33:151.

9. Id. §33:171.

10. Id. §33:180.

11. Id. §33:151.

12. Id.

13. Id. (requires one third "in number and in value of the bona fide owners of any lots or land, lying contiguous and adjacent to the territorial corporate limits of any city or town, the city of New Orleans excepted.")

14. Id.

15. Id. §33:152, 153.

16. Id. §33:153.

17. Id. §33.157.

18. Id. §33.160.

19. See, LA. REV. STAT. ANN. §33:171 (1950 & Supp. 1984).

20. Id.

21. Id. §33:172 provides:

> No ordinance enlarging the boundaries of a municipality shall be valid unless prior to the adoption thereof a petition has been presented to the governing body of the municipality containing the written assent of twenty-five percent in number of the resident property owners as well as twenty-five percent in value of the property within the area proposed to be included in the corporate limits according to the certificate of the parish assessor. Id.

22. Id. §33:172 (Supp. 1984).

23. See e.g., Barbe v. City of Lake Charles, 45 So.2d 62 (La. 1950); Kansas City So. Ry. v. City of Shreveport, 354 So.2d 1362, at 1369 (La. 1978). Reasonableness of municipal enlargement is determined by, among other factors, population, need for homes, industrial or merchantile establishments, and a need for additional land area to accommodate the present or reasonably anticipated future growth of the municipality. Id.

V. Mississippi

A. Boundaries

1. Counties

Mississippi has three coastal counties:[1] Hancock County,[2] Harrison County[3] and Jackson County.[4] Mississippi Statutes, Chapter 19, sets forth each county's legal boundary description.[5] Each county's description states that the boundary extends into the Gulf including "all the islands within six leagues of the shore of the Gulf of Mexico."[6] This description could lead to the conclusion that the three coastal counties boundaries lie six leagues offshore. The Mississippi Constitution, Article II, Section 3, similarly establishes the state's Gulf boundary to include "all islands within six leagues of the shore."[7] Finally, Mississippi Statutes, section 3-3-5 gives coastal counties jurisdiction to the southern boundary of the state,[8] which presumably was six leagues from shore.

In 1960, however, the United States Supreme Court fixed the Gulf boundary of Mississippi at three miles from its coast.[9] The court specifically addressed the language used in Mississippi's constitution refering to all islands within six leagues of the shore.[10] The court stated that this language did not establish a boundary line six leagues from shore including all waters and submerged lands as well as all islands. Instead, the court concluded that the provision gave Mississippi title to islands, not waters where there were no islands.[11] The court declined to express any opinion on the specific location of Mississippi's coastline.[12] To date, the Mississippi

Constitution and statutes which define coastal county and state boundaries to extend six leagues into the Gulf, have not been amended.

2. Municipal Boundaries

The Mississippi statutes do not set forth the boundary descriptions for coastal cities; nor does the Mississippi Constitution mention the limits a municipality may extend into coastal waters. Mississippi's law regulating tidelands and submerged lands[13] does not explicitly address municipal ownership of submerged, adjacent lands. It also fails to provide for a method of conveyance of these lands to the city by the state. The most likely source to contain an accurate description of a coastal city's territorial limits is the individual municipal charter.

3. Port Authorities

Coastal county port authorities are given broad powers over submerged lands within their jurisdiction. The Ports, Harbors, Landings and Watercraft Act,[14] can be interpreted as conferring complete control to the port authority over waters below the mean high tide line within their geographical boundaries. The port authority, therefore, has the potential power to lease, sell or restrict the use of submerged lands.[15]

B. Mississippi's Annexation Statute

Mississippi's annexation procedures are primitive by comparison to other states' laws, such as Florida's statute. Mississippi has one

statute which governs all extensions or contractions of corporate boundaries.[16] However, the statute does not address itself to extensions of corporate boundaries into tidal waters.

Several steps are required of a municipality seeking to annex or exclude territory. The process begins by the municipality passing an ordinance defining the territory proposed to be annexed and also defining the entire boundary as changed.[17] One aspect of the Mississippi statute which stands in sharp contrast to Florida annexation requirements concerns proposed improvements to be conferred on the annexed territory. The Mississippi statute requires only that the annexation ordinance describe in general terms the proposed improvements, the extent of the improvements, and the time within which the improvements will be made.[18] Florida requires a much more specific showing of the nature of improvements to be conferred on the annexed area; i.e., trunk water mains, sewage lines, etc.[19] The Mississippi statutes also requires, as does the Florida statute, a statement of the public services which the city intends to render in the annexed territory.[20]

After the municipality has passed the annexation ordinance, the municipal authorities must file a petition in the chancery court of the county in which the city is located.[21] If the annexed territory spans two adjoining counties, the petition must be filed in the chancery court of the county in which the territory is located.[22] Florida forbids annexations of territory located in a county other than the county where the municipality is located.[23] The chancery court either affirms or rejects the petition for annexation.[24] The petition must

contain a map or plat of the municipal boundaries as they will exist if the annexation takes place.[25]

Upon filing the petition, the chancellor of the court must set a fixed time within which a hearing will be held.[26] All interested parties have a right to appear at the hearing and object to the annexation.[27] Additionally, if the area to be annexed is located within three miles of another municipality, then the other municipality is automatically made a party defendant to the petition and served with notice at least 30 days prior to the hearing.[28]

At the hearing, the chancellor determines whether the annexation is 1) reasonable, 2) required by public convenience and necessity, and 3) that reasonable public and municipal services will be rendered in the annexed area.[29] If the chancellor determines that the above requirements will be met, he ratifies the proposed annexation.[30] The chancellor may also modify the proposed annexation by decreasing the territory.[31] If the chancellor determines that the above requirements are not met he must deny the proposal.[32] The chancellor's decision is effective after 10 days from the date he renders it, or within 10 days from the final determination of an appeal taken to his decision.[33] At all times the burden is upon the municipality to show the annexation is reasonable.[34] After 10 days from the date the chancellor renders his decision, he files a copy of his decree with the Secretary of State.[35]

No court has had occasion to review a proposed annexation of Mississippi's territorial waters. However, a few decisions have elaborated on the scope of the Mississippi statute. In Lowe v.

Jackson,[36] the Mississippi Supreme Court upheld an annexation of swampland under the rationale that the area was likely to become developed within a reasonable period of time.[37] Arguably, this rationale taken to its logical extreme would support a proposed annexation of uninhabited waters where the municipality could show imminent future development and industrialization of the waters. However, in Extension of Boundaries of Horn Lake v. Renfro,[38] the Mississippi Supreme Court upheld the denial of a proposed annexation of territory separated from the city by a flood plain.[39] This decision, however, also turned on the fact that the area proposed for annexation already had adequate public services.[40]

Although the Mississippi annexation statute does not articulate standards to guide annexations, the Mississippi courts have created criteria which could potentially regulate annexations of territorial waters of the state. In Bridges v. Biloxi,[41] a lower court set forth the general criteria for determining whether an annexation ordinance is reasonable under the statute. The criteria are 1) the city's need for expansion; 2) whether the area sought to be annexed is reasonably within the path of such expansion; 3) the potential health hazard from sewage and waste disposal in the annexed area; and 4) the city's financial ability to make the improvements and furnish municipal services as promised.[42] These criteria closely resemble the criteria listed in several Florida court decisions.[43]

Footnotes

1. MISS. CODE ANN. §3-3-5 (1972 & Supp. 1983).

> Counties on the Mississippi River and Gulf of Mexico extend. ...and the counties bordering

on the Gulf of Mexico, to wit Jackson, Harrison and Handwick, shall, respectively, have and possess jurisdiction and extend to the southern boundary of the state within the space embraced by extending their boundary lines which strike the Gulf of Mexico, or inlets thereto, on a contiguous direct course to the southern boundary of the state, including all islands that may lie within the limits thus defined. Id.

2. Id. §19-1-45 (1972 & Supp. 1983).

3. Id. §19-1-47.

4. Id. §19-1-59.

5. Id. See notes 2, 3, 4, supra.

6. Id.

7. MISS. CONST. art II, section 3 (1890).

8. See supra note 1.

9. See, United States v. Louisianna, 363 U.S. 1, at 80 (1960). This case decided the claims of Louisiana, Texas, Mississippi and Alabama, to exclusive possession over submerged lands beyond three geographic miles from each state's coast. Florida's claim is discussed in a separate opinion, 363 U.S. 121 (1960).

10. Id.

11. Id. at 81. "We have already held with respect to Louisiana's claim to a three league maritime boundary that an Act of Admission which refers to all islands within a certain distance of the shore does not appear on its face to mean to establish a boundary line that distance from the shore, including all waters and submerged lands as well as all islands." Id.

12. Id. at 82.

13. MISS. CODE ANN. §29-1-101, 107 (1972 & Supp. 1983).

14. MISS. CODE ANN. §59-1-17 (1972 & Supp. 1983), provides in part:

> The several port commissions in the State of Mississippi are each hearby vested with full jurisdiction and control of any and all lands lying within, or adjacent to, any river, bay or natural lake which are now, or heretofore

> were, below the mean high tide mark, and which lands lie within or adjacent to any port or harbor within the jurisdiction of such port commission. Id.;

MISS CODE ANN. §59-1-19 (1972 & Supp. 1983), provides in part:

> In the event any part of lands as are described in section 59-1-17 are not used for port purposes, and navigation and commerce will not be impeded thereby, such port commission may sell, lease, or otherwise dispose of same to individuals, firms or corporations, public or private, for individual use, on such terms and conditions and with such safeguard as will best promote and protect the public interest. Id.

15. Id.

16. MISS. CODE ANN. §21-1-27, 21-1-43 (1972 & Supp. 1983).

17. Id. §21-1-27.

18. Id.

19. See, FLA. STAT. ch. 171.042 (1983).

20. MISS. CODE ANN. §21-1-27 (1972 & Supp. 1983). Cf. FLA. STAT. ch. 171. (1983).

21. MISS. CODE ANN. §21-1-29 (1972 & Supp. 1983).

22. Id.

23. See, FLA. STAT. ch. 171.042 (1983).

24. MISS. CODE ANN. §21-1-29 (1972 & Supp. 1983).

25. Id.

26. Id. §21-1-31.

27. Id.

28. Id.

29. Id. §21-1-33.

30. Id.

31. Id.

32. Id.

33. Id.

34. Id.

35. Id. §29-1-39.

36. 336 So.2d 490, cert. den. 429 U.S. 980, 50 L.Ed. 2d 589, 97 S.Ct. 493.

37. Id.

38. 361 So.2d 1372 (Miss. 1978).

39. Id.

40. Id.

41. 178 So.2d 683 app. dismd. 383 U.S. 574; 16 L.Ed. 2d 106, 86 S.Ct. 1077.

42. 178 So.2d at 685.

43. See e.g., Bower v. City of Tampa, 316 So.2d 570 (Fla. 2d DCA 1975).

VI. Alabama

A. Boundaries

1. State Boundaries

The Alabama Constitution, Article II, Section 37, defines the state's boundaries. The constitution provides that the state's gulf-ward boundary extends "due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido River.[1] The Alabama Code, Chapter 41-2-1, defines the state's Gulf boundary in identical language.[2] In 1960, however, the United States Supreme Court restricted Alabama's Gulf boundary to three geographical miles from its coast.[3] The Court declined to specify where the coastline ended.[4]

2. County Boundaries

Only two Alabama counties border on the Gulf of Mexico: Baldwin County and Mobile County. The legal descriptions for Alabama counties are not contained in either the state's constitution or the state's statutes. Nor does Alabama law define the Gulf extent of Mobile or Baldwin County's boundaries. Article II, Section 38, of the Alabama Constitution states that "[t]he boundaries of the several counties of this state, as they now exist, are hearby ratified and confirmed."[5] The Alabama Code, Chapter 11-1-1, further provides that the state is divided into 67 counties and lists all counties by name.[6] Presumably, since the entire state is divided into counties by statute, Mobile and Baldwin County's boundaries must extend three geographical miles into the Gulf of Mexico.

3. Municipalities

Article XII, Section 220, of the Alabama Constitution discusses municipal corporations, but is silent on the question of whether coastal cities may annex Gulf waters. The Constitution is also silent as to annexation in general. Chapter 11-40-1 of the Alabama Code governs municipal corporations in general. Like the state's constitution, the Code does not mention the Gulfward extent of municipal boundaries. Information about a coastal city's municipal limits in the Gulf of Mexico, may be found in the individual city's charter or incorporation documents.

B. Alabama's Annexation Statutes

Alabama has an extensive annexation statute found in Chapter 42 of the Alabama Code.[7] The statute does not specifically address annexations of territorial waters. The Alabama statute separates annexation procedures into three categories: 1) annexations generally;[8] 2) annexations by cities of 2,000 inhabitants or more, and[9] 3) annexations by cities of 25,000 or more.[10]

1. Annexation Generally

The provisions of this section set forth proceedures for annexations but do not preclude annexations by other legally authorized means.[11] The annexation begins with the city council's passage of a resolution stating that the annexation will be in the public interest.[12] The mayor then certifies a copy of the resolution to the probate judge of the county where the land proposed for annexation is

located.[13] A map must be attached to the resolution.[14] The judge has 15 days to enter an order directing an election among the qualified voters residing within the territory to be annexed.[15] Each voter has 3 months within which to vote either for or against the annexation.[16] If a majority votes in favor, the annexation proceeds.[17]

The map or plat filed with the initial annexation resolution must accurately show 1) the territory proposed to be annexed, including subdivisions and streets, if any, and 2) that the territory is contiguous to the boundary of the city.[18] The city may not annex any territory already part of another municipality.[19] No territory may be annexed unless at least two qualified electors reside on each quarter of each quarter section according to a government survey.[20] Additionally, these residents along with owners of 60% of the acreage to be annexed, must consent in writing to the annexation.[21] After an election has been held in any area, no other subsequent election may occur for the same area or any part within 12 months.[22]

2. Annexations of Territory By Cities of 2,000 Inhabitants Or More[23]

All of the owners of property within the area to be annexed must sign and file a written petition requesting annexation.[24] The municipality of 2,000 or more inhabitants must also adopt the petition and thereby consent to the annexation.[25] The petition must contain an accurate description of the property,[26] which must be contiguous to the municipality.[27] This method is available only for uncontested annexations.[28]

3. Annexation of Territory Containing 25,000 Inhabitants Or More[29]

This annexation procedure is similar to the general annexation procedure, requiring a resolution by the city council, decree by the probate judge, map or plat of the territory, and election.

C. Conclusion

Alabama's annexation law, although extensive, does not embrace annexations of offshore waters by coastal cities. Like Florida's annexation law, Alabama's law was clearly not intended to cover such situations. Perhaps under a very strained construction of the statute a coastal city may be able to annex submerged lands off its coast. However, it appears that Alabama is no more advanced than Florida in developing laws to control attempts by municipalities to annex waters offshore.

Footnotes

1. ALA. CONST. art. III, section 37 (1901).

2. ALA. CODE §42-2-1 (1975 & Supp. 1983).

3. See, United States v. Louisiana, 363 U.S. at 82. The Court held that:

> as to the states of Louisiana, Mississippi, and Alabama...the United States is entitled, as against these States, to all the lands, minerals, and other natural resources underlying the Gulf of Mexico more than three geographical miles from the coast of each such state, that is, from the line of ordinary low-watermark and outer limit of inland waters, and extending seaward to the edge of the continental shelf. Id. at 83.

4. Id.

5. ALA. CONST. art. II, Section 38 (1901).

6. ALA. CODE §11-1-1 (1975 & Supp. 1983).

7. See, ALA. CODE §11-42-1, to 11-42-88 (1975 & Supp. 1983).

8. Id. §11-42-1, 11-42-4.

9. Id. §11-42-20, 11-42-23.

10. Id. §11-42-40, 11-42-88.

11. Id. §11-42-1.

12. Id. §11-42-2.

13. Id. §11-42-2(1).

14. Id.

15. Id. §11-42-2(2).

16. Id. §11-42-2(4).

17. Id. §11-42-2(7).

18. Id. §11-42-2(10).

19. Id.

20. Id.

21. Id.

22. Id. §11-42-4.

23. Id. §11-42-20 (1975).

24. Id. §11-42-21.

25. Id.

26. Id.

27. See, City of Leeds v. Town of Moody, 319 So.2d 242 (Ala. 1975).

28. See, City of Birmingham v. Tarrant City, 315 So.2d 583 (Ala. 1975).

29. See, ALA. CODE §11-42-40 (1975).

Part III.

Local Government Taxation

Introduction

This section discusses the possible types of taxes which a Florida county or city might impose on offshore oil producers. The three types of taxes examined are: 1) oil and gas severance taxes, 2) ad valorem taxes on real and personal property, and 3) taxes on the oil leasehold.

A. Severance Tax on Oil and Gas

Chapter 211, Florida Statutes, governs severance taxes on the production of oil and gas.[1] The tax is imposed by the state on every person engaged in the business of producing or severing oil or gas from the soil or water of the state for sale, transport, storage, profit, or commercial use.[2] The Department of Revenue is vested with administration of this statute.[3] The Department is responsible for collection and enforcement of the tax on oil and gas production, and also prescribes rules for that purpose.[4] No other taxing district in the state, including the state, counties, municipalities, drainage districts, road districts and school districts, may impose any additional excise or license tax on producers of oil or gas.[5]

The Department of Revenue places all proceeds from the severance tax in a fund known as the Oil and Gas Tax Trust Fund.[6] Each month distributions are made from this fund to the state and to counties in which oil or gas is produced.[7] Municipalities in which oil or gas is produced apparently do not share in the distribution from the Oil and Gas Tax Trust Fund.

The severance tax on oil and gas producers is divided into four separate taxes. These taxes are called the first oil tax,[8] the second

oil tax,[9] the first gas tax,[10] and the second gas tax.[11] The first oil and the first gas tax are distributed for the benefit of the state.[12] The second oil, and the second gas tax are distributed for the benefit of the counties in which the oil or gas is produced.[13]

The total amount of the severance tax is measured by the value of the oil and amount saved, and by the value of the gas produced and sold at the following rates: for oil, 8% of the gross value at the point of production; for gas, 5% of the gross value at the point of production.[14] The Florida legislature has clearly expressed its intention[15] to impose the second oil and gas tax as a county excise tax to compensate the county in which oil and gas is produced for the loss of ad valorem taxes by reason of the provision of Section 211.13, Florida Statutes.[16] The legislature's intention to compensate counties, however, may no longer be entirely justified.[17] The legislature also intends the revenues which the counties receive to make it possible for the boards of county commissioners of those counties to provide the additional public services that are required in a county where oil and gas are produced.[18] The legislature expressed no intention in the statute regarding municipalities.

B. Ad Valorem Property Taxes

1. County

The Florida Constitution provides that counties and municipalities shall be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes for their respective purposes.[19] Counties and cities may not levy ad valorem taxes on intangible personal property, or levy taxes prohibited by the

Constitution.[20] The Constitution also provides that property situated within municipalities may not be taxed for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.[21]

Chapter 125, Florida Statutes, governs county ad valorem taxation. This statute provides that the legislature and governing body of a county has the power to levy and collect taxes, both for county purposes and for providing municipal services within any municipal service taxing unit.[22] The statute also authorizes county governments to make special assessments subject to limitations which may be provided by general law.[23] No referendum is required for the levy of county ad valorem taxes either for county purposes or for the providing of municipal services within any municipal service taxing unit.[24]

The county government has the authority to create municipal service taxing units for any part or all of the unincorporated area of the county.[25] Within this taxing unit, the county may provide fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage collection, sewage disposal, drainage or other essential municipal services.[26] The funds which pay for these municipal services are derived from taxes, special assessments, or service charges taken exclusively from within the taxing unit.[27]

Chapter 211, Florida Statutes, in addition to giving the counties a percentage of the state's excise tax on oil production, also governs assessments of land value for ad valorem tax purposes.[28] Section 211.13 prohibits state and city tax appraisers, when assessing the

value of any land for ad valorem taxes, from increasing the value of the land simply because there may be oil or gas under its surface.[29] As compensation to the counties for tax losses suffered from the prohibition against taking subsurface mineral values into account when assessing lands for ad valorem tax purposes, the second oil and gas severance taxes were created.[30] Section 211.13 also prohibits increasing the value of land for tax purposes simply because oil or gas producing machinery may be located thereon.[31] However, there is no impediment to assessing an ad valorem personal property tax on the oil and gas producing equipment itself.[32] This tax may be levied in addition to the state severance tax.[33]

Whenever the mineral rights and other subsurface rights in real property are sold or otherwise transferred by the owner, the subsurface rights are treated as an interest in real property subject to taxation separate from the remaining fee interest.[34] The aggregate tax amount due on both the subsurface interest and the fee interest is equal to the total taxes due on the entire parcel were the interests combined.[35] Section 193.481, Florida Statutes, requires the separate ad valorem assessment and taxation of separately-owned subsurface rights.[36]

An apparent conflict exists between Section 211.13 and Section 193.481 of the Florida Statutes. Section 211.13 forbids any increased assessment of land because "there may be oil or gas under the surface" and declares that appraisal of oil and gas left in place is "impossible under known valuation methods."[37] Chapter 193.481, however, requires that "separated" subsurface oil and gas interests -

those carved out of the fee--be separately assessed and taxed by the county.[38] For purposes of Chapter 193.481, the county assessor must take into consideration the value of subsurface oil and gas. In Sun Oil Co. v. Fisher,[39] the First District Court of Appeal held that the legislature, by enacting Section 193.481, which subjects subsurface leasehold interests to ad valorem real property taxation, effectively repealed the inconsistent provisions of section 211.13 that appraisers may not increase the value of land because there may be oil or gas under the surface, and the repeated inconsistent statement that it is "impossible" to accurately determine the true value of oil and gas while still in place.[40] The subsurface tax is levied in addition to the state excise tax.[41]

In conclusion, the county may levy ad valorem personal property taxes on oil producing machinery. The county may levy ad valorem taxes on separated subsurface leasehold interests in addition to the state's severance tax. Such subsurface mineral rights, where severed from the fee interest, must be appraised separately as to their value for ad valorem tax purposes. The county may levy ad valorem taxes on the fee simple interest where subsurface rights are not severed, which assessment may be increased simply because there may be oil underground. The question whether the land may be assessed at a higher value because oil producing machinery is present has not been answered by the courts, although Section 211.13 explicitly provides that it may not.

2. Municipalities

The Florida constitution provides that municipalities must be authorized by law to levy ad valorem taxes, and may be authorized by general law to levy other taxes, except ad valorem taxes on intangible personal property and taxes prohibited by the Constitution.[42] Chapter 166, Florida Statutes, governs municipal ad valorem taxation.[43] A municipality may levy ad valorem taxes on real property and tangible personal property within the municipality in an amount not exceeding 10 mills, exclusive of taxes levied for bond payment, and taxes levied for periods of not longer than 2 years and approved by a vote of the electors.[44] The municipality may also require reasonable business, professional and occupational regulatory fees.[45]

The municipality may, at its discretion, tax the purchase of electricity, metered or bottled petroleum, water service, telephone and telegraph service.[46] This tax may be levied only upon purchases within the municipality and cannot exceed 10% of the payments received by the seller of the taxable item from the purchaser for the purchase of such service.[47] The Florida statutes specifically prohibit the municipality from levying a severance tax on the production of oil.[48]

The Florida Constitution, Article VII, Section 3(c) allows any county or municipality to exempt community and economic developments from ad valorem taxation. The exemption may be extended to new businesses or expansions of existing businesses. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or city authorize the exemption by referendum. The exemption applies to tangible personal property

related to the expansion of a business, as well as to improvements to real property. The exemption expires after ten years but may be renewed.[49]

C. Taxation of Leasehold Interests

Article VII, Section 10(c) of the Florida Constitution provides that where any project financed by revenue bonds is occupied or operated by any private corporation pursuant to lease, the property interest created by the lease shall be subject to taxation to the same extent as other privately owned property.[50] Section 196.001, Florida Statutes (1983) parallels this constitutional provision by making all leasehold interests in property of the state, or any political subdivision, municipality, agency, authority or other public body of the state, subject to taxation unless otherwise exempted.[51]

Other statutory provisions[52] exempt privately held leaseholds of governmental property from ad valorem taxation only when the lessee performs a governmental or public purpose.[53] Property which is owned by a municipality or other state organization which is leased to a nongovernmental lessee shall be subject to ad valorem taxation unless the lessee uses the property exclusively for literary, scientific, religous or charitable purposes.[54] Thus, unless an oil producer meets the public purpose definition, its leasehold interest in state or municipally owned lands may be taxed at the county and city level.[55]

Footnotes

1. See, FLA. STAT. §211.01-.20 (1983); FLA. ADMIN. CODE 12B-7.01-10 (1983).

2. FLA. STAT. §211.02 (1983).

3. Id. §211.07.

4. See, FLA. ADMIN. CODE 12B-7.01 et. seq. (1983).

5. FLA. STAT. §211.13 (1983) provides in part:

> No other excise or license tax in addition to the tax provided herein shall be imposed by the state, counties, municipalities, drainage districts, road, school and other taxing districts within this state upon any person who produces in any manner any oil or gas by taking it from the earth or water of this state.

6. Id. §211.06(1).

7. Id.

8. FLA. STAT. §211.02(1)(a): "First oil tax: 37.5 percent of the total tax for the state for the use of the General Revenue Fund and 50 percent of the total tax for the state for the use of the Conservation and Recreation Lands Trust Fund." Id.

9. Id. at (b). "Second oil tax: 12.5 percent of the total tax for the county in which the oil is produced for the use of the general revenue fund of the board of county commissioners; however, the proceeds of the second oil tax shall be subject to the service charge imposed pursuant to chapter 215." Id.

10. Id. at (c). "First gas tax: 30 percent of the total tax for the state for the use of the General Revenue Fund and 50 percent of the total tax for the state for the use of the Conservation and Recreation Lands Trust Fund." Id.

11. Id. at (d). "Second gas tax: 20 percent of the total tax for the county in which the gas is produced for the use of the general revenue fund of the board of county commissioners; however, the proceeds of the second gas tax shall be subject to the service charge imposed pursuant to chapter 215." Id.

12. FLA. STAT. §211.02(1) (1983).

13. Id.

14. Id.

15. Id. at (2) provides:

> It is the intention of the Legislature to impose the first oil and gas tax as a state excise tax and to impose the second oil and

gas tax as a county excise tax to compensate the county in which oil and gas is produced for the loss of ad valorem taxes by reason of the provision of this chapter, and to make it possible for the board of county commissioners of such county to provide the additonal public services that will be required in a county where oil and gas are produced.

16. Sun Oil Co. v. Fisher, 370 So.2d at 415 (Fla. 1st DCA 1979). "Section 211.02(2) recites that the excise tax was enacted 'to compensate the county...for loss of ad valorem taxes by reason of Section 211.13." Id.

FLA. STAT. §211.13 (1983) provides in part:

> The several property appraisers of this state and tax assessors of the cities therein, when assessing the value of any land for ad valorem taxes, shall not increase the value thereof by reason of the fact that there may be oil or gas under the surface of such land, inasmuch as it is impossible under known valuation methods to accurately ascertain the true value of oil and gas in place and taxation thereof is more certainly accomplished after its capture or severance from the earth or water.

17. See, Louisiana Land & Exploration Co. v. Gibbs, 354 So.2d at 395 (Fla. 1st DCA 1978). "Since the provision of the chapter removing ad valorem taxes on oil producing machinery has been repealed, the sentiment expressed in Section 211.02(2) is to that extent no longer effective." Id. Former Section 211.02(2) prohibited any ad valorem tax on oil producing equipment or machinery. Id.

18. FLA. STAT. §211.02(2) (1983).

19. FLA. CONST. art. VII, Section 9(a) (1968).

20. Id.

21. Id. art. VIII, Section 1(h).

22. FLA. STAT. §125.016 (1983), set forth in full provides:

> Annually an ad valorem tax of not exceeding 1½ mills may be levied upon all property in the county, which shall be levied and collected as other county taxes are levied and collected. The taxes shall be charged to the general fund, but such revenue may be

apportioned by the county for the cost of constructing, operating, maintaining, expanding, enlarging, improving, or developing any project or projects herein specified, or for the payment of the costs of removing and relocating any structures, installations, or facilities which in the opinion of the board of county commissioners may be required for the safe and efficient operation of any such projects. Said tax may be levied, collected, and expended for any of the purposes herein specified notwithstanding the cost and expense thereof which may have been incurred in a previous year, and when so collected and used the tax shall be considered to be levied, collected and used for a county purpose. Id.

23. Id., §125.01.

24. Id., §125.01(1)(c).

25. Id., §125.01(q).

26. Id.

27. Id.

28. See supra, note 16.

29. Id.

30. See supra, note 15.

31. FLA. STAT. §211.013 (1983). "The value of land for ad valorem tax purposes shall not be increased by reason at the location thereon of any producing oil or gas equipment or machinery used in and around any oil or gas well and actually used in the operation itself." Id.

32. Louisiana Land & Exploration Company v. Gibbs, 354 So.2d at 395 (Fla. 1st DCA 1978). See supra, note 17.

33. Id.

34. FLA. STAT. §193.481(1) (1983).

35. Id., §193.481(3).

36. Id. See also, Department of Revenue v. Ford, 438 So.2d 798 (Fla. 1983) which upheld the constitutionality of section 193.481, even though the Department of Revenue has not required all Florida property appraisers to assess subsurface interests in land. Id. at 803.

37. FLA. STAT. §211.13 (1983).

38. FLA. STAT. §193.481(2) (1983).

39. See, Sun Oil Co. v. Fisher, 370 So.2d 413 (Fla. 1st DCA 1979).

40. Id. at 415, 416.

41. Id. at 415.

42. FLA. CONST. art VII, Section 9(a) (1968); FLA. STAT. §166.201 (1983).

43. FLA. STAT. §166.201-.261 (1983).

44. Id. §166.211(1).

45. Id. §166.221.

46. Id. §166.231(1)(a).

47. Id.

48. See, FLA. STAT. §211.13 (1983) supra, at note 5.

49. See also, FLA. STAT. §196.1995 (1983) (statutory implementation of constitutional provision).

50. FLA. CONST. art VII, section 10(c) (1968).

51. FLA. STAT. §196.001 (1983). See, Volusia County v. Daytona Beach Racing, 341 So.2d 498 (Fla. 1977).

52. FLA. STAT. §196.199(2)(a) (1983).

53. "Public purpose" is defined in FLA. STAT. §196.012(5) (1983). Generally a corporation existing to make profits for its stockholders which uses the leasehold to further that purpose, will not meet the public purpose exemption. See e.g., Volusia County v. Daytona Beach Racing, 341 So.2d at 502 (Fla. 1977).

54. FLA. STAT. §196.199(4) (1983).

55. See supra, note 53.

Part IV.

Local Regulation of Oil and Gas Production Activities

A. Introduction: The Police Power

Local governments in Florida have extensive powers to regulate activities associated with oil and gas exploration, extraction, storage and transport. The source of this authority is the police power, an inherent, plenary power reserved to the states by the Tenth Amendment to the United States Constitution. The police power is defined generally as the power of the states:

> To prescribe regulations to promote the health, peace, morals, education and good order of the poeple, and to legislate so as to increase the industries of the state, develop its resources, and to add to its wealth and prosperity.[1]

The Florida Supreme Court has defined this essential ingredient of state sovereignty as "that power by which the Government may destroy or regulate the use of property in order to 'promote the health, morals and safety of the community.'"[2] The police power is generally accepted as the authority to adopt land use regulations.[3] Regulation of noise, glare, fumes, traffic, pollution, safety, aesthetics and other effects that may be associated with oil and gas production is also based on the police power.

B. Delegation to Local Governments of State Home Rule Authority to Exercise the Police Power

The power to regulate oil and gas activities exists only at the state level unless it has been delegated to local governments by statutory or state constitutional law.[4] Thus, delegation of the necessary authority must have occurred before a local government may enact an ordinance.

The police power authority has been delegated to local governments in Florida through various provisions for home rule power.[5] The genesis of the home rule power is found in Article VIII of the Florida Constitution.[6] Various sections of Article VIII specify the home rule powers of municipalities,[7] charter counties[8] and non-charter counties.[9] The Constitution specifies that differing degrees of home rule power are delegated to the three basic types of local governments in Florida, and subsequent legislation has directly addressed and treated separately the issue of home rule power delegation to the various local government types. Therefore, each type of local government will be discussed individually in assessing its delegated authority.

1. Municipal Home Rule Authority

The Constitution grants to municipalities a broad base of home rule powers. It authorizes municipalites to "exercise any power for municipal purposes except as otherwise provided by law."[10] Notwithstanding the clear indication that the intent of the Constitution was to grant broad municipal home rule powers, and that the provision was self-executing and subject only to legislative supremacy by way of general or special law, the Florida Supreme Court in 1972 took a somewhat narrower view.[11] The court held the constitutional provision did not alter the rule that the paramount law of the municipality is in its charter, which gives it all the powers it possesses, unless other statutes are applicable.[12] In response to this decision, the Legislature enacted the Municipal Home Rule Powers

Act in 1973, reaffirming the broad grant of home rule powers to municipalities.[13] The Florida Supreme Court has expressly upheld the validity of the later delegation of powers to municipalities.[14]

In assessing the effect of the Act on the power to regulate land use, the Florida Supreme Court, in Hillsborough Association for Retarded Citizens, Inc. v. City of Temple Terrace,[15] indicated the power of municipalities' to zone comes directly from the Constitution.[16] The court reasoned the Constitution does not expressly prohibit zoning legislation by municipalities and neither the Constitution nor general law expressly preempts zoning power to state or county government. This rationale appears equally applicable to permit municipalities to use their home rule powers to adopt other land use restrictions, since neither the Constitution nor general law has expressly preempted such power to state or county governments.[17] Thus, the end result of the constitutional reform aspects of the 1968 Florida Constitution coupled with the Municipal Home Rule Powers Act is to give Florida municipalities a direct source of land use control power in the Florida Constitution by virtue of municipal home rule powers.[18]

2. Charter County Home Rule Authority

Charter counties[19] and consolidated forms of government are granted essentially the same broad base of home rule powers as that granted to municipalities under the Florida Constitution. The Constitution states charter counties "shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors.[20]

This broad grant of home rule powers is further supported by Chapter 125, Florida Statutes, which grants numerous and extensive powers to county governments and specifically states "the provisions of this section shall be liberally construed in order to...secure for the counties the broad exercise of home rule powers authorized by the State Constitution."[21] This statute has been held sufficient to permit counties to execute the home rule provisions of the Constitution.[22] By combining the home rule provisions of the 1968 Florida Constitution with Chapter 125, as interpreted by the Florida Supreme Court, charter counties should find sufficient delegated authority to adopt ordinances regulating oil and gas activities since the Legislature does not appear to have preempted this authority to the state or municipalities by general law.[23]

3. Non-Charter County Home Rule Authority

Non-charter counties are granted limited home rule powers under the Constitution and must look to enabling legislation to define the limits of their home rule authority. The Constitution states non-charter counties "shall have such power of self-government as is provided by general or special law..." and "may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law."[24] Chapter 125, Florida Statutes, would appear to be the necessary enabling legislation to permit non-charter counties to adopt land use ordinances through their zoning authority.[25] However, the decision in Townley v. Marion County[26] suggests that, absent authority delegated in a special act, a non-

charter county has no alternative other than to proceed in compliance with the CMPFDA in adopting zoning codes.[27] The court reasoned that language in the CMPFDA to the effect that powers granted in the act were "supplemental and in addition to such other authority as might exist in county government in the area of zoning"[28] related only to specific zoning powers granted by special act or to charter counties and that in the absence of a special act, non-charter counties were bound by the minimum requirements contained in the CMPFDA.[29] The court opined that the broad powers of zoning granted by Section 125.01(1)(h) do not establish any objective guidelines and standards under which the zoning authority may be exercised and therefore must be read in pari materia with the provisions of the CMPFDA, which serves as a limitation on the scope of Section 125.01.[30]

This narrow view of home rule powers of non-charter counties was weakened, if not overruled, by the decision of the Florida Supreme Court in Speer v. Olson.[31] Although the taxing power and not the land use control power of a non-charter county was in question, the Florida Supreme Court expressed a very liberal view of the governmental powers possessed by non-charter counties. The court held that Chapter 125, Florida Statutes, implements the provisions of Article VIII, Section 1(f), Florida Constitution (1968), which gives non-charter counties such powers of self-government as are authorized by general or special law and also authorizes enactment of ordinances in a manner prescribed by Chapter 125, Florida Statutes, which are not inconsistent with general law.[32] The court noted the intent of the legislature in enacting the recent amendments to Chapter 125, Florida Statutes, was

to enlarge the power of the counties through home rule to govern themselves.[33] Therefore, Chapter 125 should be read as a complete grant to non-charter counties of all powers of local self-government not preempted by general or special law.[34]

Next, addressing the point in Townley that even if it does provide a broad grant of home rule power to non-charter counties, Chapter 125 must be read in pari materia with the CMPFDA as it relates to non-charter counties, the court stated:

> This Court has not only stated that an act, when it recites that it is an additional and supplemental grant of power, may be used in addition to other laws on the same subject, but may be rejected by a public entity and another applicable law used in its place.[35]

Speer establishes, then, that non-charter counties may find authority to adopt land use regulations or other regulatory measures, in a variety of sources.

C. Specific Grants of Authority

1. Comprehensive Land Use Planning and Regulation

The Florida Legislature has enacted two statutes, each of which provides an additional, independent source of land use control power to those land governments which comply with the provisions of the statutes. The first of these, the County and Municipal Planning for Future Development Act (CMPFDA),[36] confers certain land use control powers on local governments which undertake optional comprehensive planning.[37] The second statute, the Local Government Comprehensive Planning Act of 1975 (LGCPA),[38] mandates that all local government

units undertake a comprehensive planning program[39] and grants additional specific authority to local governments to adopt land use restrictions when those restrictions conform to the local government's comprehensive plan.[40] Since the LGCPA mandates comprehensive planning, sets a deadline for the adoption of a comprehensive plan and also provides greater flexibility in adopting land development regulations, the CMPFDA is rapidly losing significance. Although the LGCPA mandates the adoption of a comprehensive plan by each local government and requires that all land development regulations be consistent with the comprehensive plan,[41] there is nothing in the Act to suggest that the Act has preempted to the state the authority to adopt land use restrictions, so as to limit home rule powers in the area of land use regulation.[42]

The Local Government Comprehensive Planning Act[43] mandates adoption of a comprehensive plan containing specified elements. Although the content of the plan is not otherwise specified, the required elements identify subjects that must be addressed.[44] All of these elements could, at least indirectly, affect oil and gas production activities within a local government's jurisdiction.[45] Required elements for all local governments address future land use; traffic circulation; sanitary sewer, solid waste, drainage and potable water; conservation of natural resources; recreation and open space; housing electrical utilities; and intergovernmental coordination. Local governments touching the Atlantic or Gulf of Mexico are required to adopt a coastal zone protection element, setting out policies for:

> 1. Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

2. Continued existence of optimum populations of all species of wildlife.

3. The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

4. Avoidance of irreversible and irretrievable commitments of coastal zone resources.

5. Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.

6. Proposed management and regulatory techniques.[46]

In addition, there are a number of optional elements (which are reguired for local governments having populations of 50,000 or greater). One particularly relevant element must address plans for port and related facilities.[47] Other elements must plan for mass transit; nonautomotive traffic; offstreet parking; public services and facilities; public buildings; recommended community design; area redevelopment; safety; historical and scenic preservation; and commercial and industrial development.

Implementation of the comprehensive plan through appropriate land use regulations is specifically authorized by the LGCPA.[48] In addition, the adopted plan has a powerful, independent legal status.[49] All local land development regulations and all "development orders" must be consistent with the plan. Any local government action having the effect of permitting the development of land is affected.[50] Development is defined,[51] by reference to Section 380.04, Florida Statutes, to include "the carrying out of any building activity or

mining operation."[52] Activities specifically included within the definition of "development" are "commencement of drilling, except to obtain soil samples;"[53] the deposit of fill;[54] "a change in the intensity of use of land;"[55] "alteration of a shore or bank;"[56] and "coastal construction."[57] Virtually any local authorization of oil and gas exploration, extraction or support activities would thus have to be consistent with the adopted local comprehensive plan.

2. Local Pollution Control Programs

Section 403.182, Florida Statutes authorizes the counties and municipalities of the state to establish and administer local pollution control programs. Local pollution control programs, however, must be administered in compliance with the Florida Air and Water Pollution Control Act[58] and must be approved by the Florida Department of Environmental Regulation (DER).[59] Approval is based on a finding that local regulations are "compatible with, or stricter or more extensive" than those of the state.[60] The local program must also have the local resources necessary to effectively carry out its program.[61] An approved local program may use the enforcement authorities of the state legislation.[62] In addition, the DER may enforce the local regulations, even where they are more stringent than state requirements.[63]

The chart on the next page, supplied by DER, lists all known local programs, together with the statutory authority for the program, whether the program is approved by DER and the date of the latest agreement between DER and the local program.

3. State Preemption of Local Regulation

Local governments in Florida may exercise the police power only to the extent delegated by home rule or specific statutory provisions.[64] Just as the Legislature may grant authority, it can limit or preempt local regulation. An express preemption specifically prohibits local regulation. For example, the Legislature has prohibiteds local governments from regulating the consumptive use of water[65] or prohibiting siting of hazardous waste facilities.[66] The Legislature may also condition the exercise of local regulatory power, as it has in the LGCPA. In that case, local action has to conform to requirements mandated in the statute.[67]

A conflict between state and local regulation can also result in preemption. Although it is beyond the scope of this study to identify instances where the state has preempted local regulation of oil and gas activities, a few general principles are set forth to guide future efforts.

Local regulations must fail to the extent they conflict with state law.[68] Local and state regulations conflict if they are "contradictory in the sense of legislative provisions which cannot co-exist."[69] Thus, a local government cannot authorize something which is prohibited by the state.[70] The more difficult case is where a local government prohibits something that the state would allow. A local government cannot take away a right which the state has granted.[71] However, local governments can impose additional restrictions in areas regulated by the Legislature.[72]

The distinction between these two latter situations may be difficult to determine. For example, a local government may deny per-

mission under local regulations to conduct drilling operations which the state has permitted. Is the local body taking away a right granted by the state or merely imposing additional restrictions? The courts have given little definitive guidance for making such determinations.

Footnotes

1. Barber v. Connaly, 113 U.S. 27, 31 (1885).

2. Adams v. Housing Authority of Daytona Beach, 60 So.2d 663, 666 (Fla. 1952).

3. See J.C. JUERGENSMEYER AND J. WADLEY, FLORIDA LAND USE RESTRICTIONS, §3.01 (1980), (hereinafter cited as FLORIDA LAND USE RESTRICTIONS).

4. Id. at §3.01.

5. For an excellent discussion of the development of home rule in Florida see The History and Status of Local Government Powers in Florida, Committee on Community Affairs, Florida House of Representatives (July 31, 1972).

6. FLA. CONST. art. VIII, Sec. 1 and 2 (1968).

7. FLA. CONST. art. VIII, Sec. 2 (1968).

8. FLA. CONST. art. VIII, Sec. 1(g) (1968).

9. FLA. CONST. art. VIII, Sec. 1(f) (1968).

10. FLA. CONST. art. VIII, Sec. 2(b) (1968).

11. See City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.2d 801 (Fla. 1972).

12. Id. at 803. The court invalidated a municipal rent control ordinance because the municipal charter did not specify that the municipality had the authority to pass such an ordinance.

13. FLA. STAT. §166.021(1) (1983) states "as provided in Sec. 2(b), Art. VIII of the State Constitution, municipalities...may exercise any power for municipal purposes, excepts expressly prohibited by law."

14. City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1975). The rent control ordinance was again invalidated, however, on another basis.

15. 332 So.2d 610 (Fla. 1976), affirming 322 So.2d 571 (Fla. 2d DCA 1975).

16. Id. at 612-13.

17. FLORIDA LAND USE RESTRICTIONS, Sec. 3.02 (1980).

18. Id.

19. FLA. CONST. art VIII Sec. 1(c) (1968) establishes the procedures by which a charter county government is established.

20. FLA. CONST. art. VIII Sec. 1(g) (1968).

21. FLA. STAT. §125.01(3)(b) (1983).

22. See Speer v. Olson, 367 So.2d 207 (Fla. 1978). "The intent of the Legislature in enacting the recent amendments to Chapter 125, Florida Statutes, was to enlarge the powers of counties through home rule to govern themselves." 367 So. 2d at 210.

23. Art. VIII, Sec. 1(g) grants to charter counties all powers of local self-government not inconsistent with general law.

24. FLA. CONST. art VIII, Sec. 1(f) (1968).

25. FLA. STAT. §125.01(h) (1983) grants counties the authority to establish, coordinate and enforce such zoning and business regulations as are necessary for the protection of the public.

26. 343 So.2d 1312 (Fla. 1st DCA 1977).

27. Id. at 1314.

28. See Fla. Op. Atty. Gen. 75-63 (1975).

29. 343 So.2d at 1313-14.

30. Id. at 1313. For a thorough discussion of alternatives to the court's approach and an excellent analysis of the problems inherent in requiring Chapter 125 to be read in pari materia with the CMPFDA, see FLORIDA LAND USE RESTRICTIONS §3.03.

31. 367 So.2d 207 (Fla. 1978).

32. Id. at 210.

33. Id.

34. 367 So.2d at 211.

35. 367 So.2d at 213.

36. FLA. STAT. §§163.160-163.315 (1983).

37. Section 163.165(1) states "it is the intent of this act to enable the several counties and incorporated municipalities to plan for future development and to prepare, adopt and amend comprehensive plans to guide future development. To implement comprehensive plans, the several counties may adopt and enforce zoning regulations, adopt and enforce subdivision regulations, adopt and enforce building, plumbing, electrical, gas, fire, safety and sanitary codes." Section 163.205(1)(g) specifically authorizes local governments, after the comprehensive plan has been adopted as provided in the act, to adopt and enforce zoning districts to regulate "uses and types and sizes of structures in those areas subject to seasonal or periodic flooding, so that danger to life and property in such areas will be minimized." Although the CMPFDA appears to have been antiquated by the LGCPA (See Florida Land Use Restrictions Sec. 3.02 (1980), it may still have relevance for non-charter counties.

38. FLA. STAT. §163.3161-.3211 (1983).

39. ID. §163.3167(2).

40. Id., §163.3167(1)(c), .3201.

41. Id., §163.3194(1).

42. FLORIDA LAND USE RESTRICTIONS, Sec. 3.02 (1980).

43. FLA. STAT. §§163.3161-.3211 (1983).

44. Id., §163.3177.

45. Generally, a municipality is charged with responsibility to develop the comprehensive plan for its incorporated area and the county adopts a comprehensive plan for the unincorporated areas. Joint planning may occur by agreement or a local charter may give the county specific authority over land use within municipalities. Id., §163.3171.

46. Id., §163.3177(6)(g).

47. Id., §163.3177(7)(b).

48. Id., §163.3167(1)(c).

49. Id., §163.3194.

50. Id., §163.3164(5),(6).

51. Id., §163.3164(4).

52. Id., §380.04(1).

53. Id., §380.04(2)(d).

54. Id., §380.04(2)(g).

55. Id., §380.04(2)(b).

56. Id., §380.04(2)(c).

57. Id. The term "coastal construction" is used as defined in Section 161.021, Florida Statutes.

58. Ch. 67.436, Fla. Laws, codified at FLA. STAT. §§403.011-.182 (1983).

59. FLA. STAT. §403.182(1)(a) (1983).

60. Id., §403.182(1)(b).

61. Id., §403.182(1)(d).

62. Id., §403.182(8).

63. Id., §403.182(6).

64. Supra notes 4-10.

65. FLA. STAT. §373.217 (1983).

66. Id., §403.723, .7225(15).

67. See e.g., City of Miami Beach v. Frankel, 363 So.2d 555 (Fla. 1978).

68. Lifschitz v. City of Miami Beach, 339 So.2d 232 (Fla. 1976).

69. Scavella v. Fernandez, 371 So.2d 535 (Fla. 3d DCA 1979).

70. Id.

71. See e.g., City of Miami Beach v. Rocio Corp., 404 So.2d 1066 (Fla. 3d DCA 1981).

72. See e.g., City of Jacksonville v. Reynolds, Smith and Hill, Inc., 424 So.2d 63 (Fla. 1st DCA 1982).

Coastal local governments in Florida have broad power to control whether the state can issue oil and gas leases in specified areas. Section 253.61, Florida Statutes, enacted in 1945, gives local municipalities and counties a veto power if the proposed lease lies within certain geographic and political boundaries. The statute does not, however, clearly define the areas over which such power can be exercised. Some parts of the statute are ambiguous; other parts are almost incomprehensible. There have been no reported court decisions construing the statute to aid interpretation. The only authority interpreting the statute is a 1958 opinion by the Attorney General of Florida, which analyzes a tangential point and is thus of little assistance.[1] This section interprets Section 253.61 in light of the many possibilities presented by the drafters of the statute. Legal issues that might arise in defending a local government's use of the veto power are also briefly discussed.

Section 253.61, entitled "Lands not subject to lease," states:

> (1) Regardless of anything to the contrary contained in this law in any previous section or part thereof, no board or agency mentioned therein or the state shall have the power or authority to sell, execute or enter into any lease of the type covered by this law relating to any of the following lands, submerged or unsubmerged, except under the circumstances and conditions as hereinafter set out in this section, to wit:
>
> (a) No lease of the type covered by this law shall be granted, sold or executed covering such lands within the corporate limits of any municipality unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.
>
> (b) No lease of the type covered by this law shall be granted, sold or executed covering any such lands in the tidal waters of the state, abutting on or immediately adjacent to the cor-

porate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters, unless the governing authority of the municipality shall have first duly consented to the granting or sale of such lease by resolution.

(c) No lease of the type covered by this law shall be granted, sold or executed covering such lands on any improved beach, located outside of an incorporated town or municipality, or covering such lands in the tidal waters of the state abutting on or immediately adjacent to any improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters, unless the county commissioners of the county in which such beach is located shall have first duly consented to the granting or sale of such lease by resolution.

(2) For the purposes of this section and law an improved beach, situated outside of the corporate limits of any municipality or town, shall be an is hereby defined to be any beach adjacent to or abutting upon the tidal waters of the state and having not less than ten hotels, apartment buildings, residences or other structures, used for residential purposes, on or to any given miles of such beach.

Subsection (1)(a) is straightforward: a lease may not be granted within the corporate limits of a municipality without the express consent of the municipal governing body.

Subsection (1)(b) is ambiguous. It prohibits the lease of state lands without the municipality's consent in the tidal waters of the state "abutting on or immediately adjacent to the corporate limits of a municipality." Whether lands "abut" or are "adjacent" is uncertain. The terms are undefined. Black's Law Dictionary defines the term "abut" as "to reach, to touch" and indicates abutting lands usually, actually adjoin and touch each other. The term "adjacent" is defined as "lying near or close to; sometimes, continguous; neighboring." The

term "adjacent" is distinguished from "adjoining" in that the latter term implies the objects actually found. "Adjacent" implies that they are not far apart. The determination of whether leased lands are close enough to municipal boundaries to fall within the statutory review, of course, would be highly subjective, even without reference to the term "immediately." Although an argument could be made that the legislature meant to include only lands that touch municipal boundaries, it seems weak. The term "adjoin" could have been used to indicate such intent.

Section 1(b) also requires municipal consent for leases or grants of lands "within 3 miles of the city's limits extending from the line of mean high tide into such waters."[11] The language of this provision offers at least 3 plausible interpretations. First, it could be contrued to require city consent over leases of lands within a three mile radius of any point located on the mean high tide line. This interpretation assumes that the city's ocean boundary is coterminous with the line of mean high water. (See diagram 1). It could also mean that offshore leases within three miles of the city limits require municipal approval. Under either interpretation, a lease might fall within the radii of more than one city.

A second construction is also possible. The line from which 3 miles is measured could be interpreted as the extension of the municipal boundaries. Upon reaching the high water line, the boundary line would be extended into the water at right angles with the shore line[3] and municipal consent would be required for lands leased anywhere within three miles of that extended line. (See diagram 2). Again, more than one city could veto a particular lease.

The third possible construction of this provision is the one most likely intended by the legislature. The statute could be construed as requiring consent only over lands lying within the municipal boundary extensions perpendicular to the mean high tide line, up to a maximum of 3 miles into the ocean. (See Diagram 3).

Counties also have a statutory role, which is similarly unclear. Subsection 1(c) of the statute requires county commission consent for leases encumbering improved beaches located outside of an incorporated area. Subsection 1(c) also requires county commission consent for leases of state lands "in the tidal waters of the state abutting on or immediately adjacent to any improved beach." This language is similar to the municipal authorization and is equally troubling. The word "adjacent" may mean the lease area's boundary must touch the improved beach, or it may mean only that the lease area must be near the improved beach.[15] How near is unspecified.

Subsection 1(c) also requires the state to obtain county commissions consent for lease of state lands "within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters." The legislature did not specify how the lines are to be extended into the tidal waters. At least two possibilities exist. First, this language could mean that without county commission consent, no lease may be granted for state lands located within a three mile radius of any point located on the improved beach's mean high tide line. (See Diagram 4). Second, the language could mean that county consent is required only if the lease area lies within the 3 mile extension of the beach boundaries drawn perpendicular to the shoreline. (See Diagram 5).

Subsection (2) of the statute, defining an improved beach, is also ambiguous. An improved beach is defined as one with ten or more residential structures (not units) "on or to any given miles of such beach." Perhaps use of the plural in "miles" was unintentional, but it destroys the sentence's meaning.

Other legal issues in addition to locational criteria are likely to arise in implementation. An argument can be made that Section 253.61 impermissibly delegates legislative authority to local governments without providing sufficient standards to guide the exercise of local government discretion. Arguably, the failure to include guidelines allows local governments unbridaled discretion in vetoing leases of state lands and is therefore an unconstitutional delegation of the legislative power in violation of Article II Section 3 of the Florida Constitution.[4]

Under the doctrine of nondelegation of legislative power, the legislature may not delegate to an administrative body its lawmaking power.[5] Primary policy decisions must be made by the legislature.[6] The administration of legislative programs may be delegated to another governmental body so long as minimal standards and guidelines are provided.[7] An argument can be made that the legislature's failure to provide any standards for guiding municipal and county decisions regarding the approval of oil and gas leases under Section 253.61 violates this doctrine.

The Florida Supreme Court has struck down several statutory delegations of legislative power under the nondelegation doctrine. For example, in City of Miami Beach v. Fleetwood Hotel, Inc.,[8] the Court

found that certain provisions of a rent control ordinance amounted to an unlawful delegation of legislative power by the Miami Beach city council, without appropriate guidelines or fixed outer limits of discretion involved.[9]

A legislative delegation of power analogous to the veto power conferred on local governments by Section 253.61 was discussed by the Florida Supreme Court in Askew v. Cross Key Waterways.[10] The statute in Askew delegated power to the Administration Commission to designate Areas of Critical State Concern.[11] Although the statute provided criteria for making these determinations, it did not delineate priorities among competing areas and resources requiring state protection.[12] Similarly, Section 253.61 fails to include any standard by which the municipality might weight the value of oil leases covering different geographical areas. To this extent it is arguably unconstitutional under the Askew rationale.

There are several arguments that might defeat application of the nondelegation doctrine. In Smith v. Portante,[13] the Court stated:

> No matter how laudable a piece of legislation may be in the minds of its sponsors, objective guidelines and standards should appear expressly in the act or be within the realm of reasonable inference from the language of the act where a delegation of power is involved...[14]

Although Section 253.61 plainly contains no explicit guidelines or standards, objective standards or guidelines may be reasonably inferred. The Florida Supreme Court recognizes that in some areas of regulation it is impractical for the Legislature to enact specific standards to guide the exercise of administrative standards.[15] The

degree of required specificity thus depends upon the subject of regulation.

In this instance, the subject is the exercise of public trust responsibilites. It might reasonably be inferred that local governments are bound in the exercise of their discretion under the statute to the same standard that guides the trustees in determining whether to issue the lease, the public interest standard. Although such a standard appears broad, it embodies a long tradition and may not be susceptible to being made more specific without endangering protection of the trust. A broad public interest standard was upheld in Albrecht v. DER[16] against claims that it was overbroad. Albrecht involved a challenge to DER's authority to evaluate dredge and fall permit applications regarding whether the activity would be "not contrary to the public interest."[17]

Another source from which standards and guidelines might be reasonably inferred is the local comprehensive plan. The Local Government Comprehensive Planning Act requires development orders to be consistent with the plan.[18] Local government approval of a lease appears to meet the definition of a development order. The local comprehensive plan, therefore, would contain a logical set of standards for review of the administrative action, thus negating a delegation claim.

Finally, the delegation might be viewed by a court, not as a delegation of legislative powers to an administrative agency, which violates the principle of separation of powers, but as a delegation of legislative powers to a subordinate legislative body. The home rule

provisions of the Florida Constitution specifically authorize the delegation of authority to legislate to local governments. If the lease approval process is considered legislative, rather than administrative, then the nondelegation doctrine may simply be inapplicable because it is exercised by a legislative body.

Footnotes

1. OP. ATTY. GEN. 058-322 (December 4, 1958). The opinion answers two questions:

   > 1) "What effect, if any, does the sale and conveyance of submerged sovereignty lands and the filling in and improvement of the same, for residential and business purposes, have upon oil and gas leases previously made by the state or its agency?"; 2) "What effect, if any, does the extension of municipal corporate limits have upon oil and gas leases previously made by the state or its agency?" Id.

2. FLA. STAT. §253.61 (1983).

3. See, Lipscomb v. Gialourakis, 133 So. 104 (Fla. 1931).

4. FLA. CONST., art. II, section 3 (1968), provides:

   > "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

5. Askew v. Cross Key Waterways, 372 So.2d 913, 924, 925 (Fla. 1979).

6. Id.

7. Id.

8. 261 So.2d 801 (Fla. 1972). See also, City of Miami Beach v. Forte Towers, Inc., 305 So.2d 764 (Fla. 1975).

9. 261 So.2d at 805.

10. 372 So.2d 913 (Fla. 1979).

11. Id. at 914. See FLA. STAT. §380.05(2) (1975).

12. 372 So.2d at 919.

13. 212 So.2d 298 (Fla. 1968).

14. Id. at 299.

15. See e.g., Demko's Gold Coast Trailer Park v. Palm Beach County, 218 So.2d 745, 747 (Fla. 1969) (upholding statute allowing Zoning Commission authority to adopt building, electrical and plumbing codes when deemed proper for public welfare.); North Broward Hospital Dist. v. Mizell, 148 So.2d 1, 2 (Fla. 1962) (upholding statute authorizing hospital board to grant to revoke physicians' licenses to practice at hospital so that welfare and health of patients and hospital's best interests at all times may be served.).

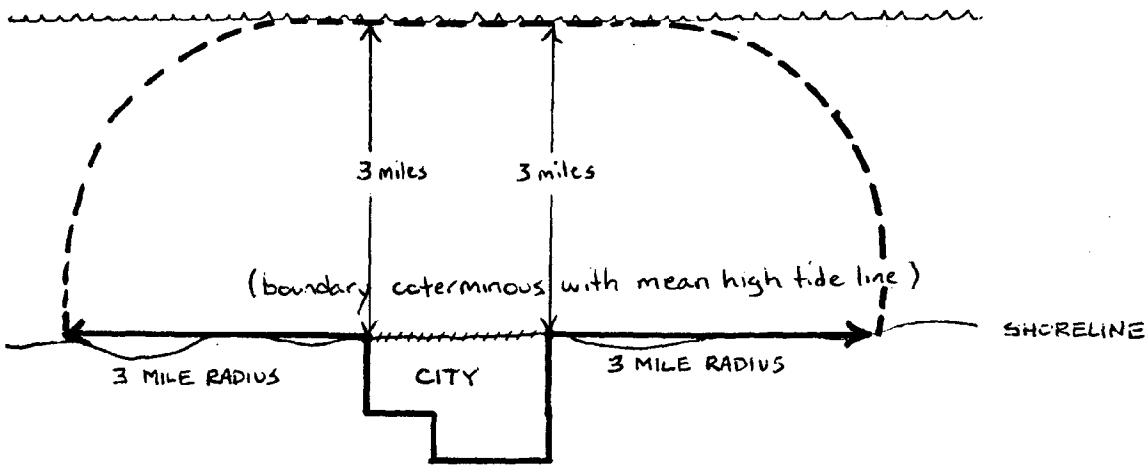
16. 353 So.2d 883 (Fla. 1st DCA 1978).

17. Id. at 885.

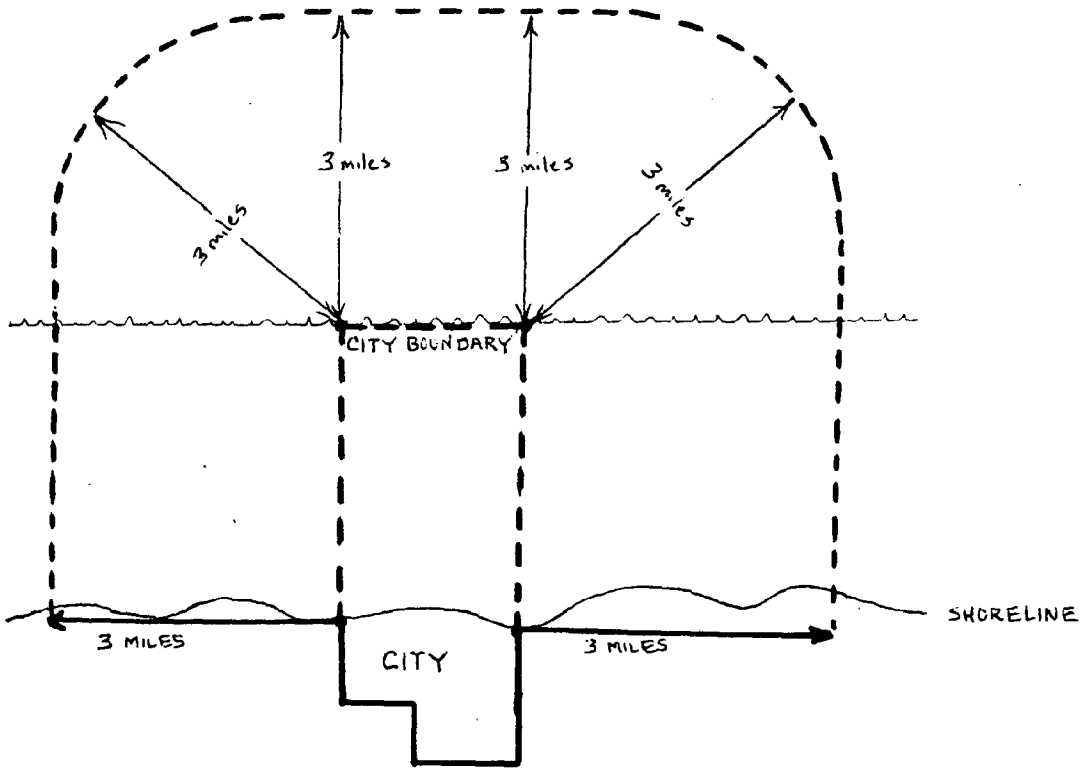
18. See discussion supra Part IV, notes 36-57.

DIAGRAMS

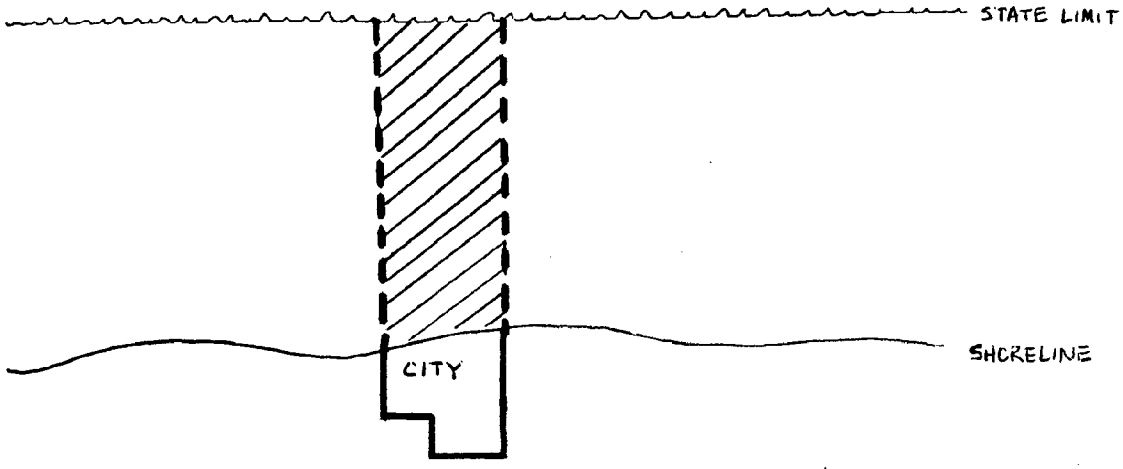
1.


3 miles
3 miles
(boundary coterminous with mean high tide line)
SHORELINE
3 MILE RADIUS
CITY
3 MILE RADIUS

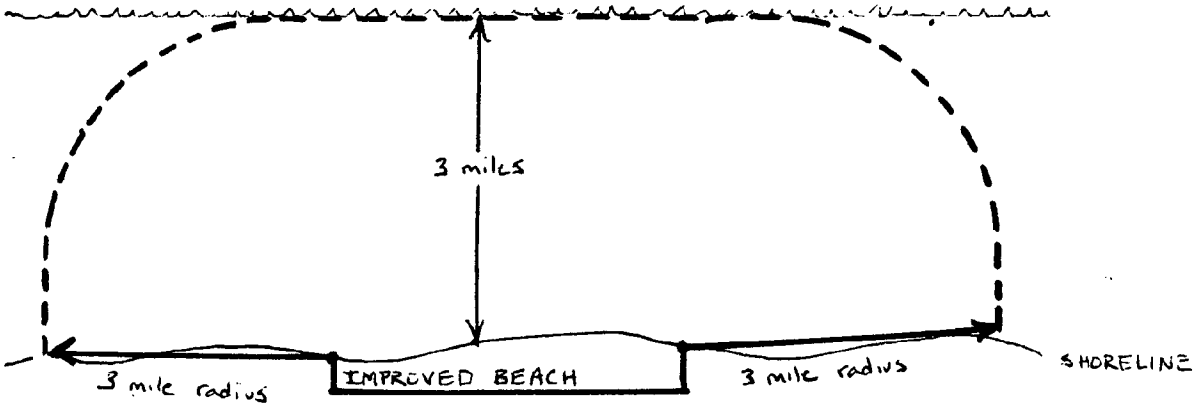
2.


3 miles
3 miles
3 miles
3 miles
CITY BOUNDARY
SHORELINE
3 MILES
CITY
3 MILES

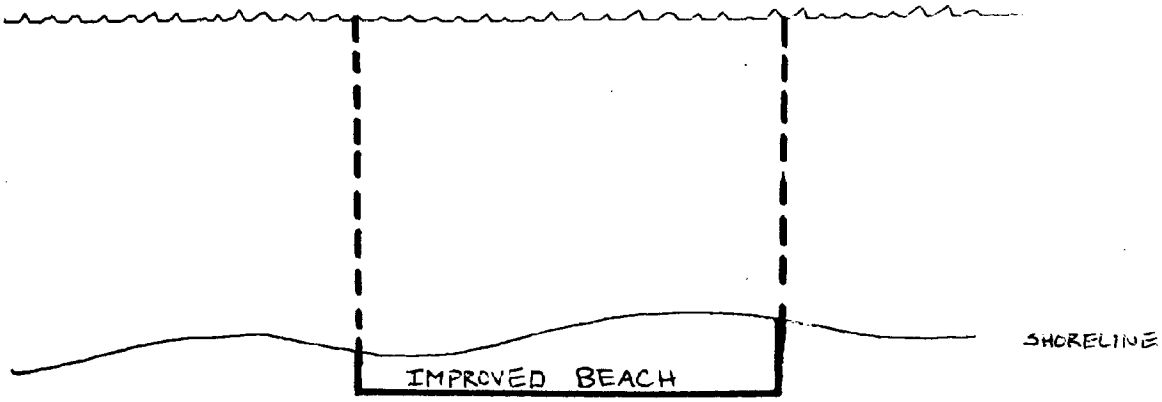
3.


STATE LIMIT
CITY
SHORELINE

4.


3 miles
3 mile radius
IMPROVED BEACH
3 mile radius
SHORELINE

5.



APPENDIX C

State of Florida Oil and Gas Lease

Lease Form

Florida Department of Natural Resources

Tallahassee, Florida

1984

Approved by Governor and
Cabinet July 20, 1982

STATE OF FLORIDA
OIL AND GAS LEASE

INFORMATION COPY

NO._____

THIS INDENTURE OF LEASE, made pursuant to the provisions of Chapter 253, Florida Statutes, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida hereinafter referred to as "Lessor and Supervising Agency" and _____
_____
hereinafter referred to as "Lessee":

WITNESSETH:

WHEREAS, all acts have been performed and all consents have been obtained that are required by law as conditions precedent to execution of this lease, and whereas sealed bids submitted for this lease were duly opened by Lessor at a meeting for that purpose, held in the City of Tallahassee, Florida, on the _____ day of _____,A.D., 19____ and it was thereupon found and determined that _____
_____
has submitted the highest and best bid for the lease on said premises as described in Exhibit A, which bid is by the said Lessor accepted and approved;

NOW, THEREFORE, the Lessor on this the_____day of _____ _____A.D., 19____, by authority of said law and in consideration of the payment by Lessee, of the sum of $_____ consideration, receipt whereof is hereby acknowledged and of the royalties, covenants, stipulations and conditions contained herein and hereby agreed to be paid, observed and performed by Lessee, does hereby demise, grant, lease and let exclusively unto the said Lessee the said land described in Exhibit A, which is made a part hereof, for the purpose of investigating, exploring, prospecting, drilling of bore-holes for the discovery and production of oil, gas, sulphur, carbon black, carbon dioxide, salt and/or other brines and other miscellaneous constituent products from the leased premises and for the laying of pipelines, building of roads, tanks, power lines and power stations, communications equipment and other structures and equipment needed to produce, save, take care of, treat, transport and own said products and, if the lands covered by this lease exceed 640 acres, to house its employees engaged in operations for drilling and/or production and handling.

For the purpose of calculating rental payments hereunder, the land covered by this lease is estimated to comprise _____ net mineral acres, whether it actually comprises more or less, and each tract described in Exhibit A is estimated to comprise the number of acres stipulated in said Exhibit A, whether it actually comprises more or less.

The term "products" as used hereinafter shall, in the absence of other meaning by immediate context, include oil, gas, sulphur, carbon black, carbon dioxide, other liquid hydrocarbons, salt and/or brines and any other miscellaneous constituent products produced.

1. TERM. (A) Subject to the other provisions herein contained, this lease shall be for a term of _____years from the date hereof (called the primary term) and as long thereafter as operations are being carried on in good faith and in a workmanlike and diligent manner, with no cessation of more than thirty consecutive days, or products covered hereby are being produced from the lands of this lease or acreage pooled therewith in paying quantities. For purposes of this lease paying quantities shall mean, the total gross amount of products produced from the lands of this lease. As defined herein paying quantities shall not include oil or gas used as fuel for lease operations.

(B) When production (which has been obtained) ceases within the primary term, this lease may be maintained by either commencing or resuming the payment of rentals, or commencing operations for drilling, or reworking the lands of this lease, or acreage pooled therewith in good faith and in a workmanlike and diligent manner, on or before the rental payment date next ensuing after the expiration of sixty days. Within 48 hours after any production of any paying quantities of products have been obtained, the Lessee shall notify by telegram or telegraphic communication the Oil and Gas Administrator and the Director of the Division of State Lands.

(C) If this lease is being maintained by production which ceases after the expiration of the primary term, the lease may be maintained in force and effect by commencing and continuing operations for drilling or reworking the lands of this lease or acreage pooled therewith for the development and production of products covered hereby on or before sixty days after such cessation of production, and prosecuting the same with diligence and in a workmanlike manner with no cessation for more than thirty consecutive days, and if such operation within a reasonable time thereafter result in the production of products covered hereby from the lands of this lease or acreage pooled therewith in paying quantities this lease shall remain in force and effect thereafter as long as products covered by this lease are produced therefrom in paying quantities.

(D) This lease shall terminate in the absence of drilling or reworking operations or production in paying quantities of products from the lands covered hereby or lands pooled therewith, within the time and in the manner as herein set forth.

(E) No drilling operations shall be conducted within any public road right-of-way. No structures for drilling operations shall be constructed on any state-owned submerged lands leased herein unless the proposed structure for such drilling operations is constructed at least one mile seaward of the coastline of the state. The granting of this lease shall not interfere with any right of the Lessor to make conveyances of submerged lands pursuant to statutory authority; nor any right of the Lessor to authorize the dredging and/or filling of submerged lands in compliance with statutes applicable thereto; and all such parcels so conveyed shall automatically be made subject to the terms and conditions of this lease.

2. DRILLING INSTRUCTIONS. (A) The Lessee shall commence and complete operations for drilling of at least one test well on the lands covered hereby within the first two and one-half year period of the term hereof, and Lessee shall commence and complete operations for drilling of at least one additional well in each succeeding two and one-half year period of the term of this lease until the total number of wells drilled shall equal one-half the number of sections of land embraced in this lease, and, after commencing such operations shall prosecute same in good faith and with reasonable diligence and in a workmanlike manner to discover and to develop said land for production until such well be completed or abandoned. The Lessee at the time the drilling of each well is commenced shall file with the Lessor a written declaration describing the two sections of land to which such well shall apply. If no well shall be commenced and continued to completion, with reasonable diligence and in a workmanlike manner to discover and develop said land for production until such well is completed or abandoned within the first two and one-half year period of the term of the lease, the entire lease shall be void. If no additional well shall be commenced and continued to completion, with reasonable diligence and in a workmanlike manner to discover and develop said land for production until such well is completed or abandoned, then this lease, at the end of such applicable two and one-half year period of the term of the lease, shall become forfeited and void as to all of the land covered hereby, except that upon which wells have been drilled in accordance with the provisions of said Chapter 253,

Florida Statutes, that is to say, this lease shall, in such event, become forfeited and void as to all lands covered hereby, except those included in the sections designated by the Lessee, as hereinabove provided, as the sections to which a well, commenced and completed in accordance with the provisions of this Paragraph 2, shall apply. It is further understood and agreed that the only penalty for failure to drill such well or wells is the cancellation or forfeiture of this lease or a portion thereof, as hereinabove provided.

(B) All wells required to be drilled under the provisions of this Paragraph 2 shall be drilled in an efficient, diligent and workmanlike manner and in accordance with the best practice to a depth of 6,000 feet or _____ INFORMATION COPY _____ before abandonment thereof, unless production in paying quantities has been accomplished at a lesser depth.

3. RENTAL. (A) This lease shall terminate as to both parties on any anniversary date hereof as to all land covered hereby on which rentals are payable hereunder on such anniversary date as hereinafter provided, unless Lessee shall on or before such anniversary date pay in advance to Lessor an annual rental of $_____ _____per net mineral acre, which shall be increased or decreased as hereinafter provided, for the number of acres included in such land on which rentals are so payable.

(B) After the second year of the term of this lease, the rental above provided for shall increase by $.50 per net mineral acre annually thereafter, except when the provisions of Paragraph 16 are in effect.

(C) Rental shall be payable under this lease on or before the anniversary date on all lands then covered by this lease, except land in a section applicable to a drilled well or upon which section production in paying quantities has been obtained or upon which section drilling or reworking operations have been conducted in good faith and in a workmanlike manner within thirty days next preceding the anniversary date.

(D) The rentals hereinabove provided for and the shut-in royalties provided for in Paragraph 9 may be paid by check or draft of Lessee, with exchange, payable to Lessor and mailed or delivered to Lessor at its office, 3900 Commonwealth Boulevard, Tallahassee, Florida, on or before the anniversary date for which such rent is payable. If any interest in the rental payable hereunder may become owned by another or others than the Lessor, the entire rental may be paid to Lessor as herein provided, and it shall make appropriate distribution thereof.

(E) The cash consideration received from the bid is the consideration for this lease, according to its terms, and shall not be allocated as a mere rental for a period.

(F) Lessee may relinquish the rights granted hereunder, either as to the entire area covered hereby or any portion thereof, at any time by filing a release for record in the county where the land released is situated and by notifying the Lessor within 24 hours by telegram or telegraphic communication and by filing a duplicate original, certified copy, or photostatic copy, of the release with Lessor within thirty days from the date it is filed for record, and thereafter no rental shall be payable hereunder as to the acreage so released and Lessee shall be released from further obligations as to such released acreage. Such relinquishment will not have the effect of releasing Lessee of any liability theretofore accrued to the Lessor.

(G) It is agreed that if Lessor or the State of Florida owns the title to or an interest in the oil and gas under the land covered by this lease less than the entire mineral interest, then the royalties and rentals herein provided for shall be reduced proportionately.

4. EXTENSIONS: If, at the expiration of the primary term of this

lease, production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted thereon or on land pooled therewith in good faith and in a good and workmanlike manner, Lessee may on or before the expiration of the primary term, file a written application with the Lessor for a thirty (30) day extension of this lease, accompanied by payment of five (5.00) Dollars per acre. The Lessor shall, in writing, extend this lease for a thirty (30) day period from and after the expiration of the primary term and so long thereafter as oil or gas is produced in paying quantities; provided further, that Lessee may, so long as such drilling operations are being conducted make like application and payment during any thirty (30) day extended period for an additional extension of thirty (30) days and, upon receipt of such application and payment, the Lessor shall, in writing, again extend this lease so that same shall remain in force for such additional thirty (30) day period and so long thereafter as oil or gas is produced in paying quantities; provided, however, that this lease shall not be extended for more than a total of three hundred ninety (390) days from and after the expiration of the primary term unless production in paying quantities has been obtained.

5. PRODUCTION ROYALTIES: When production of oil and or gas is secured, the Lessee agrees to pay or cause to be paid to the Lessor for the use and benefit of the State of Florida during the term hereof:

(A) OIL: As a royalty on oil, which is defined as including all hydrocarbons produced in a liquid form at the mouth of the well and also all condensate, distillate, and other liquid hydrocarbons recovered from oil or gas run through a separator or other equipment, as hereinafter provided

part of the gross production each month, or at the option of the Lessor, the value of Lessor's part of the gross production which shall be determined, considering like type and gravity, by the greater of:

(1) The weighted average of field posted per unit prices, plus premiums, for the month, used by the Lessee for oil, condensate, distillate, or other liquid hydrocarbons, where produced and when run; if any;

(2) The weighted average per unit market price at the point of delivery which could have been obtained in an arm's-length transaction, for the month, where produced and when run; if any;

(3) The weighted average per unit price determined from the gross proceeds of actual sales of the product by the producer in arm's-length transactions during the month; if any;

(4) A per unit value equivalent to the highest per unit value on which a royalty is paid by the producer to any other royalty interest in the general area for the same month in which such product is produced.

Lessee agrees that before any gas produced from the land hereby leased is sold, used or processed in a plant, it will be run free of cost to Lessor through an adequate oil and gas separator of conventional type or other equipment at least as efficient to the end that all liquid hydrocarbons recoverable from the gas by such means will be recovered. Upon written consent of Lessor, the requirement that such gas be run through such a separator or other equipment may be waived upon such terms and conditions as prescribed by Lessor.

(B) NON-PROCESSED GAS: As a royalty on any gas (excluding flared gas), which is defined as all hydrocarbons and gaseous substances not defined as oil in Paragraph 5(A) above, produced from any well on said land (except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons or other products)

INFORMATION COPY

part of the gross production each month, or at the option of the Lessor, the value of such part of the gross production. The value of Lessor's part of the gross production shall be determined by the greater of:

(1) The weighted average per unit market price at the point of delivery which could have been obtained in an arm's-length transaction, for the month, where produced and when run; if any;

(2) The weighted average per unit price determined from the gross proceeds of actual sales of the product by the producer in arm's-length transactions during the month; if any;

(3) A per unit value equivalent to the highest per unit value on which a royalty is paid by the producer to any other royalty interest in the general area for the same month in which such product is produced;

provided that the maximum pressure base in measuring the gas under this lease contract shall not at any time exceed 14.65 pounds per square inch absolute, and the standard base temperature shall be sixty (60) degrees Fahrenheit, correction to be made for pressure according to test made by the Balance Method or by the most approved method of testing being used by the industry at the time of testing.

(C) PROCESSED GAS: As a royalty on any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, _____

part of the gross production of residue gas and liquid hydrocarbons extracted each month, or at the option of the Lessor, the value of such part of the gross production. The value of Lessor's part of the gross production shall be determined by the greater of:

(1) The weighted average per unit market price at the point of delivery which could have been obtained in an arm's-length transaction, for the month, where produced and when run; if any;

(2) The weighted average per unit price determined from the gross proceeds of actual sales of the product by the producer in arm's-length transactions during the month; if any;

(3) A per unit value equivalent to the highest per unit value on residue gas and the highest per unit value on the respective grades of liquid hydrocarbons, on which a royalty is paid by the producer to any other royalty interest in the general area for the same month in which such product is produced.

All royalties due herein shall be based on one hundred percent (100%) of the total plant production of residue gas attributable to gas produced from this lease, and on fifty percent (50%) or that percent accruing to Lessee, whichever is the greater, of the total plant production of liquid hydrocarbons, attributable to the gas produced from this lease; provided that if liquid hydrocarbons are recovered from gas processed in a plant in which Lessee (or its parent, subsidiary or affiliate) owns an interest, then the percentage applicable to liquid hydrocarbons shall be fifty percent (50%) or the highest percent accruing to a third party processing gas through such plant under a processing agreement negotiated at arms-length, or if there is no such third party, the highest percent then being specified in processing agreements or contracts in general area, whichever is the greater. In no event, however, shall the royalties payable under this paragraph be less then the royalties which would have been due had the gas not been processed.

INFORMATION COPY

(D) OTHER PRODUCTS: As a royalty on carbon black, sulphur, salts and/or other brines, or any other products produced or manufactured from gas (excepting liquid hydrocarbons) whether said gas be "casinghead", "wet" or any other gas, by fractionating, burning or any other processing _____ _____ part of the gross production of such products, or at the option of the Lessor, the value of such part of the gross production. The value of Lessor's part of the gross production shall be determined by the greater of:

(1) The weighted average per unit market price at the point of delivery which could have been obtained in an arm's-length transaction, for the month, where produced and when run; if any;

(2) The weighted average per unit price determined from the gross proceeds of actual sales of the product by the producer in arm's-length transactions during the month; if any;

(3) A per unit value equivalent to the highest per unit value on which a royalty is paid by the producer to any other royalty interest in the general area for the same month in which such product is produced.

The royalties herein provided for shall be computed after deducting any oil or gas reasonably used for the production thereof. Lessee shall have the right to use any water that may be on the premises for operation hereunder and the right to use so much of the surface of the land covered hereby as may be reasonably necessary for developing and operating on this lease for production and for storing, marketing and transporting the products therefrom, such use to be conducted under conditions of least injury to the surface of the land.

(E) NO DEDUCTIONS: Lessee agrees that all royalties accruing to Lessor under this lease shall be without deduction for taxes or the cost of producing, gathering, storing, separating, treating, dehydrating, compressing, processing, transporting, and otherwise making the products produced hereunder ready for sale or use; provided that any tax imposed in the future by the United States on account of production shall be deductible by the Lessee to the extent Lessee is required to pay such tax on Lessor's share of production under this lease. Lessee shall not be responsible for any state of local wellhead or production taxes on Lessor's royalty interest in production under this lease.

(F) ROYALTY IN KIND: Notwithstanding anything contained herein to the contrary, Lessor may annually, at its option, upon not less than 60 days notice prior to the anniversary date of the lease, notify Lessee, that payment of all or any royalties accruing to Lessor under the lease for the ensuing year be made in kind without any deduction as specified by Paragraph 5 (E) above. If Lessor decides to take royalty in kind, Lessee shall provide storage free of charge to Lessor for 48 hours.

Lessor acknowledges that the products produced hereunder may be subject to the jurisdiction of federal regulatory authorities whose prior approval may be required in order to pay in kind all or any royalties accruing to Lessor under this lease. Upon receipt of notice that Lessor will require that payment of royalties be made in kind, Lessee agrees to apply for such approvals as may be in its sole judgment necessary. Lessee agrees to diligently seek all necessary and appropriate approvals to enable the Lessor to exercise its option to take royalties in kind. Lessee shall not be liable to Lessor for consequences of a delay caused by factors beyond Lessee's control, or for the failure of any regulatory authority to give the requested approvals.

(G) PLANT FUEL AND RECYCLED GAS: No royalty shall be payable on any gas as may represent the Lessor's proportionate share of any fuel used to process gas produced hereunder in any pro-

INFORMATION COPY

cessing plant. Notwithstanding anything contained herein to the contrary, and subject to the consent in writing of the Lessor, Lessee may recycle gas for gas lift purposes on the leased premises or for injection into any oil or gas producing formation underlying the leased premises after the liquid hydrocarbons contained in the gas have been removed and no royalties shall be payable on the gas so recycled until such time as the same may thereafter be produced and sold or used by Lessee in such manner as to entitle Lessor to a royalty thereon under the royalty provisions of this lease. Lessee shall provide Lessor with a monthly report of all gas and oil recycled or used for fuel.

(H) MINIMUM ROYALTY: During any year beginning with the anniversary date of this lease, if this lease is maintained by production, the royalties paid to Lessor in no event shall be less than an amount equal to the total annual rental herein provided; otherwise, there shall be due and payable on or before the last day of the month succeeding the anniversary date of this lease a sum equal to the total annual rental less the amount of royalties paid during the preceding year.

6. ROYALTY AND OTHER PAYMENTS AND REPORTS: The Lessee shall bear all responsibility for paying or causing royalties to be paid as prescribed by the due date provided herein.

(A) Estimated royalty payments on products produced are due and payable on or before the 25th day of the first month succeeding the month of production. On or before the 25th day of the second month succeeding the month of production, the Lessee shall file a final report of products produced, and shall pay any unpaid royalties shown to be due by the report. If such final report shows an overpayment of royalties such overpayment, at the option of the Lessee, shall be refunded or credited to the estimated royalty payment due for the month succeeding the month covered by the final report. Such final report shall show how the weighted average per unit price was determined for each product under Paragraph 5 and summary of production on a form or forms prescribed by the Lessor.

(B) No payment is necessary under this paragraph if the Lessor has exercised its option under Paragraph 5(F). However, the summary report required in Paragraph 6(A) above shall be provided to the Lessor.

(C) Any royalty payment not postmarked by the 25th day of the first month succeeding the month of production shall have added to the amount of royalty due five percent (5%) of such sum each month or fractional portion thereof, not to exceed twenty-five percent (25%) during each 12 month period. This additional royalty payment shall not apply in cases of title dispute as to the Lessor's portion of the royalty. The additional royalty prescribed by this section may be waived upon showing of cause beyond the control of the Lessee.

(D) In addition and notwithstanding the provisions of Paragraph 6(C), the Lessee shall pay a mandatory additional royalty at the rate of one percent (1%) per month from the date due until the date paid on the royalty payment provided for in Paragraph 6(A) is delinquent.

(E) All royalty payments not taken in kind shall be made to the Department of Natural Resources, State of Florida, at its office in Tallahassee, Florida, or to its duly authorized agent.

7. RECORDS REQUIRED TO BE KEPT; POWER TO INSPECT, LIABILITY:
(A) For purposes of this lease, the Department of Revenue and/or any other duly authorized agent of the Lessor is hereby specifically authorized and empowered to examine, for the term of this lease including any extensions thereto plus three (3) additional years, at all reasonable hours, the books, records, contracts, and other documents confirming and pertaining to the computation of royalties under Paragraph 5 and to the production, transportation,

INFORMATION COPY

processing, disposition, sale and marketing of oil, gas, sulphur, carbon black, salt and/or other brines and any other products produced. Such documents shall include copies of all contracts under which gas is sold or processed and all subsequent agreements and amendments to such contracts, receipts and discharges of all wells, tanks, pools, meters, and pipelines, gas meter readings, gas line receipts, and other checks or memoranda of amounts produced and put into pipelines, tanks, trucks, or pools and gas lines or gas storage, and any other reports or records which the Department of Revenue and/or any other duly authorized agent of the Lessor may require.

(B) It is agreed by the parties hereto that during all proper hours and at all times during the continuance of this lease, that the Lessor by its duly authorized agent or agents, shall be, and hereby is authorized to check meters, gauges, and any and all measuring devices used by Lessee and to require properly authenticated certificates of accuracy as to calibration of all meters and gauges aforesaid on a monthly basis, or as indicated. Such tests, when required, must be made by a properly qualified and licensed testing laboratory in the State of Florida, and said duly authorized agent or agents shall have the right at all reasonable times and places to check readings on meters, gauges and measuring devices and meter reading records of employees of Lessee's and copy and make copies of the same.

(C) The Lessee, or his assigns, shall secure, maintain, and keep all records and accounts specified in Paragraphs 7(A) and 7(B) for the entire term of this lease, including any extensions thereto, plus three (3) additional years. This period shall be extended for an additional two (2) years upon request for examination of all records and accounts for royalty purposes by the Lessor or its duly authorized agent. The liability of the Lessee, or his assigns, shall exist for the same period for which records are to be kept under this paragraph.

(D) The State shall have a first lien upon the Lessor's proportionate share of all products produced from the area covered by this lease, to secure payment of all unpaid royalty and other sums of money that may become due under this lease.

(E) It is agreed by the parties hereto that during all proper hours and at all times during the continuance of this lease, that the Lessor or its duly authorized agent or agents, at its sole discretion, is hereby authorized to inspect the premises, to insure that the Lessee is complying with the terms of this lease.

8. RESERVE ESTIMATES: After production has been obtained, Lessee shall annually furnish the Florida Department of Revenue with a statement containing the estimate of the quantity of proved reserves of oil and gas underlying the lands covered by this lease. After the initial report, the statement also shall contain an explanation of any significant changes in the estimate which have occurred during the year.

The quantity of proved reserves shall be estimated consistent with generally accepted methods in the petroleum engineering profession. The statement filed with the Florida Department of Revenue shall conform to statements of Financial Accounting Standards, issued by the Financial Accounting Standards Board, which are in effect for disclosures about oil and gas producing activities.

The information contained in this statement shall be governed by Section 213.053, Florida Statutes.

9. SHUT-IN ROYALTIES: If, at the expiration of the primary term or at any time thereafter, there is located on the leased premises a well or wells capable of producing oil or gas in paying quantities and such oil or gas is not otherwise produced due to

pending development of a satisfactory market outlet or lack of suitable production facilities and this lease is not otherwise being maintained in force and effect, Lessee shall pay as royalty a sum of money equal to double the annual rental provided for in this lease but in no event to be less than $1,200.00 per annum for each well capable of producing oil or gas in paying quantities; such payment shall be made prior to the expiration of the primary term of this lease or if the primary term has expired within sixty (60) days after Lessee shuts in such well or ceases to produce oil or gas therefrom or within sixty (60) days after this lease ceases to be otherwise maintained in force and effect; and if such payment is made, this lease shall be considered to be a producing lease and such shut-in oil or gas well royalty payment shall extend the term of this lease for a period of one (1) year from the end of the primary term or, if after the primary term, from the first day of the month next succeeding the month in which such well was shut in or production ceased or this lease ceased to be otherwise maintained in force and effect; and thereafter, if no satisfactory market outlet or suitable production facilities for such oil or gas exists, Lessee may extend this lease for three (3) additional and successive periods of one (1) year each by the payment of a like sum of money each year as above provided, on or before the expiration of the extended term. Provided, however, that if, while this lease is being maintained in force and effect by payment of such shut-in oil or gas well royalty, oil or gas should be sold and delivered in paying quantities from a well situated within 6,500 feet of the leased premises and completed in the same producing reservoir, or in any case where drainage is occurring, the right to further extend this lease by such shut-in oil or gas well royalty payments shall cease and this lease shall remain in force and effect for the remainder of the current one-year period for which the shut-in oil or gas well royalty has been paid and for an additional period not to exceed four (4) years from the expiration of the primary term by payment by Lessee of compensatory royalty at the royalty rate provided for herein, of the value at the well of production from the well completed in the same producing reservoir from which oil or gas is being sold and delivered and which is situated within 6,500 feet of or draining the leased premises on which such shut-in oil or gas well is situated, such compensatory royalty to be paid monthly to the Lessor beginning on or before the last day of the month next succeeding the month in which such oil or gas is sold and delivered from the well situated within 6,500 feet of or draining the leased premises and completed in the same producing reservoir, provided further that in the event such compensatory royalties paid in any twelve-month period are in an amount less then the annual shut-in oil or gas well royalties provided for herein, Lessee shall pay an additional sum of money equal to the difference between such compensatory royalties paid and such shut-in oil or gas well royalty within thirty (30) days from the end of such twelve-month period; provided further that nothing herein shall relieve Lessee of the obligation of reasonable development, nor of the obligation to drill offset wells as required by law.

10. REMOVAL OF EQUIPMENT. Lessee shall have the right at any time while this lease is in force and effect, or within a reasonable time after the expiration or termination of this lease, to remove all property and fixtures placed by Lessee on the land covered hereby, including the right to draw and remove all casing, provided Lessee has complied with all obligations under this lease at the time of such removal. When required by Lessor, Lessee will bury all pipelines at least four feet below the surface, and no well shall be drilled within two hundred feet of any residence or barn now on said land without Lessor's consent. Lessee shall restore the property to its former condition in so far as this is deemed practicable upon the conclusion of drilling or any other operations authorized by this lease agreement.

INFORMATION COPY

11. OFFSET WELLS. This lease contemplates the reasonable development of the production from the land described in Exhibit A, including the drilling of as many wells as a reasonably prudent operator would drill under the same or similar circumstances. In the event production in paying quantities should be brought in on adjacent land draining the leased premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances at such locations required by spacing regulations adopted by the State of Florida, Department of Natural Resources.

12. DRILLING LOG. A log of each well drilled on this lease shall be filed with the Oil and Gas Administrator at his office in Tallahassee, Florida, within thirty days after such well shall have been completed or abandoned and the correctness of such log must be sworn to by Lessee, its agent or driller, and it must be accompanied by a plat showing the exact location of said well.

13. POOLING AND UNITIZATION. Lessee is hereby given the right to pool or combine the acreage covered by this lease or any parts thereof, whether State Land, Federal Land or privately owned land, when reasonably necessary to conform with drilling units established by the State of Florida, Department of Natural Resources or to conform with any unitization or integration order issued by such department. Operations for drilling, reworking or production on any part of a unitized unit composed in whole or in part of the land covered hereby shall be considered as operations for drilling, reworking or production on land covered by this lease and the entire acreage constituting such unit or units shall be treated for all purposes as if the same were included in this lease, except that in lieu of the royalties elsewhere herein specified, Lessor shall receive on production from each of such units the proportion of the royalties herein stipulatd that the amount of Lessor's ownership in the mineral interest in the acreage placed in the particular unit involved bears to the entirety of the mineral interest in such unit.

14. POLLUTION AND SITE SECURITY. (A) The Lessee shall be liable for land or water pollution resulting from the drilling for or production of products pursuant to this lease. The Lessee shall be liable for any damage to aquatic or marine life, wildlife, birds, and any public or private property, both real and personal due to Lessee's operations pursuant to this lease. The Lessee shall not allow any extraneous matter to enter or damage any mineral or freshwater bearing formation. Provided, however, this covenant of absolute liability shall not apply if the Lessee establishes that the prohibited discharge or other polluting condition was the result of any of the following:

(1) an act of war; or
(2) an act of government, either federal, state or local; or
(3) an act of God, which shall be construed to mean an unforeseeable act exclusively occasioned by the violence of nature without the intervention of any human agency; or

(4) acts of disinterested third parties who are neither employed by or agents of the Lessee.

(B) The Lessee shall report to the supervising agency and to the Division of Resource Management, Department of Natural Resources, State of Florida, all spills or leakage of oil, gas, other petroleum products, or other waste material, and any such spill or leakage which cannot be immediately controlled shall be reported immediately to the appropriate federal agency and the Division of Resource Management, Department of Natural Resources, State of Florida.

(C) Lessee shall prepare and file with the Oil and Gas Administrator a plan for site security of each producing well

INFORMATION COPY

subject to this lease within 10 days after production has been obtained. The site security plan shall be subject to the approval of the Oil and Gas Administrator. When in the opinion of the Oil and Gas Administrator or his duly authorized agent that conditions warrant the construction of a fence to better protect the general public and/or livestock, Lessee shall build and maintain fences around its slush, sump and drainage pits, tank batteries and wells. In addition, Lessee shall:

(1) file in a timely manner with the Oil and Gas Administrator a schematic of approved pipe layouts, including all oil access points, from the actual well-head to the field plant and/or tank;

(2) provide that all oil access points on the leased premises have seals and locks. Lessee may select the type of seals and locks and methods of control by its employees;

(3) provide all transporters of products with a run ticket and/or a bill of lading, which shall show in addition to quantities, the shipper and consignee;

After written notice of a deficiency listed above to the Lessee, Lessor may cancel the lease for failure to correct the deficiency listed in the notice.

The plans required above may be revised from time-to-time with the approval of the Oil and Gas Administrator.

The requirements of this Paragraph are considered to be minimal site security requirements and Lessee shall take the necessary actions to protect the Lessor's interest.

(D) The Lessee shall, in addition to notification of fire, breaks, leaks or blow-out, notify the Division of Resource Management, Department of Natural Resources, State of Florida and the supervising agency, of any breach of site security within forty-eight (48) hours of its discovery.

(E) The Lessee shall provide the Department of Natural Resources, or its duly authorized agent access to each site for the purpose of determining:

(1) the need for site security; or

(2) the terms of the site security plan are being met; or

(3) to examine a site where a breach of site security has occurred.

15. ASSIGNMENT. (A) This lease shall not be assigned in whole or in part until and except the Lessor shall approve and consent in writing to such assignment. Such consent shall not be unreasonably withheld. Subject to the preceding sentences, the convenants, conditions, and agreements contained herein shall extend to and be binding upon the successors or assigns of the parties hereto.

(B) In the event of assignment hereof in whole or in part, in accordance with the provision hereof, liability for breach of any obligation hereunder shall rest exclusively upon the owner of this lease or a portion thereof, who commits such breach. If this lease is assigned in accordance with its terms as to a segregated portion of the land covered hereby, rentals payable hereunder shall be apportionable as between the several leasehold owners ratably on an acreage basis and default in rental payment by one shall not affect the rights of other leasehold owners hereunder.

16. FORCE MAJEURE: Should Lessee be prevented from

INFORMATION COPY

complying with any express or implied covenant of this lease, from conducting drilling operations or producing any products as herein defined from the leased premises, after effort made in good faith, by cause or reason of war, rebellion, riots, strikes, act of God inlcuding but not limited to storms, floods, washouts, landslides and lightning or any laws, acts, orders, rules, regulations or demands of governmental authority, then while so prevented, Lessee's obligation to comply with such covenant shall be suspended upon proper and satisfactory proof presented to Lessor in support of Lessee's contention and Lessee shall not be liable for damages for failure to comply therewith and this lease shall be extended while and so long as Lessee is prevented, by such cause, from drilling, reworking operations or producing products from the leased premises, provided, however, that nothing herein shall be construed to suspend the payments of rentals during the primary or extended term. Lessee shall be required at all times to use reasonable diligence to overcome such causes as described above as promptly as circumstances will permit and once such causes have terminated Lessee shall have 48 hours to notify the Lessor of such termination.

17. DEFAULT AND FORFEITURE. If the Lessee should fail or refuse to make payment of any sum due either as rental or shut-in oil or gas royalty on this lease or for royalty on the production within thirty (30) days after it shall become due, or if the Lessee or its authorized agent should knowingly make any false return or false report concerning productions, royalty or drilling, or if the Lessee should fail or refuse to drill any offset well or wells in good faith as required by law and the rules and regulations adopted by the State of Florida, or if the Lessee or its agent should refuse the proper authority access to the records pertaining to operations under this lease, or if such Lessee or its authorized agent should knowingly fail or refuse to furnish the log of any well, as provided herein, or if Lessee shall knowingly violate any of the material provisions of this lease and should Lessee fail, within thirty days after written notice to Lessee by Lessor setting out the matters as to which Lessor considers Lessee in default, to take reasonable action to remedy any such default, this lease shall be subject to forfeiture by the Lessor; and when forfeited, the area shall again be subject to lease to the highest bidder, at the option of Lessor, under the then current regulations controlling at the time of forfeiture by the Lessee. However, when a proper showing is satisfactorily made to Lessor, the rights of Lessee under this lease may be reinstated provided the rights of third parties have not intervened.

18. MISCELLANEOUS

(A) Notwithstanding any of the provisions, covenants or stipulations contained in this lease, should there be any conflict in any of the provisions of this lease with the law governing the issuance and operation of leases on the area herein described, in that event, the provision of such law shall be written into this lease and shall control.

(B) The Lessee joins in this lease for the purpose of indicating its assent to all the terms and provisions hereof, and agrees to be bound hereby.

(C) All terms and express or implied covenants of this lease shall be subject to all Federal and State laws, executive orders, rules or regulations, in force at this time or which may be promulgated, enacted and enforced in the future.

(D) Lessee shall, on or before ninety (90) days after each anniversary date while this lease continues in force and effect, file with Lessor a notarized report as to the status of operations thereon in accordance with the provisions of, and subject to the sanctions authorized in Section 253.511 of the Florida Statutes.

(E) Prior to the time that the Lessee mines, drills or extracts in any manner, petroleum, petroleum products, gas, sulphur or any other mineral from the land covered hereby, Lessee shall deposit with the Lessor a surety bond in the amount of $_____from a surety company authorized to do business in the State of Florida. The bond shall serve as security and is to be forfeited to the Lessor to pay for any damage caused by mining or drilling operations of the Lessee. Damages as used in this section shall include, but not be limited to, air and water pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the State of Florida. Lessee shall pay the premiums for said bond as they become severally due and payable and furnish a receipted bill therefore to the Lessor.

(F) That Lessee hereby covenants and agrees to investigate all claims of every nature at its own expense and to indemnify, protect, defend, hold and save harmless the State of Florida, Board of Trustees of the Internal Improvement Trust Fund and/or the State of Florida from any and all claims, actions, law suits and demands of any kind or nature arising out of this lease.

(G) Lessee may conduct geophysical exploration on the lands covered by this lease.

(H) Prior to proceeding with any geophysical exploration, the Lessee shall serve reasonable notice on the supervising agency. The route to be taken by the geophysical crew must first be submitted by the supervising agency. If areas of valuable or endangered species of vegetation or wildlife would be disturbed by the proposed route of geophysical operations, the supervising agency may require rerouting of the path or reclamation of the damaged area according to its specifications.

(I) All seismic shot holes shall be drilled sufficiently deep to prevent undue surface cratering and consequent damage to the surrounding vegetation and wildlife.

(J) The Lessee shall take all reasonable precautions designed to prevent the starting of fires in areas of geophysical operations.

(K) Lessee shall comply with all current and future statutes, rules and regulations of the United States Government, its agencies and the State of Florida, its agencies and political subdivisions. The willful violation of any statute, rule or regulation shall constitute cause for termination of the lease.

(L) The location, preparation, construction, maintenance, and restoration of the access road on leased premises and drill site shall be accomplished to the satisfaction of the supervising agency in accordance with the following:

(1) The location and construction plans of the access road shall be approved by the supervising agency prior to the commencement of construction.

(2) No construction work shall be undertaken without approval of the supervising agency.

(3) The drill site must be approved by the supervising agency before clearing of any access road or drilling site is done. Lessee must notify the supervising agency of the tentative site location so that a representative can inspect the drill site. Drilling in or within 200 yards of a river, stream, lake, pond (or the flood plain thereof) swamp, sink, or drain, shall require special approval by the Lessor, if such drilling is not prohibited by law.

(4) Lessee shall restore the drill site and access road in conformance with a plan submitted to and approved by the supervising agency at the time of approval of the site thereof.

restoration shall meet with the approval of the Oil and Gas Administrator, and the supervising agency shall be notified when restoration is complete.

(5) The size of the drill site shall not exceed four (4) acres in area unless a large area is justified and approved in writing by the supervising agency. The supervising agency shall not unreasonably withhold approval of the items listed above.

(6) The Lessee shall notify the supervising agency within 48 hours after the termination of drilling operations at the drill site.

IN TESTIMONY WHEREOF, the Executive Director of the Department of Natural Resources as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund has set his hand and has affixed hereto the Official Seal of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, in the City of Tallahassee, Florida, on this ____ day of _____, A. D. 19___.

(SEAL)
Board of Trustees
of the Internal
Improvement Trust
Fund

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

By_____
EXECUTIVE DIRECTOR
DEPARTMENT OF NATURAL RESOURCES

INFORMATION COPY

(CORPORATE SEAL)

_____
LESSEE

APPENDIX D

Onshore Impacts of Oil and Gas Activities In Florida State-Owned Coastal Water

Prepared by

Thomas A. Herbert, Ph.D.
and
Linda L. Lampl

T.A. HERBERT & ASSOCIATES
Tallahassee, Florida

1984

and

Summary of Conclusions and Recommendations of
Onshore Facilities Siting Studies of

- Southwest Florida Regional Planning Council
- South Florida Regional Planning Council
- Tampa Bay Regional Planning Council
- West Florida Regional Planning Council

TABLE OF CONTENTS

INTRODUCTION 1

METHODOLOGY 2

EXPLORATION IN FLORIDA'S STATE WATERS 7

Atlantic Peninsular Coast 7

Gulf Peninsular Coast 8

West Florida Panhandle 10

FUTURE PROSPECTS 13

Geologic Prospects: Comparative Methods 13

Industry Interest 15

INDUSTRY ACTIVITIES: WORKERS, GOODS AND SERVICES ... 19

Seismic Exploration 21

Exploratory/Delineation Drilling 24

Development Drilling 31

Permanent Shore Facilities 32

Workover and Maintenance Operations 33

THE SCENARIOS 34

Exploration and Development Scenarios 34

Timing and Level of Activities 36

SUMMARY 41

CONCLUSIONS AND RECOMMENDATIONS 42

BIBLIOGRAPHY 44

LIST OF FIGURES

Figure 1 Location map of the areas of interest 5

Figure 2 Location of OCS Planning Subarea E-1 6

Figure 3 Location Map of Florida State Drilling Leases 224-A and 224-B 12

Figure 4 OCS lease activity in Planning Subarea E-1 through 1984 17

Figure 5 Geologic prospect estimate for Federal OCS and Florida state waters <300 meters water depth 18

Figure 6 Timetable for state waters drilling (Scenario I) 38

Figure 7 Timetable for combined state/federal drilling (Scenario II) 39

LIST OF TABLES

TABLE 1 ESTIMATES FOR FLORIDA OFFSHORE DEVELOPMENT SCENARIOS 40

PREFACE

This report was supplied to the Florida Institute of Oceanography free of charge. The geological portions of this study were prepared by Thomas A. Herbert, Ph.D., a professional geologist and associate with the firm of T. A. HERBERT & ASSOCIATES in Tallahassee, Florida. The discriptions of the oil and gas industry were prepared by Linda L. Lampl, an applied anthropologist and associate with the firm. The firm of T. A. HERBERT & ASSOCIATES routinely provides consulting services for the oil and gas industry in Florida. The findings and conclusions are those of the authors.

ONSHORE IMPACTS OF OIL AND GAS ACTIVITIES IN FLORIDA STATE-OWNED COASTAL WATERS

INTRODUCTION

This report considers exploration, development and production of oil and/or natural gas reserves within the 3 Marine League (Gulf of Mexico) and 3 Geographic Mile (Atlantic Ocean) zones off the coasts of Florida. Two scenarios are presented. Scenario I addresses the onshore impacts that might result from exploration and production in Florida-owned waters only; Scenario II considers the impacts of oil and gas activities conducted concurrently in state and federally-owned waters.

This report presents a general discussion of 1) the geologic potential and leasing history for three study areas; 2) geologic prospect estimates for West Florida offshore areas; 3) industry requirements during exploration and development in terms of labor and materials; 4) Scenarios I and II. Recommendations follow, suggesting a case study to determine the actual impacts that accompany OCS activities in the Florida Panhandle.

METHODOLOGY

The object of this study was to determine the geologic potential for state-owned offshore waters and to identify the level of activity that might impact Florida coastal communities in the event that oil and gas reserves are sought within the 3 Marine League or 3 Geographic Mile zones. The guidelines were:

1) All impacts and their magnitude will ultimately be linked to the geology of the area. If the interpretation of the petroleum geology of the area indicates a high probability that hydrocarbons exist, impacts may occur; if the interpretation indicates a low probability for the discovery of hydrocarbons, there will be no call for leases, no drilling, and hence no impacts.

2) Most onshore impacts will be linked to the timing and number of rigs and the number of people and goods and services required by operators to support their projects. These people-related impacts will be influenced by industry practice in regards to hiring and purchasing and by the local or regional availability of skilled labor and specialized services.

With that in mind, the first step was to divide the state into three manageable study areas 1) the Atlantic Peninsular Coast 2) the Gulf Peninsular Coast 3) the West Florida Panhandle (Figure 1). Geology was

the first consideration; industry requirements and practice in terms of people and supplies, the second.

A review of the literature and historic leasing patterns in marine and upland environments indicated that the third area, the West Florida Panhandle, held the greatest geological potential. Informal interviews conducted with industry representatives of several major companies confirmed this information. As it became apparent that much of the industry would likely restrict interest to the West Florida area for the next decade,[1] two study areas, the Atlantic Peninsular Coast and the Gulf Peninsular Coast, were eliminated from consideration. Scenarios were developed for the remaining study area, the West Florida Panhandle.

Geologic prospects were estimated for the 3 Marine League zone along the Panhandle by extrapolating on an area-to-area basis from the Minerals Management Service (MMS) OCS Eastern Gulf of Mexico Planning Subarea E-1 that lies in federal waters directly south of state-owned inshore waters of the West Florida Panhandle

---

[1] Since not all exploration companies were polled, this statement should not be interpreted as industry-wide policy.

(Figure 2). MMS estimates of the hydrocarbon potential for Subarea E-1 prior to Lease Sale 79 in January, 1984, were confirmed in January, 1984; sixty of the 156 blocks leased in the Eastern Gulf of Mexico off Florida in Lease Sale 79 were in Planning Subarea E-1.

Data regarding the number of people associated with oil and gas exploration, development and production projects were compiled after a literature review and interviews with industry representatives. The same sources provided information regarding the timing of activities and the goods and services required to support drilling projects. An overview of industry hiring and purchasing traditions were determined by interview. The availability of skilled labor and specialized services within the West Florida Panhandle Area were determined from recent literature, personal knowledge and discussions with industry representatives.

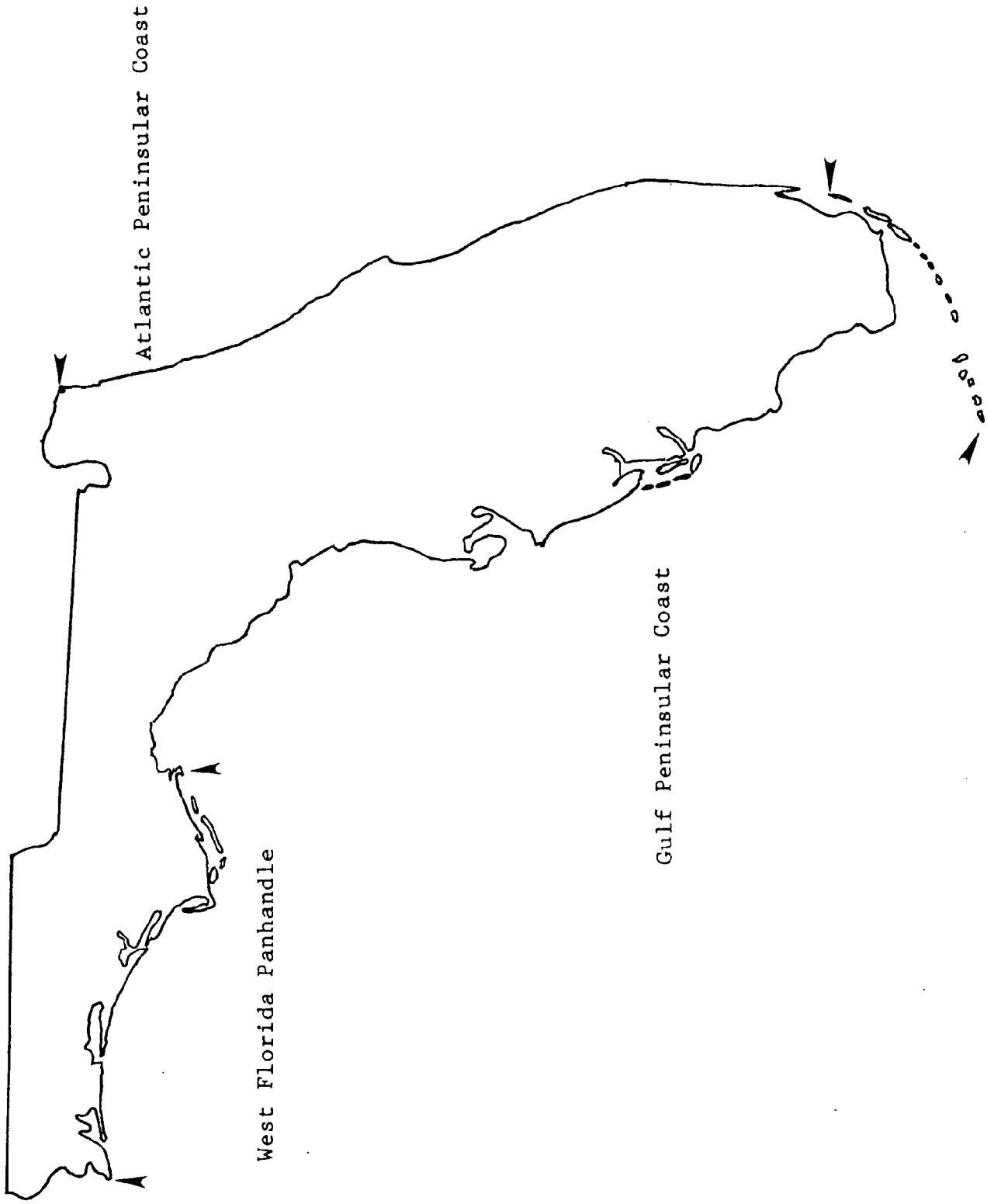


Figure 1 Location map of the areas of interest

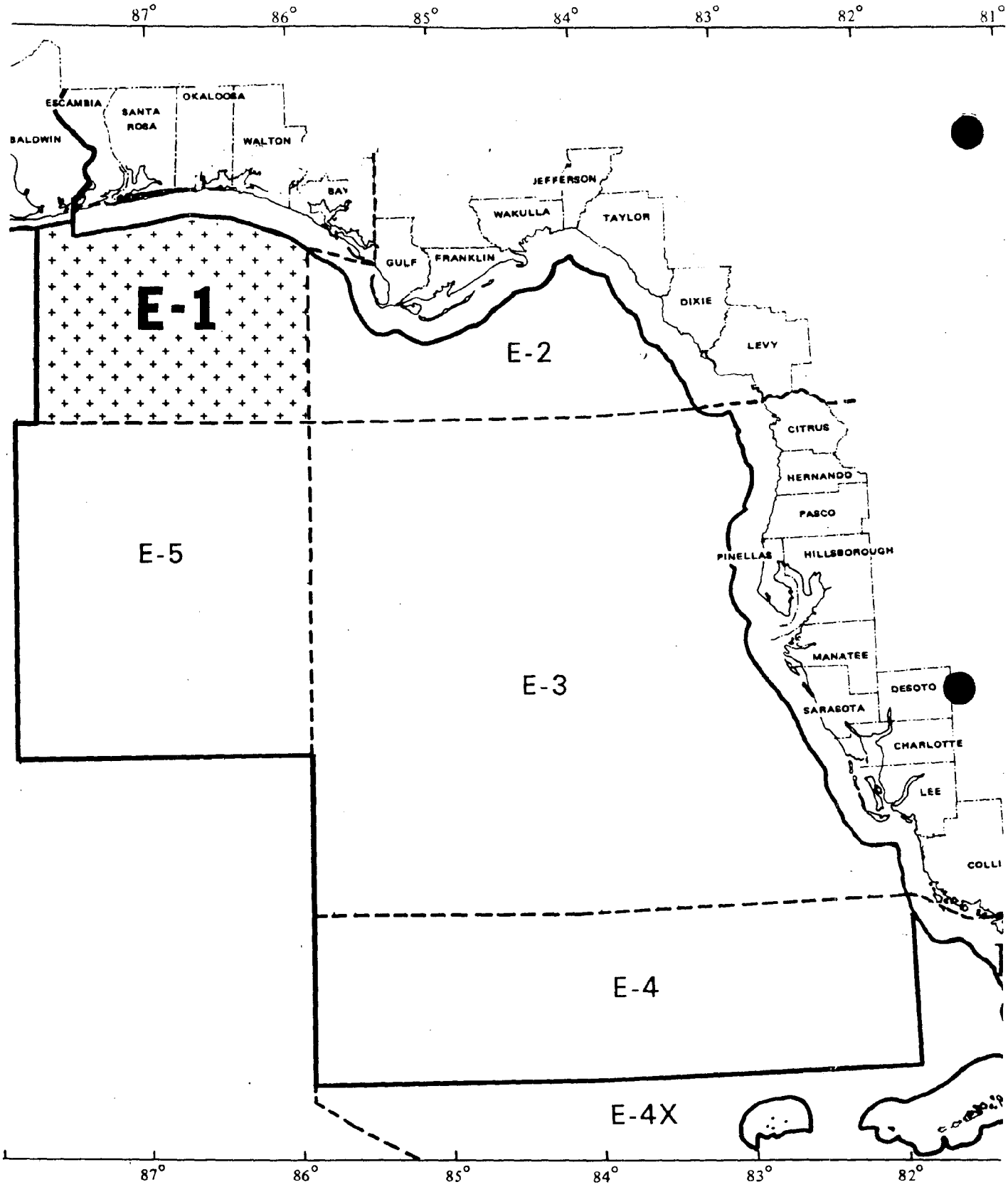


Figure 2 Location of OCS Planning Subarea E-1

EXPLORATION IN FLORIDA'S STATE WATERS

The state-owned waters of Florida were divided into three study areas to review the geologic potential, exploration history and interest, and future prospects (Figure 1).

Atlantic Peninsular Coast

The Atlantic Peninsular Coast study area extends from the Florida-Georgia state line south through the Florida Keys. Exploration geologists have expressed little or no interest in this 3-Geographic-Mile wide (nautical mile) state waters zone along the Atlantic Coast from Jacksonville to the Florida Keys in recent years. The State of Florida has never leased offshore areas between Duval County and Monroe County (Florida Keys) along the Atlantic Coast. However, several leases were granted in the Florida Keys in the 1950's and early 1960's. With the exception of OCS tests approximately 60 miles off Jacksonville, there have been no wells drilled in the OCS or 3 Geographic Mile zone off the Atlantic Peninsular Coast of Florida. Exploratory wells drilled from land locations along the Atlantic Coast showed scant geologic potential for hydrocarbons.

State leases in the waters off the Florida Keys were tested in the late 1950's and early 1960's when

several deep wells were drilled to Cretaceous and Jurassic age formations. These offshore wells, drilled on State Leases 826-G, 826-Y, and 1011, and OCS Blocks (Sale 5, 1959) in the Marquesas (now considered Florida state waters), showed no commercial oil or gas, and the leases were allowed to expire. In addition, a number of deep exploratory wells were drilled on state leases from land, (island) locations as early as 1946, in the Keys but abandoned as dry holes.

Drilling logs report that small quantities of "young oil" (hydrocarbon liquids not fully matured or converted to commercial grades of oil) were found in several of the Keys wells.[1] Even with these in mind, no serious interest is anticipated for state-owned waters in this area at this time or in the foreseeable future.

Gulf Peninsular Coast

The 3-Marine League zone along the Florida Gulf Peninsular Coast from Key West to Apalachicola was of geologic interest in the 1960's. Two deep test wells were drilled into Lower Cretaceous and possibly Jurassic Age formations from over-water locations on State Lease 224-B approximately five miles off Lee County (Drilling Permits Nos. 289 and 297). Additional wells were drilled on State Lease 224-B in the water

---

[1]Attilio, Donald E. and Bruce Blake, 1983, Petroleum Potential, Exploration Possibilities of South Florida Basin, Florida Keys: Oil and Gas Journal, v. 81, no. 45 (November 7), p. 148-153.

off Charlotte County (Drilling Permit No. 375), off Pinellas County (Drilling Permit No. 304), off Citrus County (Drilling Permit No. 382) and off Levy County (Drilling Permit No. 383). Additional deep tests were drilled off Franklin County in the Big Bend area on State Lease 224-A (Drilling Permits 281, 293, and 387). The wells were declared dry holes but provided valuable stratigraphic information useful in the interpretation of the subsurface geology and hydrocarbon potential within the 3-League zone.

Exploration in the OCS off South Florida is now concentrated in areas 40-50 miles offshore in what is known as the South Florida Basin. Because of the paucity of stratigraphic information related to this geologic basin, little or no interest is expected in state-owned waters for at least a decade. The leases granted in OCS Sale 79, south of latitude 26 degrees north, represent the beginning of exploration in the deeper basin areas now considered most promising in South Florida. Discoveries in federal waters could lead to interest in the 3-League zone in the future as the geological picture becomes clearer.

Modified versions of State Leases 224-A and 224-B are extant for the outer three statute mile band of the 3 Marine League area from Apalachicola to Naples,

Figure 3. However, no exploration interest has been expressed to the state in recent years.[1] Sohio, however, did obtain leases to four blocks in federal OCS waters located 35-40 miles off the Big Bend area in Lease Sale No. 79. If discoveries are made on the Sohio blocks, interest may be revived in state-owned waters beneath Lease 224-A in the Big Bend.

West Florida Panhandle

The state-owned waters offshore from Apalachicola west to the Perdido River (Alabama-Florida boundary) were originally leased in 1944 (State Lease 223). The area was subsequently leased again as State Lease 833 which expired in 1961. These leases included West Florida bays, estuaries, and coastal waters out to the 3 Marine League line; however, no wells were drilled seaward of the coast.

This area is now considered of high geological potential because onshore geologic trends in the deep, Jurassic Age Smackover and Norphlet Formations have been traced into offshore areas. The Smackover is the production formation at Jay and Blackjack Fields in Santa Rosa County, Florida. Jay Field, with an estimated size of 420 million barrels of oil, is considered the largest upland field discovered east of

---

[1] Personal communication with the Pat White, Division of State Lands, Department of Natural Resources.

the Mississippi to date. The geologic trend that contains the Jay Field is believed to extend into OCS Subarea Area E-1 that includes the Destin Dome; Destin Dome was the site of heavy but disappointing exploration activity in the mid-1970's.

Exploration geologists are also tracing a deep natural gas trend that was discovered in the 1970's in the Norphlet Formation (Jurassic Age) off Alabama. If this trend continues in an easterly direction, interest may increase for leasing Florida state-owned waters south of Pensacola.

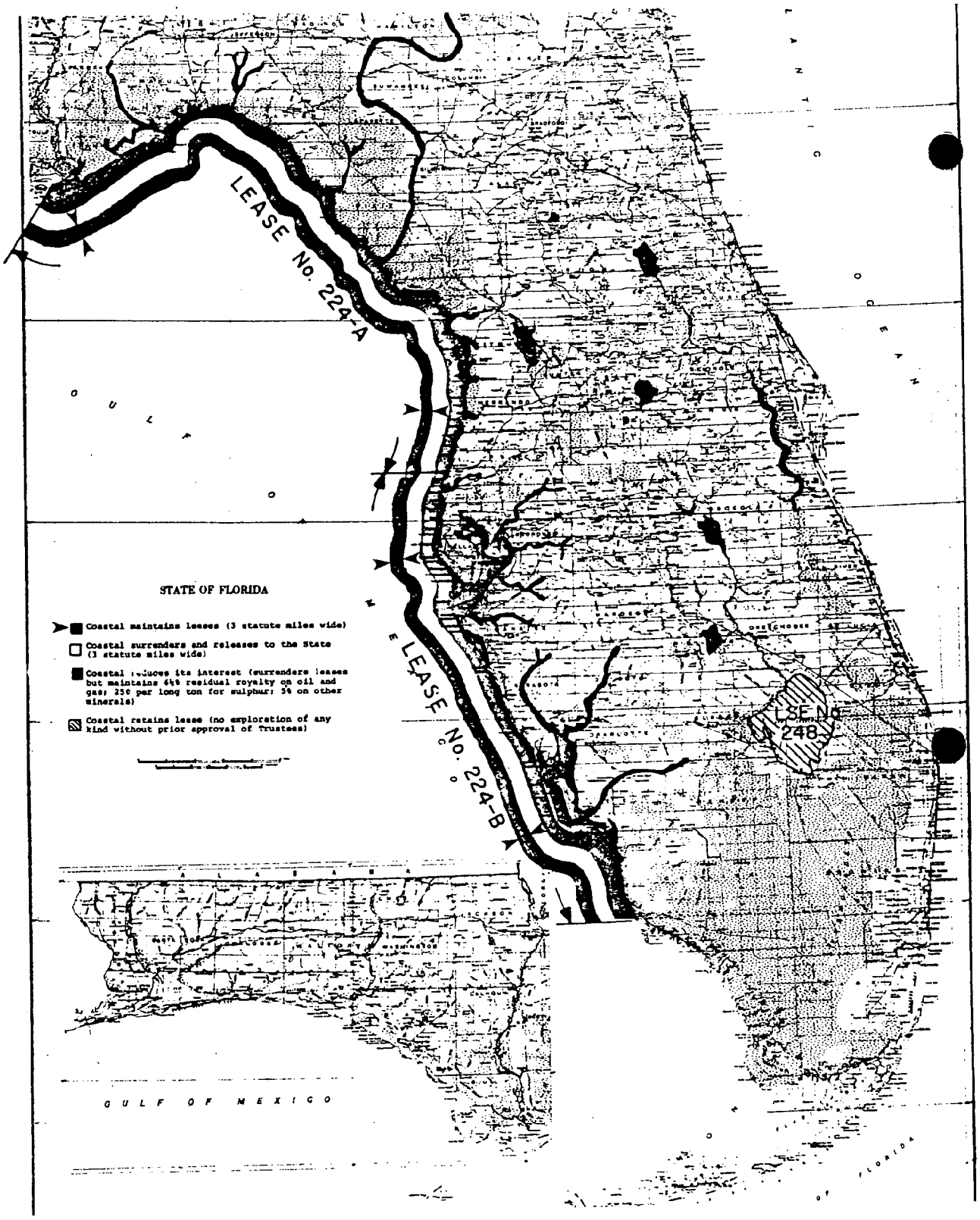


Figure 3 Location Map of Florida State Drilling Leases 224-A and 224-B.

FUTURE PROSPECTS

An estimate of the potential number of geologic prospects in Florida waters was prepared to determine the likelihood of onshore impacts, since the number of potential prospects in an area is considered an indicator industry interest. Such interest may be expressed in leasing and drilling activities which may lead to onshore impacts.

Geologic Prospects: Comparative Methods

Geophysical information regarding the numbers and size of prospects anticipated in the target area by individual oil and gas companies was not available; the data are considered propriatary. The number of potential prospects was determined by comparison of OCS Subarea E-1 and the offshore West Florida Panhandle area, Figure 4. The method, "look-alike field densities," is commonly used method to estimate the number of structurally definable (by seismic survey) fields in frontier areas[1]. Field sizes are assumed to be capable of yielding >250 million barrels. The OCS prospects off the Florida Panhandle are thought to be in this size range.

---

[1] Baker, R. A., H. M. Gehman, W. R. James, and D. A. White, 1984, Geologic Field Number and Size Assessments of Oil and Gas Plays: AAPG Bulletin, v.68, p. 426-432.

The assumptions made for the "look alike" analysis are:

* The geologic potential for petroleum hydrocarbons beneath OCS blocks off West Florida within the 300 meter isobath is similar to areas within the 3-Marine League zone from Bay County to Escambia County. The 300 meter isobath was picked as an arbitrary seaward limit on the basis of drilling economics and the regional geology of the West Florida shelf area.

* The resource estimates for OCS activities off West Florida prepared by the Minerals Management Service are a reasonable prediction of future discoveries for the study area.

Planning Subarea E-1 contains approximately 1,072 blocks in the Pensacola and Destin Dome leasing areas. Each OCS block is formed by a 3 mile by 3 mile grid that encloses 5,760 acres unless adjacent to a boundary where fractional blocks might occur.[1] The southern extent of the Destin Dome area is off the continental shelf edge in water depths of 600-800 meters. Figure 5 depicts the area of 749 blocks of the outer continental shelf in water depths less than 300 meters that was used for comparison with 134 blocks of state waters acreage extending from Panama City to the Florida-Alabama border.

---

[1] The OCS grid system was extended inshore to state-owned waters to allow comparison between areas. However, the Universal Transverse Mercator (UTM) (1,000 meter grid) coordinate system was adopted for use in state waters in 1981 by the Governor and Cabinet acting as the Trustees of state lands. The UTM system will be used for future state waters leasing.

For this analysis, it was assumed that one geologic prospect is present for every three blocks (17,280 acres) leased, and, from previous industry practices, one exploratory well is usually drilled for each prospect. Approximately 36 total geologic prospects were estimated to be present in the area depicted in Figure 5, an area of 749 OCS blocks, including some prospects near the Destin Dome (Sale 32 leases) that were drilled and abandonded as dry holes the mid-1970's. (The "look alike" method of analysis used here includes the total of evaluated and unevaluated prospects for comparison purposes.)

A minimum of six geologic prospects are predicted for the state waters area depicted on Figure 5. The state waters area is equal to 134 (OCS) blocks, if the same field density per unit area is used.

Industry Interest

Industry interest remains high in the frontier area in the Outer Continental Shelf area off West Florida despite failures in the Destin Dome blocks in the 1970's, e.g. 60 new leases were awarded in January, 1984, in the Pensacola and Destin Dome (Eastern Gulf of Mexico, Subarea E-1. Seven pre-1984 leases are still active while 40 leases were allowed to expire. Two of the leases expired from previous sales were re-leased

in the January, 1984, lease sale. After eliminating the leases drilled and abandoned, more that 20 new geologic prospects (structural traps) are shown by the leasing pattern for new leases in Subarea E-1, Figure 4.

The 134 blocks in the state-owned area depicted in Figure 5 are likely to become of significant geologic interest after more wells are drilled in federal waters. If a discovery occurs in federal waters, interest may be directed toward exploration of prospects of the same geologic time periodin inshore waters. Even a series of dry holes in the OCS could focus interest on the leasing of state tracts, particularly if data indicate evidence of stratigraphic traps suitable for hydrocarbon reserves.

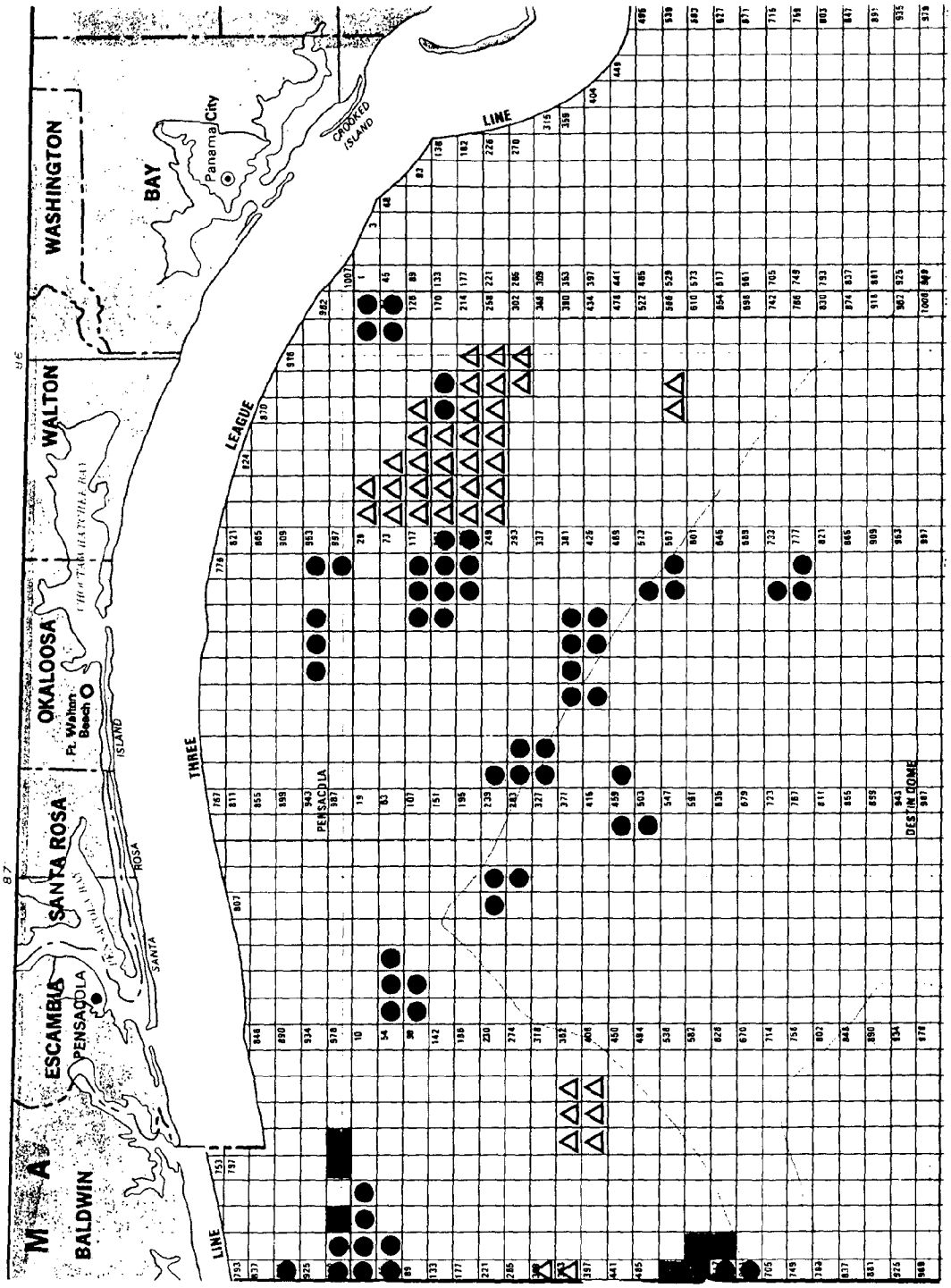


Figure 4 OCS lease activity in Planning Subarea E-1 through 1984.

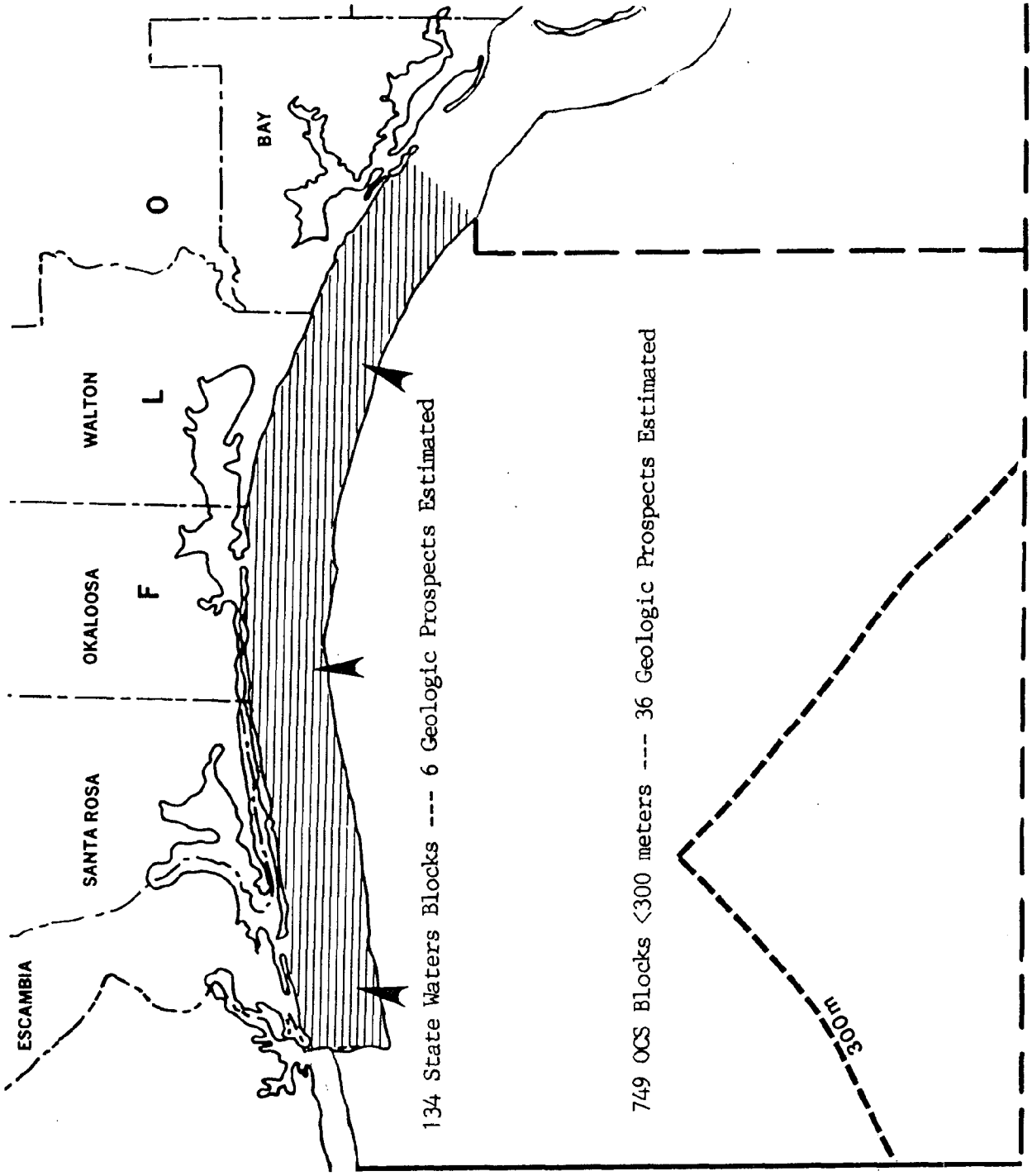


Figure 5 Geologic prospect estimate for Federal OCS and Florida state waters <300 meters water depth

INDUSTRY ACTIVITIES: WORKERS, GOODS AND SERVICES

The commercial production of hydrocarbons involves three industry-recognized phases: exploration, development, and production. Each phase is marked by highly specialized activities that require varying numbers of people to perform, varying levels of worker expertise and different kinds of equipment and supplies. The job location also varies according to phase and task. For example, the exploration phase includes 1) seismic exploration 2) leasing 3) exploratory drilling.

Seismic exploration activities in marine areas, similar to those under discussion in this report, are conducted from a relatively independent operating survey vessel that is outfitted with sophisticated data recording equipment and other research aides; leasing activities, however, are conducted from corporate offices with little personnel movement or involvement in the geographic vicinity of a proposed drilling operation.

Exploratory drilling is conducted from one of several types of mobile drilling rigs that are submerged on location for marine drilling operations. Exploration drilling rigs require a shorebase staging site near the prospect while development drilling requires a longer-term commitment to the area by the

oil companies. A recent study of one drilling operation in West Florida indicated that the manpower needs for exploration are supplied for the most part by workers who commute to the project from a wide geographic area of the Gulf Coast.[1] Final stages of development evolve into production of hydrocarbons and higher levels of impacts to the local community; the later stage is known as "production." The exploration and development process may take 6-10 years to complete during which time planning for onshore impacts can take place.

An overview of industry requirements for the exploratory and development phases is presented below in terms of employment, supplies, materials and other needs that might effect coastal communities. Production related impacts are discussed briefly; OCS facility siting studies prepared by six coastal area regional planning councils in Florida provide in-depth discussions regarding onshore facilities associated with all three phases. The Minerals Management Service provides a regular update of onshore impacts in their summary reports.[2]

---

[1] Herbert, T. A. and L. L. Lampl, 1983, Travel and Residency Patterns of Rig Workers: The Getty Oil Company Project, Santa Rosa County, Florida: Tallahassee, FL (unpublished).

[2] U. S. Dept. of the Interior, Minerals Management Service, 1983, Gulf of Mexico Summary Report: Outer Continental Shelf Oil and Gas Activities in the Gulf of Mexico and their Onshore Impact: Reston VA.

The term "Industry," as used in this paper, includes the myriad of independent companies and contractors that service oil and gas exploration and production operations. For example, these may include catering companies that handle housekeeping duties and cooking on rigs, mud logging companies that monitor and log the drill cuttings produced by exploratory drilling, roustabout (labor) contractors, and companies that provide specialized crews for specific tasks, i.e. "casing crews" to set well casing.

Seismic Exploration

The seismic exploration process uses sound waves to locate subsurface geological structures capable of bearing hydrocarbons. Energy sources such as compressed air or dynamite are used to generate acoustic signals that are sent from a host survey vessel down through the water column and into the rock strata. Reflections returning from the subsurface are recorded by hydrophones that are attached to cables towed by the survey vessel.

Geologic structures are identified and evaluated according to historic seismic and regional stratigraphic data. If the structures look promising in terms of potential for hydrocarbons, they may become "prospects" for an exploration company, who will in turn attempt to lease the surrounding acreage.

Seismic exploration may occur before, during and after lease sales in marine areas, i.e. Florida state-owned waters. Seismic exploration surveys are commonly used for field reconnaissance in frontier areas (new areas for exploration) where stratigraphic information is scant. Seismic surveys may be rerun in an area after exploration wells have been drilled; the additional data are used to delineate structures that were confirmed during drilling. Surveys may also be rerun to take advantage of improvements in technology. In other words, a single geologic prospect may be the subject of multiple cycles of seismic survey activity during the move from the status of prospect to producing field.

Marine seismic surveys are relatively independent of shore needs, both in terms of labor and facilities. Survey vessels range from 150' to 250' in length; crews vary in size but may exceed 25 persons. If necessary, these vessels can operate offshore without returning to port for fuel or supplies for up to a month. Depending on the policies of the seismic company, crews may stay with the vessel for the duration of the work or may change out at shoreside locations on a six to eight day rotation schedule. Some oil companies own their own seismic exploration vessels and use company crews. Other exploration companies use one of the dozen or

more independent seismic contractors operating in marine environments off the southeastern United States.

At the present time, most Gulf Coast seismic vessels are based in Louisiana or Texas ports and can operate in any area of the Gulf of Mexico. Crews and technicians who live and work onboard are believed to be drawn from a wide geographic area around the home port. On occasion, boat hands are hired locally as crew replacements when a survey vessel puts in for supplies or crew changes.

Typically, supplies needed for a seismic survey would include fuel, water, and perishable foods. These essentials are usually available at port facilities that routinely supply the commercial fishing or marine-oriented industries along the Gulf Coast. Services required would include equipment and engine repairs, on an as-needed-basis. Docking or shore facilities are the same as those required for other vessels of comparable size, i.e. docks, navigation channel.

SHORESIDE FACILITIES REQUIRED FOR SEISMIC OPERATIONS

* Local Services:	Fuel, water, and food, engine repairs, as needed
* Local Personnel:	None required, replacements are possible
* Local Facilities:	Docks capable of handling 150'-250' vessels, 14' navigation channel

Exploratory/Delineation Drilling

The object of exploratory drilling is to confirm the absence or presence of commercially recoverable amounts of hydrocarbons in the geologic prospect(s) identified during seismic exploration. A mobile drilling rig is positioned over the prospect; the well spudded (started) and drilled to the target formation(s). Drill cuttings are monitored as the well progresses; cores are taken, tested and evaluated to determine the sequence of beds and type of rocks encountered.

This stratigraphic information is obtained in case other exploratory wells are drilled in the same area. If the prospect is thought to be commercially viable, the well is "completed," the term used to indicate that additional casing and tubing are set down the hole; the well is then tested (flow is measured). Other exploratory wells may be drilled in the same area to delineate the "field." If the test shows a dry hole, meaning the hydrocarbons are absent or the quantity is not commercially significant, the well is plugged and abandoned. In such cases the prospect itself is usually abandoned and the leases allowed to revert or expire without further exploration.

If the quantities of hydrocarbons discovered on a lease are considered commercially valuable, indicating

the potential for a field, an evaluation or delineation process will be triggered. At that time, additional wells are drilled to outline the geographic area and thickness of the pay zone(s) in the potential field.

Exploratory drilling typically begins soon after leases have been granted and environmental and drilling permits are approved. Exploration drilling is an expensive and risky venture, particularly when conducted in water depths in excess of 100' and to target depths 16,000' to 22,000', below the earth's surface --- the conditions expected off Florida's coast. Deep offshore wells can take from three to nine months to reach total depth; well costs range from $15 to $25 million. The delineation process may take several years to complete with no guarantees that a commercial field ultimately will be found.

The well costs influence the economic feasibility of a prospect. High well (and development) costs mean that significant reserves must be discovered to make a field a commercial venture. To warrant development, in the Florida OCS area or state waters, at least under 1984 market conditions, a field would require reserves of 60 to 100 million barrels of oil or the equivalent in gas and condensate. By comparison, the size of the Jay Field in Santa Rosa County, discussed earlier as the largest discovery east of the Mississippi River to date, is estimated at 420 million barrels; the reserves

at Blackjack Creek, however, are estimated at 60 million barrels, meaning that it would be a marginally economic field if discovered today in a marine environment off Florida.

Exploration companies, because of high drilling costs in frontier areas, may only risk one well for each geologic prospect, e. g. Getty Oil Company's 1983 test on State Drilling Lease 2338 in East Bay, Santa Rosa County.[1] The test well is usually drilled at the optimum location over the geologic prospect based on geophysical data. Exploratory wells are most often drilled vertically; directional wells are sometimes used in exploration drilling in unusual situations, e.g. a navigation fairway may require an alternate surface position.

Both exploratory and delineation drilling are conducted from mobile rigs that are usually under contract to the exploration company from an independent drilling company that owns and operates rigs. The rigs are either towed or moved to location under their own power. A 25-30 member drilling crew is usually permanently assigned to a rig. Each rig crew is supported by other live-aboard workers from service

---

[1] Getty Oil Company spent 12 years in the permitting process for a single test on a 3,000 acre structure beneath East Bay; a dry hole led to the abandonment of the prospect in late 1983.

companies that provide caterers and housekeepers, crewboat and tugs, and pollution control specialists in some operational areas.[1] Specialty service personnel appear on the rig from time to time, depending on the drilling phase. For instance, special crews are brought aboard when new casing is run, safety personnel maintain gas detection equipment, and other service crews arrive to log, test and complete the well. In the event of a dry hole, cementing crews may come aboard to plug the well.

Crewmembers may catch a crewboat or heliocopter at a shorebase or other supporting facility. In frontier areas, drilling crews are sometimes assembled at a central location, Houma, Louisiana, for example, and bused or flown to the shore base. Usually, other service company crews are responsible for their own home-to-shorebase transportation.

Drilling crews usually work seven or fourteen days on the job and an equal number off (7/7 or 14/14), depending in part on the rig's location from a shorebase. Schedules for service company crews vary from 5/5 to 21/7. Specialty service personnel may only spend a day or two onboard on an as needed basis; some

---

[1] Offshore operations in state waters usually require additional rig personnel to handle more stringent pollution control operations; Alabama, for example, has a "no discharge" regulation.

specialists may only spend hours onboard. The total personnel onboard at any one time may vary from 40 to 70 workers, depending upon the drilling phase. Over the three to nine month period it takes to drill an exploratory or delineation well, a total of as many as 600 persons may live or work aboard the rig.[1]

The number of rigs operating in an area at any one time is governed by the schedules of the individual companies involved and the number of prospects. Rigs are queued from one well to another to minimize rig standby costs and to allow time for evaluation of the results of an exploratory well.

Actual exploration drilling strategies vary from company to company. A drilling rig may be retained for a year or more and moved from one prospect to another if an exploration company holds leases on more than one prospect. Exploration partnerships will be formed to jointly explore high risk areas. Other oil companies often take a "wait-and-see" attitude on evaluating lease acreage, letting another company take the active role in exploration and even development. A dry hole on

---

[1] A tally of rig personnel who worked on Getty Oil Company's East Bay test indicated 627 persons worked on the operation over a 9 month period. One third of the persons reported Florida residency. Exxon Company, U.S.A. kept similar records for operations in Mobile Bay in Alabama state-owned waters and recorded 450-500 workers over a 9 month period. ODECO reports a similar employee count for its operations off Louisiana.

a group of lease blocks usually means that the entire area will be abandonded. The exploration strategies vary from company to company and are governed by the economics of exploratory drilling at the time leases are evaluated.

Specialized equipment and materials will be needed over the life of each project: as an example, drilling fluid components, casing and tubing, test equipment, and logging are all major expenditures. At this time (1984), oilfield service and equipment centers that supply Gulf Coast operations are located in Laurel, Mississippi, and New Orleans, Houma, Morgan City and Lafayette, Louisiana. A new center may be emerging at Mobile, Alabama, where discoveries from 1979-1984 pushed the offshore frontier to the East of Mobile Bay. In Florida, a nucleus of specialty services already exists; a well logging firm, environmental safety, roustabout contractor, and wire line and testing contractors, are already located at Jay in West Florida.

Unlike seismic survey vessels, exploratory drilling operations require shoreside support. The criteria for selection of a shorebase includes: proximity to the rig itself and road/highway access for trucks transporting heavy loads such as casing, tubing, cementing units to and from the shore site. A

shorebase capable of supporting an offshore exploratory drilling operation requires a 3-5 acre storage area, a loading dock with a minimum of 200' of bulkhead with access via a 14-18' channel, and quarters suitable for a temporary office. Several exploration company personnel (usually commuting from the nearest exploration office) and contract service personnel (usually hired locally), a total of 4-6 persons, manage the site and handle shorebase logistics and dispatching operations. Semi-skilled and skilled labor may be hired locally to run cranes and fork lifts, provide welding and repair services and general labor tasks.

Pensacola and Panama City, Florida, are likely staging areas for northern Gulf OCS and state waters operations. The West Florida Regional Planning Council study on facilities needs discusses in detail the locational aspects and needs of shore facilities.

REQUIREMENTS FOR A TYPICAL SHOREBASE

* Local Services: Fuel, water, food, welding, minor fabricationandsupplies
* Local Personnel: 8-10 skilled and semi-skilled workers
* Local Facilities: Docks, storage areas and suppliers of non-specialty marine equipment

Development Drilling

Development is a period when additional wells are drilled to "fill in" the spacing between the delineation wells to optimize hydrocarbon recovery. Once reservoir characteristics of a field are known, identified by delineation drilling, field development planning and development drilling begins. Development wells are frequently drilled directionally from one or more platforms at central locations throughout the field. These development wells can be drilled by a mobile drilling rig; often the rig used for exploratory and delineation drilling is put on long-term contract to begin development wells. A production platform or well jacket is then placed over the wells drilled by a mobile unit then the wells are connected to a pipeline collection system.

Permanent drilling and production platforms are commonly used to complete multiple wells and house production facilities. These large structures are fabricated in shipyards (usually on the Gulf Coast) and are towed into position. Two wells can be drilled at a time from a fixed platform, and, as they are completed, the wells can be hooked to flow lines to begin production. Numerous combinations of rigs and platforms are possible for field development, depending upon the size and type (oil and/or gas) of the field.

Drilling crews who work aboard fixed platform operations are contract personnel assigned to duty tours of 7/7 or 14/14. Data regarding these workers home bases are not available.

Permanent Shore Facilities

Planning and construction of storage and processing facilities on shore usually begins with the period between delineation and development drilling. Schedules are usually phased so that as wells are completed the hydrocarbons can be brought through a pipeline to a shore plant or terminal. If oil is the hydrocarbon discovered, a storage terminal for transhipping to a refinery must be designed and built. If natural gas is discovered, a gas treatment plant must be designed and built and connected to a pipeline carrier for distribution. These planning and construction operations are carried out simultaneously with the early stages of development drilling so that shore facilities and pipelines are completed when the majority of the development wells are ready to begin production. The entire operation from exploration to full scale production often takes a decade to complete.

The shorebase support facilities for production drilling operations take on a more permanent character as long-term commitments to an area are recognized. An oil company may move from temporary, leased facilities

to a permanent docking area with ample storage and buildings. Service companies usually acquire adjacent land to handle their operations. Throughout development drilling, shorebase personnel requirements should remain nearly the same as for exploratory operations.

Workover and Maintenance Operations

Throughout the life of a field (15-25 years), the operating wells will require constant attention to keep them in proper working order. These "workover" operations generally require fewer personnel than for production drilling, but shore support will remain about the same. Occasionally, over the life of a field, replacement wells will be drilled to maintain production levels.

THE SCENARIOS

This section considers two scenarios for exploration and development in the West Florida Panhandle area's offshore state-owned waters: Scenario I considers exploration on state waters alone, Scenario II considers concurrent operations in state and federal waters. The West Florida Panhandle area is adjacent to OCS Planning Subarea E-1. Figure 2 depicts the area under consideration for this analysis.

Exploration and Development Scenarios

The Minerals Management Service staff prepared exploration and development scenarios as background for Lease Sale 79 in January 1984 which are presented in Final Regional Environmental Impact Statement, Gulf of Mexico, Volume 1, January 1983. As defined by the Minerals Management Service (Final EIS, Volume 1, p. 249) a development scenario is:

> ... a hypothetical framework of assumptions and estimates on the amounts, timing, and general locations for OCS exploration, development, and production activities and facilities, both offshore and onshore. As such it is not a prediction of future oil and gas activities because all of these activities are unpredictable prior to a lease sale and only become clear as offshore development proceeds from lease through production.

The Minerals Management Service "most likely find scenario" was used to describe anticipated levels of activity in the OCS and as a guide to predicting state waters impacts.

Scenario I is the prediction of the number of wells and related activity on state waters tracts alone. Table 1 (I) presents the number of wells, platforms and pipelines that could be expected in the Panhandle for state waters exploration and development based on the evaluation of six geologic prospects with one field discovery. State waters activity is predicted to be 14 exploration and delineation wells, 15 development wells, one platform, and 20 miles of pipeline. These figures were extrapolated from MMS "most likely find" estimates for Sale 79 areas in Planning Subarea E-1.

Scenario II is summarized in Table 1 (II); this depicts the level of activity anticipated for concurrent state/federal waters offshore explorations and development. This scenario would include a total of 50 exploration and delineation wells, 53 development wells, 3 platforms, and 125 miles of pipeline. The MMS predicted activity level in OCS waters alone shows 36 exploration and delineation wells, 38 development wells, and 2 platforms; 105 miles of pipeline will be constructed to bring the product to shore. The MMS "most likely find" for OCS Planning Subarea E-1 off West Florida was used as the baseline for these estimates.

Timing and Level of Activities

Preparation of a lease program for state-owned waters will probably require a minimum of one year. At the earliest, leasing in state-owned offshore waters would begin in mid-1985 or 1986 and drilling on West Florida state leases could not before late 1986. It is anticipated, however, that exploration drilling activities will begin on blocks leased in OCS Lease Sale 79 in OCS Subplanning Area E-1 in late 1984 or early 1985.

Figures 6 and 7 present the estimated drilling and development timetables for state waters and for simultaneous state-federal activities, respectively.

Figure 6 is the timetable for state waters activities; it was prepared under the assumption that exploratory drilling would begin in 1987 and that a field discovery would be made by 1989. If a discovery occurred by 1989, a platform could be set in 1990; development wells then could be drilled directionally from the platform.

Figure 7 is the combined timetable for state and federal activities; it was prepared under the assumption that exploratory drilling would begin in the OCS area late in 1984 and that drilling in state waters would begin in 1987. Under this scenario, the peak

years for rig activity in the West Florida Panhandle area would be 1988 and 1989. This assumes a total of four rigs each year with each rig drilling three exploratory wells per year. By 1989 a platform could be set, and multiple wells could be drilled from the platform. The peak years for wells drilled would 1989-92 with the majority of the wells drilled from the production platforms.[1]

The scenarios carry a caveat. The exploration programs of the companies that hold the 68 active leases in Planning Subarea E-1 may or may not be carried out over the lease term. Some companies will take a "wait and see" attitude; others will actively explore their leases. The phasing of the exploration activities will be governed by the success or failure of the first wells drilled, the internal corporate planning schedules of individual companies, and, to a large degree, the implementation of the stipulation governing drilling operations in military areas.

---

[1] Operations now underway in the waters off the State of Alabama will provide an excellent case study to guide planning in Florida. A recent publication of the Alabama Geological Survey, "Oil and Gas Leasing and Drilling Alabama State Coastal Waters and Adjacent OCS Waters, 1951-1983" should be helpful to the reader.

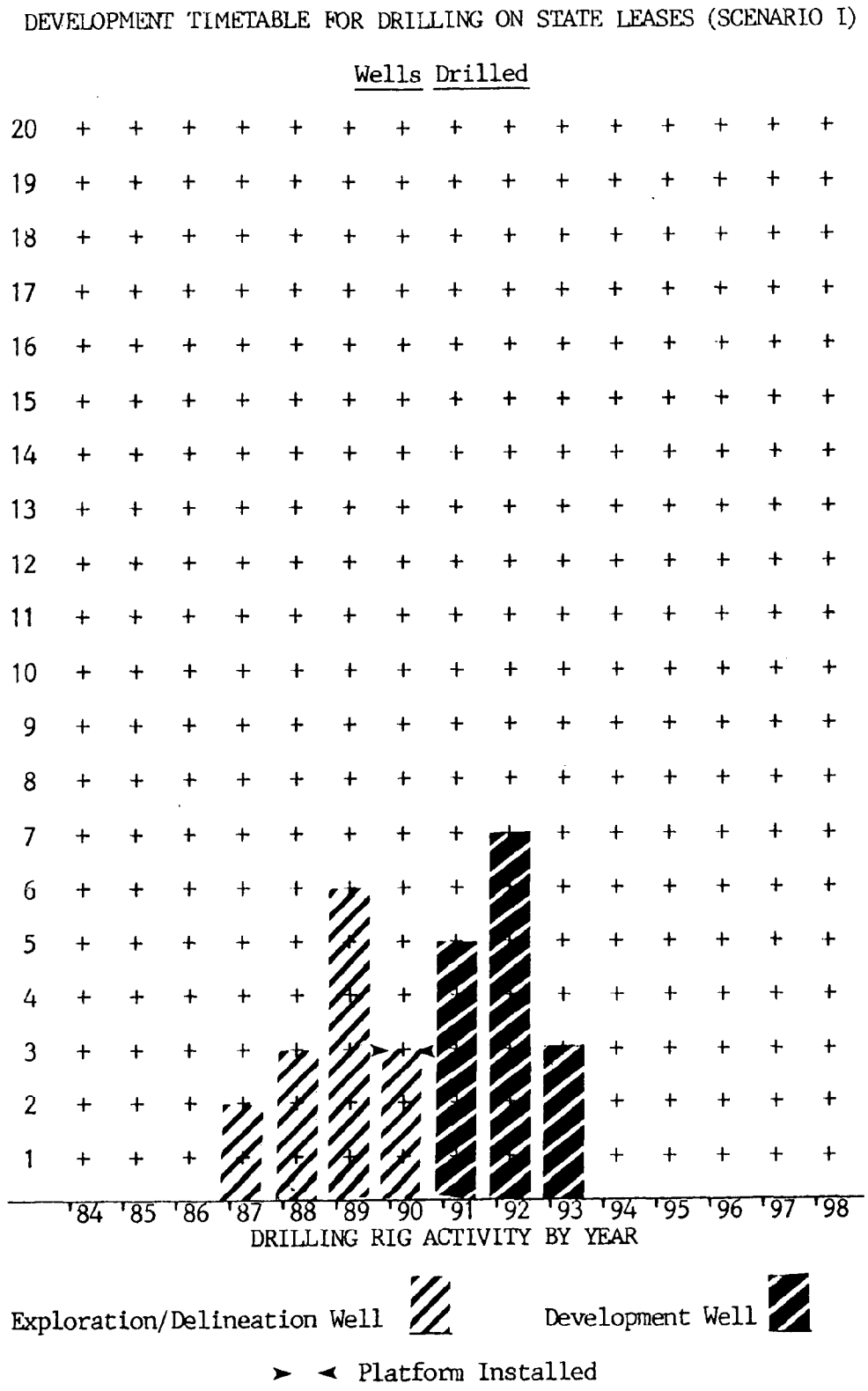


Figure 6 Timetable for state waters drilling (Scenario I)

COMBINED DEVELOPMENT TIMETABLE FOR DRILLING ON STATE AND FEDERAL LEASES (SCENARIO II)

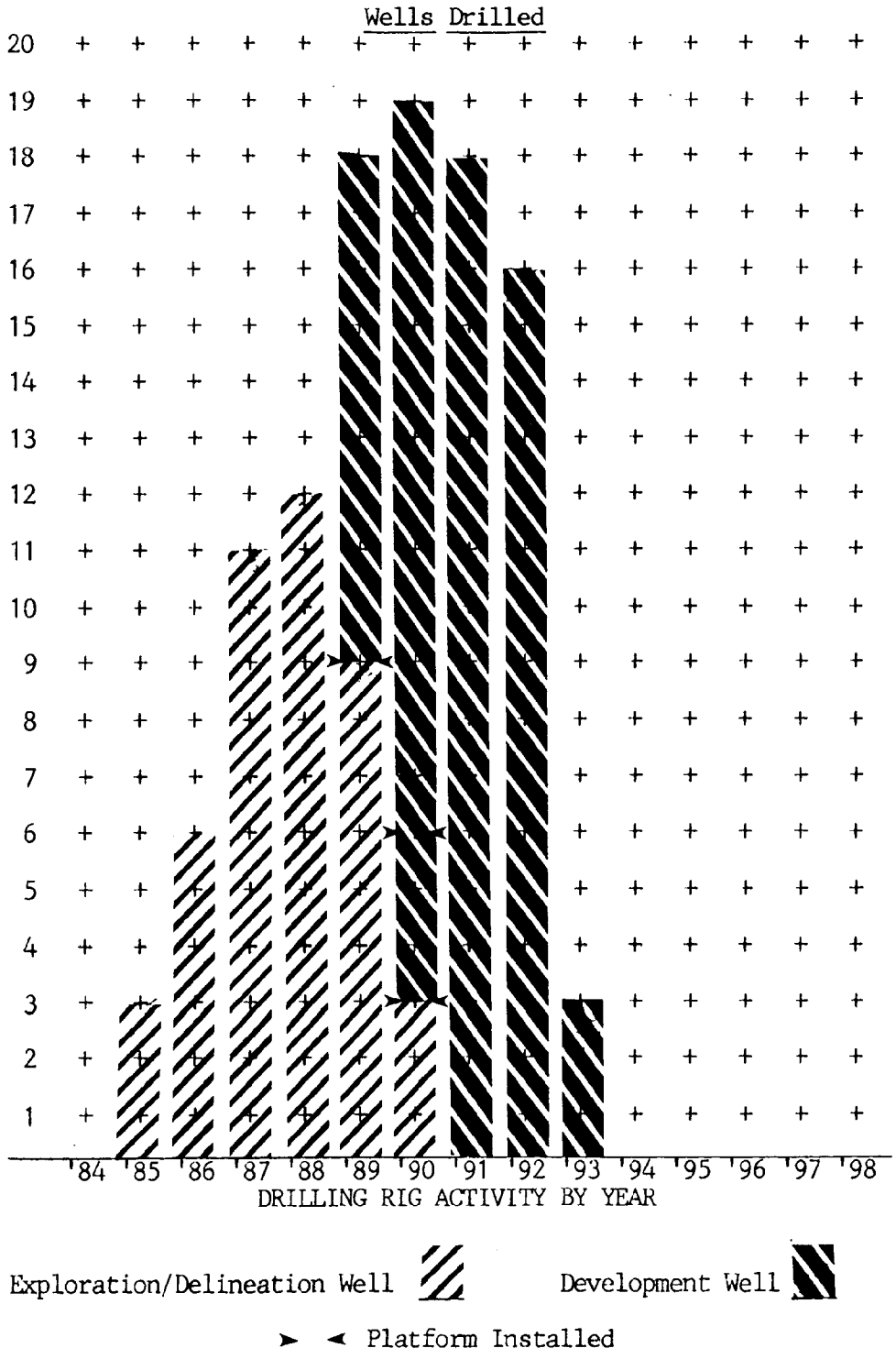


Figure 7 Timetable for combined state/federal drilling (Scenario II)

TABLE 1

ESTIMATES FOR FLORIDA OFFSHORE DEVELOPMENT SCENARIOS

SCENARIO I --- STATE WATERS

Geologic Prospects	6
Fields Discovered	1
Exploration/Delineation Wells	14
Platforms	1
Development Wells	15
Pipeline Miles	20
Years of Field Life	20

* * *

SCENARIO II --- STATE/FEDERAL WATERS

Geologic Prospects	26
Fields Discovered	3
Exploration/Delineation Wells	50
Platforms	3
Development Wells	53
Pipeline Miles	125
Years of Field Life	20

Source of Federal Waters Estimates:

Most Likely Find Scenario, USDI, Minerals Management Service, Final EIS for Sale 79, p. 255.

Source of State Waters Estimates:

Look alike field comparisons between state and federal waters areas and extrapolations from MMS information.

SUMMARY

The onshore impact associated with exploration for oil and gas reserves in state-owned waters off the West Florida Panhandle is expected to be minimal. Panama City and Pensacola would be suitable for temporary or permanent shorebase sites and would, therefore, be most likely to share any onshore impacts associated with support of the two to three rigs needed for exploration and delineation drilling. Two or three shorebase facilities could be located in these cities; the most probable combination is one in Pensacola and one or two in Panama City. Development wells from the mobile rigs and platforms would probably require the same number of shorebase facilities.

Recent studies focused on exploration and development in the Outer Continental Shelf areas off Florida also suggest that onshore impact in the OCS only would be minimal through the exploration phase activities. However, some studies suggest that shorebase facilities for offshore Florida OCS operations in the northern Gulf of Mexico will be located in Mobile, Alabama, or in Venice, Louisiana.

CONCLUSIONS AND RECOMMENDATIONS

The scenarios presented in this report are designed to provide the reader with a range of the kinds of activities and the level of activities that might be associated with exploration and development in state and federally-owned waters off the West Florida Panhandle coast.

Conclusions

1) Oil and gas leasing interest probably in state-owned waters will most likely be focused in the offshore area of the West Florida Panhandle for the next decade.

2) Interest in state waters leases will be keyed to geologic interpretations from upcoming drilling in the OCS and from seismic investigations in state waters.

3) OCS exploratory activities will begin in late 1984 or early 1985 in the area beyond state-owned waters off the Panhandle and will probably continue through the end of the decade, even if no discoveries are made; drilling may begin on state leases by 1987.

4) If a discovery is made, development drilling will begin and 15-25 year commitments will be made to the onshore areas to support these activities.

5) An analysis of OCS leasing patterns indicates at least 20 new geologic prospects have been identified in federal waters; at least six similar prospects are predicted for inshore state waters.

6) Four drilling rigs are predicted for combined state and federal waters operations; similar activities off Alabama can serve as a case study to guide planning in Florida.

7) The six regional planning reports on OCS facilities siting provide the basis for long-term planning for OCS and state waters operations.

8) The onset of OCS exploration activities in late 1984 provides a unique opportunity to begin studies to document impacts through an analysis of worker travel and in-migration patterns.

Recommendations

1) It is recommended that a study of the travel and residency patterns for workers on OCS drilling operations off the Panhandle be considered and implemented before operations start.

2) It is recommended that the facilities siting study for West Florida be updated on a continuing basis to begin planning for longer-term onshore impacts.

BIBLIOGRAPHY

Attilio, Donald E. and Bruce Blake, 1983, Petroleum Potential, Exploration Possibilities of South Florida Basin, Florida Keys: Oil and Gas Journal, v. 81, no. 45 (November 7), p. 148-153.

Baker, R. A., H. M. Gehman, W. R. James, and D. A. White, 1984, Geologic Field Number and Size Assessments of Oil and Gas Plays: AAPG Bulletin, v. 68-4, p. 426-432.

Exxon Company, U.S.A., 1983, Offshore Alabama: (brochure).

Herbert, T. A. and L. L. Lampl, 1983, Travel and Residency Patterns of Rig Workers: The Getty Oil Company Project, Santa Rosa County, Florida: Tallahassee, FL (unpublished).

MacGregor, J. R., 1983, Direct Employment Associated with Gulf of Mexico OCS Oil & Gas Activities: unpublished paper prepared for ODECO.

Mink, Robert M., 1984, Oil and Gas Leasing and Drilling in Alabama State Coastal Waters and Adjacent OCS Waters, 1951-1983: Alabama Geological Survey Oil and Gas Report 7B, 39 p.

Northeast Florida Regional Planning Council, 1983, Coastal Energy Impact Study for Northeast Florida: Jacksonville, FL.

South Florida Regional Planning Council, 1983, OCS Facility Siting Study, Volume I and II (Draft): North Miami, FL.

Southwest Florida Regional Planning Council, 1983, Outer Continental Shelf Onshore Facilities Siting Study: Fort Myers, FL.

Tampa Bay Regional Planning Council, 1982, Coastal Energy Facility Siting Study: Tampa, FL.

U. S. Dept. of the Interior, Minerals Management Service, 1983, Gulf of Mexico Summary Report: Outer Continental Shelf Oil and Gas Activities in the Gulf of Mexico and their Onshore Impact: Reston VA.

U. S. Dept. of the Interior, Minerals Management Service, 1983, Regional Environmental Impact Statement, Gulf of Mexico, Volumes I and II: Metairie, LA.

West Florida Regional Planning Council, 1983, Regional Outer Continental Shelf Onshore Facilities Siting Study for West Florida: Pensacola, FL.

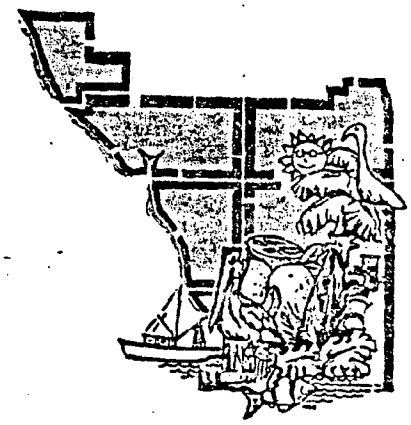
Withlacoochee Regional Planning Council, 1983, Outer Continental Shelf Onshore Facility Siting Study for the Withlacoochee Region, Volumes I and II: Ocala, FL.

Zinn, Jeffery, 1978, Environmental Planning for Offshore Oil and Gas, Volume II: Effects on Coastal communities: The Conservation Foundation, Washington, D.C.

MAY 11 1983

SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL

OUTER CONTINENTAL SHELF
Onshore Facilities Siting Study



REGIONAL COMPREHENSIVE PLAN SERIES

Southwest Florida Regional Planning Council
2121 West First Street, Fort Myers, Florida

Published April, 1983

Preparation of this document was financed through a Coastal Energy Impact Program Subgrant (82-CE-66-09-00-21-010) from the Florida Department of Veteran and Community Affairs, Division of Local Resource Management, and the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, under the Coastal Zone Management Act of 1972, as amended.

Part IX - Conclusion

A. Conclusions

1. Future Oil and Gas Activity

Exploration activities for oil and gas can be expected to continue in the Eastern Gulf. This is part of a national effort to achieve full development of OCS resources. Over-dependence on unstable foreign sources and experiences such as the 1973 Arab oil embargo have stimulated this action. Factors such as increased fuel supplies and lower prices are unlikely to reduce this effort to develop the OCS because they are short term. Therefore, local governments should not reduce the attention paid to OCS activities.

The Gulf of Mexico is an area of proven resource potential. It has an existing industry base--at least for the Central and Western Gulf. Additionally, there are producing areas onshore. For these and similar reasons, the industry will likely continue to push for development of the Eastern Gulf.

2. Onshore Impacts

One of the purposes of this project was to provide some perspective on the onshore impacts possible if the OCS were developed. That has been achieved. It has been difficult, however, because there is inadequate historical information on which to develop a projection in a reasonable manner. It is possible that one hundred holes could be drilled and all be dry or at least below commercial production. Success could be achieved when the next hole is drilled. It is that type of uncertainty that makes the projection of specific onshore impacts almost impossible.

Based on the experience and knowledge gained through this project, however, several conclusions can be made.

1) The chances of a commercial-level find in the Southwest Florida OCS are very low.

2) If oil were found, it would be a low-level find.

3) The impacts of such a find would be minimal, perhaps even lower than noted above.

4) Onshore impacts are likely to be further reduced by industry use of facilities in other areas, such as Tampa Bay. These areas offer much fewer problems for onshore facilities in terms of public resistance, permitting difficulties, environmental problems, land use conflicts and other factors.

5) There will be significant resistance from a broad range of citizens and residents to the siting of onshore facilities in Southwest Florida.

6) Elected and appointed officials at local, regional and state levels will reflect this public sentiment, and, in order to ensure protection of Florida resources, will closely monitor and may oppose industry actions to locate in this Region, without clear-cut plans preventing any adverse environmental impacts.

B. Recommendations

1. State

The State is the level of government in Florida with the most direct and frequent contact with federal agencies in OCS matters. It is through the Governor or his representative that the concerns of Florida are communicated to the U.S. Department of the Interior. A letter or resolution to a federal agency from the Governor and Cabinet carries more weight (political and legal) than one from a county commission. In order to make the optimal use of that fact, however, state government must have participation by regional planning councils and local governments in as many steps of the OCS development process as possible.

From the perspective of the Regional Planning Council and local governments, it is very important that the relevant state agencies continue to provide information.

As of now, the Office of the Governor and the Department of Community Affairs perform that function. Without information, neither the Regional Planning Council nor local governments can adequately assist the state in dealing with the federal government.

This arrangement provides definite benefits for the State. The letters, resolutions, comments and other items from regional planning councils and local governments can serve a number of important functions.

1. Provide more specific information about local conditions,

2. Indicate local preferences,

3. Give support to comments made by state agencies,

4. Bring up questions about problems perhaps overlooked or not considered important at the state level, and

5. Catch errors and omissions in the document being reviewed.

Most importantly, this evidence of local awareness and concern is especially necessary for Florida in that it gives added weight to the comments and questions raised by state agencies. Some federal agencies or staff may think that comments from state agencies are not representative of a broad range of concerns among agencies and individuals throughout Florida. The broad participation discussed here can help to correct that.

There should be participation by a broad range of state agencies. In this way, the variety of expertise available to the State can be more fully utilized. If this is done, the result will be a more careful, thorough review of proposed federal and/or industry actions. The information developed in this study will provide state agencies with a firmer base from which to examine those actions. Additionally, it will assist in the review of state policies that address OCS activities now and in the future. This will ensure that the resources of Florida are developed in a manner that is advantageous to the people of this state while protecting its resources wisely. The review of the Draft Regional Environmental Impact Statement-Gulf of Mexico in 1982 was an excellent example of this type of effort.

2. Region

For the Regional Planning Council, this project has resulted in adoption of policies as Council rules. This represents an important step in dealing with this issue. These policies will provide a basis for Council review of OCS projects and related activities with impacts on this Region.

This Council should continue to participate in reviews of OCS documents and reports. Especially important are review and comment of environmental impact statements for proposed OCS activities.

Council also provides another important function for this Region as clearinghouse. Local governments - even if interested - cannot always review and comment on OCS documents and activities. Council, however, can assist local governments by distributing relevant materials, notifying local staff of meetings, events, documents, etc.

Council can also present local and regional concerns to state and federal agencies by acting as a local "advocate." State agencies and staff could be unaware of local and regional concerns or attribute less weight to a regional or local concern than desirable. In such a case, regional and local review and comments can ensure an awareness at the state level of the existence of the problem and of its importance.

As noted above, it is essential that local concerns be transmitted clearly and quickly to the state and to the Governor. The regional planning council assists in this by forwarding the written concerns and comments from local governments to the appropriate state agency and staff. Such comments are combined with regional comments to present the most complete picture of regional and local concerns possible.

In requesting review and comment on a proposal, a very important question is that of whom to contact. For state and local government, this problem can cause unnecessary delays and even missed deadlines. If an environmental impact statement is sent to the wrong local staff person, this error may not be discovered until it is too late. The state will have lost the input to be gained from the local level and the local government will have lost the opportunity to comment. The regional planning council can provide the effort to reduce the chance of this happening.

Another way to foster awareness of OCS activities is to maintain relevant reports, documents and other material in the SWFRPC library. Council members and staff will then have at hand the information needed to review OCS related proposals. This material can be used in a similar fashion by local governments. In addition, members of the media and the public in general can benefit by the presence of this material.

3. Local

Specific discussions about individual local governments are found above in this report. General comments follow.

Local governments, just as the Regional Planning Council, have no specific authority or control over activities in areas beyond their jurisdiction, such as the OCS. They can exercise considerable influence, however, by the review and comment that they provide on proposed activities in the OCS and on related activities in state waters and on land. They regulate land uses within their own jurisdictions via local codes and ordinances.

It is imperative that local government participate as much as possible. This may seem unnecessary. To wait until applications are received for construction and other permits for an onshore facility, however, is to wait too long. For local governments, it may not be realistic or possible to monitor federal actions and proposals. It is possible, however, to utilize state and regional efforts to monitor those actions.

For SWFRPC to function effectively as an advocate of local concerns in this issue, local governments should respond as much and as specifically as possible. It is important that the concerns of local government be stated as definitively as possible.

An environmental impact statement, for example, prepared for an OCS lease sale addresses a relatively small area - from the federal perspective. From the regional and local perspective, however, that area - and the concerns that are created by the sale - can loom much larger.

This factor is even more important now that OCS lease sales are being conducted for much larger areas. The environmental impact statements prepared for these sales can cover millions of acres. Sale 79, for example, addresses 58 million acres and the entire Eastern Gulf.

In contrast, the total acreage offered in the thirty-three general oil and gas lease sales from 1954 - 1982 was only 33.3 million acres.[1] The average sale covered about one million acres. For the period of 1954 - 1979, only 822,601 acres were leased in the Mississippi-Alabama-Florida OCS (i.e., the Eastern Gulf).[2]

Of special importance in reviewing OCS-related proposals - and many other items as well - is the need to note concerns as early as possible. Extensive review may not be possible at that moment but it alerts all parties that this is a concern. Also, in reviewing several drafts of very large proposals, it is easy to forget something due to the large size of the document and the variety of issues. Additionally, even if an issue is noted later, the comment period may be closed by then.

The list of various sites given above in this report may contain several sites that may one day be the scene of OCS activity. Probably more important, however, are the local policies, codes and plans that could affect the siting process. Industrial activity would be restricted by the current policies of most local governments in the Region. Generally, even where allowed, the correctly zoned land lacks Gulf access or adequate area. If a local government is seriously interested in attracting OCS related industry, it must consider some alternatives such as the following:

1. Rezone existing land with Gulf access to industrial categories.

2. Increase the level of industrial activity allowed on potential sites with industrial zoning and Gulf access.

Either of the alternatives will likely generate opposition from citizens. The major opposition, however, should be expected if and when an industry firm begins to seek the necessary permits for site alteration. The level of opposition probably will depend on the site, surrounding uses, environmental conditions, size and type of facility to be sited there and public awareness.

Since it appears that most local governments in the Region do not intend to encourage the siting of OCS facilities in the area, at best it is probable that only activities perceived as having very little impact will be allowed. It is also probable that there will be little or no seeking-out of any OCS-related activity.

In addition to restrictions and prohibitions contained within local codes and comprehensive plans, there is the Charlotte Harbor Management Plan. The goals, objectives and implementing actions of the Plan have been endorsed by all local governments within the Region. The specific influence that this might have on any siting decisions by a local government is unknown. It is likely

that, however, this would result in decisions more protective of the environment and more restrictive of OCS onshore development.

For the majority of local governments that apparently do not want this type of development, the added restrictions present no problem. For any local government interested in such development, it will be necessary to ensure that any proposal for an onshore facility be carefully examined. This, of course, should be normal procedure.

C. Site Profile

In other portions of this report, a number of possible sites for onshore OCS facilities have been reviewed. Two have been identified as most likely to satisfy industry needs. They are the San Carlos Island site and the Port Boca Grande site. As is often the case, neither site is ideal. Each site could be improved upon. Based on the site identification process noted above, a simple site profile for the most acceptable sites has been developed. Gulf access is without a doubt the most important characteristic of an ideal site. While other factors can be dealt with in less than ideal circumstances, there is no substitute for Gulf access.

Land area is not as important as first thought. Based on information developed during the completion of this project, it appears that onshore facilities could function quite well on relatively small sites. The format utilized in this project was based on twenty acres as the smallest acceptable site. Ten acres may be a more reasonable figure, at least by industry standards. Sites of five acres or less may also be suitable.

Surrounding and adjacent land uses must be considered in any site selection. As was discovered in the discussion of size, however, there is much more leeway than was first thought. This is influenced directly by the site area and facility activity. That is, the larger the site and the greater the activity associated with the site, the more likely it is that conflicts may occur with adjacent land uses.

For example, if only one service boat per day used the San Carlos Island site, it would probably have little or no adverse impact on the tourism/recreation activities of that area. In fact, for some persons, the sights and sounds of such a craft might be regarded as a normal part of the scene.

A large site with relatively little activity, however, may have less apparent impact. If that same service boat were to operate out of a site of one hundred acres, the apparent impacts would be considerably reduced. Additionally, that larger site area would provide a greater degree of buffering and separation from nearby land uses.

Even a fairly straightforward attempt to develop a site profile requires some caveats. To consider one of these characteristics alone would be foolish. Thus, while Gulf access is essential, other factors must be considered. A site with direct Gulf access - but located in a residential area - would be a poor selection because of the potential for conflict and negative impacts. Therefore, as in the siting of any facility, a broad range of factors must be considered.

---

[1] U.S., Department of the Interior, Minerals Management Service in cooperation with the U.S. Geological Survey, Gulf of Mexico Summary Report 3, by Kenneth J. Havran et al, U.S. Geological Survey Open-file Report 82-242, pp. 20 and 21.

[2] U.S., Department of the Interior, Final Environmental Impact Statement - Proposed OCS Oil and Gas Sales 67 and 69, 1981, p. 105.

Part X - Council Action

On April 21, 1983, the last of two hearings was held on this study by the Southwest Florida Regional Planning Council. (An earlier hearing had been held on March 17, 1983.) At the April hearing, Council unanimously accepted this study and authorized its distribution. As a final action, Council voted--without dissent--to recommend to interested agencies and other parties that Port Boca Grande not be considered as a site for onshore OCS facilities.

OCS FACILITY SITING STUDY

SOUTH FLORIDA REGIONAL PLANNING COUNCIL

1983

CONCLUSION

The South Florida Region contains many environmental and economic resources that are sensitive to OCS-related oil and gas activities. Preservation and enhancement of these resources is necessary to retain the quality of life that residents and visitors now enjoy. The primary benefits that OCS-related activities can provide to the Region are 1) a possible slight reduction in oil and gas product prices, 2) increased petroleum product availability, and 3) minor economic benefit associated with OCS-related facilities locating in the Region. In contrast, there are many risks to the Region associated with both onshore and offshore OCS-related activities. The primary risk is from an oil spill contacting the shore, or harming the offshore environment. Environmental resources identified above may be irreparably damaged or killed with signficant economic consequences. The tourism industry could lose millions of dollars if a major oil spill impacts the Region. A major oil spill would in most cases require costly cleanup operations that may ultimately be borne by national, state, and local taxpayers. Because many risks and potential costs to the Region are several hundred million dollars greater than the value of potential benefits, OCS-related activities that may adversely impact the Region should be discouraged.

COASTAL ENERGY FACILITIES SITING STUDY

Prepared by

Tampa Bay Regional Planning Council
9455 Koger Boulevard
St. Petersburg, Florida

December 1982

The preparation of this report was funded in part by grant number 82-CE-66-08-00-21-008 provided by the Coastal Zone Management Act of 1972, as amended, administered at the federal level by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration and administered at the state level by the Florida Department of Community Affairs, Division of Local Resource Management, Coastal Energy Impact Program.

CHAPTER VII
CONCLUSIONS AND RECOMMENDATIONS

The Federal Department of Energy has outlined the need for the nation to increase its own petroleum production. Toward that goal the OCS mineral resources will have a major impact on domestic production and reduce our dependence on imported oil. This recognized need has resulted in an increase in leasing and exploration for oil and natural gas in the eastern Gulf of Mexico.

Concern over the impact this oil exploration and development will have on the local economies and environment resulted in the establishment of the Coastal Energy Impact Program. The Tampa Bay Regional Planning Council has participated in this program with the objective of:

- Developing local and regional expertise in understanding and managing OCS facilities;
- Increasing local and regional understanding of the OCS process; and
- Promoting orderly OCS-related development by selecting preferred sites before any discoveries are made.

The Coastal Energy Facilities Siting Study was developed to accomplish these objectives. The study addresses the type and character of onshore facilities which will be needed during each phase of OCS activities. A facility siting matrix was developed to assess each site in relationship to the economic potential and environmental hazards involved. Nine candidate sites were examined. The siting criteria, based on existing laws, and the site selection matrix were used to narrow this site selection list to four potential sites. The Coastal Energy Technical Advisory Committee indicated that due to the time which would elapse between the planning process and the actual location of an OCS facility no single site should be chosen. Rather the matrix be used as a tool to determine the most suitable site at the time it is needed.

The following recommendations were developed by the Coastal Energy Technical Advisory Committee to address facility siting, governmental actions, and facility operations.

FACILITY SITING GUIDELINES

The following recommended guidelines relate to the potential opportunities and disadvantages of an OCS facility siting project in the Tampa Bay area. These recommendations and criteria were developed by the Coastal Energy Technical Advisory Committee to assist in the process.

1. The Site Assessment Matrix developed by the Tampa Bay Regional Planning Council (TBRPC) should be utilized in the siting of all Outer Continental Shelf (OCS) related onshore facilities in the Tampa Bay Region.

2. OCS drilling equipment should not operate within sight of land. Also, further studies should be conducted to analyze economic and environmental impacts of transporting oil and gas.

3. Only water-dependent OCS onshore facilities should be located at the water's edge (i.e., marine terminals, service bases, pipecoating yards).

4. Facility sites should be located in a remote area for OCS onshore facilities where safety is the primary concern. Also, strict buffering guidelines should be enforced.

5. Facility sites should not be located adjacent to environmentally sensitive areas or where environmental standards are not being met for those OCS onshore facilities where pollution is the primary concern.

6. Facility sites should be designed in a fashion that requires a minimum of maintenance dredging. Natural water scouring action should be utilized to prevent formation of silt traps.

7. It has been recorded that chronic/intermittent oil spills can have a serious impact on animal and marine life and environmentally sensitive areas. Therefore, oil transfer facilities should be located away from fresh water, estuarine and marine habitats and other environmentally sensitive areas. Where such an arrangement is not possible, the receiving vessel should be isolated utilizing either a dead-end slip or placing containment booms around the vessel during all oil handling operations.

8. Efforts should be made to use existing oil/gas onshore facilities in other areas since most oil/gas facilities are capital and land intensive rather than labor intensive and are not the maximum economic use of waterfront properties.

9. Efforts should be made to ensure that supporting and complementary facilities are located in proximity to each other to accomplish a linkage between facilities and services to the maximum extent feasible.

10. Within the coastal zone, only those areas with suitable rates of tidal flushing are desirable locations for large thermal discharge facilities (10 to 100 million BTU/hour or greater). For example, this would exclude the following areas: McKay Bay, Hillsborough Bay, Little

Manatee River estuary, Cockroach Bay and Bishop Harbor, and Terra Ceia Bay.

11. The design, construction and siting of all OCS onshore facilities within the coastal zone should take into account the effects of a hurricane surge.

GOVERNMENTAL ACTION PROPOSALS

In the event of an OCS facility siting project being initiated in the Tampa Bay area, governmental action on the part of the state and/or local government will be required. In light of this, the following recommended proposals are designed to provide insight into the process.

12. Chapter 27F-2 (Development of Regional Impact (DRI) criteria), Florida Administrative Code (F.A.C.) should be amended to include a category which specially addresses oil/gas onshore facilities. The facilities to be included are: marine terminals, pipelines (both off and onshore), refineries, gas processing plants, partial processing plants, and petrochemical plants.

13. Those jurisdictions lying within the coastal zone, as defined by the Florida Coastal Zone Management Program of 1981, should amend their respective comprehensive plans, developed pursuant to Section 163.3161, Florida Statutes (F.S.) to address oil/gas onshore facilities. Specifically, Sections 163.3177(6)(a) land use, (d) conservation, and (g) coastal zone, should reflect the potential impacts of oil/gas activities. If warranted, an optional plan element dealing specifically with OCS activities should be developed pursuant to Section 163.3177(7)(1).

14. Local ordinances and permits should be reviewed by local governments to ensure that they adequately reflect the types of impacts that are associated with OCS onshore facilities, as identified in the Council's Coastal Energy Facilities Siting Study, and contain appropriate mitigative measures as recommended in the study.

15. The Tampa Bay Study Committee should incorporate the findings and recommendations of the Coastal Energy Facilities Siting Study into its planning efforts.

16. The Gulf of Mexico Regional Transportation Management Plan should be updated for the eastern Gulf of Mexico if commercial quantities of oil and/or gas are discovered.

17. If commercial quantities of oil and/or gas are discovered in the eastern Gulf of Mexico, technical seminars and workshops should be conducted for local government officials, planners, environmentalists and concerned citizens by the Tampa Bay Regional Planning Council, Department of Environmental Regulation, Department of Community

Affairs, Governor's Office, U.S. Department of Interior, and the U.S. Geological Survey.

18. Federal consistency requirements of the Coastal Zone Management Act must be enforced by the Office of Coastal Zone Management. This might include litigation to establish precedents ensuring the protection and predictability of approved coastal management programs in participating states.

19. Provisions should be made in the National Oil and Hazardous Substance Pollution Contingency Plan (40 C.F.R. 6282), and in the Clean Water Act, for direct funding to the states with offshore exploration/development for development of containment or clean-up capabilities.

20. Environmental documents by the Environmental Protection Agency (EPA) are not required for OCS facilities (except for drilling in "environmentally sensitive" areas) because they are not considered new sources for National Pollution Discharge Elimination System permitting. This situation should be reviewed by EPA and the Department of Interior, with input from state and local governments, and changes made, if warranted.

21. A geological investigation should be required for any hazardous waste treatment, storage and disposal facility in the State of Florida in view of the accessibility of its aquifers and runoff problems. The revision of Appendix VI 40 C.F.R., Part 264, was made effective immediately on November 23, 1981 rather than the customary six months after publication and requires only states west of the Rocky Mountains to conduct a geological investigation for these type of facilities. This revision should be amended to include the entire State of Florida.

22. TBRPC should continue to work with local governments in their efforts to adequately prepare for OCS activities.

FACILITY OPERATIONS GUIDELINES

Once located in the region, an OCS facility should be designed and operated in a manner that will provide the maximum economic benefits and environmental consideration. The operation of the facility should adhere to the following recommended guidelines.

23. If the solid waste produced by an OCS facility is to be disposed of at an authorized landfill, the operator of said facility should notify the appropriate management agency of the characteristics of such waste (physical and chemical). Further, the landfill operator should contact the OCS facility operator as to its ability to receive and process such waste material.

24. If the solid waste is to be disposed of at an approved resource recovery facility/incinerator, the generator of such waste should notify the operator of said facility as to the type, composition (physical and chemical), and quantity of material to be disposed.

Special attention should be paid to potential toxicity and/or chemical transformation which could result from the disposal methods.

25. Training programs associated with OCS development should encourage the utilization of the existing regional labor force.

26. Resource recovery should be required in order to convert hazardous OCS wastes, such as oiled material, acids, and heavy metals, into less harmful products.

27. Preservation areas should be protected from any further oil/gas development. Preservation areas as identified in the Council's adopted growth policy, Future of the Region include: Class I and II waters, marine grassbeds, coastal marshes, mangrove forests, beaches and dunes and other important nursery areas, estuarine and man-made beaches, fresh water swamps and marshes, state wilderness areas, and historical and archaeological sites.

28. Because of their physical character or present use, conservation areas provide a buffer zone for preservation areas. Therefore, they should remain in non-urban or agricultural uses except where public interest would be measurably benefitted. Conservation areas as identified in the Council's adopted growth policy, Future of the Region include: Class III waters outside of port areas, aquatic preserves, and river flood plains, as identified by maps in Chapter 6.

29. Site alteration/preparation should be scheduled to avoid the most environmentally sensitive periods of the year (i.e., wet, mating, etc.).

30. The following items should be considered for use during any dredge and fill operation:

- Locate channels parallel to the direction of tidal currents and watershed runoff to minimize sedimentation;
- Use silt curtains to confine sediments where feasible and necessary;
- Avoid economic loading of hopper dredges in cases involving fine grain material;
- Avoid overboard or open-water disposal of polluted or fine-grained material;
- Build and use diked upland spoil disposal areas except where spoil is highly polluted;
- Route wastewater return through marsh or other vegetated areas, subject to biological chemical analysis, rather than directly to open water; and
- Restrict dredging and spoil disposal to those months when aquatic organisms are least sensitive.

31. The following items or Best Available Techniques should be considered where shoreline alteration is required:

- Minimize erosion through use of offshore breakwaters or by re-routing navigation and establishing speed limits.

- Bulkheads:
  - Select more gently sloping shoreline where possible;
  - Bulkhead only where necessary;
  - Place riprap in front of the bulkhead; and
  - Place bulkhead above mean high water line.

- Riprap:
  - Where possible, use plantings of suitable marsh vegetation in lieu of riprap; and
  - Place a polyethylene mat or other proper bedding beneath the riprap to protect it from slumping due to erosion of its base.

- Piers:
  - Space pilings to allow free flow of tidal currents and littoral drift;
  - Elevate piers high enough above marsh crossings to avoid shading; and
  - Do not place non-water-dependent facilities on piers.

32. Concentrated industrial stormwater runoff should be prevented from entering adjacent water bodies. Best management practices shall be used in industrial stormwater systems design to prevent impacts on receiving water bodies.

33. Stormwater retention/detention ponds or some other retention techniques should be used. If retention/detention ponds are not considered viable due to site specific characteristics, then the following on-site controls should be considered: grassy swales; shallow depression retention; infiltration trenches; percolation swales; percolation sumps; grading control; or other best management practices, as appropriate.

34. Onshore wetlands located on the facility site should be preserved and incorporated into the stormwater retention system.

35. The following sediment control techniques should be used to minimize any adverse effects on surrounding water bodies:

- Stripping of vegetation, grading or other soil disturbance shall be done in a manner which will minimize soil erosion;
- Whenever feasible, natural vegetation shall be retained and protected;
- The extent of the disturbed areas and the duration of their exposure shall be kept to the minimum necessary to allow for the proposed construction;
- Either temporary seeding, mulching, sprigging, sodding, revegetation or other suitable stabilization measures shall be used to protect exposed critical areas during construction or other land disturbance activities; and
- Drainage provisions and retention provisions shall accommodate increased runoff resulting from modified soil and surface conditions during construction. Such provisions shall be in addition to all existing requirements.

36. A resource-based water quality monitoring program should be estab-

lished for OCS onshore development prior to construction to establish existing conditions and to demonstrate that adequate controls for both point and nonpoint discharge are in place.

37. Federal legislation should ensure a comprehensive ongoing research program to develop the most effective strategies for dealing with oil spills.

38. Align navigation and access channels to avoid shellfish beds, seagrass flats, or other productive areas.

39. Special protective efforts regarding the preservation of rare, endangered, or threatened species and habitats required to support these species should be taken when impacted by OCS onshore development.

40. Pipelines should follow an inland route, whenever possible. This route should follow existing highway or utility rights-of-way and avoid environmentally sensitive areas.

41. Pressure-activated shutoff valves should be installed in all pipelines whenever they pass through or near an environmentally sensitive area. Further, this same type of equipment should be installed at all petroleum transfer operations.

42. The least damaging landfall should be identified for location of a pipeline corridor and all hydrocarbon pipelines should be routed through this corridor.

43. Once installed, pipeline route locations, both offshore and on land, should be adequately identified to minimize the risks of interference with other activities. An offshore route should be published in "Notice to Mariners" and placed on appropriate navigational charts. At the landfall, the pipeline route shall be delineated with appropriate markers.

44. For landfall sites, the size of the area affected should be minimized and the entire area restored physically (land/water interface) and ecologically, to a condition as closely approximating the original as possible.

45. Pipeline installation should be scheduled to avoid key ecological and tourist seasons.

46. The State of Florida should establish funding for research that assesses the impacts of oil and gas spills from OCS facilities outside the jurisdiction of the Federal Government.

REGIONAL POLICY PROPOSALS

The Council's adopted growth policy, Future of the Region, provides regional criteria for conducting the Council's various review responsibilities and clarifying the Council's adopted regional issues list. The following policy proposals are recommended for addition to the growth policy to reflect the policy findings of the Coastal Energy Facilities Siting Study.

47. The use of local and state planning and review efforts and decision-making tools shall be promoted to ensure that Florida's unique economic and environmental resources are not jeopardized.

48. The Council will continue to encourage the federal government to integrate its efforts with those of local and state governments to facilitate the recovery of oil and gas from the nation's OCS in an environmentally sensitive manner.

49. It is recommended that specific environmental and socio-economic studies be conducted on the geophysical/geographical areas (basins) of the Gulf of Mexico as identified by past nomination trends and lease sales to industry.

50. Provision of funding for local and state governments in order to assist in preparation for OCS development shall be promoted.

WEST FLORIDA REGIONAL PLANNING COUNCIL

COASTAL ENERGY IMPACT PROGRAM

REGIONAL OUTER CONTINENTAL SHELF ONSHORE FACILITIES SITING STUDY FOR WEST FLORIDA

EXECUTIVE SUMMARY

AND

RECOMMENDATIONS AND CONCLUSIONS

The preparation of this document was financed through a grant from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration in conjunction with the Florida Department of Community Affairs.

Grant No. 82-CE-66-01-00-21-015

April 1983

CHAPTER 1

EXECUTIVE SUMMARY AND RECOMMENDATIONS AND CONCLUSIONS

Because the worldwide demand for energy is steadily increasing and because the United States is determined to decrease its energy dependence on non domestic resources, it is inevitable that Florida's offshore Outer Continental Shelf (OCS) will be explored and developed. The nation's need to stimulate domestic production has accelerated the federal OCS leasing process which could accelerate the oil industry's activity in Florida' offshore areas. Although the Minerals Management Service (MMS) received no bids for lease blocks in the OCS areas offshore from northwest Florida in the 8 March 1983 sale, the oil industry contends it does maintain its interest. Federal, state, regional and local concern over possible oil industry impacts in West Florida remain, and certain preparatory actions are needed before any oil or natural gas landfalls in Region I.

This OCS facilities siting study examined the potential impacts of five (5) likely types of OCS-related, onshore facilities and up to seven (7) alternative sites for each type of facility. Due to the proximity of the oil industry facilities in and around Mobile, Alabama, and in Mississippi, Louisiana, and Texas, there is a possibility that a resource discovery may not impact West Florida. This alternative was examined because oil industry technical representative input indicates its viability if a resource discovery is made in the southwest corner of the Pensacola Block or extreme western margin of the Destin Dome Block (see Figure A-1).

The West Florida Regional Planning Council staff began the contracted work using the approach developed by the New England River Basins Commission but found that the scenario approach and format was not adequate for developing an assessment of the potential OCS onshore impacts for West Florida. The method used for completing this OCS Study is basic and relatively uncomplicated. The process followed eleven (11) basic steps/procedures.

1. Literature review/research.

2. Identification of typical oil industry facility needs.

3. Evaluation of regional constraints for OCS facilities siting.

4. Direct technical input from oil industry representatives and public participants.

5. Development of regional assumptions.

6. Selection of alternative facilities sites based on oil industry requirements and local suitability.

7. Formulation of socioeconomic evaluation matrix.

8. Formulation of environmental impact matrix.

9. Evaluation and assessment of the role of federal, state, regional and local regulatory and policy mechanisms.

10. Evaluation of alternative sites for development of specific West Florida recommendations.

11. Conclusions and final report preparation.

RECOMMENDATIONS

Due to a lack of any "real" information concerning the location, type or volume of a resource discovery, the West Florida Regional Planning Council staff and OCS Advisory Committee were not able to recommend actual sites for all industry needs. However, recommendations have been developed which will serve to assist any future siting decisions to be made when further OCS exploratory activity yields more detailed data. This combination of general and specific recommendations are presented in four (4) different categories. Some recommendations are pertinent to more than one (1) category. The recommendation categories are:

A. Environmental Resources

B. Industry Activities

C. Facilities Siting

D. Public Policy Actions

The following recommendations have been developed to provide a basis for decision makers to evaluate and permit OCS related facilities to locate in this region.

A. Environmental Resources Recommendations

Implementation of certain methods or measures are necessary to minimize any environmental degradation or loss from OCS onshore activities. The adoption and use of these recommendations is a function of the region's elected officials and the staffs that support local governmental processes.

1. Efforts should be made to employ an environmental quality (air, water, and groundwater) and safety monitoring program prior to and during the construction and operation of an OCS facility site.

2. Facility sites should not be located in areas that are environmentally sensitive, or where environmental quality is stressed prior to an OCS facility siting.

3. OCS facility sites should be located away from marine or estuarine meadows.

4. Efforts should be made to retain natural vegetation, where feasible, at an OCS facility site.

5. OCS facilities (service bases and pipelines) should be installed with blowout or pressure activated shutoff devices wherever located in or near environmentally sensitive areas or populated areas.

6. Efforts should be made to minimize any oil industry activity impacts in nearshore marine and estuarine areas.

7. Efforts should be made to mitigate for any habitat loss by reestablishment of a comparable habitat at an alternate location.

8. Facility sites should contain an onsite stormwater/drainage retention/detention area.

9. Any approved discharge from a retention/detention system should be accomplished through natural vegetated areas and not directly into open estuarine or marine waters.

10. Efforts should be made to employ the best practicable technology to control dust or any other suspended particles in the air during construction and operation phases of any OCS onshore facility.

11. Efforts should be made by all OCS vessels to operate within defined navigation areas in a manner not to generate wakes or otherwise increase turbidity or to otherwise impact shellfish beds, marine grass beds or other sensitive estuarine areas.

12. Effort should be made to employ sediment control techniques and to avoid actions that might promote erosion.

13. All solid waste products, domestic and industrial, should be disposed of at approved, permitted solid waste disposal areas or resource recovery facilities.

14. Any hazardous waste (chemical or physical) should be disposed of at a authorized disposal site, and the facility operator should be notified in advance of the characteristics and composition of the waste and the time of its transport.

15. Efforts should be made to eliminate any thermal discharge to estuarine or other temperature sensitive habitats.

16. Facility sites that will generate high noise levels should be located, where feasible, in areas to minimize noise impacts.

17. Efforts should be made for facility related transportation to avoid all noise sensitive areas.

18. High noise level activities should be limited to daylight hours if surrounding land use will be impacted.

19. Any pipeline landfall should be made by horizontal drilling so as to not disturb the beach dune system.

B. Industry Activity Recommendations

When an industry establishes a facility onshore in West Florida certain measures should be implemented to minimize any degrading impacts due to facility operations. Necessary management measures described prior to development are more readily incorporated by the industry and therefore less costly to implement.

1. OCS facility site construction should be staged to minimize the amount of area under construction at any one time.

2. OCS facility sites that are related or complementary should be located in close proximity to each other.

3. Efforts should be made by industry representatives to conduct ongoing technical and public presentations to educate and inform about OCS activities and related onshore operations.

4. Efforts should be made by the OCS industry to provide local labor training programs and to employ from the existing labor force.

5. Efforts should be made to maintain natural vegetation, grass or other ground cover (e.g., mulching, sodding, etc.), on any unused areas of an OCS facility site.

6. Efforts should be made to preserve any wetland areas that may be a part of or adjoining an OCS facility site. These areas should be incorporated into the site's drainage system.

7. Efforts should be made to minimize dredging, bulkheading or other engineered disturbance activities. Procedures such as "jack and bore" to cross roads and horizontal drilling to cross barrier islands and rivers should be emphasized to minimize dredging.

8. OCS facility site maintenance dredging should employ turbidity devices and be conducted at a time when impacts to the surrounding environment will be minimized (i.e., winter).

9. OCS facility site operation and maintenance procedures should be conducted at times to minimize any negative impacts to flora, fauna and environmental quality (i.e., cross rivers and streams during low flow).

10. OCS facility sites should maintain a drainage system for stormwater and for spillage that drains to an onshore retention area.

11. OCS facility sites should employ other best management practices where onsite retention/detention is not viable (e.g., grassed swales, grading, shallow depression retention, rooftop retention, etc.).

12. OCS facility sites for fuel servicing should include fuel spill containment equipment to be used whenever any fuel or product is spilled.

13. Efforts should be made to insure that spill containment devices are readily available at any product transfer site.

14. Any discharge or disposal from OCS facility sites or vessels into estuarine or other nearshore waters should be prohibited.

15. Efforts should be made to designate and use upland diked disposal sites for any spoil generated during maintenance dredging needed for an OCS activity.

16. OCS facility sites should be as hurricane proof as possible.

17. Facility sites for OCS crew and supply boats should be designed to allow the vessels to use onshore power rather than onboard generators at dockside.

18. Efforts should be made to transport OCS products by pipeline, where feasible.

19. Efforts should be made to incorporate blow out or shutoff devices at product transfer points.

20. Onshore facilities should be constructed with fan-cooled equipment to minimize impacts on water resources.

C. Facilities Siting Recommendations

Onshore facilities are necessary for OCS operations. Specific methods and actions should be employed prior to and during construction of any OCS facility to minimize any negative impacts. Decisions for siting industry facilities should incorporate issues of public concern regardless of an absence of existing regulatory provisions. These recommendations should be considered by all levels of government involved in facilities siting, as well as the oil industry.

1. OCS facility sites that are not water dependent should be located as far as feasible from the region's estuarine water areas.

2. OCS facility sites should be located in areas where needs can be accommodated by existing onshore facilities, where feasible (e.g., existing docking facilities).

3. OCS facility sites constructed in flood prone areas should include provisions for accommodating hurricane force wind and water surges.

4. OCS facility sites should be located in areas that will not impact rare, endangered or threatened species.

5. OCS pipelines should be located away from environmentally sensitive areas and be placed in previously disturbed (e.g., rights-of-way) areas, where feasible.

6. OCS right-of-way areas should be no wider than necessary to minimize impacts.

D. Public Policy Action Recommendations

Local elected officials federal agency personnel, state agency personnel and regional government officials must be involved in any onshore activities to support OCS development by industry. Representatives of governments and government agencies are charged with making the decisions that will ultimately determine what industry activities take place and what the subsequent impacts will be.

1. Efforts should be made by federal, state, regional and local governments to promote the development of OCS resources in a coordinated, environmentally sensitive, and responsive manner.

2. Efforts should be made by federal and state governments to promote research and development of techniques that will further minimize the negative impacts of OCS related activities.

3. Efforts should be made by regional and local governments to stay aware and become involved in OCS related real issues affecting the regional and local environment and economy.

4. Efforts should be made by state and local governments to prepare for regulatory and fiscal needs prompted by OCS onshore activities.

5. Efforts should be made by local governments to incorporate policies and provisions for OCS related facilities and impacts into all comprehensive planning efforts.

6. OCS onshore facilities should be considered to have regional impact and should be reviewed an permitted by regional and local clearinghouse procedures.

7 Efforts should be made by gas utilities in Region I to guide development of OCS onshore facilities so that the region's residents obtain optimum benefit from regionally produced energy resources.

CONCLUSIONS

This OCS facility siting study examines probable industry facility needs and the impacts that may be presented within the West Florida region and offers guidance for federal, state, regional and local decision makers to prepare for these impacts. During the preparation of this study certain conclusions were reached. Overall conclusions pertinent to this study are summarized as follows.

Petroleum fuel (oil and natural gas) has been determined to be a resource of vital importance to the United States and is therefore subject to national control. Federal government policy has established that domestic petroleum fuel reserves will be explored and developed to the greatest possible extent. The Outer Continental Shelf of the United States has been viewed for extensive and systematic resource development and is the subject of the U.S. Department of the Interior's OCS Oil and Gas Leasing Program.

Although the U.S. Department of the Interior Minerals Management Service and Geological Survey have been charged with estimating the oil and gas reserves in the OCS, including the Gulf of Mexico OCS; the reserves of natural gas and oil and not know. Some technical sources report that the world is depleting its rapidly declining supply of petroleum fuels, while other technical experts claim that development of vast new reserves is imminent. The same disagreement occurs between experts concerning the resource reserves in the Gulf of Mexico OCS.

The State of Florida has maintained: "Florida supports OCS operations for leasing, exploration and production, providing that consideration is given to our unique coastal environment."[1] The state has pledged close supervision of any OCS activities and has conscientiously fulfilled its pledge. Florida filed (14 September 1982) a petition for judicial review of Secretary of the Interior James Watt's approved Five-Year Outer Continental Shelf Oil and Gas Leasing Program. The petition was filed because the state was not satisfied that its "unique coastal environment" has been adequately provided for in the Department of the Interior leasing program.

Although there is a need to determine and prepare for OCS related facilities in West Florida there is an uncertainty about exactly when any such facilities may be expected to occur. The U.S. Department of the Interior has streamlined the OCS federal lease sale process to promote and accelerate OCS exploration. However, at the same time the process was revised the worldwide supply of petroleum fuels was at a surplus level. The current surplus of petroleum fuels has precipitated a decrease in the price for the fuels. This surplus and reduced price combination has caused the oil industry to be less interested in OCS exploration. It is not cost effective for the oil industry to continue to spend funds for lease options and expensive exploration activities at a time when product volumes are at a surplus level and when domestic supplies cost the same or more than foreign supplies. Oil companies are interested in selling their product as soon as possible and maintain it is too costly to "sit on" a resource find while waiting for a more favorable market.

Another factor that makes it difficult to estimate when onshore facilities for OCS activities will be needed is the time periods involved in the lease sale process. Once a leasing schedule has been developed by MMS, it requires two and one-half years to three and one-half years to complete the leasing process. After the lease process is completed the lease holder has five to ten years to conduct exploration drilling within a lease block.

Even if a lease block were sold today, local citizens and government representatives would have ample time to complete any necessary planning efforts and to implement any necessary regulations or management controls.

"Remaining recoverable reserves of oil and gas in the Gulf of Mexico Outer Continental Shelf an Continental Slope have been estimated to be 2.90 billion barrels of oil and 39.8 trillion cubic feet of gas, as of December 31, 1981."[2] MMS further estimates that the recoverable oil and gas resources of the eastern Gulf could be:

1. Most Likely Find: 123 Million Barrels of Oil
   157 Billion Cubic Feet of Gas

OR

2. Maximum Find: 980 Million Barrels of Oil
   1.26 Trillion Cubic Feet of Gas[3]

MMS states that "over 90% of the gas resources are estimated to be discovered in subplanning are E-1" which provides an estimate of:

1. Most Likely Find: 31 Million Barrels of Oil
   147 Billion Cubic Feet of Gas

OR

2. Maximum Field 242 Million Barrels of Oil
   920 Billion Cubic Feet of Gas

These MMS estimates have not been disaggregated into subplanning areas which corresponded to the West Florida Regional Planning Council OCS facilities siting study boundary. Using input supplied by four (4) different oil industry representatives the study staff prepared an estimate of the minimum resource that would justify the cost of developing a production field in the OCS offshore from West Florida. This minimum volume is estimated as 100 million cubic feet of gas per day and 10 thousand barrels of oil per day.*

It has been concluded, for this study, that two (2) areas of the OCS are more likely to yield a resource find that could impact Region I. The two (2) areas are:

1. Destin Anticline

2. Southwest corner of the Pensacola Block and western margin of the Destin Dome Block (see Figure A-1).

*for a field life of seven (7) years.

The MMS has determined that the only "high resource potential" in the eastern Gulf of Mexico is an area south of Escambia and Santa Rosa Counties. Currently there are seven (7) active leases in this area. It is likely that any resource discovery made in this area will be transported to Alabama rather than to Florida.

If a resource discovery is in the OCS offshore from West Florida it is very likely that the product will be transported to shore in a pipeline. The State of Florida has developed a stipulation that disallows any other transportation system (e.g., barge or tanker ship) unless a pipeline is not economically feasible. If a discovery is made that would yield less than 100 cubic feet of gas per day or 10 thousand barrels of oil per day, a pipeline would not be cost effective, therefore, another transportation system would be required. Oil produced at a rate of less than 10 thousand barrels per day may be tankered ashore, while gas produced less than 100 million cubic feet per day might not be produced.

Based on input offered by three (3) oil company representatives it has been assumed that if a pipeline is to landfall in West Florida it will be sixteen (16) inches in diameter. Such a pipeline is designed to transport more than a minimum volume discovery. Most pipelines that landfall on the Gulf Coast are less than twenty (20) inches in diameter.

While it is not possible to detail exact locations for all oil industry facility sites it is possible to offer seven (7) potential sites for an OCS pipeline landfall. Related industry facilities would be located in close proximity to a pipeline landfall. The seven (7) potential landfall sites are:

1. A1 - Perdido Key (Escambia County) in the vicinity of Highway 292 and the Intracoastal Waterway Bridge (see Figure 5-3).

2. A2 - Santa Rosa Island/Gulf Breeze (Santa Rosa County) in the vicinity of the Santa Rosa County and Okaloosa County line (see Figure 5-3).

3. A6 - Panama City Beach (Bay County) in the vicinity of the intersection of Highway 79 and U.S. Highway 98 (see Figure 5-3).

4. A7 - Mexico Beach (Bay County) between Tyndall Air Force Base and Mexico Beach (see Figure 5-3).

If two (2) resource discoveries were made, one (1) close to Pensacola and one (1) close to Mexico Beach, it is possible that two (2) pipeline landfalls could occur, however, such an occurrence is not an assumption for this study.

MMS and oil industry experts state natural gas has been concluded to be the most likely resource find the OCS offshore from West Florida. The resource finds in Jay, Florida and in Mobile Bay, Alabama have come from the geologic formation called "Smackover". This same formation is the likely source for any future find in the OCS offshore of Region I. The Smackover

Formation is producing "sour" natural gas or gas that contains hydrogen sulfide, therefore, a gas treatment facility will be necessary to remove the hazardous hydrogen sulfide. The most suitable sites for gas treatment facilities in West Florida are recommended as:

1. C1 - Southwest Escambia County (see Figure 5-3)

2. C3 - Holley/Navarre vicinity (Santa Rosa County) (see Figure 5-3).

3. C6 - West Bay (Bay County) (see Figure 5-3).

4. C7 - Mexico Beach vicinity, between Mexico Beach and Tyndall Air Force Base (Bay County) (see Figure 5-3).

The onshore support or service base is the first onshore facility that would be located to accommodate OCS activity in West Florida. Factors that are considered when locating an onshore support base include:

1. land availability and surrounding land use;

2. waterfront access;

3. access to the Gulf of Mexico;

4. access to rail and road transportation;

5. availability of support services, e.g., potable water, fuel, and communication facilities; and,

6. potential for flooding and hurricane damage.

The most suitable sites for onshore support bases are recommended as:

1. B1 - Bayou Chico Industrial Park (Escambia County) (see Figure 5-3).

2. B7 - Southwest Forest Industries (Bay County) (see Figure 5-3).

Although oil is not likely to be discovered, another onshore oil industry facility that has been considered for West Florida is an oil barge terminal. Such facilities already exist and may be expanded or modified to accommodate hydrocarbons discovered in the OCS offshore from West Florida. An oil barge facility would be more likely to be needed if an oil find is made which would generate a large enough volume of oil to justify a pipeline. In such an event, oil would be directed into a pipeline at the production platforms and transported to an oil barge terminal for storage and transshipment. Oil could be piped ashore either separately or combined with natural gas, treated and stabilized, then piped to a barge terminal where it may be stored or transshipped to an oil refinery.

APPENDIX E

Permit Requirements for Siting Onshore Facilities Related to Offshore Oil and Gas Activities

and

Florida Legislation Affecting Offshore and Onshore Energy Development

Prepared by

South Florida Regional Planning Council

1983

PERMITTING

An array of permits are involved in siting any onshore OCS-related facility. Effective planning requires knowledge of necessary permits and time periods required. Table V-2 shows the permits that may be required for each component of each OCS-related facility, the agency, and the normal expected time to obtain each permit. The time periods are general estimates; if an application is particularly complex or subject to litigation, obviously a much longer time period is required.

A consolidated permitting scheme for OCS-related facilities should be developed so that coordinated State decisions can be made, taking into account all the complex variables. A similar scheme for industrial siting presently exists in the Florida Industrial Siting Act (FISA), Chapter 288.501. This Act is designed to centralize, coordinate, and facilitate permitting procedures for new or expanded industrial facilities, with the goal of encouraging industrial development in Florida.

The Act provides an optional procedure for developers who, if they fulfill three criteria, can make one application that results in one determination that the developer's proposed project does or does not comply with all State requirements. The three criteria are:

1. the proposed facility will create at least fifty full-time jobs.

2. it involves industrial, commercial, wholesale, or retail business activities <u>and</u>

3. it needs permits or licenses from at least two State agencies.

If a developer receives approval from the Governor and Cabinet, the ultimate arbiters of a decision under the Act, both construction and development of the facility are approved.

Local government decisions, including DRI orders, are specifically not covered by the Act, and an applicant must obtain local approval before filing a FISA application. Nevertheless, local decisions are affected by State decision on a FISA application in that the local government cannot, for two years from the date of a State decision, change ordinances, plans, or development orders that might effect the project, unless the developer agrees to such change or the local comprehensive plan is amended.

The goal of the Act was to streamline and condense the application and permitting process.

Despite the intent to streamline the application process, developers have apparently either determined that Act requirements are more burdensome than dealing with individual State agencies, or that they do not wish to "put all their eggs in one basket." Were it redrafted, the statute might address OCS-related facility siting issues, mandating consideration of specific environmental concerns. However, why the statute has not been effective should be determined first.

APPENDIX F

PROJECT ADVISORY BOARD

The Coastal Energy Impact Program (CEIP) Office established a Project Advisory Board to provide guidance and assistance during the course of the project. Several meetings were held beginning with a "kickoff meeting" just eleven days following the start date of the grant. This initial meeting was followed up by personal contacts with individual members of the Advisory Board and periodic meetings throughout the project. A formal mid-term project meeting was held at DCA in February 1984.

The members of the Advisory Board were helpful in providing background information, documentation, and suggestions whenever asked. Of particular value was the guidance provided during the preparation of the final recommendations by those individuals mentioned in the Acknowledgements.

The following individuals provided advice through the auspices of the Project Advisory Board.

Department of Natural Resources

Mr. Ted Forsgren, Chief
Bureau of State Lands Management

Mr. Kirby Green, Chief
Bureau of Survey and Mapping

Ms. Patricia White
Land Management Specialist
Bureau of State Lands Management

Mr. Steve R. Windham, Chief
Bureau of Geology

Department of Environmental Regulation

Mr. Fred Calder
Office of Coastal Management

Ms. Suzanne P. Walker, Chief
Bureau of Permitting

Mr. David R. Worley
Office of Coastal Management

Department of Community Affairs

Mr. Terry Jernigan
Division of Local Resource Management
Coastal Energy Impact Program

Mr. Jeffrey Kiss
Division of Local Resource Management
Coastal Energy Impact Program

Mr. James Murley, Director
Division of Resource Planning and Management

Mr. James Quinn, Chief
Bureau of State Land Planning
Division of Local Resource Management

Other Board Members

Mr. Chris L. Jensen
Associate Director
Florida Petroleum Council

Ms. Shirley Taylor
Citizens Advisory Committee on Coastal Zone Management; and Sierra Club

Oil and Gas Leasing in Florida Offshore Waters

Volume II

A Description of Florida's Existing Program and Recommendations for Revised Procedures

Prepared by:

Florida Institute of Oceanography

St. Petersburg, Florida

Financial support was provided by The Coastal Zone Management Act of 1972 as amended, administered at the Federal level by the Office of Ocean and Coastal Resource Management, National Oceanic & Atmospheric Administration and administered at the State Level by the Florida Department of Community Affairs, Division of Resource Planning and Management, Coastal Energy Impact Program.

October 15, 1984

TABLE OF CONTENTS

VOLUME II

Page

Acknowledgements i

Executive Summary. iii

Glossary and Acronyms. viii

List of Tables xiv

I. Introduction and Background. 1

II. Purpose of Project 4

III. Preparation and Format of Report 5

IV. Discussion and Summary 8

V. State Leasing Program 19

A. Alabama. . . . . AL 1-32

B. Alaska . . . . . AK 1-39

C. California . . . . . CA 1-41

D. Florida. . . . . FL 1-42

E. Louisiana. . . . . LA 1-31

F. Mississippi. . . . . MS 1-29

G. North Carolina . . . . . NC 1-21

H. South Carolina . . . . . SC 1-22

I. Texas. . . . . TX 1-36

Appendix A Annexation Procedures Used in Six Coastal States

ACKNOWLEDGEMENTS

The authors of this report are:

James W. Miller, Ph.D.
Associate Director
Florida Institute of Oceanography
St. Petersburg, Florida

and

Murice O. Rinkel
OCS Representative
State of Florida

The material on which the report is based was generously provided by many individuals and organizations. Guidance and advice was obtained from the Department of Community Affairs (DCA) Project Advisory Board (see Appendix F of Volume I) during the planning stages and during the preparation of the recommendations. Special thanks go to Mr. James Quinn, Mr. Terry Jernigan and Mr. Jeffrey L. Kiss of the Division of Resource Planning and Management, DCA; and Mrs. Patricia White, Bureau of State Lands Management, and Mr. Steve R. Windham, Bureau of Geology, of the Department of Natural Resources for their help throughout the project.

The reports on the oil and gas leasing programs of the other eight coastal states reviewed in Volume II were made possible only by the outstanding cooperation and assistance of the following individuals.

Alabama

- Department of Environmental Management
  Mr. Joe B. Broadwater (Director)
  Mr. Robert Cooner (Biologist)
- Department of Conservation and Natural
  State Lands Division
  Mr. Robert A. Macrory (Director)
- State Oil and Gas Board
  Dr. Ernest A. Mancini (Supervisor)

Alaska

- Department of Natural
  Resources
  Division of Oil and Gas
  Ms. Pam Rogers
  Leasing Manager
- Department of Fish and Game
  Habitat Division
  Mr. John A. Clark (Director)

ACKNOWLEDGEMENTS
(cont'd)

California

. State Lands Commission
Ms. Claire R. Dedrick
(Executive Officer)
Division of Research and Planning
Mr. Dwight E. Sanders (Chief)
Mr. Allen D. Willard
Minerals Resources Engineer
Ms. Susan R. Livenick
Assoc. Mineral Resources Engineer

Mississippi

. Bureau of Geology
Mineral Lease Division
Mr. John D. Kellis (Chief)

. Department of Wildlife Conservation
Bureau of Marine Resources
Mr. James S. Franks
(Staff Scientist)

South Carolina

. Water Resources Commission
Mr. Camille Ransom, III (Director)
Mr. Paul S. League, (Attorney)
Ms. Gwen M. Euler
(Ground Water Geologist)

Louisiana

. Office of Mineral Resources
Mr. William E. Howe
Chief Engineer

North Carolina

. Department of Natural Resources and Community Development
Division of Earth Resources
Mr. Steve Conrad (Director)

. State of North Carolina
Center for Urban and Regional Studies
Mr. Charles Wyman
(Research Associate)

Texas

. General Land Office
Petroleum and Minerals Division
Mr. Jack M. Howard
(Geologist)

. Coastal Division Land Management
Mr. Michael H. McKann
(Environmental Quality Specialist)

. Parks and Wildlife Department
Mr. J. Rollin MacRae
Wetlands Permits Coordinator

EXECUTIVE SUMMARY

Recognizing that the increasing interest of industry in exploring Florida's Outer Continental Shelf could spread into state waters, the Florida Department of Community Affairs (DCA), in 1982, proposed that a comprehensive study be undertaken for the management of the potential oil and gas operations in state waters. As the first step in this program, a Coastal Energy Impact Program grant was awarded by DCA to the Florida Institute of Oceanography in May 1983. The purpose of this grant was to review Florida's existing leasing procedures as well as those of eight other coastal states and to incorporate the information obtained into specific policy and program recommendations to aid Florida officials in making decisions if they choose to develop and implement a long range oil and gas program in Florida waters.

The results of this study indicate that Florida's oil and gas leasing program is primarily oriented toward onshore operations. Statutory provisions, regulations, and policy for offshore leasing and operations are vague and sometimes contradictory. Even so, Florida law does provide a method for the leasing and development of state waters.

Given the current level of oil industry interest in federal OCS areas adjoining state waters, an active effort could be undertaken by industry to pursue this possibility. Under current circumstances this situation could very likely foster reactive decisions which could prove contrary to the protection of Florida's coastal and marine resources.

Adequate pre-lease planning and lease program development are essential in providing the data necessary to make prudent decisions. In this regard, the first and foremost concern throughout the development of this report has

been to provide specific recommendations in support of an envvironmental program which offers the maximum protection possible for Florida's resources if oil and gas are found and developed.

It is not the purpose of this document nor the intent of the sponsor or authors to recommend whether oil and gas operations should be encouraged in Florida waters. That determination is the statutory responsibility of the Governor and Cabinet acting as the Board of Trustees of the Internal Trust Fund.

The following program elements were analyzed for each of the nine states studied (including Florida): Philosophy of the state towards oil and gas development; the statutory authority for leasing; program management; the geographic description of territorial waters; the role of local government in offshore leasing; oil and gas revenues and their distribution; environmental controls and regulations; and leasing procedures. The basic Florida report was augmented by special reports on: existing oil and gas related statutes; the role of local government in offshore leasing, taxation, and annexation; and on the socioeconomic impact of oil and gas leasing.

The project report is divided into three volumes: Volume I - Florida's leasing program, the special reports, and the recommendations; Volume II - reports on all nine coastal states reviewed; and Volume III the recommendations. Each report also contains the introductory and background material.

The five policy and twenty program recommendations resulting from this study are summarized below. The basis for each recommendation is discussed in the main body of the recommendations section contained in Volumes I and III.

Policy Recommendations

1. Formation of Policy Advisory Group

   a. That the Board of Trustees of the Internal Improvement Trust Fund establish a policy for initiating an oil and gas environmental protection program in state territorial waters.

   b. That an ad hoc advisory committee be established to provide broad-based input to the Trustees in developing such policy.

2. Development of an Offshore Comprehensive Leasing Program

   That a comprehensive oil and gas leasing program be developed specifically for offshore waters to provide for more effective resource management safeguards, environmental protection, and obtaining just revenues for the state.

3. Development of a Pre-leasing Environmental Study Program

   - That a comprehensive long range pre-leasing study program supported with adequate funding and staff be initiated for the purpose of acquiring environmental data in state offshore waters showing potential for oil and gas development.

4. Restrictions on Offshore Lease Sales

   - That no oil and gas leasing takes place in Florida's territorial waters until such time as the necessary environmental data are obtained.

5. Mineral Leasing

   - That any minerals not defined as constituent products in the current oil and gas lease form in the State of Florida shall not be considered as part of an offshore oil and gas leasing program.

Program Recommendations

1. Development of Leasing Program Consistent with State Policy

a. That a Memorandum of Understanding be established between the Department of Natural Resources and the Department of Environmental Regulation pertaining to lease/permit programs for offshore oil and gas operations.

b. That all program recommendations which follow or are developed in the future be examined for consistency with the offshore oil and gas policy to be established by the Board of Trustees/Governor and Cabinet.

2. Establishment of a Leasing Advisory Board with Supporting Committees.

a. That a permanent offshore oil and gas Leasing Advisory Board be formed for the purpose of providing guidance to the Board of Trustees of the Internal Improvement Trust Fund with respect to the development and management of oil and gas operations in offshore state waters.

b. That an environmental/scientific committee and a technical committee be formed to serve as staff to the Leasing Advisory Board recommended in 2a.

3. Recommended Charges to the Leasing Advisory Board

3a.(1) That a grid pattern by laid out in Florida's territorial waters with initial leasing planning regions to be selected based on current OCS oil and gas activities.

3a.(2) That the state be divided into offshore planning areas for the purpose of determining excluded areas, avoidance areas, and leasing areas, within their respective grid patterns.

3b.(1) That Chapter 253 F.S. be amended to more specifically and thoroughly address oil and gas leasing in state offshore waters. Recommendations contained in this document should be given major emphasis in this process.

3b.(2) That the state clarify by statute the authority of coastal municipal governments to annex state offshore waters.

3c.(1)(a) That minimum environmental lease stipulations be established for each planning region identified (i.e. excluded, avoidance and leasing areas) based on the results of the environmental study program.

3c.(1)(b) That an offshore environmental resource management code system, similar to that now used in Texas, be examined for lease planning regions and for site specific stipulations in Florida.

3c.(2)(a) That an adequate funding source be developed to support the long term comprehensive environmental study programs required for exploration, development and production.

3c.(2)(b) That the necessary executive and legislative actions be taken to obtain the funds cited above from existing revenue.

Program Recommendations (cont'd)

3d(1) That the Rules of the Department of Natural Resources, section 15Q-15.08-(9)F.A.C., be amended to add the basis for calculating offshore royalty percentages. Instead of basing royalties on the distance from production, a flexible sliding scale method should be devised similar to that used in California and Alaska.

3d(2) That a revenue distribution program be initiated on a statutory basis designating approximately five percent (5%) and/or a maximum amount of the current uplands oil and gas severance tax for coastal and offshore environmental studies; for research on renewable energy sources; and to provide for revenue sharing with local governments likely to be affected by offshore oil and gas development.

3e(1) That a set of specific operating orders be referenced in each offshore oil and gas lease.

3e(2) That an offshore environmental enforcement and inspection program be established.

3e(3) That general environmental stipulations be developed for each planning region prior to each sale.

3e(4) That an agreement be established with the State of Alabama specifying the environmental stipulations to be used in common waters such as in Perdido Bay. Other potential interstate conflict issues also should be addressed.

4. Lease Procedures and Terms

That the recommended Leasing Advisory Board review existing onshore lease terms and procedures for compatibility and adaptability to an offshore oil and gas leasing program.

GLOSSARY AND ACRONYMS

Glossary

Applicant - Any person requesting the State to either issue a call for nominations for leasing or offer for lease minerals owned by the State.

Aquatic preserves - Submerged or tidal areas identified and designated by the Florida Legislature which have exceptional biological, aesthetic, educational, and/or scientific value, with the intent of setting them aside forever as preserves or sanctuaries for the benefit of future generations pursuant to Chapter 258, F.S.

Barrier islands - Thin, elongated, naturally formed islands, usually parallel to the shoreline, formed of unconsolidated sediments (mostly sand), separated from the mainland by natural bodies of water, including estuaries and wetlands.

Beach - Gently sloping areas of loose material (e.g. sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or land form, or to the line of vegetation.

Bid - The offer to pay a valuable consideration to obtain a mineral lease.

Bidder - Any person submitting a bid.

Block - A geographical area, as portrayed on an official BLM protraction diagram or leasing map, that contains approximately nine square miles (2,304 hectares or 5,760 acres).

Board of Trustees - Board of Trustees of the Internal Improvement Trust Fund (Florida, Governor and Cabinet).

Bonus - A sum of money offered or paid by a lessee to the State as consideration for the execution of a lease.

Coastal waters - Those waters surrounding the continent which exert a measurable influence on users of the land.

Coastal zone - Coastal waters and adjacent lands which exert a measurable influence on the uses of the sea. The zone extends onshore to the upper reaches of the tidal zone and adjacent shore areas.

Continental margin - A zone separating the emergent continents from the deep sea bottom.

Continental shelf - A broad, gently sloping, shallow feature extending from the shore to the continental slope.

Delay rental - A payment offered or made by a lessee to the State, on a per mineral acre basis, annually during each year of the primary term of a mineral lease after the first year thereof, to delay commencement of drilling operations.

Designated environmental preservation areas - Gulf of Mexico shorefront areas which have been established for the quality and significance of their natural environments. They have been legislatively, administratively, or privately protected from the developmental influences of man and are managed solely for the preservation, understanding, and appreciation of their natural attributes. Included are National Parks and Preserves, National and State Wilderness Areas, National Marine and Estuarine Sanctuaries, National Natural Landmarks, Wildlife Sanctuaries, Florida Aquatic Preserves, and Environmentally Endangered Lands.

Development - Activities that take place following exploration for, discovery of, and delineation of minerals in commercially attractive quantities, including but not limited to geophysical activity, drilling, platform construction, and operation of all directly related onshore support facilities; and that are for the purpose of ultimately producing the minerals discovered.

Development of Regional Impact (DRI) - Any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county pursuant to Chapter 380, F.S.

Ecosystem - The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist.

Environmental impact statement - A statement required by the National Environmental Policy Act of 1969 (NEPA) in relation to any action significantly affecting the environment; a NEPA document.

Estuary - A natural body of water semi-enclosed by land, connected with the open ocean, and within which sea water is measurably diluted by fresh water derived from the land. The estuary includes: a) estuarine water; b) tidelands; c) tidal marshes; and d) submerged lands. Estuaries extend upstream as far as the waters contain a measurable quantity or percentage of sea water.

Exploration - The process of searching for minerals. Exploration activities include: a) geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or infer the geologic conditions conducive to the accumulation of such minerals and (b) any drilling, except development drilling, whether on or off known geological structures. Exploration also includes the drilling of a well in which a discovery of oil or natural gas in paying quantities is made and the drilling, after such a discovery, of any additional well that is needed to delineate a reservoir and to enable the lessee to determine whether to proceed with development and production.

Glossary (cont'd)

Gas - All natural gas, including casinghead gas, and all other hydrocarbons not defined as oil.

Gas well - A well capable of producing gas from a gas pool or gas pools.

Habitat - A specific type of place that is occupied by an organism, a population, or a community.

Joint bid - A proposal whereby two or more bidders combine in submitting a bid for a mineral lease.

Field - An area within which hydrocarbons have been concentrated and trapped in economically producible quantities in one or more structural or stratigraphically related reservoirs.

Hydrocarbon - Any of a large class of organic compounds containing primarily carbon and hydrogen, comprising paraffins, olefins, members of the acetylene series, alicyclic hydrocarbons, and aromatic hydrocarbons, and occurring in many cases in petroleum, natural gas, coal, and bitumens.

Lease - A contract authorizing exploration for and development and production of minerals; the land covered by such a contract.

Lease royalty - A share of the production, or the proceeds thereof, specified in a lease as a fraction, percentage or fixed sum, payable to the State by the lessee.

Lease sale - The public opening of sealed bids made after competitive auction for leases granting companies or individuals the right to explore for and develop certain minerals within a defined period of time.

Local government - Any county or municipality or any special district or local government entity established pursuant to law which exercises regulatory authority over and grants development permits for land development pursuant to Chapter 163, F.S.

Marshes - Persistent emergent non-forested wetlands characterized by vegetation consisting predominantly of cordgrasses, rushes, and cattails.

Marine league - 3.45 statute miles.

Mean high water - The average height of the high tides over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the water after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

Mean high water line - The intersection of the local elevation of mean high water with the shore.

Glossary (cont'd)

Mineral - Oil, gas, and other minerals, both hydrocarbon and non hydrocarbon, unless otherwise specifically included, sand, clay, gravel, limestone, and coal.

Mineral acre - The equivalent of the full mineral interest in one acre of land.

Non-renewable resource: Those natural resources that, once used or exhausted, cannot be replaced. Commonly used with commodity type resources such as coal, petroleum, natural gas, etc.

Oil - Crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the pool.

Oil well - A well capable of producing oil from an oil pool or oil pools.

Outer Continental Shelf (OCS - All submerged lands that comprise the continental margin adjacent to the U.S. and seaward of state offshore lands. The OCS has been subject to Federal jurisdiction and control since enactment of the Submerged Lands Act (43 U.S.C. 1301 and 1302). Current national policy is provided in the Outer Continental Shelf Lands Act Amendments of 1978.

Petroleum - An oil, flammable bituminous liquid that occurs in many places in the upper strata of the earth, either in seepages or in reservoirs; essentially a complex mixture of hydrocarbons of different types with small amounts of other substances; any of various substances (as natural gas or shale oil) similar in composition to petroleum.

Pool - An underground reservoir containing a common accumulation of oil or gas or both.

Primary term - The initial period of oil and gas leases, can range from 2 to 20 years in coastal states.

Renewable resource - Those resources which, if managed, used, and harvested properly, can replenish themselves at a rate equal to the rate of consumption. They are usually biological or living resources.

Reserve estimate - An assessment of the portion of the identified oil or gas resource that can be economically extracted.

Reservoir - An accumulation of hydrocarbons that is separated from any other such accumulation.

Right-of-way - A legal right of passage over another person's land; the strip of land for which permission has been granted to build a pipeline and for normal maintenance thereafter.

Glossary (cont'd)

Seismic - Pertaining to, characteristic of, or produced by earthquakes or earth vibration; having to do with elastic waves in the earth.

Severance tax - A tax levied by the State upon a person or persons engaging or continuing to engage within a State in the business of producing or severing oil and gas from the soil or the waters, or from beneath the soil or the waters of the State for sale, transport, storage, profit, or for use.

Shut-in royalty - An amount specified in the lease to be paid for a time period also specified in the lease to hold the lease in force after a gas well has been completed capable of production in paying quantities, but which has been shut-in under provisions specified in the lease.

Shut-in well - A well that is capable of producing oil and/or gas but must remain shut-in until connected to a gathering system, pipeline or cleansing facility; or for some other reason.

Spoil islands - Artificial islands created with dredged material resulting from disposal of material created, resulting from, or as waste products of creating, maintaining, or deepening channels, harbors, ports, or other such projects.

Territorial sea - In Florida, for jurisdictional purposes, the ocean and seafloor area from mean low water seaward three nautical miles on the Atlantic Coast, and extending seaward three marine leagues on the Gulf Coast.

Wetlands - Areas periodically inundated or saturated by surface or groundwater and supporting predominantly vegetation typically adapted for life in saturated soil conditions.

Acronyms

ADNR	Alaska Department of Natural Resources
CEIP	Coastal Energy Impact Program
CZMA	Coastal Zone Management Act of 1972, as amended.
DCA	Department of Community Affairs (Florida)
DER	Department of Environmental Regulation (Florida)
DNR	Department of Natural Resources
DRI	Development of Regional Impact
EPA	Environmental Protection Agency
FAC	Florida Administrative Code

Glossary (cont'd)

FDNR	Florida Department of Natural Resources
FIO	Florida Institute of Oceanography
F.S.	Florida Statutes
LGCPA	Local Government Comprehensive Planning Act (Florida)
MHW	Mean high water
MMS	Minerals Management Service (Department of the Interior)
OCS	Outer Continental Shelf
OFCP	Office of Federal Coastal Programs (Florida)
OHW	Ordinary high water
SUS	State University System

LIST OF TABLES

Description	Page
1. Coastal States Included in Review of Leasing Procedures	5
2. Topical Outline for State Reports	7
3. Historical Summary of State Leasing Programs	9
4. Statutory and Vested Authority for State Oil and Gas Leasing Programs	10
5. Geographical Description of State Territorial Waters	11
6. Delegation of Management Responsibilities for State Leasing Program	12
7. State Leasing Procedures	13
8. Summary of State Lease Terms	14
9. State Environmental Responsibilities and Policies	15
10. State Revenues from Offshore Oil and Gas	16
11. Distribution of State Oil and Gas Revenues	17
12. Authority of Local Government to Annex State Territorial Waters	18

Introduction

I. Introduction and Background

In recent years the oil and gas industry has expressed interest in exploring for oil and gas in Florida offshore waters. Their interest has been primarily in the federal waters of the Outer Continental Shelf (OCS).

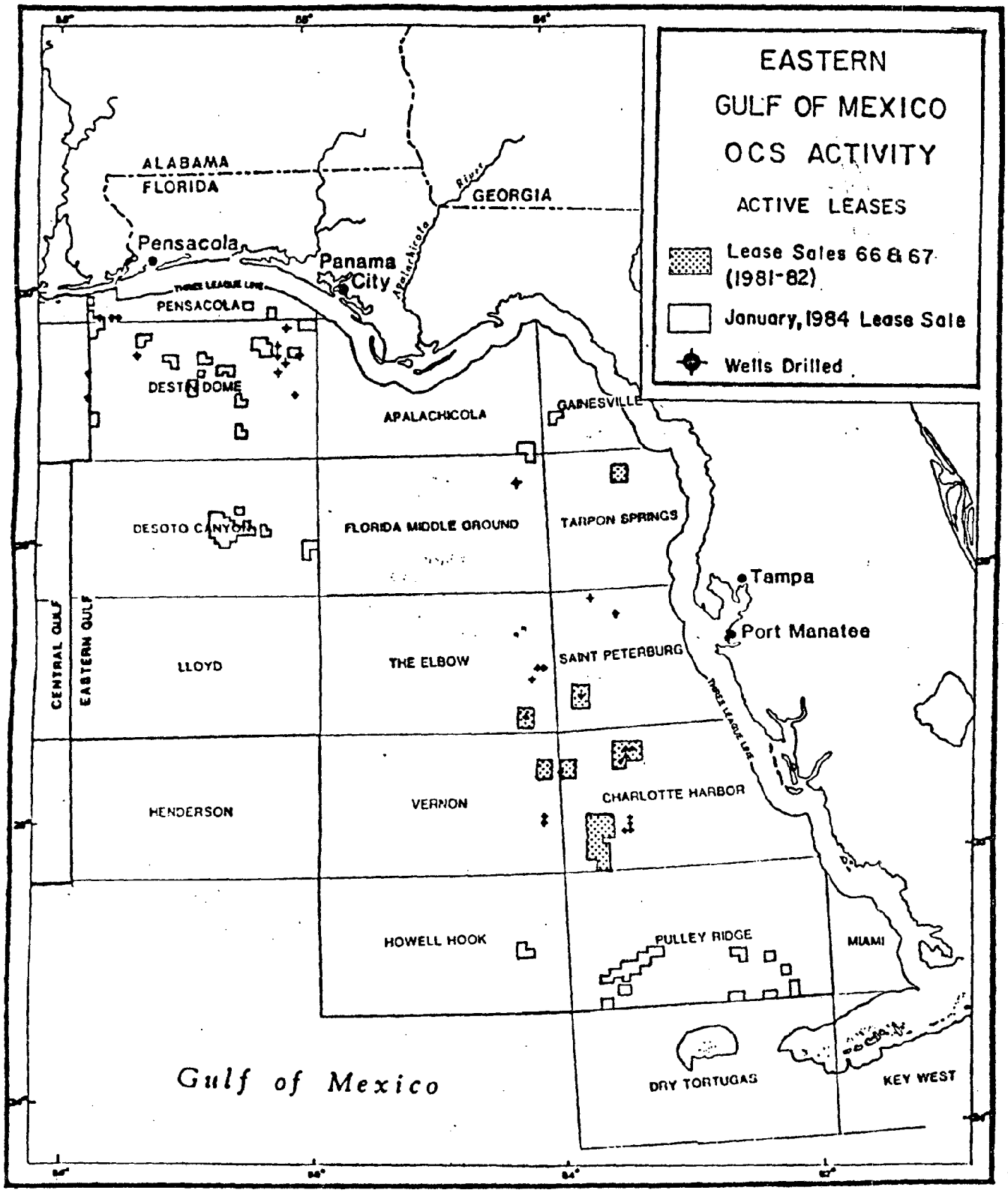
Blocks leased in past OCS Lease Sales along the coast of Florida indicate that formations offshore northwest and southwest Florida and along the continental slope may have hydrocarbon potential. Interestingly, these leased OCS blocks are parallel to onshore areas which represent the major producing oil and gas fields in the State (Figure 1).

In the January 1984 OCS Lease Sale, blocks were leased offshore northwest Florida which are within 3 miles of state territorial waters. Several companies already have applied to the Department of the Interior Minerals Management Service (MMS) for permits to drill exploration wells on blocks 14 to 40 miles from the coastline. Should there be a major discovery on these OCS blocks, it is likely that exploration interest could extend into state waters.

Historically, because the state's oil and gas operations have been primarily on shore, leasing procedures, permitting, and environmental concerns have been directed toward onshore operations. The environmental circumstances and conditions for offshore operations, however, differ substantially from those onshore. This fact has long been recognized by the Federal Government, and the coastal states examined in this study which have separate and distinct management procedures for onshore and offshore areas.

Given the increasing industry interest in OCS areas offshore Florida, and the probability that state waters may be targeted for exploration, the Office of Federal Coastal Programs (OFCP) within the Florida Department

FIGURE 1



SOURCE: U.S. Department of the Interior, Minerals Management Service

of Community Affairs (DCA) proposed a comprehensive study of oil and gas management procedures in state waters. The primary purpose of the proposed study was to develop measures for maximum protection of valuable coastal and marine resources in consideration of the potential for oil and gas development. The secondary purpose was to provide recommendations to ensure that the state receives adequate compensation for public resources if and when they are developed.

As the first step in pursuing this proposal, the OFCP, in cooperation with the Florida Department of Environmental Regulation and the Florida Department of Natural Resources (FDNR), prepared an outline to provide the framework for a comprehensive approach towards adapting existing onshore leasing/permitting procedures for use in state offshore waters. The project was designed to provide an analysis of leasing and permitting procedures, leading from the initial mapping of state waters to potential revenue distribution, and was to be accomplished in four phases:

Phase I - Mapping Lease Tracts
Phase II - Leasing Procedures
Phase III - Permit Procedures
Phase IV - Allocation of Revenue

Recognizing that these categories are not mutually exclusive, the DCA elected, as the first step in this program, to address leasing procedures (Phase II). In May 1983, a Coastal Energy Impact Program (CEIP) grant was awarded to the Florida Institute of Oceanography (FIO) to undertake the Phase II tasks of:

- defining existing rules, regulations, statutes, and procedures affecting leasing in state offshore waters;
- summarizing oil and gas leasing programs of selected coastal states;
- describing the interface of geographical boundaries between state and Federal offshore waters;

- reviewing county and local government statutes, rules, and regulations;
- reviewing Federal and state policies in regard to oil, gas, and mineral leasing; and
- drafting recommendations for a revised leasing program for state offshore waters to serve as a planning document for future policy decisions.

II. Purpose of Project

The purpose of the project and this report is to provide a working document, incorporating background information and specific recommendations, on which policy/management decisions can be based with respect to future oil and gas leasing in Florida's offshore waters. Conversely, it is not the purpose of this document nor the intent of the FIO to recommend whether oil or gas operations in Florida offshore waters should be permitted. The determination of whether oil and gas operations in Florida offshore waters should be approved is the responsibility of the Governor and Cabinet acting as the Board of Trustees of the Internal Improvement Trust Fund.

If oil and gas resources are discovered in commercial quantities in Florida's offshore waters, any program developed must be compatible with the protection of the coastal environment and the exploration and production of offshore oil and gas. With increasing activity in the Federal waters of the eastern Gulf of Mexico, now is the time to rationally and systematically develop a state offshore leasing program that will ensure adequate environmental protection as well as the potential financial benefits accruing to the state from offshore oil and gas revenues.

If it is decided at a future date to award additional leases in Florida offshore waters, the material in this report should provide useful guidance in the preparation of revised leasing procedures. To provide such guidance is the overall goal of the project and this report.

III. Preparation and Format of Report

The data in this report were obtained from interviews and meetings with Florida State officials, the DCA project advisory board (Appendix F), representatives from the other states selected for reviews shown in Table 1, Federal officials, and from a wealth of documents provided by all of the above.

The format shown in Table 2 was used for the report of each of the nine states reviewed in Volume II to facilitate the comparison and critique of their respective oil and gas leasing programs.

TABLE I

Coastal States Included in Review of Leasing Procedures

Alabama	Louisiana
Alaska	Mississippi
California	North Carolina
Florida	South Carolina
	Texas

Three consultants contributed to the Florida report. Their contributions consisted of a review of state laws, the role of local governments in leasing, and the socioeconomic impact of offshore oil and gas activities. The complete reports of these consultants are included as Appendices A, B, and D, respectively, in this report (Volume I).

The draft of each state report reflecting its program was sent to selected state officials for review and comment. The final reports of the eight other states reviewed and the draft of the Florida report, together with Appendices, were sent to the members of the DCA project advisory board (Appendix F) prior to general distribution. Following insertion of comments received, the final draft of this report was distributed widely to state agencies and private organizations.

TABLE 2

TOPICAL OUTLINE FOR STATE REPORTS

A. Statutory Authority
   1. Vested Authority
   2. Members of Governing Body

B. Philosophy of State Towards Leasing in State Waters

C. History of Leasing Program
   1. Establishment of offshore leasing program
   2. Frequency distribution of leases by year
   3. Average geographic size of lease and related bidding data
   4. Example of prior lease sale schedule
   5. Revenues accruing to state

D. Delegation of Management Responsibilities for State Leasing Program
   1. Name of managing agency or department
   2. Agency responsibilities
   3. Organization chart of state agencies

E. Geographic Description of State Territorial Waters
   1. General description of state offshore boundaries
   2. Mapping and charting procedures used to define lease areas

F. Local Jurisdictional Control Over State Waters
   1. The role of counties and municipalities
   2. The role of port authorities
   3. Proprietary interests of local governments in submerged lands
   4. Home rule rights and the authority for local governments to annex offshore lands
   5. Effects of local government regulations on offshore operations subsequent to issuance of leases
   6. Ability of local governments to tax oil and gas facilities, properties or production through taxes on leasehold interests, equipment or by levying a severance tax

G. Oil and Gas Revenues Accruing to State
   1. Minimum royalties allowed by law
   2. Royalties prescribed for oil and gas leases

G. Oil and Gas Revenues Accruing to State (cont.)
   3. Rental per acre
   4. Delay rental payment
   5. Shut-in royalties
   6. Offset wells
   7. Pooled acreage
   8. Bonus consideration
   9. Severance tax
   10. State agency receiving royalties
   11. Distribution of Revenue within State

H. Environmental Controls and Regulations
   1. Responsible agencies
   2. Relation to leasing agency
   3. Environmental review process prior to issuing lease/permit
   4. Environmental stipulations
   5. Baseline environmental research
   6. Role of Corps of Engineers

I. Leasing Procedures
   1. Leasing Schedule
   2. Call or nominations for lease
   3. Fees
   4. Publication of calls for nominations and advertisements for leasing
   5. Bidding
   6. Terms of lease
   7. Handling of proprietary information

J. Relation of Leasing Program to Issuance of Permits

K. Mineral Leasing

L. The Socioeconomic and Physical Impact of Oil & Gas Leasing in Florida's Waters (Florida Report Only)

TABLE 3

Historical Summary of State Leasing Programs*

	Leases			Wells		Production		Lease Sales Schedule
	First Offshore	Number Issued To Date	Average Size (Acres)	First Drilled	Number Drilled To Date	Initial Production Date	Current Status	(Frequency of Sales)
Florida	Early 1940's	19	? to 2.3 million	1945	29	Non-Producing	Non-Producing	N.E.[1]
Alabama	1950's	18[2]	4,150±[3]	1951-1952	<20	Non-Producing	None produced to date. First production will be 1987	N.E.
Alaska	1958	3,377	5,760	1898	No Data	1902	In Production	January, May & September each year
California	1929	59	2,668	1896	43,838[3]	1932	In Production	N.E.
Louisiana	1920	900 total 742 since 1960	1,000+	1901	18,506[4]	1928	In Production	Monthly
Mississippi	1982	2	2,880	None	0	Non-Producing	Non-Producing	N.E.
North Carolina	1944	5	5	1946	4 drilled offshore	Non-Producing	Non-Producing	N.E.
South Carolina	None	0	2,500[6]	None	0	Non-Producing	Non-Producing	N.E
Texas	1922	42[2]	640/1,440	1938	816[7]	1940	In Production	April and October each year

1. None established. 2. Currently leased. 3. Based on 1982 figures. 4. As of 1980. 5. Average @ 1976 sale several thousand acres. 6. Maximum acreage allowable. 7. Wells in currently leased fields.
* Data provided and reviewed by respective state officials.

TABLE 4
STATUTORY AND VESTED AUTHORITY FOR STATE
OIL AND GAS LEASING PROGRAMS

STATE	STATUTE NUMBER	GOVERNING BODY		
		NAME	APPOINTED (A) ELECTED (E)	NUMBER OF MEMBERS
FLORIDA	Chapter 253, 253.03 (1) 1982 Supplement	Board of Trustees of the Internal Improvement Trust Fund	E	7
ALABAMA	Alabama Code §9-17-60 to §9-17-62	None - Leasing Authority held by Commissioner of Conservation and Natural Resources	A	-
ALASKA	Alaska Statute 38.05	None - Leasing Authority held by Commissioner of Natural Resources	A	-
CALIFORNIA	Public Resources Code, Div. 6, Part 1, Chpt. 4, Article 1, 6301	State Lands Commission	A,E[1]	3
LOUISIANA	Louisiana Code, Title 30, Section 124	State Mineral Board	A	9[2]
MISSISSIPPI	Mississippi Code Ann. §§29-7-1 et seq. (1972 and supp. 1982)	Commission on Natural Resources	A	7
NORTH CAROLINA	General Statutes §146-8	Depart. of Admin., Dept. Nat. Res. & Community Devel., the Governor and Council of State	E	10
SOUTH CAROLINA	South Carolina Code §48-43-390	State Budget and Control Board	E[4]	5
TEXAS	Texas Code Chptr. 52, subchptr. A, §52.04	School Land Board	A,E[3]	3

1 The Commission consists of the State Controller and the Lieutenant Governor (elected) and the State Director of Finance (appointed).

2 Additionally, the Governor and the Secretary of the Department of Natural Resources serve as ex-officio members.

3 The Board consists of the elected Commissioner of the General Land Office and 2 appointed citizens, one by the Governor and one by the Commissioner.

4 The Board consists of 5 ex-officio members: Governor, Treasurer, Comptroller General, Chairman of Senate Finance Committee, Chairman of House Ways and Means Committee.

* Data provided and reviewed by respective state officials.

TABLE 5
GEOGRAPHICAL DESCRIPTION OF STATE TERRITORIAL WATERS *

	COASTLINE[1] LENGTH (MILES)		NUMBER OF FRONTING COUNTIES	BOUNDARY DISPUTES	SEAWARD TERRITORIAL BOUNDARY	DEFINED LEASE AREAS	COASTAL DESCRIPTION					
	LINEAR	TIDAL					BARRIER ISLAND	REEFS	ESTU-ARIES	MARSH	BEACH	ROCKY SHORE
FLORIDA	1,350	8,426	33	None although OCS-state boundaries have not been legally identified in Atlantic	3 nautical miles in Atlantic 3 marine leagues (10.35 statute miles) in Gulf	No	X	X	X	X	X	
ALABAMA	52	607	2	Legal Boundary w/Mississippi not firmly established	3 nautical miles	Yes	X		X	X	X	
ALASKA	6,640	33,904	24	State and Federal Jurisdiction in Dispute	3 nautical miles	Yes	X		X		X	X
CALIFORNIA	840	3,427	18 inc. San Fran Bay	None	3 nautical miles	No	X		X	X	X	X
LOUISIANA	397	7,721	11	Mississippi Boundary In Dispute	3 nautical miles	Yes				X	X	
MISSISSIPPI	44	359	3	Alabama & Louisiana Boundaries in Dispute	3 nautical miles	Yes	X		X	X	X	
NORTH CAROLINA	301	3,375	8	None	3 nautical miles	Yes	X		X	X	X	
SOUTH CAROLINA	187	2,876	8	Georgia Boundary In Dispute	3 nautical miles	No	X		X	X	X	
TEXAS	367	3,359	12	State & Federal Jurisdiction in Dispute	3 marine leagues (10.35 nautical miles)	Yes	X		X	X	X	

* Data provided and reviewed by respective state officials.

[1]from: Information Please Almanac, 1983
A & W Publishers, Inc., N.Y.

TABLE 6*

Delegation of Management Responsibilities for State Leasing Programs

		Lease Recommendation			Lease Sale Management	Lease Administration				Permit Authority			Environmental Regulation					
	Managing Agency or Department	Assess Public Interest	Tract Evaluations	Tract Selection		Maintain Records	Inspections	Interact With Other State Agencies	Monitor Production Activities	Oil and Gas Exploration	Drilling	Production	Impact Reports	Recommendations	Lease Conformity	Spill Management	Monitor Air and Water Quality (Environmental Permits)	Royalty Accounting
Florida	Department of Natural Resources	X	X	X	X	X	X	X	X		X			X	X	X		X
	Dept. of Environmental Regulation						X				X					X	X	
Alabama	Department of Conservation and Natural Resources	X	X	X	X	X		X	X					1		1	1	X
	State Oil and Gas Board					X	X	X		X	X	X						
	Department of Environmental Management							X			X			X	X		X	
Alaska	Department of Natural Resources	X	X	X	X	X	X	X	X	X			X	X				X
California	State Lands Commission	X	X	X	X	X		X	X	X	X	X	X	X		X	8,9	X
	Department of Conservation						X	X	X		X			X	X	X		
	Coastal Commission							X						X				
Louisiana	State Mineral Board		X	X	X	X	X	X	X	X	2		3		X		3	X
Mississippi	Department of Natural Resources	X	X	X	X	X		X	X	X					X			
	Department of Wildlife Conservation					X	X	X	X				X	X	X			
	State Oil and Gas Board							X			X	X			X		4	
North Carolina	Department of Natural Resources and Community Development	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	
	Department of Administration																	
South Carolina	Water Resources Commission	X	X	X	X	X	X	X	X	X	X	X	X	X	X		7	
Texas	General Land Office	X	X	X	X	X	X	X	X	X	5	5		X	X		6	X

1. Department of Environmental Management 2. Office of Conservation. 3. Department of Natural Resources
4. Bureau of Pollution Control 5. Director State Railroad Commission 6. Corps of Engineers
7. Department of Health and Environmental Control 8. Air Quality - Local Air Pollution Control District
9. Water Quality - Regional Water Quality Control Board
*Data provided and reviewed by respective state officials.

TABLE 7 *
STATE LEASING PROCEDURES

	RESPONSIBLE AGENCY	LEASE INITIATOR	LEASE SCHEDULE		ADVERTISEMENT			BIDS
			BETWEEN SALES	BETWEEN SALE AND AWARD	NOTICE PRIOR TO SALE	MEDIA	FEES	AWARD BASIS
FLORIDA	Department of Natural Resources	Potential lessee	N.E.[1]	2	5 weeks	Leon County newspapers and newspaper in county of lease	$200 non-refundable processing fee	On high bonus
ALABAMA	Department of Conservation and Natural Resources	Private person, Commissioner, head of leasing agency, or Governor.	1 Yr.[3]	5 days	2 months	The Montgomery Advertiser, and newspaper in county of lease	Parties requesting lease advertisement must pay for same	Most advantageous to state
ALASKA	Department of Natural Resources	Department of Natural Resources	4 months	Varies with timing of bonus and rental payments	2 months	Statewide newspaper; public service announcements on electronic media; posting in area; & other available methods	Bid deposit of 20% of cash bonus	May vary with bidding method used
CALIFORNIA	State Lands Commission	State Lands Commission or industry	N.E.	N.E.	2 months	Statewide newspaper and newspaper of county of production	Various[4] fees required	May vary with bidding method used
LOUISIANA	Department of Natural Resources	Qualified individuals (including representatives of foreign countries)	1 month		60 days	Official journal of the state and parish where lands are located	$300 deposit[5] with lease application	Most advantageous to state
MISSISSIPPI	Department of Natural Resources	Private person, firm, or state commission	One sale held to date (7/8/82)[1]	1	60 days	Southeastern Oil Review, a newspaper in county of lease, and a Jackson newspaper	Prepaid fee per tract; bids to cover publication expenses	Most advantageous to state
NORTH CAROLINA[6]	Department of Natural Resources and Community Development	Private person, firm, or corporation	N.E.	N.E.	-	-	N.E.	-
SOUTH CAROLINA	Water Resources Commission	Private person, industry, or Commissioner	N.E.	20 days	At least 25 days prior to bid submission	Statewide newspaper and newspaper of county of production	N.E.	On high bonus
TEXAS	State General Land Office	Industry or private person nominates tracts	6 months	Generally on sale date	At least 30 days	State distributes printed lists of tracts - 25-30 state newspapers advertise sale	$100 nomination fee	High bonus/ High royalty

1 No schedule established
2 15 weeks between nomination request and award
3 May vary greatly - current figure given
4 $25 filing fee plus processing fee, guarantee deposit, insurance, a native declaration fee, environmental impact report and consultation fee
5 Refundable with lease bid
6 All leasing procedures currently under revision
* Data provided and reviewed by respective state officials.

TABLE 8 *

SUMMARY OF STATE LEASE TERMS

	Title Guarantee	Length Initial	Length Extensions	Transfer	Work Cessation Stop Production	Handling of Proprietary Information
Florida	No guarantee of clear title	5 years[1]	Lease in force as long as operations are carried out or production continues	Written consent of lessor	60 days to resume production or make rental payments	Excise tax, production processes, and geophysical data held confidential, drilling data held for 90 days on operator requests All else public record.
Alabama	No guarantee of clear title	Established in invitation to bid, usual is 5 years	1 year with rental payments	Written approval of Commissioner of conservation and natural resources needed	90 days to drill or produce oil & gas	Well data kept confidential for 6 years upon written request of operator
Alaska	No guarantee of clear title	5-10 years	Lease in force[2] as long as drilling, producing, reworking within 60 days	Permission of Commissioner needed	6 months to produce, drill, or rework	Confidentiality upon request, no time limit
California	Lessee has exclusive rights to drill, prospect or produce hydrocarbons. Others can conduct geological/geophysical surveys.	20 years	None allowed	Permission of Commission needed	6 months to conduct operations to restore production	Permittee and lessee written consent needed to inspect production. Data kept confidential by state.
Louisiana	No guarantee of clear title	5 years		State approval needed	90 days to produce, drill or make rental payments	Required data and information supplied by lessee held in confidence
Mississippi	No guarantee of clear title	5 years in Gulf, 3 years elsewhere	Lease in force as long as production, drilling or reworking continues	Prior written notice to state needed	90 days to resume work or make rental payment	Mineral exploration data kept confidential for 10 years. Disclosure is a misdeameanor.
North Carolina	Lessee holds exclusive rights for $1, title to minerals remains with state until excavation	2 year[3]	2 year[4,5] (10 year limit)	Permission Dept Administration, Dept. of Nat. Resources and Community Development needed	N.E.[6]	Geo-physical and well log log records kept confidential for 1 - 2 years.
South Carolina	No leasing to date, no provision in statutes	5 year	Yr. to yr. with drilling or production	Not addressed in state code	N.E.	Required well logs, samples, surveys, and reports confidential for 1 year
Texas	No guarantee of clear title	5 years in Gulf, 3 years elsewhere	1 yr period for 5 yr. if shut-in royalty paid	Lessee may sell, relinquish or give a lien to qualified person	60 days[7] if lessee reworks or commences drilling	Reserve estimates, sale, processing data held in confidence until lessee releases

1. Board of Trustees may authorize to 10 years. 2. Upon extension, lease rental may increase up to 150% of previous rental. 3. 1976 lease. 4. If test wells are drilled where footage not less than 20,000 feet within 2 years. 5. 90 day grace period if less than 20,000 feet drilled in any 2 years, but work is underway at end of period. 6. Procedures not established. 7. With a dryhole, a delay rental payment within 60 days [illegible] necessary to keep lease. * *Data provided and reviewed by respective s[illegible] officials.*

TABLE 9

State Environmental Responsibilities and Policies*

	A Responsible Agency	B Leasing Agency	Relationship Between Agencies	Baseline Environmental Programs	Role of Corps of Engineers	Policy	Concerns
Florida	Dept. of Environmental Regulation	Dept. of Natural Resources	Formal agreement joint application process	N.S.P.[1] Independent research, regional, and site specific data collecting for permitting	Environmental permitting phase	Wide range of attitudes toward development	Adverse effects on tourism, environment, and community development
Alabama	Department of Environmental Management	Dept.of Conservation & Natural Resources	Formal "Memorandum of Agreement" but no clear understanding	N.S.P. State geological survey conducts in-house studies; most stipulations based on available data	No direct role in leasing process; does influence the permitting process	Strong support for exploration and development of oil and gas resources (especially with 1979 discovery of gas in Mobile Bay)	Although few state environmental restrictions, there is is a qualified zero discharge policy
Alaska	Dept. of Environmental Conservation	Dept. of Natural Resources	DEC is lead entity for dept. review of other state agency programs as they impact environmental quality	Dept. of Fish and Game conducts baseline and applied research re: oil and gas activities	Primarily concerned with dredge and fill permits	Wide range of attitudes toward development	Arctic area production effects on whale migration route and Eskimo-whale interaction
California	Shared[2]	State Lands Commission (SLC)	Memorandum's of Understanding	SLC and State Water Resources Board carry out baseline studies prior to development of an area	Primarily concerned with structures, dredge and fill permits	Very cautious development policy	Strong environmental, especially with state history of oil spills
Louisiana	Office of Conservation	Dept. of Natural Resources	No direct relationship	N.S.P.	Issues permits with respect to 404 clean water program	Strong economic and social support of continued oil and gas development	No environmental review prior to leasing, no shoreline buffer zone (drilling can occur anywhere
Mississippi	Dept. of Wildlife Conservation	Dept. of Natural Resources	Formal "Memorandum of Agreement" which facilitates cooperation	D.W.C. supports research for data base, integrates other data and develops guidelines	Issues dredge permits with respect to 404 clean water program	Preservationist policy tempered by need to develop resources	Buffer zones around environmentally sensitive areas
North Carolina	Dept. of Natural Resources & Community Development	Council of State	D.N.R.C.D. provides recommendations on oil & gas leasing	Coastal energy impact programs to chart estuarine resources	Issues permits with respect to 404 clean water program	No official policy on oil & gas leasing in state waters, statutes allow leasing if in best state interest	No general environmental stipulations addressing offshore oil and gas leasing (no current leases or drilling in state waters)
South Carolina	Water Resources Commission	State Budget & Control	Exclusive agent	Conducted through State wildlife and outside agency grants. No overall plans of funding offshore environmental research	Not Clear	Current attitude is neutral, no current plans for offshore drilling	Drilling platforms must be greater than 1 mile from beach
Texas	Parks and Wildlife Service	General Land Office	Informal cooperation through Governor's Office	N.S.P. Environmental leasing codes derived from previous experience, prior research programs, and scientific literature	Not directly involved in leasing process, serves as environmental permitting & enforcement arm of state	Strong support for continued oil and gas development with concern for environmental protection	Has developed series of environmental recommendation codes for lease tracts

1. No specific program for oil and gas leasing 2. Dept. of Resources, Dept. of Fish and Game, Minerals Management Service, National Marir Fisheries Service 3. Department of Health and Environmental Control *Data provided and reviewed by respective state officials.

TABLE 10

State Revenues From Offshore Oil and Gas Operations

	Royalties			Rentals		Bonus (Cash) Consideration	Severance Tax	
	Minimum	Typical	Shut-in	Rate (per acre)	Delay (per acre)		Gas	Oil
Florida	1/8	1/8-1/4 Getty 1968 lease 1/8	twice annual rental rate ($1,200) minimum	$3.50 per acre first 2 yrs increase @ .50/yr. after 2nd year	N.E.[1]	determined by competitive bidding	5%[2]	8%[2,3]
Alabama[4]	set at each lease sale	1/6-1/4	twice annual rental rate	$5	twice annual rental rate	Determined for ea. lease sale $100/ $200/acre min. 1982 avg. bonus = $2406 per acre	8%[5]	8%[5]
Alaska[4]	12.5%[7]	20%	N.E.	1st yr-$1 2nd yr-$1.50 3rd yr-$2 4th yr-$2.50 5th yr-$3 fixed	rate in effect during year of abandonment is maintained	determined for each lease sale	greater of 10% gross value or $.064 per 1000 ft^3	12.25%[8]
California	16 2/3%	20%	Average of 3-year production	usually $1.00/acre/yr	Rarely used	determined by competitive bidding	None	None
Louisiana	1/8	25-30%	$25/acre/6mo. ($500 minimum)	none if in production	1/2 bonus	determined by competitive bidding	7¢ MCF	12.5%[9]
Mississippi	3/16	20%	twice delay rental	N.E.	$5 ($2 minimum)	specified each sale	6%	6%
North Carolina	N.E.	1/6	$1/acre/yr(1st3yr) $2 " (4th,5th) $3 " (after)	N.E.	N.E.	N.E.	$.0006/ 1000$ft^3$	$.005/ barrel
South Carolina	1/6	N.E	N.E	N.E	N.E	N.E.	N.E.	N.E.
Texas	1/8	1/4	twice annual rental rate ($1200 min)	None if productive	individually determined $10.00/G.O.M. $ 5.00/other land	fixed separately with each tract[10]	7.5%	greater of 4.6% or 4.6¢/barrel

1. None established 2. Tax @ wellhead. Due to high sulphur content, severance tax is determined by subtracting interim processing costs between wellhead and final sale from final sale value. 3. Tax @ wellhead. For small wells (less than 100 barrels per day) tax for oil is 5% @ the wellhead. 4. 1981 amounts 5. Except @ wells producing 25 barrels or less of oil or 200,000 ft^3 (see *3) or less of gas per day (levied at 4%) or offshore production @ depths greater than 18,000 ft below mean sea level (levied @ 6%) 6. Leasing method may vary with each sale. 7. In special circumstances, be reduced to 5%. 8. Escalates to 15% after 5 yrs. 9. Lower for less capable wells. (6.25 and 3.125%) 10. Does not include a $100 nomination fee.
*Data provided and reviewed by respective state officials.

TABLE 11
DISTRIBUTION OF STATE OIL AND GAS REVENUES

	AGENCY COLLECTING REVENUES	ROYALTIES, RENTALS, AND BONUSES (100%)					SEVERANCE TAX (100%)	
		STATE LEVEL		LOCAL LEVEL		TOWARD ADMINISTRATION		
		AGENCY	%	AGENCY	%		AGENCY	%
FLORIDA	Department of Natural Resources	Internal Improvement Trust Fund	100%	None	0%	Granted from Internal Improvement Trust Fund	Department of Revenue	100%
							Oil and Gas Tax Trust Fund	To State/County of Production
ALABAMA	State Land Division, Department of Conservation and Natural Resources	State General Fund	90%	None		4	Dept. of Revenue	100%
		DCNR	10%				General Fund	
ALASKA	Department of Natural Resources	Various State Funds	100%	None	0%	None	None	
CALIFORNIA	State Lands Commission	State Treasury	100%	None[5]	0%	None	None	
LOUISIANA	Office of Mineral Resources, Department of Natural Resources	Bond Security Redemption Fund	90%[2]	County of Prod.	10%[2]	$15,000 to cover advertising costs	N.S.	
			100%[3]	None	0%[3]			
		Enhanced Mineral Income Trust	Balance	None	0%			
MISSISSIPPI	Mineral Lease Division, Department of Natural Resources	Min.Lease	0.5%	None	0%	.5% of Royalties, Rentals and bonuses to Mineral Lease Division	N.S.	
		Gulf and Wildlife Protection Fund	2%					
		State General Fund	97.5%					
NORTH CAROLINA	Department of Natural Resources	State Treasury	100%	None	0%	Granted Funds from Royalties, Rentals and bonuses	N.S.	
SOUTH CAROLINA	Water Resources Commission	State Treasury Special	100%	None	0%	Granted from Exploration Permit Monies	N.S.	
TEXAS	General Land Office	Permanent Public School Fund	100%	None	0%	.5% of Severance Taxes	Available School Fund	25%
							General Fund	75%

[1] N.S.: Not separate from royalties, rentals and bonuses.

[2] Directly from royalty funds to a maximum of $12.5 million.

[3] Directly from leases and bonuses to a maximum of $2.5 million.

[4] Dependent on legislative appropriation.

[5] State Controller apportions 1% to local city or county.

* Data provided and reviewed by respective state officials.

* ALASKA

ROYALTIES, RENTAL AND BONUSES DISTRIBUTION

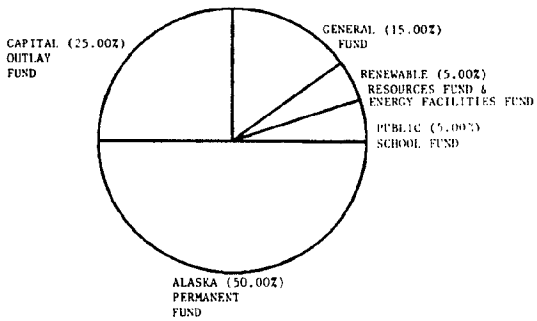


TABLE 12

Authority of Local Governments to Annex State Territorial Waters*

	County	Municipality
Florida	Jurisdiction includes state waters; no statutory annexation authority	Only by legislative enactment consistent with "Municipal Annexation or Contraction Act." No case history exists.
Alabama	Jurisdiction includes state waters - although not defined by statute	Not addressed in constitution
Alaska	Jurisdiction includes state waters within burrough boundaries	Controlled by state appointed "Local Boundary Commission" established by statute
California	Jurisdiction includes state waters - defined by statute	Established statutes permit cities to annex state waters with approval of State Lands Commission
Louisiana	Jurisdiction of parishes includes state waters	Statutes do not address - can be done by petition and election or by petition and ordinance
Mississippi	Constitution still claims that state and county jurisdiction extends 6 leagues gulfward	Not addressed in constitution - contained in city charters - No case history
Texas	Jurisdiction includes state waters	General law, cities can extend 1 mile, home rule cities 3.5 miles gulfward

* Data provided and reviewed by respective state officials.

STATE LEASING PROGRAMS

Alabama

STATE OF ALABAMA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	AL- 1
B. Philosophy of State Towards Leasing in State Waters	AL- 2
C. History of Leasing Program	AL- 3
D. Delegation of Management Responsibilities for State Leasing Program	AL- 6
E. Geographic Description of State Territorial Waters	AL- 8
F. Local Jurisdictional Control Over State Waters	AL-10
G. Oil and Gas Revenues Accruing to State	AL-13
H. Environmental Controls and Regulations	AL-18
I. Leasing Procedures	AL-22
J. Relation of Leasing Program to Issuance of Permits	AL-28
K. Mineral Leasing	AL-30
References	AL-31

LIST OF TABLES AND FIGURES

Description		Page
Table 1	Currently Leased Tracts in Alabama State Coastal Waters. . .	AL- 5
Table 2	Tentative Timetable for Alabama 1984 Lease Sale.	AL-23
Figure 1	Alabama State Agencies Involved With Oil and Gas Leasing Programs . .	AL- 9
Figure 2	Oil and Gas Leases and Wells in Alabama State Waters and Adjacent Federal OCS Waters . .	AL-11

A. Statutory Authority

1. Vested authority

The authorization for leasing lands in the State of Alabama rests with the Commissioner of Conservation and Natural Resources with the approval of the Governor. The basis for such authority is §9-17-60, 9-17-61, and 9-17-62 of the 1975 Alabama State Code. These sections read as follows:

"Section 9-17-60. Authorization for leasing of certain state lands for exploration, development and production - Lands of department of conservation and natural resources. The commissioner of conservation and natural resources, on behalf of the state, is hereby authorized to lease any lands or interest therein under the jurisdiction of the department of conservation and natural resources for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands.

Section 9-17-61. Same - Lands of other state departments, institutions or agencies. The commissioner of conservation and natural resources, on behalf of the state, is hereby authorized, upon the written request of the head of any state department, institution or agency, to lease any land or interest therein owned by such department, institution or agency or in which such department, institution or agency has the beneficial interest for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands.

Section 9-17-62. Same - Lands under navigable streams, waters, etc. The commissioner of conservation and natural resources, on behalf of the state, is hereby authorized to lease, upon such terms as he may approve, any lands or any right or any interest therein under any navigable streams or navigable waters, bays, estuaries, lagoons, bayous or lakes and the shores along any navigable waters to high tide mark and submerged lands in the Gulf

of Mexico within the historic seaward boundary of this state, which is hereby declared to extend seaward six leagues from the land bordering the gulf, for the exploration, development and production of oil, gas and other minerals or any one or more of them, on, in and under such lands, and such lands or interests therein for such purposes shall be supervised and managed by the department of conservation and natural resources."

2. Members of governing body

As the authority of leasing is vested entirely with the Commissioner of Conservation and Natural Resources who is appointed by the Governor, there is no governing body as is the case in other states such as Florida and Mississippi.

B. Philosophy of State Towards Leasing in State Waters

The current administration in the State of Alabama strongly supports the exploration and development of oil and gas resources in territorial waters. There clearly is concern, however, for environmental protection, as evidenced by the consolidation of several state agencies into the Department of Environmental Management (DEM) in 1982 (Alabama Code §22-22A-4, Michie Supp. 1982). Although the DEM has not issued any new regulations affecting Alabama's leasing program, agencies "such as DEM have a proper and important role in seeing that offshore oil and gas exploration and exploitation do not negatively impact the quality of a state's coastal areas and adjacent waters. Alabama's approach in this regard seems carefully considered" (Olmstead 1982). The focus of explorations in the next decade probably will be in Alabama coastal waters and in the federal offshore area. Interest there was

stimulated by Mobil Oil Corporation's 1979 discovery of gas in the mouth of Mobile Bay. In response to interest by oil companies and the need to provide adequate energy supplies, the State recently offered a substantial amount of offshore area for lease, as described in Section C of this report, and the federal government plans to do the same in the outer continental shelf in the near future (Friend et al 1982). It is clear that Alabama is definitely predisposed towards developing their offshore oil and gas resources.

C. History of Leasing Program

1. Establishment of offshore leasing program

The first exploration for oil in Alabama occurred in 1865 when test wells were drilled in Lawrence County. Although the Legislature enacted Alabama's first oil and gas statute as early as 1911, it was not until 1944 that commercial oil production was established near Gilbertown in Choctaw County. Since that time, many fields have been established as evidenced by the existence of 1290 producing oil and gas wells in the state in 1983 (State Oil and Gas Board of Alabama 1984). Although offshore lease sales were held in the 1950's and 1960's, what turned out to be a major sale was held in October 1969. At this time, four leases were granted to Mobil Oil totalling 19,695 acres. Following the issuance of leases on Tracts 76, 77, 94, and 95 in 1969, Mobil Oil Exploration and Producing Southeast, Inc. (MOEPSI) encountered a 10-year delay before obtaining approval to proceed with the drilling of the Tract 76 Well No. 1. No wells were drilled in Alabama state waters between the completion of Gulf's Tract 19 well on January 31, 1952, and the spudding of MOEPSI's first well on Tract 76 on November 17, 1978

(Mink 1984). Drilling began in November 1978 and gas was first discovered on Alabama Tract 76 in November 1979 in the mouth of Mobile Bay by MOEPSI. Offshore bids next were invited in March 1981 and September 1982 and as a result, leases were granted in both years. The State Oil and Gas Lease No. 579 covering tract 110 issued to MOEPSI and others, was the only lease awarded in 1982 in Alabama's state waters. In late 1982, bids were sought for Perdido Bay, but because of the economy and early exploration work which produced negative results, none were submitted (Olmstead 1983). At the present time 18 state-owned tracts in Alabama's coastal waters are under lease to oil and gas companies (Mink 1984). As of May 1984, it was anticipated that production of hydrocarbons would begin in state waters in 1987 (MacCrory 1984).

2. Frequency distribution of leases by year

The following leases have been granted in Alabama's territorial waters since 1969. No lease sales were held in 1983.

1969 - 4 leases
1981 - 13 leases
1982 - 1 lease

3. Average geographic size of lease and related bidding data

The average size lease for the October 1969 sale was 4,923 acres. In 1981 the average size of the 13 leases granted was 4,235 acres. The one lease granted in 1982 was 1,295 acres. Table 1 shows the related bidding data for the 1969 and 1981 lease sales respectively.

4. Example of prior lease sale schedule

Sales are not held on a scheduled basis.

Table 1 -Currently leased tracts in Alabama state coastal waters

[Source: Alabama Department of Conservation and Natural Resources, Montgomery, Alabama.]

State tract no.[1]	State lease no.	Acreage	Lessee	Sale date	Total bonus ($)	Bonus ($) per acre	Royalty (%)	Annual rental ($) per acre
52	533	5,164	Exxon	March 1981	9,112,000.00	1,764.52	25	5
62	534	5,164	Exxon	March 1981	10,522,000.00	2,037.57	27	5
63	535	5,164	Exxon	March 1981	15,226,000.00	2,948.49	27	5
71	527	4,196	MOEPSI	March 1981	40,425,000.00	9,634.18	25	5
72	528	5,164	MOEPSI	March 1981	31,535,000.00	6,106.70	25	5
76	347	5,053	MOEPSI	October 1969	21,475.25	4.25	16.67	1
77	348	5,165	MOEPSI	October 1969	26,083.25	5.05	16.67	1
89	529	4,811	Phillips, Hunt and Sohio	March 1981	42,712,059.00	8,878.00	25	5
90	530	4,612	Union, Gulf, Pogo, Pennzoil, Natomas and Total Pet.	March 1981	21,879,000.00	4,743.93	25	5
94	349	5,155	MOEPSI	October 1969	11,598.75	2.25	16.67	1
95	350	4,322	MOEPSI	October 1969	19,665.10	4.55	16.67	1
110	579	1,295	MOEPSI Getty, Conoco	September 1982	3,117,000.00	2,406.95	25	5
111	536	1,687	Exxon	March 1981	53,168,000.00	31,516.30	28	5
112	537	4,932	Exxon	March 1981	137,254,000.00	27,829.28	28	5
113	531	5,123	Shell and Amoco	March 1981	34,370,000.00	6,708.96	25	5
115	538	3,416	Exxon	March 1981	12,308,000.00	3,603.04	27	5
116	539	3,254	Exxon	March 1981	18,232,000.00	5,602.95	27	5
132	532	2,367	Shell	March 1981	22,435,000.00	9,478.24	25	5

[1]All tracts have a primary lease term of 5 years.

Source: Mink 1984

5. Revenues accruing to state

The four leases awarded to MOEPSI in 1969 have not yet resulted in production which is now scheduled to begin in 1987.

As can be seen readily on Table 1, there was an enormous increase in state revenues from bonuses between 1969 and 1981; i.e., in 1969, the average bonus was $4.00 per acre whereas in 1981 it was $8,158 per acre. This resulted in gross bonus revenues alone to Alabama of over 449 million dollars in 1981. Assuming that production is as anticipated, the state should receive substantial additional revenue in royalties as well as rental payments the latter of which should provide approximately an additional $275,270 per year.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

As is the case with Mississippi, the leasing and management of Alabama's offshore tracts is handled by three separate state agencies: The Department of Conservation and Natural Resources, the State Oil and Gas Board, and the Department of Environmental Management. These three agencies operate through the auspices of an interagency Memorandum of Agreement as does Mississippi.

2. Agency responsibilities

(a) The Department of Conservation and Natural Resources (DCNR) has responsibility for initiating the leasing process by issuing calls for nominations, advertising, preparation of the lease, processing, and granting

the lease to selected offerors. This is different than the handling of upland leases where the process is initiated by private industry.

(b) The Oil and Gas Board is responsible for conservation of Alabama's oil and gas resources, the prevention of waste, and the protection of the public's interest. It is composed of three members appointed by the Governor who serve for staggered six-year terms. The Chairman of the Board reports directly to the Governor.

The Board's powers and duties include jurisdiction and authority over all persons and property necessary to administer and enforce the provisions of Article 1 (Conservation and Regulation of Production) of Chapter 17, Title 9, of the Code of Alabama, 1975. Examples of these duties are: inquiries on any aspects of oil and gas development and production; inspection of records and field operations; to hold hearings; to promulgate operational rules and regulations (subject to public hearings); to issue all oil and gas drilling permits; to assign production allowables; and to maintain well records.

Although the Board has no direct role in the leasing process, it has considerable power over many aspects of Alabama's development of oil and gas resources. The state geologist is an ex officio state oil and gas supervisor and is responsible for enforcing the provisions of Article 1 referred to above, and all the regulations promulgated by the Board. The state geologist also serves as the ex officio secretary of the Board. He is appointed to the position of state geologist by the President of the University of Alabama with confirmation by the Governor.

(c) The Department of Environmental Management (DEM) was formed on October 1, 1982 with passage of the "Alabama Environmental Management Act". Created by consolidating several existing state agencies into one, DEM was established as a regulatory agency responsible for: maintaining air and

water quality; monitoring hazardous wastes; and overseeing coastal preservation, development, permitting, regulatory, and enforcement functions; Alabama Code §22-22A-4 (Michie Supp. 1982).

To date, DEM has not issued any new regulations relating to oil and gas development; instead, it administers those previously promulgated by other agencies and boards whose functions it assumed under the 1982 reorganization. As noted, before a drilling permit for a well to be located in the area of jurisdiction of DEM is issued by the State Oil and Gas Board in addition to permits relating to discharge and water quality. DEM must determine that the activity will be consistent with the state's coastal area management program, Alabama Code §9-7-20 (Michie Supp. 1982) (Olmstead 1983).

3. Organization chart of state agencies

The principal Alabama state agencies involved with the leasing of oil and gas rights, the conservation of oil and gas resources, and the protection of the environment are shown in Figure 1.

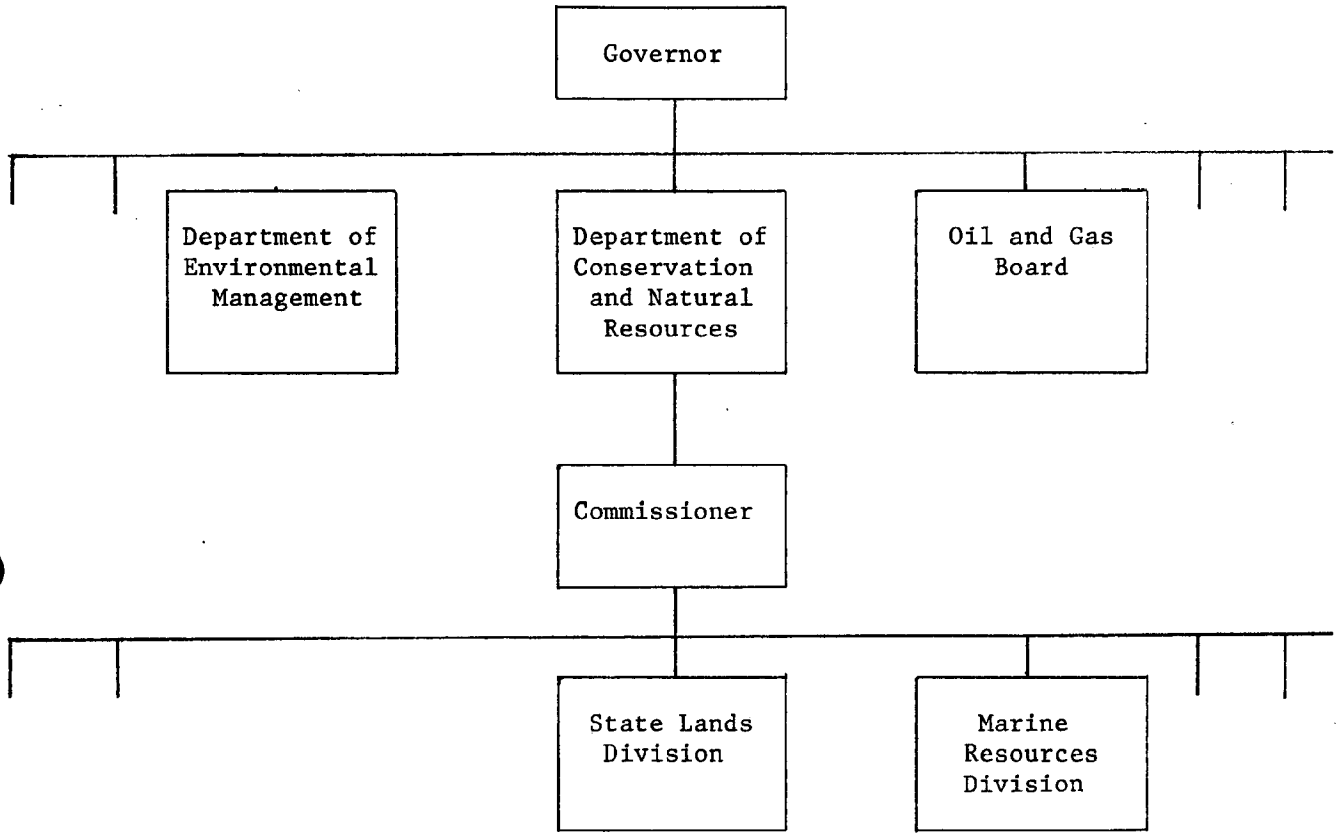
E. Geographic Description of State Territorial Waters

1. General description of State offshore boundaries

Coastal Alabama is composed of Mobile and Baldwin counties and associated state waters. The area essentially is a flat undulating plain extending along the coast adjacent to Mississippi Sound on the west and along the margins of Mobile, Bon Secour, and Perdido Bays on the east. While the offshore territorial boundary between Alabama and Florida has been settled, the comparable legal boundary between Mississippi and Alabama has not been

Figure 1

Alabama State Agencies Involved
With Oil and Gas Leasing Program



firmly established although currently there is no actual dispute. The mouth of Mobile Bay is still being defined legally. At the present time drilling cannot take place within one mile of the coastline in this area.

The Gulf shoreline extends linearly for about 52 miles. The official length of Alabama's tidal shoreline taking into account bays, estuaries, etc. is changing constantly and has not been established.

The seaward boundary of Alabama's territorial waters was declared originally by Alabama to extend six marine leagues (20.8 miles) into the Gulf

of Mexico (Article 2, Leases, Division 2 §§9-17-62, Alabama Code). This claim, however, was disputed by the U.S. Supreme Court interpreting the Submerged Lands Act (43 U.S.C. §§1301 et seq), which ruled that Alabama's territorial waters are limited to three miles; United States v. Louisiana, 363 U.S. 1 (1960) (Olmstead 1983). The three mile line basically is now accepted as the legal limit and the claim of the three marine league limit is a dead issue.

2. Mapping and charting procedures used to define lease areas

As shown in Figure 2, Alabama has a total of 133 tracts in its territorial waters (Macrory 1984). (Note: Seven tracts are not shown.) As described in Section C of this report, there are at the present time 18 tracts under lease. The maximum tract size authorized is 5,200 acres. Of the 81 tracts available for nomination announced on September 1, 1983, the average size was 3,945 acres (State of Alabama 1983).

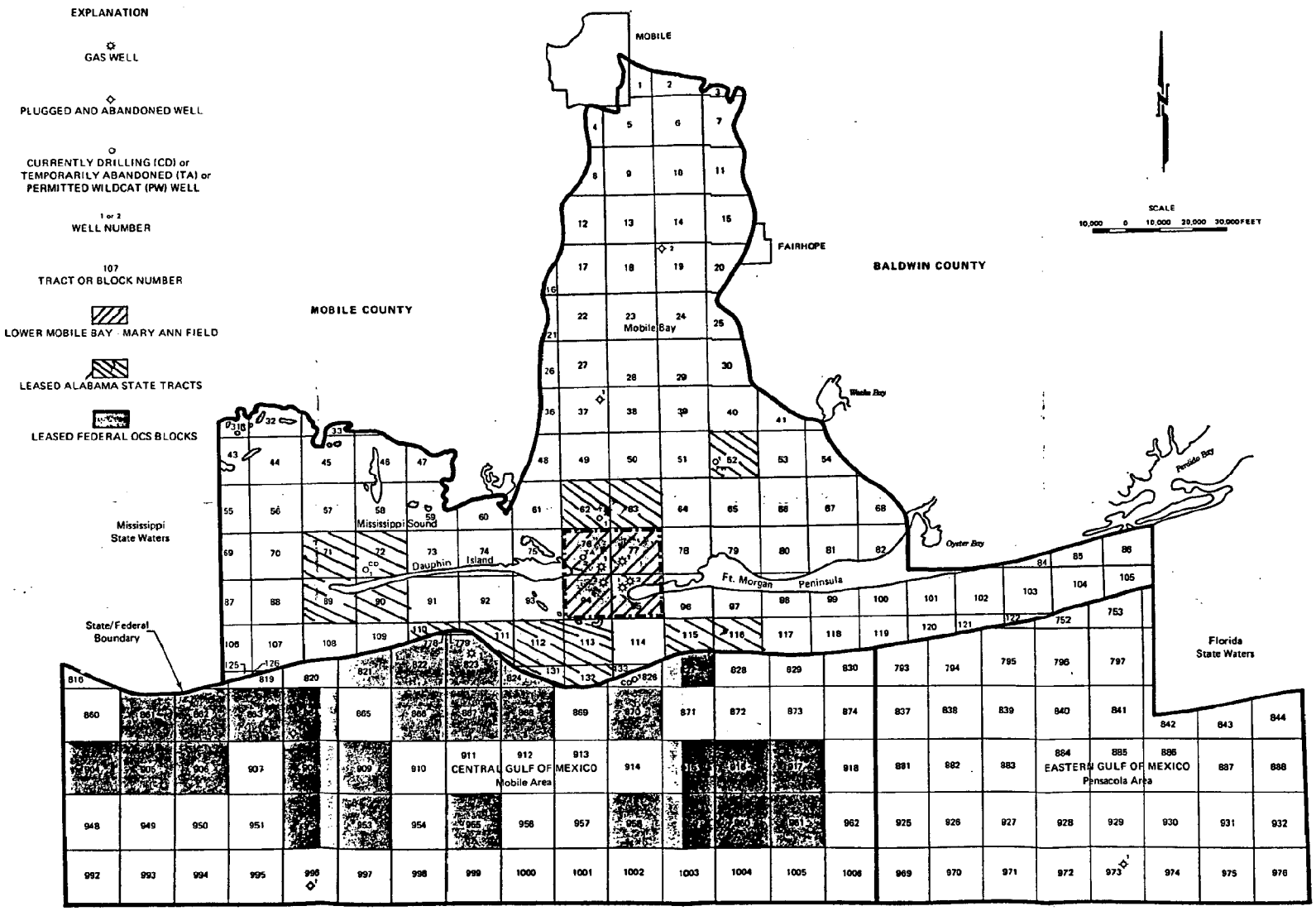
The offshore tracts were established on a 15,000 foot rectangular grid base as related to the Alabama Coordinate System. The base used was a 15 minute series of the United States Geological Survey Maps for the Gulf Coast area. In order to plot grid lines south of the coast line, existing lines shown were extended to form a grid system.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

Local governments in Alabama have no role in the leasing process other than providing comments (Macrory 1984). Both Baldwin and Mobile counties, however, receive a percentage of the severance taxes collected for oil and

OIL AND GAS LEASES AND WELLS IN ALABAMA STATE WATERS AND ADJACENT FEDERAL OCS WATERS



Note: This illustration is not intended to show accurate locations of state or federal boundary lines nor the accurate locations of tracts, blocks, or wells.

Figure 2

gas production in state territorial waters (see Section G-11 of this report). There is nothing in the State leasing statutes indicating a requirement for local government participation either in an advisory or approval role with respect to the granting of oil and gas leases. Interestingly, in 1982 the state gave lands to the University of South Alabama for leasing purposes under an existing statute. In December, 1983, however, these lands were taken back by the legislature.

2. The role of port authorities

The role of port authorities is not addressed in state statutes.

3. Proprietary interests of local governments in submerged lands

Local governments do not have proprietary interests for tax purposes in offshore state-owned land (see Section G-9 of this report).

4. Home rule rights and the authority for local governments to annex offshore lands

There are no home rule annexation rights in Alabama.

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

See Sections G-9 and G-11 of this report.

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax

See Section G-9 and G-11 of this report.

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by Law

There is no specified generic royalty contained in the Alabama lease. The amount is set for each lease sale. The state can, at its option, require that all royalties be paid in kind. A special provision in the March 1981 lease sale is worthy of note. If the State Oil and Gas Board orders institution of enhanced recovery operations or methods in the leased area, the royalties specified in the lease are reduced five percent (5%) upon initiation of each stage of such operations by the lessee. This reduction in royalties is not granted until there has been two years of production and the lessee can confirm that the revenue produced is insufficient to achieve a reasonable rate of return with respect to the lessee's investment in the leased area. The maximum number of such reductions is two.

2. Royalties prescribed for oil and gas leases

   1981 royalties = 25%

3. Rental per acre

   1981 = $5.00 per acre

4. Delay rental payment

   Two times the annual rental.

5. Shut-in royalties

   Twice the amount of the annual rental

6. Offset wells

If gas is sold or used from offset wells drawing from the leased area, the right to extend the lease by the shut-in gas well royalty payments expires at the end of the 12-month period for which payment was made. To continue the lease, the lessee must pay royalties at the rate provided for in the lease. If this amount is less than the shut-in royalties, the lessee must pay the difference.

7. Pooled acreage

In the case of pooled or unitized acreage, in lieu of the royalties specified in the lease, the lessor receives on production from each such unit the proportion of the royalties stipulated in the lease based on the amount of the lessor's ownership of the pooled acreage.

8. Bonus consideration

1981 average = $8158.86 per acre

According to Macrory (1984) the DCNR will recommend a minimum bonus of $500.00 per acre in the future.

9. Severance tax

Effective January 1, 1984 a new law (Act No. 83-889) significantly changed the severance tax for oil and gas production. The key provisions of the law are:

Annual privilege (severance) taxes will be levied as follows: Eight percent (8%) of gross value at the point of production except that wells producing 25 barrels or less of oil or 200,000 cubic feet or less of gas per day will be levied at four percent (4%), and offshore production obtained

from depths greater than 18,000 feet below mean sea level will be levied at six percent (6%). These privilege taxes also apply to royalty interest. In addition to the privilege tax there is a 2% production tax.

In all cases of production of oil from unit operations, the aggregate production of oil from the entire unit will be divided by the number of wells within the unit, including injection, disposal, and other wells utilized in unit operations, and the quotient will be the number of barrels of oil produced from each well in the unit regardless of the actual amount of oil per day produced from the well, if any (Masingill 1980).

The new law (Act No. 83-889) prohibits counties, cities, towns, and municipalities from levying taxes, fees, licenses, or any charges whatsoever either directly or indirectly on or with respect to "the production, treating, processing, ownership, sale, storage, purchase, marketing or transportation on any oil or gas produced in the state of Alabama and on which severance taxes have been paid to the state of Alabama, or upon the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas, or upon the ownership, operation or maintenance of plants, facilities, machinery, pipelines, gathering lines or any equipment whatsoever, which are, or may be, necessary or convenient to the production, treating, processing, ownership, storage, sale, purchase, marketing or transportation of such oil or gas", ----- "the limitation herein imposed upon counties, cities, towns and municipalities shall not apply to any county, city, town or municipality which does not receive a share of the severance tax levied upon production other than offshore production as defined in Section 40-20-1 under the provisions of this article." The Act goes on to say, "Nothing contained herein shall be deemed to limit or to enlarge the authority of a county,

city, town or municipality to levy taxes or licenses on oil refining facilities located therein or on the suppliers of services or goods not including oil or gas to those persons engaging in the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas. Provided, however, no such taxes or licenses shall be levied on offshore drilling or production facilities as defined in Section 40-20-1."

10. State agency receiving royalties

All royalties not taken in kind are paid to the State Lands Division, Department of Conservation and Natural Resources and distributed to appropriate agencies, Section 9-17-68, Alabama Code.

11. Distribution of revenue (severance taxes) within State

The rather complex procedures for distributing oil and gas revenues in the state also are contained in Act No. 83-889.

"Section 3. Section 40-20-8, Code of Alabama 1975, is hereby amended to read as follows:

Section 40-20-8.

(a) Ninety percent of the net amount of taxes herein levied on oil or gas from offshore production as herein defined shall be collected by the department and deposited to the state general fund. The remaining ten percent of such net amount shall be allocated and distributed by the Comptroller to the county in which the oil or gas was produced for county purposes or to be expended at the discretion of the county governing body.

(b) Twenty-five percent of the net amount of all taxes herein levied and collected by the department except as provided herein in subsection (a) shall be deposited by the department to the general fund of the state.

(c) Sixty-six and two-thirds percent of the remaining seventy-five percent of all taxes herein levied and collected by the department, after the same has been certified into the state treasury, shall be allocated and distributed by the comptroller to the credit of the general fund of the state and to the county in which the oil or gas was produced and to the municipalities therein in the proportion set out in the following schedule:

(1) Twenty-five percent of all taxes herein levied and collected on oil and gas produced from oil or gas wells located within any county, shall be allocated and distributed to each such county for county purposes or to be expended at the discretion of the county governing body. In all counties having a population of not less than 34,875 nor more than 36,000, according to the 1970 federal decennial census, such funds shall be allocated and distributed by the counties to the boards of education of the public schools in such counties on a pro rata basis as established by the number of children in net enrollment in the public schools during the prior school attendance year. In all counties having a population of not less than 16,000 nor more than 16,250, according to the 1970 federal decennial census, such funds shall be allocated and distributed by the counties as follows: Each year the first $150,000.00 shall be paid to the custodian of the county school funds, and after the payment of said $150,000.00 each year, the balance of said funds shall be divided and paid one-third to the custodian of the county school funds and two-thirds to the custodian of the county general funds.

(2) Ten percent of all taxes herein levied and collected on oil and gas produced from oil or gas wells located within the corporate limits or the police jurisdiction of any municipality shall be allocated and distributed to each such municipality.

(3) Fifty percent of the first $150,000.00 remaining, or any part thereof, collected per year under the provisions of this article, shall be allocated and distributed to the state, 42½ percent to the county and seven and one-half percent to municipalities therein on a population basis.

(4) Eighty-four percent of all remaining sums collected per year under the provisions of this article shall be allocated and distributed to the state, 14 percent to the county and two percent to municipalities therein on a population basis.

(d) Sixteen and two-thirds percent of the remaining seventy-five percent of all taxes herein levied and collected by the department shall be certified into the state treasury to the credit of the state general fund.

(e) Sixteen and two-thirds percent of the remaining seventy-five percent of all taxes herein levied and collected by the department on oil and gas produced from oil or gas wells located within any county shall be allocated and distributed to each such county for county purposes, to be expended at the discretion of the county governing body."

H. Environmental Controls and Regulations

1. Responsible agencies

The Department of Environmental Management (DEM) has the responsibility for dealing with air and water quality, solid and hazardous waste material, as well as protection of Alabama's coastal areas (Alabama Code §22-22A-4 Michie Supp. 1982). While not in an approval role for leases, the DEM issues water quality certification under Section 401 of the Clean Water Act for Corps of Engineers 404 permits and has the authority for implementing the National Pollutant and Discharge Elimination System (NPDES).

2. Relation to leasing agency

Although there is a Memorandum of Agreement between the Department of Conservation and Natural Resources and the DEM there does not appear to be a clear understanding between them on the matter of environmental stipulations.

3. Environmental review process prior to issuing lease/permit

If, during the permitting process, either DEM or DCNR objects to a permit application based on environmental considerations, the permit is not granted.

According to Cooner (1983), the State of Alabama currently enforces a "no discharge" policy in regard to oil and gas drilling operations in Alabama coastal waters. This position, really a continuation of a policy set in the mid 1970's by a blue ribbon commission appointed by then Governor Albert Brewer, was taken following an analysis of the characteristics of the Alabama coastal area, a review of past drilling operations, and a review of the rules of the Oil and Gas Board which "prohibit the discharge of oil in any form, drilling muds and cuttings, additives, and solid wastes into waters of the State".

Since the establishment of the zero discharge policy by DEM, there has been a relaxation of some restrictions so that the policy now is one of a "qualified zero discharge". As a consequence, there is a continuous informal review of environmental policy and changes are made as required.

4. Environmental stipulations

There appear to be relatively few environmental stipulations in the Alabama leasing program. Environmental stipulations are not published prior to the issuance of a lease and are not really identified until the permitting

stage. For example, there are no stipulations addressing drilling in or around bays, estuaries, or aquatic preserves. Similarly, there is no statewide regulation citing the minimum distance from shore that drilling or production operations can be carried out. Rather, the environmental restrictions involved in the leasing process are specifically identified in each lease sale. In the past, the Department of Environmental Management, which does not develop stipulations, has on occasion entered into environmental agreements with individual companies.

Stipulations contained in the lease form used for the 1981 lease sale are as follows:

- LESSEE shall use all means at its disposal to recapture all escaped hydrocarbon materials or other pollutants and shall be liable for all damages to aquatic or marine life, wildlife, birds, and any public or private property unless the discharge or other polluting condition was the result of an act of war, an act of government, an act of God, or an act or omission of a third party acting without the consent of the LESSEE. [This, in effect, is a qualified zero discharge policy.]
- The LESSEE must obtain all required governmental permits for any drilling or production activity on the leased area. No such required permits are waived by the granting of the lease by the lessor.
- All pipelines, unless buried, including gathering lines, must have a smooth surface design. In the event that an irregular pipe surface is unavoidable, those irregular surfaces must be protected to allow trawl gear, seines and gill nets to pass over without snagging or otherwise damaging the structure or the fishing gear.
- No drilling operations are permitted on the seabed of the lease area. The lessee however, has the right to construct or erect and maintain artificial islands and other devices permanently or temporarily attached to the seabed.

- For leases in tracts 32, 33, 34, 44, 45, 46, 47, 53, 58, 59, 60, 72, 73, 74, 88, and 89 no drilling operations are permitted on the seabed of the leased area within one-half mile of the shoreline of any land area, regardless of where such land is located.
- For leases in tracts 85, 86, 90, 91, 92, 93, 96, 97, 98, 99, 100, 101, 102, 103, 104, 112, 113, and 114, no drilling operations are permitted within one mile of the shoreline regardless of where such land area is located.

These same restrictions may or may not apply to future lease sales. (Note: See Figure 2 for location of tracts cited above.)

When the DCNR State Lands Division needs assistance on environmental issues, it utilizes the Marine Resources Division of DCNR (see Figure 1). Once the environmental permits are issued, the Marine Resources Division monitors offshore operations for compliance to the stipulations.

5. Baseline environmental research

As with many other coastal states, there does not appear to be a significant program of basic environmental research addressing problems related to oil and gas exploration. Although the Alabama Geological Survey carries out some in-house studies, neither the Department of Environmental Management nor the Oil and Gas Board allocates funds for research or the collection of environmental data. Rather, the stipulations are based on available data in the literature, project reports, and information obtained on trips of opportunity.

6. Role of Corps of Engineers

Although the Corps plays no direct role in the leasing process, it exerts a significant influence during the permitting procedures. This is discussed in more detail in Section J of this report.

I. Leasing Procedures

1. Leasing schedule

Alabama has not established a schedule of lease sales. As described in Section C of this report, there have been lease sales going back to the 1950's and 1960's, with major sales occurring in 1969, 1981, and 1982. The next sale is scheduled for August 14, 1984. The announcement for this sale was issued on September 1, 1983, thus providing almost a full years notice. This is consistent with the opinion of the Oil and Gas Board Supervisor who feels that a schedule should be established that provides an advance notice so that potential bidders have adequate time to assess the tracts to be offered and determine whether they choose to bid (Mancini 1983). It also is considered desirable to coordinate state lease sales with Federal sales on the Outer Continental Shelf (OCS). The Director of the Lands Division of DCNR (Macrory 1984) pointed out that the limited number of tracts in Alabama's waters is an inhibiting factor in scheduling regular lease sales. Ideally the state sales would precede the OCS sales by 2 - 3 months. The tentative schedule for the 1984 lease sale is shown in Table 2.

2. Call for nominations or lease

The general leasing process is initiated by individuals, the Commissioner of the Department of Conservation and Natural Resources (DCNR),

Table 2

Tentative Timetable for Alabama 1984 Lease Sale

September 1, 1983	Issue Call for Nominations
March 30, 1984	Deadline for Nominations
April 30, 1984	Preliminary Tract Selection
May 17, 1984	Public Hearing
May 31, 1984	Deadline for Comments
June 8, 1984	Final Tract Selection
June 15, 1984	Legal Notice of Lease Sale
August 14, 1984	Lease Sale Date
Within 5 Days	Award of Lease

Source: Alabama Department of Conservation and Natural Resources (1984)

or at the request of the head of any other state agency owning or having interest in the land to be leased, or at the request of the governor. Alabama ordinarily does not respond to requests for offshore lease sales by individuals. The state normally initiates all such sales. There are no formal regulations, but the format which DCNR must follow is set out in skeletal form by statute, Alabama Code §§9-17-62-69 (Michie 1980). More detailed information is supplied by DCNR notices entitled "Invitation for Bids for Oil and Gas Leases on Certain Submerged Lands..." which are issued anew for each sale.

3. Fees

Parties requesting the Commissioner to advertise state lands for oil and gas lease purposes are required to pay for the necessary legal advertisements for such sales (Section 9-17-66, Code of Alabama 1975). The bidders were required to tender one half of the required cash bonus with their bids in the 1981 sale. This latter requirement may vary with each sale.

4. Publication of calls for nominations and advertisements for leasing

Invitations for bids shall be published in The Montgomery Advertiser, Montgomery, Alabama, at least 25 days before the final date for submitting bids. Invitations for bids shall contain a statement as to the final date for submitting bids; the time and place at which the bids will be opened; and a legal description of the location and the approximate acreage of the tract of land proposed to be leased. Publication of the invitations for bids shall also be placed in a newspaper published in the county or counties in which the land is located; however, if a typographical error appears in such ad or ads, same shall not invalidate the sale; provided, that no tract of land

containing more than 5,200 acres shall be leased or advertised for lease under the provisions of this division (Section 9-17-65, Code of Alabama 1975).

5. Bidding

According to §9-17-65, Alabama Code, "all lands proposed to be leased under the provisions of this division shall be leased only upon the basis of competitive bids. The commissioner of conservation and natural resources shall obtain written, sealed competitive bids on every proposed lease of each tract of such land. Bids shall be opened publicly in the office of the commissioner of conservation and natural resources at the time stated in the invitations for bids.

"The lease of any tract of land shall be awarded to the highest responsible bidder making the most advantageous offer to the state, and the commissioner of conservation and natural resources must either accept the most advantageous offer or reject all bids within five days from the date said bids were opened. The commissioner of conservation and natural resources may reject all bids on any tract of land when, in his opinion, the public interest will be served thereby, but such tract of land shall not thereafter be leased except in accordance with the provisions of this division." Because of the need for additional state funds in 1982, the lease sale process was completed in only 60 days.

An analysis of Alabama's bidding process was made by Olmstead 1983, who concluded that "the 'responsible' element seems to be the only requisite characteristic the bidder must possess. Looking at the statute as a whole, it appears to be an element which allows the state to reject an otherwise valid bid if the bidder is deemed incapable of fulfilling the terms of the

lease and/or of assuring the state of its revenues. Yet 'responsible' is nowhere defined, and there appears to be no absolute financial or other qualities a bidder must possess other than meeting the minimum bid amounts and tendering "the required" cash bonus with his offer. After the Commissioner's decision, and approval of the governor, the lessee has a mineral right which he may exploit subject to other permitting and review processes."

6. Terms of lease

- Title

The 1981 oil and gas lease form states that "Notwithstanding any provisions to the contrary in this lease, this lease is granted and accepted without any warranty of title and without any recourse against LESSOR whatsoever, either express or implied, it being expressly agreed that the LESSOR shall not be required to return any payments received hereunder or be otherwise responsible to LESSEE therefore." As the title search is the responsibility of the LESSEE, the state is freed from any legal liability.

- Length of lease

The length of the primary term of the lease is established in the invitation to bid. The usual term is five years.

- Extension of lease

If drilling operations are not commenced on the leased area on or before one year from the signing of the lease, the lease terminates unless the lessee pays the rental due to the state, in which case the lease can be

extended for one year. Successive extensions of 12 months each can be made if rental is paid, during the primary term of the lease. The primary term of the lease also can be extended if there is located on the leased area or acreage pooled therewith a well or wells capable of producing gas in paying quantities, that is not being used or sold. In this event, the lease can be extended for a year at a time if the lessee pays to the state a royalty equal to twice the annual rental. Extensions also are possible under the standard force majeure clause subject to an annual payment of $10.00 per leased acre.

- Transfer of lease

Leases can be assigned, sold, or transferred with the written approval of the Commissioner of Conservation and Natural Resources.

- Compliance with rules and regulations

The lessee agrees to comply with all licenses, permits, and other authorizations required from any State or Federal governmental agency to effect drilling, site preparation, or other use of the leased area. Again, it may be noted that no mention is made of compliance with any local restrictions or regulations.

- Cessation of work

If work is not stopped for more than 90 days and efforts are underway to drill or produce oil or gas, the primary term of the lease can be extended. The lease then can remain in force if future cessations of work do not exceed 90 days. The lessee must notify the State Lands Division within 5 days of any cessation of work.

- Other terms of lease

Any lease executed under the provisions of Division 2, Article 2 of Chapter 17, Title 9, Code of Alabama, 1975, may authorize the lessee to pool or unitize the lease, the lands or minerals covered thereby or any part thereof with other lands, leases or mineral estates or parts thereof upon such terms as the commissioner of conservation and natural resources may approve (Section 9-17-63, Alabama Code 1975). The Commissioner of the DCNR also has the authority to amend existing leases to allow pooling or unitization as long as the primary term, bonuses, delay rentals, royalties, or other compensation to the state are not changed (Section 9-17-64, Alabama Code 1975, 1983 Michie Supplement).

The oil and gas lease contains provisions affecting removal of equipment, operations, spills, and other legal requirements usually associated with the covenants of a property contract.

7. Handling of proprietary information

If an operator requests in writing, all logs, cuttings, cores, core analyses, cored intervals, and formation depths from a well shall be kept confidential for a period of six (6) months from the completion of such well (State Oil and Gas Board of Alabama 1983b).

J. Relation of Leasing Program to Issuance of Permits

As discussed previously, the leasing/permitting program inextricably involves three separate state agencies. In addition, the permitting process involves the participation of the U.S. Corps of Engineers. Whereas the Oil

and Gas Board issues drilling permits, the Corps is responsible for issuing the permit to erect the required operational structures, and for issuing dredge and fill permits under the 404 "Clean Water Program". The permit for erection of structures may require the preparation of a lengthy environmental impact statement which is not required by the Oil and Gas Board prior to issuing a drilling permit. Meeting this requirement alone can take up to two years. The Department of Environmental Management (DEM), which issues water quality certification under Section 401 of the Clean Water Act for 404 permits, has veto power over the Corps of Engineers permit based on water quality, and/or consistency with Alabama's coastal zone management program. This veto option, however, has not been exercised thus far in connection with oil and gas operations. The position of the DEM is that the environmental stipulations are negotiable during the permitting phase, but once agreed upon and specified in the permit, they must be adhered to. When all of these procedures are combined with the acquisition of additional permits from the DEM, the process becomes quite complex. The result is, it may be relatively easy to obtain a lease and extremely difficult and time consuming to obtain the necessary operational permits. This situation should improve as the Corps of Engineers and the U.S. Environmental Protection Agency (EPA),in cooperation with DEM and the Oil and Gas Board, currently is developing a general environmental impact statement, based on a zero discharge policy, for Alabama's coastal and delta areas. This step should reduce the length of the permitting process to 60-90 days or even less in some instances (Macrory 1984).

K. Mineral Leasing

Mineral leasing in Alabama is handled separately from oil and gas leasing and falls under the State Lands Division.

References

Cooner, R. (1983). Statement of Past and Current Policy of the Alabama Department of Environmental Management Concerning Oil and Gas Drilling Operations in Alabama Coastal Waters. Presented at the Mobile Bay Area Drilling Fluids Transport Assessment Workshop, Mobile, Alabama, December 6-8, 1983.

Friend, J., Lyon, M., Garret, N., Borom, J., Ferguson, J., and Lloyd, G. (1982). Alabama Coastal Region Ecological Characterization, 3. A Socioeconomic Study. Geological Survey of Alabama, Information Series 62. University, Alabama.

Hardin, J., Sapp, C., Emplaincourt, J. and Richter, K. (1976). Shoreline and Bathymetric Changes in the Coastal Area of Alabama, A remote sensing approach. Geological Survey of Alabama, Information Series 50, University, Alabama.

Joiner, T., Wyatt, M., and Masingill, J. (1980). A Discussion of Oil and Gas Development in Southwest Alabama, with Special Emphasis on Recent Development in Jurassic Formations and Highlights of Points Included on AIPG Field trip. Oil and Gas Report 6, State Oil and Gas Board, University, Alabama.

Macrory, R. (1984). Personal Communication. Director, Alabama State Lands Division, Montgomery, Alabama.

Mancini, E. (1983). Personal Communication. Alabama State Geologist and Oil and Gas Supervisor, Tuscaloosa, Alabama.

Masingill, J., Editor (1980), Alabama State Oil and Gas Report 3D, The Petroleum Industry in Alabama, 1980, University, Alabama.

Mink, R. (1984). Oil and Gas Leasing and Drilling in Alabama State Coastal Waters and Adjacent Federal OCS Waters, 1951-1983. Geological Survey of Alabama, Oil and Gas Report 7B, Tuscaloosa, Alabama.

Olmstead, J. (1983). Leasing Alabama's Oil and Gas Tracts. Water Log, a Newsletter for the Mississippi-Alabama Sea Grant Consortium. Vol. 3, No. 2, April - June.

State of Alabama (1982). Act No. 82-612, Alabama Environmental Management Act.

State of Alabama (1983). Act No. 83-889, Amendment to Code of Alabama, 1975, Sections 40-20-1, 40-20-2, and 40-20-8.

State of Alabama (1983). Announcement - Call for Nominations Submerged Lands, Department of Conservation and Natural Resources, Montgomery, Alabama.

State Oil and Gas Board of Alabama (1983a). General Order Prescribing Rules and Regulations Governing the Conservation of Oil and Gas in Alabama; and Oil and Gas Laws of Alabama, with Oil and Gas Board Forms, University, Alabama.

State Oil and Gas Board of Alabama (1983b). Order No. 83-245.

State Oil and Gas Board of Alabama (1984). Activity and Production Report. February 29, 1984, University, Alabama.

Alaska

STATE OF ALASKA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	AK- 1
B. Philosophy of State Towards Leasing in State Waters	AK- 1
C. History of Leasing Program	AK- 4
D. Delegation of Management Responsibilities for State Leasing Program	AK- 7
E. Geographic Description of State Territorial Waters	AK- 9
F. Local Jurisdictional Control Over State Waters	AK-11
G. Oil and Gas Revenues Accruing to State	AK-14
H. Environmental Controls and Regulations	AK-22
I. Leasing Procedures	AK-28
J. Relation of Leasing Program to Issuance of Permits	AK-36
K. Mineral Leasing	AK-36
References	AK-39

LIST OF TABLES AND FIGURES

Description		Page
Table 1	History of Competitive Oil and Gas Leasing of State Lands	AK- 5
Table 2	Petroleum Production Revenue Forecast (Expected Values in Millions of 1983 Dollars)	AK- 8
Table 3	Timetable and Required Steps for Oil and Gas Lease Sales in Alaska	AK-31
Table 4	Alaska State and Federal Permit Requirements for Oil and Gas Leasing Activities	AK-37
Figure 1	Alaska State Agencies Involved With Oil and Gas Leasing Program	AK-10
Figure 2	State of Alaska Department of Natural Resources Five-Year Oil and Gas Leasing Program (1984-1988)	AK-30

A. Statutory Authority

1. Vested authority

The authority for leasing Alaska state lands for oil and gas development rests with the Commissioner of Natural Resources. According to Alaska Statute 38.05, the Commissioner may "establish reasonable procedures and adopt reasonable rules and regulations necessary to carry out this chapter and may, whenever necessary, issue directives or orders to the director (State Lands Division) to carry out specific functions and duties" and "enter into agreements, which he considers necessary to carry out the purposes of this chapter, including agreements with federal and state agencies".

2. Members of governing body

Because authority for granting oil and gas leases is assigned to the Department of Natural Resources, there is no separate governing body needed for approving leases as is the case with several other coastal states. The delegation of authority within the Department of Natural Resources is discussed in Section D of this report.

B. Philosophy of State Towards Leasing in State Waters

According to Alaska Statute 38.05.135 "except as otherwise provided, valuable mineral deposit in lands belonging to the state shall be open to exploration, development, and the extraction of minerals. All lands, together with tide, submerged, or shorelands, to which the state holds title to or to which the state may become entitled, may be obtained by permit or

lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by Alaska Statute 38.05.135-38.05.181, lands may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state".

According to Jackson et al. (1981), "Attitudes concerning oil and gas development in the Arctic subregion range from the very pro-development stance of the Arctic Slope Regional Corporation to the anti-development stance of the Barrow village corporation. However, all organizations find onshore leasing preferable to offshore leasing, and all organizations agree that leasing beyond the barrier islands is unacceptable." Since 1981, leases have been granted beyond the barrier islands (Rogers 1984).

The overall philosophy and leasing strategy of Alaska's oil and gas program can best be summed up by the following objectives contained in the Five Year Oil and Gas Leasing Program report dated January 1984.

1. To adhere to an oil and gas leasing program, as required by state statute, that is predictable and dependable, so that the petroleum industry, the public, and the federal and state governments may efficiently plan oil and gas related activities and fiscal expenditures.
2. To coordinate leasing with nearby owners of subsurface rights, particularly the federal government, so that: (1) state-wide oil, gas and coal leasing activities are cohesive regardless of land ownership; (2) geologic and environmental data may be shared if possible; (3) drainage of commonly owned petroleum reservoirs may be equitable; and (4) oil, gas, coal and other mineral exploration and development may continue while ownership disputes are being resolved.

3. To collect resource information adequate to estimate a fair return to the state when developing leasing procedures and terms of sales and for long-term fiscal planning.
4. To obtain the maximum economic return to the State and its citizens from the sale of state-owned oil and gas resources by using an optimal mix of bidding methods and by encouraging competition.
5. To lease first in the most prospective areas and near areas in which development has been or is taking place so that potential additional development may take advantage of existing facilities wherever possible.
6. To maintain access to promising oil, gas and coal areas by reserving access corridors and by avoiding commitments to incompatible surface uses in key transportation corridors.
7. To avoid hindering development or placing an undue burden on industry, by simplifying necessary regulations so they are fair and effective.
8. To work with local citizens, local governments, special interest groups, and other government agencies when selecting areas for leasing, designing lease sales, and when approving permits.
9. To encourage the petroleum industry to provide local training programs and to hire people for available jobs.
10. To protect the integrity of affected cultures, the environment, and fish and wildlife resources through plans of operations, lease and permit stipulations, and comprehensive monitoring operations.

C. History of Leasing Program

1. Establishment of offshore leasing program

Natural oil seeps were observed as early as 1853 along Alaska's shoreline with the first oil claims being staked out in 1867. Exploration and development activities grew over the years although as late as 1956, less than three million acres were under oil and gas lease. The State of Alaska conducted its first lease sale in Cook Inlet in 1958, leasing 77,000 acres for $4 million (State of Alaska 1983).

2. Frequency distribution of leases by year

Table 1 shows the history of oil and gas leasing in Alaska since December 1959.

3. Average geographic size of lease and related bidding data

The data on Alaskan oil and gas lease sales are shown on Table 1. The maximum size lease allowable by law is 5,760 acres (Alaska Statute 38.05.180(m)).

4. Example of prior lease sale schedule

As shown in Table 1, 28 lease sales were held from December 1959 to October 1974, an average of 1 3/4 sales per year, of which 23 involved offshore acreage. Since instituting a five year leasing program in 1979, a total of 12 lease sales have been held through 1983, an average of almost 2 1/2 per year, of which 7 were offshore sales (State of Alaska 1984b). Two of these lease sales, held in 1983, are not shown in Table 1.

Table

History of Competitive Oil and Gas Leasing of State Lands

Sale Number and Date		Location	Description	Acres Offered	Percent Leased	Acres Leased
1.	Dec. 10, 1959	Wide Bay; Kenai; Kachemak Bay	Offshore	88,055.00	87.66	77,191.00
2.	July 13, 1960	Kenai Peninsula; West Forelands; Nushagak Bay	Offshore/Uplands	17,567.51	93.96	16,505.57
3.	Dec. 7, 1960	Katalla; Kalifonsky Beach; Herenden Bay; Kodiak	Offshore	73,047.70	31.30	22,866.70
4.	Jan. 25, 1961	Ninilchik	Uplands	400.00	100.00	400.00
5.	May 23, 1961	Tyonek; Controller Bay; Pavlov Bay	Offshore/Uplands	97,876.00	98.06	95,980.00
6.	Aug. 4, 1961	Controller Bay	Tidelands	13,257.00	100.00	13,257.00
7.	Dec. 19, 1961	Icy, Yakutat, Kachemak Bays; Kenai Peninsula; Cook Inlet	Offshore/Uplands	255,708.44	73.14	187,025.40
8.	April 24, 1962	Big Lake	Uplands	1,061.70	100.00	1,061.70
9.	July 11, 1962	Tyonek; West Forelands; Kalgin Island; Chisik Island; S. Kenai Peninsula; Wide Bay	Offshore/Uplands	315,668.93	87.77	264,437.13
10.	May 8, 1963	Tyonek; Kenai	Offshore/Uplands	167,583.06	84.43	141,490.51
11.	CANCELLED					
12.	Dec. 11, 1963	Below Forelands; Knik-Turnagain Arms; Cook Inlet; Kenai Peninsula; Tyonek	Offshore/Uplands	346,782.40	71.25	247,089.00
13.	Dec. 9, 1964	Fire Island, West Forelands; Trinity Bay; Prudhoe West	Offshore/Uplands	1,194,373.00	60.51	722,659.00
14.	July 14, 1965	Prudhoe West	Offshore/Uplands	754,033.00	53.45	403,000.00
15.	Sept. 28, 1965	Fire Island; Cook Inlet; Kalgin Island; Redoubt Bay; Knik; Kenai Peninsula	Offshore/Uplands	403,042.06	74.87	301,751.28
16.	July 19, 1966	Kenai Peninsula; Knik; Cook Inlet; Redoubt Bay; Kalgin Island; Iliamna; Middleton Island; Fire Is.	Offshore/Uplands	184,410.05	72.66	133,987.29
17.	Nov. 22, 1966	Big Lake; Kenai	Offshore/Uplands	19,229.70	96.67	18,589.70
18.	Jan. 24, 1967	Katalla; Prudhoe	Offshore/Uplands	47,729.00	88.82	42,397.00
19.	Mar. 28, 1967	Cook Inlet	Offshore/Uplands	2,560.00	REJECTED 12-9-74	
20.	July 25, 1967	Big Lake; Knik; Iliamna;Beluga; Cook Inlet; Kalgin Island; Ninilchik	Offshore/Uplands	311,249.89	82.39	256,447.31
21.	Mar. 26, 1968	Port Heiden, Port Moller	Offshore	346,623.00	47.59	164,961.00
22.	Oct. 29, 1968	Big Lake; Knik; Beluga; West Forelands; Ninilchik; Kenai; Kachemak	Uplands	111,199.48	54.20	60,272.15
23.	Sept. 10, 1969	Colville to Canning River	Offshore/Uplands	450,858.47	91.50	412,548.47
24.	May 12, 1971	Big Lake; Kenai; West Forelands	Uplands	196,635.07	47.10	92,617.97
25.	Sept. 26, 1972	Big Lake; Knik; Beluga; Cook Inlet	Offshore/Uplands	325,401.42	54.78	178,244.71
26.	Dec. 11, 1972	Cook Inlet	Offshore/Uplands	399,920.96	44.50	177,972.56
27.	May 9, 1973	Tuxedni; Ninilchik; Kenai; Kalgin	Offshore/Uplands	308,400.81	36.93	113,891.71
28.	Dec. 13, 1973	Ninilchik; Kachemak Bay; Beluga	Offshore/Uplands	166,648.04	58.69	97,803.69
29.	Oct. 23, 1974	Kalgin; West Forelands; Chisik; Ninilchik; Cook Inlet; Big Lake; Turnagain	Offshore/Uplands	278,269.43	50.00	127,119.65
29A.	CANCELLED					
29B.	July 24, 1979	Copper River Basin	Uplands	34,678.04	100.00	34,678.04
30.	Dec. 12, 1979	Beaufort Sea	Offshore	341,140.18	86.80	296,307.65
31.	Sept. 16, 1980	Prudhoe Bay	Uplands	196,268.00	100.00	196,268.00
32.	Aug. 25, 1981	Lower Cook Inlet	Offshore/Uplands	202,836.74	75.15	152,428.22
33.	May 13, 1981	Upper Cook Inlet	Offshore/Uplands	815,000.00	50.99	429,978.16
35.	Feb. 2, 1982	Lower Cook Inlet	Offshore/Uplands	601,171.50	21.82	131,190.69
36.	May 26, 1982	Beaufort Sea	Offshore/Uplands	56,862.41	100.00	56,862.41
37.	Aug. 24, 1982	Middle Tanana & Copper River Basins	Uplands	852,603.08	19.80	168,849.00
37A.	Aug. 24, 1982	Chakok River	Uplands	1,874.00	100.00	1,874.60
34.	Sept. 28, 1982	Prudhoe Uplands	Uplands	1,231,517.00	46.44	571,954.00
38.	CANCELLED					
				11,211,542.67	57.19	6,411,958.27

Table 1 (Continued)

Sale #	$/Acre	Tracts Offered	Tracts Leased	Bonus Received	Bidding Method*
1.	$ 52.08	37	31	$ 4,020,342.43	
2.	24.70	27	26	407,654.54	
3.	1.54	26	9	35,325.31	
4.	679.04	3	3	271,614.40	
5.	74.71	102	99	7,170,464.88	
6.	8.35	6	6	110,671.55	
7.	79.47	68	53	14,863,049.33	
8.	4.81	8	8	5,097.00	
9.	59.42	89	76	15,714,112.60	
10.	29.23	200	158	4,136,224.92	
11.					
12.	12.31	308	207	3,042,680.74	
13.	7.66	610	341	5,537,100.94	
14.	15.25	297	159	6,145,472.59	
15.	15.49	293	216	4,674,343.74	
16.	52.55	205	153	7,040,880.17	
17.	7.33	36	35	136,279.67	
18.	34.87	23	19	1,478,777.23	
19.					
20.	73.14	295	220	18,757,340.88	
21.	18.24	308	147	3,009,224.00	
22.	17.29	230	125	1,042,219.90	
23.	2,181.66	179	164	900,041,605.34	
24.	4.87	244	106	455,640.57	
25.	7.43	259	152	1,324,673.40	
26.	8.75	218	105	1,557,848.84	
27.	9.93	210	96	1,130,324.51	
28.	253.77	98	62	24,819,189.91	
29.	8.19	164	82	1,040,909.98	
29A.					
29B.	4.56	20	20	158,041.78	
30.	1,914.87	71	62	567,391,497.48	Cash bonus with fixed sliding scale royalty; net profit share (NPS) bid variable with fixed royalty and fixed cash bonus
31.	63.12	78	78	12,387,469.60	Cash bonus bid variable with fixed royalty and fixed NPS
32.	10.00	78	59	1,524,282.20	Royalty bid variable with fixed cash bonus
33.	10.00	202	103	4,299,781.60	Royalty bid variable with fixed cash bonus
35.	10.00	149	31	1,311,906.90	Royalty bid variable with fixed cash bonus
36.	573.02	13	13	32,583,451.87	Cash bonus bid variable with fixed royalty and fixed NPS
37.	3.33	217	33	562,943.90	Cash bonus bid variable with fixed royalty and fixed NPS
37A.	52.00	1	1	97,479.20	Cash bonus, fixed royalty
34.	46.71	261	119	26,713,018.17	Cash bonus bid variable with fixed royalty and fixed NPS
38.					
	$ 261.23	5,633	3,377	$1,674,998,942.07	

*A cash bonus with fixed royalty bidding system was used until December 1979.

(State of Alaska 1983)

5. Revenues accruing to state 1959-1982

The bonuses accruing to Alaska from oil and gas lease sales since 1959 are shown on Table 1. While a similar summary of historical data for other types of oil and gas revenues is not available, Table 2 presents projected data for the years 1983-1999 (State of Alaska 1984b).

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

Title 38 of the Alaska Statutes (Public Lands), charges the Department of Natural Resources (DNR) with primary responsibility for management of the State of Alaska subsurface hydrocarbon and mineral resources (State of Alaska 1984a). The DNR uses a staff of 15 for pre-sale operations and an additional 23 persons for post-sale lease administration, royalty accounting, etc. (Rogers 1984).

2. Agency responsibilities

The DNR is divided into 11 divisions. The divisions most directly concerned with oil and gas leasing are the Division of Oil and Gas (DO and G) and the Division of Land and Water Management (DLWM). The DLWM "is generally responsible for the management of surface resources on state lands. Activities include authorizing special land uses through leases and permits and ensuring compliance with lease terms and conditions affecting surface uses. The division also is responsible for monitoring, surveillance, and oversight of pipelines and gaslines built in Alaska". The DO and G "performs the resource management function for state-owned subsurface resources, including oil and gas. It also prepares for and conducts oil and gas lease

Table 2

Petroleum Production Revenue Forecast
(Expected Values in Millions of 1983 Dollars)

	Total Severance and Conservation Taxes	Total Royalties	Total Petroleum Revenues
1983	1498.00	1444.22	2942.22
1984	1230.19	1209.94	2440.13
1985	1183.00	1184.91	2367.90
1986	1210.11	1222.00	2432.11
1987	1199.77	1223.99	2423.76
1988	1055.99	1278.40	2333.90
1989	984.90	1195.79	2180.69
1990	880.79	1108.34	1989.23
1991	702.11	930.81	1632.93
1992	614.59	850.66	1465.26
1993	531.67	751.06	1282.73
1994	456.07	681.02	1137.09
1995	396.58	595.52	992.10
1996	304.81	518.92	823.73
1997	282.42	487.94	770.38
1998	263.17	470.36	733.53
1999	237.70	435.29	673.00

Source: Alaska Department of Revenue, Petroleum Revenue Division, Petroleum Production Revenue Forecast, Quarterly Report, September 1983.

sales and administers subsurface leases, including plans for operations and voluntary unitization. The DO and G accounts for income received from oil, gas, and geothermal resources" (State of Alaska 1984a).

3. Organization chart of State agencies

Figure 1 shows the Alaskan state agencies involved with oil and gas leasing.

E. Geographic Description of State Territorial Waters

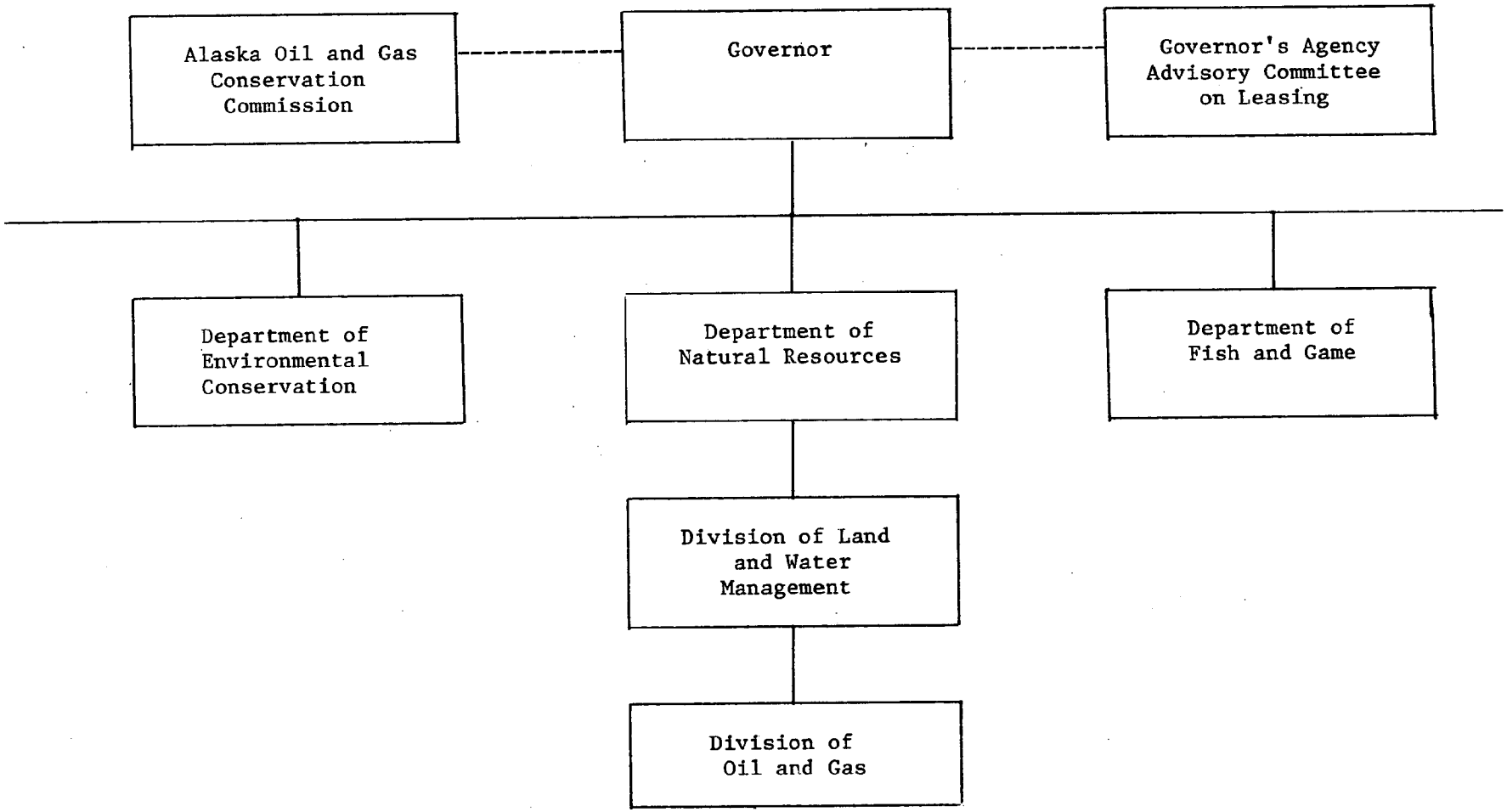
1. General description of State offshore boundaries

Alaska includes eight ecosystems of which five are in areas of oil and gas potential: (1) coastal and marine; (2) moist tundra; (3) high brush; (4) alpine tundra; and (5) low brush (Jackson et al., 1981). Although there have been numerous studies on the effects of oil and gas operations on this immense and complex environment, much needs to be done to settle the many controversial issues now under consideration.

The seaward territorial boundaries of Alaska have not been identified, although Alaska Statute 38.05.365(16) defines submerged lands as "all lands covered by tidal waters between the line of mean low water and seaward to a distance of three geographical miles or further as may hereafter be properly claimed by the state". Because of the sheer size of the State (6,640 miles of coastline) the process of identifying these boundaries will be both long and complex.

"Before the state can lease the submerged lands of its territorial sea, or before the federal government can lease the submerged lands of the outer continental shelf (OCS), the boundary between state and federal jurisdiction

Figure 1
Alaska State Agencies Involved With
Oil and Gas Leasing Program



must be determined. If the location of the boundary cannot be agreed upon, then disputed areas must be identified. By identifying disputed areas, an agreement can be reached between the state and federal government concerning the management of these lands while ownership is determined by the courts ---" "--- Representatives of the state and federal governments began meeting in the fall of 1983 to identify areas where there are disputes regarding the location of territorial sea boundaries in Alaska ---" "--- The method for establishing the boundary of a state's territorial sea is set out in the Convention on the Law of the Sea by the United Nations Conference at Geneva, 1958. The convention provides that the width of the territorial sea can be measured from a baseline corresponding to the low water line along the coast as marked on maps and charts officially recognized by the coastal state. On the pacific coast, including Alaska, the low water line has been established as the interface between land and water when the tide reaches its mean lower low water (MLLW) stage. Once the MLLW line is determined, the territorial sea can be fixed by measuring seaward three nautical miles. If an island, reef or bar exists within three nautical miles of shore, as measured from the MLLW line, the territorial sea is extended seaward an additional three nautical miles."

2. Mapping and charting procedures used to define lease areas

See discussion in Section E-1 of this report.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

As stated earlier, the Department of Natural Resources is responsible for Alaska's oil and gas leasing process. While local counties and

municipalities appear not to have an approval role on oil and gas leases, their comments are invited by DNR during the initial step of the leasing process as are comments of the general public. Local jurisdictions have a further input within the context of the state coastal management programs and the requirement to achieve federal consistency.

2. The role of port authorities

Port authorities have no role in the leasing process except to the extent that municipalities with port authorities can comment on the program and request tract deletions or special stipulations (Rogers 1984).

3. Proprietary interests of local governments in submerged lands

See Section F-4 of this report.

4. Home rule rights and the authority for local governments to annex offshore lands

Local jurisdictions are designated as boroughs or cities. These in turn are designated as: first, second, and third class boroughs; unified municipalities; first and second class cities; and unorganized boroughs.

"The municipal powers are given to the communities by State statute, but the actual operational aspects of local activities are primarily under the control and regulation of the individual local government although the State may provide some guidelines for these operations ---." "--- All municipalities, whether they are boroughs or cities, are granted certain general powers, as listed in AS 29.48.010, deal with the administration of municipal government and are subject to the other provisions of the law" (State of Alaska 1983). Whether these rights authorize cities and/or boroughs to annex offshore lands is not specified.

5. Effects of local government regulations on offshore operations subsequent to issuance of lease

"Local permitting processes are difficult to describe because they vary with each community. Cities located outside of an organized borough (all areas outside of organized boroughs are considered to be part of the unorganized borough) may operate more or less independently whereas cities within organized boroughs may, in addition to their own city regulations, be required to meet borough standards and requirements. Although boroughs and cities may be given certain powers by State statute they are not required to exercise all of the powers they are granted. Different first class cities may employ various combinations of the regulations with which they are empowered. The type of document issued for various activities may also vary with each municipality. Some communities may issue a certificate for businesses to operate within their city limits; others may require a license, registration or nothing at all" (State of Alaska, 1983). The extent to which local permitting affects oil and gas operations in offshore state lands is not clear.

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax

In 1973, Alaska enacted the "20-Mill Hardware Tax" (Property Tax, A.S. 43.56). "Properties covered include virtually all properties located in the state which are used in the exploration for, production of and pipeline transportation of oil and gas. Permanent residences, office buildings requiring substantial local government services, regulated utility pipelines and property used solely for the retail distribution or liquification of

natural gas are exempt. Under this law, taxable properties are assessed each year at full and true value and are taxed at a rate of 20 mills (two percent). Organized municipalities (boroughs) in Alaska also may levy property taxes on oil and gas properties based on state assessments at the same rate as applied to locally assessed properties. However, such taxes paid to municipalities may be credited against the 20-mill state levy" (State of Alaska 1983). As is the case of the role of local governments in the permitting and/or leasing process, the impact of the property tax just cited on offshore oil and gas activities is not clear. Ultimately it will depend on whether offshore submerged lands can be annexed by local boroughs and municipalities for taxation purposes. At the present time, Alaskan leasing officials don't anticipate that this will happen (Rogers 1984).

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

The minimum oil and gas royalty in Alaska is 12.5% (Alaska Statutes 38.05.180). Under special circumstances, in unproven areas, however, the commissioner of the DNR "may offer additional incentives, including a reduction of royalty to a minimum of five percent in the case of oil and gas, and other terms in and granting permit or lease for exploration and development whenever it appears to be in the best interests of the state to do so" (Alaska Statute 38.05.135). As described in the next section, Alaska's royalty system is designed for flexibility.

2. Royalties prescribed for oil and gas leases

"To meet the goals of providing a steady, long-term source of revenues and maximizing the economic return to the state and its citizens, Alaska has adopted a number of different leasing methods. Based on geologic and economic analysis, the Commissioner of Natural Resources determines which leasing method will be used by the state for each sale. The leasing method options available to the Commissioner, under A.S. 38.05.180(f), include:

- a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;
- a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease or a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;
- a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;
- a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;
- a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;
- a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease; and

- a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease."

The commissioner of the DNR also can choose to select a sliding scale royalty "if the commissioner selects a method of bidding which sets a royalty reserved to the state, either fixed or as the bid variable, based on a sliding scale, the sliding scale will be determined, according to a method chosen at the commissioner's discretion which will be based on volume of production or other factors. The method chosen by the commissioner will consider the prolongation of the economic life of the oil and gas reservoir or reservoirs underlying the sale area or lease to which the sliding scale is to be applied" (Alaska Statutes 38.05.120 and 38.05.180).

There are additional options designed to enhance competition and encourage participation by smaller bidders.

"Any royalty provided for in AS 38.05.135-38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state" (Alaska Statute 38.05.182). Royalties can be reduced under certain conditions as stated in Section 39 of the revised April 1984 oil and gas lease. "After initial production for two years from the field in which the leased or unit area is located has occurred, the state, in its discretion may reduce the lessee's obligations to pay royalty on all of the leased area or on any tract or portion of the leased area segregated for royalty purposes upon (1) request by the lessee, (2) a clear showing by the lessee that the revenue from all oil, gas, and associated substances produced from the field is

insufficient to produce a reasonable rate of return with respect to the lessee's total investment in the field, and (3) a clear showing by the lessee that a reduction in royalty will increase total production from the field."

In recent sales 16 2/3% or 20% royalties have been required (Rogers 1984).

3. Rental per acre

See Section G-4 of this report.

4. Delay rental payment

"The commissioner of the DNR may establish by regulation that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty or net profit share exceeds rental income to the state for that year. Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first year, $1.00 per acre;

(2) for the second year, $1.50 per acre;

(3) for the third year, $2.00 per acre;

(4) for the fourth year, $2.50 per acre;

(5) for the fifth and following years, $3.00 per acre"

(Alaska Statutes 38.05.180(n)).

5. Shut-in royalties

"No lease covering land on which there is a well capable of producing oil or gas in paying quantities will expire because the lessee fails to produce oil or gas, unless the commissioner gives notice to the lessee or

operator allowing a reasonable time, which will not be less than 60 days after receipt of notice, to place the well on a producing status and the lessee or operator fails to do so. After producing status is established, production must continue on the leased land until suspension of production is allowed by the commissioner" (Alaska Statutes 38.05.020, 38.05.140(d), 38.05.180).

6. Offset wells

"The commissioner will include a directional drilling clause in all oil and gas leases that have been issued or that may be subsequently issued by the state. The clause will provide that actual drilling from a well located off the leased premises, but to be completed or bottomed on leased premises, will be considered as actual drilling under the lease terms." (Alaska Statutes 38.05.020, 38.05.145(a), 38.05.180). The directional drilling clause in the April 1984 revised oil and gas lease (Section 12) reads as follows:

"This lease may be maintained in effect by directional wells whose bottom hole location is on the leased area but that are drilled from locations on other lands not covered by this lease. In those circumstances, drilling will be considered to have commenced on the leased area when actual drilling is commenced on those other lands for the purpose of directionally drilling into the leased area. Production of oil or gas from the leased area through any directional well surfaced on those other lands, or drilling or reworking of that directional well, will be considered production or drilling or reworking operations on the leased area for all purposes of this lease."

The revised (April 1984) oil and gas lease further addresses offset drilling in Section 14.

"The lessee shall drill such wells as a reasonable and prudent operator would drill to protect the state from loss by reason of generality of the foregoing sentence, if oil or gas is produced in a well on other land not owned by the State of Alaska or on which the State of Alaska receives a lower rate of royalty than under this lease, and that well is within 500 feet in the case of an oil well or 1,500 feet in the case of a gas well of lands then subject to this lease, and that well produces oil or gas for a period of 30 consecutive days in quantities that would appear to a reasonable and prudent operator to be sufficient to recover ordinary costs of drilling, completing and producing an additional well in the same geological structure at an offset location with a reasonable profit to the operator, and if, after notice to the lessee and an opportunity to be heard, the state finds that production from that well is draining lands then subject to this lease, the lessee shall within 30 days after written demand by the state begin in good faith and diligently prosecute drilling operations for an offset well on the leased area. In lieu of drilling any well required by this paragraph, the lessee may, with the state's consent, compensate the state in full each month for the estimated loss of royalty through drainage in the amount determined by the state."

7. Pooled acreage

To reduce wastes, increase efficiency and avoid excessive drilling, the commissioner of DNR is authorized to allow pooling and unitized operation of pools by different lessees. The commissioner can order unitization if it is in the best interests of the state (Alaska Statutes 31.05.100 and 31.05.110).

"On the surface, the production from one pool may not be commingled with that from another pool except when the quantities from each source of the production are determined by periodic well tests or other measurements.

In the same wellbore, commingling of production from two or more pools will not be permitted except after notice, hearing, and an order of the commission approving such commingling. After the first hearing, the commission will, in its discretion, approve commingling in other wells in the same pools if the proposing operator has certified that all operators with wells completed in one or more of the pools have been notified and no protest is furnished the commission within 15 days." (Alaska Statute 31.05.030). The oil and gas lease (Section 15) states that "The lessee agrees, within six months after demand by the state, to subscribe to a reasonable cooperative or unit agreement that will adequately protect all parties in interest, including the state. The state reserves the right to prescribe such an agreement. With the consent of the lessee, and if the leased area is committed to a unit agreement approved by the state, the state may establish, alter, change, or revoke drilling, producing, and royalty requirements of this lease as the state determines necessary or proper to secure the proper protection of the public interest." (State of Alaska 1984c).

8. Bonus consideration

Bonuses are determined for each lease sale. The amount of the bonus results from many factors and is dependent to some extent on the royalty established for the sale, as discussed in Section G-2 of this report. As can be seen on Table 1, bonuses have ranged from $1.54 in 1960 to a peak of $2,181 per acre in 1969 for an overall average of $261.23 per acre.

9. Severance tax (production tax)

"Alaska first enacted a severance tax in 1955 with the imposition of a fixed rate of one percent. Since then, Alaska's severance tax law has undergone numerous alterations to reflect changing conditions. The most

recent change came in 1981 when the legislature raised the nominal severance tax rate on oil from 12.25 percent of value to a rate which escalates from 12.25 percent for the first five years of production on leases brought into production after June 30, 1981 to 15 percent for all production thereafter. This change represented an effort to hold state revenues stable in the face of a simultaneous reduction in the corporate income tax revenues as they applied to oil and gas income. Other than the change in the nominal rate, Alaska's current severance tax policy was established in 1977. The goal of the 1977 law was to make the tax sensitive to the economics of marginal fields. To accomplish this goal, the legislature modified the nominal severance tax rate through the introduction of a so-called "Economic Limit Factor (ELF)" which adjusts the nominal tax rate downward as the rate of production declines. The ELF is a figure arrived at by a mathematical formula which determines the effective rate of taxation as opposed to the nominal rate." (State of Alaska 1983).

10. State agency receiving royalties

Royalties are paid directly by the lessee to the Department of Natural Resources. To ensure that the state receives proper royalty payments and that proper records are being maintained "The lessee shall keep open at all reasonable times, for inspection by any duly authorized representative of the State of Alaska, the leased area, all wells, improvements, machinery, and fixtures on the leased area, and all reports and records relative to operations and surveys or investigations on or with regard to the leased area or under this lease. Upon requests, the lessee shall furnish the State of Alaska with copies of and extracts from any such reports and records." (State of Alaska 1984c, Section 16).

11. Distribution of revenue within State

Most royalties due the state are taken in value rather than in kind. Most royalties taken in kind are disposed of by negotiated contract. The distribution of royalty oil and gas is determined by the Alaska Royalty Oil and Gas Development Advisory Board. This board is comprised of the Commissioner of Commerce and Economic Development, the Commissioner of Revenue, and the Commissioner of Natural Resources who is a non-voting member, plus three public members with experience in petroleum related fields who serve for three-year staggered terms. The duties of this board include: the development of a plan for utilizing the state's oil and gas royalty interests based on: the growth of the private sector, environmental standards, public fiscal stability; holding public hearings related to the distribution of royalty oil and gas, determining the rights to receive future oil or gas production under state leases, and to make recommendations to the Commissioner of Natural Resources relating to sale, delivery, transportation, refining or processing of oil or gas which he may include in the offer and sale of oil or gas obtained by the state as royalty under Alaska Statute 38.05.182 (Alaska Statute 38.06.040). Royalties are distributed as follows: 50% to the Alaska Permanent Fund; 5% to the Public School Fund; 5% to the Renewable Resources Fund and Energy Facilities Fund; 25% to the Capital Outlay Fund; and the remainder to the General Fund.

H. Environmental Controls and Regulations

1. Responsible agencies

Responsibility for the administration and enforcement of Alaska's environmental laws rests primarily with the Department of Environmental

Conservation (DEC) (State of Alaska 1983). The DEC formulates and reviews annually the statewide environmental plan for the management and protection of the quality of the environment and the natural resources of the state, in furtherance of the legislative policy and purposes expressed in the relevant Alaska statutes (Alaska statutes 46.03.030). These statutes address both air and water quality control and the consequences of accidental spills. For example, Alaska statutes prohibit the discharge of oil and/or other hazardous substances unless specifically authorized by permit, requires those responsible for spills to undertake cleanup costs and damages as well as civil and criminal penalties (State of Alaska 1983). As with other states, the permit for discharge of dredge and fill material is issued by the Corps of Engineers.

2. Relation to leasing agency

In addition to a plan of operations approved by the Department of Natural Resources, successful bidders on oil and gas leases must submit to the Department of Environmental Conservation for approval an oil discharge contingency plan and show proof of financial responsibility prior to commencing operations. Within the DEC the responsibility falls within the Division of Environmental Quality Management. This division "is responsible for establishing air, land and water quality standards and developing the necessary long and short-term plans and strategies to meet these standards. Responsible for the development of the state implementation plan for air quality, the various water quality management plans, the state's solid waste management plan, oil discharge contingency plans and for coordinating the department's effort in interagency and multi-media planning programs, such as coastal management planning, water resources management plans, etc. Division is the lead entity for the department review of programs of other state

agencies as they might impact the quality of the environment" (State of Alaska 1983).

3. Environmental review process prior to issuing lease/permit

As with most other coastal states, the detailed environmental review takes place during the permitting phase after the lease is issued. There are long, carefully worked out permitting procedures defined in state documents addressing permitting requirements. There is, however, a requirement in Step 7 of the lease process (see Section I-1 of this report) in which the Agency Advisory Committee on Leasing "begins researching data for inclusion in a 'Social, Economic and Environmental Analysis' which is prepared for major sales under Administrative Order No. 52" (State of Alaska 1983). This analysis begins about 15 months prior to the lease sale.

4. Environmental stipulations

"In addition to the environmental laws enforced by the Department of Environmental Conservation, the state has adopted other safeguards to minimize social, cultural and environmental impacts. The Department of Natural Resources requires that before any operations are undertaken on a leased area the lessee must first have an approved plan of operations. To ensure protection of fish and wildlife habitats the Department of Fish and Game requires the acquisition of certain permits prior to commencing operations on a leased area.

As mentioned, the plan of operations required by the Department of Natural Resources (which also must be reviewed by the Department of Environmental Conservation and Department of Fish and Game) has a number of requirements. The plan must contain maps and an explanation of (1) the

sequence and schedule of operations to be conducted; (2) the projected use requirements associated with the proposed operations; (3) plans for rehabilitating the leased area; and (4) a description of how the operating procedures have been designed to minimize adverse effects of other natural resources and other uses, such as fish and wildlife habitat, historical and archaeological sites and public use areas. A detailed description of what is required in the plan of operations can be found in the state regulations (11 AAC 83.158) or in a state lease form" (State of Alaska 1983).

"Alaska Statute 38.05.035(a)(14) and the departmental delegation of authority provide the Director, Division of Oil and Gas (DO and G), with the authority to impose conditions or limitations, in addition to those imposed by statute, to ensure that a resource disposal is in the state's best interest. Lease stipulations will be enforced throughout the term of the lease. Measures listed under "Plans of Operations and Other Terms of Sale" will be imposed through Plans of Operations and other permits to mitigate the social and environmental effects of lease activities. These measures have been developed considering the social, economic and environmental analyses (SEEAs) for lease sales 33 and 35, agency revisions to these documents, public comment, and measures imposed in prior Cook Inlet lease sales" (State of Alaska 1984a).

5. Baseline environmental research

While there does not appear to be an environmental research program devoted solely to gathering baseline data related to offshore oil and gas development, each relevant agency is responsible for developing a long range plan of operations and management which includes the acquisition of environmental data. For example, the Department of Fish and Game (ADF&G)

conducts both literature research and field studies pertaining to the environmental aspects of oil and gas activities. A variety of funding sources are utilized by the department to obtain necessary resource data. Some of the funding is appropriated specifically to address hydrocarbon development. Other funding sources are intended to meet broader objectives, but the information generated frequently is applicable to evaluating oil and gas proposals.

The Department of Natural Resources is one of ADF&G's primary funding sources for addressing hydrocarbon development within the state and adjacent coastal waters. The program is funded annually by the state legislature, and for the past two years ADF&G has received an annual budget of approximately $152,000. The department devotes a majority of this funding to conducting literature research and preparing environmental analyses of proposed state oil and gas lease sales. A small percentage of the budget is used for field investigations.

Another program that provides departmental funding for conducting marine research specifically directed toward obtaining environmental data pertinent to offshore oil and gas activities is the Outer Continental Shelf Environmental Assessment Program (OCSEAP), which is funded primarily by the Minerals Management Service. The department's marine mammal staff has utilized this funding source to conduct numerous research projects over the past ten years such as the evaluation of the potential impacts of hydrocarbon development on marine mammal populations in lower Cook Inlet. During the current fiscal year, studies also are being funded through the National Marine Fisheries service, U.S. Department of Commerce, the North Pacific Fishery Management Council, and the Federal Aid to Wildlife Restoration Programs. Although these programs are not specifically designed to address

the environmental aspects of oil and gas operations, the baseline data obtained is often useful in evaluating any activities that could potentially affect marine mammals.

In terms of the application of the funds which the ADF&G receives specifically for use in responding to hydrocarbon development, the data are used for three primary purposes: first, the assessment of biological resources in the vicinity of a lease area or project site; second, the determination of populations and habitats likely to be the most sensitive to oil and gas activities; third, the use of the data as a basis for the department's recommendations for mitigating measures necessary to protect fish and wildlife resources and harvest activities (Clark 1984).

6. Role of Corps of Engineers

Because Alaska has established an extensive program of leasing and permitting, the role of the Corps of Engineers primarily is concerned with issuing dredge and fill permits. Factors addressed in obtaining such permits are: "conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, navigation, recreation, water quality and, in general, the needs and welfare of the people. All individuals, organizations, commercial enterprises and federal, State and local agencies must contact the Army Corps of Engineers in order to receive authorization for the discharge of dredged or fill material into U.S. waters. The permit applies to all tidal influenced waters shoreward to the extreme high tide line and their adjacent wetlands, and all other waters of the United States landward to the ordinary high water line and their adjacent wetlands. Permits under this section will also require that the applicant obtain a 401 Water Quality Certification from the State of Alaska. The

application for a Corps permit will serve as an application for the State certification under a joint memorandum of understanding" (State of Alaska 1983). If there are no substantive objections a permit usually can be issued within 90 days after receipt of the application.

I. Leasing Procedures

1. Leasing schedule

Alaska has a long and detailed leasing process. According to the Five-Year oil and gas leasing program (State of Alaska 1984), a period of approximately five (5) years is required from the point at which the DNR chooses new areas to add to the leasing program to the award of a lease. The 20 steps to be completed during this five-year period are summarized on Table 3.

"By design, the timetable is flexible up until the completion of step 15 with the issuance, through public notice, of a final decision that the sale is in the state's best interest. Before the sale may be held, the director of the Division of Oil and Gas (DO and G) (DNR) must make a written final decision that the sale serves the state's best interest (A.S. 38.05.035). This decision sets out the facts and applicable law upon which the determination has been made.

Prior to the issuance of a final decision, DO and G issues a formal notice that it intends to make a final decision under Alaska Statute 38.05.035(a)(14). DO and G's formal notice under Alaska Statute 38.05.345(a)(3) that it intends to make a decision on the proposed lease sale is distributed to the affected communities, industry, state agencies and the

public for comment and contains a preliminary analysis of the potential effects of the proposed sale. Based upon the comments received, a final decision on the sale tracts to be included and the mitigating measures that will be imposed on the leases made" (State of Alaska 1983).

It is planned to hold an average of three lease sales per year over the next five years. The projected lease schedule from 1984-1988 is shown in Figure 2.

2. Call for nominations for lease

The nominations for oil and gas leases in Alaska are announced by the Commissioner of the Department of Natural Resources and are published annually in the required five-year oil and gas leasing program report "consisting of a schedule of proposed lease sales and specifying as precisely as practicable the location of tracts proposed to be offered for oil and gas leasing during the calendar year in which the proposed program is submitted to the legislature and the following four calendar years" (Alaska Statute 38.05.180-b).

3. Fees

In addition to the bonus requirement, established by the Commissioner of the DNR, each bidder must submit a bid deposit in the amount of 20% of the cash bonus (Rogers 1984).

4. Publication of calls for nominations and advertisements for leasing

Notices of lease sales for oil and gas relevant to offshore leases are required to be given by "(1) publication in newspapers of statewide circulation and in a newspaper of general circulation in the vicinity of the proposed action, (2) publication through public service announcements on the

Figure 2

FIVE–YEAR OIL & GAS LEASING PROGRAM
ALASKA DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL & GAS

Proposed Area & Date	1984												1985												1986												1987												1988											
	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
43 Beaufort Sea 5·84				F	S																																																							
43A Colville Delta 5·84				F	S																																																							
41 Bristol Bay Upl. 9·84					PN PA		F		S																																																				
46A Cook Inlet 2·85											PN PA		F	S																																														
47 Kuparuk Upl. 5·85					SE		H				PN	PA			F		S																																											
45 Hope Basin 9·85									SE		H				PN	PA			F		S																																							
45A North Slope 9·85															PN	PA			F		S																																						
48 Kuparuk Upl. 1·86			M	SE			H												PN	PA			F		S																																			
49 Cook Inlet 5·86						R		M											H				PN	PA			F		S																															
52 Beaufort Sea 9·86								C		R	M										SE		H				PN	PA			F		S																											
51 Prudhoe Bay Upl. 1·87											C		R		M										SE		H				PN	PA			F		S																							
50 Camden Bay 5·87															C		R		M										SE		H			PN	PA			F		S																				
53 Icy Cape 9·87																			C		R		M										SE		H			PN	PA			F		S															
46 Holitna Basin 9·87																			C		R		M										SE		H			PN	PA			F		S															
54 Kuparuk Upl. 1·88																							C		R		M										SE		H			PN	PA			F		S											
55 Demarcation Pt. 5·88																											C		R		M									SE		H				PN	PA			F		S							
56 Alaska Pen. 9·88																															C		R		M									SE		H				PN	PA			F		S			

NC= Call for Nominations / Comments
C = Call for Comments
R = Nominations/Comments Received
M = Proposed Sale Area Mapped
SE= Social, Economic And Environmental Analysis (SEEA)

H = Public Meeting
PN= Preliminary .345 (a)(3) Notice
PA= Preliminary Analysis
F = Final Decision / Final .345 (a)(4) (Notice Of Sale and Terms) Alaska Coastal Management Program Determination
S = Sale

(State of Alaska 1984)

Table 3

Timetable and Required Steps for Oil and Gas Lease Sales in Alaska

Step 1 (61 to 26 months before lease sale): The department proposes a new area for addition to the leasing schedule based on an assessment of oil and gas industry interest and invites comment on the proposed addition by the state's Agency Advisory Committee on Leasing (AACL), affected communities situated near the proposed lease area and the general public.

Step 2 (59 to 24 months before sale): The new area is included in the five-year leasing program presented to the Alaska Legislature.

Step 3 (32 to 22 months before sale): The department issues a formal "call for nominations and comments" to the oil industry, state and federal agencies and the public for the new sale (nomination) area as reflected in the five-year leasing program. Simultaneously, the department begins collecting available seismic data and compiling surface and subsurface geologic data on the nomination area.

Step 4 (23 months before sale): The department analyzes the nominations and comments submitted by the oil industry, interest groups, other agencies and the public and refines the nomination area to a "proposed sale area".

Step 5 (22 months before sale): The department decides whether to offer incentive credits for geophysical exploration in the sale area.

Step 6 (21 months before sale): The department advertises the availability of maps of the new proposed sale area and begins contracting to purchase and process available geophysical and geologic data. State agencies also are invited to review the proposed sale area boundaries.

Step 7 (18 - 12 months before sale): The AACL begins researching data for inclusion in a "Social, Economic and Environmental Analysis" (SEEA) which is prepared for major sales under Administrative Order No. 52. The SEEA Document is compiled by the Governor's Office of Management and Budget (OMB), Division of Governmental Coordination (DGC) and consists of state agency sale area information and recommended mitigating measures. A SEEA is generally not prepared if one has recently been completed for the area. Instead, agencies are asked to provide revised and updated SEEA information to DNR and OMB. Revised information is available for public review.

Step 8 (12 months before sale): The department completes its preliminary geologic analysis and estimates of reservoir parameters on the proposed lease sale area.

Table 3 (Continued)

Step 9 (11 to 15 months before sale): If a SEEA is prepared, it is made available to the public.

Step 10 (14 to 9 months before sale): The department conducts public meetings on the sale.

Step 11 (9 to 8 months before sale): Public review of the SEEA ends.

Step 12 (8 months before sale): The department initiates land status research to determine specific leasable acreage and begins an economic analysis of the proposed sale area.

Step 13 (6 months before sale): The department completes its geological analysis, including the identification of potential geohazards, and begins a preliminary assessment of bidding methods to be used in the sale.

Step 14 (6 to 5 months before sale): Final revisions are made to the sale area boundary map. The AACL publishes comments and responses to the SEEA.

Step 15 (4 to 6 months before sale): The department issues a preliminary finding that sets out the issues and facts regarding the proposed sale area and invites the comments of affected communities and the public.

Step 16 (2 - 4 months before sale): Based on solicited comment, the department reaches final decisions on the sale, including tracts to be leased and mitigating measures that will be enforced. A coastal management consistency determination is prepared and the final decision is written.

Step 17 (2 months before sale): Based on geophysical information, the department prepares a confidential prospect map of the proposed sale area and selects the bidding options to be used in the sale.

Step 18 (2 months before sale): The department issues a final public notice of the sale.

Step 19 (1 month before sale): The department conducts a final land status check of the sale area and identifies any third party interests.

Step 20 (day zero): The department conducts the lease sale on its schedule date.

(State of Alaska 1983, plus revisions from Rogers 1984)

electronic media serving the area affected by the action, (3) posting in a conspicuous location in the vicinity of the action, or (5) another method calculated to reach affected persons. A notice shall contain sufficient information to inform the public of the nature of the action and the opportunity of the public to comment on the action." (Alaska Statute 38.05.345).

5. Bidding

"The commissioner (of DNR) may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner. Bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state" (Alaska Statute 38.05.180(f)). The commissioner has a number of options with respect to the royalty and bonus payments. These options are summarized in Section G-2 of this report.

6. Terms of lease

- Title

The state makes no representations or warranties, express or implied, as to title, or access to, or quiet enjoyment of, the leased area. The state is not liable to the lessee or any successor in interest to the lessee entitled to any refund due to deficiency in title for any rentals, bonuses, or royalties paid under this lease (State of Alaska, 1984c).

- Length of lease

An oil and gas lease may be issued for a maximum of ten (10) years. The commissioner of the DNR, however, may issue a lease for a period of not less than five (5) years if he finds it to be in the best interests of the state

(Alaska Statute 38.05.180(m)). The maximum size oil or gas lease is 5,760 acres (Alaska Statute 38.05.180(m)).

- Extension of lease

A lease "covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon extension, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 per cent of the rate for the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities" (Alaska Statute 38.05.180(m)). The minimum notice of expiration to the lessee from the State is six months (State of Alaska, 1984c, Section 4d).

- Transfer of lease

Leases or permits or undivided interests in them may, with the permission of the commissioner, be assigned or subleased to persons qualified to hold a lease (Alaska Statute 86.605(a)).

- Compliance with rules and regulations

If the lessee fails to comply with any provision of the lease or applicable regulations, and the failure to comply continues for 60 days following receipt of notice of failure to comply, the lease may be terminated

or cancelled depending on the lease status and whether the lease tract contains a well capable of producing oil or not (Alaska Statutes 38.05.020, 38.05.035, and 38.05.145(a)).

- Cessation of work

"If oil or gas in paying quantities is produced from the leased area, and if that production ceases at any time, this lease will not terminate if drilling or reworking operations are commenced on the leased area within six months after cessation of production and are prosecuted with reasonable diligence; if those drilling or reworking operations result in the production of oil or gas, this lease will remain in effect for so long as oil or gas is produced in paying quantities from the leased area." (State of Alaska 1984c, Section 4 (c) 2).

7. Handling of proprietary information

Alaska apparently does not have a statute comparable to Florida's sunshine laws. For example, according to Alaska Statute 38.05.035, the Director of the Public Lands Division of the DNR is responsible for maintaining confidential files on bidding and cost data as well as geological, geophysical, and engineering data supplied, whether or not concerned with the extraction or development of natural resources if the confidentiality is requested by the person supplying the information.

Similarly, technical data obtained during the lease including all pertinent tests, records, surveys, and analyses conducted on or pertaining to the leased land or products from it, excluding interpretation of these items, or proprietary research data or techniques are to be furnished upon the request of the commissioner. These data will be kept confidential at the

request of the person supplying the information (Alaska Statute 82.805 and 82.810). The Department of Natural Resources "may maintain the confidentiality of a manufacturer's proprietary technical information relating to chemical and biological agents used to control or mitigate the effects of an oil discharge. The department may refuse to release the information unless the manufacturer authorizes its release or unless a court orders its release. The department may provide the information to the Department of Fish and Game and other state and federal agencies if the department or other agency requesting the information agrees to maintain its confidentiality." (Alaska Statute 46.04.025). There does not appear to be a statutory limitation on the length of time that such data can be kept confidential.

J. Relation of Leasing Program to Issuance of Permits

Alaska requires that a number of permits be obtained by the lessee prior to commencing oil or gas operations. These permits involve several state and federal agencies including the DNR, Department of Environmental Conservation, Department of Fish and Game, the Alaska Oil and Gas Conservation Commission, the Corps of Engineers, the U.S. Environmental Protection Agency, and several others. Table 4 summarizes the permitting requirements.

K. Mineral Leasing

Mineral leasing in Alaska also is handled by the Department of Natural Resources. At one time the DNR held consecutive oil and gas geothermal and coal lease sales. They may not do it again in the future (Rogers 1984).

Table 4

Alaska State and Federal Permit Requirements for Oil and Gas Leasing Activities

Permit Title	Agency/Department	Fee	Form #	Acquisition Time
Air Quality Control Permit to Open Burn & Air Quality Control to Operate	Department of Environmental Conservation	None	None	30 days
Discharge into Navigable Waters Certificate of Reasonable Assurance	Department of Environmental Conservation	None	10-806	60-75 days
Pesticide Permit	Department of Environmental Conservation	None	No #	60 days
Plan Review for Sewage Systems or Water and Wastewater Treatment Works	Department of Environmental Conservation	None	None	30 days
Solid Waste Disposal Permit	Department of Environmental Conservation	None	No #	60 days
Surface Oiling Permit	Department of Environmental Conservation	None	No #	5 days
Anadromous Fish Protection Permit	Habitat Protection, Department of Fish and Game	None	None	14 days
Critical Habitat Area Permit	Habitat Protection, Department of Fish and Game	None	None	14 days
State Game Refuge Permit	Habitat Protection, Department of Fish and Game	None	None	30 days
Equipment Fords	Habitat Protection, Department of Fish and Game	None	None	—
General Inwater Application	Habitat Protection, Department of Fish and Game	None	None	—
Material Removal Application	Habitat Protection, Department of Fish and Game	None	None	—
Permit to Drill or Deepen	Alaska Oil & Gas Conservation Commission	$100.00	10-401	10 days
Water Well Authorization	Alaska Oil & Gas Conservation Commission	None	None	—
Plan of Operations	Division of Minerals and Energy Management, Department of Natural Resources	None	None	—
Burning Permit	Land and Water Management, Department of Natural Resources	None	None	—
Land Use Permit	Land and Water Management, Department of Natural Resources	None	DL-285	30-60 days
Right-of-Way or Easement Permit	Land and Water Management, Department of Natural Resources	$10.00	10-112	—
Special Land Use Permit	Land and Water Management, Department of Natural Resources	$10.00	10-135	30-60 days
Tidelands Permit	Land and Water Management, Department of Natural Resources	$20.00	10-107	60 days
Disturbance of Natural Material Permit	Division of Parks, Department of Natural Resources	None	None	—
Discharge of Dredged Fill into U.S. Waters	Corps of Engineers, U.S. Army	$100.00	4345	120 days

Table 4 (Continued)

Permit Title	Agency/Department	Fee	Form #	Acquisition Time
Seismic Exploration Permit	Division of Minerals and Energy Management,	None	DNR 10-1118	30-60 days
National Pollutant Discharge Elimination System Permit	U.S. Environmental Protection Agency	$10.00	Short forms A,B,C,D	180 days
		$100.00 (1st discharge)	Standard forms A,C	
		$50.00 (additional discharges)		

State Departments and Commissions

Alaska Oil and Gas Conservation Commission	Enhanced Recovery Methods Regulation of Wells and Fields
Commerce and Economic Development	Registration of Corporations
Environmental Conservation	Wastewater Disposal Permit
Fish and Game	State Game Sanctuary Permit
Health and Social Services	Food Service Permit
Labor	Plumbing Code and Permits Fire and Unfired Pressure Vessels
Natural Resources	Gravel Use Permits Water Use Permit State Park Noncompatible Use Permit
Public Safety	Life and Fire Safety Plan Check Permit to Use Dangerous Fireworks Permits for Oversize and Weight Loads and/or Vehicles
Revenue	Alaska Business License

Federal Agencies and Commissions

U.S. Army Corps of Engineers	Structures of Work in or Affecting Navigable Waters of the U.S. Transportation of Dredged Material to Dump in Ocean Waters
Treasury	Use of Explosive Permit and License
Transportation	Permit for Bridges over Navigable Waters Notice of Intent to Establish or Change an Airport Landing Area Structures Which May Interfere with Airplane Flight Paths—Notice of Proposed Construction or Alteration Pipeline Safety Act
EPA	Prevention of Significant Deterioration of Air Quality Program New Source Performance Standards Oil Storage Facilities—Oil Spill Prevention Containments and Countermeasure Plans Permit to Discharge into Water (NPDES)
FCC	Licensing and Operating Radio Equipment

Local Government

Check with each local government on permits that may be needed

(State of Alaska 1983)

References

Clark, J. (1984). Personal Communication. Alaska Department of Fish and Game, Juneau, Alaska.

Jackson, J., B. Golden, A. Stadnychenko and S. Kolasinski (1981). Arctic Summary Report, Rogers, Golden and Halpern, Inc., Reston, Virginia.

Rogers, P. (1984). Personal Communication. Leasing Manager, Division of Oil and Gas, Department of Natural Resources, State of Alaska.

State of Alaska (1983). Oil and Gas Leasing Handbook, Department of Natural Resources, Anchorage Alaska.

State of Alaska (1984a). Oil and Gas Leasing Handbook Supplement, Alaska Statutes and Regulations, Department of Natural Resources, Anchorage, Alaska.

State of Alaska (1984b). Five-Year Oil and Gas Leasing Program, Department of Natural Resources, Anchorage, Alaska.

State of Alaska (1984c) Competitive Oil and Gas Lease (Revised April 1984).

California

STATE OF CALIFORNIA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	CA- 1
B. Philosophy of State Towards Leasing in State Waters	CA- 2
C. History of Leasing Program	CA- 4
D. Delegation of Management Responsibilities for State Leasing Program	CA-12
E. Geographic Description of State Territorial Waters	CA-16
F. Local Jurisdictional Control Over State Waters	CA-17
G. Oil and Gas Revenues Accruing to State	CA-20
H. Environmental Controls and Regulations	CA-24
I. Leasing Procedures	CA-30
J. Relation of Leasing Program to Issuance of Permits	CA-40
K. Mineral Leasing	CA-40
References	CA-41

LIST OF TABLES AND FIGURES

Description		Page
Table 1	State of California Offshore Oil and Gas Leases	CA- 5
Table 2	State of California Status of Platforms	CA- 8
Table 3	Oil and Gas Activity Approved for State Waters Since the Moratorium Was Lifted in 1973	CA- 9
Figure 1	State and Federal Offshore Platforms and Man-Made Islands in the Long Beach Area	CA-10
Figure 2	State and Federal Offshore Platforms and Man-Made Islands in the Santa Barbara Channel Area	CA-11
Figure 3	California State Agencies Involved with Oil and Gas Leasing	CA-15

A. Statutory Authority

1. Vested authority

The statutory authority for leasing State lands is vested in the State Lands Commission created in 1938. "The commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State, and of the beds of navigable rivers, streams, lakes, bays, estuaries, inlets, and straits, including tidelands and submerged lands or any interest therein, whether within or beyond the boundaries of the State as established by law, which have been or may be acquired by the State (a) by quitclaim, cession, grant, contract, or otherwise from the United States or any agency thereof, or (b) by any other means. All jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission.

The commission shall exclusively administer and control all such lands, and may lease or otherwise dispose of such lands, as provided by law, upon such terms and for such consideration, if any, as are determined by it" (Public Resources Code, Div. 6, Part 1, Ch. 4, Art. 1, 6301).

Unlike the other coastal states discussed in this document, the State of California has had, since acquiring statehood, the authority to grant lands in trust to local public jurisdictions. The management of these in-trust grants has changed over the years in the direction of becoming increasingly more stringent.

With regard to the sovereign lands of the State that have not been granted, the Commission has been given a relatively clear mandate to pursue an active management course. Where such lands have been granted, however, the Commission has, of necessity, been placed in a position of reviewing

accomplished fact, since the trustee, subject to the conditions and restrictions, if any, of the grant, is initially the responsible entity for the administration of the granted lands. The State Lands Commission, on the other hand, holds all retained and residual State authorities. The respective roles of the State Lands Commission and the trustees have been unclear. This has been detrimental to effective management and control of the granted lands by both the trustee and the State Lands Commission. Legislation appears needed to define the respective roles (California State Lands Commission 1976).

2. Members of governing body

The State Lands Commission is comprised of the State Controller, the Lieutenant Governor, and the State Director of Finance, each of whom serves as an ex-officio member. The first two are elected officials while the last is a cabinet level officer appointed by the Governor. "The Commission is assisted by a staff of more than two hundred and fifty specialists in mineral resources, land management, boundary determination, petroleum engineering and natural science. The staff is supervised by an Executive Officer who is appointed by the Commission".

B. Philosophy of State Towards Leasing in State Waters

The basic concern of California for protecting its environment is well known. This concern is stated officially at the outset of the California Statute on Environmental Quality (Division 13) 21000 Legislative Intent.

"The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage. (Added by Stats. 1970, c.1433, p.2780, §1.)"

C. History of Leasing Program

1. Establishment of offshore leasing program

The first California tideland oil well was drilled in 1896 at Summerland in Santa Barbara County. In these early years, no State laws existed to govern the extraction of oil and gas from State-owned lands. In 1921, the Legislature began providing for the issuance of prospecting permits and leases for oil and gas development on the State's tide and submerged lands.

The first state leases were issued in 1929 off Santa Barbara County. Activity has continued in the Santa Barbara Channel tidelands and off the coasts of Los Angeles and Orange County.

The last leases issued by the State of California were in early 1969. After the 1969 Santa Barbara Channel blowout and resulting oil spill, the State Lands Commission declared a moratorium on all new exploration and development drilling in State waters. The moratorium was lifted in late 1973 for exploration and development drilling on a case by base basis. After a hiatus of over a decade, the Commission has commenced a program which will enable the State to lease, by competitive bid, approximately 40,000 acres of State tidelands and submerged lands for oil and gas development (California State Lands Commission (1981).

2. Frequency distribution of leases by year

Table 1 summarizes California offshore oil and gas leases from 1929 to 1968. As of September 1982, seven platforms, three man-made islands, and 42 subsea completions were operating on these leases (Stadnychenko and McCord 1982).

Table 1

STATE OF CALIFORNIA OFFSHORE OIL AND GAS LEASES

P.R.C.	Parcel No.	Present Lessee	Cash Bonus $	Acreage	Date Issued
Santa Barbara County					
129		Aminoil	Not required	254	1/27/44
208		Aminoil	Not required	1920	1/18/46
308		Atlantic Richfield, et.al.	Not required	1920	3/04/47
309		Atlantic Richfield, et.al.	Not required	1920	3/04/47
421		Aminoil	Not required	68.48	10/22/29
424		Aminoil	Not required	20	11/12/29@
428		William L. Appleford	Not required	69.21	7/29/30
1824		Chevron-Exxon	7,250,606.95	5500	1/10/57
2199	Parcel C	Chevron-Shell	12,423,598.05	3840	7/25/58
2205	Parcel A	Phillips-Pauley, et.al.	13,550,000.00	3840	7/25/58*
2206	Parcel D	Texaco	23,711,538.24	3840	7/25/58
2207	Parcel E	Phillips-Exxon,et.al.	5,100,000.00	3840	7/25/58#
2725	Parcel 2	Texaco	9,550,000.00	4250.14	5/04/61
2726	Parcel 3	Atlantic Richfield, et.al	1,355,111.00	4250.14	5/04/61
2793	Parcel 4	Atlantic Richfield, et.al.	2,101,875.00	4250.14	10/26/61
2879	Parcel 6	Union	3,047,740.00	5653.10	4/26/62
2894	Parcel 7	Chevron-Shell	1,502,020.00	4250.14	6/28/62
2920	Parcel 8A	Chevron-Shell	14,080,713.82	4250.14	8/28/62
2933	Parcel 9A	Phillips-Pauley	6,100,000.00	4250.14	10/25/62
2955	Parcel 10A	Texaco	107,100.00	4250.14	10/20/62
2991	Parcel 11	Union	267,000.00	4250.14	2/28/63
3004	Parcel 12	Union-Exxon	612,840.00	3150	4/25/63
3120	Parcel 18A	Atlantic Richfield-Mobil	352,111.15	3324	4/29/64
3133	Parcel 19	Exxon	22,002,500.00	5535	5/28/64
3150	Parcel 21	Atlantic Richfield-Chev.	18,666,555.66	5553	7/28/64
3242	Parcel 24	Atlantic Richfield-Mobil	3,667,111.00	4290	4/08/65
3498	Parcel 39	Chevron-Exxon	203,115.00	1165	6/15/66
3499	Parcel 40	Phillips-Pan Petroleum	335,000.00	1340	6/15/66
3503	Parcel 38	Union	1,320,760.00	1660	6/28/66
4000	Parcel 60	Atlantic Richfield-Chevron	361,408.00	204	8/28/68
4001	Parcel 35A	Chevron	53,600.00	780	8/28/68
4002	Parcel 36A	Chevron	61,200.00	600	8/28/68
4031	Parcel 61	Continental	2,625,000.00	2332	8/28/68**

* Quitclaimed 4/08/68
@ Quitclaimed 11/3/71
\# Quitclaimed 7/25/75
** Quitclaimed 9-23-82

Table 1 (Continued)

STATE OF CALIFORNIA OFFSHORE OIL AND GAS LEASES

P.R.C.	Parcel No.	Present Lessee	Cash Bonus $	Acreage	Date Issued
Orange County					
91		Aminoil, Exxon	Not required	589	5/21/43
163		Aminoil	Not required	640	11/15/44
185		Exxon-Texaco	Not required	1255	9/24/45
E392		Aminoil	Not required	835	9/26/38
425		Aminoil	Not required	835	2/10/50
426		Aminoil	Not required	640	2/10/50
3033	Parcel 14	Union	6,110,000.00	2113.245	7/25/63
3095	Parcel 16A	Chevron	4,066,676.00	3360	1/30/64
3119	Parcel 17	Mobil	1,250,285.00	3420	4/29/64@
3177	Parcel 20A NE	Pauley Petroleum	3,651,000.00	1549	8/18/64
3413	Parcel 20A SW	Union	00.00	1871	12/01/65
Ventura County					
145		Energy Develop. Corp.	Not required	326	7/03/44
410		Norris	Not required	50	4/17/29
427		Mobil	Not required	148	5/19[illegible]
429		Norris	Not required	80	4/21/[illegible]
735		Chevron	Not required	220	6/30/52
1466		Atlantic Richfield	Not required	1175	8/29/55
3184	Parcel 22A	Chevron	8,123,345.00	5540	9/24/64
3314	Parcel 25	Shell	3,299,685.00	5430	7/02/65
3403	Parcel 26A	Chevron	1,714,633.00	5300	11/18/65
3489	Parcel 33	Mobil-Union	205,970.00	4570	5/26/66
3490	Parcel 34	Mobil-Union	234,030.00	5305	5/26/66
3945	Parcel 54	Shell	1,356,085.00	5546	5/23/68
3946	Parcel 55	Shell	279,190.00	5589	5/23/68*

* Quitclaimed 4/18/73
@ Quitclaimed 4/25/73

Table 2 shows the status of State leases on which platforms presently are located. During the State fiscal year (July 1, 1981 through June 30, 1982) 14,634,928 barrels of oil, 7,345,637,000 cubic feet of gas liquids were produced from offshore leases on the State's tidal and submerged lands. The figures are exclusive of production from State-granted lands that have been transferred to public jurisdiction and are administered by local agencies, including Long Beach, Venice Beach, Torrance, and Newport West offshore areas.

Table 3 shows the offshore oil and gas activity in state waters since the 1969 moratorium which, as stated before, was lifted in 1973 (Stadnychenko and McCord 1982). Figures 1 and 2 show the locations of state and federal offshore platforms in the Long Beach and Santa Barbara Channel areas respectively.

3. Average geographic size of lease and related bidding data

The lease acreages for California state waters are shown in Table 1. The total acreage leased in 59 leases from 1929 to 1968 for all four counties combined was 157,435 acres with an average lease size of 2,668 acres, well under the maximum permissible lease size of 5,760 acres.

4. Example of prior lease sale schedule

Because of the 1969 moratorium on drilling activity no lease sale schedule has been established. The State Lands Commission, however, plans to open up for lease approximately 40,000 acres in 1985 between Point Conception and Point Arguello.

Table 2

State of California Status of Platforms

Platform	Operator	Field or location	State PRC number	Number of slots	Water depth (feet)	Status
Herman	Texaco	West Tidelands	2725	0	88	Inactive platform; 19 subsea completions (inactive); Final environmental impact report (FEIR), resumption of exploratory drilling from within lease--not from platform.
Helen	Texaco	Cuarta Field	2206	40	94	Inactive platform; 9 idle wells. FEIR, resumption of exploratory drilling from within lease--not from platform.
Holly	ARCO	South Elwood Field	3242 3120	30	211	Redrilling in operation. FEIR, resumption of exploratory drilling from within lease--not from platform; 9 active wells also in PRC 3120 resuming exploratory drilling.
Hilda	Chevron	Summerland Field	1824	24	106	Producing platform.
Hazel	Chevron	Summerland Field	1824	25	100	Producing platform.
Heidi	Chevron	Carpinteria Field	3150	60	125	Producing platform. 1 producing well also in PRC 3133 from Platform Heidi; resumption of drilling into P-3133 from Heidi has been approved.
Hope	Chevron	Carpinteria	3150	60	136	Producing platform. 4 producing wells also in PRC 4000 from Platform Hope; also serves as transfer facility for OCS production.
Emmy	Aminoil	Huntington Beach	425	53	47	Development drilling ongoing.
Eva	Union	Huntington Beach	3033	39	57	Producing platform; also serves as transfer facility for OCS production.

SOURCE: Sanders, 1982.

Table 3
Oil and Gas Activity Approved for State Waters
Since the Moratorium Was Lifted in 1973

Lease	Company	Approval date*	Project
		Redrilling	
427	Mobil	11/21/74	4 wells
3120 3242	ARCO	4/30/75	13 wells from Holly
186	Exxon	4/28/76	28 wells
91 163 425 426 392	Aminoil	1/26/77	144 wells from Emmy, 183 wells from upland locations
410	Cabot	3/31/77	6 wells
		New Development	
3095	Chevron	1/14/75	20 wells from Esther
3120 3242	ARCO	4/30/75	17 wells from Holly
186	Exxon	4/28/76	3 wells
1824 3150 4000	Chevron	10/28/76	36 wells
410	Cabot	3/31/77	5 wells
145	Energy Dev.	9/24/80	17 wells
1466	ARCO	10/30/80	1 well
3133	Exxon	12/17/81	--
		Exploration	
2879	Union	5/29/80	4 wells
308 309	ARCO	10/8/80	9 wells
2920	Shell	12/16/80	1 well
3314	Shell	4/29/81	8 wells
208	Aminoil	2/25/82	13 wells
3120 3242	ARCO		
2206 2725 2955	Texaco	4/27/82	5 wells
2933	Phillips	5/27/82	4 wells

*Approval dates reflect approval from the California State Lands Commission. Some activity may not have yet been approved by other State agencies, such as the California Coastal Commission or the Air Resources Board.

SOURCE: Sanders, 1982.

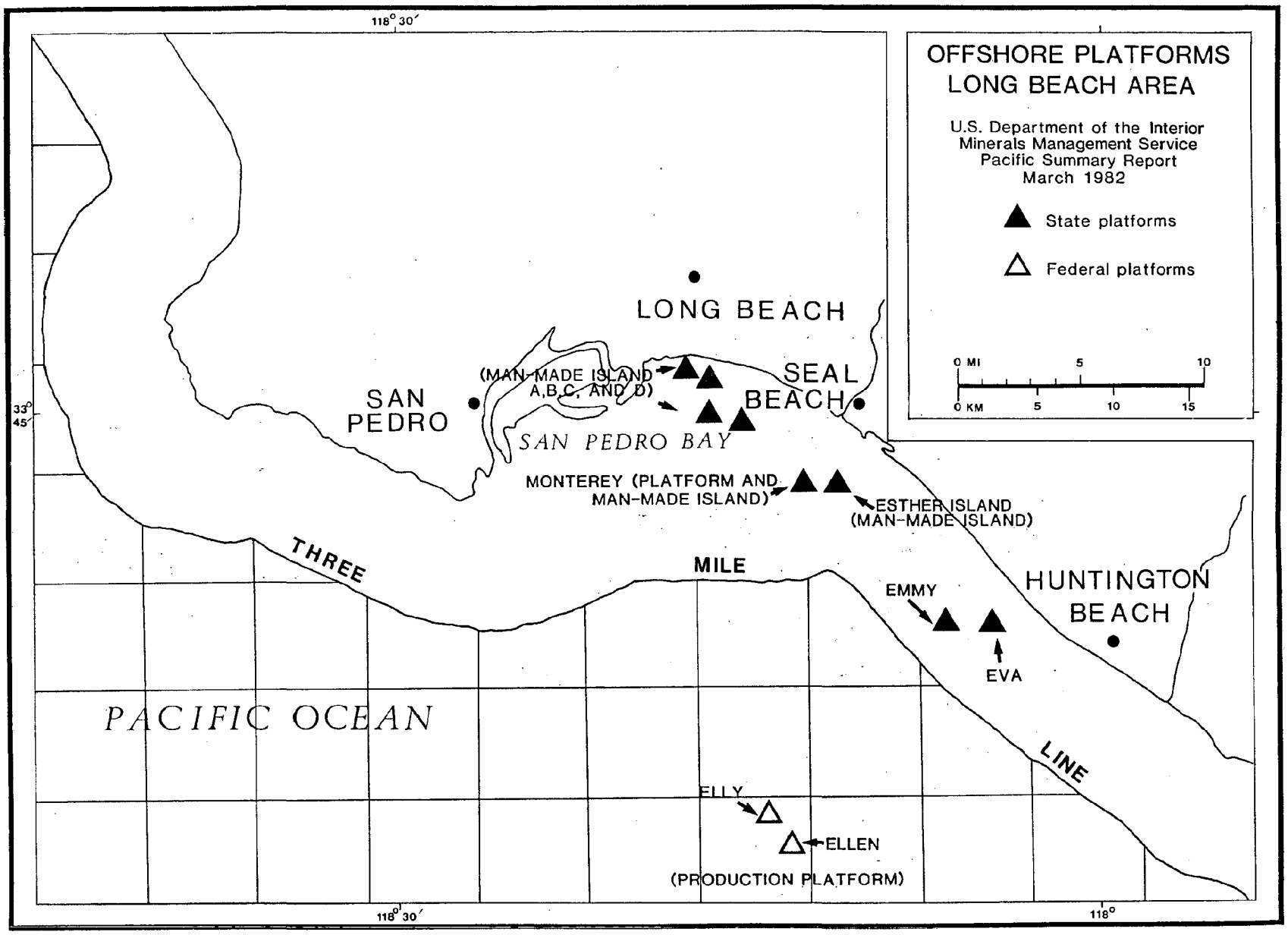


Figure 1 State and Federal offshore platforms and man-made islands in the Long Beach area. (Collins et al., 1982, Adapted from Sanders, 1982, by Rogers, Golden & Halpern, 1982.)

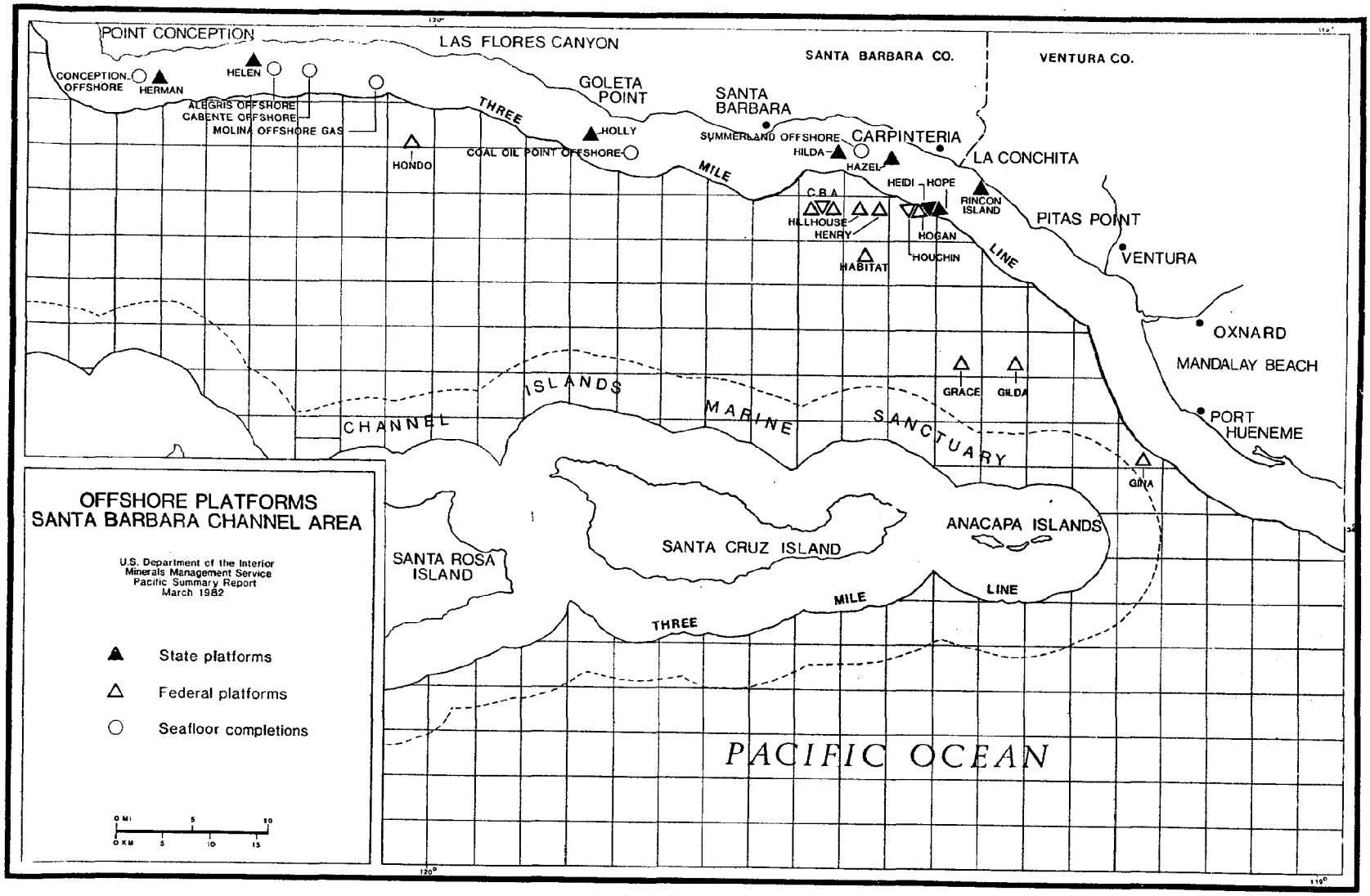


Figure 2 State and Federal offshore platforms and man-made islands in the Santa Barbara Channel area. (Collins et al., 1982, Adapted from Sanders, 1982, by Rogers, Golden & Halpern, 1982.)

5. Revenues accruing to state over past 39 years

"California has had a favorable and profitable history of oil and gas development on State lands offshore Southern California. Since 1929 the State has received over $2.5 billion in revenue from this source. Over this period the State has experienced no significant problems with spills, blowouts or other adverse conditions. Consideration is now being given to possible leasing of additional offshore resources in areas heretofor undeveloped" (California State Lands Commission, 1982).

The bonus revenues for offshore leases from 1929 to 1968 are shown on Table 1.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

In California, three agencies have a major role in oil and gas development on the tidelands out to Federal waters. They are the California State Lands Commission, the Division of Oil and Gas of the Department of Conservation, and the California Coastal Commission. In addition, local government agencies have significant roles because of onshore processing facilities and transportation permits.

2. Agency responsibilities

The State Lands Commission (SLC) has jurisdiction over all ungranted tidelands and submerged lands and is the land manager responsible for the leasing and royalty collection from production of oil and gas in State

waters. It issues the lease by competitive bid, develops necessary environmental impact reports for the area of interest, and regulates subsequent activities (exploration, development, production, abandonment) pursuant to its operating rules and regulations. Any exploration plans submitted by the oil industry, or plans of development in the event of a commercial discovery, must be approved by the SLC. All drilling, operating, maintenance, and abandonment of wells in State lands is subject to the SLC drilling and production regulations (California Administrative Code, Title 2, Division 3, Chapter 1, Article 3.3). In the event of an oil spill, the Commission has the authority to stop operations in the area.

The Division of Oil and Gas also is responsible for regulating the drilling, operation, maintenance and abatement of all oil and gas wells in California, both offshore and onshore. Its authority is similar to that of the SLC although at the present time, the SLC regulations are more stringent. The Division issues permits to drill, establishes engineering standards, and inspects operations of all wells drilled. In the event of an oil spill, the Division of Oil and Gas assists in the abatement of the spill and investigates its cause.

The third major agency involved in the review process of State oil and gas activity is the California Coastal Commission. The Coastal Commission's responsibility regarding oil and gas activity is divided between the OCS and the coastal zone, including State waters. It maintains permit authority over development in State waters and coastal lands and works closely with the State Lands Commission and the Division of Oil and Gas. The Coastal Commission also has permit authority over onshore-related portions of OCS oil and gas development activities which lie within the coastal zone (Stadnychenko and McCord, 1982). The Coastal Act of 1976 gave the California

Coastal Commission the authority to regulate coastal development while coastal cities and counties prepared coastal plans of their own. Under the Local Coastal Program (LCP), local governments prepare a Land Use Plan (LUP), zoning ordinances, zoning district maps and, where required, other implementing actions applicable to the coastal zone (California Coastal Commission, 1981). Input is provided from the public and the California Coastal Commission; residents voice their opinions on the coastal development and the laws that govern their community, while the Coastal Commission aids in identifying coastal issues, citing precedential permit decisions, and interpreting Coastal Act policies (Collins et al, 1982).

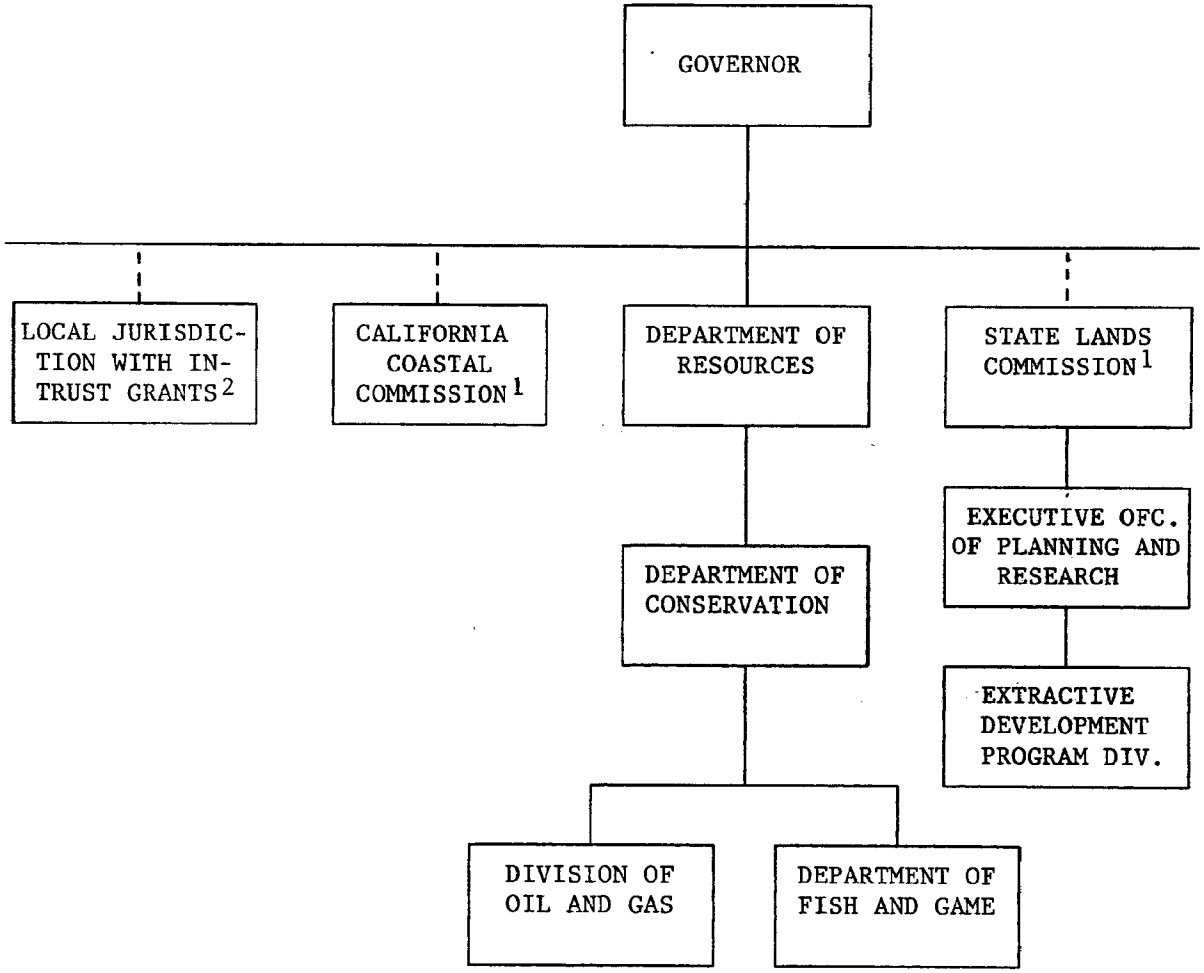
The relationship of the SLC to State and local agencies with respect to the leasing process has been subject to considerable controversy; although the Commission clearly has the statutory authority (PRC 6851-6855) to lease all State owned lands. As a practical matter, the Governor's office has developed a series of Memorandums of Understanding (MOU) in which the roles of the SLC, the Coastal Commission and the County of Santa Barbara (where a large number of onshore processing and transportation facilities are being located) have been defined. These MOUs have clarified responsibilities on specific projects (Livenick 1984).

3. Organization chart of State agencies

Figure 3 shows the California State agencies involved with oil and gas leasing.

FIGURE 3

CALIFORNIA STATE AGENCIES INVOLVED WITH OIL AND GAS LEASING



[1] INDEPENDENT COMMISSION, DOES NOT REPORT TO GOVERNOR.

[2] DO NOT REPORT TO GOVERNOR.

E. Geographic Description of State Territorial Waters

1. General description of State offshore boundaries

The Pacific coast of California covers 840 statute miles with a tidal shoreline of 3,427 statute miles. Territorial waters extend offshore for 3.45 statute miles. Including the four counties fronting on San Francisco Bay, there are 18 coastal counties. Its long mountainous coastline includes numerous bays, estuaries, state parks, beaches, and other environmentally protected areas.

2. Mapping and charting procedures used to define lease areas

There has not been a systematic state-wide procedure for laying out lease tracts. Statutes (PRC 6871.4) limit the maximum tract size to 5,760 acres. Often a geologic study is conducted in order to assure that a tract may contain resources (Livenick 1984). The State Lands Commission establishes the high-water mark or the ordinary low-water mark of any of the swamp, overflowed, marsh, tide, or submerged lands (Public Resources Code (PRC), Div. 6, Part 1, Ch. 4, Art. 3, 6357).

Except as provided in Section 6871.2, the tide and submerged lands of the State along the coast of the Pacific Ocean which may be leased pursuant to Section 6871.3 for the production of oil and gas are those extending from the northerly city limits of the City of Newport Beach, Orange County, to the northerly boundary of the State of California (Public Resource Code, Div. 6, Part 2, Ch. 3, Art. 4, 6871.1) except that those lands in oil sanctuaries where no production can occur (PRC 6871.2). In other words, oil or gas cannot be extracted from any tide or submerged lands along the Pacific coast lying in a sanctuary.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

As described in Section A-1 of this report, dating back to 1851, California has made a number of statutory grants to municipalities of tide and submerged lands lying within city boundaries. Such municipalities have been held to have the right to develop oil and gas underlying the granted lands, however to the trust restriction that revenue be used for fishing, navigation and commerce (Kruger 1958). Tide and submerged lands and beds of navigable rivers and lakes may be leased by the commission for the extraction of oil and gas in accordance with the provisions of the Public Resources Code insofar as such leases are not in conflict with the provisions of the Code. No political subdivision or official of the State or any city or county may grant or issue any lease, license, easement, privilege, or permit vesting authority in any person to take or extract oil or gas from tide or submerged lands whether filled or unfilled of which the State is the owner or from which the State has the right to extract oil or gas, or both (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 4, 6871).

Section 6879 of the Public Resources Code, however, authorizes cities and counties to enter into agreements for oil and gas extraction under certain conditions such as the following: Whenever tide and submerged lands of the State have been granted to a city or county by a grant which does not reserve to the State the right to produce oil and gas therefrom, such grantee may enter into agreements for the purpose of bringing about the cooperative development and operation of all or a part of the oil and gas field in which such lands are located, for the purpose of producing, preserving or protecting oil and gas resources. Any such agreements must be approved in advance by the State Lands Commission.

The Public Resources Code Div. 6, Part 2, Ch. 5, 7051(a) further authorizes public agencies to grant oil and gas leases. "The board of supervisors, boards of trustees, directors or other governing body of any county or other public or quasi-public corporation, body or agency authorized to acquire and hold real property pursuant to the statutory authority under which such county, corporation, body or agency is created may, under such limitations and restrictions as are prescribed by law, lease for the production of oil, gas and other hydrocarbons or for the mining of any other minerals whatsoever, any land owned by the county or such other public or quasi-public corporation, body or agency, or include such land in a community lease embracing adjoining lands, or enter into compensatory royalty agreements in lieu of making such lease, whenever, in the judgment of the governing body, the public use of such property shall not be substantially interfered with thereby." There are, however, restrictions on the leasing authority which are too numerous to include here.

2. The role of port authorities

Port authorities do not play a significant role in offshore oil and gas leasing.

3. Proprietary interests of local governments in submerged lands

See Section F-1 of this report.

4. Home rule rights and the authority for local governments to annex offshore lands

Unlike most other coastal states reviewed in this document, California has established procedures for counties and municipalities to annex offshore

state lands subject to the approval of the State Lands Commission (Government Code 35009). Specific guideline requirements are provided to identify the proposed boundaries and their relation to shoreline patterns and the boundaries of adjacent jurisdictions.

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

   See Section F-6 of this report

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax

Local governments that have been granted in-trust lands have the legal right to charge and receive revenues such as rentals, royalties, etc., produced by the use of such lands. Problems have arisen, however, when the rates established locally are not consistent with rates established by the State for ungranted lands. It also has been held that developments, leases, and revenues relating to granted tide and submerged lands must contribute to the benefit of the state as a whole rather than solely the population of the local trustee (California State Lands Commission 1976). The use of tidelands revenues for non-trust purposes is a violation of such trusts and the courts have prevented such use. Continuing efforts are underway to achieve consistency amongst trustees.

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

The minimum royalty prescribed by law is 16 2/3%.

2. Royalties prescribed for oil and gas leases

Four types of royalty for oil and gas are used: flat rate, sliding scale, net profits, and multipliers on each of the first two. For example, "When state lands, including tide and submerged lands, are offered for lease by the commission, the commission shall specify a sliding scale royalty on oil commencing at not less than 16 2/3 percent up to a maximum percentage specified in the invitation to bid to be paid on the average production of oil per well per day under such lease, and a royalty of not less than 16 2/3 percent as specified in the invitation to bid on dry gas natural gasoline, and other products extracted and saved from the gas produced under such lease, except gas used for lease or reinjection into the leased lands" (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 2, 6827). "Such royalties shall be paid in kind or as a percentage of the current market price at the well of, and of any premium or bonus paid on, the production removed or sold from the leased land, subject to an annual rental payable in advance of not less than one dollar ($1) for each acre of land subject to the lease at the rental date" (Section 6827). The State may elect to take in kind in lieu of royalty, a specified percentage of the oil, gas and/or other hydrocarbon substances removed or sold from the leased lands. The State makes this election by giving 30 to 180 days' written notice to the Lessee. In the notice, the State specifies which hydrocarbon or hydrocarbons it elects to take in kind, the percentage, and the date it wishes to begin receiving in

kind payments. Upon written notice to the Lessee, the State may elect to stop receiving any or all hydrocarbons taken in kind and may exercise its right to take hydrocarbons in kind at any time it is not taking the full twenty percent (20%) of all hydrocarbons removed or sold from the leased lands. Although most state oil and gas leases provide for in kind royalty, specific provisions in the Point Conception Lease are not applicable to other leases.

When the commission exercises a right to take oil, gas or other hydrocarbons in kind pursuant to any lease, the commission enters into contracts or agreements for the disposition and sale of such oil, gas, or other hydrocarbons with the highest responsible bidder following competitive bidding, and in accordance with procedures set forth in rules and regulations adopted by the commission.

In order to prevent the premature abandonment of a lease, if, after the holding of a public hearing, the commission finds that continued production from a lease is in the best interests of the people of California and that such production is economically unfeasible under the terms set forth in the lease, the commission may renegotiate the lease to reduce the minimum royalty rate or to substitute such other consideration as would be in the best interests of the State.

3. Rental per acre

See item G-4 of this report

4. Delay rental payment

The state has very few "delay" rentals. Most rentals on tide and submerged lands are $1.00 per acre per year for the life of the lease.

5. Shut-in royalties

Shut-in royalties are provided for by lease amendments. Normally they are representative of recent (3 year) average production (Livenick 1984).

6. Offset wells

If any well producing in commercial quantities gas and/or gas condensate, or oil or gas is completed on other than State lands, with any part of its producing interval within 500 or 1489 feet respectively from the exterior boundary of the lease, the State may notify the Lessee in writing to drill an offset well. Within the time specified in the notice, normally 120 days from the date of the notice (although it can range from 30 to 180 days), the Lessee must commence operations for the drilling of an offset well on the leased lands to the same zone as that zone from which such well is producing, or is capable of producing oil or gas. An offset well for gas or gas condensate, and/or oil and gas means a well, the midpoint of the producing interval of which is situated not more than 500 feet (oil) and 1489 feet (gas) respectively from the point on the boundary of the lease nearest to the producing interval of the well to be offset.

7. Pooled acreage

If the State determines that the ultimate recovery of oil or gas will be increased, oil or gas will be protected from unreasonable waste, land subsidence may be arrested or ameliorated, or adjacent landowners will be protected, the Lessee shall unite with other lessees of the State or with others owning or operating lands not belonging to the State, including lands belonging to the United States, in operating under a cooperative or unit plan of development or operation for the pool or field or any part thereof. The

State, with the consent of the Lessee, may establish, change or revoke any drilling and production requirements of this lease, may permit apportionment of production, and may make such regulations concerning the institution and operation of any cooperative or unit plan that the State deems necessary or proper for the protection of its interests. (State of California Oil and Gas Lease).

8. Bonus consideration

The amount of the bonuses paid at the time of leasing may be a major bid factor. Other bid factors include the sliding scale royalty, the percentage of net profits offered by the bidders, the percentage of other products extracted during operations, and other factors. Unless the Commission of State Lands decides to reject all bids pursuant to Section 6836 of the Public Resources Code, the lease of the parcel or tract which is the subject of the bid is awarded to the qualified bidder who offers to pay the highest cash bonus in addition to satisfying all other provisions of the lease. (Public Resources Code Div. 6, Part 2, Ch. 3, Article 2, 6827).

Bonuses paid in the past for offshore leases are summarized in Table 1.

9. Severance tax

There is no oil and gas severance tax in California.

10. State agency receiving royalties

Royalty payments are paid to the State Lands Commission.

11. Distribution of revenue within State (Subvention)

With the exception of revenues derived from state school lands and from other special sources described in the Public Resources Code, the Commission

of State Lands deposits in the State Treasury all revenues, moneys, and remittances received by it under Division 6 of the Public Resources Code. The distribution of these funds throughout the state is in accordance with priorities prescribed in the Code. In addition, the State Controller annually apportions one percent of the revenues paid to the state under Article 4 of the Public Resources Code to each city or county having within its boundaries ungranted tide and submerged lands or such other tide and submerged lands granted to it by the state in which the state has reserved the rights to the mineral deposits contained therein. The total amount apportioned to each city or county in each year may not exceed $75,000 per mile, or fraction of a mile, of ocean frontage within and owned or operated as a park by a city or county and leased by the State Lands Commission for the production of oil, gas and other hydrocarbons, and only in those cases where such ocean frontage is available to the public free of charge for recreational purposes. Any city which is fronted, in whole or in part, by a state and gas lease and which owns or operates a public recreational beach on the ocean is qualified to receive an apportionment. For purposes of Section 6817 of the Code, tide and submerged lands within the limits of a city are deemed not to be within the boundaries of a county except in the case of a city and county (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 1, 6817).

H. Environmental Controls and Regulations

1. Responsible agencies

Agencies involved with the environmental aspects of offshore oil and gas leases include: the Department of Resources; the Department of Fish and Game; the United States Fish and Wildlife Service; the Minerals Management

Service; and the National Marine Fisheries Service. The onshore permitting agency such as the county, city, or Air Pollution Control District also can play a significant role through environmental or land use control projects. Each plays a role either in establishing regulations and/or guidelines, providing consultation or comments, or in enforcement of stipulations or regulations.

For example, the regulations contained in Chapter 3 of the California Environmental Quality Act (CEQA) are prescribed by the Secretary of the Department of Resources land are binding on all public agencies in California. They form one of the principal bases of the environmental impact report required prior to undertaking any significant offshore activities. The basic purposes of CEQA are:

- Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities.
- Identify ways that environmental damage can be avoided or significantly reduced.
- Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

2. Relation to leasing agency

See Section D-2 of this report.

3. Environmental review process prior to issuing lease/permit

It should be mentioned that since 1978 the Minerals Management Service and the State of California have worked out procedures that greatly streamlined the granting of permits on the OCS benefiting both the State and the Federal Government. "Prior to 1978, the review permit process was sometimes delayed for over 9 years, resulting in huge litigation costs. By California law (AB 884), a State lead agency is mandated to make a decision within 12 months after an application is deemed complete. Responsible State agencies under the law have an additional 6 months to make their decisions. With the approximate 18-month timetable and Federal/State environmental review consolidation now in effect, industry's financial risks have lessened and their ability to secure all necessary permits/approvals in a timely manner has significantly improved" (Collins et al., 1982).

An example of special environmental requirements being placed on the lessee may be found in the Point Conception - Point Arguello lease form. Under Exhibit 'C' a number of environmental requirements are included such as: designation of pipeline corridors; judicious use of explosives to avoid harming marine birds and mammals; drilling in geologically unstable areas; site-specific biological surveys including sampling; and the preparation of a fisheries training program to familiarize operational personnel with fishing methods, hazards, and potential conflict with oil and gas operations.

4. Environmental stipulations

Article 3.3 of the Regulations for Oil and Gas Drilling and Production operations on State Title and Submerged Lands (State of California 1980), is applicable to operations conducted from mobile rigs, fixed offshore structures and upland locations serving these leases. In addition to

complying with Division 6 of the California Public Resources Code and with Title 2, Division 3, Chapter 1 of the California Administrative Code, lessees are required to comply with all applicable laws, rules and regulations of the United States and of the State of California and with any respective political subdivision thereof, including, but not limited to, the Division of Oil and Gas, the Department of Fish and Game, the Division of Industrial Safety, the State Water Resources Control Board, the Regional Water Quality Control Boards, and the California Coastal Commission (Public Resources Code Sections 6005, 6216, 6301, 6871, 6871.1, 6873(d)). Additional general stipulations are addressed in the Public Resources Code. It should be pointed out that these regulations are not limited to environmental concerns, but also are applicable to safety, resource conservation, royalty accounting and to engineering practices.

"Notwithstanding any other provision of law to the contrary, no leases shall be let for the extraction of oil and gas from coastal tidelands or submerged lands in state waters within the Santa Barbara Channel unless the commission determines that such a lease will not result in the seepage or spillage of oil (either by finding that the safety and containment devices to be used are sufficient to prevent such seepage or spillage or that no seepage or spillage would result in any event) or in the destruction of scenic or aesthetic values" (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 4, 6870).

Section 6871.2 of the Public Resources Code further restricts oil and gas operations in specific areas along the Pacific coast. For example, according to Section 6872.2, If the commission determines that any tide and submerged lands belonging to the State should be drilled pursuant to the terms of Section 6872.1, in order to preserve and protect highly developed

recreational and residential areas, the commission can require that any well or wells drilled in the described area be slant-drilled from an upland or littoral site to and into the subsurface of the tide or submerged lands covered by the lease. The area to which this section is applicable is the tide and submerged lands along the coast of the Pacific Ocean south of the northerly city limits of the City of Newport Beach in Orange County to the southerly boundary of the State.

On the other hand, wells may be drilled and/or slant-drilled anywhere within State owned submerged lands right up to shore as described in Section 6873(a) and (b) of the Public Resources Code. "(a) Each well drilled pursuant to the terms of the lease may be drilled or slant-drilled to and into the subsurface of the tide or submerged lands or beds of navigable rivers or lakes, covered by the lease from upland, riparian or littoral drill sites owned or controlled by the State or owned by or available, at any time, to the lessee, or from drill sites located upon any filled lands heretofore or hereafter filled, whether contiguous or noncontiguous to the riparian or littoral lands or uplands, or from any pier heretofore or hereafter constructed owned by or available to the lessee and available for such purpose, or from platforms or other fixed or floating structure in, on or over the tide or submerged lands or beds of navigable rivers or lakes, covered by the lease or otherwise available to the lessee.

(b) Such lease shall prohibit the pollution or contamination of the ocean, tidelands, or navigable rivers or lakes, and shall prohibit the impairment of and interference with bathing, fishing, or navigation in the waters of the ocean, any bay or inlet thereof, or any navigable river or lake, and shall prohibit the impairment of and interference with developed shoreline recreational or residential areas. In addition, no oil, tar,

residuary product of oil, or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any navigable river or lake."

5. Baseline environmental research

The SLC conducts baseline studies, as appropriate, on the offshore environment. Individual responsible (permitting) agencies have unique information needs, which normally are addressed through the California Environmental Quality Act process (Livenick 1984). Further, under the California Porter-Cologne Water Quality Act, Chapter 3, Article 3, Section 13142.5(d), "Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development" by the State Water Resources Control Board.

6. Role of Corps of Engineers

The Corps of Engineers has no role in leasing in California, but as with other states has permitting authority as follows:

- Structures or work in or affecting navigable waters of the United States - Section 10, River and Harbor Act of 1899 (33 U.S.C. 403).
- Discharge of dredged or fill material into waters of the United States - Section 404, Clean Water Act (33 U.S.C. 1344).
- Transportation of dredged material for purpose of dumping into ocean waters - Section 103, Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

I. Leasing Procedures

"Exploratory drilling can occur either before or after leasing; and by the State or by industry. A drilling program can be authorized and conducted by the Commission, after appropriate site specific environmental analysis, prior to lease. This can be an expensive undertaking and the risk of no resource, and thus no revenue to the State, is a risk assumed by the State. If exploration is deferred until after leasing, such exploratory work would be done by the lessee which assumes the risk of a dry hole. If the area has been leased with some form of bonus and no recoverable oil and gas is found, the State has received funds while the lessee has received nothing. Public policy questions are involved in the options decision to pay for exploration directly or ultimately through the cost of consumed products. The degree of risk which is to be assumed by the State is one of many factors that will affect the choice of bidding option." (California State Lands Commission 1982).

1. Leasing Schedule

California has no lease schedule for offshore oil and gas activities. The SLC may initiate the decision to lease lands or may respond to a request from industry. When an application is received by the State Lands Division it is reviewed by the Extractive Development Program Division for compliance with state statutes, rules, regulations, and land management policies including those of the California Environmental Quality Act. During this review it is decided if an Environmental Impact Report (EIR) is required. Under Government Code 65920 et. seq., the SLC is required to approve or disapprove a development project within one year from date of application acceptance.

Perhaps more than any other coastal state reviewed in this document, California has been concerned with the impact of OCS oil and gas activity on the leasing strategy and schedule in state waters. This concern is expressed well in the California State Lands Commission report (1982).

"Federal lease sales contiguous to State lands proposed for leasing can affect State leasing strategy in several ways. First, the existence of contiguous Federal leased parcels allows industry to conduct geological and geophysical exploration work on Federal lands to determine the existence of oil and gas and in addition to obtain information on what might occur on the adjacent State lands. This could be a mixed blessing, for if a resource is discovered on Federal lands, and it appears that it extends into State lands, this knowledge should make the State lands more valuable in a competitive bidding situation. Conversely, if resource assessment on Federal lands turns up no resource either on federal lands or State lands, future bidding on State lands would be depressed. The issue is timing--whether it is better to go ahead and lease an unknown parcel before Federal data is available and hope for the best, or wait for the Federal data and hope it is promising or wait and take the chance the Federal data is not promising and face the effects that information may have on bidding for State lands. However, if the parcels were leased in a sequential program with a fixed up--front cash payment (i.e. bonus or initial rental.) with the bid factor being a percentage of net profits, the effects on revenue would be evident later in the leasing program.

Secondly, accelerated leasing of adjacent federal OCS lands could have a serious effect on industry's financial ability to bid and subsequently explore on both Federal and State lands within a reasonable time frame. Because of the enormous amounts of upfront cash bonus money required for

Federal leasing, there is serious question as to whether any one firm, or even a consortium of firms can almost simultaneously provide the capital required for obtaining leases and for development on both State and Federal lands. Again, timing becomes critical in order to obtain maximum benefit from the leasing program.

Finally, with data available from exploration on Federal lands, both the State and industry can get a fairly good picture of potential drainage of State lands that may be caused by drilling on Federal lands. The question then becomes whether the leasing strategy should be based solely on avoiding drainage by leasing those areas suspected of drainage first, or this in addition to other factors. A sequential leasing program under consideration would first lease tracts which show the potential for drainage to protect the State's interest." The leasing strategy in California is being developed at this time.

"The leasing program, as developed by the State Lands Commission, is separated into two major segments: pre-lease and post lease. In summary, the pre-lease activities which span a period of four years include: (1) geologic and geophysical surveys; (2) cultural resource surveys; (3) acquisition and analyses of oil and gas resource data; (4) designation of sites for and conduct of exploratory drilling; (5) the preparation of a Program Environmental Impact Report (EIR) under the provisions of the California Environmental Quality Act (CEQA) for the Lease Sale and site specific EIRs for each exploratory well; and (6) the development of the lease system to authorize and govern the development of the State's oil and gas resources, e.g. number and size of tract offerings, bidding system(s), lease stipulations, etc. Following the sale and any consequential lease awards, the Commission's program would be of a more administrative nature, i.e.

ensuring compliance with lease requirements and operating rules and regulations." (California State Lands Commission December 1981).

2. Call or nominations for lease

Before offering any tide or submerged land area or beds of navigable rivers or lakes in any area for an oil and gas lease, the commission must hold a public hearing on the matter within a city or county adjacent to such area and give not less than 60 days written notice to each adjacent city or county, and to the Department of Parks and Recreation, and shall publish such notice in the manner prescribed in Section 6834. The commission proposes, at such hearings, a plan for the control subsidence and pollution which might occur as a result of the proposed oil and gas operation. In not less than 30 days after such hearing, the commission determines whether or not to offer the land for lease" (Public Resources Code, Div. 6, Part 2, Ch. 3, Art. 4, 6873.2).

3. Fees

Each bid for an oil and gas lease is accompanied by a certified or cashier's check in an amount to be fixed by the commission, which sum is deposited as evidence of good faith and except in the case of the successful bidder shall be returned to the bidder. While literally not a fee, this deposit is comparable to fees charged in other states. Upon the execution of the lease the amount is applied upon the annual rental for the first year and the balance, if any, is returned to the lessee. If the successful bidder fails or refuses to execute the lease within 15 days after the award, the amount of the check is forfeited to the State. Various fees may be charged during the lease review process such as: filing fee of $25.00; a processing fee; a guaranty deposit; insurance; a Negative Declaration fee; consultant fee

if an EIR is required; the cost of preparing an EIR (ranges from $5,000 to $100,000) (State of California, no date). EIR's can exceed $100,000. The Point Conception EIR cost around $250,000 and additional studies pushed costs up toward a half million dollars. EIR costs for large developments (post lease sale) may be in the millions of dollars (Livenick 1984).

4. Publication of calls for nominations and advertisements for leasing

Whenever the Commission determines that lands shall be leased for gas and oil "The Commission shall cause a notice of intent to receive bids to be published at least once in a newspaper of general circulation in the county in which the lands, interest or project is located and may have such notice published at least once in a newspaper of general circulation in the City of Los Angeles, or San Francisco, or Sacramento. Such notice shall specify the lands or interest (oil, gas or mineral lease; easement; timber; land; etc.) for sale or project (public works or consultant contracts, oil, gas or mineral exploration, etc) for bid, the time and place for the receipt and opening of bids, and the availability of appropriate approved bid packages and forms at the office of the Commission" (California Administrative Code 1982, Title 2, Div. 3, Ch. 1, Art. 1, 1909).

5. Bidding

The Public Resources Code currently limits the methods which can be used in competitive bidding for State leases. The Code provides that the following methods may be used:

- Cash bonus bid with sliding scale royalty on oil.
- Bid factor applied to sliding scale royalty on oil.
- Flat rate percentage bid of royalty on oil and gas.

. Percentage bid of net profits on oil and gas.

At the present time the bidding procedures require that "The Commission shall at the specified time and place publicly open or have opened the sealed bids and shall award the highest or lowest responsible bidder, as appropriate, unless, in the opinion of the Commission such award is not in the best interest of the State, in which case the Commission may reject all existing bids and call for new ones or terminate bidding. The Commission shall have broad discretion as to whether a bidder is "responsible" based on what it deems to be in the best interest of the State. Except as otherwise provided in the bid instructions specifying a shorter period, and/or limiting the firm bid requirement to a specific number of high or low bidders as appropriate, each bid shall be a firm bid, irrevocable for a period not to exceed ninety (90) days from the date of bid opening. Bidders shall bear all reasonable expenses incurred by the Commission for bid processing and award including costs of approval, advertising and environmental review, in accordance with terms set forth in the approved bid package" (California Administrative Code, 1982, Title 2, Div. 3, Ch. 1, Art. 1, 1909).

6. Terms of lease

- Title

"The Lessee has the exclusive right to prospect for, drill for, produce and take only oil, gas and other hydrocarbon substances from the leased lands. This right includes the right to conduct geological and geophysical surveys on the leased lands for the purpose of determining subsurface conditions. However, the State may permit others to conduct geological or geophysical surveys on the leased lands as provided in sections 6212.2 and

6826 of the Public Resources Code and the applicable regulations of the State. A lease does not give the Lessee the privilege or right to store gas within the geological zones underlying the leased lands nor any other privilege or right not expressly stated" (State of California, Oil and Gas Lease).

- Length of lease

Oil and gas leases in California are for a primary term of 20 years and for so long as oil or gas is produced in paying quantities or drilling, production or maintenance operations continue.

- Extension of lease

The Public Resources Code, Section 6829.1 requires that the Lessee commence operations for the drilling of a well for oil or gas within the drilling term of three (3) years from the date of a lease. If the Lessee fails to commence such operations before or to prosecute them diligently after the expiration of the three (3) year term, the lease terminates as extensions are not possible. Whenever the leased lands cease to produce oil or gas, the lease will continue in force if within six (6) months after production ceases, or such longer period as the State may authorize, the Lessee commences and prosecutes with reasonable diligence, drilling, deepening, repairing, redrilling or other operations for restoring production of oil or gas from the leased lands.

- Transfer of lease

Leases issued by the State Lands Commission under Chapter 3 of the Public Resources Code "may be assigned, transferred or sublet to all or any

part of the leased or permitted lands, and as to either a divided or undivided interest therein, or as to any separate and distinct zone or geological horizon or portion thereof, subject to approval by the commission, to any person, association of persons, or corporation, who at the time of the proposed assignment, transfer, or sublease, possesses the qualification provided in this chapter" (Art. 1, Section 6804).

- Compliance with rules and regulations

The Lessee must comply with all valid laws, rules and regulations of the United States and of the State of California and its political subdivisions applicable to the Lessee's operations, including, but not limited to, the applicable provisions of Divisions 3 and 6 of the Public Resources Code and the regulations of the Division of Oil and Gas and State Lands Commission. The Lessee also must comply with the special operating requirements included in the lease and all measures designed to mitigate the environmental impact of its operations under the lease, including environmental impact reports, to be completed prior to the consideration and approval of exploratory and developmental activities (State of California, Oil and Gas Lease).

To assure compliance with production data requirements the Lessee must provide the state with facility drawings and data to be used for production, processing, measurement, and transportation of oil and gas. The State may elect at any time to witness any such measurements and sampling.

- Cessation of work

"If, at any time or from time to time, before or after the expiration of the primary term of such lease, the leased lands cease to produce oil or gas, the lease shall, nevertheless, continue in full force and effect if within

six months after the cessation of production, or such longer period of time as the commission may authorize, lessee shall commence and thereafter prosecute with reasonable diligence drilling, deepening, repairing, redrilling or other operations for the purpose of restoring production of oil or gas from the leased lands" (Public Resource Code, Div. 6, Part 2, Ch. 3, Art. 2, 6827).

7. Handling of proprietary information

The Lessee must file with the State copies of all geophysical data covering the leased lands and all logs (including electric logs), surveys, drilling records, well histories, core records, formation tests and related information as measured and recorded in the course of drilling, for the wells drilled into the leased lands. All data and information filed by the Lessee with the Division of Oil and Gas in connection with a lease, whether or not held in confidential status by the Division of Oil and Gas, must be submitted to the State for its use in enforcing compliance with the terms of this lease and regulations of the State. All data and information supplied in confidence by the Lessee is kept confidential by the State and is not disclosed to any person or agency without the written consent of the Lessee or unless their disclosure is required by law. Notwithstanding the above, the State may disclose any data or information filed by the Lessee to any governmental agency needing the data or information to regulate the leased lands or adjacent lands, provided that the disclosure is made pursuant to an agreement with the governmental agency specifying the purposes for which the data and information may be used and requiring the data and information to be kept confidential, and that notice is given to the Lessee of the nature of the information and data that are disclosed, the governmental agency to which they are disclosed and the purposes of their disclosure (State of California, Oil and Gas Lease).

The Public Resources Code also authorizes the commission to require, as a condition to the issuance of any permit for the conduct of geological or geophysical surveys on tide and submerged lands, that the permittee make available to the commission, upon request, all factual and physical exploration results, logs, and records resulting from the operations under the permit for the confidential use of the commission. The commission may make such data available to those governmental agencies which need the information in order to evaluate or regulate those tide and submerged lands and adjacent lands. The information is not open to inspection by any other person or agency without the written consent of the permittee (Public Resource Code, Div. 6, Part 2, Ch. 3, Art. 2, 6826).

This policy also is addressed in the Environmental Quality Act, Chapter 5, Section 21160, wherein it states that when "any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report. If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange or properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report."

J. Relation of Leasing Program to Issuance of Permits

The State Lands Commission also is responsible for issuing permits and prescribing operational regulations for granted and ungranted lands. The latter are contained in detail in the California State Code, Title 2, Article 3.2 (Oil and Gas Regulations) Section 2125-2142. In addition, local jurisdictions holding in-trust grants also issue permits and stipulate rules and regulations. As a result, there is a significant variation in the amount of time elapsing between the award of a lease and the commencement of production. The passage of the Permit Assistance Act (AB 884, Chapter 1200, Statutes of 1977) has resulted in expediting the permitting process (Government Code 65920 et. seq.).

K. Mineral Leasing

Mineral leasing is handled by the MInerals Lease and Permit Unit, Division of Energy and Mineral Resources, State Lands Division. This organization is responsible for managing all mineral leases on state lands except oil, gas, and geothermal.

There are two basic types of mineral extraction leases issued through the Minerals Unit - competitive bid lease for known commercially valuable deposits such as sand and gravel deposits, and a preferential lease issued after discovery of a commercially valuable deposit through prospecting efforts under authorization of a prospecting permit. All leases and permits are issued by authority and approval of the State Lands Commission as directed by statues of the State Public Resources Code (State of California State Lands Commission).

References

California Coastal Commission (1981). Coastal Energy Development: the California Experience. (In Collins et al 1981).

California State Lands Commission (1976). A Report on the Use, Development, and Administration of Granted Tidelands and Submerged Lands. Sacramento, Cal.

California State Lands Commission (Dec. 1981). Proposed Oil and Gas Lease Sale Program Pt. Conception - Pt. Arguello, Santa Barbara County. Sacramento, Cal.

California State Lands Commission (May 1982). Proposed Oil and Gas Lease Sale Program Pt. Conception - Pt. Arguello, Santa Barbara County, Supplemental Report to the Legislature. Sacramento, Cal.

Collins, K., McCord, C. Stadnychenko, A. and Yoskin, P. (May 1982). Pacific Summary Report, A Revision of Outer Continental Shelf Oil and Gas Activities in the Pacific (Southern California) and their Onshore Impacts, a Summary Report, May, 1980. Rogers, Golden, and Halpern, Inc., Reston, Va.

Krueger, R. (1958). State Tidelands Leasing in California, U.C.L.A. Law Review, Vol. 5. No. 3.

Livenick, S. (1984). Personal Communication. State Lands Commission, Sacramento, Cal.

Sanders, D. (1982). Chief of Planning and Environmental Coordination Unit, State Lands Commission, Oral and Written Communications, Sacramento, Cal.

Stadnychenko, A. and McCord, C. (December 1982). Pacific Summary Report, Outer Continental Shelf Oil and Gas Activities in the Pacific and Their Onshore Impacts. Rogers, Golden, and Halpern, Inc., Reston, Va.

State of California (no date). General Information Regarding Applications for Extractive Development of State Lands, Extractive Development Program, State Lands Commission, Sacramento, Cal.

State of California (no date). The California State Lands Commission, a brochure, Sacramento, Cal.

State of California (1980). Regulations for Oil and Gas Drilling and Production Operations on State Tide and Submerged Lands. State Lands Commission, Sacramento, Cal., July 13, 1980.

State of California (1983). Public Resources Code, State Lands Commission, Sacramento, Cal.

STATE OF FLORIDA

OIL AND GAS LEASING PROGRAM

1984

TABLE OF CONTENTS

Description		Page
A.	Statutory Authority	1
B.	Philosophy of State Towards Leasing in State Waters	2
C.	History of Leasing Program	4
D.	Delegation of Management Responsibilities for State Leasing Program	11
E.	Geographic Description of State Territorial Waters	12
F.	Local Jurisdictional Control Over State Waters	21
G.	Oil and Gas Revenues Accruing to State	24
H.	Environmental Controls and Regulations	27
I.	Leasing Procedures	35
J.	Relation of Leasing Program to Issuance of Permits	39
K.	Mineral Leasing	39
L.	The Socioeconomic and Physical Impact of Oil and Gas Leasing in Florida's Waters	39
References		42

Appendices

A. Oil and Gas Leasing in Florida's Territorial Waters: State Laws

B. Florida Local Governments and Oil and Gas Leasing of State Territorial Waters

C. State of Florida Oil and Gas Lease Form and Steps for Lease Processing

D. Onshore Impacts of Oil and Gas Activities in Florida State-Owned Coastal Water

E. Permit Requirements for Siting Onshore Facilities Related to Offshore Oil and Gas Activities: and Florida Legislation Affecting Offshore and Onshore Energy Development

LIST OF TABLES AND FIGURES

Description		Page
Table 1	Wells Located in Submerged Water Bottoms and Offshore - State of Florida	6
Table 2	Oil and Gas Leases Issued for Exploration in Florida Territorial Waters	10
Figure 1	Florida Offshore Leaseholdings of Coastal Petroleum Company	8
Figure 2	Florida State Agencies Involved with Oil and Gas Lease/Permit Program	13
Figure 3	Supplemental Official OCS 8-G Block Diagram	20
Figure 4	Florida State and Federal Coastal Jurisdictions	31
Figure 5	Oil and Gas Lease Administrative Flow Chart	40

A. Statutory Authority

1. Vested Authority

The basic authority for leasing lands owned by the State of Florida is vested in the Board of Trustees of the Internal Improvement Trust Fund (hereinafter the Trustees). This authority is contained in Chapter 253, §253.03(1), F.S., 1982 Supplement. "The Board of Trustees of the Internal Improvement Trust Fund of the state is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may hereafter inure to, the state or any of its agencies, departments, boards, or commissions,---"

"---Lands vested in the Board of Trustees of the Internal Improvement Trust Fund shall be deemed to be:

a) All swamp and overflowed lands held by the state, or which may hereafter inure to said state;

b) All lands owned by the state by right of its sovereignty;

c) All internal improvement lands proper;

d) All tidal lands;

e) All lands covered by shallow water of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;

f) All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for road and canal rights-of-way;

g) All lands which have accrued, or which may hereafter accrue, to the state from any source whatsoever, excluding lands held for road and canal rights-of-way or spoil areas or borrow pits or any land, title to which is vested or may become vested in any port authority; flood control district, water management district, or navigation district or agency created by any general or special act."

The authority of the Trustees to administer state lands is delineated further in Chapter 253.03(7), F.S. "The Board of Trustees is hereby authorized and directed to administer all state-owned lands and shall be

responsible for the creation of an overall and comprehensive plan of development concerning the acquisition, management and disposition of state-owned lands so as to ensure maximum benefit and use. The Board of trustees of the Internal Improvement Trust Fund shall adopt rules and regulations necessary to carry out the purposes of this act as herein set forth."

The procedures and policies involved in implementing these responsibilities are discussed in detail in Appendix A (Volume I).

2. Members of Governing Body

The Board of Trustees of the Internal Improvement Trust Fund (also known as the Governor and Cabinet) is a body of seven elected officials: the Governor, the Commissioners of Education, Agriculture, Insurance, the Secretary of State, the Comptroller, and the Attorney General. Appendix A (Volume I) contains detailed descriptions of the responsibilities, policies, and administrative procedures of the Trustees with respect to oil and gas leasing in state waters.

B. Philosophy of State Towards Leasing in State Waters

Florida, because of both the extent and nature of it's coastal geography, has reason to be concerned with precipitous development of its shoreline and offshore regions more than other coastal states. These facts, viewed within the context of the state's dependence upon tourism and coastal recreational activity, has understandably resulted in a cautious and conservative attitude with respect to oil, gas and mineral development in offshore waters. This concern, however, is long standing and has a constitutional basis expressed as a public interest standard.

All sovereignty lands management decisions must conform to the public interest standard in Article X, Section 11 of Florida's constitution:

"The title to lands under navigable water...is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest." (emphasis added)

The Trustees have adopted an even more stringent standard for oil and gas leases. Section 16Q-21.04(2) (k), F.A.C. provides that:

"Oil and gas leases on state-owned submerged lands shall be approved only...upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been thoroughly considered, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation, and national security." (emphasis added)

This emphasis on serving the public interest is consistent with the legislative goals of conserving Florida's oil and gas resources described in Chapter 377.06 F.S. as follows:

"It is hereby declared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made therefrom, to encourage the continuous and economic supply of the demand therefore; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all

purposes indicated by the provisions herein..." (Florida Coastal Management Program, Final Environmental Impact Statement, Department of Environmental Regulation).

The overall philosophy of Florida, with respect to land and resource development, has been expressed as the maximum benefit and use or as a balanced public utilization of land resources, which can be summed up as follows:

a. Encourage detailed inventories and evaluation of state-owned mineral resources.

b. Control management activities on state-owned land that would preclude or seriously impair the ability to extract significant mineral resources.

c. Allow extraction of state-owned mineral resources in environmentally sensitive areas only upon demonstration that the extraction is of overriding public importance, that all reasonable steps will be taken to minimize adverse environmental impacts, and that there are no reasonable alternatives.

d. Discourage all future releases of state-owned mineral reservations, excepting right-of-entry and exploration.

e. Require that all state-owned lands subjected to mining be reclaimed or restored and left in such condition so as to maximize future public uses and values. (Board of Trustees of the Internal Improvement Trust Fund 1981)

A detailed description and analysis of the Public Interest Standard, and its basis, and a review of the State Lands Management Plan is contained in Appendix A (Volume I).

C. History of Leasing Program

1. Establishment of Offshore Leasing Program

Hydrocarbons never have been produced commercially from Florida's territorial waters although there have been a number of exploratory efforts along the Gulf coast. Table 1 lists 29 wildcat exploratory wells drilled

since 1945. It should be noted that this number includes several wells that were drilled on leases acquired under Federal OCS Lease Sale 5, in 1959, the area that the Supreme Court subsequently has ruled belongs to Florida. The last exploration well was drilled, plugged, and abandoned in 1968 with the exception of the Getty well in Santa Rosa County. Although this latter lease was issued to Young, Anderson, and Beall in 1968 and assigned to Getty in 1970 (see Table 1), the final environmental permit was not issued by the Corps of Engineers until March 1983. The well was spudded in June 1983 and subsequently plugged and abandoned later that same year.

An interesting situation exists with respect to existing offshore leases in Florida waters. Coastal Petroleum Company (a subsidiary of Coastal Caribbean Oils and Minerals Ltd, a Bermuda Corporation) owns three leases encompassing approximately 3.7 million acres of submerged lands along Florida's Gulf Coast and under certain lakes and rivers (Coastal Caribbean Oils and Minerals Ltd. 1984) These lease holdings are shown in Figure 1.

The two Gulf Coast leases, 224-A and 224-B, follow the coastline from Apalachicola Bay to a point six miles south of Naples, a distance of 425 statute miles. These leases are divided into two separate areas, as described below.

The Inner Area, shown on Figure 1, includes tidal estuaries and bays, and extends 4.36 miles from the shoreline to cover approximately 2.3 million acres. Within this area, Coastal has a 6.25 percent residual royalty interest on the wellhead value of any oil or gas found--payable in cash or in kind, at Coastal's option--as well as a 5 percent royalty interest on the production or market value of any minerals. The Offshore Area, also shown on Figure 1, is a three-mile-wide belt that extends from 7.36 to 10.36 miles from the shoreline, covering more than 800,000 acres and bordering federal offshore acreage.

Table 1

WELLS LOCATED IN SUBMERGED
WATER BOTTOMS AND OFFSHORE
STATE OF FLORIDA

County	Operator	Well	Name	Date
*Bay	Magnolia Petr.	1	St. Blk 4-B	4-45
*Charlotte	Mobil Oil	1	St. Lse 224-B	3-67
+Citrus	Mobil Oil	1	St. Lse 224-A	11-67
+Collier	La. Land & Exp.	1	St. Of Fla. 16-2	11-72
*Franklin	Calf. Co/Coastal	1	St. Lse 224-A	?
+Franklin	Calf. Co/Coastal	2	St. Lse 224-A	11-60
+Franklin	Coastal Carr. Oil	A-1	St. Lse 244	10-59
+Franklin	Magnolia Petr.	1	St. Blk #5-B	5-47
*Franklin	Magnolia Petr.	A-1	St. Blk #5-B	6-47
Franklin	Mobil Oil	1	St. Lse 224-A	4-68
Lee	Calf. Co./Coastal	1	St. Lse 224-B	9-60
Lee	Calf. Co./Coastal	2	St. Lse 224-B	8-61
Levy	Mobil Oil	B-1	St. Lse 224-A	11-67
*Monroe	California Co.	1	St. Lse 10-11	9-59
Monroe	California Co.	2	St. Lse 10-11 (Marq. Area)	1-61
Monroe	California Co.	3	St. Lse 1011	11-61
Monroe	Calf. Co./Gulf	1	OCS Lse 0672,Blk 44	11-60

Table 1 (cont)

County	Operator	Well	Name	Date
Monroe	Commonwealth	1	St. Lse 362	4-55
*Monroe	Gulf	1	St. Lse 373	11-45
*Monroe	Gulf	1	St. Lse 374	10-46
Monroe	Gulf/Calf. Co.	1	Marq. OCS BLK 28	1-60
Monroe	Gulf/Calf. Co.	1	Marq. OCS BLK 46	7-61
+Monroe	Gulf	1	St. of Fla. 826-G	4-55
Monroe	Gulf	1	St. of Fla. 826-Y	2-59
+Monroe	O.D. Robinson/ Republic Oil	1	St. (Barnes Sound)	2-45 2-46
Pinellas	Calf. Co./Coastal	3	St. 224-B	2-63
Santa Rosa	Humble	1	St. Lse 833	9-56
*Offshore	California Co.	1	OCS-Lse 0674	12-60
Santa Rosa	Getty	1	St. of Fla.2338 (Originally issued to Young, Anderson and Beall on 7/9/68)	3-70

TOTAL WELLS DRILLED 29

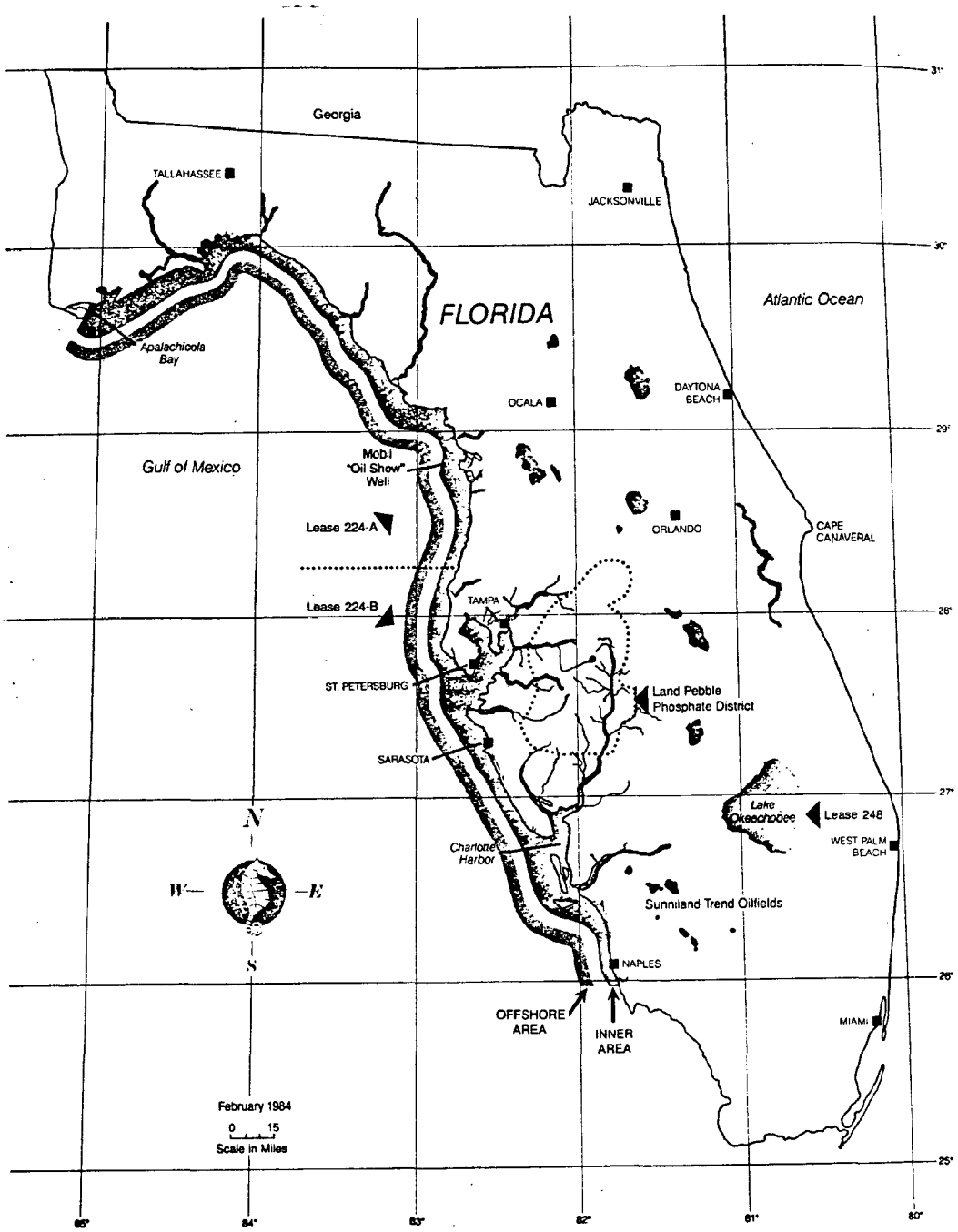
* May be onshore

\+ Does not appear on state map

(Source: Bureau of Geology
Department of Natural Resources)

Figure 1

Florida Offshore Leaseholdings of
Coastal Petroleum Company



(Source: 1983 Annual Report Coastal Caribbean Oils and Minerals, Ltd.)

The third lease, 248, covers the 450,000-acre tract beneath Lake Okeechobee. Although Coastal has a working interest in the Okeechobee acreage (100 percent as to minerals), it has agreed not to conduct any exploration, drilling, or mining operations in this area without the prior approval of the State of Florida. Lease 248 also covers an additional 200,000 acres beneath certain other inland lakes and the St. John's River. On this acreage, Coastal has the same royalty interests as within the aforementioned inshore area.

The three leases--which were granted to Coastal's predecessors company by the State of Florida in the early 1940's--require the payment of annual rentals totaling $59,247. The current lease, renegotiated in 1976, expires on January 6, 2016. However, if any oil, gas, or minerals are being produced in economically sustainable quantities at the expiration of the lease term, such production will be allowed to continue until it becomes uneconomic. At present, all three of the leases are nonproducing. (Coastal Caribbean Oils and Minerals, Ltd 1984). Additional details of these early offshore Florida leases are contained in Appendix D (Volume I).

2. Frequency Distribution of Leases by Year

A total of 19 oil and gas leases have been issued for exploration in Florida's territorial waters. These leases, which were granted between the early 1940's and 1972, are summarized in Table 2.

3. Average Geographic Size of Lease and Related Bidding Data

The size of lease ranged from a few thousand acres to the enormous 2.3 million acre lease held by Coastal Petroleum Company discussed previously. The Getty lease originally issued in 1968 was 47,932 acres.

Table 2

OIL AND GAS LEASES
ISSUED FOR EXPLORATION IN
FLORIDA TERRITORIAL WATERS

Year	Operator	No. Leases	Lease No.
Early 1940's	Coastal Petroleum	3	224-A 224-B 248
1945	Magnolia Petroleum Gulf Oil	1 1	4-B 373
1945	O.D. Robinson/ Republic Oil	1	Barnes Sound
1946	O.D. Robinson/ Republic Oil	1	Barnes Sound
1946	Gulf Oil	1	374
1947	Magnolia Petroleum	1	5-B
1955	Commonwealth Gulf Oil	1 1	362 826-G
1956	Humble Oil	1	833
1959	Gulf Oil Calif. Co. Coastal Petroleum	1 1 1	826-Y 10-11 244
1960	Calif. Co./Coastal Pet. Calif. Co./Coastal Pet.	1 1	224-B 224-A
1968	Young, Anderson, Beall	1	2338
1970	#2338 Transferred to Getty Oil	—	
1972	La. Land and Exp.	1	1 16-2
	TOTAL	19	

4. Example of Prior Lease Sale Schedule

Lease sale schedules have not been established in Florida.

5. Revenues Accruing to State

Because oil or gas has not been produced commercially in Florida's territorial waters, no revenues have accrued to the state except bonus and rental fees. The only active offshore oil and gas leases are those of Coastal Petroleum and Getty Oil Company, resulting in total annual rentals of $70,271.36.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of Managing Agency or Department

The implementation of the trust and fiduciary responsibilities with respect to the administration, management, and disposition of Florida sovereignty lands has been assigned by the Board of Trustees of the Internal Improvement Trust Fund to the Florida Department of Natural Resources (FDNR).

2. Agency Responsibilities

The general responsibilities of the FDNR as defined in Chapter 16Q-21.01 (March 27, 1982) Chapter Rules of the Department of Natural Resources include:

1) Aid in fulfilling the trust and fiduciary responsibilities of the Board of Trustees of the Internal Improvement Trust Fund for the administration, management, and disposition of sovereignty lands;

2) Insure maximum benefit and use of sovereignty lands for all the citizens of Florida;

3) Manage, protect, and enhance sovereignty lands so that the public may continue to enjoy traditional uses including, but not limited to, navigation, fishing and swimming;

4) Manage and provide maximum protection for all sovereignty lands especially those important to public drinking water supply, shellfish harvesting, public recreation, and fish and wildlife propagation and management;

5) Insure that all public and private activities on sovereignty lands which generate revenues or exclude traditional public uses provide just compensation for such privileges; and,

6) Aid in the implementation of the State Lands Management Plan

3. Organization Chart of State Agencies

The state agencies involved directly or indirectly with oil and gas leasing in Florida are shown in Figure 2. The interaction of the DNR and the Department of Environmental Regulation is discussed in detail in a report prepared by the Office of the Governor in 1982 (see references).

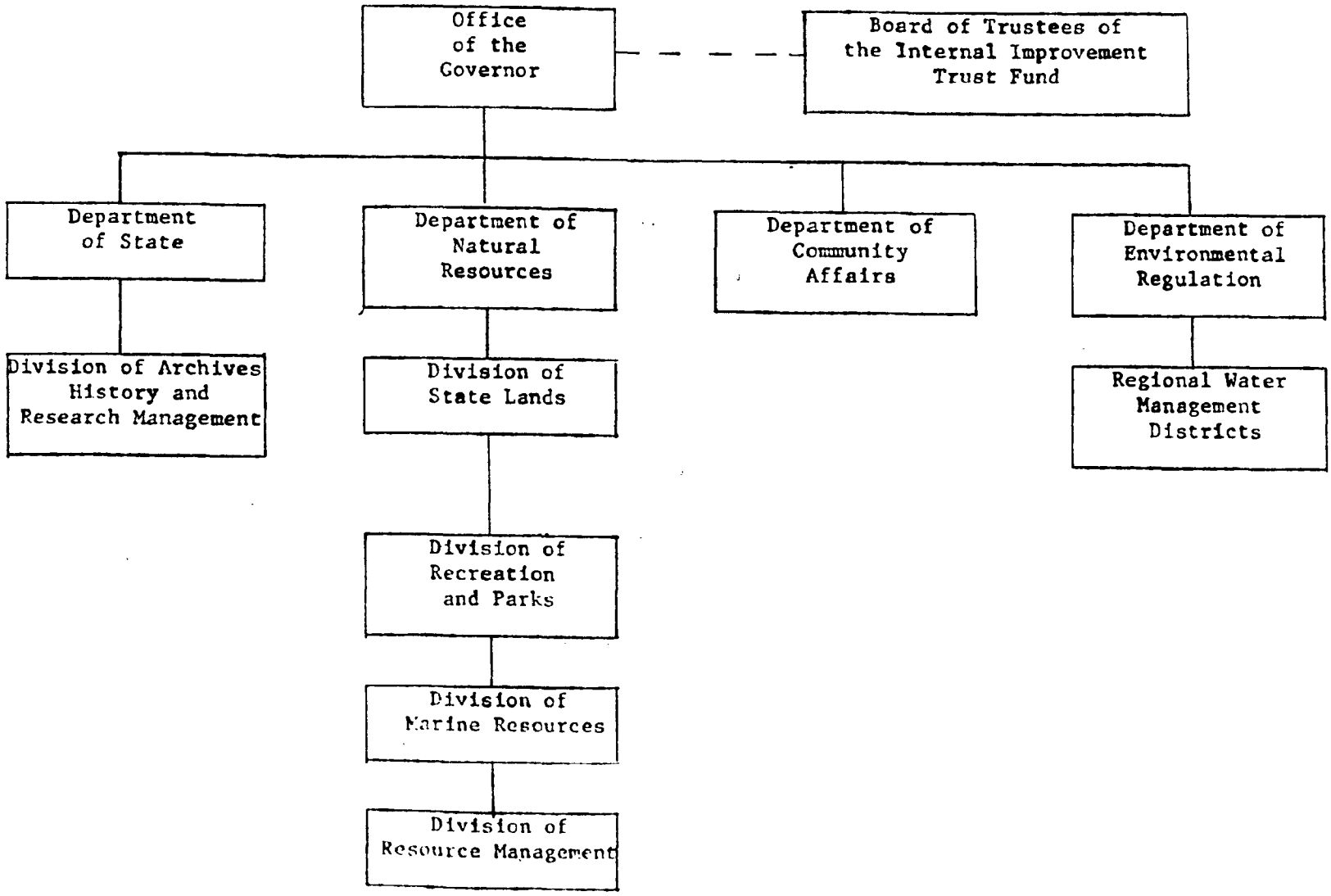
E. Geographic Description of State Territorial Waters

1. General Description of State Offshore Boundaries

Florida has the longest coastline in the continental United States, its 33 coastal counties stretching 1350 miles from the Alabama border to the Georgia coast. The following discussion of Florida's boundaries was taken from Section II of the Florida Coastal Management Program Plan (NOAA OCZM 1981). "Section 305(b)(1) of the federal Coastal Zone Management Act (CZMA) of 1972 requires that a state management program identify the boundary of the coastal zone which is subject to the management program. There are four elements to a state's coastal boundary: the inland boundary, excluded areas, the seaward boundary, and interstate boundaries. Based upon the geography of Florida and the legal basis for the state program, the entire state is proposed to be included within the coastal zone, (except for lands owned,

Figure 2

Florida State Agencies Involved With
Oil and Gas Lease/Permit Program



leased, held in trust or whose use is otherwise by law subject solely to the discretion of the federal government, its officers or agents). Also excluded are lands of the Seminole Indian Tribe."

"Geographically, Florida has low land elevation, a generally high water table, and an extensive coastline with many rivers emptying into coastal waters. Few places in Florida are more than seventy miles from either the Atlantic Ocean or the Gulf of Mexico. The result is an interrelationship between the land and coastal waters which makes it difficult, if not impossible, to establish a scientifically supportable boundary which would exclude inland areas having no significant effect on coastal waters.

The Florida Legislature has directed that the Coastal Management Program be based upon existing laws and regulations; Chapter 380.21(2), F.S. No new regulatory scheme is being proposed or created by the state coastal management program. The laws and regulations upon which the state's program is based, are laws of statewide applicability. Consequently, the establishment of a coastal boundary line including less than the entire state would give the erroneous appearance that a new regulatory scheme had been created for a portion of the state and would lead to needless public confusion. However, for the purposes of administration of funding to local governments pursuant to Section 307 of the CZMA, the boundary of the program is limited to coastal counties. The following is a description of the seaward and interstate boundaries.

The United States Supreme Court has recognized that Florida has jurisdiction over submerged land to a distance of three marine leagues, or approximately 10.35 statute miles in the Gulf (U.S. vs. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 364 U.S. 502, 81 S. Ct. 258, 5 L. Ed. 2nd. 247, 1960). However, the Federal Coastal Zone Management Act

defines the seaward extent of the coastal zone as the outer limit of the U.S. territorial sea, currently three nautical miles. Thus, for the purposes of the Florida Coastal Management Program only, the seaward limit of three nautical miles represents the area within which the state's management program may be authorized and financed through CZMA Section 306 funds. This seaward boundary does not in any way alter the state's claim to ownership of all land and waters to a distance of 10.35 statute miles.

The seaward boundary in the Atlantic is the same as the U.S. territorial sea definition, i.e. three nautical miles. These limits are irrespective of any other claims Florida may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the operation of the Fisheries Conservation and Management Act of 1976.

The western lateral boundary of Florida's Coastal Management Program is defined by the adjudicated boundary between Florida and Alabama. The coastal zone boundary in Alabama is the 10' MSL contour in Mobile and Baldwin Counties. The northern lateral boundary of the state's coastal program is the adjudicated boundary between Florida and Alabama as well as Florida and Georgia. The coastal zone boundary in Georgia is an area averaging about 20 miles inland within portions of six coastal counties. Each state, with the development of its own coastal management program, has consulted with one another to ensure compatibility between each state's respective boundary designations." (NOAA Office of Coastal Zone Management, 1981, pp. II-10 to II-11.)

"The mean high water line means the intersection of the local elevation of mean high water with the shore. The mean high water line along the shore of land immediately bordering on navigable waters is recognized and declared to be the boundary between the foreshore owned by the State of Florida in its

sovereign capacity and the uplands subject to private ownership." (FDNR Rules 16-21.03(22), 1982.)

"Mean high water means the average height of the high tides over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the water after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value." (FDNR Rules 16-21.03(21), 1982). Within these boundaries lie Florida's sovereignty lands which are defined in the Rules of FDNR, Chapter 16-21 as:"those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, under navigable fresh and salt waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated."A detailed discussion of Florida's sovereignty lands management policies is contained in Appendix A (Volume I).

With respect to the leasing of state-owned submerged lands, oil, gas, and other petroleum leases can be issued only when the proposed lease area is at least one mile seaward of the outer coastline of Florida as defined in United States v. Florida, 425 U.S. 791, 48L, Ed., 2nd 388, 96 S. Ct. 1840, upon adequate demonstration that the proposed activity is in the public interest, that the impact upon aquatic resources has been considered thoroughly, and that every effort has been made to minimize potential adverse impacts upon sport and commercial fishing, navigation and national security. (DNR Rules Chapter 16Q-21, §21.04, 2, (k), 1982.) Thus, on Florida's Atlantic Coast, a potential two-mile leasing zone extends from one to three nautical miles offshore while on the Gulf coast the leasing zone is a nine mile strip extending from one to 10.35 statute miles offshore.

In addition to its length, Florida's coastal region offers a wider variety of environmental characteristics than any other state. The East Florida section is a young marine plain of very low relief characterized by sandhills, swamps, sinks, and lakes. Few streams drain in this lowland area. The underlying sedimentary strata recently have been raised above sea level and the coastline is a typical shoreline of emergence, characterized by an extensive series of nearly continuous barrier islands extending from Daytona Beach to Biscayne Bay.

Barrier islands also are a common landform along the Gulf Coast. These islands consist of sand and other loose sediments that have been and continue to be transported by wind and water action. Florida has 80 barrier islands covering a total of 467,710 acres. Brackish, relatively quiet bays and estuaries lie between the barrier islands and the mainland. The waters in these bays and estuaries, a blend of the terrestrial-freshwater systems of the mainland and the saltwater system of the ocean, are among the richest ecosystems known.

One of the characteristic features of barrier islands is their instability. Because the islands are composed of unconsolidated and shifting sands, they migrate along the coast in response to littoral currents as well as a gradually rising sea level. As such, they do not readily support construction of permanent structures or pipelines. The movement of sand under and around a pipeline can cause the line to sag, bend, and perhaps rupture. A line that was buried may in time, become exposed.

2. Mapping and Charting Procedures Used to Define Lease Areas

The state boundaries are defined in the Florida Constitution, Article II, Section 1(a).

"(a) The state boundaries are: Begin at the mouth of the Perdido River, which for the purposes of this description is defined as the point where latitude 30°16'53" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°17'02" north and longitude 87°31'06" west intersect; thence to the point where latitude 30°18'00" north and longitude 87°27'08" west intersect; thence to the point where the center line of the Intracoastal Canal (as the same existed on June 12, 1953) and longitude 87°27'00" west intersect; the same being in the middle of the Perdido River; thence up the middle of the Perdido River to the point where it intersects the south boundary of the State of Alabama, being also the point of intersection of the middle of the Perdido River with latitude 31°00'00" north; thence east, along the south boundary line of the State of Alabama, the same being latitude 31°00'00" north to the middle of the Chattahoochee River, thence down the middle of said river to its confluence with the Flint River, thence in a straight line to the head of the St. Marys River; thence down the middle of said river to the Atlantic Ocean; thence due east to the edge of the Gulf Stream or a distance of three geographic miles whichever is the greater distance; thence in a southerly direction along the edge of the Gulf Stream or along a line three geographic miles from the Atlantic coastline and three leagues distant from the Gulf of Mexico coastline, whichever is greater, to and through the Straits of Florida and westerly, including the Florida reefs, to a point due south of and three leagues from the southernmost point of the Marquesas Keys; thence westerly along a straight line to a point due south of and three leagues from Loggerhead Key, the westernmost of the Dry Tortugas Islands; thence westerly, northerly and easterly along the arc of a curve three leagues distant from Loggerhead Key to a point due north of Loggerhead Key; thence northeast along a straight

line to a point three leagues from the coastline of Florida; thence northerly and westerly three leagues distant from the coastline to a point west of the mouth of the Perdido River three leagues from the coastline as measured on a line bearing south 0°01'00" west from the point of beginning; thence northerly along said line to the point of beginning. The State of Florida shall also include any additional territory within the United States adjacent to the Peninsula of Florida lying south of the St. Marys River, east of the Perdido River, and south of the States of Alabama and Georgia.

(b) The coastal boundaries may be extended by statute to the limits permitted by the laws of the United States or international law."

The plane coordinate system used in Florida is based on two conformal projections. The northern part of the State uses a Lambert conic projection with two standard parallels and the southern part has a transverse Mercator projection with two zones, using a reduced scale for the central meridian of each zone (U.S. Department of Commerce 1951).

Lease blocks have not been laid out in Florida's territorial waters. A method for laying out the blocks, however, was submitted by the Florida Department of Natural Resources and approved by the Governor and Cabinet in 1981. The Universal Transverse Mercator projection system was used with a 1,000 meter grid size. The resulting block network will in effect be a continuation of the lease block system used by the Federal government on the Outer Continental Shelf. Where state lease blocks meet Federal lands, the boundaries have been delineated for Florida's West Coast using satellite based data and drawn on OCS block diagrams prepared by the Department of Interior, Minerals Management Service. Figure 3 is an example of an OCS block diagram. The federally prepared block diagrams as shown in Figure 3 were approved by the State of Florida in late 1983. Comparable boundaries have not been agreed upon for Florida's Atlantic Coast.

FIGURE 3

SUPPLEMENTAL OFFICIAL OCS 8-G BLOCK DIAGRAM

SALE NO. 79

☐ FED - STATE SEAWARD BDY. RADIUS 54 654.93'

☐ 8-G BOUNDARY RADIUS _____

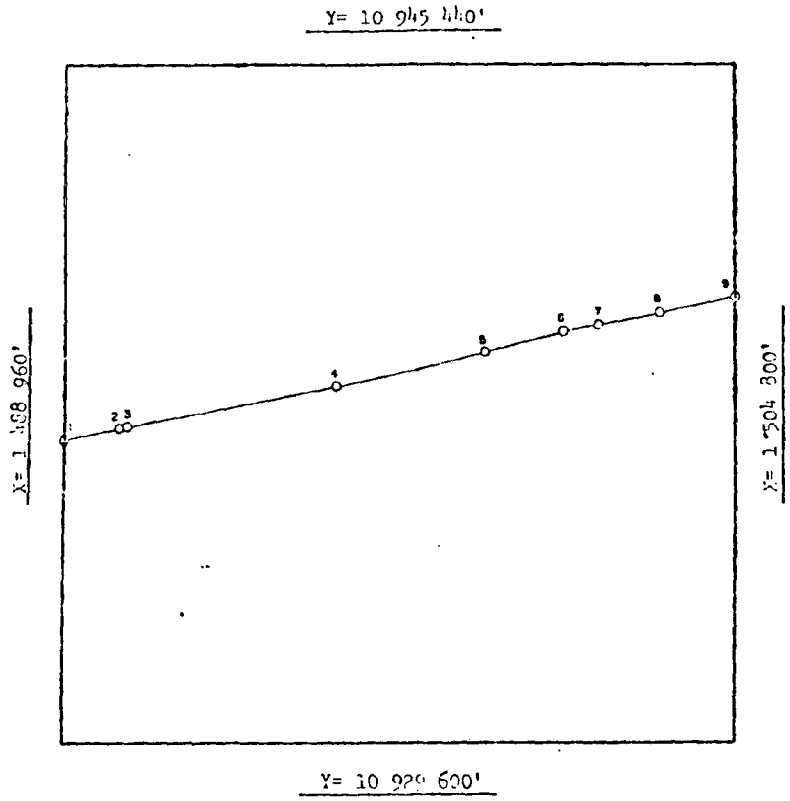
OPD NAME Pensacola

OPD NO. HH 16-5

BLOCK NO 843

OCS LEASE NO _____

STATE LEASE NO. _____



	INTERSECTIONS X	INTERSECTIONS Y		ARC CENTERS X	ARC CENTERS Y
1	1 488 960.00'	10 936 730.44'	*1-2	1 475 446.31'	10 989 [illegible]
2	1 490 237.46'	10 936 975.68'	2-3	1 479 927.56'	10 990 [illegible]
3	1 490 442.45'	10 937 015.44'	*3-4	1 479 927.56'	10 990 679.[illegible]
4	1 495 362.18'	10 937 979.40'	4-5	1 484 847.29'	10 991 643.90'
5	1 4[illegible] [illegible].74'	10 938 786.31'	*5-6	1 484 847.29'	10 991 643.90'
6	1 500 735.56'	10 939 283.00'	*6-7	1 488 [illegible].17'	10 992 [illegible]
7	1 501 [illegible].65'	10 939 431.08'	7-8	1 491 779.10'	10 993 [illegible]
8	1 503 [illegible].14'	10 939 718.66'	*8-9	1 491 779.10'	10 993 235.35'
9	1 504 [illegible].00'	10 940 092.16'			

*TANGENT SEGMENT

FEDERAL AREA _____ % _____ STATE AREA 2570.80 ac % _____ 8G AREA 3189.20 ac % _____ DISPUTED AREA _____ % _____

COMPUTATIONS BY [illegible] DATE 5 2 83

DRAFTED BY [illegible] DATE 5-12-83

CHECKED BY [illegible] DATE 5-23-83

FOR THE DIRECTOR [signature]

DATE 6/3/83

FOR THE STATE _____

DATE _____

FL-20

UNITED STATES DEPARTMENT OF INTERIOR
MINERALS MANAGEMENT SERVICE

F. Local Jurisdictional Control Over State Waters

A special report containing a detailed analysis of the role of local governments in the leasing of state offshore waters for oil and gas operations has been prepared by the Center for Governmental Responsibility, University of Florida, College of Law, and is contained in Appendix B (Volume I). It is recommended that readers wishing to understand the legal status of issues involving annexation actions by local governments and the impact of such actions on offshore activities carefully review this document. Basically, Chapter 171, F.S., entitled "Municipal Annexation or Contraction Act", does not address the annexation of territorial waters. While there are conditions under which territorial waters conceivably could be annexed, there are no Florida cases examining the scope of a municipality's power to annex such areas.

The U.S. Constitution, the Florida Constitution, and the Florida Statutes, as well as a large body of case law govern municipal annexations in Florida. The Florida Constitution, Article VIII, Section 2(a), (c), contemplates municipal annexation of unincorporated territory as provided by general or special law. Annexation law is built on the premise that the power to change municipal boundaries, establish municipalities outright, or expressly prohibit municipal expansion is solely a legislative power. The legislature may exercise the power directly or may delegate the power to municipalities.

The legislature's power, however, is not unlimited. The legislature must observe constitutional limitations or courts will intervene. The principle limitation is that municipal boundaries may not be extended solely to increase tax revenues. Annexation for that purpose is a flagrant abuse of

authority amounting to a taking without just compensation. In essence, the legal ramifications of annexation, taxation, and/or control of state waters by local governments is unclear. While annexation laws exist, they may have to be reinterpreted or modified in preparation for offshore activities in state waters. Appendix B also analyzes the annexation laws of other coastal states with respect to offshore territorial waters. A review of this material will provide the reader with further insight into the problems and the benefits to be gained by such laws.

Local governments can greatly influence offshore oil and gas activites regardless of annexation laws. As pointed out in Section IV of Appendix B (Volume I), the Local Government Comprehensive Planning Act (LGCPA), Chapter 163, F.S. requires counties and municipalities to prepare, adopt, and amend comprehensive plans to guide local development. An excellent summary of the potential impact of this Act is presented in the South Florida Regional Planning Council 1983 report OCS Facility Siting Study.

Once adopted by the local governing body (163.190(2)), the Act requires that "all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with the adopted comprehensive plan or element or portion thereof," F.S. (163.3194(1). That is, once adopted, no development order may be issued, no capital expenditure made, no governmental action related to land use taken, that is inconsistent with the comprehensive plan. Adoption of the comprehensive plan thus obligates local governments to:

- Bring existing zoning ordinances into conformity with the future land use plan element.
- Revise or initiate land development regulations to conform with the plan.

. Disapprove development applications that are inconsistent with the comprehensive plan.

The consistency requirement of the LGCPA, 163.3194(1), F.S., gives the comprehensive plan a unique legal status, subordinating zoning regulations to the comprehensive plan. The few legal signals so far indicate strong acceptance of the plan's primacy. Although the South Florida report is aimed primarily at OCS activities, the same concerns and actions pertain to oil and gas development in state territorial waters. The report states further: "Tools that allow local governments to encourage, discourage, and regulate onshore OCS-related facilities include the following: (Remembering that coastal zone controls must be reasonable and national needs must be considered).

1. Counties and municipalities have what is in effect a veto power over State leasing of adjacent or nearby submerged lands. This is particularly relevant to pipeline landfalls and water-dependent facilities. There are significant exceptions and conditions based on Chapter 253, F.S.

2. The local Comprehensive Plan can be amended to reflect and incorporate local policies regarding OCS-related activities. Only Broward County directly and clearly addresses the Impacts of offshore energy development (part 1-3) of the Coastal Zone Protection Element). However, the policy guidelines hinge on imprecise words such as "guide" and "encourage."

3. Local land development regulations can be written to specifically regulate or discourage onshore OCS-related development by limiting certain uses in specific districts, not zoning any land for OCS-type industry, or imposing strict regulations a specific use even if permitted and zoned. Such regulations include height, size, setback, aesthetic, and safety requirements as well as air and noise performance standards. Subdivision regulations and platting requirements can also exert local control as can building, plumbing, electrical, gas, fire, safety, and sanitary codes, if written to deal with specific characteristics of particular OCS-related facilities.

4. The Development of Regional impact process can be used to evaluate petroleum storage facilities located within 1000 feet of any navigable water with a storage capacity of more than 50,000 barrels, or any industrial manufacturing or processing plant that is determined to be a Development of Regional Impact (DRI). The conditions imposed in the local government's DRI development order control facility siting.

5. Through taxation and spending measures, local governments may encourage and direct the facility siting.

6. Local governments may enact local air, noise, odor, and water pollution controls that either limit or encourage siting of certain facilities. The controls must be as strict or more strict than State or Federal regulations in order to be valid and avoid conflict with State or Federal regulations.

7. Port authorities, whether established as separate entities or operated by or in conjunction with local governments, can have a significant effect on marine-dependent OCS-related facilities through port regulations or tariffs, safety regulations, liability insurance requirements, and fire regulations.

8. Local governments may establish historic preservation districts which could discourage development in these areas."

G. Oil and Gas Revenues Accruing to State

1. Minimum Royalties Allowed by Law

Minimum royalties for oil and gas in Florida are 1/8 of gross production. During any year beginning with the anniversary date of a lease, if the lease is maintained by production, the royalties paid to Lessor in no event can be less than an amount equal to the total annual rental, otherwise, an amount must be paid equal to the total annual rental, less the amount of royalties paid during the preceding year (State of Florida 1982a).

2. Royalties Prescribed for Oil and Gas Leases

Because oil or gas has not been produced in Florida's territorial waters, royalties have not been generated from this source. Royalty payments from upland oil and gas fields are described beginning on page 13 of Appendix A (Volume I).

3. Rental per Acre

Rental payments are established prior to advertising for a lease sale and are specified in the lease agreement. No rental is due if lands are developed for oil or gas or if a well has been commenced in good faith to secure production in paying quantities. The details of the manner in which rental rates are set is described on pages 14-15 of Appendix A (Volume I).

4. Delay Rental Payment

Florida oil and gas leases establish an annual rental fee but do not have a delay rental clause.

5. Shut-in Royalties

As stated in Florida's Oil and Gas lease "If, at the expiration of the primary term or at any time thereafter, there is located on the leased premises a well or wells capable of producing oil or gas in paying quantities and such oil or gas is not otherwise produced due to pending development of a satisfactory market outlet or lack of suitable production facilities and this lease is not otherwise being maintained in force and effect, Lessee shall pay as royalty a sum of money equal to double the annual rental provided for in this lease but in no event to be less than $1,200.00 per annum for each well capable of producing oil or gas in paying quantities;---." Further details regarding the handling of shut-in royalties are contained on page 8 of Appendix C and on pages 15 and 16 of Appendix A (Volume I).

6. Offset Wells

As stated in Florida's Oil and Gas Lease "in the event production in paying quantities should be brought in on adjacent land draining the leased

premises, Lessee agrees to drill such offset wells as a reasonable prudent operator would drill under the same or similar circumstances at such locations required by spacing regulations adopted by the State of Florida, Department of Natural Resources."

7. Pooled Acreage

The statutory basis for authorizing pooling or unitization of leased premises is discussed on page 16 of Appendix A (Volume I).

The Florida Oil and Gas Lease addresses royalty aspects in greater detail. " Operations for drilling, reworking or production on any part of a unitized unit composed in whole or in part of the land covered hereby shall be considered as operations for drilling, reworking or production on land covered by this lease and the entire acreage constituting such unit or units shall be treated for all purposes as if the same were included in this lease, except that in lieu of the royalties elsewhere herein specified, Lessor shall receive on production from each of such units the proportion of the royalties herein stipulated that the amount of Lessor's ownership in the mineral interest in the acreage placed in the particular unit involved bears to the entirety of the mineral interest in such unit."

8. Bonus Consideration

In Florida, the amount of the bonus required for a lease sale is not set by the state. In effect, because both the rental and royalty levels are established by state statute, the lease award is made to the bidder offering the highest cash bonus. Details of the statutory requirements relating to the bonus consideration are contained on pages 4 and 5 of Appendix A (Volume I).

9. Severance Tax

Severance in Florida for ordinary oil production is 8% of value at the wellhead. For small wells (less than 100 barrels per day) the tax for oil is 5% at the wellhead. Severance tax for gas at the wellhead also is 5%. Because oil and gas produced in Florida is so sour (high sulfur content) that it is actually lethal, no one will buy it at the wellhead. The amount of severance tax due therefore is determined by starting with the final sale value and subtracting the interim processing costs between wellhead and final sale (Parramore 1984).

10. State Agency Receiving Royalties

Royalties are paid to the Department of Natural Resources.

11. Distribution of Revenue Within State

The distribution of oil and gas revenues within the state is established by statute and is described on pages 6-8 in Appendix A (Volume I).

H. Environmental Controls and Regulations

1. Responsible Agencies

The Florida Department of Natural Resources (FDNR) is solely responsible for leasing of all state lands as the administrative arm of the Board of Trustees of the Internal Improvement Trust Fund. While other state agencies are not involved directly in the leasing process some play a critical role in the permitting following the award of a lease. This role is addressed in the FDNR 1982 (Section 16Q-21.04(2c)):

"The Department of Environmental Regulation biological assessments and reports by other agencies with related statutory, management, or regulatory authority may be considered in evaluating specific requests to use sovereignty lands. Any such reports sent to the department in a timely manner shall be considered."

Environmental parameters and the agencies responsible for their management are as follows:

Air Quality

Florida's air quality program is administered by the Department of Environmental Regulation (DER) pursuant to Chapter 403, F.S. (the Florida Air and Water Pollution Control Act) and the 1977 Federal Clean Air Act. The Environmental Protection Agency (EPA) administers the Clean Air Act at the federal level, while DER is the implementing agency at the state level. These two acts provide the authority for DER to establish ambient air quality standards and emission standards to protection or upgrade air quality. DER has established State Ambient Air Quality Standards for six major pollutants: nitrogen dioxide, carbon monoxide, ozone, sulfur dioxide, lead, and total suspended particulate. All sources of air pollution, whether existing, modified, or new must comply with Chapter 17-2, F.A.C., which sets standards for allowable emissions.

To achieve and maintain national (and State) ambient air quality standards, DER developed an air implemention plan in 1972. This plan has been quite successful in helping Florida to attain the six ambient standards; Florida does not have a persistent, serious problem with any of these major pollutants. Several of Florida's urban areas have exceeded the standards at one time or another, but in general pollutant levels have been well below the State or national standards. Some of Florida's ambient air quality standards are stricter than those of the Federal Government.

DER is responsible for issuing permits for the construction or operation of all air pollution sources. Power plants, phosphate plants, pulp and paper mills are examples of industrial facilities that require emission permits (State of Florida 1983).

Water Quality

The Department of Environmental Regulation also is responsible for maintaining water quality on state lands and in state waters.

"These waters of the state are rivers, streams and their tributaries, bayous, sounds, estuaries and bays and their natural tributaries, most natural lakes and the Atlantic Ocean and Gulf of Mexico to the seaward limit of the state's territorial boundaries. Waters owned entirely by one person other than the state are included only with regard to possible discharge on other property or water. If there is a connection, then a permit may be required---."

DER controls the permitting of dredge and fill activities under Chapter 403, F.S. The evaluation under this statute includes consideration of water quality, navigation, fish and wildlife habitats, and endangered and threatened species.

2. Relation to Leasing Agency

Recent attempts have been made within the state to streamline activities related to oil and gas leasing and the subsequent permitting procedures. While formal memorandums of understanding have not been drawn up, a joint application process was established in 1982 to expedite selected activities in Florida waters (State of Florida 1982b). This improved permitting procedure involved the cooperation of the DER, the DNR and the Corps of Engineers.

3. Environmental Review Process Prior to Issuing Lease/Permit

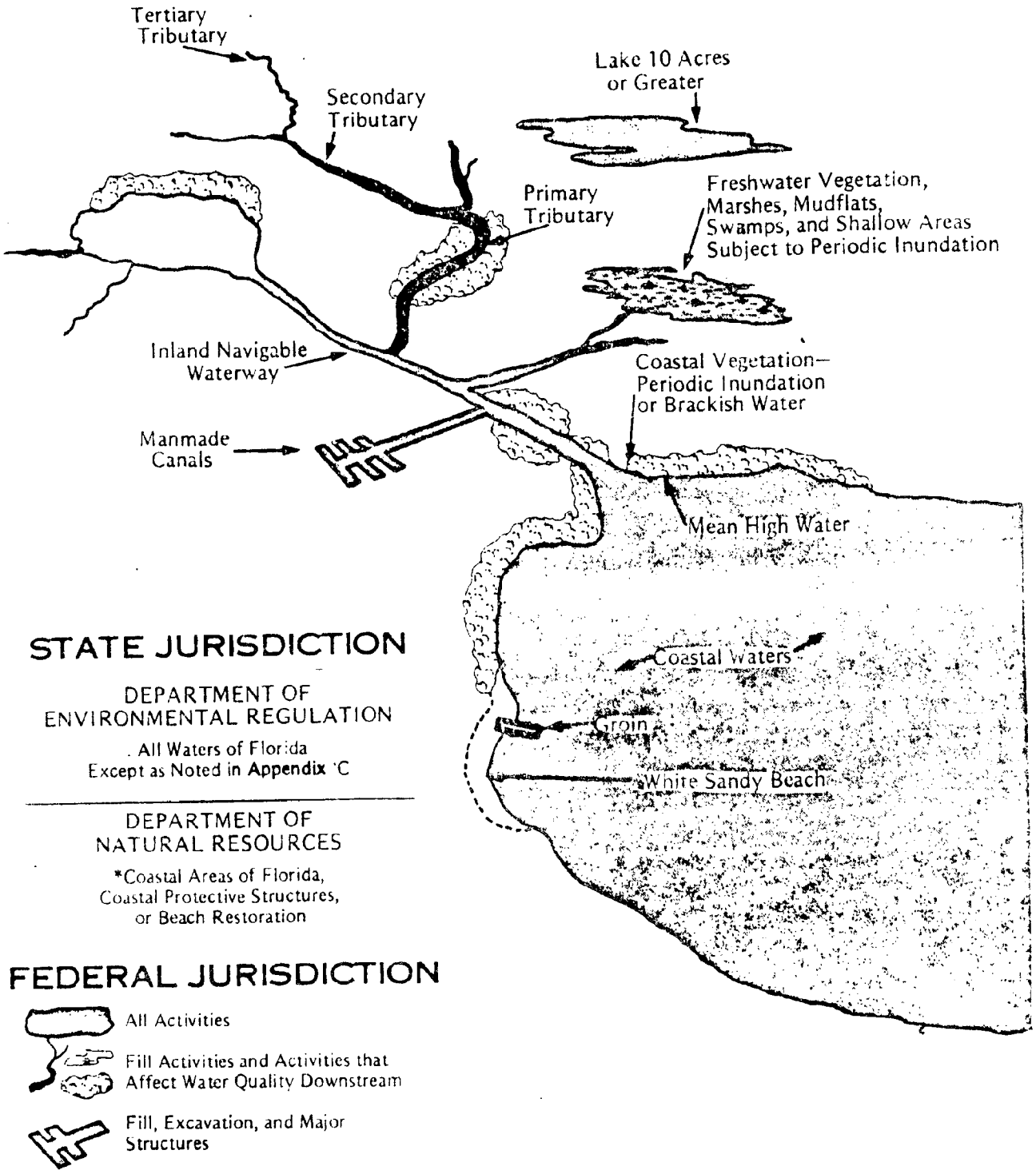
A formal environmental review process prior to issuing oil and gas leases in Florida's offshore waters has not been established. Rather, the environmental review occurs during the permitting phase. The administrative and application procedures for obtaining environmental permits is described in the Joint Application Pamphlet (State of Florida 1982b). Appendix E 1.2,a.(2) of that pamphlet states "Unless specifically exempted, all dredging and filling activities which are to be conducted in or connected directly to waters of the state or which are connected via an excavated water body or series of excavated water bodies to certain waters of the state require permits (see Figure 4).

The purpose of the Joint Application Pamphlet is to furnish information on permit programs and instructions for submitting an application to the U.S. Department of Army, Corps of Engineers (Corps), the State of Florida Department of Environmental Regulation (DER), and the State of Florida Department of Natural Resources (FDNR) for work in the waters of the state.

Federal and state laws prohibit certain activities unless authorized by permit. These laws include the River and Harbor Act of 1899; the Federal

FIGURE 4

Florida State and Federal
Coastal Jurisdictions



(State of Florida Joint Application for Permit, .Dredge .Fill .Structures)

Water Pollution Control Act Amendments of 1972, as amended by Clean Water Act of 1977; the Marine Protection, Research and Sanctuaries Act of 1972; and Chapters 161, 253, 258, and 403, F.S. In addition, other laws are directly related to the procedures for processing permit applications. These include the Fish and Wildlife Coordination Act of 1958, the National Environmental Policy Act of 1969, and Chapter 120, F.S. Rules and regulations governing the Department of the Army permit programs are listed in Title 33, Section 209.120 of the Code of Federal Regulations. Those governing the Department of Environmental Regulation are listed in Florida Administrative Code Rule 17, while those governing the Department of Natural Resources, Bureau of Beaches and Shores and Bureau of State Lands are listed in Florida Administrative Code Rule 16 (Appendix E).

Appendix A of the Joint Application Pamphlet addresses the information requirements of the Board of Trustees of the Internal Improvement Trust Fund. The purpose of this appendix is to list the information required by the Board to obtain a letter of consent, submerged land lease, easement, or other form of consent sought pursuant to Chapter 253.77, F.S. Copies of Florida Administrative Code Rules 16Q-21 (Sovereignty Submerged Lands Management Rule), 16Q-20 (Florida Aquatic Preserve Rule) and 16Q-18 (Biscayne Bay Aquatic Preserve Rule) of the Department of Natural Resources, showing the more detailed requirements, and criteria for approval are available upon request. A copy of an application submitted to the Department of Environmental Regulation satisfies many of the information items required by the above rules and will be forwarded to DNR. The Bureau of State Lands Management will review the application for compliance with the administrative rules of the Department of Natural Resources. Additional information will be requested if needed. Exemption from Department of Environmental Regulation

permitting requirements does not relieve anyone using state-owned lands from soliciting consent or other authorization from Department of Natural Resources unless specifically exempt under Florida Administrative Code Rule 16Q-21.

4. Environmental Stipulations

The Florida Oil and Gas Lease addresses environmental stipulations in a general way in Section 14(A), "Pollution and Site Security."

"The Lessee shall be liable for land or water pollution resulting from the drilling for or production of products pursuant to this lease. The Lessee shall be liable for any damage to aquatic or marine life, wildlife, birds, and any public or private property, both real and personal due to Lessee's operations pursuant to this lease. The Lessee shall not allow any extraneous matter to enter or damage any mineral or freshwater bearing formation. Provided, however, this covenant of absolute liability shall not apply if the Lessee establishes that the prohibited discharge or other polluting condition was the result of any of the following:

(1) an act of war; or

(2) an act of government, either federal, state or local; or

(3) an act of God, which shall be construed to mean an unforeseeable act exclusively occasioned by the violence of nature without the intervention of any human agency; or of nature without the intervention of any human agency; or

(4) acts of disinterested third parties who are neither employed by or agents of the Lessee."

The environmental responsibilities of the lessee are addressed further in the lease in Section 18(E) with regard to the requirement for a surety bond.

"Prior to the time that the Lessee mines, drills or extracts in any manner, petroleum, petroleum products, gas, sulphur or any other mineral from

the land covered hereby, Lessee shall deposit with the Lessor a surety bond in the amount of $50,000 from a surety company authorized to do business in the State of Florida. The bond shall serve as security and is to be forfeited to the Lessor to pay for any damage caused by mining or drilling operations of the Lessee. Damages as used this section shall include, but not be limited to, air and water pollution, destruction of wildlife or marine productivity and any other damage which impairs the health and general welfare of the citizens of the State of Florida."

While environmental issues are cited in a general way in the Oil and Gas Lease, there are more specific environmentally related stipulations contained in Florida statutes. These stipulations along with relevant administrative requirements are discussed in Appendix A (Volume 1) pages 18-24. Further stipulations are found in the State Lands Management Plan adopted by the Board of Trustees of the Internal Improvement Trust Fund in March 1981 (Appendix A, Volume I, pages 33-49).

The impact of these permitting requirements and stipulations, and their interpretation by State officials, was reflected in the numerous stringent clauses in the only permit for oil and gas drilling in Florida's waters since 1968. This permit, issued to Getty Oil Company (for exploration in East Bay, Santa Rosa County) in November 1982 followed by the Corps of Engineer's permit in March 1983 was in effect a zero-discharge policy. This policy required a major effort on Getty's part to comply as indicated in the following statement.

"Getty Oil Company has committed 16 persons per shift to the task of protecting East Bay. Three boats were purchased for use by crews: to monitor the environment of East Bay land surrounding areas during drilling operations; to maintain the specially-required equipment such as the Oil

Fence, and to perform routine housekeeping chores inside the 12-acre area. In addition, consultants have been hired to audit the environmental monitoring and environmental compliance of the East Bay Project." (Getty Oil Company 1983).

5. Baseline Environmental Research

There is a considerable amount of research in the Gulf of Mexico conducted by scientists from academic, state, and private organizations. Funding is derived from private sources, federal grants for basic and/or applied research, or from state agency budgets to permit the fulfillment of statutory responsibilities. As with most other coastal states, Florida does not have a funded program dedicated to obtaining baseline data in support of future offshore oil and gas activities. Regional and site specific environmental data are collected, however, as required to support the application for permits for offshore development, As these data are made available, a body of knowledge is accumulating which will have a direct impact on our ability to make intelligent management decisions about future oil and gas development in Florida's waters.

6. Role of Corps of Engineers

See Section H-3 of this report.

I. Leasing Procedures

1. Leasing Schedule

Florida has no schedule for offshore oil and gas lease sales.

2. Call or Nominations for Lease

Oil and gas leases usually are offered in response to a nomination (proposal) for a lease from a potential lessee. See Appendix A, Volume I, pages 2-3 for details.

3. Fees

A $200 non-refundable processing fee must accompany a nomination.

4. Publication of Calls for Nominations and Adverisements for Leasing

See Appendix A, Volume I, pages 3-4.

5. Bidding

All oil and gas leases in Florida are by sealed bids and competitive bidding. See Appendix A, Volume I, pages 4-5 for details.

6. Terms of Lease

-Title

The lease grants exclusive rights to: investigate, explore, prospect and drill for discovery and production of "oil, gas, sulphur, carbon black, carbon dioxide, other liquid hydrocarbons, salt and/or brines and any other miscellaneous constituent products produced. See Appendix A, Volume I, pages 20-24 for details.

-Length of Lease

The current Florida oil and gas lease establishes a primary term of five years although Section 253.55, F.S. authorizes the Board of Trustees to issue leases for primary terms up to 10 years. See Appendix A, Volume I, pages 24-26 for details.

-Extension of Lease

Leases can be extended under a variety of conditions as specified in Appendix A, Volume I, pages 24-28.

-Transfer of Lease

Leases can be assigned in whole or in part with the written permission of the Lessor. Liability rests with the owner of the lease and in the event of segregated ownership, liability is apportioned accordingly.

-Compliance With Rules and Regulations

The Lessee is required to comply with all current and future statutes, rules and regulations of the U.S. Government and the State of Florida. See Appendix A, pages 27-29 for a discussion of the resolution of conflicting laws affecting compliance.

-Cessation of Work

See Appendix A "Terms of Lease" pages 24-28 and Appendix C, Volume I, for a detailed discussion.

7. Handling of Proprietary Information

In general, Florida's Public Records Law provides that all public records may be examined "by any person---at reasonable times, under reasonable conditions---" unless an exemption is provided by law, (Section 119.07, F.S.). A detailed discussion of the management of proprietary data is included in Appendix A, Volume I, pages 82-83.

The 15 steps required for processing an oil and gas lease in Florida can be summarized as follows:

1. Request to Nominate.

Applications for nominations for the lease of sovereignty lands in which the State of Florida holds an interest in the petroleum or petroleum products shall include the following:

a. Name and address of the applicant or nominee;

b. Legal description of the parcel sought including the surface acreage; this description may utilize the submerged land blocks approved by the Board of Trustees on March 17, 1981;

c. Identification of the state agency vested with the ownership of the petroleum products;

d. Percentage of the petroleum interests held by the State;

e. Identification of any municipal corporation in which all or part of the parcel sought is located or within 10 miles thereof;

f. Identification of any improved beach outside a municipal corporation or lands in the tidal waters of the State of Florida abutting on or immediately adjacent to any improved beach in which all or part of the parcel sought is located or is within 3 miles thereof, and

g. A $200.00 non-refundable processing fee.

2. Letter of acknowledgement sent to applicant by DNR, Bureau of State Lands Management.

3. Title requested from the Title Section of Bureau of State Lands Management by Uplands Leasing office.

4. Request sent to State Departments of Transportation or Agriculture for permission. Agency may specify stipulations to be put in lease.

5. Application sent to Bureau of Geology for review. They make recommendations on geological structure based on available data. Special site visits are not made. The Bureau of Geology report serves as the basis for establishment of royalties by DNR based on proximity to dry holes, producing wells, etc. Formal approval by the Bureau of Geology is not required.

6. Forwarded to uplands office of Bureau of State Lands Management for review of land restrictions, local government regulations and related statutory and legal aspects.

7. List of owners within 500 feet of lease site is obtained from applicant if not already submitted with application. List is based on county tax records.

8. Application agendaed for permission to advertise by delegation of authority by Board of Trustees to the Executive Director of the DNR.

9. Approved lease form is designated prior to advertising. Standard form is used.

10. Advertisements are executed as specified in Chapters 253.115 and 253.52, F.S.

11. Lease date is set by Bureau of State Lands Management.

12. Bidders are notified of lease sale date.

13. Bids submitted by applicant must be sealed and accompanied by certified check.

14. Public lease sale is held on specified date in the manner prescribed in Chapters 253.53, 253.54 and 253.55, F.S.

15. Selected bidder is notified by Bureau of State Lands Management.

A flow chart summarizing the above lease process is shown in Figure 5.

J. Relation of Leasing Program to Issuance of Permits

Issues involving the interrelationships of leasing and permitting are discussed in detail in Section H. and in Appendix E, Volume I.

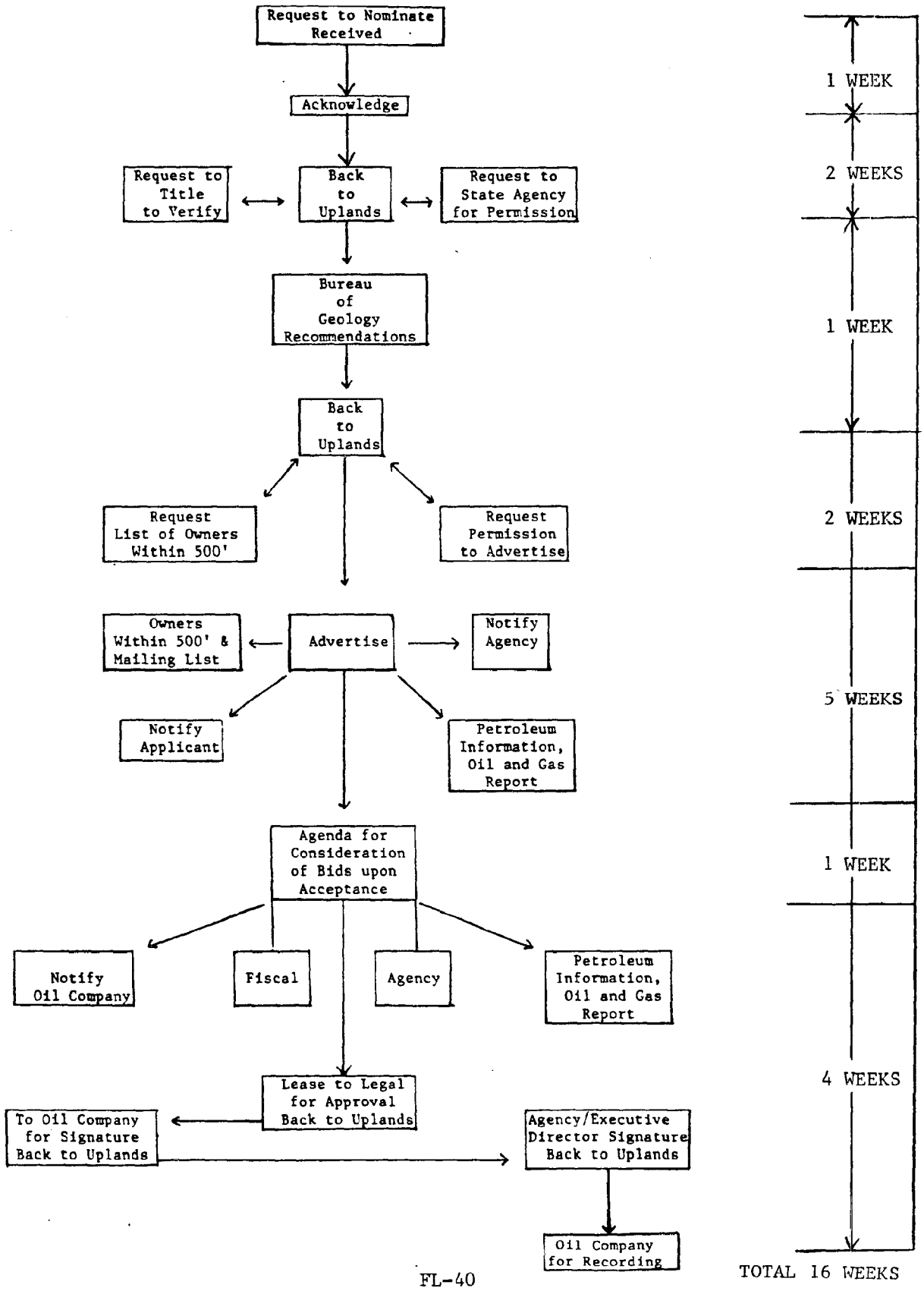
K. Mineral Leasing

Non oil and gas mineral leasing in Florida also is handled by the Bureau of State Lands Management of DNR. At the present time, there are rock mining and sand and gravel leases. A different lease form is used for such leases than for oil and gas and lease sales are held separately.

L. The Socioeconomic and Physical Impact of Oil and Gas Leasing in Florida's Waters

Numerous studies have been performed over the years to assess the impact of offshore oil and gas activities on the coastal regions of the United States. In anticipation of such activities in the eastern Gulf of Mexico,

FIGURE 5
OIL AND GAS LEASE
ADMINISTRATIVE FLOW CHART



the Florida Department of Community Affairs recently has supported studies by seven Florida Regional Planning Councils to determine local and regional effects of oil and gas operations on Florida's coastal zone. Although the impetus for conducting these studies was the potential development in nearby Federal waters, the results will apply equally well in the event that oil and gas exploration and production occurs in state offshore waters.

Because of the voluminous nature of these reports, it is not possible to discuss each in detail. Rather, a special report prepared by T.A. Herbert and Associates, addressing the main issues, is contained in Appendix D, Volume I. Examples of areas covered are local employment, shore side space requirements, dollar impact, transportation, required services, and historical data affecting each of these parameters.

Also contained in Appendix D are the summaries, conclusions, and recommendations of the four Regional Planning Councils facing on or near the Gulf of Mexico. It is recommended that the reader review these summaries for a better understanding of the socioeconomic issues as viewed by local governments.

Louisiana

STATE OF LOUISIANA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	LA- 1
B. Philosophy of State Towards Leasing in State Waters	LA- 1
C. History of Leasing Program	LA- 2
D. Delegation of Management Responsibilities for State Leasing Program	LA- 5
E. Geographic Description of State Territorial Waters	LA- 9
F. Local Jurisdictional Control Over State Waters	LA- 9
G. Oil and Gas Revenues Accruing to State	LA-11
H. Environmental Controls and Regulations	LA-20
I. Leasing Procedures	LA-23
J. Relation of Leasing Program to Issuance of Permits	LA-28
K. Mineral Leasing	LA-30
References	LA-31

LIST OF TABLES AND FIGURES

Description		Page
Table 1	Summary of Louisiana Offshore Leasing Data for Period July 1980 to March 1984	LA- 4
Table 2	State Revenues Collected From the Petroleum Industry: Fiscal Year 1981-82	LA- 6
Table 3	Specific Taxes Levied on the Petroleum Industry in Relation to Undedicated Funds Collected by the Revenue Department and the Mineral Board: Fiscal Year 1955-82	LA-14
Figure 1	Louisiana State Agencies Involved with Oil and Gas Leasing Program	LA- 8

A. Statutory Authority

1. Vested Authority

The Louisiana State Mineral Board, which is a corporate body with power to sue or be sued, has the authority to lease for the development and production of minerals, oil, and gas, any lands belonging to the State, or the title to which is in the public, including road beds, water bottoms, and lands adjudicated to the State at tax sale (Louisiana Code, Title 30, Section 124). The Board administers the State's proprietary interest in minerals as provided in the Louisiana Code.

The Mineral Board also is charged with the responsibility of administering all leases to insure maximum development and production and to insure that the terms and conditions of the respective leases are fully complied with.

2. Members of Governing Body

The State Mineral Board is composed of 9 members appointed by the Governor, plus the Governor and the Secretary of the Department of Natural Resources who serve as ex-officio members. The Governor can serve as the ex officio chairman, or may designate the Board to elect a chairman to serve for two years. The members serve terms concurrent with that of the Governor. The Governor may not appoint board members engaged in an industry which may result in a conflict of interest.

B. Philosophy of State Towards Leasing in State Waters

With its extensive history of oil and gas exploration and development, Louisiana clearly is committed to the continuing support of offshore

production. The oil and gas industry long has been a way of life in Louisiana and the economy of the state is intimately dependent upon it as evidenced by the one billion dollar-a-year income on oil alone and the fact that a decrease in the price of oil of $1.00 per barrel costs the state $31 million. The size of Louisiana's offshore oil and gas industry can better be appreciated when realizing that in the U.S. 70% of offshore oil and 90% of offshore gas is produced from Louisiana waters (Scott and Associates 1983).

Although offshore development and production began before there was much concern for environmental protection, efforts have been underway for several years to institute protective measures where practical such as recent permitting regulations affecting the Marsh Island Wildlife Refuge in Iberia Parish, and the general environmental stipulations contained in the 1981 rider attached to the oil and gas lease (State of Louisiana 1981).

The recently developed Louisiana Coastal Zone Management Program also reflects the official current environmental policy. This program, established in 1978 as the "State and Local Coastal Resources Management Act of 1978", vows "To protect, develop, and where feasible, restore or enhance the resources of the state's coastal zone." In addition to authorizing the necessary procedures to implement this policy, the "Act" established the Coastal Management Section in the Department of Natural Resources, and the 23-member Louisiana Coastal Commission, both of which have a major role in the management of coastal activities.

C. History of Leasing Program

1. Establishment of Offshore Leasing Program

When the State Mineral Board was first organized in 1936,nearly all of Louisiana's prospective water bottoms were under lease, with several of these

leases containing as much as a million acres. A majority of the acreage was held by production, often minor in nature.

On August 8, 1945, the Board held its first offshore "modern" lease sale, although offshore waters had been leased in South Louisiana beginning in 1920, and long before anyone became aware of the so-called "Tidelands controversy". No adverse claim was ever posed to the State's ownership until 1943 and later. The Board has awarded a total of over 900 leases in the various offshore areas of Louisiana, 742 since 1960, within the boundaries of the state as established by the legislature. The State of Louisiana received over twenty-six million dollars in bonuses during this period and some twenty-two million in rentals through 1950. Activity ceased until May of 1953, when the Submerged Lands Act was signed into law by the then President of the United States, Dwight D. Eisenhower.

On October 12, 1956, complications arising from conflicting Federal and State claims as to boundaries of the respective domains became extremely complex and it was virtually impossible to administer existing leases, much less accomplish future leasing. An agreement was reached and a decree was filed in the Supreme Court of the United States which allowed resumption of activity, separating the areas of controversy for the purpose of the agreement into various stipulated zones. As of September 1983, approximately 40% of Louisiana's offshore submerged lands were under lease (Wiese et al 1983).

2. Frequency distribution of leases by year

Table 1 summarizes Louisiana's offshore lease data for the period July 1980 to March 1984.

Table 1
Summary of Louisiana Offshore Leasing Data
for Period July 1980 to March 1984

CLASSIFICATION	ACREAGE OFFERED	TOTAL BONUSES BID	HIGH ACREAGE BID ON	HIGH BONUSES	AVERAGE PRICE PER ACRE BID	NUMBER OF LEASES LET	ACREAGE LEASED	BONUSES ON LEASED ACREAGE	AVERAGE PRICE PER ACRE
				July 1980 - June 1981					
Offshore	145,798	42,683,046.90	54,096	33,828,817.14	625.35	65	49,805	32,891,809.78	660.41
Pass-a-Loutre Offshore	3,075	38,304.00	152	38,304.00	252.00	1	152	38,304.00	252.00
Total Offshore	148,873	42,721,350.90	54,248	33,866,121.14	877.35	66	49,957	32,930,113.78	912.41
				July 1981 - June 1982					
Offshore	219,936	45,087,183.33	77,861	33,171,103.25	426.03	82	72,878	32,914,294.08	451.64
Pass-a-Loutre Offshore	0	0	0	0	0	0	0	0	0
Total Offshore	219,936	45,087,183.33	77,861	33,171,103.25	426.03	82	72,878	32,914,294.08	451.64

CLASSIFICATION	ACREAGE OFFERED	TOTAL CASH PAYMENTS BID	HIGH ACREAGE BID ON	HIGH BONUSES	AVERAGE PRICE PER ACRE BID	NUMBER OF LEASES LET	ACREAGE LEASED	BONUSES ON LEASED ACREAGE	AVERAGE PRICE PER ACRE
				July 1982 - June 1983					
Offshore	168,170	13,977,394.85	32,480	12,398,710.42	381.73	36	32,629	12,942,955.99	396.67
Pass-a-Loutre Offshore	828	0	0	0	0	0	0	0	0
Total Offshore	168,998	13,977,394.85	32,480	12,398,710.42	381.73	36	32,629	12,942,955.99	396.67
				July 1983 - March 1984					
Offshore	76,970	11,135,880.81	25,830	9,874,847.59	382.30	33	21,431	9,161,533.31	427.49
Pass-a-Loutre Offshore	0	0	0	0	0	0	0	0	0
Total Offshore	76,970	11,135,880.81	25,830	9,874,847.59	382.30	33	21,431	9,161,533.31	427.49

Source: State of Louisiana
Office of Mineral Resources (1984)

3. Average geographic size of lease and related bidding data

The average size of an offshore oil and gas lease in Louisiana over the last five years was about 1000 acres. Although state law permits leases of up to 5,000 acres each (Louisiana Code, Title 30, Section 126), since 1977 the largest lease awarded has been 2,500 acres. A summary of related bidding data including bonuses and lease sizes is shown in Table 1 for the period July 1980 to March 1984.

4. Example of prior lease sale schedule

Lease sales have been held monthly for the last 15 years.

5. Revenues accruing to State

The bonus and rentals are shown in Table 1 for the period July 1980 to March 1984 for offshore leases. Table 2 shows total income to Louisiana from the petroleum industry for the year 1981-82.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

The Louisiana Department of Natural Resources (LDNR) is the recipient of all proposals for mineral leases. The LDNR in turn transmits them to the State Mineral Board for its action. Louisiana has no oil and gas board.

2. Agency responsibilities

The Mineral Board has "the responsibility of administering all leases to insure maximum development and production and to insure the terms and

Table 2

State Revenues Collected from the Petroleum Industry: Fiscal Year 1981-82

REVENUE SOURCE	AMOUNT COLLECTED (Millions)
Oil Severance Tax[a]	$ 809.3
Gas Severance Tax[a]	159.4
Royalties, Rentals and Bonus[a]	653.2
Corporate Income Taxes[b]	23.5
Personal Income Taxes[c]	15.5
Total Estimated	$ 1,677.2
Plus Other Unestimated Taxes =	?

[a] Actual numbers.

[b] Approximated in Department of Revenue survey.

[c] Estimated.

Source: Scott and Associates (1983)

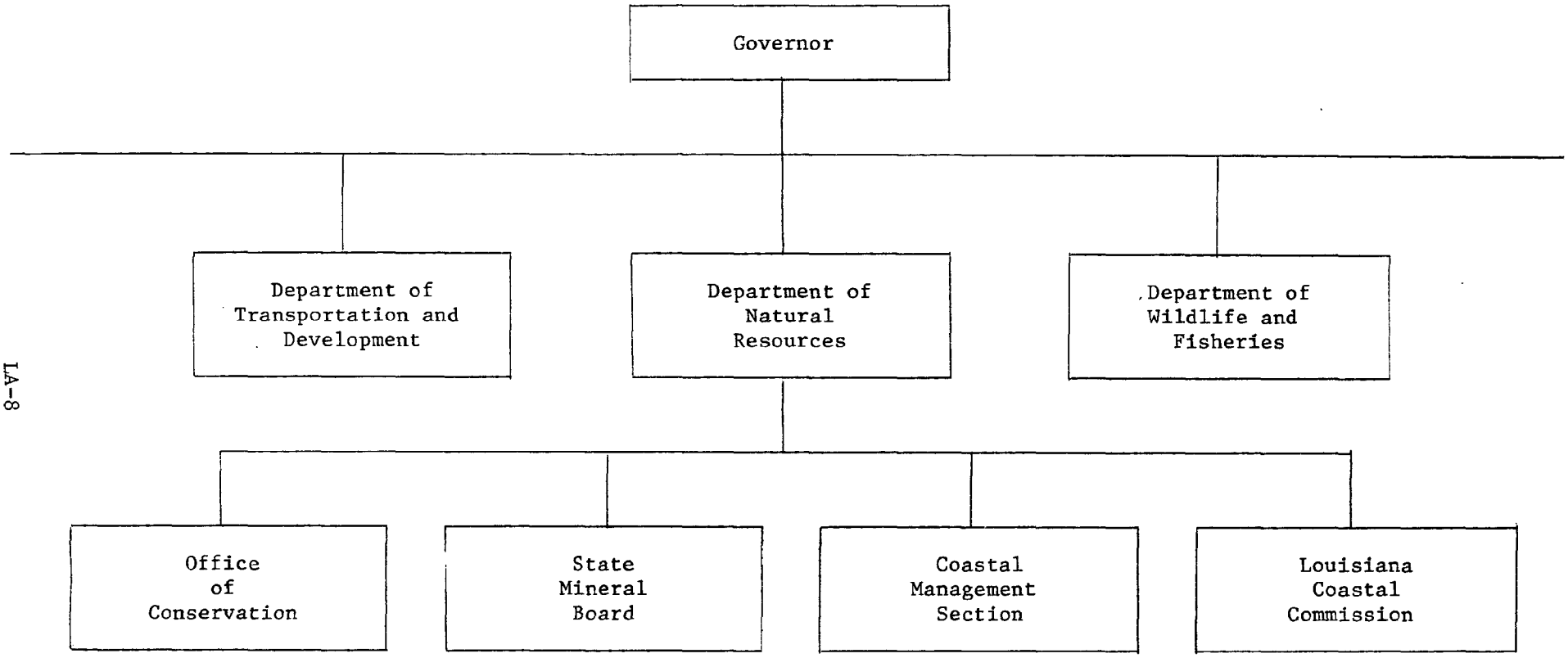
conditions of the respective leases are fully complied with. To assist the State Mineral Board in the above responsibilities is a staff comprised of four divisions, namely, Administration, Audit, Legal, and Geological and Engineering. There are a total of about 70 geologists, engineers, auditors, etc. in the Mineral Board office. The major areas of responsibilities are assigned to Board Committees who review with the staff all matters requiring Board approval and make recommendations to the composite Board. The only exception is the lease sale in which the composite Board participates" (Department of Natural Resources 1980). Specific areas of responsibilities include: tract evaluation; recommendations for leasing; managing the lease sale; evaluation of bids; review of special leases, unitization agreements, royalty and bonus arrangements; title disputes; interaction with other state agencies such as the Department of Wildlife and Fisheries; and auditing of royalties and other revenue due to the State. "The State Mineral Board may conduct geological and geophysical surveys, may equip, drill and operate wells or mines for the production of minerals; may construct, operate and maintain necessary or convenient facilities for saving, transporting and marketing mineral production, and may do all other things which may appear to be necessary or desirable. The State Mineral Board may contract to have any of these things done" (Louisiana Code, Title 30, Section 209). The Mineral Board coordinates with other State agencies, such as the Department of Wildlife and Fisheries, in developing procedures or regulations that become part of any lease awarded.

3. Organization chart of state agencies

Figure 1 shows the state agencies involved in Louisiana oil and gas leasing.

Figure 1

Louisiana State Agencies Involved With
Oil and Gas Leasing/Permitting Program



E. Geographic Description of State Territorial Waters

1. General Description of State offshore boundaries

The territorial waters of Louisiana extend gulfward for three nautical miles. While the offshore boundary with Texas has been established, there remains a dispute with Mississippi. The shoreline of Louisiana extends for about 350 miles.

2. Mapping and charting procedures used to define lease areas

Louisiana offshore tracts were layed out in the 1940s using the Lambert plane coordinate system which also was used to lay out federally owned tracts. Some minor changes have occurred since that time.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

As contained in the Louisiana Constitution, all offshore lands within territorial limits are owned by the State. As a consequence, all leasing of offshore lands for oil and gas is handled by the State Mineral Board. Local governments have no role in the leasing process. This is different than the leasing of Louisiana uplands for oil and gas where every agency ("defined as a levee district, drainage district, road district, school district, school board, or other board, commission, parish, municipality, State university, State college, State penal or charitable institution or agency, unit or institution of the State or subdivision thereof") is authorized to lease its land for the development and production of minerals (Louisiana Code, Title 30, Sections 151, 152).

2. The role of port authorities

Port authorities play no role in leasing of state-owned waters.

3. Proprietary interests of local governments in submerged lands

Local governments or agencies have no proprietary or annexation rights in offshore submerged lands (Howe 1983-1984).

4. Home rule rights and the authority for local governments to annex offshore lands

(See Item 3)

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

Drilling permits are issued by the Commissioner of Conservation and "No other agency or political subdivision of the State shall have the authority, and they are hereby expressly forbidden, to prohibit or in any way interfere with the drilling of a well or test well in search of minerals by the holder of such a permit" (Louisiana Code, Chapter 30, Section 204). It appears, however, that local parish governments may play a larger role in the future. After about six years of work between the Coastal Management Section of the Louisiana Department of Natural Resources (DNR) "and participating coastal zone parishes, final local coastal management plans are beginning to undergo state approval review. An approved local program would become part of the Louisiana Coastal Resources Program (LCRP), and a parish with an approved plan would receive some state funding during the first year of program implementation. Program approval also would allow a parish to implement a permit system for coastal uses of local concern. Because there are no

approved local plans at this time (May 1983), the state now is responsible for permitting all uses of local concern as defined by the State and Local Coastal Resources Management Act of 1978 which are sited in the Louisiana Coastal Zone. The rules for local coastal management program approval are strict and specific." They involve development of goals, projected needs, socio-economic impact, and holding public hearings, etc. Subsequent to these procedures the plan is submitted to the Secretary of the DNR for approval.

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax.

Because offshore lands are owned exclusively by the State, local governments cannot tax offshore facilities.

G. Oil and Gas Revenues Accruing to State

There are five primary levies that Louisiana places on the petroleum industry which have-especially in recent years-constituted a very large portion of the state's revenue collections. They are as follows: oil condensate severance tax; natural gas severance tax; royalty payments; bonus payments; and rental payments.

1. Minimum royalties allowed by law

Minimum statutory royalties are one-eighth (1/8) of all oil and gas produced, saved, or utilized.

2. Royalties prescribed for oil and gas leases

Royalties can vary from lease to lease and are subject to many factors. "Until very recently the royalty rate was virtually always one-eighth of the value of the product severed. However, as the price of petroleum products began to rise in the early 70's, the royalty rate became an important element in the total bid for a lease. At this writing, royalty rates are more typically in the 25-30% range and 40% rates are not unusual" (Scott and Associates 1983). In some instances tradeoffs are made between high royalties and lower bonuses or vice versa. The notice of publication promulgated by the Office of Mineral Resources addresses the royalty policy. The July 14, 1982 lease sale notice contains the following statement: "A bid of a royalty less than the aforesaid statutory minimums will be increased to said statutory minimums by the Board. All bidders are notified that the Board does not obligate itself to accept a bid which offers the aforesaid statutory minimums, but reserves the right to accept a bid which offers in excess of the statutory minimums, and is considered most advantageous to the State of Louisiana."

The current Louisiana Oil and Gas Lease form addresses in-kind royalties. "Unless Lessor elects to take in kind all or any part of the portion due Lessor as royalty on minerals produced and saved hereunder, which option is hereby expressly reserved by Lessor pursuant to L.R.S. 30:127A and which is to be exercised by written notice by Lessor to Lessee at any time and from time to time while this lease is in effect and either prior or subsequent to acceptance by Lessor of royalties other than in kind, it being understood that nothing contained in this lease or in the rider attached hereto shall ever be interpreted as limiting or waiving said option, Lessee shall pay to Lessor as royalty. ---" "--- Lessee shall not make any deduction

whatsoever for the cost of any operation, process, facility, or other item considered to be a production function or facility at the time such oil is run.---" "--- In all cases, Lessor's royalty shall be calculated and paid after deduction of all severance or production taxes." (State of Louisiana 1981). Table 3 shows royalties, rentals and bonuses received by Louisiana for the period 1954 to 1982. The state requires numerous reports to be submitted by lessees and auditors are assigned to assure that the state receives the proper revenues.

3. Rental per acre

See Item 4.

4. Delay rental payment

If actual drilling operations are not commenced on or before one year from the date of the lease, the lease will terminate unless the Lessee, on or before the expiration of that period, pays the lessor a sum not less than one-half of the cash bonus payment made to the Lessor on the date of the lease. The amount of this cash payment referred is determined at the time of the lease. Rental payments extend the lease for one year at a time and can continue throughout the primary term of the lease. If on any rental paying date actual drilling operations are being conducted on or production in paying quantities is being obtained from the leased premises, no rental shall be due for the annual rental period then commencing (State of Louisiana 1981).

5. Shut-in royalties

"If at any time or times (during or after the primary term) there is on the leased premises a well or wells capable of producing gas in paying

Table 3

SPECIFIC TAXES LEVIED ON THE PETROLEUM INDUSTRY IN RELATION TO UNDEDICATED FUNDS COLLECTED BY THE REVENUE DEPARTMENT AND THE MINERAL BOARD: FISCAL YEARS 1955-82

Fiscal Year	Severance Taxes (millions of $) Oil	Gas	Undedicated Royalties, Rentals, & Bonuses[a] (millions of $)	Collections by Department of Revenue and Mineral Board[b] (millions of $)	Dependency Ratio (%)[c]
1954-55	59.1	4.2	115.8	335.2	53.4
1955-56	64.1	4.7	93.0	339.9	47.6
1956-57	73.0	5.4	89.0	361.6	46.3
1957-58	69.2	6.0	71.0	348.6	41.9
1958-59	79.7	27.3	108.3	429.8	50.1
1959-60	79.1	53.3	69.2	402.5	50.1
1960-61	84.3	58.9	81.2	426.1	52.7
1961-62	85.5	60.4	74.5	437.3	50.4
1962-63	92.9	66.3	103.3	485.3	54.1
1963-64	97.0	71.3	106.9	512.8	53.7
1964-65	100.2	73.8	113.3	552.8	52.0
1965-66	117.8	82.0	154.6	661.1	53.6
1966-67	116.3	92.2	122.0	659.8	50.1
1967-68	131.2	101.3	153.0	728.3	52.9
1968-69	125.5	108.5	153.2	748.2	51.8
1969-70	126.0	116.5	154.4	778.9	51.0
1970-71	133.0	116.1	149.5	914.3	43.6
1971-72	122.5	114.0	153.8	1,010.7	38.6
1972-73	112.5	147.0	140.1	1,073.0	37.2
1973-74	186.1	192.2	182.6	1,207.0	46.5
1974-75	282.5	250.9	176.6	1,453.7	48.8
1975-76	275.9	225.8	189.2	1,565.0	44.1
1976-77	269.9	210.4	205.4	1,619.8	42.3
1977-78	259.6	202.0	270.7	1,831.5	40.0
1978-79	261.9	197.7	246.5	1,993.1	35.4
1979-80	335.0	174.3	520.4	2,454.8	41.9
1980-81	639.0	160.9	496.3	2,803.9	46.2
1981-82	809.3	159.4	653.2	3,267.2	49.6

Source: Data were collected from various issues of the *Annual Report of the Department of Revenue*, and mimeograph data supplied by the Research Division of the Department of Natural Resources.

[a] Does not include the royalty payments to the Rockefeller Fund, Marsh Island Fund, or the Conservation Fund, all of which are dedicated monies.

[b] Does not include the highway fund, which is dedicated, or State Land Office Fees which are collected by Mineral Resources and are generally quite small. Also this number does not include revenues which the state collects through the Treasurer's Office or Department of Public Safety.

[c] The sum of columns 1 through 3 divided by column 4.

Source: Scott and Associates 1983

quantities, which fact has been duly verified and confirmed in accordance with Lessor's requirements for proof thereof, but gas is not being used or marketed therefrom because of the lack of a reasonable market or marketing facilities or governmental restrictions and if this lease is not then being otherwise maintained by separate operations or production, this lease shall, nevertheless, remain in full force and effect for a period of ninety (90) days after cessation of such production or such operations or the shutting in of such well. If, on or before the expiration of the ninety (90) day period, production or operations shall not have been commenced or resumed, Lessee, in order to maintain the lease in force thereafter, shall commence semi-annual payments to the Lessor at the rate and in the manner provided herein below and thereby maintain the lease in full force and effect during the periods covered by such payments; however, if the ninety (90) day period should expire during the first year of the primary term or during any year for which a rental has previously been paid, the initial payment hereunder shall not be required until the next anniversary date of the lease.---" "--- Each semi-annual payment shall be at the rate of twenty-five dollars ($25.00) per acre for the number of acres then covered by this lease, but no payment shall be less than five hundred dollars ($500.00)." (State of Louisiana 1981).

6. Offset wells

"If at any time during or after the primary term there is completed on adjoining property a well located within six hundred and sixty (660) feet of the leased premises (or within any spacing or pooling unit distance greater than 660 feet established by the Commissioner of Conservation) and such well produces oil, gas, or other liquid or gaseous mineral in paying quantities

for twenty (20) days (which need not be consecutive) during any period of thirty (30) days, or produces its monthly allowable during such thirty (30) day period" (State of Louisiana 1981), it will be assumed that leased premises are being drained, are not being protected and that an offset well is economically feasible. "If Lessee is the operator of or has a working interest in the adjoining property, Lessee will begin actual drilling operations for a well on the leased premises within ninety (90) days after the end of the above thirty (30) day period. In all other cases Lessee shall be required to begin such operations only within ninety (90) days after receipt of written notice from the Board of the expiration of the above thirty (30) day period. No offset well shall be necessary if, on or before the maturity date of the offset obligation or any deferred maturity date as hereinafter provided, any of the stated presumptions is rebutted or a unit for the well in question embracing all or part of the leased premises is formed by agreement with the Board or by order of the Commissioner of Conservation.

In lieu of commencing operations for an offset well as above provided, Lessee may, at Lessee's option, commence compensatory payments equal to the royalties herein provided, computed on one-half (1/2) of the oil, gas, or other liquid or gaseous mineral produced by the well in question on and after the date operations would have otherwise been commenced, value to be determined in accordance with the provisions of Article 6 of this lease.---" "--- In addition to the specific offset drilling obligation above provided, Lessee agrees to drill any and all wells necessary to protect the leased premises from drainage of oil, gas, or other liquid or gaseous mineral by a well or wells on adjoining property or to take any other steps reasonably necessary to protect the leased premises against such drainage, including,

but not limited to, obtaining the formation of appropriate drilling or production units." (State of Louisiana 1981).

7. Pooled acreage

"Lessee may, with the consent and approval of Lessor pool or combine the acreage covered by this lease (or any portions thereof) with any other property, lease, or leases (or portions thereof). Operations on or production of minerals from, or the existence of a shut-in gas well on, any portion of a unit, including units created by the Commissioner of Conservation or by conventional agreement, in which all or any part of the leased premises is embraced shall have the same effect under the terms of this lease as if it had occurred on the leased premises." (State of Louisiana 1981).

8. Bonus consideration

Bonuses are established for each lease sale and are determined by competitive bidding among companies interested in drilling on the site. Table 1 shows the range of bonuses over the past 4 years for offshore leases. Table 3 shows bonuses lumped with royalties and rentals for the period 1954 to 1982.

9. Severance tax

A tax on oil and gas resources was authorized originally in the Louisiana constitution of 1898. As would be expected, numerous changes have occurred over the years affecting both the basis and amount of the tax. For example, in "a special legislative session in 1973, the severance tax rate on oil and condensate was changed from a volume basis to a value basis with the

rate being 12.5 percent for oil and condensate from most wells, but with lower percentages, 6.250 and 3.125, from less capable wells. The natural gas tax rate was changed to 7 cents per MCF. Historical data on Louisiana's oil and gas severance tax collections and royalty, rentals and bonus receipts for fiscal years 1955 through 1982 are listed in the first three columns of Table 3. Receipts from the oil severance tax have gone through five distinct phases over the period from fiscal year 1954-55 to 1981-82. The fifth phase, and the one of interest here, was the dramatic rise in collections in fiscal years from 1980, 1981, and 1982. Oil severance tax receipts rose from $261.9 million in 1979 to $809.3 million in 1982 - a 209% increase! Production was still declining during this period, so this rise can be attributed solely to the increase in oil prices from $12.50 a barrel to as high as $38.00 a barrel at one time in 1982" (Scott and Associates, 1983).

10. State agency receiving royalties

"All bonuses, rentals, royalties, shut-in payments or other sums payable to the state as the lessor under the terms of valid existing mineral leases entered into under this Subpart or previously granted by the state and under the supervision of the board or from leases hereafter granted shall be paid to the office of mineral resources, and all such payments if made payable to the Register of the State Land Office as previously required, may be endorsed and otherwise processed by the secretary of the Department of Natural Resources pursuant to his general authority in regard to the functions of that office as provided in R.S. 36:921 through R.S. 36:926." The funds are forwarded by the Department of Natural Resources to the State Treasurer for distribution.

11. Distribution of revenue within the State

The State Treasurer is authorized to withdraw an amount from such funds received to maintain the sum of $15,000 to cover expenses incurred for advertising of state owned lands and distribute the remaining funds as follows (Louisiana Code, Title 30, Section 136):

- One tenth (1/10) of royalties from mineral leases are remitted to the governing authority of the parish in which severance or production occurs except properties comprising the Russell Sage Wildlife and Game Refuge.
- Remaining royalty funds are credited to the Bond Security and Redemption Fund and disbursed by the State Treasurer according to law until there shall have been paid into said fund in each fiscal year the sum of twelve million, five hundred thousand dollars.
- The proceeds of all leases and bonuses, including annual delay rentals after deduction of such revenues made by law for the payment of expenses of the State Mineral Board, are paid into the State Treasury for credit to the Bond Security and Redemption Fund until there shall have been paid into said fund in each fiscal year the sum of two million, five hundred thousand dollars.
- After the above obligations are met, the balance of such funds are deposited into the Enhanced Mineral Income Trust Fund which was established in 1979. After this fund reaches a certain level, the balance of these proceeds is deposited in the general operating budget of the state.

H. Environmental Controls and Regulations

1. Responsible agencies

The principal state office concerned with protection and monitoring the environment is the Office of Conservation which has a staff of several hundred persons to oversee the required regulatory functions. Other agencies such as Department of Wildlife and Fisheries become involved if land under their jurisdiction is subject to a lease sale.

2. Relation to leasing agency

There is no direct relationship between the LDNR and the Office of Conservation. The Office of Conservation is a regulatory body for the entire state. It issues permits to drill, sets allowables, and performs related functions.

3. Environmental review process prior to issuing lease/permit

There is no environmental review prior to or during the leasing process. In 1981, however, a rider entitled "Approved Rider for Attachment to Louisiana State and State Agency Lease Forms" was made part of the lease form. Section 4 "Environmental and Other Considerations" addresses environmental issues. "Lessee hereby agrees, as one of the obligations of this rider, that in exercising the rights granted it under the Lease, it will comply with and be subject to all applicable environmental and other laws and regulations validly adopted or issued by the State of Louisiana, or its agencies, or by the United States, or its agencies. Lessee further agrees that it will comply with all minimum water quality standards validly adopted by said governmental authorities with respect to oil pollution and noxious

chemicals and waste being introduced into affected water areas. Further, in conducting all operations under this Lease requiring dredging, filling, or local navigation in order to explore, develop or exploit shallow-water areas, Lessee shall comply with the applicable requirements of the appropriate Louisiana state agency charged with the environmental management of said area. Finally, it is understood and agreed that on depletion of production or completion of operations under this Lease, the Lessee shall remove all structures which would impede commercial fishing and trawling, including, without limitation, all submerged materials, equipment or debris placed on the leased premises by or for the account of Lessee; and the affected water bottoms shall, to the extent reasonably possible of accomplishment, be returned or restored to a condition as nearly equivalent to that which existed before said operations were conducted and/or structures were constructed. Lessee further agrees that in exercising the rights granted it hereunder and in discharging the obligations undertaken in Paragraph 2 of this rider, involving issuance of advance certifications, permits or approvals, it will allow sufficient lead time in the planning of its activities to permit the affected regulatory agencies to make appropriate review of the proposed operations." This rider places the onus on the lessee to determine what rules apply to a given tract and to take whatever steps are necessary to ensure compliance. It is clear, however, that Louisiana does <u>not</u> have the policy of issuing leases readily and then following up with stringent permitting restrictions.

4. Environmental stipulations

As with most states the environmental stipulations are contained in permitting regulations and not in the leasing process. Such stipulations

also are found in the geological and geophysical survey stage. For example, in reference source State of Louisiana (1950) it states that "Pursuant to R.S. 30:214 all permits will be issued subject to strict compliance by the permittee with all applicable rules governing the conduct of seismic exploration in water areas as such rules may from time to time be promulgated by the Department of Wildlife and Fisheries for the protection of oysters, fish and wildlife. Further all wildlife and water fowl refuges, game and fish preserves or oyster seed ground reservations or any part thereof, shall not be deemed to be included in the area covered by any permit unless written permission from the agency in charge of such refuge, preserve or reservation is secured."

Because there are only general stipulations, except in the case of parks, very few site specific stipulations arise. This policy must be viewed within the context of many years of leasing and re-leasing the same tracts. As in Texas there is no buffer zone along the Louisiana coastline. Drilling and production can occur anywhere.

Because drilling can occur anywhere, there is increasing concern with respect to managing wetlands and near offshore areas. In response to this concern, in May 1983, the Coastal Management Section of the Louisiana Department of Natural Resources introduced new review procedures for permit applications of major oil and gas well access canals and rods (Cote de la Louisiane 1984). Aimed at balancing development and conservation, one of the issues is to encourage slant drilling where it will result in a reduced need for dredging.

5. Baseline environmental research

Louisiana has no program for collecting environmental data specifically addressing offshore oil and gas development.

6. Role of Corps of Engineers

As with some other coastal states, the role of the Corps of Engineers is during the permitting phase and is concerned with dredge and fill permits under Section 401 of the 404 Clean Water Program. With respect to drilling permits the Commissioner of Conservation coordinates with the Corps as appropriate.

I. Leasing Procedures

1. Leasing Schedule

Louisiana holds regularly scheduled lease sales on the second Wednesday of every month.

2. Call or nominations for lease

In Louisiana, qualified individuals including representatives of foreign countries can apply for an oil or gas lease. All proposals for mineral leases are submitted to the Secretary of the Department of Natural Resources who, in turn, transmits them to the State Mineral Board for its action. The State Mineral Board may inspect the land including conducting geophysical and geological surveys. After receiving the report of the inspection, the Board may offer for lease all or part of the lands described in the application.

3. Fees

A $300.00 deposit must accompany all written applications for oil and gas leases. This sum is returned should the applicant bid for a lease.

4. Publication of calls for nominations and advertisements for leasing

"The board shall publish in the official journal of the state, and in the official journal of the parish where the lands are located, an advertisement which must appear in these journals not more than sixty days prior to the date for the opening of bids. The board may publish other such advertisements at its discretion. This advertisement shall contain a description of the land proposed to be leased, the time when and place where sealed bids shall be received and publicly opened, a statement that the bid may be for the whole or any particularly described portion of the land advertised, and any other information that the board may consider necessary, and the royalty to be demanded should the board deem it to the interest of the state to call for bids on the basis of a royalty fixed by it. ---" "--- This advertisement and any other published by the board, shall constitute judicial advertisement and legal notice within the contemplation of Chapter 5 of Title 43 of the Louisiana Revised Statutes of 1950. The board may also cause notices to be sent to those whom it thinks would be interested in submitting bids. On its own motion and after complying with the provisions of R.S. 36:354 (A)(2), or at the request of the secretary of the Department of Natural Resources, the board shall advertise for bids for a lease in the same manner as if an application had been made therefore."

5. Bidding

"Bids may be for the whole or any particularly described portion of the land advertised. At the time and place mentioned in the advertisement for the consideration of bids, they shall be publicly opened. Bids received by the mineral board shall be opened at any state owned buildings situated in the city in which the capitol is located. The mineral board has authority to

accept the bids most advantageous to the state, and may lease upon whatever terms it considers proper. ---" "--- The board may reject any and all bids, or may lease a lesser quantity of property than advertised and withdraw the rest. If all written bids are rejected, the board may immediately offer for competitive bidding a lease upon all or any designated part of the land advertised, upon terms appearing most advantageous to the state. This offering shall be subject to the board's right to reject any and all bids."

6. Terms of lease

- Title

Notwithstanding any provisions to the contrary in a Louisiana Lease or in the rider attached, an oil or gas Lease is granted and accepted without any warranty of title and without any recourse against Lessor whatsoever, either expressed or implied. It is expressly agreed that the Lessor shall not be required to return any payments received or be otherwise responsible to Lessee.

- Length of lease

The maximum primary term for offshore oil and gas leases in Louisiana is five (5) years.

- Extension of lease

The following excerpt is taken from the current Louisiana State Oil and Gas lease form. "If at the expiration of the primary term, oil, gas or other liquid or gaseous mineral is not being produced hereunder but on or before that date (or on or before the end of ninety (90) days following cessation of production or abandonment of a well, if a well be abandoned or production

should cease within ninety (90) days prior to the expiration of the primary term) Lessee commences actual drilling or reworking operations on the leased premises in an effort to make the premises produce any such minerals (or production is commenced or resumed during such ninety (90) day period), then this lease shall continue in force so long as such operations are being conducted in good faith without lapse of more than ninety (90) days between cessation of operations and their recommencement whether on the same well or wells or on a different well or wells successively or so long as the production so commenced or resumed is obtained in paying quantities. If at any other time after the expiration of the primary term production hereunder should for any reason cease or terminate, Lessee shall have the right at any time within ninety (90) days from cessation of production to resume production or actual drilling or reworking operations in an effort to make the leased premises again produce any of such minerals, in which even this lease shall remain in force so long as such operations are continued as above provided. If as a result of any such operations, oil, gas, or other liquid or gaseous mineral be found and produced or the production of any of them be restored, this lease shall continue in force so long as any of them is produced hereunder in paying quantities or this lease is otherwise being maintained as herein provided." (State of Louisiana 1981).

- Transfer of lease

The rights of the Lessee may be assigned or transferred in whole or in part, if approved by the Lessor (State of Louisiana 1981).

- Compliance with rules and regulations

See Section H-4 of this report.

- Cessation of work

"If actual drilling operations be abandoned at any time within a period of ninety (90) days prior to any rental paying date or if production ceases within such ninety (90) days, Lessee shall have a period of ninety (90) days after the date of such abandonment of operations or cessation of production within which to commence or resume production, commence actual drilling operations on the leased premises, or make the rental payment, and the commencement or resumption of production, commencement of such operations, or payment of rental within the ninety (90) day period shall have the same effect as though resumed, commenced, or paid on or before the rental paying date." (State of Louisiana 1981).

7. Handling of proprietary information

The lessee shall furnish Lessor on request any or all of the following types of data relating to wells drilled on the leased premises or pooled lands: all wire line surveys; logs; core descriptions; drill stem and production test data; daily drilling reports (to be supplied weekly); and production data. The lessee also shall furnish the Lessor with any other requested information and data to keep lessor fully informed that the lessee is complying with the provisions of the lease. Any information furnished by lessee to lessor or otherwise examined and studied by lessor shall be retained in confidence. It is not required that lessee furnish or permit inspection of any interpretation of any of the types of data referred to above, and nothing shall be construed as requiring lessee to secure any such data solely for the purposes of satisfying requests by the lessor. The lessor's representatives shall have access at all reasonable times to examine and inspect Lessee's records and operations pertaining to the leased premises

or lands pooled therewith (State of Louisiana 1981). The state's obligation to hold information on a proprietary basis also is stated in the Rules and Regulations Applicable to Geophysical and Geological Surveys Conducted Upon or Relating to State-Owned Lands and Waterbottoms (State of Louisiana 1950). "The State Mineral Board hereby declares that all information, maps and other data of every kind whatsoever that are supplied to the Board pursuant to the requirements of R.S. 30:213, shall be kept confidential and shall be available only to the State Mineral Board and Commissioner of Conservation in the proper administration and development of state-owned lands and waterbottoms. In order to make effective such secrecy, all such maps and other data shall at all times be kept under lock and key, except during the course of actual examination by or on behalf of the Board or the Commissioner."

J. Relation of Leasing Program to Issuance of Permits

The general attitude in Louisiana is to refrain from awarding leases unless it is intended subsequently to issue a permit. Because most offshore tracts have been leased 3-4 times over the years, this usually is not a problem. At the present time "No well or test well may be drilled in search of minerals without first obtaining from the Commissioner of Conservation a permit. The Commissioner of Conservation shall collect for each well or test well drilled in search of minerals, a drilling fee permit of $100.00. A permit shall be valid for ninety days from date of issuance and if not used within that period shall be renewable for a fee of $25.00. If the well is not drilled in ninety days after the renewal permit is issued, it shall be

void and a new permit must be obtained upon the payment of an additional $100.00 permit fee. For each drilling permit that must be altered, amended, or changed after its issuance, an additional fee of $25.00 shall be due for each such alteration, amendment, or change, except for unit well nomenclature. The issuance of the permit by the Commissioner of Conservation shall be sufficient authorization to the holder of the permit to enter upon the property covered by the permit and to drill in search of minerals thereon. No other agency or political subdivision of the state shall have the authority, and they are hereby expressly forbidden, to prohibit or in any way interfere with the drilling of a well or test well in search of minerals by the holder of such a permit." (Louisiana State Code, Title 30, Section 204).

Although the Coastal Management Section of the DNR has the authority to issue coastal use permits Permits issued pursuant to existing statutory authority of the office of conservation in the Department of Natural Resources for the location, drilling, exploration and production of oil, gas, sulphur or other minerals are issued in lieu of coastal use permits, provided that the office of conservation coordinates permitting actions and ensures that all activities so permitted are consistent with the guidelines, the state program, and any affected local program.

Permits address air and water quality and related parameters and are coordinated with the Louisiana Coastal Zone Management Office, and the Corps of Engineers and on the average are issued within six months of awarding a lease.

K. Mineral Leasing

The leasing and permitting of minerals other than oil, gas, and/or liquid or gaseous hydrocarbons, such as potash, lignite, salt, etc., are handled by a separate office in Louisiana. Unlike hydrocarbons, there are no regularly scheduled lease sales for other minerals.

References

Cote de la Louisiane (1984). CMS Improves Permit Application Review. Vol. 1, No. 1 (January), Department of Natural Resources, Baton Rouge, Louisiana.

Department of Natural Resources (1980). A Handbook on the Duties and Responsibilities of the State Mineral Board and its several Divisions; Geology of Natural Gas in South Louisiana; the Lower Tuscaloosa trend of South-Central Louisiana; South Louisiana Tuscaloosa Activity. Baton Rouge, Louisiana.

Howe, W. (1983-1984). Personal Communication, Office of Mineral Resources, Baton Rouge, Louisiana.

Scott, L.C., and Associates (1983). The Petroleum Industry in Louisiana. Prepared for the Mid-Continent Oil and Gas Association.

State of Louisiana (1950) Revised. Rules and Regulations Applicable to Geophysical and Geological Surveys Conducted Upon or Relating to State-Owned Lands and Waterbottoms. Promulgated under authority of Title 30, Chapter 3, Sections 211 through 216 of the Louisiana Revised Statutes of 1950.

State of Louisiana (1981). Lease for Oil, Gas and Other Liquid or Gaseous Minerals, Parish of East Baton Rouge, Louisiana.

Wiese, J., Slitor, D. and McCord, C., (September 1983). Gulf of Mexico Summary Report. Rogers, Golden and Halpern, Reston, Va.

STATE OF MISSISSIPPI

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	MS- 1
B. Philosophy of State Towards Leasing in State Waters	MS- 2
C. History of Leasing Program	MS- 3
D. Delegation of Management Responsibilities for State Leasing Program	MS- 4
E. Geographic Description of State Territorial Waters	MS- 7
F. Local Jurisdictional Control Over State Waters	MS-10
G. Oil and Gas Revenues Accruing to State	MS-11
H. Environmental Controls and Regulations	MS-15
I. Leasing Procedures	MS-21
J. Relation of Leasing Program to Issuance of Permits	MS-27
K. Mineral Leasing	MS-28
References	MS-29

LIST OF TABLES AND FIGURES

Description		Page
Table 1	Statistical Information Describing Mississippi's Oil and Gas Lease Sale No. 1	MS- 5
Figure 1	Mississippi State Agencies Involved with Oil and Gas Leasing Program	MS- 8
Figure 2	Assessment Document Approval Schedule of the Mississippi Leasing Program	MS-18
Figure 3	Leasing Schedule for State of Mississippi	MS-22

A. Statutory Authority

1. Vested Authority

Primary responsibility for mineral leasing in Mississippi's coastal waters rests with the Commission on Natural Resources. Miss. Code Ann. §§29-7-1 et seq. (1972 & Supp. 1982). The 1982 supplement reads as follows:

"The Commission on Natural Resources is hereby authorized and empowered, for and on behalf of the state, to lease any and all of the state land now owned (including that submerged or wherever the tide may ebb and flow) or hereafter acquired, to some reputable person, association, or company for oil and/or gas and/or other minerals in and under and which may be produced therefrom, excepting, however, sixteenth section school land, lieu lands, and such forfeited tax land and property the title to which is subject to any lawful redemption, for such consideration and upon such terms and conditions as said commission shall deem just and proper.

The Commission shall have the authority to promulgate rules and regulations governing all aspects of the process of leasing state lands within its jurisdiction for mineral development, including the setting of any necessary fees, delay rental payments, shut-in royalty payments, and such other provisions as may be required.

There shall not be conducted any seismographic or other mineral exploration or testing activities on any state-owned lands within the mineral leasing jurisdiction of the commission without first obtaining a permit therefor from the commission. The commission shall have the authority to promulgate rules and regulations governing all aspects of seismographic or other mineral exploration activity on state lands within its jurisdiction, including the establishing of fees and issuance of permits for the conduct of such mineral exploration activities."

2. Members of Governing Body

The Mississippi Commission on Natural Resources is "composed of seven persons appointed by the governor, with the advice and consent of the senate, for a term of seven years. One person is appointed from each congressional district as consituted January 1, 1978, and two members from the state at large. The initial terms of the members from congressional districts are for one, two, three, four, and five years respectively, and the initial terms of the members from the state at large shall be one for six years and one for seven years. Thereafter, all terms shall be for seven years. The commission elects from its membership a chairman who presides over meetings and a vice-chairman who presides in the absence of the chairman or when the chairman is excused" (Mississippi Code, Cumulative Supplement, Vol. 12, September, 1981).

B. Philosophy of State Towards Leasing in State Waters

The Commission on Natural Resources has established a policy to protect and preserve the mineral resources of the state. However, this preservationist policy is tempered by a recognition of the need to facilitate the development of these same resources when it would be in the best interests of the state and can be accomplished in an environmentally responsible manner. To further this policy, the Commission has promulgated regulations governing the manner in which state lands are leased for mineral exploration.

The basic attitude of Mississippi towards leasing in State waters is reflected clearly by Ladner and Franks (1982) in the introductory paragraph.

"Based upon their contacts with state agencies, companies are interested in leasing Mississippi's public trust lands, located in the coastal waters of the State of Mississippi, for oil and gas exploration, development and production. Also, the state is interested in leasing these lands for mineral resource development in order to generate operating funds for state government and other activities which it sponsors. These two concurrent interests have provided the stimulus to begin identifying and addressing specific management information applicable to leasing Mississippi's coastal public trust lands for mineral resource development and for generating revenues for the State."

C. History of Leasing Program

1. Establishment of Offshore Leasing Program

Mississippi held its first and only offshore oil and gas lease sale to date on July 8, 1982. Although overall the sale was disappointing, eight bids were received, with the state accepting two worth a total of $3.2 million. The accepted bids were for two separate 2,880 acre tracts west of Cat Island. To date, no significant mineral exploration activities have occurred on the tracts leased. Hence, the effectiveness of the Mississippi's offshore oil and gas leasing program remains to be seen.

2. Frequency distribution of leases by year

New program - no data available

3. Average geographic size of lease and related bidding data

Lease Sale No. 1 offered 206,940* acres divided into 81 tracts for an average of 2,555 acres per tract. Additional statistical data pertaining to this sale are shown in Table 1.

4. Example of prior lease sale schedule

New program - no data available

5. Revenues accruing to State over past --- years

New program - no data available

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

The management of Mississippi's lease program has been assigned to three state agencies; (a) The Department of Natural Resources (DNR) (b) The Department of Wildlife Conservation (DWC) and (c) The State Oil and Gas Board (OGB). To provide a coordinated and systematic approach for leasing and development, the three agencies entered into a "Memorandum of Agreement" on September 16, 1982 just two months following the first lease sale.

---

* Tracts 21 (2880 acres), 48 (2633 acres), and 60 (2880 acres) = 8,393 acres were removed before sale.

Table 1

Statistical Information Describing

Mississippi's Oil and Gas

Lease Sale No. 1

1.	Number tracts offered for bid	81
2.	Number tracts receiving bids	8
3.	Percentage bids received to bids offered	9.87
4.	Number acres offered for bid	206,940
5.	Number acres receiving bids	23,040
6.	Percentage acres bid to acres offered	11.13
7.	Average amount bid per acre	$ 239.71
8.	Sum of high bids	$ 5,522,948.80
9.	Sum of all bids	$ 5,522,948.80

(Kellis, 1983)

2. Agency responsibilities

(a) The Department of Natural Resources, on behalf of the State, assesses the interests in leasing public lands, calls for nominations, advertises, prepares the lease, and in general manages the leasing procedure. Together with the DWC, the DNR also monitors mineral development and operations to ensure conformity with the terms of the lease.

(b) The Department of Wildlife Conservation monitors the performance of the lessee with respect to adherence to the guidelines contained in the DWC document "Environmental Profile and Generic Guidelines for Activities Associated with Oil and Gas Drilling Rigs and Production Platforms" (EPGD). The DWC also coordinates with other state agencies and interested parties, in the review of the reports required, to determine if the actions proposed in these documents are consistent with the Environmental Profile and Coastal Program. The results of these reviews are sent to the State Oil and Gas Board and to the lessee. As stated above, the DWC jointly with the DNR, also monitors the mineral development activities to ensure that the activities conform with the assessment documents. Final determination as to compliance with state regulations is made by the Mississippi Commission on Wildlife Conservation and sent to the Oil and Gas Board.

(c) The Oil and Gas Board actually issues the drilling permit once the Commission on Wildlife Conservation prepares and approves the necessary documents. The Oil and Gas Board monitors mineral development activities to ensure that drilling and drilling-related equipment, as approved in operation permits, is used properly and that discharges into the environment are prevented and that other provisions of the operational permit are not violated.

In summary, the leasing program of Mississippi is managed by three separate agencies working cooperatively through the auspices of a Memorandum of Agreement.

3. Organization chart of Mississippi State agencies

Figure 1 shows the relative positions of the Mississippi State agencies involved in oil and gas leasing.

E. Geographic Description of State Territorial Waters

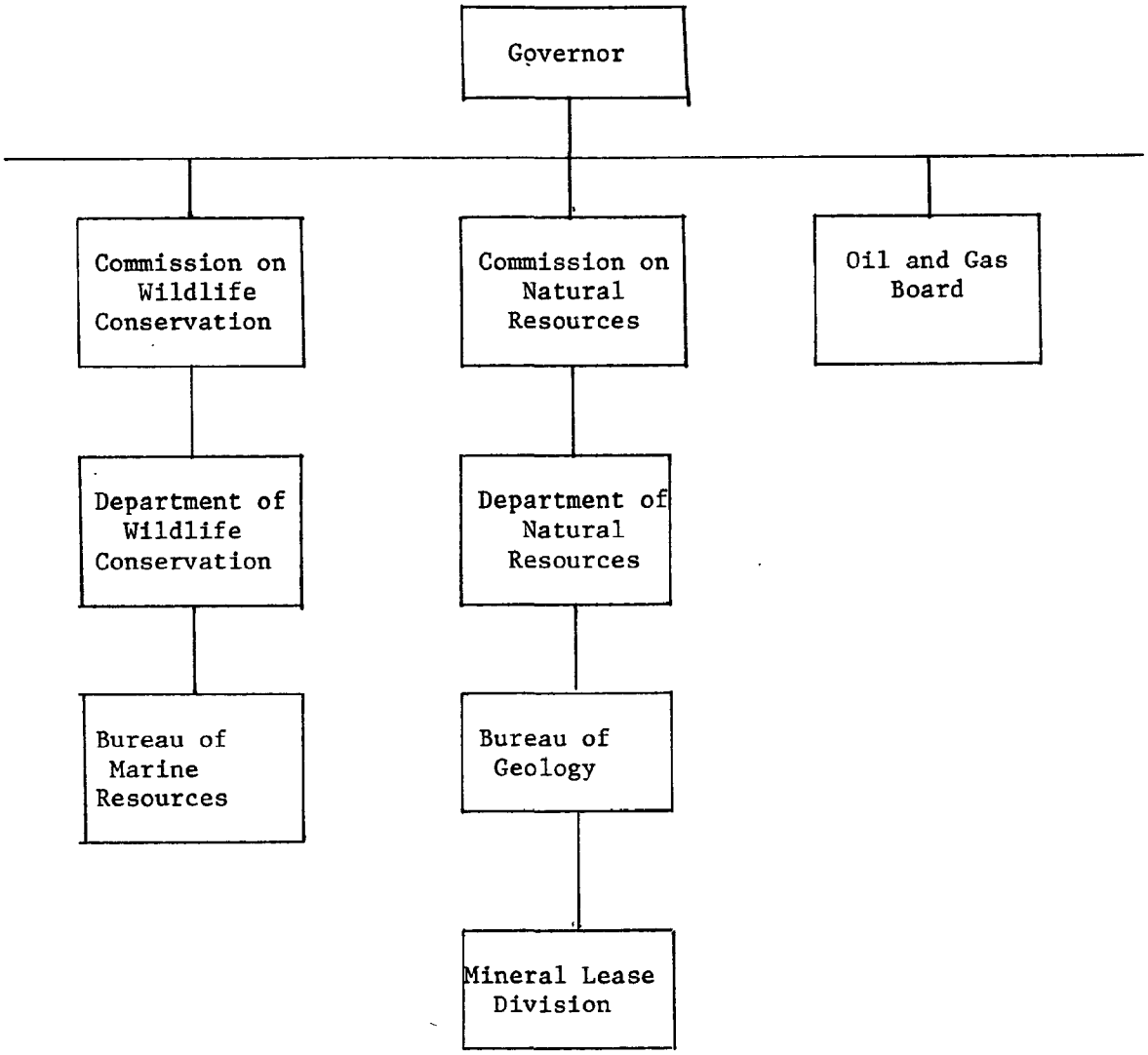
1. General Description of State offshore boundaries

The transition zone between uplands and fresh water, and the estuarine environment includes the shoreline of Mississippi which extends three (3) miles seaward and approximately 70 statute miles along the Gulf Coast between east and west state lines. The tidal shoreline within this distance is more than 369 statute miles. Although much of this shoreline area is occupied by salt marshes, it includes twenty-seven miles of man-made beaches.

In addition to those resources, and included in the coastal ecosystem, is the barrier island chain comprised of four islands: Cat Island, Ship Island, Horn Island and Petit Bois Island, listed in their order of occurrence from west to east. These islands strongly influence the movement and circulation of water in the territorial waters of Mississippi. They are important recreational sites and their nearshore waters serve as critical nursery habitats for some species of fish.

Figure I

Mississippi State Agencies Involved
With Oil and Gas Leasing Program



2. Mapping and charting procedures used to define lease areas

The authority and general procedures for surveying Mississippi territorial waters are contained in Chapter 455 Section 1, Section 29-7-3 Mississippi Code of 1972 (amended 1982) and are described as follows:

"The Commission on Natural Resources is authorized to employ competent engineering personnel to survey the territorial waters of this state in the Mississippi Sound and the Gulf of Mexico and to prepare a map or plat of such territorial waters, divided into blocks of not more than six thousand (6,000) acres each with coordinates and reference points based upon longitude and latitude surveys. The Commission is authorized to adopt such survey, plat, or map for leasing of such submerged lands for mineral development; and such leases may, after the adoption of such plat or map, be made by reference to the map or plat, which shall be on permanent file with the Commission and a copy thereof on file in the office of the State Oil and Gas Board." All blocks are based on the Mississippi (Mercator) Plane Coordinate System, East Zone with X origin = 500,000 at 88°50' and Y origin = 0.00 at 29°40'. Each regular block contains 5,760 acres. The base is compiled from USGS Topographic sheets, 1:24,000 and 1:62,500 series (Kellis 1983).

Recognizing the lack of a clear definition of the seaward boundary between State and Federal waters, the Department of Natural Resources cites in its Invitation for Bids for Oil and Gas Lease Sale No. 1, Gulf of Mexico, dated June 21, 1982, and in other appropriate documents that "The exact location of the state line is subject to the provisions and interpretation of Federal Law. In the event of changes in the location of the state line after the lease sale, all payments, including bonus, shall remain based upon the estimated tract size at the time the lease is executed."

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

There are no "home rule jurisdictions" in Mississippi's three coastal counties. Local agencies and interested parties do participate, however, in the state review process required for assessing the impact of federal activities on state territorial waters as prescribed in Executive Order 12372 dated July 14, 1982 (see Section H-3 of this report). With respect to activities totally within the state, no mention is made in state statutes and rules as to whether the participation of local authorities is sought either in an advisory or approval role other than a very general statement found in the Oil and Gas Lease, Section 9 (b), which states "In connection with all its operations hereunder, LESSEE agrees to fully comply with all applicable statutes and rules, regulations and orders of governmental authorities having jurisdiction over said operations, or any portion thereof, reference to which is hereby made for all pertinent purposes."

2. The role of port authorities

Some uncertainty exists as to whether coastal county port authorities are subject to the Commissions' leasing regulations. The Ports, Harbors, Landings and Watercraft Act, Miss. Code Ann. §§59-1-17, 59-1-19 (1972 & Supp. 1982) can be interpreted as giving them complete control over waters below the mean high tide within their geographical boundaries. If this is correct, they have authority to make leases on their own, without going through the Commission. To date, this potential conflict, though recognized by the agencies, has not been resolved (Marshall and Jarman 1983).

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

According to Chapter 7 "Mineral Leases of State Lands" Section 29-7-3, Mississippi Code," --- Whenever any such land or property is leased for oil and gas and/or other minerals, such lease contract shall provide for a lease royalty to the state of at least three-sixteenths (3/16) of such oil and gas or other minerals, same to be paid in the manner prescribed by the commission" (Mississippi Code, Ch. No. 455, House Bill No. 833, approved 4/15/82).

2. Royalties prescribed on Oil and Gas Lease Form for Lease Sale No. 1

(a) On oil (which includes condensate and other liquid hydrocarbons): 20% of the market value at the well as hereinafter defined as all oil produced and marketed hereunder and not used for fuel in conducting operations on the land leased hereunder or pooled herewith or in treating to make marketable the products therefrom. Market value for oil is hereby defined as the current posted price for oil of like grade and quality currently prevailing in that field on the date it is run into the pipeline, barge, or other conveyance used in transporting oil from the well without any deductions whatsoever except applicable severance taxes paid on production and processing costs, as defined in subsection (d) hereinafter. In the event no posted price exists in the field, then the average of the posted price of oil of like grade and quality currently prevailing in the three nearest offshore fields of similar size shall be used to compute market value in accordance herewith.

(b) On gas in its natural state or otherwise not sold but rather utilized off the premises by LESSEE for purposes other than the recovery, extraction or manufacture of gasoline or other products therefrom, 20% of the market value of the gas at the well. On gas marketed in its natural state or otherwise, 20% of the net proceeds received by LESSEE from such sale; and if processed by an unaffiliated third party on behalf of LESSEE for the recovery, extraction or manufacture of gasoline, sulphur or other products therefrom in any plant, 20% of the proceeds received by LESSEE. On gas processed by LESSEE itself or any of LESSEE'S wholly or partially owned affiliates or subsidiaries for the recovery, manufacture or extraction of gas, gasoline, sulphur or other products therefrom in any plant: 20% of the net proceeds derived from the sale of such gas, gasoline, sulphur or other product so recovered, extracted or manufactured. "Net proceeds" as used herein shall be defined as the proceeds remaining after deducting from the sales price received under any bonafide contract for sale of gas, gasoline, sulphur or other products applicable severance tax and processing costs, as defined in subsection (d) hereafter.

It should be pointed out that the Mississippi DNR regulations call for royalties of not less than 1/8 at the well on all oil, gas, casinghead gas or other substance produced and saved or the proceeds thereof.

3. Rental per acre

There is no rental payment other than delay rental.

4. Delay rental payment

Never less than $2.00 per mineral acre. $5.00 per year per acre of leased area or fraction thereof in Lease Sale No. 1.

5. Shut-in royalties

Twice the amount of the delay rental

6. Offset wells

In lieu of commencing operations for an offset well to State lands having a lower royalty burden or to private lands, as above provided, LESSEE may, at LESSEE'S option, commence compensatory payments equal to the royalties herein provided, computed on the value of one-half (1/2) of the oil, gas, or other liquid or gaseous hydrocarbons produced by the well in question, on and after the date operations would have otherwise been commenced, value to be determined in accordance with the provisions of Article 6 of this lease.

7. Pooled acreage

If production is found on the pooled acreage, it shall be treated as if production is had from this lease, whether the well or wells be located on the premises covered by this lease or not. In lieu of the royalties elsewhere herein specified, LESSOR shall receive on production from a unit so pooled only such portion of the royalty stipulated herein as the amount of LESSOR'S acreage placed in the unit or LESSOR'S royalty interest therein on an acreage basis bears to the total acreage so pooled in the particular units involved.

8. Bonus consideration

Minimum of $100.00 per acre, for Lease Sale No. 1.

9. Severance tax

Six percent (6%) for both oil and gas.

10. State agency receiving royalties

Mineral Lease Division
Bureau of Geology
Department of Natural Resources

11. Distribution of revenue within the State

According to Chapter 455, Section 1 Section 29-7-3, Mississippi Code of 1972 (amended April 15, 1982), revenue received from the extraction of oil and gas, or other minerals is to be distributed within the State as follows:

"Five-tenths of one percent (5/10 of 1%) shall be retained in a special fund to be appropriated by the Legislature to the Commission for the administration of the Mineral Lease Division of the Department of Natural Resources and two percent (2%) shall be paid into a special fund to be designated as the "Gulf and Wildlife Protection Fund," to be appropriated by the Legislature, one-half (1/2) thereof to be used by the Department of Wildlife Conservation solely for the purpose of clean-up, remedial or abatement actions involving pollution as a result of the exploration or production of oil or gas, and the remaining one-half (1/2) thereof to be used by the Wildlife Heritage Committee for use first in the prudent management, preservation, protection and conservation of existing waters, lands and wildlife of this state and then, provided such purposes are accomplished, for the acquisition of additional waters and lands."

H. Environmental Controls and Regulations

The Mississippi coastal ecosystem is comprised of four distinct environmental systems: the uplands, the salt marshes, the barrier islands and the estuary (the coastal embayment of water at the margin of the Gulf of Mexico involving the mixing of two kinds of water -- seawater and freshwater). These environmental systems occupy separate zones in the coastal area of Mississippi and, importantly, no one part of the coastal ecosystem operates independently of any other.

1. Responsible agencies

The Department of Wildlife Conservation has the responsibility of enforcing the Mississippi Coastal Wetlands Protection Law, Miss. Code Ann. §§49-27-3 et. seq. (1982 Supp).

Guidance and regulations regarding modifications in the coastal area of the State of Mississippi and pertaining to the infrastructure support needs of OCS-produced oil and gas are addressed by the Mississippi Coastal Program (1980). On the whole, the goal of the program is to promote decisions that balance development with the environment. These decisions are made by the Mississippi Commission on Wildlife Conservation, as well as a number of other state agencies. The Commission on Wildlife Conservation acts through the Bureau of Marine Resources (BMR) located in Long Beach, Mississippi. The BMR operates under the Department of Wildlife Conservation headquartered in Jackson, Mississippi. The BMR is basically responsible for the "wet" resources of the coastal area. It has direct regulatory control over coastal wetlands, marine fisheries, and certain waterfront industrial sites. Other agencies handle the management of coastal resources on land. These are the

Bureau of Pollution Control (air and water pollution), the Bureau of Land and Water Resources (surface and groundwater), and the Department of Archives and History (historical resources).

2. Relation to leasing agency

As discussed in Section D-2 of this report, the Department of Wildlife Conservation is responsible for developing environmental guidelines and monitoring the performance of the lessee for adherence to these guidelines. This function is performed in cooperation with the leasing agency, the Department of Natural Resources, and the permitting agency the Oil and Gas Board through the auspices of a formal "Memorandum of Agreement".

3. Environmental review process prior to issuing lease/permit

Prior to obtaining a lease, the lessee must adhere to the guidelines contained in the following documents:

- The Department of Wildlife Conservation (DWC) document entitled "Environmental Profile and Generic Guidelines for Activities Associated with Oil and Gas Drilling Rigs and Production Platforms".
- Rule 25 (J) of the Commission on Natural Resources rules governing oil and gas production from state-owned lands which requires, in turn, submission to the DWC of an "Exploratory Evaluation Document", which identifies anticipated drilling operations and their impacts on ambient environmental systems in the drilling area, the socio-economic conditions of the vicinity, and an environmental monitoring plan.
- An "Appraisal Evaluation Document", enumerating more specifically the factors above, after completion of initial exploratory operations.

- A "Development/Production Document" to supplement the previously submitted environmental/socio-economic assessments at specified times. In the past, the DWC coordinated the review of these documents, referred to as "assessment documents", with other state agencies and interested parties using the State A-95 Clearinghouse in order for the Mississippi Commission on Wildlife Conservation to determine if the actions proposed in the above documents are consistent with the Environmental Profile and Coastal Program.* Following a decision by the Mississippi Commission on Wildlife Conservation, a consistency determination is sent to the State Oil and Gas Board and to the lessee. This review procedure is summarized in Figure 2.

4. Environmental stipulations

A series of recommendations for buffer zones was prepared prior to Lease Sale No. 1. As described by Ladner and Franks (1982), these environmental and safety guidelines address the discharge of pollutants into the coastal waters and the siting of oil and gas drilling rigs and production platforms. In regard to the former, intentional disposal of pollutants into the coastal waters is not to be allowed. In regard to the latter, the guidelines provide

---

* On July 14, 1982, Executive Order 12372 "Intergovernmental Review of Federal Programs" was promulgated and Circular A-95 was rescinded by the Federal Office of Management and Budget. This order in essence allows the states to establish their own process for reviewing and commenting on federal programs and activities and requires the participation of both state and local agencies in environmental decisions.

Figure 2 Assessment Document Approval Schedule of the Mississippi Leasing Program

Preparation of appropriate Assessment Document by lessee	Assessment Document submitted to DWC for approval and initial review for completeness	DWC submits Assessment Document for A-95, State OGB, DNR and RD review	End A-95 review	Permits may be applied for before document approvals, but cannot be issued until a consistency determination has been made by DWC *MCP consistency - MCWC approval of Assessment Document
	Initial Review	A-95 Review		State Oil and Gas Board
	15 Days	60 Days DWC Assessment Documented Review	15 Days	DWC (90 Days) DNR (Water Quality) COE
	90 Days			

*MCWC Disapproval stops process
State OGB - State Oil and Gas Board
DWC - Department of Wildlife Conservation
DNR - Department of Natural Resources
COE - U.S. Army Corps of Engineers
- Mississippi Research and Development Center

for buffer zones around environmentally sensitive areas and certain man-made structures. These buffer zones are to be considered potentially sensitive habitats i.e. "caution or alert zones" at the generic level of planning in terms of the siting and operation of oil and gas drilling rigs and production platforms. Beyond generic level considerations, proposed oil and gas operations within these buffer zones have to be adequately justified based upon acceptable site specific conditions, proposed specific actions at the site specific location and expected environmental influences on the site and adjacent areas.

As described in the following paragraphs, a generic approach is used which is intended to apply only to coastal waters.

1. A buffer zone extending 1 mile from the seagrass beds and macroscopic algal communities or the areas located in the vicinity of the islands and containing substrate and energy conditions suitable for the production of these organisms. Except for Cat Island, all of these buffer zone areas generally are located north of the barrier islands.
2. A buffer zone extending 1 mile from the eastern, western, and southern shorelines of the barrier islands. When applicable, the buffer zone specified in Number 1 takes precedence over this specified buffer zone.
3. A buffer zone extending 0.5 miles on each side of the ship navigation channels. Designated Safety Fairways seaward of the barrier islands are also buffer zones. These are Coast Guard specifications.
4. A buffer zone extending 0.5 miles on each side of the Intracoastal Waterway for navigational safety.

5. A buffer zone extending 0.25 miles from each side of a pipeline or from the outermost pipelines if more than one pipeline is present in a pipeline corridor.

6. A buffer zone extending 1 mile from the outer edge of oyster reefs and oyster leases.

7. A buffer zone extending 1 mile from mainland shorelines which are not populated.

These buffer zones are minimum conditions which apply at the generic level of planning and apply only to Lease Sale Area Number 1.

5. Baseline environmental research

The Mississippi Department of Wildlife Conservation (DWC) supports a program of environmental research that provides part of the data base used for establishing criteria for environmental decisions affecting oil and gas leasing stipulations. The DWC also integrates data collected from other sources and develops guidelines such as those cited above. The reader is referred to Ladner and Franks (1982) for an excellent summary of these efforts.

6. Role of Corps of Engineers

The Corp's role is implemented by exercising its authority to issue dredge and fill permits under the 404 Clean Water Program (Federal Water Pollution Act).

I. Leasing Procedures

The current rules and regulations governing leasing procedures for production or extraction of oil, gas, and other minerals from state-owned lands described in this section were promulgated on February 25, 1982 by the Mississippi DNR, Bureau of Geology, Mineral Lease Division under the authority of Sections 29-7-1 et seq., 49-2-1 et seq., and 53-5-1 et seq., Mississippi Code annotated (1972).

1. Leasing Schedule

Because Mississippi's leasing program began as recently as July 1982, lease sales have not been scheduled regularly. The timetable for the current leasing procedure is summarized in Figure 3 where the estimated elapsed time from the initial decision to offer public lands for lease to award of a lease is shown to be 157 days.

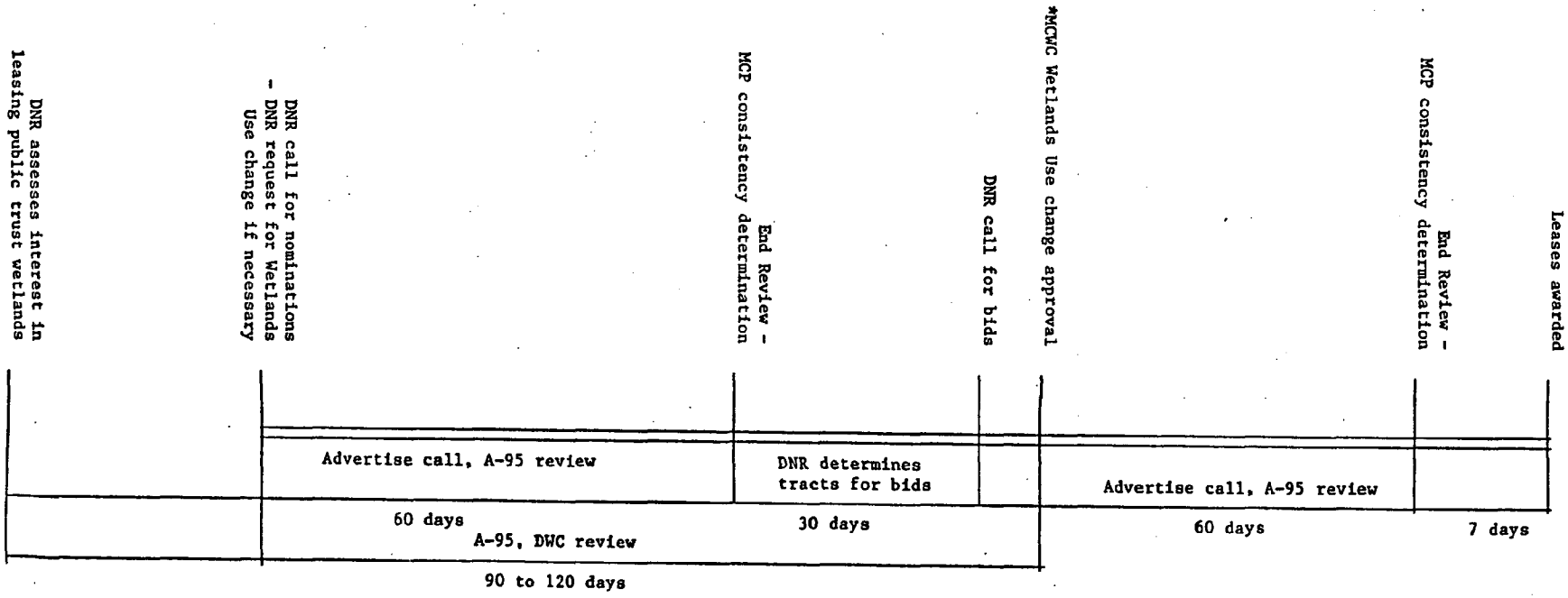
2. Call or nominations for lease

Any person desiring to have offered for lease any State-owned lands within the jurisdiction of the Commission may apply to the Commission to have the lands advertised. The Commission may, without any prior request and upon its own motion, call for nominations for leasing or advertise for lease any lands within its jurisdiction.

3. Fees

Prior to publication of any call for nominations for leasing or advertisement for leasing, the Commission may prescribe and collect from each applicant a prepayment for publication expenses allocable to the respective

FIGURE 3 LEASING SCHEDULE FOR STATE OF MISSISSIPPI



*MCWC Disapproval Stops Process
DNR - Department of Natural Resources
DWC - Department of Wildlife Conservation
MCP - Mississippi Coastal Program
MCWC - Mississippi Commission on Wildlife Conservation

tract or tracts applied for by each applicant. If no bids are received, or if the applicant does not submit a bid for the tract applied for and all other bids are rejected, the entire prepayment is forfeited to the State as liquidated damages. In the event the applicant forfeits the prepayment, the applicant also is required to pay any amount by which the actual publication costs allocable to the tract applied for exceed the prepayment. If the applicant does submit a bid for the tract applied for and all bids are rejected, or if the applicant is an unsuccessful bidder, the entire prepayment is refunded. The successful bidder for each tract on which a mineral lease is awarded pays publication costs allocable to the leased tract as a condition precedent to execution of the lease by the Commission.

4. Publication of calls for nominations and advertisements for leasing

All calls for nominations for leasing are to be published for at least 60 days. All calls for nominations for leasing and advertisements for leasing shall be published in: the Southeastern Oil Review; at least one major paper in Jackson having general circulation in the area wherein the lands lie; and one paper in the county or counties where the involved lands lie. Advertisements for bids are published no sooner than 30 days after the final publication date for the call for nominations. The jurisdictional advertisement for leasing shall be published in a Jackson, Mississippi newspaper having general circulation throughout the State of Mississippi at least one (1) time per week for four consecutive weeks next preceding the date set for the opening of bids. There shall be at least twenty-one (21) days from the date of first publication to the date set for the opening of bids, which shall be no more than seven (7) calendar days from and after the last date of publication. The advertisement must include a

description of the tracts to be leased, the date, time and place where bids will be received and publicly opened, any pre-set lease terms or conditions, and a description of the lease form or the place where the form or any additional information is available.

5. Bidding

The regulations pertaining to oil and gas leasing provide for competitive bidding on individual tracts no larger than 2,880 acres unless the commission finds that the use of larger tracts is in the best interests of the state. The Commission reserves the right, however, to lease by competitive or noncompetitive negotiation when necessary or appropriate in the best interests of the State.

Sealed bids may be submitted on any or all of the tracts offered, but a separate bid must be submitted for each advertised tract sought to be leased. All bids are opened publicly by the Commission as specified in the advertisement, and must either be accepted, rejected or taken under advisement. After final review of the bids, the Commission can in its discretion accept those most advantageous to the State or reject all bids. If the bid system employed by the Commission calls for an award only to the highest and best bidder, the Commission may, upon opening the bids, return the bid security of the apparently unsuccessful bidders, and may take the bid of the apparently successful bidder under advisement. If the bid system requires the evaluation of the bids of several bidders, the Commission may take all such bids under advisement. Whenever bids are taken under advisement, the Commission, in its discretion, may allow the bidders to retrieve their actual bid security and substitute therefor equivalent security in a form acceptable to the Commission.

6. Terms of lease

- Title

The State shall neither warrant nor agree to defend either the title to the leased property or the accuracy of the description therefor. However, and while the State shall refund no bonus or other payments in the event of discovery that the leased acreage is overestimated, the State will not demand additional bonus or other payments should the leased acreage be underestimated. Moreover, the lease shall be neither affected nor impaired by discovery of an overestimate or underestimate in the leased acreage.

- Length of lease

Unless the Commission finds it in the best interests of the State to use longer lease terms, the primary term for all oil and gas leases covering tracts in the Mississippi Sound and Gulf of Mexico shall be five (5) years, and the primary term for all other oil and gas leases shall be three (3) years. The primary term for all leases other than oil and gas leases shall be prescribed by the commission as required (State of Mississippi 1982(f)). The "force majeure" clause of the lease shall apply to the procurement of all required drilling and other permits by the lessee.

- Extension of lease

If drilling operations are not started within one year, the lease terminates unless the lessee pays a rental fee to the state. The start date for drilling operations may be extended one year at a time but cannot be extended beyond the primary term of the lease.

The delay rental (optional payment made by a lessee to delay commencement of drilling operation) cannot be less than two dollars per mineral acre, and may be made an escalating delay rental upon terms prescribed by the Commission on Natural Resources.

- Transfer of lease

The lease will permit assignment or transfer of all or any interest therein only upon prior written notice to the State, upon forms provided by the Division of Mineral Lease, or reproductions thereof.

- Compliance with rules and regulations

The lease shall contain a condition requiring the lessee to comply with all applicable rules and regulations of the Department of Wildlife Conservation regarding the submission of environmental data and assessments and field monitoring plans prior to obtaining from the Oil and Gas Board technical approval to initiate operations.

- Cessation of work

If drilling, reworking, or production ceases within 90 days prior to a rental payment date, or if production ceases within such ninety (90) consecutive day period, LESSEE shall have a period of ninety (90) consecutive days after the date of such cessation of operations or of production within which to resume work or make the rental payment. If oil or gas is not being produced at the end of the primary term, there is a 90-day grace period during which, if operations are resumed, the lease will be continued.

- Other terms of lease

In addition to the above, the oil and gas lease contains provisions affecting removal of equipment, operations, spills, surety bonds and other legal requirements.

7. Handling of proprietary information

House Bill No. 833, Sect. 29-7-3 Mississippi Code of 1972 amended April 15, 1982 states that "each permit within the Mississippi Sound or tidelands shall be reviewed by the Department of Wildlife Conservation and such special conditions as it may specify will be included in the permit. Information or data obtained in any mineral exploration activity on any and all state lands shall be disclosed to the state through the commission, upon demand. Such information or data shall be treated as confidential for a period of ten (10) years from the date of receipt thereof and shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized employees of this state. Any person who makes unauthorized disclosure of such confidential information or data shall be guilty of a misdemeanor, and upon conviction thereof, be fined not more than five thousand dollars ($5,000.00) or imprisoned in the county jail not more than one (1) year, or both."

J. Relation of Leasing Program to Issuance of Permits

Permits for seismographic or other mineral exploration must be obtained from the Commission on Natural Resources. Drilling and other operational permits are issued by the Mississippi Oil and Gas Board, See Miss. Code Ann. §§53-3-11 et seq. (1972 & Supp. 1982).

The Commission on Wildlife Conservation has the authority to review each such permit and specify any special conditions to be included in the permit for the protection of wildlife. The oil and gas permits are reviewed pursuant to the Memorandum of Agreement (MOA) described earlier between the

Bureau of Marine Resources of the Department of Natural Resources; the Department of Wildlife Conservation; and the Oil & Gas Board. The MOA also provides for the monitoring of drilling operations by the Commissions on Wildlife Conservation and Natural Resources, and obligates the Oil and Gas Board to suspend operations which are judged by those Commissions to be inconsistent with previously approved documents. Dredge and fill permits are issued by the Corps of Engineers under the 404 Clean Water Program.

K. Mineral Leasing

In Mississippi, the State Code, regulatory documents, lease forms and related documents all lump together the "leasing of oil, gas and other minerals".

References

Executive Order 12372. (1982) Federal Rules for Intergovernmental Review of Federal Programs. Washington, D.C.

Kellis, J. (1982(a)) Invitation for Bids for Oil and Gas Lease Sale No. 1. Mississippi Department of Natural Resources, Jackson, Mississippi.

Kellis, J. (1982(b)) Leasing for Production or Extraction of Oil, Gas, and Other Minerals from State-Owned Lands. Mississippi Department of Natural Resources, Jackson, Mississippi.

Kellis, J. (1982(c)) Memorandum of Agreement, Department of Natural Resources, Department of Wildlife Conservation and the State Oil and Gas Board. Mississippi Department of Natural Resources, Jackson, Mississippi.

Kellis, J. (1982(d)) Oil and Gas Lease Form.

Kellis, J. (1982(e)) Procedure for Issuing Permits for Geophysical Operations on State-Owned Lands. Mississippi Department of Natural Resources, Jackson, Mississippi.

Kellis, J. (1982(f)) Rules and Regulations Governing Leasing for Production or Extraction of Oil, Gas, and Other Minerals from State-Owned Lands. Mississippi Department of Natural Resources, Jackson, Mississippi.

Kellis, J. (1982(g)) Personal Communication Bid Recap for Oil and Gas Lease Sale No. 1, Mississippi Sound. Mississippi Department of Natural Resources, Bureau of Geology, Mineral Lease Division, Jackson, Mississippi.

Kellis, J. (1983) Personal Communication. Chief, Mineral Lease Division, Mississippi Department of Natural Resources, Jackson, Mississippi.

Ladner, C. and Franks, J. (1982) Mississippi Coastal Waters, Mineral Lease Sale Area Number 1; Environmental Profile and Generic Environmental Guidelines for Activities Associated With Oil and Gas Drilling Rigs and Production Platforms. Prepared by the Department of Wildlife Conservation, Bureau of Marine Resources, Long Beach, Mississippi.

Marshall L, and Jarman, C. (1983) Leasing Mississippi's Offshore Oil and Gas Tracts. Water Log, A Newsletter for the Mississippi-Alabama Sea Grant Consortium, Vol. 3, No. 2, April - June.

State of Mississippi. (1982) Chapter No. 455, House Bill No. 833, Amendment to Section 29-7-3 Mississippi Code of 1972. Jackson, Mississippi.

North Carolina

STATE OF NORTH CAROLINA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	NC- 1
B. Philosophy of State Towards Leasing in State Waters	NC- 2
C. History of Leasing Program	NC- 3
D. Delegation of Management Responsibilities for State Leasing Program	NC- 5
E. Geographic Description of State Territorial Waters	NC- 7
F. Local Jurisdictional Control Over State Waters	NC- 8
G. Oil and Gas Revenues Accruing to State	NC- 9
H. Environmental Controls and Regulations	NC-12
I. Leasing Procedures	NC-14
J. Relation of Leasing Program to Issuance of Permits	NC-19
K. Mineral Leasing	NC-20
References	NC-21

LIST OF FIGURES

Description		Page
Figure 1	North Carolina State Agencies Involved With Oil and Gas Leasing Program	NC- 6

A. Statutory Authority

1. Vested authority

The State, acting at the request of the Department of Natural Resources and Community Development, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Natural Resources and the Community Development, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Natural Resources and Community Development, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State (North Carolina General Statutes §146-8).

2. Members of governing body

The members of the Council of State are the following elected officials: the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each

serve a term of four years (Constitution of North Carolina, Article III, Section 7).

B. Philosophy of State Towards Leasing in State Waters

The North Carolina General Statutes allow for leasing of territorial waters for oil and gas exploration if such leases are in the best interests of the state (North Carolina General Statutes, §146-8). "The state has no officially pronounced policy on oil and gas leasing in state waters. State government is statutorily obligated to (take such measures as it may deem best suited to promote the conservation and development of (its natural) resources (G.S. section 113-8)), and to meet the responsibilities of a number of specific environmental statutes. However, the state's OCS Task Force has developed policies regarding the federal OCS program that indicate what approach the state may take to leasing inshore waters. The state is generally supportive of the OCS program as a means of reducing the nation's dependence on foreign supplies; its "balanced" approach to OCS leasing entails support for (1) the leasing of those tracts with the greatest potential for oil and gas, and (2) restricting leasing on those tracts where risk of environmental and economic damage is greatest. This approach has been reflected in the state's position on Lease Sales 56 and 78, in which the Governor has supported the leasing of most tracts but objected to the inclusion of some" (Wyman 1984).

C. History of Leasing Program

1. Establishment of offshore leasing program

General Statute 146-8, enacted in 1937, authorized the State "to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State." The first oil and gas leases for state-owned bottomlands were let in 1944, one to the Coastal Plains Company of Kinston, and a second to Standard Oil Company of New Jersey. It is unclear what happened to the Coastal Plains lease, but no submerged lands drilling was undertaken. Under the terms of Standard's lease, the company was obligated to drill at least one well within 18 months of signing. They eventually drilled two: one in 1946 and a second in 1947. Both were dry. Standard subsequently pulled out and relinquished its leases later that year (Wyman 1984).

2. Frequency distribution of leases by year

Since 1944, a total of five submerged lands oil and gas leases have been granted in North Carolina. These were issued, one each year, in the years 1952, 1957, 1960, 1966, and 1976. The last lease, granted on April 21, 1976, expired on April 20, 1978.

3. Average geographic size of lease and related bidding data

Each of the leases cited in Section 2 covered a very large area, commonly from several hundred thousand to over one million acres. From this area, the lessee could select tracts (ranging from 750,000 acres in the earliest lease to 5,760 acres as in the most recent) to maintain under lease

for as long as oil or gas was produced in paying quantities. All apparently were negotiated individually with the prospective lessees, and competitive bidding was not used to determine and obtain market value.

"A payment was either not required or was a nominal one dollar; annual rentals were not required except for acreage held until year 10 under the special provisions of the 1944 and 1952 leases. In the last four leases, the lease could be extended biennailly without production, if the lessee met the footage drilling requirement up to a total of 25 years in three leases and 10 years in the fourth. Despite these similarities, the leases also evidence a progressive tightening of terms on the part of the state, most noticeably in the amount of acreage that could be held by a single producing well (reduced from 750,000 acres to 5,760), in the biennial footage drilling requirement (increased from 12,000 to 20,000 feet), and in the royalty paid to the state (from 1/8 to 1/6) (Wyman 1984).

4. Example of prior lease sale schedule

   A lease sale schedule has not been established.

5. Revenues accruing to State over past 40 years

   - Only four wells have been drilled in North Carolina state waters to date - all four were dry wells.
   - No oil or gas revenues have accrued to the state. The most recent lease (1976) was granted to the lessee for consideration of only one dollar ($1.00).

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

   - Department of Natural Resources and Community Development
     Division of Land Resources
   - Department of Administration
     State Property Office

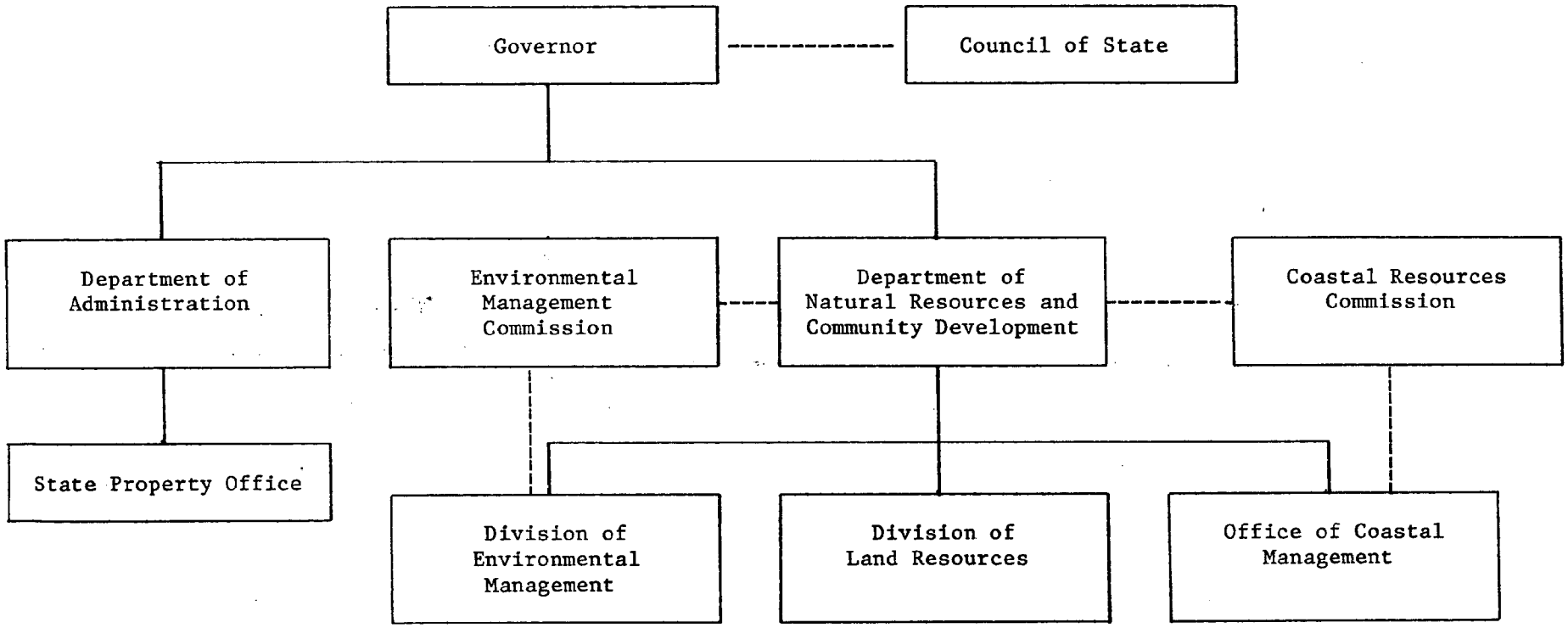
2. Agency responsibilities

The Department of Natural Resources and Community Development (NRCD) has responsibility within state government for initiating lease proposals. Proposed leases are sent from the NRCD to the Department of Administration, State Property Office for review. Final approval is granted by the Council of State and the Governor. North Carolina does not have an Oil and Gas Board. Statutorily, the NRCD, the Department of Administration, the Council of State, and the Governor all play a role in the leasing process. In practice, and by informal agreement between the NRCD and the Department of Administration, NRCD has taken the lead and is expected to continue this role in the future.

3. Organization chart of state agencies

The principal North Carolina state agencies involved with the potential leasing of oil and gas are shown in Figure 1.

Figure 1
North Carolina State Agencies Involved With
Oil and Gas Leasing Program



E. Geographic Description of State Territorial Waters

1. General description of State offshore boundaries

North Carolina's coast which includes eight counties fronting on the Atlantic Ocean, extends for about 315 miles with the seaward boundary extending three miles offshore. At the present time, there are no boundary disputes with either South Carolina or Virginia. The boundaries have been approved by the legislatures of the states concerned and ratified by the U.S. Congress. This coastline encompasses five general estuarine areas characterized by narrow estuaries with mud and marsh bottoms; large open bodies of water with sandy bottoms and grass beds; Pamlico Sound with its one million acres of tributaries and varied bottom types; the fresh water marshes and wooded swamps of Albemarle Sound, and the long line of barrier islands comprising the Outer Banks.

2. Mapping and charting procedures used to define lease areas

In 1977, North Carolina initiated several major changes in its leasing program. The federal Outer Continental Shelf grid, consisting of lease blocks roughly three miles square, was extended into state waters, and the intention was expressed to lease much smaller acreages than in the past, using these lease blocks, and to eliminate the practice of selecting areas within the lease boundaries to be held by production.

The three-mile limit has been drawn cartographically on OCS protraction diagrams for North Carolina's waters. The mathematical computation of the seaward boundary is now budgeted by the Department of the Interior, Minerals Management Service for fiscal year 1984. The plan calls for the Department of Natural Resources to extend the OCS grid pattern into state waters as planned earlier.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

"On June 6, 1983, the General Assembly passed House Bill 865, which amends the grant of zoning authority to counties by extending it over estuarine waters within the counties' boundaries. All of the waters behind the barrier islands (most of the state's submerged lands) are affected, but not those in the three miles seaward of the islands.

The effect of this act must be read in terms of the Coastal Area Management Act, N.C.G.S. §113A-100 to §113A-128. Basically, county land use plans must be consistent with state guidelines adopted by the Coastal Resources Commission (CRC), and local ordinances (including zoning) must be consistent with local land use plans. The CRC currently does not have any specific guidelines on offshore oil and gas development. At this point in time, then, a county is free to pass a zoning ordinance prohibiting oil and gas development within its estuarine boundaries, and it will be effective unless the CRC adopts guidelines stating that oil and gas development will be permitted under certain conditions which would have the effect of making the county zoning ordinance inconsistent with the state guidelines (Wyman 1984).

2. The role of port authorities

It is too early in the development of North Carolina's lease program to know exactly what the role of the port authority might be. It is safe to assume that it would be consulted on potential leases and would have a major role in development of oil terminal facilities built at the state ports at Morehead City and Wilmington.

3. Proprietary interests of local governments in submerged lands

See Item 1

4. Home rule rights and the authority for local governments to annex offshore lands

See Item 1

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

See Item 1

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax

See item 1

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

There is no statutory minimum royalty in North Carolina.

2. Royalties prescribed for oil and gas leases

No oil or gas has been produced in North Carolina's offshore waters. The following terms, however, were specified in the 1976 lease to Anschutz Corporation and also were included in a 1981 modification of this lease although the latter lease was never used.

The lessee pays the state 1/6 of the market price at the well on the day the oil is run into pipelines or fuel storage tanks. The royalty also is 1/6 of market price for gas used off the premises or for the manufacture of casinghead gasoline. The state may elect to collect these royalties in kind at the same royalty rate, with the gas or oil delivered to pipelines or field storage tanks at state expense. Royalty payments are not required for oil and gas used for the production of oil and gas, or for repressuring the oil and gas bearing formations.

3. Rental per acre

Rental rates have not been established.

4. Delay rental payment

Delay rental payment rates have not been established.

5. Shut-in royalties

The lessee is not obligated to market oil or gas under terms, conditions, or circumstances that are uneconomical. However, the Department of Natural Resources and Community Development must be notified of shutting in a well and the lessee must pay $1.00 per acre per year for shut-in wells.

For wells shut in for over three years, the royalties are $2.00 per acre per year for the fourth and fifth year and $3.00 per acre per year for the sixth and succeeding years (State of North Carolina, 1976). This policy was changed in the draft lease of 1981 and probably will be revised again.

6. Offset wells

In the event a well or wells producing oil or gas in paying quantities should be brought in on adjacent premises not owned by the Lessor, the Lessee

agrees to drill such offset wells as a reasonably prudent operator would drill under the same or similar circumstances (State of North Carolina, 1976).

7. Pooled acreage

If acreage is to be pooled or unitized, permission must be obtained first from the Department of Natural Resources and Community Development. Royalties paid to the state are then prorated, based on net acreage comprising the state's share of the land (State of North Carolina, 1976).

8. Bonus consideration

Bonus rates have not been established.

9. Severance tax

Under the Oil and Gas Conservation Act of 1945, General Statute §113-387, the Department of Natural Resources and Community Development is authorized to levy a tax of $.005 per barrel of oil and $.0005 per 1000 $ft.^3$ of gas to pay for the administration and other costs of the Conservation Act. This is the only severance tax on oil and gas.

10. State agency receiving royalties

See Section G-11 of this report.

11. Distribution of revenue within state

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Natural Resources and

Community Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State (North Carolina General Statutes §146-8).

H. Environmental Controls and Regulations

1. Responsible agencies

Environmental controls and regulations are established by the Department of Natural Resources and Community Development (NRCD). Within NRCD, air and water quality permit programs are administered by the Division of Environmental Management. Other environmental responsibilities are distributed within the NRCD (Schecter 1981).

2. Relation to leasing agency

The NRCD has the responsibility of providing recommendations on oil and gas leasing to the Council of State.

3. Environmental review process prior to issuing lease/permit

The required environmental reviews are conducted during the permitting stage (Schecter 1981), although lease proposals have undergone environmental review in the past, and almost certainly will in the future.

4. Environmental stipulations

At the present time, there are no general environmental stipulations specifically addressing offshore oil and gas leasing, including potential leases in aquatic preserves, bays, and estuaries. Rather, environmental issues are addressed on a lease-by-lease basis. For example, the most recent lease (April 21, 1976) grants rights to the lessee for the purpose of, "laying pipelines, constructing telephone and telegraph lines, building tanks, power stations, gasoline plants, ponds, roadways, and structures thereon to produce, save and take care of said products, provided that the foregoing mineral lease and lease of easements and rights of way are specifically subject to all existing and future laws, rules and regulations; ---".

This same lease exempts from the leased lands; state-owned lakes, state-owned parks and forest lands, all shell deposits, and other specific locations.

This lease, which includes both onshore and offshore state lands, stipulates further that, "no drilling, prospecting or other work performed under the terms of this lease will take place within 500 feet of any State lake, State park boundary or State forest boundary, now so designated or that may be designated in the future nor within 500 feet of any National Park Boundary." Of particular note is that the stipulations cited in the lease also are subject to future laws, rules, regulations, and boundary designations. The right of the state to prevent drilling on land already leased as a result of new laws would seem to discourage a lessee from making large investments in exploratory operations.

The 1976 lease also is subject to any oyster or clam bed lease granted previously and the lessee is required to prevent pollution of North Carolina

waters and must comply with all laws of the State. Further, "in its operation within the prospecting area, the Lessee shall not discharge into the waters thereof any substance deleterious to fish or other kinds of marine life, aquatic plant, or migratory waterfowl which may be found in or using the waters within the prospecting area."

5. Baseline environmental research

Several mapping projects have been funded by the Coastal Energy Impact Program to chart the locations of various estuarine resources. The data obtained will provide useful baseline information.

6. Role of Corps of Engineers

As with other states the Corps exercises its responsibilities with respect to Section 404 of the Clean Water Act. Corps permits are coordinated closely with the NRCD Office of Coastal Management. A single joint application form for Corps Section 10 and 404 permits and related state permits can be used. Submission of this application form to the Corps or respective state coastal consultant will initiate each permit process (Schecter 1981).

I. Leasing Procedures

1. Leasing schedule

At the present time there are not regularly scheduled lease sales in North Carolina.

2. Call or nominations for lease

Oil and gas leasing procedures for North Carolina are in the process of review and details are not available at this time. The existing procedures became effective on February 1, 1976 and are contained in the North Carolina Administrative Code, Title 15, Subchapter 5E-Disposition of Mineral Deposits on State Lands Under Water.

The procedures are summarized as follows:

Any person, firm, or corporation desiring to lease, buy or otherwise acquire the right to mine, dig, or remove mineral deposits on State Lands under water, including natural oil and gas, shall apply in writing to the Secretary or his designated agent.

The applicant shall specify the location, the mineral, or minerals to be removed, the proposed method of extraction, and any supporting information that the Secretary or his designated agent, may reasonably require in evaluating the applicant's request.

The Secretary shall transmit to the Earth Resources Council* all information received from the applicant for study, evaluation and recommendation. In arriving at its recommendation, the Earth Resources Council shall consider, but not be limited to, the following criteria:

(a) Receipt of consideration from the applicant based upon the fair market value of the minerals to be extracted.

---

* The Earth Resources Council was abolished in 1983 by the North Carolina General Assembly.

(b) Orderly development of resources.

(c) Protection of the environment.

On receipt of the Earth Resources Council's recommendation, as well as staff recommendations, the Secretary may approve, approve with modification or conditions, or reject the recommendation. In the event the Secretary recommends a lease, his recommendation shall be transmitted to the Governor and Council of State for final action.

3. Fees

See Item I-2

4. Publication of calls for nominations and advertisements for leasing

See Item I-2

5. Bidding

See Item I-2

6. Terms of lease

The terms of the North Carolina oil and gas lease described below are based on the most recent lease granted (April 21, 1976).

- Title

Lessee in exchange for consideration of one dollar received exclusive rights "for the purpose of mining, exploring by geophysical and other methods, operating for and producing therefrom oil, gas and associated

hydrocarbons, and no other minerals". The title to all minerals covered by the lease remain with the State until the minerals are severed from the land.

Source: Oil and Gas Mining Lease; North Carolina and the ANSCHUTZ Corporation, April 21, 1976.

- Length of lease

The primary term for the 1976 lease was two years.

- Extension of lease

The 1976 lease allowed for automatic two year extensions not to exceed a total of ten years if test wells are drilled where total footage is not less than 20,000 feet within each two year period. Footage exceeding 20,000 feet apply towards the required footage for the next two year lease period. If less than 20,000 feet are drilled in any two year period, but work is underway at the end of the period, a 90-day grace period is authorized after which the lease is null and void.

If the lessee incurs operational costs during a given two year period, those costs can be accepted in lieu of drilling footage up to a maximum of 10,000 feet of actual drilling on the basis of $10.00 of expenditures being equivalent to one (1) foot of drilling.

- Transfer of lease

The lease can be assigned with the permission of the Department of Administration and the Department of Natural and Economic Resources (now Natural Resources and Community Development).

- Compliance with rules and regulations

The lease requires compliance with all state laws and regulations, including those addressing the protection of the environment discussed in Section H-4.

- Cessation of work

- Other terms of lease

Should commercial production begin, the lessee is required to describe an area 3 x 3 miles, known as the production area. An initial production area is defined as "any related production area, the boundaries of which are not contiguous with or which do not overlap the boundaries of a previously selected area." The producing well must be located in the center of the production area. A lessee may hold several production areas simultaneously.

7. Handling of proprietary information

The lessee is required to furnish to the Department of Natural Resources and Community Development reports of geological, geophysical and geochemical results and interpretations within 90 days after the end of each two-year term or grace period. Thus, under existing regulations for seismic exploration, the state can require access to geophysical exploratory results, "but only to the extent necessary to determine that all protective requirements have been complied with" (15 NCAC SC .0021(b)). It is unclear from the statute whether authority exists to demand copies of such records for purposes of resource evaluation.

Chapter 132 of the General Statutes establishes that virtually all information possessed by the State as public records "shall mean all

documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government". To keep applicant identies and submitted geophysical and well log records confidential will require a statutory amendment (Wyman 1984).

J. Relation of Leasing Program to Issuance of Permits

Oil and gas drilling permits are issued by the Department of Natural Resources and Community Development (NRCD). Under the North Carolina Coastal Area Management Act §113A-118, however, appropriate local counties and cities must issue a permit for minor developments taking place in "Areas of Environmental Concern" which include state territorial waters. Permits for oil and gas drilling, however, would be considered major development and would be issued by the NRCD. Such permits must be consistent with the state's coastal zone management plan (see section F-1 of this report). Upon receipt of an application for a permit, the Secretary of NRCD "shall issue public notice of the proposed development (i) by mailing a copy of the

application,or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a copy of the application at the location of the proposed development; and (iii) by publishing notice of the application at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not to exceed 15 days from the date of the newspaper publication of the notice. Public notice under this subsection is mandatory." While not intended specifically for offshore operations, a permit procedure is established for conducting any exploratory drilling for oil and gas at any location in the state (North Carolina General Statutes, Chapter 113, Article 27). Permits are obtained from the Division of Land Resources of the NRCD. Inspection procedures are established and the wells must be plugged following abandonment. This permitting process normally requires about 10 days (Schecter 1981).

K. Mineral Leasing

Submerged lands mineral leases also are handled by the Division of Land Resources in the Department of Natural Resources and Community Development. The only extant ones are for phosphate mining in the Pamlico River and no active mining operations have been undertaken on them.

References

Schecter, R. (1981). North Carolina Environmental Permit Directory, Office of Regulatory Regulations, Department of Natural Resources and Community Development.

State of North Carolina (1976). Oil and Gas Mining Lease Form, Department of Natural and Economic Resources.

Stuckey, North Carolina (1944). Prepare to Sink Drill for Oil in North Carolina, Charlotte Observer, September 29, 1944; Oil Prospectors Discover Lots of Things But No Oil, Raleigh News and Observer, June 8, 1947.

Wyman, C. (1984). Personal Communication, Center for Urban and Regional Studies, University of North Carolina, Chapel Hill, North Carolina.

Wyman, C., Brower, D. and Kessler, M. Oil and Gas Leasing of North Carolina's Submerged Lands. CEIP Report No. 38 (Raleigh: North Carolina Department of Natural Resources and Community Development (in press).

STATE OF SOUTH CAROLINA

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	SC- 1
B. Philosophy of State Towards Leasing in State Waters	SC- 2
C. History of Leasing Program	SC- 2
D. Delegation of Management Responsibilities for State Leasing Progam	SC- 3
E. Geographic Description of State Territorial Waters	SC- 4
F. Local Jurisdictional Control Over State Waters	SC- 7
G. Oil and Gas Revenues Accruing to State	SC- 9
H. Environmental Controls and Regulations	SC-11
I. Leasing Procedures	SC-16
J. Relation of Leasing Program to Issuance of Permits	SC-21
K. Mineral Leasing	SC-21
References	SC-22

LIST OF FIGURES

Description	Page
Figure 1 - South Carolina State Agencies Involved With Oil and Gas Leasing Program	SC- 5

A. Statutory Authority

1. Vested authority

As contained in Section 48-43-390 of the South Carolina Code, the South Carolina State Budget and Control Board is designated exclusively as the State Agency with the authority, responsibility, and power to lease all State lands to persons for the purpose of drilling for and producing oil and gas. The Board may lease lands enumerated in the Code if it finds that the lease of the lands would not be detrimental to the State and its citizens and the South Carolina Water Resources Commission recommends that a lease of the lands be granted. South Carolina is generally considered a legislative state, and all State agencies derive their authority expressly from the General Assembly. The Governor serves as Chairman of the Budget and Control Board, and is the individual designated to execute State leases. All vacant lands and lands purchased by the former land commissioners of the State are subject to the directions of the Board (South Carolina Code, Chapter 11, Section 1-11-70).

The Board also is responsible for issuing permits "for any construction, alteration, dredging, filling or other activity when such activity involves or will involve the use of any land below the ordinary high water mark of any nontidal navigable waterway in this State" (South Carolina Code, 1976, Sections 1-5-40, 1-11-70, and 49-1-10).

2. Members of governing body

The five members of the State Budget and Control Board are: the Governor, who serves as Chairman; the Treasurer; the Comptroller General; the Chairman of the Senate Finance Committee; and the Chairman of the House Ways and Means Committee, all of whom serve on an ex officio basis.

B. Philosophy of State Towards Leasing in State Waters

The attitude towards leasing submerged state lands for oil and gas exploration in South Carolina is neutral. At the present time there are no plans for offshore drilling operations (Euler 1984). The official concern for protection of South Carolina's coastal environment is reflected, however, in the South Carolina Code, Chapter 43, Section 48-43-390 (f). "In considering the special provisions, rules and regulations needed for a specific tract, the Commission and Board shall specifically include such provisions, rules and regulations shown by the commenting agency to be necessary (1) for the protection of the environment; (2) to minimize the detriment to aesthetics; (3) for the protection of the property rights of other persons and the public; (4) to avoid obstructing navigable streams; (5) to prevent interference with recreation; (6) to protect the public beaches; (7) to maintain the quality of underground water."

C. History of Leasing Program

1. Establishment of offshore leasing program

To date there have been no offshore oil and gas leases granted in South Carolina territorial waters and no lease schedule currently exists.

2. Frequency distribution of leases by year

N/A

3. Average geographic size of lease and related bidding data

The South Carolina Code specifies that the maximum size lease authorized is 2,500 acres although a person may hold more than one lease (Chapter 43, Section 48-43-390).

4. Example of prior lease sale schedule

N/A

5. Revenues accruing to State over past -- years

N/A

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

The South Carolina Water Resources Commission has been designated as the exclusive agent for the State Budget and Control Board, for managing the state oil and gas leasing program.

2. Agency responsibilities

For matters relating to oil and gas exploration and production and leasing of state lands, the Commission reports to one or both of two authorities. First, pursuant to the Commission's original enabling legislation, the Commission is authorized and required to investigate, analyze, and make recommendations to the Governor and the General Assembly with respect to any water resources related matter. To the extent that oil and gas activities and leasing of state lands for such activities relate to

water resources concerns, the Commission reports to the Governor and the General Assembly. The purpose of such reporting is to keep both the Governor and the General Assembly appraised of ongoing matters of interest and concern to the State and to make recommendations as to those matters. The Commission is required to make such reports pursuant to Section 49-3-40, Code of Laws of South Carolina, 1976. With respect to the specific issue of leasing of state lands, the Commission reports to the South Carolina State Budget and Control Board (League 1984).

The Water Resources Commission is responsible for selecting lands to be leased, administering the competitive bidding for leases, administering the leases, receiving and compiling comments from other state agencies concerning the desirability of leasing the state lands proposed for leasing, and such other activities that pertain to oil and gas leases as may be included in the responsibilities of the State Budget and Control Board. The Commission also issues permits for oil and gas exploration, drilling, and production.

3. Organization chart of South Carolina state agencies

Figure 1 shows the state agencies involved in oil and gas leasing.

E. Geographic Description of State Territorial Waters

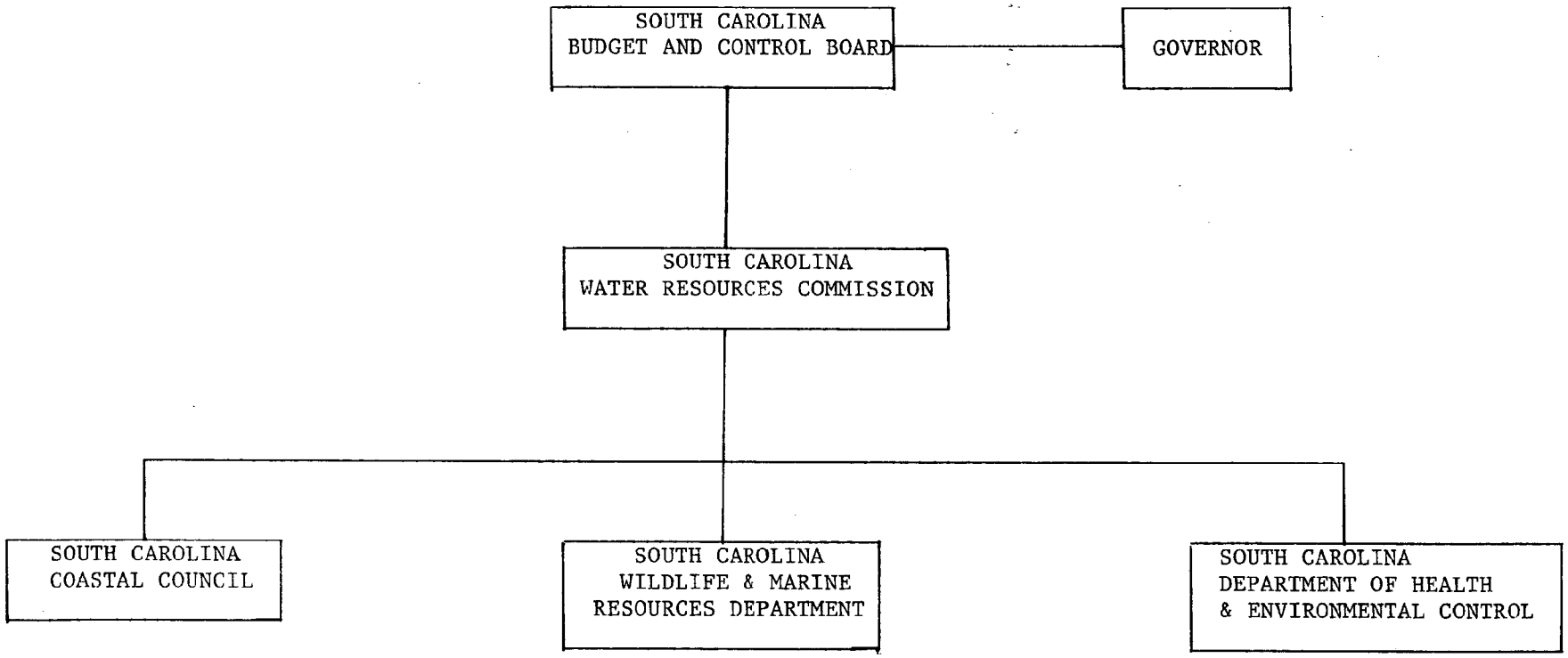
1. General description of state offshore boundaries

South Carolina has 187 miles of coastline distributed through 8 coastal counties. The coastline can be divided into three distinct geographical segments:

1) a crescent-shaped beach stretching from the North Carolina border to Winyah Bay

Figure 1

South Carolina State Agencies Involved With
Oil and Gas Leasing Program



2) the Santee River Delta extending approximately 18 miles along the shore between Winyah Bay and Bulls Bay, and

3) the southern section extending from Bulls Bay to the Georgia border - an area fronted by a series of barrier islands separated from the mainland by a wide zone of salt marsh.

The major portion of the central and southern length of the coast is bordered by barrier islands. Located behind the islands and separating them from the mainland are the highly productive salt marshes. Although the state's coastline is only 187 miles long, its numerous estuaries, bays, rivers and creeks combine to create an actual shoreline nearly 3,000 miles in length (Adkins 1982).

The territorial waters extend three miles offshore. According to Chapter 43, 1976 code, as amended, Section 48-43-10, "Submerged lands mean all lands, whether public or private, overlain by water within the territorial jurisdiction of South Carolina". While there is no dispute over offshore territorial boundaries with North Carolina, there is a dispute between South Carolina and Georgia that is being decided by the U.S. Supreme Court.

2. Mapping and charting procedures used to define lease areas

South Carolina's territorial waters have not been mapped or divided into lease tracts.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

Because of the absence of an offshore leasing program, the role of local governments has not been addressed. There is, however, a South Carolina Coastal Council, created by statute in 1977 (Act No. 179) comprised of representatives of the coastal counties, and state legislators (State of South Carolina 1977). This Act provided the Council with broad powers with respect to approval of permit applications, establishing regulations, and interacting with local governments as well as matters concerning local ordinances affecting the management and protection of the coastal zone including navigable waters of the state. Local involvement in future oil and gas activities in South Carolina coastal areas also is reflected in the South Carolina Code, Chapter 43, Section 48-43-370 "no permit to drill a gas or oil well shall be granted within the corporate limits of any municipality, unless the governing authority of the municipality shall have first duly approved the issuance of such permit by resolution."

2. The role of port authorities

The South Carolina Ports Authority may provide comments on offshore leases if the leases will have a direct impact on navigation.

3. Proprietary interests of local governments in submerged lands

See Section F-4 of this report.

4. Home rule rights and the authority for local governments to annex offshore lands

In South Carolina, both cities and counties enjoy a large degree of autonomy in the assertion of proprietary interests in many areas relevant to municipal government. While no definitive answer, can be provided, it is believed that South Carolina cities and counties may assert some proprietary interests in adjacent submerged lands and annex or tax submerged lands should oil and gas be developed. The most important inquiry with respect to South Carolina, however, has to do primarily with submerged lands in non-tidally influenced areas. Tide lands are presumed to be owned by the State, and the vast majority of South Carolina's approximately 500,000 acres of tide lands are under State ownership. The State also claims ownership to the bottoms of non-tidal navigable rivers. In either case, should a municipality or county seek to assert proprietary interests or annex such areas, the city or county could not prevail against State ownership or regulation. Therefore, it is doubtful that this issue will have a significant impact in South Carolina (League 1984).

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

South Carolina has taken steps to ensure that local governments have a voice in offshore activity adjacent to their corporate limits (see item 1 this section). The Coastal Council works closely with local governments with regard to ordinances affecting the coastal regions. For example, any city or county involved with enforcing ordinances or regulations affecting areas of critical concern, which include the coastal territorial waters, submits the elements of such ordinances to the Council for review for compliance with the State's coastal zone management plan (State of South Carolina 1977).

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax

See Section F-4 of this report.

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

According to the South Carolina Code, no lease shall provide for a royalty less than one-sixth of the oil and gas produced from the leased property or one-sixth of the monetary value of such oil and gas at the wellhead.

2. Royalties prescribed for oil and gas leases

Have not been established.

3. Rental per acre

Has not been established.

4. Delay rental payment

Has not been established.

5. Shut in royalties

Have not been established.

6. Offset wells

Revenue policy not established.

7. Pooled acreage

The South Carolina Water Resources Commission may upon application or on its own motion and after a hearing, establish spacing units for each pool (South Carolina Code, Chapter 43, Article 1, Section 48-43-330). "An order establishing spacing units shall specify the size and shape of the units, which shall be such as will, in the opinion of the commission, result in the efficient and economical development of the pool as a whole ----". "---- Except where circumstances reasonably require, spacing units shall be of approximately uniform size and shape for the entire pool ----". "---- An order establishing spacing units shall specify the location for the drilling of a well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of notice of the hearing to consider spacing ----". "---- An order establishing spacing units for a pool shall cover all lands determined or believed to be underlain by such pool, and may be modified by the commission from time to time to include additional lands determined to be underlain by such pool or to exclude lands determined not to be underlain by such pool."

Section 48-43-340 continues "When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of a spacing unit, the interested persons may integrate their tracts or interests for the development and operation of the spacing unit. In the absence of voluntary integration, the commission upon the application of any interested person, shall make an order integrating all tracts or interests in the spacing unit for the development and operation thereof and for the sharing of production therefrom. The commission, as a part of the order establishing a spacing unit or units, may prescribe the terms and conditions upon which the interest of the royalty owners in the

unit or units shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent separate order integrating the interest of the royalty owners.

8. Bonus consideration

Bonus payments have not been established.

9. Severance tax

Rates have not been established.

10. State agency receiving royalties

Royalties are paid to the South Carolina Water Resources Commission.

11. Distribution of revenue within state

All monies collected by the Water Resources Commission and the State Budget and Control Board as bonuses, rental payments, or royalties are deposited with the State Treasurer in a special account and expended as the General Assembly may direct (South Carolina Code Chapter 43, Article 1, Section 48-43-390). Monies collected by the Commission for issuance of oil and gas exploration permits are forwarded to the State Treasurer who places them in an account for the Commission, to be used for related administrative duties (South Carolina Code Chapter 43, Article 1, Section 48-43-310).

H. Environmental Controls and Regulations

1. Responsible agencies

The South Carolina Water Resources Commission is assigned primary responsibility for regulating and enforcing environmental controls through

its comprehensive permitting process. The Commission recently has promulgated new proposed oil and gas regulations, which currently are before the South Carolina General Assembly for approval. While the proposed regulations do not apply specifically to activities on submerged lands, they indicate the comprehensive nature of the environmental protection in South Carolina's oil and gas program. Sometime in the future, the Commission will promulgate additional regulations for activities on submerged lands (League 1984). Under the Oil and Gas Act No. 179, 1977 48-43-30), the Commission is authorized to:

(a) Prevent waste of oil and gas, to protect correlative rights, and to prevent pollution of the water, air, and land, by oil or gas

(b) Require the following

- identification of ownership of oil or gas wells, and related facilities
- preparation of the required well logs, samples, and reports
- proper drilling, casing, operation, and plugging of wells
- testing of oil and gas
- certificates of clearance in connection with the transportation of delivery of oil, gas or products thereof
- permits for the onshore and offshore exploration of oil and gas
- placing of meters for monitoring production
- that pipelines do not interfere with navigation, fishing, shrimping, and other lawful recreational and commercial activities

The Commission regulates all aspects of offshore operations and promulgates pertinent rules, regulations, and orders as required.

The control of water and air quality for South Carolina rests with the Department of Health and Environmental Control (South Carolina Code, Title 48, Chapter 1, Pollution Control Act §48-1-20). The broad duties of this Department include development of comprehensive plans, issuing permits, supporting relevant studies, and enforcing standards.

2. Relation to leasing agency

The Water Resources Commission by statute (State of South Carolina 1980) has been designated as the exclusive agent of the Budget and Control Board for oil and gas leasing.

3. Environmental review process prior to issuing lease/permit

As stated in Section I-4 of this report, the Water Resources Commission must consider the comments of other state agencies in determining the advisability of leasing oil and gas tracts. "In considering special provisions, rules and regulations needed for a specific tract, the Commission and Board shall specifically include such provisions, rules and regulations shown by the commenting agency to be necessary (1) for the protection of the environment, (2) to minimize the detriment to aesthetics, (3) for the protection of the property rights of other persons and the public, (4) to avoid obstructing navigable streams, (5) to prevent interference with recreation, (6) to protect the water" [South Carolina Code, Section 48-43-390 (f)].

Agencies involved in this review process include the Water Resources Commission, the South Carolina Coastal Council, the Department of Wildlife and Marine Resources, the Department of Health and Environmental Control, local governments, and the Corps of Engineers.

The South Carolina Coastal Council implements the South Carolina Coastal Management Plan and must certify that activities within the coastal zone are consistent with the plan. The Department of Wildlife and Marine Resources and the Department of Health and Environmental Control, while not having direct regulatory responsibility in the State leasing program, are the two other agencies which will likely have the greatest input through comments on the leasing program in general and individual leases specifically.

4. Environmental stipulations

Detailed environmental stipulations have not been defined except for a general stipulation contained in Chapter 43, Water Resources Commission, 1976 code, as amended, Sections 48-43-10, where it specifies that, "no well construction permit shall be issued by the commission for drilling on any beach. Well drilling platforms in the Atlantic Ocean shall not be located within one (1) mile of the mean high water mark of any beach within the territorial jurisdiction of the State of South Carolina" and a stipulation that "all pipelines placed in the Atlantic Ocean, its harbors, bays and other bodies of water which are a part of the Atlantic Ocean to transport oil, gas, condensate or product that cross the lands and under waters that are within the territorial jurisdiction of the State of South Carolina be located under the bottom of the Atlantic Ocean, its harbors, bays and other bodies of water which are a part of the Atlantic Ocean so that the pipelines will not interfere with navigation, fishing, shrimping, and other lawful recreational and commercial activities."

The concern and authority for establishing future stipulations, however, occurs in several places in the South Carolina Code such as: the Water Resources Commission permitting and operational control authority contained

in Chapter 43, §48-43-10; Title 48, Environmental Protection and Conservation, Chapter 1, Pollution Control Act, §48-1-40 which authorizes the Department of Health and Environmental Control to promulgate standards for air and water quality; the 1977 Act establishing the South Carolina Coastal Council which provides authority to "promulgate rules and regulations to carry out the provisions of this act"; the statutory "advisory" capacity of the Department of Wildlife and Marine Resources; the Corps of Engineers which will probably have a role in the future under the Federal Clean Water Act; and of course the State Budget and Control Board which has the final authority for leasing state lands. The challenge will be to delineate clear lines of responsibility amongst these agencies for addressing environmental issues related directly to oil and gas leasing and permitting.

5. Baseline environmental research

South Carolina does conduct some baseline studies through the State Wildlife Department and through grants from outside agencies such as the National Science Foundation. There is no overall plan for the collection of offshore environmental data and no funds currently are allocated for such a program. If data were needed they probably would be collected by private industry (Ransom 1983).

6. Role of Corps of Engineers

The role of the Corps of Engineers is somewhat confused due to a portion of Budget and Control Board's permitting regulations for activities in navigable waters having been superseded by the permitting authority of the South Carolina Coastal Council. The Budget and Control Board no longer issues permits for activities within tidally influenced areas. Any activity

taking place within a "critical area" as defined in the South Carolina Coastal Management Act may require a permit by the South Carolina Coastal Council. Presumably, the Corps of Engineers could comment on any such permit application made to the Coastal Council (League 1984).

I. Leasing Procedures

1. Leasing schedule

South Carolina has no current plans for oil and gas leasing in State waters, although the Water Resources Commission is now developing regulations to establish leasing procedures (Euler 1984).

2. Call for nominations for lease

Unlike some other states, requests for nominations can be initiated by private persons. According to South Carolina Code, Chapter 43, Article 1, §48-43-390, "Any person desiring that a certain tract or tracts of property be submitted for bidding shall nominate such tract or tracts by so informing the commission in accordance with the procedure for nominating established by the commission.

If the commission determines that the tract nominated as provided herein or upon its own motion determines that a tract should be submitted for bidding, it shall invite all interested persons to submit bids for leasing the designated tract". As described in §48-43-40 "At least twenty days prior to the invitation for bids for the leasing of state lands for the purpose of oil and gas exploration and production, a public hearing shall be held. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard".

3. Fees

Fees have not been established.

4. Publication of calls for nominations and advertisements for leasing

As stated in §48-43-390, "Invitations for bids shall be published in a newspaper of general circulation within the county or counties where the tract proposed to be leased is located and in a newspaper of statewide circulation, at least twenty-five days before the final date for submitting bids. Invitations for bids shall also be mailed twenty-five days before the final date of submitting bids to the last known address of all persons who have filed a statement in accordance with the procedure established by the commission indicating a desire to bid upon tracts put up for leasing. The invitation to bids shall contain (1) a description, location and approximate acreage of the tract to be leased; (2) the address to which the bids are to be submitted; (3) the time and place at which the bids will be opened; (4) the date and time by which the bids must be received; (5) any special provisions of the lease or special rules and regulations promulgated by the commission for the tract to be leased; and (6) any other matters that the commission may deem pertinent ----". "---- Prior to the mailing and publication of invitations to bid, the commission shall advise the appropriate State agencies by notice of the tract proposed to be submitted for bidding. The agencies wishing to comment on the desirability of leasing such tract shall do so within thirty days following receipt of the notice.

The commission shall consider the comments of the agencies in determining the advisability of leasing the tract. If the commission determines to lease the tract on which it has received unfavorable comment from the agencies, the commission and board shall require such special

provisions in the lease agreement and promulgate such rules and regulations for each individual tract that is leased as may be necessary to safeguard against particular hazards or detrimental effects that may result from drilling oil or gas wells and the production of oil or gas on the tract." Additional procedures with respect to public notices are described in §48-43-40 wherein it states that any notice at the election of the Water Resources Commission "may be given by any one or more of the following methods: (a) personal service, (b) publication in one or more issues of a newspaper in general circulation in the state capital or of a newspaper of general circulation in the county where the land affected or some part thereof is situated, or (c) by United States mail addressed, postage prepaid, to the last known mailing address of the person or persons affected. The date of service shall be the date on which service was made in the case of personal service, the date of first publication in the case of notice by publication, and the date of mailing in the case of notice by mail. The notice shall be issued in the name of the State, shall be signed by the chairman, secretary or executive director of the commission, shall specify the style and number of the proceedings, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by an officer authorized to serve process, or by any agent of the commission, in the same manner as is provided by law for the service in civil action in the courts of the State. Proof of the service by such agent shall be made by the affidavit of the agent making personal service."

5. Bidding

According to South Carolina Code, Chapter 43, Article 1, §48-43-390 "No property shall be leased except by sealed bid. The property shall be leased

to the bidder submitting the bid which provides for the highest bonus payment. The bonus payment shall be in addition to any rental payments established by the commission in the lease agreement and royalties provided for herein ----". " ---- The bids shall be opened publicly at the time and date prescribed by the commission in the offices of the commission by the person designated by the commission to open bids. The commission shall furnish to persons who request a copy of the lease agreement for the tract submitted for bidding. The lease of any tract shall be granted to the highest responsible bidder but the commission and the board may reject all bids when it determines that the public interest will be served thereby. The commission and the board must accept the most advantageous offer or reject all bids within twenty days from the date the bids were opened."

6. Terms of lease

- Title

To date the state of South Carolina has leased no submerged land for oil and gas drilling; therefore, the question of a guaranteed title to leased areas had not arisen. The statutes authorizing the leasing of state land do not contain any provision expressly guaranteeing title.

- Length of lease

The primary term of an oil and gas lease is five years.

- Extension of lease

Leases can be extended from year to year so long as substantial drilling operations continue unless the well drilled upon the leased property becomes

a producing well, in which case the lease shall be extended from year to year for as long as production continues or the leased property has a known capacity to produce oil or gas and the production has been discontinued with the prior approval of the Commission under such terms as the Commission has prescribed (South Carolina Code Chapter 43, Article 1, Section 48-43-390).

- Transfer of lease

Transfer of lease is not addressed in the South Carolina Code.

- Compliance with rules and regulations

The South Carolina lease form has not been developed, thus compliance requirements specifically addressing oil and gas lease stipulations have not been detailed. Section 48-43-50 of the South Carolina Code, Chapter 43, Article 1, however, states that "Any member or authorized employee of the commission shall have the power to conduct hearings, to summon witnesses, to administer oaths and to require the production of records, books and documents for examination at any hearing or investigation conducted by the commission."

- Cessation of work

Procedures not established.

7. Handling of proprietary information

The Water Resources Commission has the authority to require that a lessee prepare and file well logs and samples, directional surveys, reports on well location, drilling, and production reports. The log and samples of an exploratory or wildcat well need not be filed before one year after the

completion of the well. If requested by the operator, the Commission will keep the log and samples and associated information confidential for one year from the date of filing and may keep these data confidential for an additional year if requested by the operator (South Carolina Code, Section 48-43-30 (B)(1)(b)). Further, both existing oil and gas regulations of the Commission and proposed regulations contain provisions on confidentiality for logs and core samples (League 1984).

J. Relation of Leasing Program to Issuance of Permits

Following the creation of the South Carolina Coastal Council, the Council issues permits for construction, alteration, dredging, or filling activities on any land below the mean high water line in tidally influenced areas or on submerged lands in tidally influenced areas. The Water Resources Commission retains specific responsibility to issue permits for exploration, drilling, and production of oil or gas in submerged areas; however, permits for any such activities would require a certification from the South Carolina Coastal Council that such activities are consistent with the South Carolina Coastal Management Plan (League 1984).

K. Mineral Leasing

Mineral leases are handled by the South Carolina Lands Resource Commission and are processed separately from oil and gas leases. There is very limited activity, as mining is all on private property.

References

Adkins, A., Ed. (1982). Understanding Our Coastal Environment. South Carolina Coastal Council, Columbia, South Carolina.

Euler, G. (1984). Personal Communication, Water Resources Commission, Columbia, South Carolina.

League, P. (1984) Personal Communication. Legal Counsel, South Carolina Water Resources Commission.

Ransom, C. (1983). Personal Communication, Director, Geology-Hydrology Division, Water Resources Commission, Columbia, South Carolina.

State of South Carolina (1977). An Act to Establish the South Carolina Coastal Council, R204, S280, effective July 1, 1977, Columbia, South Carolina.

State of South Carolina. State Code of Laws, Chapter 11, State Budget and Control Board, Columbia, South Carolina.

State of South Carolina. State Code of Laws, Title 48, Chapter 1, Pollution Control Act, Columbia, South Carolina.

State of South Carolina (1980). State Code of Laws of South Carolina 1976, 1980 Cumulative Supplement, Columbia, South Carolina.

State of South Carolina (1982). State Code of Laws, Chapter 43, Water Resources Commission, Oil and Gas Exploration, Drilling and Production Statutory; 1976 Code, as amended, Sections 48-43-10, et. seq., Columbia, South Carolina.

STATE OF TEXAS

OIL AND GAS LEASING PROGRAM

TABLE OF CONTENTS

Description	Page
A. Statutory Authority	TX- 1
B. Philosophy of State Towards Leasing in State Waters	TX- 1
C. History of Leasing Program	TX- 2
D. Delegation of Management Responsibilities for State Leasing Program	TX- 5
E. Geographic Description of State Territorial Waters	TX- 8
F. Local Jurisdictional Control Over State Waters	TX-10
G. Oil and Gas Revenues Accruing to State	TX-14
H. Environmental Controls and Regulations	TX-19
I. Leasing Procedures	TX-31
J. Relation of Leasing Program to Issuance of Permits	TX-35
K. Mineral Leasing	TX-35
References	TX-36
Appendix A	

LIST OF TABLES AND FIGURES

	Description	Page
Table 1	Texas Permanent School Fund Mineral Lease Sales. October 3, 1939 to October 3, 1983	TX- 3
Table 2	Texas Special Board Mineral Lease Sales. April 6, 1954 to October 4, 1983	TX- 4
Table 3	Recap of the Total Texas Lease Sale Including. Submerged Land in the Gulf of Mexico for October 4, 1983	TX- 6
Table 4	Texas Gulf of Mexico Lease Revenues From June 9, 1922 to August 31, 1983	TX- 7
Table 5	Examples of Resource Management Codes Used by. the State of Texas for Oil and Gas Leasing in State Waters	TX-23
Table 6	An Example of the Use of Coded Environmental Recommendations for Oil and Gas Leasing in Texas Territorial Waters	TX-25
Table 7	Examples of Rationale Used for Kleberg County, Texas Resource Management Code Recommendations	TX-27
Figure 1	Texas State Agencies Involved With Oil and Gas Leasing Program	TX- 9

A. Statutory Authority

1. Vested authority

In accordance with the Texas Code Chapter 52 (Oil and Gas) Subchapter A, §52.011, "the School Land Board may lease to any person for the production of oil and natural gas:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

(3) all unsold surveyed and unsurveyed public school land."

The School Land Board determines the price of leases and the amount of delay rentals to be charged but does not guarantee a clear title to the lessee.

2. Members of governing body

The members of the School Land Board are: The Commissioner of the General Land Office, and two citizens appointed by the Governor and the Attorney General. To augment this basic governing body, the Commissioner recently has appointed a Blue Ribbon Committee which, while having no statutory authority, serves as a technical advisory board. This committee reports to the Governor and the General Land Office.

B. Philosophy of State Towards Leasing in State Waters

The basic attitude of the State of Texas, with its long history of oil and gas production, clearly is supportive of continued development. This

attitude is not surprising when considering that the annual interest accruing to the state Public School Fund from oil and gas revenues is in excess of $300 million. While the prevailing attitude is "pro-development", there is a genuine concern with respect to protecting the environment as described in Section H.

C. History of Leasing Program

1. Establishment of offshore leasing program

The State of Texas issued its first offshore Gulf of Mexico lease in 1922. The first well was drilled in 1938, and production was recorded in 1940. It was not until 1953, however, with enactment of the Submerged Lands Act, and its legal interpretation by the Supreme Court in 1960, that title to the 3 marine leagues (10.35 statute miles,) claimed by Texas adjacent to its shores was clarified legally.

As of December 31, 1982, there were 42 active offshore leases and 55 identified oil fields in Texas' offshore waters, with 35 wells. For this same time period, there were 718 identified gasfields with 781 wells."

2. Frequency distribution of leases by year

Texas holds lease sales in April and October of each year. Because of the long history of offshore exploration and development, this has resulted in the same tracts being sold several times. Table 1 shows the history of permanent School Fund mineral lease sales from 1939 to 1983. Table 2 shows the Special Board mineral lease sales from 1954 to 1983. Special sales generally are for lands owned by other State agencies.

Table 1
Texas Permanent School Fund Mineral Lease Sales
October 3, 1939 to October 3, 1983
(Texas General Land Office)

SALE DATE	ACRES OFFERED	ACRES LEASED	PERCENT LEASED	BONUS CONSIDERATION	AVERAGE PER ACRE
Dec 5, 1939)	1,622.00				
Jan 2, 1940)	316,128.06				
Mar 5, 1940)	5,748.40				
Apr 2, 1940)	38,430.00	100,441.24	27.58	$ 1,788,635.35	$ 17.01
May 7, 1940)	2,110.00				
July 2, 1940)	157.00				
Dec 3, 1940	191,181.95	24,261.25	12.69	96,466.66	3.98
Mar 4, 1941	1,094.78	134.78	12.31	3,470.00	25.75
Aug 5, 1941	17,254.29	9,347.25	54.17	94,742.09	10.14
Oct 7, 1941	17,516.65	7,848.80	44.80	76,799.48	9.81
Oct 6, 1942	31,144.00	14,558.00	46.74	310,735.00	21.34
Apr 6, 1943	9,394.55	8,080.55	86.00	107,135.25	13.26
Sep 7, 1943	209,189.30	19,252.84	9.20	90,930.16	4.72
Mar 7, 1944	117,129.88	35,600.88	30.39	869,825.28	24.43
July 4, 1944	10,857.25	1,280.00	11.79	23,282.50	18.19
Feb 6, 1945	4,904.20	2,370.50	48.35	25,418.77	10.72
Mar 5, 1946	25,717.14	11,343.80	44.11	777,265.23	68.52
June 4, 1946	131,830.53	35,899.23	27.23	515,416.85	14.36
Dec 3, 1946	335,685.77	50,591.93	15.07	1,015,668.91	20.08
Nov 4, 1947	2,649,058.05	597,421.33	22.55	12,281,924.76	20.56
June 1, 1948	164,065.42	91,526.70	55.79	1,917,597.83	20.95
Sep 7, 1948	17,132.99	14,242.49	83.13	176,758.53	12.41
Dec 7, 1948	142,246.67	79,135.61	55.63	2,157,025.26	27.26
June 7, 1949	458,278.30	54,866.30	11.97	649,676.49	11.84
Dec 6, 1949	366,284.14	81,558.95	22.27	1,310,238.24	16.06
June 6, 1950	211,138.19	70,449.91	33.37	842,930.20	11.97
Dec 5, 1950	526,450.08	93,670.60	17.79	1,579,808.41	16.87
May 1, 1951	144,994.91	75,985.35	52.41	1,786,326.83	23.51
Oct 2, 1951	62,264.47	48,466.71	77.84	1,109,596.90	22.89
Mar 4, 1952	15,434.88	14,544.28	94.23	617,528.38	42.46
July 1, 1952	226,557.80	124,894.36	55.13	2,134,503.96	17.09
Dec 2, 1952	39,911.45	29,900.65	74.92	647,279.91	21.65
Sep 1, 1953	153,685.88	103,460.32	67.32	3,430,139.77	33.15
Dec 1, 1953	515,628.76	415,486.06	80.58	32,361,687.26	77.89
Apr 6, 1954	39,339.10	27,053.10	68.77	1,102,793.09	40.76
Sep 7, 1954	78,347.54	38,074.17	48.60	1,957,616.33	51.42
May 3, 1955	328,970.21	120,496.25	36.63	11,346,025.11	94.16
Sep 6, 1955	80,349.85	30,337.60	37.76	3,570,082.49	117.68
Dec 6, 1955	39,390.88	23,461.88	59.56	1,494,153.11	63.68
July 3, 1956	97,142.69	49,345.39	50.80	4,304,681.87	87.24
Dec 4, 1956	84,372.82	50,171.48	59.46	3,262,210.03	65.02
June 4, 1957	120,421.66	68,507.53	56.89	5,088,950.89	74.28
Mar 4, 1958	252,265.60	99,967.70	39.63	4,520,076.24	45.21
Dec 2, 1958	155,323.00	81,700.87	52.60	3,164,782.94	38.75
Apr 7, 1959	26,380.21	14,432.99	54.71	566,202.73	39.73
Dec 1, 1959	197,551.42	96,339.24	48.77	5,860,921.50	60.84
Dec 6, 1960	325,654.76	128,336.79	39.41	6,536,606.54	50.93
Aug 1, 1961	178,625.23	88,530.95	49.96	4,992,726.09	56.40
Feb 6, 1962	383,657.51	113,332.13	29.54	3,656,056.47	30.28
Oct 2, 1962	220,974.99	89,331.26	40.43	3,402,596.24	38.09
May 7, 1963	336,575.06	141,261.81	41.97	5,011,320.58	35.48
Nov 5, 1963	449,553.61	148,242.19	32.98	4,544,513.86	30.66
May 5, 1964	369,669.84	124,895.67	33.79	4,781,885.48	38.29
Oct 6, 1964	237,604.59	88,327.62	37.17	3,552,640.67	40.22
Feb 2, 1965	945,736.53	436,420.91	46.16	39,211,912.09	89.85
June 1, 1965	609,545.61	212,611.60	34.88	17,670,634.03	83.10
Oct 5, 1965	534,513.00	131,660.09	24.63	6,851,764.38	52.04
Feb 1, 1966	390,923.99	136,048.13	34.80	8,331,097.72	61.24
May 3, 1966	509,929.00	118,832.00	23.30	6,966,000.00	58.62
Aug 2, 1966	472,329.98	101,236.73	21.43	5,603,921.71	55.35
Nov 1, 1966	383,484.28	1,581.73	.41	136,666.64	86.40
Apr 4, 1967	241,221.40	65,289.80	27.07	5,013,574.47	76.79
Nov 7, 1967	292,557.00	54,950.49	18.78	2,487,502.63	45.27
May 7, 1968	203,986.00	34,368.80	16.84	1,499,081.42	43.61
Dec 3, 1968	230,110.00	49,868.43	21.67	2,197,315.30	44.06
July 1, 1969	402,201.00	82,121.36	20.41	3,570,502.79	43.48
Nov 4, 1969	499,470.00	112,354.98	22.49	4,113,468.66	36.61
Apr 7, 1970	419,479.00	87,169.99	20.78	3,111,614.91	35.70
Aug 4, 1970	427,638.00	59,199.11	13.84	2,494,000.33	42.13
Dec 1, 1970	434,197.00	70,518.51	16.24	3,287,711.79	46.62
May 4, 1971	26,717.80	13,436.30	50.29	784,380.77	58.38
July 6, 1971	594,132.00	97,429.60	16.40	3,898,288.06	40.00
Dec 7, 1971	401,912.00	39,843.21	9.91	1,783,878.85	44.77
May 2, 1972	376,386.00	40,946.85	10.88	1,593,719.13	38.93
Oct 3, 1972	579,985.00	66,879.69	11.53	2,694,939.55	40.30
Mar 6, 1973	487,259.00	113,737.35	23.34	7,451,278.36	65.51
Oct 2, 1973	1,348,610.00	392,886.04	29.13	21,471,657.61	54.65
July 2, 1974	1,323,825.00	336,037.65	25.38	24,686,447.86	73.46
Oct 1, 1974	692,940.00	144,554.73	20.86	6,344,667.79	43.89
Feb 4, 1975	819,032.91	89,146.73	10.88	4,231,099.75	47.46
June 3, 1975	130,328.43	35,502.80	27.24	2,109,809.39	59.42
Oct 7, 1975	379,526.25	91,783.10	24.18	3,345,109.68	39.03
Apr 6, 1976	610,441.91	123,864.53	20.29	9,370,428.48	75.65
Oct 5, 1976	1,014,646.15	282,723.00	27.86	35,312,639.92	124.90
Feb 1, 1977	605,585.47	127,754.14	21.09	8,533,813.54	66.80
June 7, 1977	476,948.97	131,600.12	28.00	9,905,884.18	75.27
Oct 4, 1977	641,567.51	289,894.20	45.00	27,148,948.51	93.65
Feb 7, 1978	741,964.80	229,208.16	30.89	21,693,130.13	94.64
June 6, 1978	507,684.34	207,044.05	40.78	19,118,204.22	92.34
Feb 6, 1979	1,254,282.31	414,936.32	33.08	44,988,148.51	108.42
Oct 2, 1979	1,207,538.00	359,735.70	29.79	25,199,109.26	70.05
Apr 1, 1980	774,115.99	420,915.16	54.37	33,538,577.76	79.68
Oct 7, 1980	1,062,993.83	500,891.77	47.52	44,983,509.30	89.81
Apr 7, 1981	785,412.14	388,766.95	40.50	38,258,040.78	98.41
Oct 6, 1981	703,877.56	325,178.31	46.20	37,350,071.83	114.86
Apr 6, 1982	625,073.13	161,087.98	25.77	16,796,262.08	104.27
Oct 5, 1982	617,485.09	141,163.42	22.86	14,925,035.14	105.73
Apr 5, 1983	21,668.56	16,490.91	76.11	2,895,467.17	175.61
Oct 4, 1983	1,043,121.58	241,890.66	23.00	29,124,776.64	120.40
	38,014,781.83	11,418,329.38	30.00	763,599,749.64	66.87

Table 2

Texas Special Board Mineral Lease Sales
April 6, 1954 to October 4, 1983

SALE DATE	ACRES LEASED	BONUS CONSIDERATION
04-06-54	1,562.66	$ 71,083.00
09-07-54	2,182.36	88,390.71
05-03-55	3,094.57	70,967.76
09-06-55	337.00	7,612.00
12-06-55	2,838.00	23,413.00
12-04-56	60.00	990.00
03-04-58	3,963.45	193,085.20
12-02-58	6,419.95	207,614.74
12-01-59	3,979.30	207,496.70
12-06-60	8,050.80	232,797.14
11-05-63	4,188.69	106,768.57
05-05-64	4,783.00	617,684.00
10-06-64	82.50	1,237.50
02-02-65	495.52	25,809.68
06-01-65	167.90	2,844.50
08-02-66	4,056.17	105,430.00
04-04-67	194.64	6,187.36
11-07-67	3.42	200.00
05-07-68	4,796.00	93,700.09
11-04-69	105.27	2,659.00
04-07-70	889.17	98,964.62
07-06-71	876.72	45,589.44
12-07-71	119.41	2,690.22
05-02-72	7,814.30	10,233.10
10-03-72	2,541.70	140,005.00
10-02-73	2,180.80	193,118.80
07-02-74	4,576.89	270,310.02
10-01-74	1,123.82	30,601.62
06-03-75	1,854.00	624,086.26
10-07-75	557.64	23,170.27
10-05-76	5,987.56	363,277.77
02-07-78	3,472.97	18,811.91
06-06-78	5,184.82	620,715.91
02-06-79	179.17	9,035.03
10-02-79	4,199.75	358,565.22
04-01-80	16,183.94	1,546,673.03
10-07-80	19,059.09	2,146,355.13
04-07-81	13,782.00	4,481,745.84
10-06-81	1,690.82	400,644.66
04-06-82	4,215.14	545,397.68
10-06-82	6,298.98	665,490.33
04-05-83	4,621.45	596,060.96
10-04-83	1,451.25	173,845.29
	160,222.59	$15,431,359.06

Source: Texas General Land Office
Energy Resources
Report GL 26R
November 22, 1983

3. Average geographic size of lease and related bidding data

The average size lease in Texas is 640 acres although there is a wide variation in lease size with the legal limit being 5,760 acres (three square miles). Tables 1 and 2 also summarize the acreage leased and bonuses received over the past 45 years.

4. Example of prior lease sale schedule

Lease sales for tracts in state waters are scheduled for April and October of each year. The average number of sales over the last ten years has been two per year. Table 3 shows a recap of the most recent lease sale (October 4, 1983).

5. Revenues accruing to state over past 60 years

Table 4 summarizes the bonus, rental, and royalty revenues accruing to Texas from offshore mineral leases over the past 60 years.

D. Delegation of Management Responsibilities for State Leasing Program

1. Name of managing agency or department

The primary agency for the Texas oil and gas leasing program is the General Land Office.

2. Agency responsibilities

The General Land Office is responsible for issuing notice of sales, processing applications, bids, and handling all aspects of the leasing program. These responsibilities are carried out by about six employees. The

Table 3

Recap of the Total Texas Lease Sale
Including Submerged Land in the
Gulf of Mexico for
October 4, 1983

DESCRIPTION	OFFERED		ALL BIDS		BIDS AWARDED			
	TRACTS	ACRE	NUMBER	AMOUNT	TRACTS	ACRES	AMOUNT	BONUS PER AC
SCHOOL LAND BOARD								
GROUP I SURVEYED SCHOOL LAND	48	12,181.33	39	$ 1,535,422.56	21	5,887.35	$ 953,206.29	$161.91
GROUP II RIVERS, CREEKS, LAKES, BAYOUS	72	6,086.12	30	353,273.26	27	1,900.00	321,585.92	169.26
GROUP III SUBMERGED - BAYS	519	254,777.27	198	6,895,125.90	141	58,471.23	6,221,311.27	106.40
GROUP IIIA SUBMERGED - BAYS (ROYALTY BID)	93	58,645.66	57	1,818,830.50	37	22,975.61	1,148,780.50	50.00
GROUP IV SUBMERGED - GULF OF MEXICO	562	576,228.91	122	18,297,666.27	93	97,839.98	14,998,243.66	153.29
GROUP IVA SUBMERGED - GULF OF MEXICO (ROYALTY)	115	135,202.29	80	9,463,866.00	46	54,816.49	5,481,649.00	100.00
TOTAL	1,409	1,043,121.58	526	$38,364,184.49	365	241,890.66	$29,124,776.64	$120.40
SULPUR-SURVEYED SCHOOL LAND	11	5,035.08	2	16,490.13	2	400.95	16,490.13	41.13
TEXAS SCHOOL FOR THE BLIND	1	87.00		-0-		-0-	-0-	-0-
TEXAS PARKS & WILDLIFE DEPARTMENT	3	1,010.67	2	106,553.18	2	592.04	106,553.18	179.98
TEXAS DEPARTMENT OF CORRECTIONS	15	10,274.73	1	66,292.11	1	854.50	66,292.11	77.58
DEPARTMENT OF HIGHWAYS & PUBLIC TRANSPORTATION (LIMESTONE)	1	4.71	1	1,000.00	1	4.71	1,000.00	212.31
TOTAL LEASE SALE	1,440	1,059,531.77	532	38,554,519.91	371	243,742.86	29,315,112.06	120.27

Note: Data is adjusted for rejections, corrections, deletions and refunds.
Special funds leases are to be awarded at the next applicable board meeting.

Source: Texas General Land Office
Energy Resources
Report GL 27R
November 7, 1983

Table 4

Texas Gulf of Mexico Lease Revenues
from June 9, 1922 to August 31, 1983

PERIOD FROM	PERIOD TO	TOTAL REVENUE	INSIDE THE 3 MILE LINE	BETWEEN 3 MILE & 3 MARINE LEAGUE LINE	OUTSIDE 3 MARINE LEAGUE LINE
			BONUS		
06-09-22	09-28-45	$ 814,055.70	$ 814,055.70	$ -0-	$ -0-
09-29-45	06-23-47	272,700.00	272,700.00	-0-	-0-
06-24-47	06-05-50	7,231,755.48	889,131.14	3,690,714.95	2,651,909.39
06-06-50	05-22-53	-0-	-0-	-0-	-0-
05-23-53	06-30-58	49,788,639.03	26,686,774.18	23,101,689.85	175.00
07-01-58	08-31-59	-0-	-0-	-0-	-0-
09-01-59	08-31-60	257,900.00	257,900.00	-0-	-0-
09-01-60	08-31-61	3,228,639.51	630,669.51	2,597,970.00	-0-
09-01-61	08-31-62	297,129.88	-0-	297,129.88	-0-
09-01-62	08-31-63	2,617,057.14	1,880,223.94	736,833.20	-0-
09-01-63	08-31-64	2,435,244.36	1,496,464.23	938,780.13	-0-
09-01-64	08-31-65	53,114,943.63	5,104,510.47	48,010,433.16	-0-
09-01-65	08-31-66	18,223,357.84	2,369,385.24	15,853,972.60	-0-
09-01-66	08-31-67	3,641,414.96	340,368.25	3,301,046.71	-0-
09-01-67	08-31-68	1,251,852.50	172,795.20	1,079,057.30	-0-
09-01-68	08-31-69	1,838,118.33	639,436.41	1,198,681.92	-0-
09-01-69	08-31-70	5,994,666.32	1,926,427.69	4,068,238.63	-0-
09-01-70	08-31-71	4,326,120.11	949,621.46	3,376,498.65	-0-
09-01-71	08-31-72	1,360,212.64	526,382.45	833,830.19	-0-
09-01-72	08-31-73	3,701,737.30	1,944,932.00	1,756,805.30	-0-
09-01-73	08-31-74	32,981,619.28	8,380,583.20	24,601,036.08	-0-
09-01-74	08-31-75	5,319,762.85	2,621,139.46	2,698,623.39	-0-
09-01-75	08-31-76	6,197,853.00	1,392,167.30	4,805,685.70	-0-
09-01-76	08-31-77	41,343,114.81	3,734,746.75	37,608,368.06	-0-
09-01-77	08-31-78	49,807,750.45	11,354,775.67	38,452,974.78	-0-
09-01-78	08-31-79	34,578,340.94	5,810,497.79	28,767,843.15	-0-
09-01-79	08-31-80	34,733,270.02	10,578,978.89	24,154,291.13	-0-
09-01-80	08-31-81	37,467,196.97	15,297,091.59	22,170,105.38	-0-
09-01-81	08-31-82	27,529,516.33	7,073,298.97	20,456,217.36	-0-
09-01-82	08-31-83	10,180,696.40	322,052.40	9,858,644.00	-0-
TOTAL BONUS		$ 440,534,665.78	$113,467,109.89	$ 324,415,471.50	$ 2,652,084.39
			RENTAL		
06-09-22	09-28-45	$ 61,973.75	$ 61,973.75	$ -0-	$ -0-
09-29-45	06-23-47	7,680.00	7,680.00	-0-	-0-
06-24-47	06-05-50	377,355.00	47,855.00	162,198.81	167,301.19
06-06-50	05-22-53	9,176.00	9,176.00	-0-	-0-
05-23-53	06-30-58	3,852,726.98	1,474,789.31	2,371,957.67	5,980.00
07-01-58	08-31-59	143,857.00	99,757.00	44,100.00	-0-
09-01-59	08-31-60	98,226.00	60,536.00	37,690.00	-0-
09-01-60	08-31-61	68,578.00	52,508.00	16,070.00	-0-
09-01-61	08-31-62	127,105.00	49,565.00	77,540.00	-0-
09-01-62	08-31-63	177,174.91	50,501.49	126,673.42	-0-
09-01-63	08-31-64	525,315.00	222,425.00	302,890.00	-0-
09-01-64	08-31-65	755,050.12	354,120.00	400,930.12	-0-
09-01-65	08-31-66	3,163,475.00	731,730.25	2,431,744.75	-0-
09-01-66	08-31-67	3,711,092.65	745,257.90	2,965,834.75	-0-
09-01-67	08-31-68	2,683,732.50	451,462.75	2,232,269.75	-0-
09-01-68	08-31-69	1,491,592.50	224,507.75	1,267,084.75	-0-
09-01-69	08-31-70	618,362.50	147,462.50	470,900.00	-0-
09-01-70	08-31-71	726,294.15	153,556.00	572,738.15	-0-
09-01-71	08-31-72	963,367.60	251,426.90	711,940.70	-0-
09-01-72	08-31-73	920,121.60	233,435.90	686,685.70	-0-
09-01-73	08-31-74	1,065,516.60	375,270.90	690,245.70	-0-
09-01-74	08-31-75	2,935,295.60	865,528.30	2,069,767.30	-0-
09-01-75	08-31-76	3,222,535.84	1,038,647.44	2,183,888.40	-0-
09-01-76	08-31-77	2,404,988.80	858,440.55	1,646,548.25	-0-
09-01-77	08-31-78	4,775,509.92	873,291.65	3,902,218.27	-0-
09-01-78	08-31-79	7,318,748.40	1,764,839.70	5,553,908.70	-0-
09-01-79	08-31-80	10,293,153.80	2,447,015.09	7,784,738.71	-0-
09-01-80	08-31-81	13,100,484.25	3,501,372.83	9,599,111.42	-0-
09-01-81	08-31-82	14,214,478.97	4,568,110.63	9,646,368.34	-0-
09-01-82	08-31-83	11,986,676.70	3,978,327.19	8,008,349.51	-0-
TOTAL RENTAL		$ 91,799,645.14	$ 25,754,920.78	$ 65,871,443.17	$ 173,281.19
			ROYALTY		
06-09-22	09-28-45	$ 48,334.36	$ 48,334.36	$ -0-	$ -0-
09-29-45	06-23-47	16,020.30	16,020.30	-0-	-0-
06-24-47	06-05-50	86,441.74	86,441.74	-0-	-0-
06-06-50	[illegible]	45,919.04	45,919.04	-0-	-0-
05-23-53	06-30-58	623,187.10	621,122.81	2,064.29	-0-
07-01-58	08-31-59	627,207.75	568,538.44	58,669.31	-0-
09-01-59	08-31-60	627,209.32	512,690.93	114,518.39	-0-
09-01-60	08-31-61	593,582.64	471,757.87	121,824.77	-0-
09-01-61	08-31-62	697,690.21	577,298.44	120,391.77	-0-
09-01-62	08-31-63	781,656.59	620,358.63	161,297.96	-0-
09-01-63	08-31-64	695,677.39	549,735.90	145,941.49	-0-
09-01-64	08-31-65	784,583.21	639,870.42	144,712.79	-0-
09-01-65	08-31-66	761,992.60	637,531.23	124,461.37	-0-
09-01-66	08-31-67	1,117,173.25	545,306.30	571,866.95	-0-
09-01-67	08-31-68	2,370,266.00	738,166.62	1,632,099.38	-0-
09-01-68	08-31-69	3,042,557.45	931,691.90	2,110,865.55	-0-
09-01-69	08-31-70	3,698,001.66	1,057,034.80	2,640,966.86	-0-
09-01-70	08-31-71	4,917,214.91	1,025,920.86	3,891,294.05	-0-
09-01-71	08-31-72	5,234,746.97	1,090,074.83	4,144,672.14	-0-
09-01-72	08-31-73	4,646,116.78	835,361.17	3,810,755.61	-0-
09-01-73	08-31-74	7,670,534.16	1,098,595.37	6,571,938.79	-0-
09-01-74	08-31-75	19,066,478.17	2,460,660.75	16,605,817.42	-0-
09-01-75	08-31-76	29,326,685.25	4,022,395.39	25,304,289.86	-0-
09-01-76	08-31-77	40,448,124.66	8,342,572.91	32,105,551.75	-0-
09-01-77	08-31-78	63,683,551.68	21,160,405.85	42,523,145.83	-0-
09-01-78	08-31-79	58,513,179.34	16,210,368.78	42,302,810.56	-0-
09-01-79	08-31-80	155,237,379.21	19,063,958.43	136,173,420.78	-0-
09-01-80	08-31-81	168,559,195.32	14,886,422.87	153,672,772.45	-0-
09-01-81	08-31-82	209,080,586.39	18,554,601.95	190,525,984.44	-0-
09-01-82	08-31-83	143,009,561.73	13,649,002.10	129,360,559.63	-0-
TOTAL ROYALTY		$ 926,010,855.78	$131,068,160.99	$ 794,942,694.19	$ -0-

Source: Texas General Land Office Energy Resources Report GL27R November 7, 1983

Parks and Wildlife Department (PWD) provides guidance to the General Land Office on matters affecting protection of the environment and environmental stipulations. This advisory role is supported by the Resource Management Recommendation Committee composed of representatives from the PWD, General Land Office, Railroad Commission, Texas Antiquities Committee, Corps of Engineers, National Park Service, National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

The issuance of drilling permits is handled by the Railroad Commission of Texas (comprised of three elected commissioners). Environmental permits are issued by the Corps of Engineers. Texas has no Oil and Gas Board. It is clear that while the authority for leasing rests with the Commissioner of the General Land Office, heavy reliance is placed on advisory committees.

3. Organization chart of State agencies.

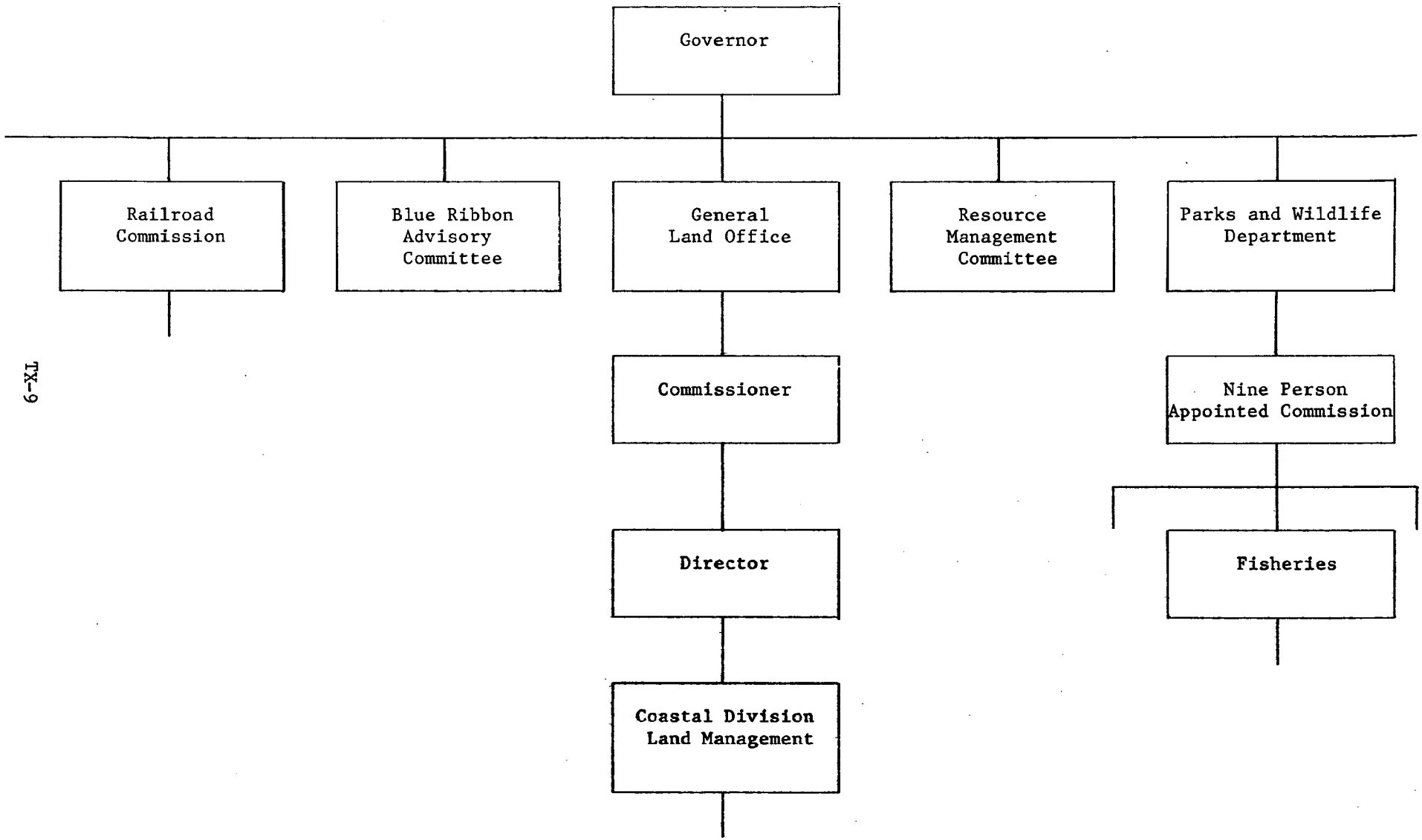
Figure 1 shows the relative positions of the Texas State agencies involved in oil and gas leasing.

E. Geographic Description of State Territorial Waters

1. General description of State offshore boundaries

The State of Texas has sovereignty over and owns the water, beds, and shores of the Gulf of Mexico and its extensions to its gulfward boundaries of three marine leagues (10.45 miles) (Natural Resources Code, Section 11.012). This amounts to 2.5 million acres of Gulf waters within the State's jurisdiction. The 400-mile-long Texas Coast, found in 12 counties actually fronting on the Gulf, encompasses seven major bay and estuarine systems

Figure 1
Texas State Agencies Involved
With Oil and Gas Leasing Program



bordering over 1400 miles of intricate shoreline (Davenport 1980). There are 760 square miles of marshland, 2100 square miles of bays and estuaries, 200 square miles of formal wildlife refuges, and 35 square miles of made land and spoil. In addition, there are eight major barrier islands in Texas with a combined length of 229 miles. Of the 400 miles of land fronting on the Gulf, all but 11 miles are defined as "beach". At the present time, there are no territorial border disputes with either Louisiana or Mexico although there are disputes with respect to the line of demarcation between state and federal waters.

2. Mapping and charting procedures used to define lease areas

There are 1242 small tracts and 350 large tracts in Texas territorial Gulf waters. These tracts were laid out in the middle 1940's and are the same size as tracts in the Federal waters of the Outer Continental Shelf. The method used for laying out the tracts and establishing state boundaries was the Texas Plane Coordinate System which is a continuation the of land coordinate system.

F. Local Jurisdictional Control Over State Waters

1. The role of counties and municipalities

Local county and municipal governments have no advisory or approval role in the leasing process although there are local ordinances that can affect leasing such as in Galveston, where drilling within city limits is prohibited.

2. The role of port authorities

The Texas Port Authority is not authorized to issue oil or gas leases. The Authority would intercede only if oil or gas operations would interfere with port operations or traffic on navigable waters.

3. Proprietary interests of local governments in submerged lands

See next section (4) of this report.

4. Home rule rights and the authority for local governments to annex offshore lands

An interesting issue occurred in Texas in 1983. Prior to June 19, 1983, the gulfward boundaries of general law cities in Texas were limited to one mile from the coastline. The five coastal home rule cities, however, could extend their boundaries into the Gulf up to the state limits of three marine leagues (10.45 miles).

"State officials, most prominently former Texas Land Commissioner Bob Armstrong, argued that annexation and taxation of these lands by the coastal cities threatened to stifle the development of these energy resources and reduce the income the state and the public schools receive from them because oil companies will be encouraged to leave the state's waters and instead operate in the federally-controlled area where they are not subject to state or local taxes." (Farabee 1983).

As a result of this concern, a bill was introduced in June 1983 (Senate Bill 551) to limit the gulfward boundary of home rule cities to one marine league (3.48 miles) from the coastline. The purpose of this bill is stated clearly by Farabee (1983), "SB 551 would protect the state's income from

these submerged lands by removing the threat that cities along the coast may annex them and tax any oil and gas operations located there. It will accomplish this goal by providing that no city, whether home-rule or general law, may include an area more than three miles out into the Gulf within its boundaries. This will allow those coastal cities who have expressed concern about being able to protect their beaches and marine environments from harmful effects to continue to do so in the area of most concern -- the three mile strip nearest the coast -- while still protecting the state's revenues from operations in the remaining 7.5 miles of state control off the coast. The bill will also lift the moratorium on coastal annexation imposed by the 67th Legislature when it passed HB 411 and allow annexation to begin again within the three mile area. It will also allow cities to continue to annex and control areas located within the state's bays and estuaries." This bill was passed quickly and became law as of June 19, 1983.

5. Effects of local government regulations on offshore operations subsequent to issuance of leases

   See next section (6) of this report.

6. Ability of local governments to tax oil and gas facilities, properties, or production through taxes on leasehold interests, equipment, or by levying a severance tax.

Senate Bill 551 addresses the issue of taxation of submerged lands within the jurisdiction of home-rule cities. In the following quotation from the bill, Subsection 'b', referred to, is the area circumscribed by one marine league gulfward of the coastline and the geographical limits of the home-rule cities involved. "(c) A contract or agreement by which a home-rule

city purports to pledge, directly or indirectly, taxes or other revenue from or attributable to state-owned submerged lands or other lands located outside the area described by Subsection (b) of this section does not create an enforceable right to prevent the reformation of the city's boundary under Subsection (d) of this section.

(d) The boundary of a home-rule city is void to the extent that it violates Subsection (b) of this section, and the boundary is reformed on the effective date of this Act to exclude the territory situated outside the area described by Subsection (b) of this section.

A home-rule city may create industrial districts in the area that is outside the city limits and that is located in an area formed in the manner prescribed by Subsection (b) of this section except that the lines drawn under Paragraph (B) of Subdivision (1), Paragraph (B) of Subdivision (2) or Paragraph (A) of Subdivision (3) of Subsection (b) may be extended for no more than five statute miles instead of one marine league. The governing body of such city shall have the right, power, and authority to designate the area described as an industrial district, as the term is customarily used, and to treat such area from time to time as such governing body may deem to be in the best interest of the city. Included in such rights and powers of the governing body of any city is the right and power to enter into contracts or agreements with the owner(s) or lessee(s) of land in such industrial district upon such terms and considerations as the parties might deem appropriate. The city shall have no authority to regulate oil and gas exploration, production, and transportation operations in an industrial district established pursuant to this Act, but in consideration of such relinquishment and the relinquishment of other rights under Section 5, Municipal Annexation Act, as amended (Article 970a), Vernon's Texas Civil

Statutes), the city is expressly authorized to require payments of a property owner or lessee(s) in such industrial district in an amount not to exceed 35 percent of the revenue that would be produced if the city imposed a property tax in the industrial district. Nothing herein shall prohibit a city and property owner or lessee(s) from agreement by contract for payments in a lesser amount."

G. Oil and Gas Revenues Accruing to State

1. Minimum royalties allowed by law

Royalty is defined as the sum of money equal to the market value for the general area where produced and when run, or royalty that may be collected in kind. As stated in Chapter 52 §52.175, "no lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund, and the lessee shall in every case pay to the surface owner amounts equal to the bonus money and the delay rentals paid to the state, and in case of production such lessee shall pay to the surface owner amounts equal to one-half of all royalty above the reserved one-eighth."

2. Royalties prescribed for oil and gas leases

As stated in Chapter 52, §52.022 "in addition to the cash amount bid for a lease, the area included in the lease shall be leased for not less than one-eighth of the gross production of oil produced and saved, or its value, and not less than one-eighth of the gross production of gas produced and sold off the area or its value, plus an amount determined by the board, until

production is secured." Royalties, however, usually exceed the minimum required by law and can vary even during a single sale depending on the specific tract being offered. For example, in a lease sale on April 7, 1981, royalties were fixed at 1/4. For the scheduled April 3, 1984 lease sale, royalties are set at 1/4. Royalties are not required on any gas used to process gas in any processing plant, gas used for gas lift purposes on the leased premises, or gas used for injection into oil or gas producing formations. If production is continued after the expiration of the primary term, royalties are required to be paid up to an amount equal to the annual delay rental. If there are insufficient royalties, an additional sum must be paid to make up the difference. The option to take royalty in kind may be exercised at any time or periodically on not less than a 60-day notice to the holder of the lease. To ensure that the state is being paid its full share of royalties, production reports are compared with production reports of the Railroad Commission - market value requirements in lease and actual field audits on some leases (Howard 1984).

3. Rental per acre

The annual statutory rental fee paid by the lessee to the state is $2.00 per acre. As with the royalty rate, the rental rate per acre varies with the tract being offered. In the April 7, 1981 sale, rental payments were $10.00 per acre per year in the Gulf and $5.00 everywhere else. . Rental for the scheduled April 3, 1984 lease sale will be $10.00 per acre. However, after production of oil and gas is obtained in paying quantities and the payment of royalty begins, the permittee is not required to pay any further annual rental fee.

4. Delay rental payment

According to Chapter 52, §52.022 "(b) if production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, an amount determined by the board for as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease."

5. Shut-in royalties

The shut-in royalty is an amount equal to double the annual rental provided in the lease but not less than $1,200 a year for each well capable of producing gas in paying quantities. The lessee may extend the lease for four additional and successive periods of one year by paying the same amount each year. A related royalty payment used in Texas is the compensatory royalty. As described in Chapter 52 §52.024 "if, during the period the lease is kept in effect by payment of the shut-in gas royalty, gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir or in any case in which drainage is occurring, the right to continue to extend the lease by paying the shut-in gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid and for an additional period of not more than five years from the expiration of the primary term by the lessee paying compensatory royalty at the royalty rate provided in the lease of the value at the well of production from the well which is causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises".

6. Offset wells

If oil or gas should be discovered in commercial quantities on private land within 1,000 feet of state lands or close enough to drain oil or gas from state lands, the owner or lessee of state lands must begin drilling within 100 days to protect the state lands from being drained. If this is not done, the lease can be forfeited. Further, according to Chapter 52, §52.223, "no applicant may obtain more than 1,000 acres of land within one mile of a well that is producing oil".

7. Pooled acreage

Chapter 52, Subchapter E, §52.151 authorizes the Commissioner of the General Land Office to "execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements the royalty interests in oil or gas or both reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state" if the agreement is in the best interests of the state. In the case of offshore leasing, such an agreement must be approved by the School Land Board.

8. Bonus consideration

Bonuses are fixed separately for each lease tract offered and can vary widely. The April 7, 1981 lease sale illustrates this as the cash bonus minimums established were $10.00, $20.00, $40.00. For royalty bids, bonuses were fixed at $50.00 and $100.00 per acre. For the sale scheduled for April 3, 1984, minimum bonuses required for offshore bids range from $100 to $500 per acre. In addition to the bonus, there is now a new nomination fee of $100.00 due at the time of bid nomination.

9. Severance tax

According to the (State of Texas 1982), Texas Natural Resources Code, Title 3, Subtitle 1, Severance Taxes (Section 201, Subchapters B and C), the severance tax on gas is 7.5% of the market value of gas produced and saved in the state; market value being defined as value at the mouth of the well. "If gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. Payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts. If the consideration for the sale of gas includes products extracted from the gas, a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including a bonus or premium." The minimum tax rate on sweet and sour gas produced and saved is 121/1,500 of one cent for each 1,000 cubic feet.

The severance tax on oil is at the rate of 4.6% of the market value of oil produced or 4.6 cents for each barrel of 42 standard gallons of oil produced, whichever rate results in the greater amount of tax. The market value of oil is the actual market value plus any bonus, premium, or other thing of value paid for the oil or that the oil will reasonably bring if lawfully produced.

10-11. Distribution of revenue within state

According to the Texas Code, Chapter 52 (Oil and Gas), §52.241, "Distribution of funds. The proceeds arising from activities which effect lands belonging to the public free school or the permanent fund of the several asylums, shall be credited to the permanent funds of said respective institutions. All proceeds paid or collected from activities under this law

affecting the lands belonging to the permanent fund of the University of Texas shall be credited by the State Treasurer to the available fund of such institution, and all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same or for other permanent improvements. All proceeds arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the same fund.

The distribution of severance taxes on gas and oil are as follows: "One-half of one percent of the tax collected under this chapter shall be set aside in the state treasury for the use of the comptroller to administer and enforce the provisions of this chapter, subject to appropriation by the legislature. Money set aside by this section that is not spent at the end of a fiscal year reverts proportionally to the other funds to which the taxes imposed by this chapter are paid. After deducting the amount required to be deposited by Section 201.403 of this code, the comptroller shall deposit one-fourth of the revenue collected from the tax imposed by this chapter to the credit of the available school fund and three-fourths to the general fund" (State of Texas 1982).

H. Environmental Controls and Regulations

1. Responsible agencies

As discussed in Section D-2 of this report, the management of environmental programs is the responsibility of the Texas Parks and Wildlife Service (PWD). While having broad authority, the PWD acts in an advisory

capacity only to the General Land Office during the oil and gas leasing process. Once leases and permits are issued, the PWD serves as the environmental regulatory agency for the state. The other agency involved in the environmental aspects of oil and gas operations in Texas is the Corps of Engineers. While not involved in the leasing process directly, the Corps plays a key role in permitting and enforcement, and as a consequence significantly influences the development of environmental stipulations.

2. Relation to leasing agency

Unlike Alabama and Mississippi where a formal Memorandum of Agreement was created to facilitate cooperation between agencies involved with oil and gas leasing, Texas handles any necessary coordination informally through the auspices of the Governor's office. Thus, there is no formal relationship between the PWD and the General Land Office.

3. Environmental review process prior to issuing lease/permit

Texas has an excellent system of providing information on environmental restrictions to potential lessees. "Lease sales are announced through a Notice for Bids booklet, which contains a description of the land tracts offered for lease and a request for bids. Since 1972, the booklet also has contained environmental recommendation codes pertaining to submerged tracts located in bays, estuaries, and the Gulf of Mexico. These codes inform potential lessees of the concerns of certain state and federal agencies, concerns that might constrain oil and natural gas operations. The coding process accomplishes three goals. First, the codes suggest operating procedures that encourage the protection of sensitive natural resources. Second, the codes assist potential bidders and lessees in developing plans

that are likely to receive more expeditious approval from state and federal agencies. Third, the codes provide greater predictability in the leasing process by somewhat reducing the uncertainties associated with the development of state-owned submerged land." (State of Texas 1981a). The procedure used to develop environmental recommendation codes contained in State of Texas 1981a involves the following six steps:

1. "A listing of the submerged tracts that may be offered for lease is submitted by the Production, Exploration, and Development Division of the General Land Office to the Coastal Division of the General Land Office.
2. The Coastal Division assigns environmental recommendation codes to each tract from a master list of codes maintained by the division.
3. The Coastal Division forwards copies of the list of tracts and codes to 19 persons in eight state and federal agencies for review. These agencies are the General Land Office; the Texas Parks and Wildlife Department; the Railroad Commission of Texas; the Texas Antiquities Committee; the U.S. Army Corps of Engineers; the U.S. Department of Interior Fish and Wildlife Service and National Park Service; and the U.S. Department of Commerce National Marine Fisheries Service.
4. The Coastal Division notes on the master code list any changes in tentative code assignments submitted by the reviewers.
5. The Coastal Division forwards a list of the submerged tracts and final code assignments to the Production, Exploration, and Development Division.

6. A list of the submerged tracts offered for lease with their assigned codes is published in the Notice for Bids booklet."

The assignment of environmental recommendation codes occurs during a one-month period prior to each sale.

4. Environmental stipulations

Each submerged tract nominated for lease sale is assigned one or more two-letter environmental codes. The codes are suggested guidelines for the conduct of activities within the tracts and are designed primarily to encourage the protection of biologically sensitive areas. Recommendations include restrictions and precautionary measures to minimize adverse impacts from drilling, dredging, spoiling, and associated activities.

Once codes are established there are very few changes although changes can be made during the permitting process in some cases for site specific reasons. For tracts with no codes, the General Land Office can assign codes and request that a committee, comprised of the agencies listed above, review them. If acceptable to the Corps of Engineers, they may appear in the Corps' permit. The review time for such additions can be as little as one week.

Table 5 contains examples of the coded recommendations. Based on the codes shown in Table 5, each tract is identified and the appropriate codes are cited as illustrated in Table 6.

In addition to the stipulations shown in Tables 5 and 6 the General Land Office issues specific rules and regulations governing oil and gas operations in state waters designed to further protect the environment. The following are examples taken from Rules and Regulations Governing Geological, Geophysical and Other Surveys and Investigations in Areas Within Tidewater Limits Within the Jurisdiction of the State of Texas as Promulgated by the Commissioner of the General Land Office. 126.16.01.001-.012 (State of Texas 1983b).

Table 5

Examples of Resource Management Codes
Used by the State of Texas
for Oil and Gas Leasing in State Waters

DREDGING

DA - No dredging or propwashing

DD - No dredging or propwashing to a depth exceeding 6 feet as measured from mean low water

DJ - Use silt curtains

DM - No dredging or propwashing within 1500 feet of shoreline at mean low water

SPOILING

SA - No spoiling

SC - No spoiling in water less than 6 feet deep as measured from mean low water

SD - Place and contain spoil on land above mean high water and above contiguous marshes

SG - No spoiling in NW quarter of tract

SK - No spoiling within 1000 feet of shoreline at mean low water

SN - Orient spoil banks in a direction which will not create detached tidal pools; avoid continuous spoil banks

CHANNELS

CA - Use existing channels only

CE - Backfill access channel if well is non producing or when abandoned

DRILLING

OA - No drilling in this tract; directional drilling should be considered

OE - Use no more than one drill site per quarter tract

OH - Drill only from deep-water portion of tract of square mile

Table 5 Continued

OM - Avoid drilling and construction of any platforms on the top or slopes of reefs, banks, hard bottoms, or artificial reefs

OR - No drilling within 1000 feet of shoreline at mean low water

OV - Place all bulk crude storage facilities in containment levees on land above mean high water and above contiguous marshes

OY - No drilling mud other than that attached to washed drill cuttings and no oily drill cuttings discharged within sensitive habitat areas of tract

TIME LIMITATIONS

TA - No drilling within 3 miles of Gulf shoreline between March 15 and September 15; no drilling within 2 miles of Gulf shoreline at any time

TC - No disturbance of a rookery at any time; no drilling, dredging, or other construction within 1000 feet of a rookery between February 15 and September 1

MISCELLANEOUS

MB - Avoid reefs during pipeline construction and geophysical surveying

ME - Avoid submerged grass beds, marshes, and other sensitive resource areas; coordinate drilling location(s), production activities, access routes and rights-of-way within Texas General Land Office

MH - No wheeled or tracked vehicles on submerged grass beds below mean low water

ML - Work within this tract should be coordinated with private oyster lease owner; contact the Texas General Land Office for information

MN - Use low-profile structures for all permanent production facilities to minimize visual impact

MO - Work in tract is subject to Section 7 evaluation under the Endangered Species Act

Source: Texas General Land Office
Revised January 9, 1984

Table 6

An Example of the Use of Coded
Environmental Recommendations for
Oil and Gas Leasing in
Texas Territorial Waters

ARANSAS AND CARLOS BAYS

Aransas County

340.	Tract 85	223± Acres	DA, MC, MF, OA, OV, SA
341.	Tract 86	310± Acres	DA, MC, MF, OA, OV, SA
342.	Tract 87	320 Acres	DA, MB, MC, OV, SA
343.	Tract 88	320 Acres	DA, MB, MC, MF, OV, SA

".005(F) No seismic operations shall be conducted in or on any of the islands, salt water lakes, bays, inlets, marshes and reefs owned by the State of Texas and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas and landward from the fifteen (15) foot water depth line without the presence of an inspector assigned to the operation by the Commissioner or his designated representative.

.005(G) No shots shall be discharged within five hundred (500) feet of any dredged channel, nor within three hundred (300) feet of any dock, pier, causeway and other structures, nor a marked oyster bed or marked red snapper bank---.

.007 If an exploration party should drill a hole or holes in any of the bays or in the Gulf of Mexico, said hole or holes shall be drilled in such manner as will, so far as practicable, prevent the pollution of said waters, and in such manner as to interfere as little as possible with the fishing or shrimping industries---.

.008 (A) Before any shot is discharged either in the Gulf of Mexico or the bays, the exploration party shall employ methods approved by the industry to frighten or drive away the fish and/or marine life which may be in the area where the shot is to be discharged. If there is one or more schools of fish in the area to be shot, operations must be suspended in that particular area until said school or schools of fish have been driven away.

(B) No shot shall be detonated within one mile of a shrimping fleet previously and in good faith operating in the area.

.011 No shots shall be detonated during the months of May, June, July, August, and September within three miles of a major resort beach."

In a second set of rules Rules and Regulations Governing Operations on Permanent Free School Lands, 135.16.03.001-.016, the disposal of salt water and mud is addressed (State of Texas 1983a).

.007 "No salt water slush or mud materials shall be disposed of in the water before all oil or chemicals, harmful to marine life, have been removed therefrom. Without limitation upon the foregoing rules, sufficient precautions shall be exercised to prevent pollution and destruction of marine life or its habitat."

There are no restrictions in Texas as to how close to shore oil and gas operations can be conducted, except, for example as defined by municipalities such as Galveston where the limit is 1 1/2 miles from shore or Corpus Christi where the limit is 2 miles from shore.

In an effort to justify the codes just discussed, a rationale was developed as shown in Table 7 for use in the Kleberg County area.

Codes can be removed by Parks and Wildlife, and the U.S. Fish and Wildlife Service. In addition, specific parts of tracts can be exempted from code restrictions. If this occurs, the change is reflected in the permit

Table 7

Examples of Rationale Used for Kleberg County, Texas Resource Management Code Recommendations

DA - Because of the presence of sensitive marine fishery nursery habitats, marshes, or oyster reefs, this tract has great estuarine productivity. Dredging or propwashing in this tract would destroy marine fishery habitats, including nursery grounds, and food sources; and probably would increase turbidity in adjacent waters. Therefore, this recommendation is necessary to protect these biologically productive areas.

DD - Deeper water areas are generally less productive than shallow estuarine waters. Submerged seagrass and benthic algal growth is more sparse at greater depths due to a reduction in solar penetration; therefore, the food sources for important finfish and shellfish are not as productive. This recommendation is necessary to minimize the proliferation of excessively deep and relatively biologically unproductive canals.

SA - This code is recommended for the protection of productive areas of shallow estuarine waters and marshes. Placement of dredged materials in these areas degrades or destroys valuable marine fishery habitats, including nursery grounds, and food sources.

OH - This tract contains extensive, productive shallow-water fishery habitats. Adverse impacts to these habitats and the marine fishery resources they support from spillage of petroleum products, drill cutting discharges, and possible dredging for well access should be minimized by confining drilling operations to deep-water portions of the tract.

MB - Shell reefs or serpulid reefs (in the Baffin-Alazan Bay area) occur in or immediately adjacent to this tract. Pipeline installation across these reefs would destroy or otherwise adversely impact reef production and/or fishery habitat values. This recommendation is necessary to protect reefs from impacts of pipeline installation in this tract.

Source: Texas General Land Office
December 1983

issued by the Corps of Engineers. If there are differences in opinions between the agencies with respect to the environmental code, someone will be dispatched to the site to obtain additional data (MacRae 1984).

The enforcement of the resource management codes can be carried out by the Parks and Wildlife Service which is authorized to issue violations and also to shut down operations if the codes are violated.

5. Baseline environmental research

At the present time there is no research program specifically addressing the environmental aspects of the offshore oil and gas industry. The codes represent a distillation of many years experience of observing the effects of exploration and drilling operations. New data obtained are integrated with data available from prior research programs, the scientific literature, etc. Although there is no direct input from the academic community during the development of the codes, a committee has been formed recently, composed of industrial representatives, for the purpose of providing advice on code development.

At the present time, oil companies desiring to learn about existing resource management codes are required to call the General Land Office for this information. The Coastal Division of the General Land Office, however, is developing a program to computerize the codes and subsequently to publish them for sale to industry (Irby 1984). According to the General Land Office "The time available to review tentative code assignments appears to be inadequate. Allowing for the preparation and dissemination of lists of tracts and codes and the collection and transmittal of comments, only two to three weeks are available for review. This period cannot be lengthened under the current procedure. Since each lease sale usually involves more than 1000 submerged state tracts, the time available to review the codes recommended

for each tract is short. As a result, it is often impossible to say with certainty which state or federal agency requested a particular code for a tract or why.

As a result, inconsistent or contradictory codes may be overlooked and unnecessary codes may be included. Also, there is little opportunity to revise or eliminate codes in light of new research, new technology, revised rules and regulations, or changing environmental conditions" (State of Texas 1981a). This computerization will be of value in another way by allowing industry to identify the state or federal agency responsible for a specific stipulation. Under the new system it will be possible for industry to identify the source of the stipulation and the justification. This, in turn, will allow them to negotiate any mitigating circumstances for a particular code with the appropriate agency prior to the issuance of a permit. This is important because the General Land Office has adopted an unofficial policy of not enforcing codes published in the leasing program for a sale if they do not appear in the Corps permit. This policy is understandable when considering the General Land Office has only three inspectors to monitor compliance to environmental regulations.

6. Role of Corps of Engineers

Although not directly involved in the leasing process, per se, because of its key role in the environmental permitting phase, the Corps of Engineers must be considered as an essential element in the lease of offshore lands. This is especially true with respect to the development and implementation of the environmental codes discussed in the previous section. For example, the representatives of the Resource Management Recommendations Review Agency meet once every two weeks in Galveston at a meeting called by the corps to review

404 permits under the Clean Water Act. These meetings rarely are attended by all 19 members of the review agencies but usually are attended regularly by representatives of NMFS, Fish and Wildlife Service, Parks and Wildlife Service, and General Land Office. Because of the frequency of these meetings, there normally is very little delay in issuing permits unless industry challenges any of the information. If, as a result of these meetings or any other cause, the codes are waived, they simply are left off the permit by agreement with the Corps.

Because the Corps, in effect, serves as the environmental permitting and enforcement arm of the state, the resource management codes are recommendations to the Corps who in turn issue the actual environmental permits. The operational drilling permits are issued by the Texas Railroad Commission. The enforcement of these codes also is under the Corps of Engineers.

Since the General Land Office uses the Corps to enforce their codes, it is important to note that the Corps does not have to accept all the recommendations made by the General Land Office and may issue a permit against the advice of the interagency review committee. The codes, therefore, are not enforceable by the state with the exception that during the seismic permitting process, which occurs prior to the leasing program, there are special codes issued by the General Land Office which are enforceable by the State. Appendix A is an example of a recent permit Application Public Notice issued by the Corps of Engineers.

I. Leasing Procedures

1. Leasing schedule

The leasing program is handled by the State General Land Office. All lease sales are scheduled regularly and take place in April and October of each year. The initial lease process can be summarized as follows:

1. A list of tracts nominated by industry is issued to appropriate state and federal agencies by the General Land Office.

2. The agencies respond with recommended environmental code changes to the General Land Office.

3. The General Land Office reviews these changes and asks for additional information as required.

4. A notice for bids is issued which include the codes as environmental stipulations (see Section H-4 of this report). Industry does not have the opportunity or time to object to the environmental codes during the lease process.
5. The lease process continues with respect to announcements, etc. as described in the following sections.

Leases are awarded to the highest bidder on sale day with the time from the lease sale to issue of lease being about 3 - 4 weeks.

2. Call for nominations or lease

The Commissioner of the General Land Office fixes the day and hour when areas will be subject to lease and advertises them at least 30 days prior to the lease sale date. This is done by distributing printed lists as provided, for sales of surface rights of public lands. As with all meetings of state governmental bodies, a notice also must be sent to the Secretary of State to be posted on a bulletin board at the main office. The Commissioner may or may not recognize prior surveys of the area to be leased. As stated in Chapter 52, §52.014 "Recognized surveys shall be advertised and shall be subject to lease as a whole. Surveys not recognized shall be deemed,

together with all adjacent unsurveyed areas, as one unsurveyed area, and the Commissioner shall advertise the whole or designated portions thereof for lease."

3. Fees

The minimum price required by law is one dollar ($1.00) per acre. Nominators also are required to submit by a separate check a special nomination fee in the amount of $100.00.

4. Publication of calls for nominations and advertisements for leasing

See Item 2.

5. Bidding

Separate sealed bids are required for each lease area and by each marginal number. Applications that include two or more areas or for a price less than the fixed royalty and price per acre are void. In the event that the highest bid is a tie, all applications are rejected and the School Land Board sets a new lease date not later than the 15th day of the following month. Bids less than the original highest bid are not considered.

6. Terms of lease

- Title

The State does not guarantee clear title to the leased area to the lessee.

- Length of lease

Leases usually are granted for a primary term of five years for the Gulf of Mexico and three years in other areas.The lease can be extended continuously beyond the primary term as long as oil or gas is produced from the leased area.

- Extension of lease

According to Chapter 52 §52.024 "if the shut-in gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased and after that if no suitable market for the gas exists, the lessee may extend the lease for four additional and successive periods of one year by paying the same amount each year on or before the expiration of the extended term." If, at the expiration of the primary term of a lease, oil or gas has not been produced but drilling operations are underway, a 30-day extension can be obtained from the General Land Office in return for $3,000 if the leased area is less than 640 acres and for $6,000 if it is more than 640 acres. Additional 30-day extensions can be granted for up to 390 days beyond the primary term if drilling operations continue. If oil or gas is being produced, an unlimited number of 30-day extensions can be granted.

- Transfer of lease

A lessee may sell, relinquish, or give a lien on a permit or lease and the rights secured by the permit or lease at any time to a qualified person (Chapter 52, §52.244). The sale or transfer of university land, however, may not be in blocks of less than 40 acres (Chapter 52, §52.245).

- Compliance with rules and regulations

Chapter 52, §52.032 states that: oil and gas operations are required to be carried out "insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life and obstruction of navigation."

- Cessation of work

In accordance with Chapter 52 §52.023 "each lease shall provide that:

(1) if the production of oil or gas on premises leased under this subchapter ceases for any reason at or after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the cessation of production;

(2) the lease shall remain in effect as long as the drilling and reworking operations continue in good faith and in a workmanlike manner for a period of more than 60 days without interruption; and

(3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect as long as oil or gas is produced from the premises in paying quantities or payment of shut-in gas royalties or compensatory royalties is made as provided by law."

If a dry hole is drilled during the primary term of the lease prior to the discovery and production of oil or gas, the lease can continue in force if the lessee begins payment of delay rental within 60 days (Oil and Gas Lease Section 8).

- Other terms of lease

Prerequisite to selling natural or casinghead gas for use outside the state, the Railroad Commission must determine that existing needs for fuel are met by the agency executing the lease; health care facilities; public and private schools; state, county, municipality, or other political subdivisions; producers of food or fiber requiring irrigation; or anyone in the state needing fuel (Chapter 52 §52.293).

7. Handling of proprietary information

Texas statutes permit the General Land Office to hold technical information as proprietary if releasing it would benefit a competitor. The Texas Oil and Gas Lease form Section 5 (A) (revised Jan. 1983) requires the lessee to provide the General Land Office with estimates of oil and gas reserves, and copies of all contracts and agreements pertaining to the sale and processing of gas. These documents are held in confidence unless their release is authorized by the lessee. Industry is not required to provide the State with data obtained during the seismic exploration phase.

J. Relation of Leasing Program to Issuance of Permits

- Director of State Railroad Commission issues drilling permits

- Corps of Engineers issues environmental permits for leases in state waters.

See Section H of this report for a more detailed discussion of the role of the Corps of Engineers.

K. Mineral Leasing

According to Chapter 52 §52.012 "Oil and gas shall only be leased together and shall be leased separately from other minerals."

References

Davenport, S. (1980). Texas 1980 - Year of the Coast. Environmental Management Program, General Land Office, Austin, Texas.

Farabee (1983). Bill Analysis, Senate Bill No. 551. Legislative Budget Board, Austin, Texas.

Howard, J. (1983, 1984). Personal Communication, Director, General Land Office, Austin, Texas.

Irby, H. (1984). Personal Communication, Coastal Division, Texas General Land Office, Austin, Texas.

MacRae, J. (1984). Personal Communication, Texas Parks and Wildlife Department, Austin, Texas.

McKann, M. (1984). Personal Communication. Coastal Division, General Land Office, Austin, Texas.

State of Texas (1978). Accessibility and Protection of Texas Shorefront Areas. General Land Office, Austin, Texas, June.

State of Texas (1981a). Environmental Recommendation Codes; Project Draft. Coastal Division, General Land Division, Austin, Texas, January 18.

State of Texas (1981b). Notice for Bids - April 7, 1981. General Land Office, Austin, Texas.

State of Texas (1982). Oil and Gas Production Tax Laws. Comptroller of Public Accounts, Austin, March.

State of Texas (January 3, 1983a). Rules and Regulations Governing Operations on Permanent Free School Lands. Natural Resources Code, Chapter 141, Subchapter C, Section 52.032.

State of Texas (January 3, 1983b). Rules and Regulations Governing Geological, Geophysical and Other Surveys and Investigations in Areas Within Tidewater Limits Within the Jurisdiction of the State of Texas and Promulgated by the Commissioner of the General Land Office. Natural Resources Code, Sections 31.107 and 52.032, Austin, Texas.

State of Texas (1983c). Senate Bill No. 551, relating to Gulfward boundaries of home rule cities. Amendment to Natural Resources Code Section 11.0131.

State of Texas (1983d). Oil and Gas Lease, General Land Office, Austin, Texas.

State of Texas. Code, Chapter 52, Oil and Gas, Subchapters A - G.

Texas Coastal and Marine Council (1982). Texas Coastal Legislation, 5th Ed., 1982. Austin, Texas.

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553

REPLY TO
ATTENTION OF:

PUBLIC NOTICE

SWGCO-RP, PERMIT APPLICATION-16624 21 July 1983

To Whom It May Concern:
This district has received an application for a Department of the Army permit as described below:

APPLICANT: Convest Energy Corporation, 2401 Fountain View Drive, Suite 700, Houston, Texas 77057.

AUTHORIZED AGENT OF APPLICANT: Ford Engineering Firm, P.O. Box 2470, Victoria, Texas 77902 Phone 512-573-3249.

WATERWAY AND LOCATION: Matagorda Bay, in State Tracts 173, 174 and 194, in Matagorda County, Texas.

WORK: The applicant proposes to erect and maintain structures and perform work for the drilling of wells for producing oil or gas as shown on the attached plans.

AUTHORIZATION FROM OTHER AGENCIES: Railroad Commission of Texas certification is required.

Plans of the proposed work may be seen at the office of the District Engineer in the Essayons Building, 400 Barracuda, Galveston, Texas or at Corpus Christi Area Office, Corpus Christi, Texas.

Environmental impact has been considered in Environmental Impact Statement, Crude Oil and Natural Gas Production in Navigable Waters along the Texas Coast.

The application will be processed pursuant to Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act. Any person may request a public hearing. The request must be submitted in writing to the District Engineer within fifteen days of the date of this notice and must clearly set forth with particularity the reasons for holding a public hearing.

Evaluation of the probable impacts involving deposits or discharge of dredged or fill material into Waters of the United States will include the application of guidelines established by the Administrator of the Environmental Protection Agency.

The District Engineer has consulted the latest published version of the National Register of Historic Places and has determined that there are no registered properties within the permit area.

Preliminary indications are that no known endangered species or their critical habitat will be affected by the proposed work.

This public notice is being distributed to all known interested persons in order to assist in developing facts on which decision by the Corps of Engineers can be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

Comments on these factors will be accepted and made part of the record and will be considered in determining whether it would be in the best public interest to grant a permit. Comments must be submitted to the District Engineer, P.O. Box 1229, Galveston, Texas 77553, on or before 5 August 1983 . If there are any questions relative to this Public Notice, please contact Mr. Alan Sisselman at the above address or by telephone at 409-766-3936.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS

APPENDIX A

ANNEXATION PROCEDURES USED IN SIX COASTAL STATES*

Prepared by

Principal Investigator

Richard Hamann

and

Research Assistant

George Gramling

The Center for Governmental Responsibility

University of Florida College of Law

Gainesville, Florida

1984

* This material is taken from a document entitled "Florida Local Governments and Oil and Gas Leasing of State Territorial Waters" which is contained in Volume I of this report.

TABLE OF CONTENTS

Page

Introduction 28

I. Alaska 28

A. Types of Municipalities. 28

1. Boroughs 28

2. City Boundaries. 29

B. Alaska's Annexation Statute. 30

1. State Initiated Annexations 31

2. Local Annexations 32

3. Step Annexation 34

4. Tidelands Acquisition 35

Footnotes 36

II. California. 40

A. Boundaries 40

1. State 40

2. Counties. 40

3. Cities. 40

B. California's Annexation Statute. 40

1. Annexation of Submerged Lands 41

Footnotes 42

III. Texas 44

Introduction. 44

A. Boundaries and Annexation. 44

1. State 44

2. Counties. 44

3. Municipalities. 45

Footnotes 46

Table of Contents (con't)

Page

IV. Louisiana 47

A. Boundaries 47

1. State 47

2. Counties. 47

3. Municipalities. 48

B. Louisiana's Annexation Statutes. 48

1. Annexation by Petition and Election 48

2. Annexation by Petition and Ordinance. 49

Footnotes 49

V. Mississippi 52

A. Boundaries 52

1. Counties. 52

2. Municipal Boundaries. 53

3. Port Authorities. 53

B. Mississippi's Annexation Statute 53

Footnotes 56

VI. Alabama 60

A. Boundaries 60

1. State Boundaries. 60

2. County Boundaries 60

3. Municipalities. 61

B. Alabama's Annexation Statute 61

1. Annexation Generally. 61

2. Annexations of Territory By Cities of 2,000 Inhabitants or More 62

3. Annexation of Territory Containing 25,000 Inhabitants or More 63

C. Conclusion 63

Footnotes 63

Introduction

This section will analyze the annexation methods used by other coastal states which lease offshore waters for mineral development. The annexation laws of Alabama, Mississippi, Louisiana, Texas, California, and Alaska are surveyed. For reasons such as differing population densities, rates of growth, and amounts of offshore activity, some states' annexation laws are more sophisticated than the laws of other states.

I. Alaska

A. Types of Municipalities

1. Boroughs

Alaska differs from every other state by the way in which it is divided into political subdivisions. Alaska has never had any counties, such as are found in most other states. Somewhat similar to counties, however, are the state's largest political subdivisions, boroughs.[1] A borough may contain one or more cities as well as unincorporated territory. Alaska is presently divided into ten boroughs.[2] New boroughs may also be formed. In order to incorporate as a borough, however, an area must meet certain requirements regarding population, natural geography, economy, and transportation.[3]

A borough may be categorized as first, second, or third class and the powers of a borough depend on its classification.[4] Boroughs are governed by either home rule or general law.[5] Only first class boroughs which have adopted home rule charters are governed by home rule.[6]

The Alaska Constitution, Article X, Section 3, requires that the entire state be divided into boroughs, organized or unorganized.[7] Article XII, Section 1, of the Constitution extends the State's boundaries over "all the territory, together with the territorial waters appurtenant thereto, included in the Territory of Alaska upon the date of ratification of the constitution by the people of Alaska."[8] Nothing in either the Alaska Constitution nor the Alaska statutes specifically delineates the geographical jurisdiction of a borough. However, since the entire state is required to be divided into boroughs, it follows that the borough's jurisdiction extends over territorial waters within its boundaries.

Another type of local government in Alaska is the city. Article X, Section 7 of the Alaska Constitution provides for incorporation of cities as prescribed by law.[9] Alaska statutes, Title 29 contains the law pertaining to municipal government, including annexation. Like boroughs, cities are either governed by home rule or general law.[10] Cities may be either first class or second class, but only first class cities may adopt home rule.[11] A first class city must have 400 or more permanent residents.[12]

2. City Boundaries

The creation of municipalities and the establishment of their boundaries is a legislative function.[13] The power of the legislature to adopt methods for changing or establishing these boundaries derives from Article X, Section 12, of the Alaska Constitution.

The Constitution also provides for the establishment of a local boundary commission in the executive branch of the state government.[14]

The commission may consider proposed changes to local government boundaries.[15] This section of the constitution establishes two methods of local boundary alteration: 1) by direct action of the local boundary commission subject to legislative disapproval, and 2) by establishment by the commission of procedures for the adjustment of boundaries by local action.[16] The local Boundary Commission is a unique feature of Alaskan Law. The framers of Alaska's Constitution intended to provide an objective administrative body to make state level decisions regarding local boundary changes, in order to avoid the chance that a small, self-interested group might prevent boundary changes otherwise in the public interest.[17]

B. Alaska's Annexation Statutes

Currently two statutes govern municipal expansion[18] and an additional statute governs conveyances of tidelands to municipalities.[19] The statute governing municipal expansion by local action is Chapter 29.68.010. Expansion by state action is governed by Chapter 44.47.583. The Alaskan Constitution provides for legislative veto over any of the Local Boundary Commission's proposals.[20] Neither the statutes nor constitution specifically address annexations of territorial waters. The Alaska statute which comes nearest to allowing municipal control over adjacent state waters is Chapter 38.05.320. This statute is not an annexation statute but is instead intended to allow conveyances of tidelands to municipalities, apparently for dredge and fill developments.

1. State Initiated Annexations

The Local Boundary Commission consists of five members appointed by the Governor for overlapping five year terms.[21] The Commission must:

1) make studies of local government boundary problems;[22]
2) develop proposed standards and procedures for changing local boundary lines;[23]
3) consider a local government boundary change requested of it by the legislature, the Commissioner of Community and Regional Affairs, or a political subdivision of the state;[24] and
4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed, and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.[25]

The local boundary commission may:

1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services;[26] and
2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes,

including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years.[27]

2. Local Annexations

The method by which a local municipality, either city or borough, may change its boundaries is codified in Alaska Statutes, Section 29.68.010, and in the Alaska Administrative Code, Section 15.010. The statute provides that:

1) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.[28]

2) In addition to the regulations governing annexation by local action adopted under Section 44.19.260, [renumbered as (44.47.565)], the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include:[29]

(a) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;[30]

(b) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval;[31] and

(c) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.[32]

3) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.[33]

The development of standards to guide municipal annexations is a precondition to the commission's exercise of its discretion under subsection (b) of the statute.[34] Three purposes underlie the statutory requirement of annexation standards.[35] First, such standards expose the basic decision-making processes of the commission to public view and thus subject commission action to broad corrective legislation.[36] Second, the standards guide local governments in preparing proposals and making annexation decisions.[37] Third, annexation standards objectify the criteria of decision making and delineate the battleground for a public hearing.[38]

In Port Valdez Co. v. City of Valdez,[39] the Alaska Supreme Court addressed the Local Boundary Commission's failure to promulgate stan-

dards for annexation required by the statute.[40] The City of Valdez annexed the entire port area including land owned by the Port Valdez Company.[41] The annexation was challenged on the ground that the Boundary Commission had not developed any standards to regulate or restrict the city's annexation.[42] The Alaska Supreme Court noted that failure to promulgate standards made any annexation voidable and prima facie illegal.[43] The court had reached the same conclusion three years earlier in a similar instance of the Boundary Commission's failure to promulgate standards and procedures.[44] Thus, until the Commission develops standards, which research reveals it has yet to do, any annexation might be voidable on this ground.

3. Step Annexation

Step annexation is a term which describes the gradual assimilation of adjacent territory by a municipality.[45] It is an alternative to immediate annexation in situations where such annexation would be premature.[46] This method of annexation may be most suited to attempted annexations of large, uninhabited areas of water. Florida law contains no parallel. Ordinarily, a step annexation is commenced by a municipality's petition specifically requesting the step annexation alternative.[47] However, the Local Boundary Commission could require a municipality to use the step method.[48] Presumably, a municipality's attempt to directly annex large tracts of vacant ocean, simply for the purpose of taxing oil leases, could be regulated by requiring the municipality to annex only small, developed tracts one at a time.

4. Tidelands Acquisition

The Alaska Annexation statutes does not address municipal annexation of offshore oil fields or territorial waters. However, under the Alaska Land Act,[49] enacted in accordance with the Alaska Constitution, Article VIII, Section 10, home rule cities and first class cities incorporated on or before April 1, 1964, may apply for conveyance of all lands extending seaward from the mean high tide line, to either the pierhead line or harbor line.[50] If there is no pierhead or harbor line established, the city may petition for submerged land up to any line, subject to approval by the Director and Commissioner of the Division of Lands.[51] The tidelands are conveyed to the municipality subject to the rights of occupants existing on the land at the time the petition is made to purchase the land.[52] Where no occupant has a preference right to the submerged lands, the municipality may lease or sell the land which is conveyed to it and may impose terms or conditions upon it.[53]

Apparently this act was created for the purpose of allowing the municipality to dredge and fill the immediate adjacent waters.[54] However, the Act does not define tidelands, which arguably include all waters seaward of the line of mean high water. The statute by its terms does, however, restrict conveyances to "tidelands and submerged lands suitable for occupation and development without unreasonable interference with navigation."[55] It is therefore questionable whether the statute would allow conveyance to a municipality of vacant, uninhabited submerged lands.

Footnotes

1. See, Walters v. Cease, 388 P.2d 263 (Alaska, 1964).

2. The ten boroughs are: Ketchikan Gateway Borough, Kodiak Island Borough, Matanuska-Sustina Borough, North Slope Borough, Sitka Borough, Bristol Bay Borough, Fairbanks North Star Borough, Haines Borough, Juneau Borough, and Kenai Peninsula Borough.

3. See, Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974). See also, ALASKA STAT. §29.18.030 (1983).

4. ALASKA CONST. art. X, section 11, (1959) provides: "A home rule borough or city may exercize all legislative powers not prohibited by law or by charter."

5. See, ALASKA STAT. §29.08.020 (1983), which states:

   "A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city."

6. ALASKA STAT. §29.08.01 (1983).

7. Unorganized boroughs are discussed in article X, section 6, of the ALASKA CONSTITUTION which provides:

   "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility."...

8. ALASKA CONST. art. X, section 1, (1959).

9. See, ALASKA CONST. art. X, section 7, (1959).

   > Cities shall be incorporated in a manner prescribed by law and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law. Id.

10. ALASKA STAT. §29.08.01 (1983).

11. ALASKA STAT. §29.18.010 (1983).

12. Id.

13. See, Town of Fairbanks v. Barrock, 282 F. 417 (9th Cir. 1922); In re Annexation to City of Anchorage, 146 F. Supp. 98 (D. Alas. 1956).

14. ALASKA CONST. art X, section 12, (1959).

15. ALASKA STAT. §44.47.567(b)(1) (1983); Id. §29.68.010.

16. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

17. Id. See, City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska 1971). Of course, this philosophy is opposite that of many other states, such as Florida. Florida's annexation statute does not provide for central decision making by a board or state agency. Instead, Florida allows each municipality to decide for itself, by referenda, whether to enlarge or contract. See, FLA. STAT. ch. 171 (1983).

18. ALASKA STAT. §29.68.010 (1983); Id. §44.47.583 (1983).

19. Id. §38.05.320 (1983).

20. ALASKA CONST., art X, section 12, (1959); See, United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

21. ALASKA STAT. §44.47.565 (1983).

22. Id. at 44.47.567(1).

23. Id. at .567(2).

24. Id. at .567(3).

25. Id. at .567(4).

26. Id. at .567(b)(1).

27. Id. at .567(b)(2).

28. ALASKA STAT. §29.68.010(a) (1983).

29. Id. at .010(b).

30. Id. at .010(b)(1).

31. Id. at .010(b)(2).

32. Id. at .010(b)(3).

33. Id. at .010(c).

34. See, United States Smelting, Ref. & Mining Co. v. Local Boundary Commission, 489 P.2d 140 (Alaska 1971); Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., 516 P.2d 408 (Alaska 1973).

35. See, Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (1974).

36. Id.

37. Id.

38. Id.

39. Id.

40. Id. at 1148.

41. Id.

42. Id. at 1150.

43. Id.

44. See supra note 20.

45. Supra note 35, at 1151.

46. Id.

47. Id.

48. Id.

49. ALASKA STAT. §38.05.320 (1983).

50. Id. at .320(b).

51. Id.

52. Id.

53. Id. at .320(7).

54. Alaska's tidelands regulation has a long legislative history. The steps in the legislative history are the 1957 Act passed by the Territorial Legislature (ch. 184, SLA 1957); the 1957 federal Tidelands Act passed by Congress (Pub. L. 85-303, 71 Stat. 623, 48 U.S.C. §§455-455c); the 1959 Act passed by the Alaska State Legislature (ch. 169, SLA 1959); a 1960 formal Attorney General's opinion (1960 OP. ATTY. GEN. No. 13); the 1964 amendments to the 1959 Act (ch. 81, SLA 1964).

55. ALASKA STAT. §38.05.320 (1983). But see, State Dept. of Nat. Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981) (this Act to be liberally construed in favor of conveying waters to municipality).

II. California

A. Boundaries

1. State

The State of California, in its sovereign capacity, possesses legal title to: 1) tidelands, i.e., the area situated between the ocean's low and high water marks on the shoreline; 2) submerged lands up to three geographical miles from the coastline, and 3) the beds of navigable streams and lakes.[1]

2. Counties

The Fifteen California counties which border on the Pacific Ocean are: San Diego, Orange, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Monterey, San Francisco, Santa Cruz, San Mateo, Marin, Sonoma, Mendocino, Humbolt, and Del Norte.

The state is required to be divided into counties by statute.[2] The boundaries for each California county are individually defined in the California Government Code.[3] Like the State's oceanward boundary, each coastal county's boundary lies three miles off its coastline, as defined by statutes.[4]

3. Cities

City boundaries may extend into the Pacific Ocean, subject to the annexation restrictions over submerged lands, discussed *infra*.

B. California's Annexation Statute

With over 50 cities along its coast, California, like Florida, has a substantial interest in long-range management of submerged

lands. Unlike Florida, however, California has enacted laws specifically aimed at offshore municipal annexation. California has affimatively banned annexations or incorporations of State owned tidelands or submerged lands, without the approval of the State Lands Commission.

1. Annexation of Submerged Lands

California has enacted at least two statutes which restrict municipal annexations or incorporations of submerged or tide lands. The earliest statute, enacted in 1963 and still applicable, geographically restricted the area which could be annexed to lands within the seaward extensions of the city's existing land boundaries.[5] The statute also precluded any annexation without approval by the State Lands Commission.[6] The more recent tidelands annexation statute, enacted in 1977, does not create additional substantive requirements.[7] Rather, the newer statute merely re-words the former statute, without repealing it.[8] No court has yet considered California's tidelands annexation statutes.

The statutory requirements for annexation of submerged land are as follows:

1. No tidelands or submerged lands owned by the state or by its grantees in trust may be annexed to, or incorporated into, a city without the approval of the State Lands Commission.[9]
2. The city must file a map with the Commission showing proposed new boundaries.[10]
3. The State Lands Commission may approve or disapprove any or

all portions of the boundary proposal.[11] The Commission must require, where feasible, the city's extension of its boundaries to be at right angles to the shoreline.[12] The Commission may, however, allow irregular boundaries if necessary.[13]

4. The Commission has 45 days to decide whether to approve the annexation.[14]

5. The Commission's decision is final and conclusive.[15] Failure of the Commission to report their conclusion within 45 days is deemed approval of the annexation.[16]

Footnotes

1. REPORT ON THE USE, DEVELOPMENT, AND ADMINISTRATION OF GRANTED TIDELANDS AND SUBMERGED LANDS, State Lands Commission of California 1 (January, 1976). "By enactment of the Submerged Lands Act of 1953 (43 USC §1301) the United States relinquished to the coastal states all of its rights in all lands beneath navigable waters within a three mile limit and, in excess of that limit, within state boundaries as they existed at the time a state became a member of the Union, or as theretofore approved by Congress. The limit of the grant was three leagues." United States v. Louisiana, 363 U.S. 1 (1960). See, CALIF. CONST. art. XXI, section 1 (1849). ("...thence running west along said boundary line to the Pacific Ocean, and extending therein three English miles...") Id. See, CAL. GOV. CODE §170 (West 1980 & Supp. 1984) which provides: "the boundary...runs and has in the past run three English nautical miles oceanward...and adjacent to the mainland."

2. CAL. GOV. CODE §23001 (West 1980).

3. See, CAL. GOV. CODE §23108 (Del Norte); §23112 (Humboldt); §23119 (Los Angeles); §23121 (Marin); §23123 (Mendocino); §23127 (Monterey); §23130 (Orange); §23137 (San Diego); §23138 (San Francisco city and county); §23140 (San Luis Obispo); §23141 (San Mateo); §23142 (Santa Barbara); §23144 (Santa Cruz); §23149 (Sonoma); §23156 (Ventura) (West 1980 & Supp. 1984).

4. See e.g., CAL. GOV. CODE §23108 (Del Norte County) (West 1980) providing: "The boundaries of Del Norte County are as follows: ...beginning at a point in the Pacific Ocean...three miles from shore." Id.

5. CAL. GOV. CODE §35014 (West 1980).

6. Id.

7. CAL. GOV. CODE §35009 (Supp. 1984).

8. Id.

9. Id. §35009.

10. Id.

11. Id.

12. Id.

13. Id.

14. Id.

15. Id.

16. Id.

III. Texas

Introduction

The annexation law of Texas has evolved further than any other state discussed in this article. Not only has Texas updated the statutory law to reflect Supreme Court decisions regarding its boundaries, it has also enacted comprehensive legislation to regulate municipal annexation of submerged lands.

A. Boundaries and Annexation

1. State

The gulfward boundary of Texas was determined by the United States Supreme Court in Texas v. Louisiana in 1976.[1] The State of Texas has full sovereignty over the water, beds and shores, and arms of the Gulf of Mexico up the three marine leagues from its coastline.[2] This sovereignty is subject only to the United States' power to regulate foreign and interstate commerce under Article 1, Section 8 of the United States Constitution, and the United States' power over maritime and admiralty jurisdiction under Article III, Section 2 of the United States Constitution.[3]

2. Counties

The twelve coastal counties in Texas are: Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, Calhoun, Matagorda, Brazoria, Galveston, Chambers, and Jefferson. The gulfward boundary of each coastal county is three marine leagues.[4] The area in the extended boundaries of the counties is part of the public free school land and

is subject to constitutional and statutory provisions pertaining to use, sale, lease and distribution.[5]

3. Municipalities

Texas has enacted statutes directly limiting the gulfward extent of municipalities, and prohibiting annexations of submerged lands beyond a certain limit.[6] Texas has two types of cities: general law cities and home rule cities. Recent statutory changes and court decisions have made the present status of Texas law difficult to ascertain.

The background of Texas annexation law explains how the present gulfward annexation limits evolved. Prior to June 19, 1983, the gulfward boundaries of general law cities were limited to one mile from the coastline.[7] Home rule cities, however, were permitted to extend their boundaries 10.45 miles gulfward.[8] Fearing that home rule taxation and annexation of submerged land oil leases would encourage oil companies to relocate outside the state's boundaries in federal waters, the Texas legislature enacted what is now the law regarding submerged land annexations.[9] Presently, the boundaries of general law cities are limited to one mile gulfward from the coastline.[10] Home rule cities may extend their boundaries no more than one marine league (3.48 miles) into the Gulf.[11] Although at least one home rule city, Port Arthur, had, prior to enactment of the new annexation limits, extended is boundaries 10.5 miles gulfward, the statute voided the boundary beyond one marine league from the coastline.[12]

The new Texas law continues to allow coastal municipalities to tax oil leases within their Gulf boundaries, but only up to one mile in the case of general law cities or one league for home rule cities.[13]

Footnotes

1. 426 U.S. 465 (1976). See, U.S. v. Louisiana, 363 U.S. at 84 (1960); TEX. NAT. RES. CODE ANN. §11.1012 (Vernon 1983).

2. Id.

3. Id.

4. See, TEX. NAT. RES. CODE ANN. §11.013 (Vernon Supp. 1982).

5. Id. The revenues derived from submerged lands leases within state waters are used to support public schools in Texas.

6. The general annexation statute in use in Texas is not relevant for purposes of this discussion. See, TEX. REV. CIV. STAT. ANN. art. 970a (Vernon 1963 & Supp. 1983).

7. See TEX. NAT. RES. CODE ANN. §11.013(c) (Vernon Supp. 1982). "The gulfward boundaries of any city, town or village created and operating under the general laws of the State of Texas shall not be established or extended by incorporation or annexation more than 5,280 feet gulfward beyond the coastline..." Id.

8. Cf. TEX. NAT. RES. CODE ANN. §11.0131 (Vernon 1981) (emergency moratorium on home rule annexations more than one mile from coastline; expired October 1, 1983).

9. Senate Bill 551, enacted June 19, 1983, amending TEX. NAT. RES. CODE ANN. §11.0131(b), (c), and (d) (Vernon 1963 & Supp. 1982).

10. See supra note 7.

11. See supra note 9.

12. Id.

13. Id.

IV. Louisiana

A. Boundaries

1. State

The state's gulfward boundary was established in United States v. Louisiana,[1] by the United States Supreme Court. Although Louisiana, like Mississippi and Alabama, had previously claimed a boundary three marine leagues into the Gulf,[2] the Court rejected this argument and held that Louisiana's boundary extended only three geographic miles from its coastline.[3] Louisiana's constitutional and statutory provisions,[4] claiming a three marine league limit, are therefore superceded.

2. Counties

Louisiana's counties are called parishes. The eleven parishes which border on the Gulf of Mexico are: Cameron, Vermillion, Iberia, St. Mary, Terrebonne, Lafourche, Jefferson, Plaquemines, Bernard, Orleans, and St. Tammany.

Louisiana statutes provide that the gulfward boundary of coastal parishes "extend coextensively with the gulfward boundary of the State of Louisiana."[5] Since the state's gulfward boundary lies three geographical miles from the coastline, the Gulf parishes' boundaries also extend to this limit.

3. Municipalities

There is no method for determining the gulfward extent of coastal cities' boundaries other than to investigate each city's charter and laws.[6]

B. Louisiana's Annexation Statutes[7]

Two methods of annexation are available to a municipality in Louisiana. First, a municipality may extend its corporate limits by means of petition and election.[8] A second method is by means of petition and ordinance.[9] Additionally, if the territory to be annexed is owned by a public body, such as the state, a municipality may annex the area upon petition to the public body, without complying with otherwise required procedures of advertisement, petition by residents or public hearing.[10] Louisiana's annexation law, like the laws of Florida, Alabama, Alaska, and Mississippi do not specifically address annexations of coastal waters. However, the statute on its face would not prevent municipal annexation of offshore lands.

1. Annexation by Petition and Election[11]

This method is employed by owners of an adjacent area seeking to become part of the city.[12] One-third of the land owners in the area lying contiguous to the city (excepting New Orleans) may request the city to annex the area.[13] The petition must contain a map or plat outlining the area to be annexed.[14] The plat is permanently recorded in the official records of the town.[15]

After the petition has been filed, the city officials may order an election to be held by the qualified electors residing in the area

proposed for annexation.[16] If the majority of voters vote in favor of annexation, the city officials may then order a second election to be held by the qualified electors residing in the city itself.[17] If a majority of the city's voters vote in favor of the proposed annexation, the area is annexed to the city by proclamation.[18]

2. Annexation by Petition and Ordinance[19]

This method allows a municipality (excepting New Orleans) to annex territory through passage of local ordinances.[20] The ordinance is valid, however, only when a petition has previously been filed requesting annexation, signed by a certain percentage of the residents in the area to be annexed.[21] If there are no registered voters residing in the area proposed for annexation, then the requirement for a majority of the registered voters on the petition does not apply.[22]

Subject to the requirement that the annexation be reasonable, Louisiana statutes do not prohibit annexations of unoccupied, rural lands. One of the major considerations in determining the reasonableness of an annexation proposal is whether the city needs the area for future growth.[23] Assuming a municipality could demonstrate a reasonable need for offshore waters, the Louisiana statute on its face would allow such an annexation.

Footnotes

1. 363 U.S. 1 (1960).

2. 363 U.S. at 79.

3. Id. For an interesting discussion of Louisiana's boundaries see, Stockwell, The Boundaries of the State of Louisiana, 42 LA. L. REV. 1043 (1982).

4. See e.g., LA. REV. STAT. ANN. §49:1 (1954 & Supp. 1983) "The historic gulfward boundary of the state of Louisiana extends a distance of 3 marine leagues from coast." Id.

5. LA. REV. STAT. ANN. §49:6 (1954 & Supp. 1983).

6. See, LA. REV. STAT. ANN. §33:178 (Supp. 1984) (must file boundary changes with clerk of the district court of parish in which city is located).

7. LA. REV. STAT. ANN. §33:141-180 (1950 & Supp. 1984).

8. Id. §33:151.

9. Id. §33:171.

10. Id. §33:180.

11. Id. §33:151.

12. Id.

13. Id. (requires one third "in number and in value of the bona fide owners of any lots or land, lying contiguous and adjacent to the territorial corporate limits of any city or town, the city of New Orleans excepted.")

14. Id.

15. Id. §33:152, 153.

16. Id. §33:153.

17. Id. §33.157.

18. Id. §33.160.

19. See, LA. REV. STAT. ANN. §33:171 (1950 & Supp. 1984).

20. Id.

21. Id. §33:172 provides:

> No ordinance enlarging the boundaries of a municipality shall be valid unless prior to the adoption thereof a petition has been presented to the governing body of the municipality containing the written assent of twenty-five percent in number of the resident property owners as well as twenty-five percent in value of the property within the area proposed to be included in the corporate limits according to the certificate of the parish assessor. Id.

22. Id. §33:172 (Supp. 1984).

23. See e.g., Barbe v. City of Lake Charles, 45 So.2d 62 (La. 1950); Kansas City So. Ry. v. City of Shreveport, 354 So.2d 1362, at 1369 (La. 1978). Reasonableness of municipal enlargement is determined by, among other factors, population, need for homes, industrial or merchantile establishments, and a need for additional land area to accommodate the present or reasonably anticipated future growth of the municipality. Id.

V. Mississippi

A. Boundaries

1. Counties

Mississippi has three coastal counties:[1] Hancock County,[2] Harrison County[3] and Jackson County.[4] Mississippi Statutes, Chapter 19, sets forth each county's legal boundary description.[5] Each county's description states that the boundary extends into the Gulf including "all the islands within six leagues of the shore of the Gulf of Mexico."[6] This description could lead to the conclusion that the three coastal counties boundaries lie six leagues offshore. The Mississippi Constitution, Article II, Section 3, similarly establishes the state's Gulf boundary to include "all islands within six leagues of the shore."[7] Finally, Mississippi Statutes, section 3-3-5 gives coastal counties jurisdiction to the southern boundary of the state,[8] which presumably was six leagues from shore.

In 1960, however, the United States Supreme Court fixed the Gulf boundary of Mississippi at three miles from its coast.[9] The court specifically addressed the language used in Mississippi's constitution refering to all islands within six leagues of the shore.[10] The court stated that this language did not establish a boundary line six leagues from shore including all waters and submerged lands as well as all islands. Instead, the court concluded that the provision gave Mississippi title to islands, not waters where there were no islands.[11] The court declined to express any opinion on the specific location of Mississippi's coastline.[12] To date, the Mississippi

Constitution and statutes which define coastal county and state boundaries to extend six leagues into the Gulf, have not been amended.

2. Municipal Boundaries

The Mississippi statutes do not set forth the boundary descriptions for coastal cities; nor does the Mississippi Constitution mention the limits a municipality may extend into coastal waters. Mississippi's law regulating tidelands and submerged lands[13] does not explicitly address municipal ownership of submerged, adjacent lands. It also fails to provide for a method of conveyance of these lands to the city by the state. The most likely source to contain an accurate description of a coastal city's territorial limits is the individual municipal charter.

3. Port Authorities

Coastal county port authorities are given broad powers over submerged lands within their jurisdiction. The Ports, Harbors, Landings and Watercraft Act,[14] can be interpreted as conferring complete control to the port authority over waters below the mean high tide line within their geographical boundaries. The port authority, therefore, has the potential power to lease, sell or restrict the use of submerged lands.[15]

B. Mississippi's Annexation Statute

Mississippi's annexation procedures are primitive by comparison to other states' laws, such as Florida's statute. Mississippi has one

statute which governs all extensions or contractions of corporate boundaries.[16] However, the statute does not address itself to extensions of corporate boundaries into tidal waters.

Several steps are required of a municipality seeking to annex or exclude territory. The process begins by the municipality passing an ordinance defining the territory proposed to be annexed and also defining the entire boundary as changed.[17] One aspect of the Mississippi statute which stands in sharp contrast to Florida annexation requirements concerns proposed improvements to be conferred on the annexed territory. The Mississippi statute requires only that the annexation ordinance describe in general terms the proposed improvements, the extent of the improvements, and the time within which the improvements will be made.[18] Florida requires a much more specific showing of the nature of improvements to be conferred on the annexed area; i.e., trunk water mains, sewage lines, etc.[19] The Mississippi statutes also requires, as does the Florida statute, a statement of the public services which the city intends to render in the annexed territory.[20]

After the municipality has passed the annexation ordinance, the municipal authorities must file a petition in the chancery court of the county in which the city is located.[21] If the annexed territory spans two adjoining counties, the petition must be filed in the chancery court of the county in which the territory is located.[22] Florida forbids annexations of territory located in a county other than the county where the municipality is located.[23] The chancery court either affirms or rejects the petition for annexation.[24] The petition must

contain a map or plat of the municipal boundaries as they will exist if the annexation takes place.[25]

Upon filing the petition, the chancellor of the court must set a fixed time within which a hearing will be held.[26] All interested parties have a right to appear at the hearing and object to the annexation.[27] Additionally, if the area to be annexed is located within three miles of another municipality, then the other municipality is automatically made a party defendant to the petition and served with notice at least 30 days prior to the hearing.[28]

At the hearing, the chancellor determines whether the annexation is 1) reasonable, 2) required by public convenience and necessity, and 3) that reasonable public and municipal services will be rendered in the annexed area.[29] If the chancellor determines that the above requirements will be met, he ratifies the proposed annexation.[30] The chancellor may also modify the proposed annexation by decreasing the territory.[31] If the chancellor determines that the above requirements are not met he must deny the proposal.[32] The chancellor's decision is effective after 10 days from the date he renders it, or within 10 days from the final determination of an appeal taken to his decision.[33] At all times the burden is upon the municipality to show the annexation is reasonable.[34] After 10 days from the date the chancellor renders his decision, he files a copy of his decree with the Secretary of State.[35]

No court has had occasion to review a proposed annexation of Mississippi's territorial waters. However, a few decisions have elaborated on the scope of the Mississippi statute. In Lowe v.

Jackson,[36] the Mississippi Supreme Court upheld an annexation of swampland under the rationale that the area was likely to become developed within a reasonable period of time.[37] Arguably, this rationale taken to its logical extreme would support a proposed annexation of uninhabited waters where the municipality could show imminent future development and industrialization of the waters. However, in Extension of Boundaries of Horn Lake v. Renfro,[38] the Mississippi Supreme Court upheld the denial of a proposed annexation of territory separated from the city by a flood plain.[39] This decision, however, also turned on the fact that the area proposed for annexation already had adequate public services.[40]

Although the Mississippi annexation statute does not articulate standards to guide annexations, the Mississippi courts have created criteria which could potentially regulate annexations of territorial waters of the state. In Bridges v. Biloxi,[41] a lower court set forth the general criteria for determining whether an annexation ordinance is reasonable under the statute. The criteria are 1) the city's need for expansion; 2) whether the area sought to be annexed is reasonably within the path of such expansion; 3) the potential health hazard from sewage and waste disposal in the annexed area; and 4) the city's financial ability to make the improvements and furnish municipal services as promised.[42] These criteria closely resemble the criteria listed in several Florida court decisions.[43]

Footnotes

1. MISS. CODE ANN. §3-3-5 (1972 & Supp. 1983).

> Counties on the Mississippi River and Gulf of Mexico extend. ...and the counties bordering

on the Gulf of Mexico, to wit Jackson, Harrison and Handwick, shall, respectively, have and possess jurisdiction and extend to the southern boundary of the state within the space embraced by extending their boundary lines which strike the Gulf of Mexico, or inlets thereto, on a contiguous direct course to the southern boundary of the state, including all islands that may lie within the limits thus defined. Id.

2. Id. §19-1-45 (1972 & Supp. 1983).

3. Id. §19-1-47.

4. Id. §19-1-59.

5. Id. See notes 2, 3, 4, supra.

6. Id.

7. MISS. CONST. art II, section 3 (1890).

8. See supra note 1.

9. See, United States v. Louisianna, 363 U.S. 1, at 80 (1960). This case decided the claims of Louisiana, Texas, Mississippi and Alabama, to exclusive possession over submerged lands beyond three geographic miles from each state's coast. Florida's claim is discussed in a separate opinion, 363 U.S. 121 (1960).

10. Id.

11. Id. at 81. "We have already held with respect to Louisiana's claim to a three league maritime boundary that an Act of Admission which refers to all islands within a certain distance of the shore does not appear on its face to mean to establish a boundary line that distance from the shore, including all waters and submerged lands as well as all islands." Id.

12. Id. at 82.

13. MISS. CODE ANN. §29-1-101, 107 (1972 & Supp. 1983).

14. MISS. CODE ANN. §59-1-17 (1972 & Supp. 1983), provides in part:

> The several port commissions in the State of Mississippi are each hearby vested with full jurisdiction and control of any and all lands lying within, or adjacent to, any river, bay or natural lake which are now, or heretofore

> were, below the mean high tide mark, and which lands lie within or adjacent to any port or harbor within the jurisdiction of such port commission. Id.;

MISS CODE ANN. §59-1-19 (1972 & Supp. 1983), provides in part:

> In the event any part of lands as are described in section 59-1-17 are not used for port purposes, and navigation and commerce will not be impeded thereby, such port commission may sell, lease, or otherwise dispose of same to individuals, firms or corporations, public or private, for individual use, on such terms and conditions and with such safeguard as will best promote and protect the public interest. Id.

15. Id.

16. MISS. CODE ANN. §21-1-27, 21-1-43 (1972 & Supp. 1983).

17. Id. §21-1-27.

18. Id.

19. See, FLA. STAT. ch. 171.042 (1983).

20. MISS. CODE ANN. §21-1-27 (1972 & Supp. 1983). Cf. FLA. STAT. ch. 171. (1983).

21. MISS. CODE ANN. §21-1-29 (1972 & Supp. 1983).

22. Id.

23. See, FLA. STAT. ch. 171.042 (1983).

24. MISS. CODE ANN. §21-1-29 (1972 & Supp. 1983).

25. Id.

26. Id. §21-1-31.

27. Id.

28. Id.

29. Id. §21-1-33.

30. Id.

31. Id.

32. Id.

33. Id.

34. Id.

35. Id. §29-1-39.

36. 336 So.2d 490, cert. den. 429 U.S. 980, 50 L.Ed. 2d 589, 97 S.Ct. 493.

37. Id.

38. 361 So.2d 1372 (Miss. 1978).

39. Id.

40. Id.

41. 178 So.2d 683 app. dismd. 383 U.S. 574; 16 L.Ed. 2d 106, 86 S.Ct. 1077.

42. 178 So.2d at 685.

43. See e.g., Bower v. City of Tampa, 316 So.2d 570 (Fla. 2d DCA 1975).

VI. Alabama

A. Boundaries

1. State Boundaries

The Alabama Constitution, Article II, Section 37, defines the state's boundaries. The constitution provides that the state's gulf-ward boundary extends "due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido River.[1] The Alabama Code, Chapter 41-2-1, defines the state's Gulf boundary in identical language.[2] In 1960, however, the United States Supreme Court restricted Alabama's Gulf boundary to three geographical miles from its coast.[3] The Court declined to specify where the coastline ended.[4]

2. County Boundaries

Only two Alabama counties border on the Gulf of Mexico: Baldwin County and Mobile County. The legal descriptions for Alabama counties are not contained in either the state's constitution or the state's statutes. Nor does Alabama law define the Gulf extent of Mobile or Baldwin County's boundaries. Article II, Section 38, of the Alabama Constitution states that "[t]he boundaries of the several counties of this state, as they now exist, are hearby ratified and confirmed."[5] The Alabama Code, Chapter 11-1-1, further provides that the state is divided into 67 counties and lists all counties by name.[6] Presumably, since the entire state is divided into counties by statute, Mobile and Baldwin County's boundaries must extend three geographical miles into the Gulf of Mexico.

3. Municipalities

Article XII, Section 220, of the Alabama Constitution discusses municipal corporations, but is silent on the question of whether coastal cities may annex Gulf waters. The Constitution is also silent as to annexation in general. Chapter 11-40-1 of the Alabama Code governs municipal corporations in general. Like the state's constitution, the Code does not mention the Gulfward extent of municipal boundaries. Information about a coastal city's municipal limits in the Gulf of Mexico, may be found in the individual city's charter or incorporation documents.

B. Alabama's Annexation Statutes

Alabama has an extensive annexation statute found in Chapter 42 of the Alabama Code.[7] The statute does not specifically address annexations of territorial waters. The Alabama statute separates annexation procedures into three categories: 1) annexations generally;[8] 2) annexations by cities of 2,000 inhabitants or more, and[9] 3) annexations by cities of 25,000 or more.[10]

1. Annexation Generally

The provisions of this section set forth proceedures for annexations but do not preclude annexations by other legally authorized means.[11] The annexation begins with the city council's passage of a resolution stating that the annexation will be in the public interest.[12] The mayor then certifies a copy of the resolution to the probate judge of the county where the land proposed for annexation is

located.[13] A map must be attached to the resolution.[14] The judge has 15 days to enter an order directing an election among the qualified voters residing within the territory to be annexed.[15] Each voter has 3 months within which to vote either for or against the annexation.[16] If a majority votes in favor, the annexation proceeds.[17]

The map or plat filed with the initial annexation resolution must accurately show 1) the territory proposed to be annexed, including subdivisions and streets, if any, and 2) that the territory is contiguous to the boundary of the city.[18] The city may not annex any territory already part of another municipality.[19] No territory may be annexed unless at least two qualified electors reside on each quarter of each quarter section according to a government survey.[20] Additionally, these residents along with owners of 60% of the acreage to be annexed, must consent in writing to the annexation.[21] After an election has been held in any area, no other subsequent election may occur for the same area or any part within 12 months.[22]

2. Annexations of Territory By Cities of 2,000 Inhabitants Or More[23]

All of the owners of property within the area to be annexed must sign and file a written petition requesting annexation.[24] The municipality of 2,000 or more inhabitants must also adopt the petition and thereby consent to the annexation.[25] The petition must contain an accurate description of the property,[26] which must be contiguous to the municipality.[27] This method is available only for uncontested annexations.[28]

3. Annexation of Territory Containing 25,000 Inhabitants Or More[29]

This annexation procedure is similar to the general annexation procedure, requiring a resolution by the city council, decree by the probate judge, map or plat of the territory, and election.

C. Conclusion

Alabama's annexation law, although extensive, does not embrace annexations of offshore waters by coastal cities. Like Florida's annexation law, Alabama's law was clearly not intended to cover such situations. Perhaps under a very strained construction of the statute a coastal city may be able to annex submerged lands off its coast. However, it appears that Alabama is no more advanced than Florida in developing laws to control attempts by municipalities to annex waters offshore.

Footnotes

1. ALA. CONST. art. III, section 37 (1901).

2. ALA. CODE §42-2-1 (1975 & Supp. 1983).

3. See, United States v. Louisiana, 363 U.S. at 82. The Court held that:

> as to the states of Louisiana, Mississippi, and Alabama...the United States is entitled, as against these States, to all the lands, minerals, and other natural resources underlying the Gulf of Mexico more than three geographical miles from the coast of each such state, that is, from the line of ordinary low-watermark and outer limit of inland waters, and extending seaward to the edge of the continental shelf. Id. at 83.

4. Id.

5. ALA. CONST. art. II, Section 38 (1901).

6. ALA. CODE §11-1-1 (1975 & Supp. 1983).

7. See, ALA. CODE §11-42-1, to 11-42-88 (1975 & Supp. 1983).

8. Id. §11-42-1, 11-42-4.

9. Id. §11-42-20, 11-42-23.

10. Id. §11-42-40, 11-42-88.

11. Id. §11-42-1.

12. Id. §11-42-2.

13. Id. §11-42-2(1).

14. Id.

15. Id. §11-42-2(2).

16. Id. §11-42-2(4).

17. Id. §11-42-2(7).

18. Id. §11-42-2(10).

19. Id.

20. Id.

21. Id.

22. Id. §11-42-4.

23. Id. §11-42-20 (1975).

24. Id. §11-42-21.

25. Id.

26. Id.

27. See, City of Leeds v. Town of Moody, 319 So.2d 242 (Ala. 1975).

28. See, City of Birmingham v. Tarrant City, 315 So.2d 583 (Ala. 1975).

29. See, ALA. CODE §11-42-40 (1975).