Alaska Outer Continental Shelf

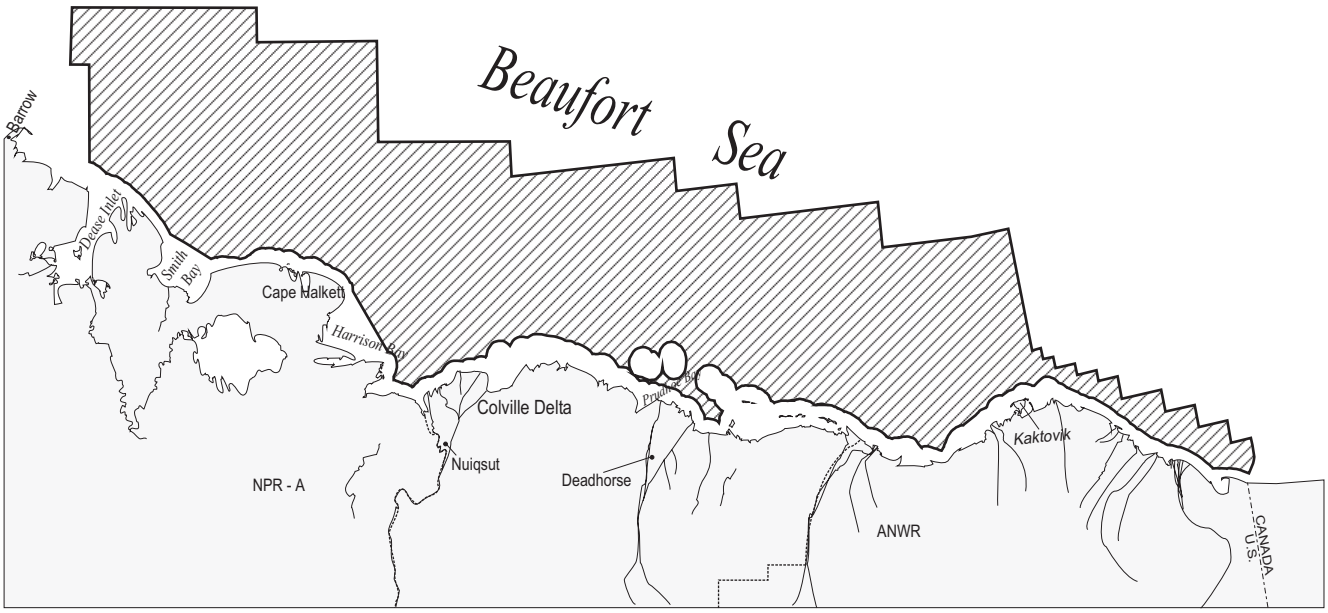
OCS EIS/EA
MMS 2003-001

# Beaufort Sea Planning Area

**Oil and Gas Lease Sales**
**186, 195, and 202**

Final Environmental
Impact Statement

Volume I
(Executive Summary, Sections I through VI)




**U.S. Department of the Interior**
**Minerals Management Service**
**Alaska OCS Region**

# APPENDIX D

# APPLICABLE FEDERAL LAWS REGULATORY RESPONSIBILITIES, AND EXECUTIVE ORDERS

# APPLICABLE FEDERAL LAWS, REGULATORY RESPONSIBILITIES, AND EXECUTIVE ORDERS

# APPLICABLE FEDERAL LAWS, REGULATORY RESPONSIBILITIES, AND EXECUTIVE ORDERS

This appendix briefly explains or summarizes only those portions of Federal public laws enacted by Congress (see the list of legal mandates in Section I.B of this EIS) and other applicable Federal regulatory responsibilities, executive orders, and stipulations (mitigating measures) as they relate directly or indirectly to Minerals Management Service's (MMS's) management of mineral leasing, exploration, and development and production activities on leases located in the submerged lands of the Outer Continental Shelf (OCS). Additionally, this section includes responsibilities and jurisdictions of other Federal Agencies and departments involved in the regulatory process of oil and gas lease sales and operations on the OCS. This is not intended to be a comprehensive summary or explanation of all the laws associated with proposed leasing, exploration, and development and production activities that might significantly affect the OCS. References, explanations, or summaries are given only to acquaint the reader with the law and are not meant as legal interpretations. Readers always should consult the entire text of the laws for updates and additional requirements and information.

## D.1. Federal Laws and Regulatory Responsibilities

### D.1.a. The Outer Continental Shelf Lands Act

A jurisdictional dispute concerning the ownership of coastal submerged lands arose as new technology became available for developing offshore oil resources in increasingly deeper waters. This dispute was resolved in 1953 by two congressional statutes that clarified Federal and State rights and responsibilities for the "continental shelf" (the submerged lands extending from the coastline to the edge of the continental slope). The first statute, the Submerged Lands Act of 1953 (43 U.S.C. § 1331 et seq.), affirmed the coastal states' assertion of ownership of the submerged lands and resources within a 3-mile belt seaward of the line of low tide. The second statute, the OCS Lands Act of 1953, as amended (43 U.S.C. § 1331 et seq.), established that the submerged lands and resources of the OCS or beyond 3 miles, "appertained to the United States and [were] subject to its jurisdiction, control, and power of disposition." The OCS Lands Act authorizes the Secretary of the U.S. Department of the Interior (USDOI) to issue mineral leases and grant rights-of-way and to prescribe regulations governing oil and gas activities on OCS lands.

The OCS Lands Act defines the OCS as:

> ...all submerged lands lying seaward and outside of the areas lands beneath navigable waters as defined in section 2 of the Submerged Lands Act and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

The pertinent provision of the Submerged Lands Act defines "navigable waters" as:

> ...all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles....

Under the OCS Lands Act, the Department of the Interior is required to:

- make Federal OCS resources available to meet the Nation's energy needs;
- conduct, develop, and manage the orderly leasing, exploration, development, and production of mineral resources on the Federal OCS;
- balance orderly energy resource development while ensuring the protection of the human, marine, and coastal environments;
- ensure that the public receives a fair and equitable return for Federal OCS resources; and
- ensure that free-enterprise market competition is preserved and maintained.

The Secretary of the Interior has delegated the responsibility of managing and regulating the development of OCS oil and gas resources in accordance with the provisions of the OCS Lands Act to the MMS.

The MMS leasing regulations are presented in Chapter 30, Code of Federal Regulations (CFR) part 256. The MMS operating regulations governing exploration, development, and production on OCS leases are presented in 30 CFR parts 250 and 270.

The OCS Lands Act extends the authority of the Secretary of the Army, through the Corps of Engineers, to the OCS to prevent obstruction to navigation in U.S. navigable waters.

The OCS Lands Act grants authority to the U.S. Coast Guard to promulgate and enforce regulations covering lighting and warning devices, safety equipment, and other safety-related matters pertaining to life and property on fixed OCS platforms and drilling vessels.

In accordance with the OCS Lands Act (43 U.S.C. § 1354) and the Export Administration Act of 1969 (50 App. U.S.C. 2405(d)), oil that is produced on the U.S. OCS must go to a U.S. port.

## D.1.b. The National Environmental Policy Act of 1969 and the Council on Environmental Quality

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. § 4321 et seq.), is the foundation of environmental policymaking in the U.S. Recognizing the profound impact of human activity on the interrelations of all components of the natural environment, the Congress declares in NEPA that it is the continuing policy of the Federal Government, in cooperation with State and local governments and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare; to create and maintain conditions under which humans and nature can exist in productive harmony; and fulfill the social, economic, and other requirements of present and future generations of Americans. The Congress authorizes and directs that, to the fullest extent possible, the policies, regulations, and public laws of the U.S. shall be interpreted and administered in accordance with the policies set forth in NEPA. The NEPA process is intended to help Federal officials make decisions based on an understanding of environmental consequences and take actions that protect, restore, and enhance the environment.

The NEPA established two primary mechanisms for this purpose:

1. The Council on Environmental Quality (CEQ) was established to advise Federal Agencies on the environmental decisionmaking process and to oversee and coordinate the development of Federal environmental policy.
2. Federal Agencies must include an environmental review process early in the planning for proposed actions.

Congress first established the CEQ as part of the NEPA. Additional responsibilities were provided by the Environmental Quality Improvement Act of 1970. The CEQ established uniform procedures by issuing

regulations (40 CFR, parts 1500 through 1508) to implement the procedural provisions of NEPA. These regulations include procedures to be used by Federal Agencies for the environmental review process. The regulations provide for the use of the NEPA process to identify and assess reasonable alternatives to proposed Federal actions that avoid or minimize adverse effects of these actions on the quality of the human environment.

The NEPA requires all Federal Agencies to use a systematic, interdisciplinary approach to protect the human environment. Such an approach ensures the integrated use of natural and social sciences in any planning and decisionmaking that may have an impact on the environment. The NEPA also requires the preparation of a detailed environmental impact statement (EIS) on any major Federal action that may have a significant impact on the environment. The EIS must address any adverse environmental effects that cannot be avoided or mitigated, alternatives to the proposed action, the relationship between short-term resources and long-term productivity, and irreversible and irretrievable commitments of resources. Environmental assessments (EA's) are prepared to determine if significant impacts may occur. If an EA finds that significant impacts may occur, NEPA requires the preparation of an EIS. The briefest form of NEPA review is the categorical exclusion review, which verifies that neither an EA nor an EIS is needed before making a decision on the activity being considered for approval.

For compliance with the NEPA, see 40 CFR, parts 1500 through 1508.

### D.1.c. The Clean Air Act of 1970 and the Clean Air Act Amendments of 1990

The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.), authorizes the U.S. Environmental Protection Agency (USEPA) to establish National (primary or secondary) standards within air-quality-control regions of each state in addition to National emission standards for hazardous air pollutants (National Ambient Air Quality Standards [NAAQS]). The Act requires Federal departments or agencies that have jurisdiction over any property or facility or that are engaged in any activity resulting from the discharge of air pollutants to comply with all Federal, State, interstate, and local requirements in the control and abatement of air pollution. Section 5(a)(8) of the OCS Lands Act requires MMS, through the Secretary of the Interior, to ensure that OCS regulations incorporate and comply with NAAQS.

The 1990 Clean Air Act Amendments (CAA) delineate jurisdiction of air quality between the USEPA and the U.S. Department of the Interior (USDOI), MMS and affect the attainment and maintenance of NAAQS (Title I), motor vehicles and fuel reformulation (Title II), hazardous air pollutants (Title III), acid deposition (Title IV), facility operating permits (Title V), stratospheric ozone protection (Title VI), and enforcement (Title VII).

Section 328 of the CAA transfers authority for air quality on the OCS to the USEPA. Under the CAA, the Secretary of the Interior is required to consult with the USEPA "to assure coordination of air pollution control regulations for OCS emissions and emissions in adjacent onshore areas." On September 4, 1992, the USEPA promulgated requirements (40 CFR, part 55) to control air pollution from OCS sources to attain and maintain Federal and State air-quality standards and to comply with CAA provisions for the Prevention of Significant Deterioration. The promulgated regulations require OCS sources to comply with applicable onshore air-quality rules in the corresponding onshore area.

On November 30, 1993, the USEPA instituted final rules for determining general conformity of Federal actions with Federal and State air-quality implementation plans. Section 176(c) of the CAA, the General Conformity Rule, requires Federal Agencies to ensure that actions undertaken in nonattainment or maintenance areas are consistent with the applicable implementation plan. A Federal Agency must make a determination that a Federal action conforms to the applicable implementation plan before the Federal action is taken.

To comply with the CAA, the MMS established regulations to address air quality concerning OCS operations. These regulations are found under 30 CFR 250.302, 250.303, and 250.304. The regulated pollutants include carbon monoxide, particulates, sulfur dioxide, nitrogen oxides, and volatile organic compounds (as a precursor to ozone). In areas where hydrogen sulfide may be present, OCS operations are

regulated by 30 CFR 250.417. The MMS regulations allow for the collection of information about potential sources of pollution for the purpose of determining whether the projected emissions of air pollutants from a facility could result in ambient onshore air-pollutant concentrations above maximum levels provided in the regulations. These regulations also stipulate appropriate emissions controls considered necessary to prevent accidents and air-quality deterioration.

## D.1.d. The Federal Water Pollution Control Act and Clean Water Act

The Federal Water Pollution Control Act (FWPCA) of 1972, as amended (33 U.S.C. § 251 et seq.), established water-pollution-control activities to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The Clean Water Act (CWA) of 1977 (91 Stat. 1566) amended the FWPCA. Most activities are administered by the USEPA.

Title III of the CWA requires the USEPA to establish national effluent limitation standards for existing point sources of wastewater discharges that reflect the application of the best practical control technology currently available. These standards apply to existing OCS exploratory drillships, semisubmersible vessels, and jackup rigs used in exploration activities. The CWA also requires the USEPA to establish regulations for effluent limitations for categories and classes of point sources that require the application of "best available control technology economically achievable."

Section 311 of the CWA (33 U.S.C. § 1321), as amended, prohibits the discharge of oil or hazardous substances into the navigable waters of the U.S. that may affect natural resources, except under limited circumstances, and establishes civil penalty liability and enforcement procedures to be administered by the Coast Guard.

Title IV of the CWA establishes requirements for Federal permits and licenses to conduct an activity (including construction or operation of facilities) that may result in any discharges into navigable waters. Section 402 of the CWA (33 U.S.C. § 1342) gives the USEPA the authority to issue National Pollutant Discharge Elimination System (NPDES) permits for discharges of any pollutant from a point source into navigable waters. The NPDES permits are issued in compliance with USEPA's guidelines for determining the degradation of marine waters, and they apply to all sources of wastewater discharges from exploratory vessels and production platforms operating on the OCS.

Section 404 of the CWA (33 U.S.C. § 1344) authorizes issuance of permits, under certain criteria, for discharge of dredged or fill material into navigable waters at specified disposal sites. The Secretary of the Army, acting through the Corps of Engineers, has the authority to administer Section 404. Permits may be issued only after a determination is made that the activities involving discharges of dredged or fill material are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment.

Pursuant to the 1984 Memorandum of Understanding between the USEPA and the USDOI concerning the coordination of NPDES permit issuance with the OCS oil and gas lease program, the MMS Alaska OCS Region and the USEPA Region 10 entered into a Cooperating Agency Agreement to prepare EIS's for oil and gas exploration and development and production activities on the Alaskan OCS. Section 402 of the CWA authorizes the USEPA to issue NPDES permits to regulate discharges to waters of the U.S., including the territorial seas, contiguous zone, and oceans. The NPDES permits for OCS oil and gas facilities many contain effluent limitations developed pursuant to sections of the CWA, including sections 301, 302, 306, 307, and 403. With the offshore subcategory under the CWA, the USEPA may have NEPA responsibilities for permits issued to new sources (Section 306 of the CWA), that overlap with those of the MMS. The USEPA's primary role in the Cooperating Agency Agreement is to provide expertise in those fields specifically under its mandate.

In conjunction with the issuance of an NPDES permit, the USEPA is responsible for publishing an Ocean Discharge Criteria Evaluation (ODCE) that evaluates the impacts of waste discharges proposed for oil and gas projects. The purpose of the ODCE is to demonstrate whether or not a particular discharge will cause unreasonable degradation to the marine environment.

For multiple-use conflicts, see the USEPA listing of ocean-dumping sites found under 40 CFR part 228.

The MMS pollution prevention and control regulations are found under 30 CFR 250.300.

## D.1.e. The Coastal Zone Management Act and the Coastal Zone Reauthorization Amendments

Congress passed the Coastal Zone Management Act (CZMA) of 1972, as amended (16 U.S.C. § 1451 et seq.) and created the Coastal Zone Management Program to improve the management of the Nation's coastal areas. Both the Coastal Zone Reauthorization Amendments of 1990 (P.L. No. 101-508), enacted November 5, 1990, and the Coastal Zone Protection Act of 1996 (P.L. No. 104-150), enacted June 3, 1996, amended and reauthorized the CZMA. The Program, a voluntary partnership between the Federal Government and the coastal states and territories, is administered at the Federal level by the National Oceanic and Atmospheric Administration (NOAA) within the U.S. Department of Commerce (USDOC). The Program's goal is to reduce conflict between environmental and economic interest in the coastal area through the use of federally approved coastal management programs (CMP's). Each state's CZM program sets forth objectives, policies, and standards regarding public and private use of land and water resources in that state's coastal zone.

The CZMA allows a coastal state or territory with a federally approved CMP to review Federal activities for Federal consistency. Consistency applies whenever a Federal activity initiates a series of events where coastal effects are reasonably foreseeable (see H.R. Rep. No. 1012, 96th Cong., 2d Sess. 4382). The CZMA requirement that all Federal activity, including OCS oil and lease sales, regardless of location (in or outside the coastal zone) that is reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state's/territory's CMP. Section 307 of the CZMA (16 U.S.C. § 1456) contains the following Federal consistency provisions that impose certain requirements on Federal Agencies to comply with enforceable policies detailed in the federally approved CMP's:

> Section 307(c)(1) requires that Federal Agencies must conduct their activities, regardless of location, if coastal effects are reasonably foreseeable, that affects any land or water use or natural resources of the coastal zone in a manner that is fully consistent to the maximum extent practicable with enforceable policies of the affected state's coastal zone management (CZM) program. This section applies to OCS lease sales. On May 3, 1995, the MMS Regional Director, Alaska OCS Region, and the Director, Alaska Division of Governmental Coordination signed a Memorandum of Understanding Between State of Alaska Division of Governmental Coordination and USDOI, MMS Alaska OCS Region. This document facilitates and coordinates both agencies' efforts with respect to consistency determination procedures prior to MMS Alaska OCS Region's oil and gas lease sales.
>
> Section 307(c)(3)(A) requires that any Federal licenses/permits affecting any land or water use or natural resources of the coastal zone be consistent with enforceable policies of the state's CMP. This section applies to geological and geophysical permits. Additionally, this section prohibits the Federal Agency from issuing the license/permit until the affected state(s) has concurred with or presumed to concur with the applicant's consistency certification or until the Secretary of Commerce has overridden the state's consistency objection to the licensed/permitted activity.
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> Section 307(e)(3)(B) requires that activities affecting any land or water use or natural resources of the coastal zone, described in detail in OCS exploration or development and production plans, be consistent with enforceable policies of the state's CMP. The MMS is prohibited from approving an OCS plan until the affected state(s) has concurred with or is presumed to concur with the applicant's consistency certification, or until the Secretary of Commerce has overridden the state's consistency objection. On August 7, 1980, a Memorandum of Understanding Between Division of Policy and Development and Planning and U.S. Geological Survey was signed between the State of Alaska and MMS (formerly USGS). This document establishes procedures for coordinating plans and programs for consistency review and includes procedures for approvals of

exploration plans, development and production plans, and other licenses and permits for OCS activities.

On December 8, 2000, NOAA revised the regulations that implement the Federal consistency provisions of the CZMA with federally approved CMP's. These regulations are found under 15 CFR § 930.

The MMS regulations for CZMA consideration affecting OCS lease sales are found under 30 CFR 256.20. The MMS regulations for CZMA consideration affecting OCS operations and/or permit activities are found under 30 CFR 250.203, 250.204, 250.414, and 250.417.

### D.1.f. The Energy Policy and Conservation Act

The Energy Policy and Conservation Act of 1975 (42 U.S.C. § 6213 et seq.) prohibits joint bidding by major oil and gas producers. Bidders submitting bids on OCS leases are subject to the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders (30 CFR 256.46(f)).

The MMS authority and regulations for compliance with the Energy Policy and Conservation Act of 1975 are found under 30 CFR 256.4, 256.41, and 256.44.

### D.1.g. The Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. § 1361 et seq.) was enacted to ensure that marine mammals are maintained at or, in some cases, restored to healthy population levels. Jurisdiction and regulatory responsibility for the conservation and protection of these marine mammals under the MMPA is split between two Federal Agencies. The Secretary of the Interior is responsible for walruses, polar bears, sea otters, manatees, and dugongs and has delegated this responsibility to the Fish and Wildlife Service (FWS). The Secretary of Commerce is responsible for the protection of all other marine mammals (cetaceans and pinnipeds [except walruses]) and has delegated the authority for implementing the MMPA to the National Marine Fisheries Services (NMFS).

The Marine Mammal Commission is responsible for reviewing and advising Federal Agencies on the protection and conservation of marine mammals. The commission has a Committee of Scientific Advisors that provides advice on actions needed to fulfill the purposes of the MMPA. The commission is authorized to make recommendations on the prohibition of taking and importing marine mammals and marine mammal products, except as expressly provided for by an international treaty, convention, or agreement to which the U.S. is a party.

The MMPA established a moratorium on the taking or importing of marine mammals in waters under U.S. jurisdiction except during certain activities that are regulated and permitted. Such activities include scientific research, public display, and the incidental take of marine mammals in the course of commercial-fishing operations. The MMPA defines "take" to mean "hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal." "Harass" is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild; or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns including, but not limited to, migrating, breathing, nursing, breeding, feeding, or sheltering.

The moratorium may be waived when the affected species or population stock is within its optimum sustainable population range and would not be disadvantaged by the authorized taking (for example, be reduced below its maximum net productivity level), which is the lower limit of the optimum sustainable population range. On request, the Secretary (of either the USDOI or the USDOC, depending on jurisdiction) can authorize the unintentional taking of small numbers of marine mammals incidental to activities other than commercial fishing (for example, offshore oil and gas exploration and development) when, after notice and opportunity for public comment, the Secretary finds that the total of such taking during the 5-year (or less) period would have a negligible impact on the affected species. Also, the Secretary will withdraw, or suspend for a specified time, permission to take marine mammals incidental to oil and gas production, and other activities if the applicable regulations concerning the methods of taking,

monitoring, or reporting are not being complied with, or the taking is having, or may be having, more than a negligible impact on the affected species or stock.

In 1994, a new subparagraph (D) was added to Section 101(a)(5) of the MMPA to simplify the process of obtaining "small take" exemptions when unintentional taking is by incidental harassment only. Specifically, the incidental take of small numbers of marine mammals by harassment can now be authorized for periods of up to 1 year without the rulemaking as required by Section 101(a)(5)(A), which remains in effect for other authorized types of incidental taking.

To ensure that activities on the OCS adhere to MMPA regulations, the MMS must actively seek information concerning impacts of OCS activities on local species of marine mammals. The MMPA provides exemptions to taking of certain marine mammals by Alaskan Natives under certain conditions. The MMS coordinates with the FWS and NMFS to ensure that the MMS and offshore operators comply with the MMPA and to identify mitigation and monitoring requirements for permits or approvals for OCS activities, such as seismic surveys and platform removals.

### D.1.h. The Migratory Bird Treaty Act

The Migratory Bird Treaty Act of 1918 (MBTA), as amended (16 U.S.C. § 703-712), is the domestic law that affirms, or implements, the United States' commitment to four international conventions with Canada, Japan, Mexico, and Russia for the protection of shared migratory bird resources.

The MBTA governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts and nests. The take of all migratory birds is governed by the MBTA's regulation of taking migratory birds for educational, scientific, and recreational purposes and requiring harvest to be limited to levels that prevent overutilization. Section 704 of the MBTA states that the Secretary of the Interior is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed and to adopt suitable regulations permitting and governing take. The Secretary in adopting regulations is to consider such factors as distribution and abundance to ensure that take is compatible with the protection of the species.

The provisions of the MBTA apply equally to Federal and non-Federal entities and prohibits the take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit (50 CFR 21.11). Certain exceptions apply to employees of the Department of the Interior to enforce the MBTA and to employees of Federal agencies, State game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Association of Zoological Parks and Aquariums (now called the American Zoo and Aquarium Association) and public scientific or educational institutions.

### D.1.i. The International Convention of the Prevention of Pollution from Ships and Marine Plastics Pollution Research and Control Act

In 1978, the International Convention of the Prevention of Pollution from Ships (MARPOL) was updated to include five annexes on ocean dumping. By signing onto MARPOL, countries agree to enforce Annexes I and II (oil and noxious liquid substances) of the treaty. Annexes III (hazardous substances), IV (sewage), and V (plastics) are optional. The U.S. is signatory to two of the optional MARPOL Annexes (III and V). Annex V is of particular importance to the maritime community (for example, shippers, oil-platform personnel, fishers, and recreational boaters) because it prohibits the disposal of plastics at sea and regulates the disposal of other types of garbage at sea. The Coast Guard is the enforcement agency for MARPOL Annex V within the U.S. Exclusive Economic Zone (EEZ) (within 200 miles of the U.S. shoreline).

The Marine Plastic Pollution Research and Control Act (MPPRCA) of 1988 (33 U.S.C. § 1901 et seq.) is the Federal law implementing MARPOL Annex V in all U.S. waters. Under the MPPRCA, it is illegal to

throw plastic trash off any vessel within the EEZ. It also is illegal to throw any other garbage (for example, orange peels, paper plates, glass jars, and monofilament fishing line) overboard while navigating in inland waters or within 3 miles offshore. The greater the distance from shore, the fewer restrictions apply to nonplastic garbage. However, dumping plastics overboard in any waters anywhere is illegal at anytime. Fixed and floating platforms, drilling rigs, manned productions platforms, and support vessels operating under a Federal oil and gas lease are required to develop waste management plans and to post placards reflecting discharge limitations and restrictions. Garbage must be brought ashore and properly disposed of in a trash can, dumpster, or recycling container. Docks and marinas are required to provide facilities to handle normal amounts of garbage from their paying customers. Violations of MARPOL or MPPRCA may result in a fine of up to $50,000 for each incident. If criminal intent can be proven, an individual may be fined up to $250,000 and/or imprisoned up to 6 years. If an organization is responsible, it may be fined up to $500,000 and/or receive 6 years of imprisonment.

### D.1.j. The Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended (33 U.S.C. § 1401-1445 and 16 U.S.C. § 1431-1445) regulates ocean dumping of waste, provides for a research program on ocean dumping, and provides for the designation and regulation of marine sanctuaries. Also known as the Ocean Dumping Act, the MPRSA regulates the ocean dumping of all material beyond the territorial limit (3 miles from shore) and prevents or strictly limits dumping material that "would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." Material includes, but is not limited to, dredged material; solid waste; incinerator residue; garbage; sewage; sewage sludge; munitions; chemical and biological warfare agents; radioactive materials; chemicals; biological and laboratory waste; wrecked or discarded equipment; rocks; sand; excavation debris; and industrial, municipal, agricultural, and other waste. The term does not include sewage from vessels or oil, unless the oil is transported via a vessel or aircraft for the purpose of dumping. Disposal by means of a pipe, regardless of how far at sea the discharge occurs, is regulated by the CWA through the NPDES permit process. Permits under Section 103 of this Act for dumping dredged material into ocean waters are issued by the Corps of Engineers.

Title III of the MPRSA, later called the National Marine Sanctuaries Act, charged the Secretary of Commerce to identify, designate, and manage marine sites based on conservation and ecological, recreational, historical, aesthetic, scientific, or educational value within significant national ocean and Great Lakes waters. Twelve national marine sanctuaries, representing a wide variety of ocean environments, have been designated. The National Marine Sanctuary Program is administered by USDOC, NOAA.

The regulations regarding designation and management of marine sanctuaries are found under 15 CFR § 922.

### D.1.k. The National Fishing Enhancement Act

The National Fishing Enhancement Act of 1984 (33 U.S.C. § 2101 et seq.), also known as the Artificial Reef Act, established broad artificial reef development standards and a national policy to encourage the development of artificial reefs that will enhance fishery resources and commercial and recreational fishing. The national plan identifies oil and gas structures as acceptable material of opportunity for artificial reef development. The MMS adopted a rigs-to-reefs policy in 1985 in response to this Act and to broaden interest in the use of petroleum platform as artificial reefs.

### D.1.l. The Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (FCMA) of 1976 (16 U.S.C. § 1801 et seq.) established and delineated an area from the states' seaward boundary to approximately 200 nautical miles out as a fisheries conservation zone for the U.S. and its possessions. The Act created eight regional Fishery Management Councils (FMC's) and mandated a continuing planning program for marine fisheries management by the FMC's. The Act, as amended, requires that a Fishery Management Plan (FMP) (50 CFR 600), based on the best available scientific and economic data, be prepared for each commercial species (or related group of species) of fish in need of conservation and management within each respective region.

The FCMA was reauthorized by Congress through passage of the Sustainable Fisheries Act of 1996. This reauthorization implements a number of reforms and changes. One change required the NMFS to designate and conserve Essential Fish Habitat (EFH) for those species managed under an existing FMP. By designating EFH's, Congress hoped to minimize, to the extent practicable, any adverse effects on habitat caused by fishing or nonfishing activities and to identify other actions to encourage the conservation and enhancement of such habitat. The phrase "essential fish habitat," as defined in the Sustainable Fisheries Act of 1996, encompasses "those waters and substrate necessary to fishes for spawning, breeding, feeding, or growth to maturity." As a result of this change, Federal Agencies must consult with NMFS on those activities that may have direct (for example, physical disruption) or indirect (for example, loss of prey species) effects on EFH.

Of the FMP's for Alaskan fisheries, only the plan for salmon designates EFH present within the Alaska OCS Beaufort Sea Planning Area. The FMP's are amended and updated as new information from studies and public input is received and assessed. For OCS activities in the Alaska Region's Beaufort Sea Planning Area, the MMS consults with NMFS at each project stage individually (for example, the lease sale, the exploration plan, and the development and production plan). The MMS will enter into formal consultation with NMFS for EFH as part of this EIS process.

## D.1.m. The Endangered Species Act

The Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. § 1531 et seq.), establishes the National policy for the protection and conservation of threatened and endangered species and the ecosystems on which they depend. The ESA is administered by USDOI, FWS and the USDOC, NMFS. Section 7 of the ESA (16 U.S.C. § 1536) governs interagency cooperation and consultation requiring Federal Agencies to formally consult with the NMFS and FWS, when there is a reason to believe that a species listed (or proposed to be listed) as endangered or threatened may be affected by an action, such as an OCS lease sale. Section 7 mandates Federal Agencies to consult with the FWS or NMFS to ensure that any agency action is not likely to jeopardize the continued existence of any endangered or threatened species, and/or destroy or adversely modify an endangered or threatened species' critical habitat.

Formal endangered species consultation is required to provide a threshold examination and to allow both the FWS and NMFS to each prepare a biological opinion on the likelihood that the proposed activity will or will not jeopardize the continued existence of the resource, and on the effect of the potential activities on the endangered species. The biological opinion may include recommendations for modification of the proposed activity. If, as a result of the threshold examination, insufficient information is available to conclude that the proposed activity is not likely to jeopardize the species or its habitat, the Federal Agency (i.e., MMS) is notified in writing by the FWS or NMFS. In such cases, the Federal Agency must obtain additional information and, if recommended by the FWS or NMFS, conduct appropriate biological surveys or studies to determine how the proposed activity may affect the endangered species or its critical habitat. After such additional information is received, FWS or NMFS usually concludes the consultation process by issuing a formal biological opinion.

As needed during the early stages and throughout prelease processes, the MMS will formally consult with both FWS and NMFS to ensure that the Federal activities proposed in the Beaufort Sea Planning Area do not jeopardize the continued existence of threatened or endangered species and/or result in adverse modification or destruction of their critical habitat. This consultation covers only the proposed OCS lease sales and exploration activities scenarios. A separate Section 7 consultation is conducted for development,

production, and decommissioning phases for OCS activities. The FWS and NMFS make recommendations regarding modifications to proposed OCS activity to minimize adverse environmental impacts; however, it remains the responsibility of the MMS to ensure that proposed actions do not impact threatened or endangered species.

Joint regulations published in 50 CFR § 402 by the USDOI (FWS) and the USDOC (NMFS) establish procedures and rules governing interagency consultation under Section 7 of the ESA.

Section 9 of the ESA (16 U.S.C. § 1538) contains prohibitions (except as provided in law) with respect to any endangered species of fish, wildlife, and plant. For example, it is unlawful for any person subject to the jurisdiction of the U.S. to (1) take any species within the U.S. or the territorial seas of the U.S. and (2) take any species upon the high seas. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.

The regulations that provide the rules for determining and listing endangered and threatened species and designating their critical habitats are found under 50 CFR § 424.

### D.1.n. The National Historic Preservation Act

The National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470 et seq.), established a program for the preservation of historic properties throughout the U.S. and established the Advisory Council on Historic Preservation. This Act requires the head of any Federal Agency possessing licensing authority or having direct or indirect jurisdiction over a proposed Federal or federally assisted activity to consider the proposed activity's effect on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historical Places (30 CFR 60.4 or its successor). The historic properties (i.e., archaeological resources) on the OCS include historic shipwrecks, sunken aircraft, lighthouses, and prehistoric archaeological sites that have become inundated due to the 120-meter rise in global sea level since the height of the last ice age (about 19,000 years ago).

Because the OCS is not federally owned land and the Federal Government has not claimed direct ownership of historic properties on the OCS, the MMS has the authority under Section 106 of the NHPA only to ensure that any MMS funded and permitted actions do not adversely affect significant historic properties. Beyond avoidance of adverse impacts, the MMS does not possess the legal authority to manage the historic properties on the OCS.

The MMS has conducted archaeological baseline studies of the OCS to determine where known historic properties may be located and to outline areas where presently unknown historic properties may be located. These baseline studies are used to identify "archaeologically sensitive" areas that may contain significant historic properties. When proposing a Federal action (i.e., an oil and gas lease sale), the MMS may request comments concerning geological conditions, including archaeological sites on the seabed or nearshore (30 CFR 256.24).

Before approving any OCS exploration or development activities within an archaeologically sensitive area, the MMS requires the lessee to conduct a marine remote-sensing survey and to prepare an archaeological report (30 CFR 250.194).

Archaeological surveys are required both onshore and offshore in areas where there is the potential for archaeological resources to exist, so that potential impacts to archaeological resources from physical disturbance could be mitigated. If the marine remote-sensing survey indicates any evidence of a potential historic property, the lessee must either:

> move the site of the proposed lease operations a sufficient distance to avoid the potential historic property, or conduct further investigations to determine the nature and significance of the potential historic property. If further investigation determines that there is a significant historic property within the area of proposed OCS operations, NHPA consultation procedures are followed.

The MMS Alaska Region and the State of Alaska Historic Preservation Office have an agreement regarding procedures for invoking Section 106 of the NHPA.

The MMS responsibilities in archaeological resource management and protection on the OCS are found under 30 CFR 250.203(b)(15), 250.203(o), 250.204(b)(8)(v)(A), 250.204(s), 250.1007(a)(5), and 250.1009(c)(4).

## D.1.o. The Oil Pollution Act

The Oil Pollution Act of 1990 (OPA 90), as amended (33 U.S.C. § 2701 et seq.), establishes a single uniform Federal system of liability and compensation for damages caused by oil spills in U.S. navigable waters. The OPA 90 requires removal of spilled oil and establishes a national system of planning for and responding to oil-spill incidents. The OPA 90 includes provisions to:

- improve oil-spill prevention, preparedness, and response capability;
- establish limitations on liability for damages resulting from oil pollution;
- provide funding for natural resource damage assessment;
- implement a fund for the payment of compensation for such damages; and
- establish an oil pollution research and development program.

The U.S. Coast Guard is responsible for enforcing vessel compliance with OPA 90. The U.S. Coast Guard regulations on the oil-spill liability of vessels and operators are found under 33 CFR §§ 132, 135, and 136.

Section 1016 of OPA 90 (33 U.S.C. § 2716), as amended by the Coast Guard Authorization Act of 1996, supersedes the offshore oil-spill financial-responsibility provision of Title III of the OCS Lands Act Amendments of 1978, previously administered by the U.S. Coast Guard. Under OPA 90 and Executive Order 12777 (October 18, 1991), the Secretary of the Interior is given authority over covered offshore facilities and associated pipelines (except deepwater ports) for all Federal and State waters, including responsibility for spill prevention, oil-spill-contingency plans, oil-spill-containment and -cleanup equipment, financial-responsibility certification, and civil penalties. The Secretary delegated this authority to the MMS.

The MMS regulations found under 30 CFR § 253 that implement Title I of the OPA 90 establish the requirements for demonstrating oil-spill financial responsibility for covered offshore facilities requiring responsible parties to demonstrate they can pay for cleanup and damages caused by facility oil spills. These regulations govern financial responsibility requirements for oil spills for covered offshore facilities and related requirements for certain crude oil wells, production platforms, and pipelines located in the OCS and certain State waters became effective in October 1998. Responsible parties can be required to demonstrate as much as $150 million in oil-spill financial responsibility if the MMS determines that it is justified by the risks from potential oil spills from the covered offshore facilities. The minimum amount of oil-spill financial responsibility that must be demonstrated is $35 million for covered offshore facilities located in the OCS, and $10 million for covered offshore facilities located in State waters. The regulations exempt persons responsible for facilities having a potential worst-case, oil-spill discharge of 1,000 barrels or less, unless the risks posed by a facility justify a lower threshold.

## D.1.p. The Rivers and Harbors Appropriation Act

The geographic jurisdiction of the Rivers and Harbors Act of 1899 (33 U.S.C. § 401 et seq.) includes all navigable water of the U.S. (defined in 33 CFR § 329) as “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.” This jurisdiction extends seaward to include all ocean waters within a zone 3 nautical miles from the coastline (the “territorial seas”). Limited authorities extend across the OCS for artificial islands, installations, and other devices (43 U.S.C. § 333 (e)).

Various sections of the Act establish permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the U.S. The Corps of Engineers, through the Secretary of the Army, has

permitting authority for any structure work conducted in or affecting U.S. navigable waters and for construction of artificial islands, fixed structures, and other installations on the OCS. This authority arises from a provision in the OCS Lands Act (43 U.S.C. § 1333(e)) that extends the Secretary of the Army's authority to prevent obstruction to navigation in U.S. navigable waters from structures located on the OCS that are used for exploring, developing, producing, or transporting natural resources.

In addition, Section 10 of the Act (33 U.S.C. § 403) authorizes the Corps of Engineers, through the Secretary of the Army, to issue permits for all offshore construction in U.S. navigable waters, including pipelines, exploratory drilling vessels, fixed and mobile platforms, piers, wharves, bulkheads, or other works. Permits also must be issued for onshore facilities that involve dredging, filling, and excavating in U.S. navigable waters.

### D.1.q. The Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) of 1976 (42 U.S.C. § 6901 et seq.), and as amended through 1996, provides a framework for the safe disposal and management of hazardous and solid wastes. Most oil-field wastes have been exempted from coverage under the RCRA hazardous-waste regulations. Any hazardous wastes generated on the OCS that are not exempt must be transported to shore for disposal at a hazardous-waste facility.

### D.1.r. The Ports and Waterways Safety Act

The Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. § 1221 et seq.), authorizes the U.S. Coast Guard to designate safety fairways, fairway anchorages, and traffic separation schemes to provide unobstructed approaches through oil fields for vessels using ports. The Coast Guared regulations provide listings of these designated areas along with special conditions related to oil and gas production. In general, no fixed structures such as platforms are allowed in fairways. Temporary underwater obstacles such as anchors and attendant cables or chains attached to floating or semisubmersible drilling rigs may be placed in a fairway under certain conditions. Fixed structures may be placed in anchorages, but the number of structures is limited.

The Coast Guard regulations on port access routes are found under 33 CFR § 164.

### D.1.s. The Merchant Marine Act of 1920 (Jones Act)

The Merchant Marine Act of 1920, commonly referred to as the Jones Act (P.L. 66-261), regulates coastal shipping between U.S. ports and inland waterways. The Act provides that "no merchandise shall be transported by water, or by land and water…between points in the United States…in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States…" The Act requires that all goods shipped between different ports in the U.S. or its territories must be:

- carried on vessels built and documented (flagged) in the U.S.,
- crewed by U.S. citizens or legal aliens licensed by the U.S. Coast Guard, and
- owned and operated by U.S. citizens.

The rationale behind the Jones Act and earlier sabotage laws was that the U.S. needed a merchant marine fleet to ensure that its domestic waterborne commerce remains under government jurisdiction for regulatory, safety, and national defense considerations. The same general principles of safety regulations are applied to other modes of transportation in the U.S. While other modes of transportation can operate foreign-built equipment, these units must comply with U.S. standards. However, many foreign-built ships do not meet the standards required of U.S.-built ships and, thus, are excluded from domestic shipping.

The U.S. Customs Service has determined that facilities fixed or attached to the OCS for the purpose of oil exploration, as described under 43 U.S.C. § 333(a), are considered points within the U.S. The OCS oil facilities are considered U.S. sovereign territory and fall under the requirements of the Jones Act. This carries the implication that all shipping to and from these facilities related to oil exploration on the OCS can be conducted only by vessels meeting the requirements of the Jones Act. Therefore, OCS facilities can be legally served only by U.S.-registered vessels and aircraft that are properly endorsed for coastwise trade under the laws of the U.S.

## D.1.t. The Federal Oil and Gas Royalty Management Act

The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982 (30 U.S.C. § 701 et seq.), was enacted to ensure that all oil and gas originating on public land and on the OCS are properly accounted for under the direction of the Secretary of the Interior. This Act defines the responsibilities and obligations of lessees, operators, and other persons involved in the transportation of oil and gas from Federal, Indian, and OCS lands. The Secretary of the Interior has the responsibility to maintain a royalty management system and enforce the prompt collection and disbursement of oil and gas revenues owed to the U.S., Indian lessors, and the states.

The Secretary of the Interior oversees a comprehensive inspection and collection system with fiscal and production accounting and auditing system to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed and to collect and account for the payments in a timely manner.

The FOGRMA requires a lessee, operator, or other person directly involved in the developing, producing, transporting, purchasing, or selling of oil and gas to establish and maintain records, make reports, and provide information as required by the Secretary of the Interior.

Regulations at 30 CFR 201 through 243 were published by the MMS to implement the provisions of the FOGRMA. For royalties, net profit shares, and rental payments on Federal OCS leases, see 30 CFR 218.150 through 156.

## D.1.u. The Arctic Research and Policy Act

The Arctic Research and Policy Act of 1984 (15 U.S.C. § 4101 et seq.) provides national policy, priorities, and goals and a Federal program plan for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences.

The Arctic Research Commission, in cooperation with the Interagency Arctic Research Policy Committee, both established under this Act, were directed to develop a national arctic research program plan to implement the arctic research policy and facilitate cooperation between the Federal Government and State and local governments with respect to research in the Arctic. The Commission guides the Interagency Arctic Research Policy Committee in the performance of its duties and submits to the President and Congress a report each year describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

The Interagency Arctic Research Policy Committee, with the National Science Foundation as lead agency, works with the Commission in developing and establishing an integrated National Arctic Research Policy that guides Federal Agencies in developing and implementing their research program in the Arctic. The public is provided with an opportunity to participate in the development and implementation of National Arctic Research Policy through public meetings. The Committee is directed to submit to Congress, through the President, a biennial statement of activities and accomplishments of the Interagency Committee and a description of the activities of the Commission with respect to Federal activities in arctic research.

Section 201 of the Arctic Research and Policy Act is cited as the National Critical Materials Act of 1984. The purpose of this section is to (1) establish National Critical Material Council, (2) establish a national

Federal program for advanced materials research and technology, and (3) to stimulate innovation and technology use in basic as well as advanced materials industries.

## D.2. EXECUTIVE ORDERS

### D.2.a. Executive Order 13212 - Actions to Expedite Energy-Related Projects (May 18, 2001)

Executive Order 13212 states that "… in order to take additional steps to expedite the increased supply and availability of energy to our Nation …," it is necessary to improve the Federal Government's internal management of actions associated with energy-related projects. In general, the executive order directs executive departments and agencies to take appropriate actions to expedite projects that will increase the production, transmission, or conservation of energy. Departments and agencies must expedite their review of permits or take other actions as necessary to accelerate the completion of such projects while maintaining safety, public health, and environmental protections. Agencies must take such actions to the extent permitted by law, theregulations, and where appropriate.

### D.2.b. Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)

Executive Order 12898 on environmental justice provides that each Federal Agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

Agencies are required to incorporate into their NEPA documents analysis of the environmental effects of their proposed action on minorities and low-income populations and communities. The environmental justice issues encompass a broad range of impacts covered by NEPA, and concerns may arise from impacts on the natural or physical environment or from interrelated social, cultural, and economic effects. These effects must be considered in EIS's and EA's.

The Department of the Interior has developed guidelines in accordance with Executive Order 12898 on environmental justice. The MMS participated in the development of these guidelines. In August 1994, the Secretary of the Interior directed the Department's bureaus to include environmental justice in NEPA documentation and, in February 1998, the CEQ issued guidance to assist Agencies in addressing environmental justice.

Environmental justice concerns are considered anywhere (including the MMS Pacific and Gulf of Mexico regions) where OCS projects and associated NEPA documentation take place; however, issues concerning Alaska OCS-related impacts primarily have focused on the subsistence hunting, fishing, and gathering activities that occur in coastal areas.

The MMS's existing process of involving all affected communities, Native Alaskans, and minority groups in the NEPA compliance process meets the intent and spirit of Executive Order 12898. Scoping and review for the EIS is an open process that provides an opportunity for all participants, including minority and low-income populations, to express concerns that can be addressed in the EIS. It should be emphasized that the reason the MMS holds scoping meetings is to encourage and facilitate public involvement into the EIS process. Valuable public input ensures that the EIS will be thorough and will address all pertinent issues that affect the quality of the human environment to the fullest extent possible and that will contribute a major role in the MMS's planning and final decisionmaking. The MMS will

continue to identify ways to improve the input from all Alaskan residents, not only in commenting on official documents but also contributing their knowledge to the scientific and analytical sections of the EIS.

### D.2.c. Executive Order 13175 - Consultation and Coordination With Indian Tribal Governments (November 6, 2000)

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

To strengthen the United States government-to-government relationships with Indian tribes (Indian tribe is defined as Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a), Executive Order 13175 requires the Secretary of the Interior to establish regular and meaningful consultation and collaboration with Indian tribal officials in the development of Federal policies that have tribal implications. Policies that have tribal implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

### D.2.d. Executive Order 13007- Indian Sacred Sites (May 24, 1996)

The Indian Sacred Sites executive order directs Federal land-managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It is MMS's policy to consider the potential effects of all aspects of plans, projects, programs, and activities on Indian sacred sites, and to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments before taking actions that may affect Indian sacred sites located on Federal lands.

### D.2.e. Executive Order 12114 - Environmental Effects Abroad(January 1979)

Executive Order 12114 requires that Federal officials be informed of environmental considerations, and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the U.S., including Antarctica. Such Federal actions include the following:

- All major Federal actions significantly affecting the environment outside the jurisdiction of any nation (the oceans or Antarctica). This would apply to proposals that result in actions within the U.S. that, because of ocean currents, winds, stream flow, or other natural processes, may affect parts of the oceans not claimed by any nation (high seas). Included in this category would be an OCS project that, because of ocean currents, could result in effluents or spilled oil reaching fishing grounds or areas not claimed by another nation.
- All major Federal actions significantly affecting the environment of a foreign nation not involved in the action. This would apply to proposals that result in actions within U.S. territory, or within the EEZ that, because of ocean currents, winds, stream flow, or other natural processes, may affect parts of another nation, or seas or oceans within the jurisdiction of other nations. This category would include an OCS project located upcurrent from the Mexican coastline that could affect Mexico's territory in the

event of an oil spill. Also in this category are all major Federal actions in which a foreign nation is a participant and that normally would be covered by the EIS addressing the U.S. part of the Proposal. An example would be an OCS right-of-way pipeline bringing Canadian energy resources to the northeast U.S.

- All major Federal actions providing a foreign nation with a product or involving a project that produces an emission or effluent prohibited or regulated by U.S. Federal law because of its effects on the environment or the creation of a serious public health risk.

Federal actions causing significant impacts on environments outside the U.S. are to be addressed in:

- • EIS's (generic, program [5-year OCS programmatic EIS]), and project-specific (OCS lease-sale EIS);
- • documents prepared for decisionmakers containing reviews of environmental issues involved in Federal actions, or summaries of environmental analyses (for example, OCS lease-sale decision documents, Records of Decision); and
- • environmental studies or research prepared by the U.S. and one or more foreign nations, or by an international body in which the U.S. is a member or participant.

The U.S., Canada, and Mexico are negotiating a Transboundary Environmental Impact Assessments (TEIA) Agreement through the North Atlantic Free Trade Agreement (NAFTA) Commission on Environmental Cooperation (CEC). The CEC deals with a wide range of environmental and natural resource protection issues common to Canada, the U.S., and Mexico. Developing a TEIA process is one of the requirements of the 1991 North American Agreement on Environmental Cooperation. Under this agreement, a transboundary environmental impact is any impact on the environment within the area under the jurisdiction of Canada, the U.S., or Mexico caused by a proposed project, the physical origin of which is situated wholly or in part within the area under the jurisdiction of one of the three countries. For example, a proposed project on the U.S. OCS that, because of ocean currents, winds, or proximity to the Mexican coastline, could affect Mexican waters (fishing industry, fish resources, etc.) or the Mexican coastline (oil-spill contacts, etc.) would be a project considered to have the potential to cause transboundary environmental impacts. The agreement recognizes that there is a significant bilateral nature to many transboundary issues and calls upon the three countries to develop an agreement to:

- • assess the environmental impacts of proposed projects in any of the three countries party to the agreement (NAFTA) that would be likely to cause significant adverse transboundary impacts within the jurisdiction of any of the other parties;
- • develop a system of notification, consultation, and sharing of relevant information between countries with respect to such projects; and
- • give consideration to mitigating measures to address the potential adverse effects of such projects.

Negotiations are under way between the three parties to the agreement, but the final language has yet to be worked out. Because the requirements of the assessment portion of the agreement are somewhat similar to the requirements imposed by Executive Order 12114 (i.e., impacts to foreign territory must be addressed in NEPA documents), the MMS requires that EIS's prepared on major Federal OCS actions contain an assessment of potential significant impacts to foreign territory.

## D.2.f. Executive Order 13158 - Marine Protected Areas (May 26, 2000)

Executive Order 13158 defines Marine Protected Areas (MPA's) as any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

This executive order directs Federal Agencies to work closely with State, local, and nongovernmental partners to create a comprehensive system of MPA's "representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources." Ultimately, the MPA system will include new sites, as well as enhancements to the conservation of existing sites. Five principal components of this executive order are:

1. **National MPA List**: The USDOC and the USDOI will develop and maintain a National list of MPA's in U.S. waters. Candidate sites for the list are drawn from existing programs for Federal,

tribal, State and local protected areas. When completed, the list and the companion data on each site will serve several purposes such as ensuring that agencies "avoid harm" to MPA's, providing a foundation for the analysis of gaps in the existing system of protections, and helping improve the effectiveness of existing MPA's.

2. **The MPA Web Site**: The USDOC and USDOI will develop and maintain a publicly accessible web site to provide information on MPA's and Federal Agency reports required by Executive Order 13158. Also, the web site will be used to publish and maintain the National MPA List and other useful information, such as maps of MPA's; a virtual library of MPA reference materials, including links to other web sites; information on the MPA Advisory Committee; activities of the National MPA Center; MPA program summaries; and background materials such as MPA definitions, benefits, management challenges, and management tools.
3. **The MPA Federal Advisory Committee**: This committee was created to provide expert advice on, and recommendations for, a national system of MPA's. This advisory committee will include non-Federal representatives from science, resource management, environmental organizations, and industry.
4. **The Mandate to Avoid Harmful Federal Actions**: This mandate directs Federal Agencies to avoid harm to MPA's or their resources through activities that they undertake, fund, or approve.
5. **The MPA Center**: The executive order directs NOAA to create an MPA Center. In cooperation with the USDOI and working closely with other organizations, the MPA Center will coordinate the effort to implement the executive order and will:
    - develop the framework for a national system of MPA's;
    - coordinate the development of information, tools, and strategies;
    - provide guidance that will encourage efforts to enhance and expand the protection of existing MPA's and to establish or recommend new ones;
    - coordinate the MPA web site;
    - partner with Federal and non-Federal organizations to conduct research, analysis, and exploration;
    - help maintain the National MPA List; and
    - support the MPA Advisory Committee.

## D.2.g. Executive Order 13112 - Invasive Species (February 3, 1999)

Executive Order 13112 defines an "invasive species" as a species that is not native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. This executive order requires all Federal Agencies to:

- identify any actions affecting the status of invasive species;
- prevent invasive-species introduction;
- detect and respond to and control populations of invasive species in a cost-effective and environmentally sound manner;
- monitor invasive-species populations accurately and reliably;
- provide for restoration of native species and habitat conditions in invaded ecosystems;
- conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species;
- promote public education on invasive species and the means to address them; and,
- refrain from authorizing, funding, or carrying out actions that are likely to cause or promote invasive species introduction or spread, unless the Federal Agency has determined that the benefits of such actions clearly outweigh the potential harm caused by invasive species and that all feasible and prudent measures to minimize risk of harm will be taken.

Additionally, this executive order established the National Invasive Species Council (Council), cochaired by the Secretaries of Agriculture, Commerce, and the Interior and comprised of the Secretaries of State,

Treasury, Defense, and Transportation, and the Administrator of the Environmental Protection Agency. The Council:

- provides national leadership on invasive species;
- sees that Federal efforts are coordinated and effective;
- promotes action at local, State, tribal, and ecosystem levels;
- identifies recommendations for international cooperation;
- facilitates a coordinated network to document and monitor invasive species;
- develops a web-based information network;
- provides guidance on invasive species for Federal Agencies to use in implementing the NEPA; and
- prepares an Invasive Species Management Plan to serve as the blueprint for Federal action to prevent introduction; provide control; and minimize economic, environmental, and human health impacts of invasive species.

The MMS requires that EIS's prepared on major Federal OCS actions (for example, 5-year OCS program and OCS lease sales) contain an assessment of the proposed action's contribution to the invasive species problem.

## D.3. MITIGATION MEASURES

### D.3.a. Lease Term Stipulations

In each OCS planning area, oil and gas exploration and development activities have the potential for causing adverse environmental impacts. Many measures have been implemented by the MMS to "mitigate" or prevent and lessen possible impacts on environmental resources from both OCS and non-OCS activities. Mitigating measures are protective measures designed to prevent adverse impacts and to lessen and mitigate unavoidable impacts. Some of these protective measures are developed and applied to specific blocks in a planning area before leasing a block. The MMS develops and administers these requirements, which become a part of the lease-term conditions at lease issuance.

If a block is leased as a result of a lease sale, these protective measures are identified as lease-term stipulations and are attached to and become part of the lease and its conditions. These stipulations are designed to protect potentially sensitive resources in the affected block and to reduce possible multiple-use conflicts and are the requirements that the lessee must meet to mitigate adverse impacts. They also may be considered to apply to all activities that occur on the leased area throughout the life of the lease.

All stipulations are considered part of this proposed Federal action. All lease-term stipulations are considered part of this proposed Federal action and all alternatives are discussed in this EIS.

### D.3.b. Special Stipulations

To mitigate adverse environmental impacts for actions associated with a specific project (i.e., proposed plans for exploration, development and production plans, and site-clearance activities in an area located on an OCS lease block), mitigating measures may be necessary. Mitigating measures are special stipulations that limit OCS operations and are in addition to the aforementioned lease-term stipulations.

Conditions of plan approval are mechanisms determined by the MMS to control or mitigate potential environmental or safety problems that are associated with a specific proposed Federal action. During the life of the action, these protective measures are applicable specifically to the individual activities proposed in a plan and are imposed following environmental reviews (according to the NEPA) of the OCS lease location and potential resources.

Protective measures for certain resources may be suggested or identified during the scoping process for this EIS and mitigating measures may develop as a result. The MMS will evaluate additional stipulations, if any, that may develop during this EIS process.