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DEFENDING STATE'S RIGHTS UNDER THE COASTAL ZONE MANAGEMENT ACT— *STATE OF CALIFORNIA V. NORTON*

by Linda Krop*

INTRODUCTION

The 2002 decision in *State of California v. Norton*¹ provides a unique insight into the history and evolution of the Coastal Zone Management Act (“CZMA”),² a powerful and as yet underutilized federal environmental law. This case also reveals the respective roles of the legislative, judicial, and executive branches in coastal protection and governance. As this Article will discuss, the debate centers on the respective roles of the federal government and coastal states in addressing coastal resources and activities. In *State of California v. Norton*, the Ninth Circuit upheld the broad role of states in reviewing activities that may affect their coastal zones, even though such activities are under the direct authority of the federal government.³

HISTORY AND BACKGROUND OF THE CZMA

The CZMA came about as the federal government and coastal states were engaged in a decades-long struggle over offshore regulatory authority, including matters regarding offshore oil and gas development. Both the federal government and the states sought exclusive control over offshore areas, in order

to regulate and protect these areas, but also to ensure ownership of (and thus economic interest in) mineral and other resources.

Beginning in the 1930s, both Congress and California attempted to assert jurisdiction over offshore energy resources.⁴ In 1945, President Truman concurred with Congress and claimed federal authority over all offshore resources.⁵ In 1947, the Supreme Court confirmed the validity of federal jurisdiction over all offshore resources.⁶ Thus, all three branches of the federal government agreed that areas offshore were to be regulated at a national level. However, coastal states continued to assert tremendous pressure in favor of shared offshore jurisdiction and, in 1952, Congress voted to move federal jurisdiction to three miles offshore. President Truman vetoed the bill, but his opponent in the presidential race, Dwight Eisenhower, promised to support the bill and the expanded role of coastal states. Eisenhower was elected President and supported new legislation in 1953 that established state jurisdiction out to three nautical

miles offshore. This law is known as the Submerged Lands Act.⁷ Federal oversight of oil and gas development activities beyond three nautical miles from shore was ensured later that same year when Congress passed the Outer Continental Shelf Lands Act (“OCSLA”).⁸

Despite Congress’s attempt to resolve these disputes, coastal states remained dissatisfied with the compromise and the federal assertion of jurisdiction off their borders. Activities beyond three miles from shore could still have a substantial effect on a state’s coastline, as so prominently demonstrated by the 1969 Santa Barbara oil spill.⁹ This spill—“the spill heard around the world”—occurred after a blowout at Platform A, a

Union Oil Company (“Union”) drilling platform located in federal waters approximately six miles from the California coast.¹⁰ The U.S. Geological Survey (“USGS”) had waived the requirement for casing in the wells drilled from the platform,¹¹ even though casing helps to prevent oil and gas from escaping the well.¹² The USGS agreed to allow Union to install casing to a depth of 239 feet instead of the federal and state standard of 880 feet.¹³ As a result of the lack of casing throughout the depth

of the drilling wells, a blowout occurred and over three million gallons of oil released into coastal waters, blackening over 35 miles of pristine beaches.¹⁴ This spill heightened the concerns of not only Californians, but other coastal states as well, which were vulnerable to the environmental consequences of decisions made by the federal government.¹⁵

THE COASTAL ZONE MANAGEMENT ACT

The CZMA represented Congress’s next attempt to address the ongoing concerns of coastal states. Although the CZMA did not change the jurisdictional boundaries already set forth in the Submerged Lands Act and OCSLA, it offered states an enhanced role in federal planning and permitting decisions that affect their

The intent of the CZMA was to ensure proper “coordination and cooperation” between the federal government and coastal states.

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coasts.¹⁶ The intent of the CZMA was to ensure proper “coordination and cooperation” between the federal government and coastal states.¹⁷ The key to ensuring this coordination and cooperation was the requirement for consistency review. Pursuant to this provision, activities carried out or approved by the federal government that affect a state’s coastal zone must comply with the state’s coastal laws and policies.¹⁸

The CZMA provides a two-step process towards securing federal-state coordination and cooperation. First, states are encouraged to prepare coastal management programs that will manage, protect, and conserve coastal resources.¹⁹ The CZMA sets forth several areas of national concern that must be addressed in a state’s coastal program. These include, for example, protection of natural resources and water quality.²⁰ The state’s program must be approved by the National Oceanic and Atmospheric Administration (“NOAA”), a branch of the U.S. Department of Commerce.²¹

Once NOAA certifies a state’s program, the CZMA requires that activities carried out or approved by the federal government must be consistent with the state’s approval program.²² There are three types of activities subject to state consistency review: (1) activities proposed by federal agencies; (2) private activities that require federal approval; and (3) offshore oil exploration, development, and production plans that are submitted for federal approval under OCSLA.²³

Federal agency activities include those activities proposed and carried out by the federal government. The CZMA requires that such activities “shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.”²⁴ Under this provision of the CZMA, the federal agency makes a “consistency determination” and submits it to the state for review.²⁵

Private applicants seeking a license or permit from a federal agency are also subject to the consistency requirement of the CZMA.²⁶ The Act provides that an application for a federal license or permit must include “a certification that the proposed activity complies with the enforceable policies of the state’s approved program and that such activity will be conducted in a manner consistent with the program.”²⁷ The state then has the ability to review the application for consistency with its coastal management program. A state may concur with, or object to, the consistency certification.²⁸

Similarly, an application for approval of an offshore oil and gas exploration or development and production plan must also include a certification that the activity will be carried out in a manner consistent with the state’s approved coastal management program.²⁹ As with private licenses and permits, the state may concur with, or object to, a consistency certification.³⁰

There are two key differences between consistency review

of federal agency activities (i.e., those activities carried out by a federal agency) and private activities that must be approved by federal agencies. First, unlike privately proposed actions, which must be conducted in a manner consistent with a state’s coastal program, a federal agency activity need only be “carried out in a manner which is consistent to the maximum extent practicable” with a state’s program.³¹ The difference in language allows the federal government some relief from the consistency requirement; private activities, by contrast, must be found strictly consistent with a state’s coastal program. Second, the CZMA provides that federal agencies may proceed with a proposed activity even if a state finds the activity to be inconsistent with its approved coastal program, whereas a state’s objection to a private application precludes the federal government from issuing a license or permit.³² These distinctions demonstrate that although Congress was willing to encourage federal-state coordination and cooperation, it was not willing to give states veto authority over the actions or proposals of federal agencies.³³

INTERPRETING CZMA

SECRETARY OF THE INTERIOR V. CALIFORNIA: A NARROW READING OF THE CZMA

In 1981, the State of California and several environmental groups sought consistency review of a federal oil and gas lease sale located in the Santa Maria Basin offshore Santa Barbara County (Lease Sale 53).³⁴ The sale was proposed by the U.S. Minerals Management Service (“MMS”), the federal agency responsible for administering oil and gas leasing and

development under OCSLA.³⁵ California and the other plaintiffs were concerned that the lease sale could result in an oil spill that would threaten the southern sea otter.³⁶ They asserted that this threat was inconsistent with the State’s coastal management program. The MMS, however, refused to allow the State to review the proposed lease sale for consistency review under the CZMA.³⁷

The district court and the Ninth Circuit Court of Appeals ruled in favor of the State of California, finding that the lease sale would affect the State’s coastal zone and therefore required consistency review by the State.³⁸ However, the U.S. Supreme Court reversed.³⁹ The Court placed great reliance on the fact that the CZMA required a “direct” effect on a state’s coastal zone in order to trigger the consistency requirement.⁴⁰ The Supreme Court found that because the sale of an oil lease only allows “very limited, ‘preliminary activities,’” and does not grant the right to “full-scale exploration, development or production,” it therefore could not result in a “direct” effect on the State’s coastal zone.⁴¹ Instead, the Court pointed out that under OCSLA, only the subsequent approval of a specific exploration plan (“EP”) or development and production plan (“DPP”) could result

In 1947, the Supreme Court confirmed the validity of federal jurisdiction over all offshore resources.

in a direct effect on a state's coastal resources. Accordingly, the Court noted that consistency review would be appropriate later, when specific exploration, development or production plans are submitted for federal approval.⁴²

This decision reinvigorated the controversy over offshore jurisdiction, and fractured the state-federal compromise that had been crafted in 1972. The coastal states turned to Congress again, and when the CZMA was reauthorized in 1990, Congress responded to *Secretary of the Interior v. California* by amending the Act to delete the requirement for a "direct" effect and by clarifying the legislature's intent for coastal states to be able to review *any activities* would affect their coastal zones, whether directly or indirectly. Congress specifically stated its intent that states should be allowed to review offshore oil and gas leases.⁴³

STATE OF CALIFORNIA V. NORTON: A BROAD APPLICATION OF CONSISTENCY REVIEW UNDER THE CZMA

There have been no further lease sales offshore California since the Supreme Court's ruling in *Secretary of the Interior v. California*. However, in 1999, 40 undeveloped leases located off the coast of Central California were set to expire unless "suspended" by MMS. Under OCSLA, an oil and gas lease is initially granted for five to ten years. If production does not commence within that time period, the oil lessee must request a "suspension," otherwise the lease will expire.⁴⁴ None of the leases in question had been produced; therefore they required suspensions to remain in existence. Because these leases were sold between 1968 and 1984, their initial sales escaped state consistency review.⁴⁵

The forty leases had been suspended previously for a variety of reasons, including a directed suspension from 1992 to 1999, during which time MMS conducted a study regarding the potential environmental and socioeconomic effects of development of the leases on the adjacent coastal communities of Santa Barbara, Ventura and San Luis Obispo Counties.⁴⁶ When the study was completed in 1999, MMS notified the lessees that the leases must be suspended or they would expire.

In response to MMS's notice, California Governor Gray Davis asked for a report from the California Coastal Commission ("Coastal Commission"), the agency responsible for consistency review under the CZMA, regarding the State's ability to respond to the proposed lease suspensions. The Coastal Commission staff scheduled a public hearing on the matter. In its report, the Commission staff explained that under *Secretary of the Interior v. California*, the state would have to wait for submittal of new proposed seismic surveys, EPs and DPPs before being allowed to review the leases for consistency with the State's coastal management plan.⁴⁷

In anticipation of the Coastal Commission hearing, a coalition of environmental groups hired the Environmental Defense Center ("EDC") to evaluate the State's role in responding to the proposed lease suspensions.⁴⁸ The EDC argued that the 1990 amendments to the CZMA should apply to the lease suspensions, and that the Coastal Commission should be allowed to review the suspensions for consistency with the State's coastal management program.

At the hearing in June 1999, the Coastal Commission agreed with the EDC and voted to send a letter to MMS, demanding the right to review the suspensions. The Commission noted a number of concerns with the leases, including the close proximity of the leases to the Monterey Bay and Channel Islands National Marine Sanctuaries, and changed environmental circumstances, including the expanded range of the southern sea otter, as well as more stringent air and water quality standards.⁴⁹

MMS rejected the Coastal Commission's request, and instead suspended the leases on November 12, 1999.⁵⁰ EDC urged the Commission to challenge the suspensions in court, under the CZMA. On November 18, 1999, the State of California, through the Governor, Attorney General and Coastal Commission, filed a lawsuit challenging not only the failure of MMS to allow the State to review the lease suspensions under the CZMA, but also the failure of MMS to conduct environmental review prior to suspending the leases.⁵¹ The oil lessees intervened on behalf of the federal government, and the three adjacent counties and ten environmental groups intervened on behalf of the State.⁵²

In their briefs, the state, environmentalists and counties argued that the lease suspensions should be reviewed by the state either under section 1456(c)(1) of the CZMA as a federal agency action, or under section 1456(c)(3)(A) as private licenses or permits requiring federal agency approval. The plaintiffs also argued that section 1456(c)(3)(B) of the CZMA, which pertained to EPs and DPPs, clearly did not apply to the lease suspensions. MMS claimed that CZMA and National Environmental Policy Act ("NEPA") review would happen later, when the oil companies submitted EPs and DPPs. MMS even made the "post hoc" argument that lease suspensions are categorically excluded from NEPA review.

The district court rejected MMS's arguments, ruling that (1) MMS had failed to explain during the environmental review process why lease suspensions are excluded from environmental review, and (2) the 1990 CZMA amendments gave the State the right to review the lease suspensions as a federal agency action under section 1456(c)(1) of the CZMA.⁵³ The decision placed significant reliance on the 1990 amendments to the CZMA, pointing out that the purpose of the 1990 amendments was to "to overrule *Secretary of the Interior*."⁵⁴ Judge Wilken noted that "Section 1456(c)(1)(A) was amended to delete the word 'directly' modifying 'affects,'" and that "Congress indicated in the legislative history that 'the term "affects" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable.'" ⁵⁵ Finally, the decision cited Congress' statement that the 1990 amendments were intended "'to make clear' that the sale of oil and gas leases is subject to the CZMA;" and noted that all of the parties agreed that the 1990 amendment of the CZMA stated oil and gas lease sales constitute federal agency activities subject to state consistency review.⁵⁶ Therefore, the only question left was whether lease suspensions were also subject to state review.

Judge Wilken answered this question in the affirmative,

explaining that “MMS’s grant of the suspensions is a federal activity which it carries out in the exercise of its statutory duties.”⁵⁷ She concluded:

Therefore, because of Congress’s intent to require a federal agency to give the State consistency determinations at the time of the sale of the leases, which did not occur in this case, and because the MMS’s grant of these suspensions requires activities that affect the coastal zone, the Court finds that the MMS must provide the State with a determination that the lease suspensions are consistent with the State’s coastal management program, pursuant to CZMA § 1456(c)(1).⁵⁸

MMS and the oil companies appealed. In December 2002, the Ninth Circuit Court of Appeals affirmed Judge Wilken’s ruling.⁵⁹ In an unusually descriptive opinion, the court reviewed the background of oil and gas development offshore California, including a discussion of the 1969 Santa Barbara oil spill. The court recognized that “[s]ome would trace the current framework of environmental protections in substantial measure directly to the Santa Barbara spill.”⁶⁰ Moreover, the court noted that “[o]f particular relevance here, the federal Coastal Zone Management Act and California’s Coastal Act followed in the wake of the spill and both provided California substantial oversight authority for offshore oil drilling in federally controlled areas.”⁶¹

The court followed with an overview of the CZMA, OCSLA, and NEPA. The Court reiterated that Congress amended the CZMA in 1990 with the specific intent of overturning *Secretary of the Interior v. California*.⁶² The court then concluded that the CZMA required full review at the lease suspension stage.⁶³

As the court noted, the lease suspensions “represent a significant decision to extend the life of oil exploration and production off of California’s coast, with all of the far reaching effect and perils that go along with offshore oil production.”⁶⁴ The court rejected MMS’s argument that the State could wait until submittal of EPs and DPPs, pointing out that “[a]lthough a lease suspension is not identical to a lease sale, the very broad and long term effects of these suspensions more closely resemble the effects of a sale than they do the highly specific activities reviewed under section (c)(3).”⁶⁵ Therefore, “section (c)(1) review is available now for the broader effects implicated in suspending the leases. This phasing of review fits closely the expressed intent of Congress in subjecting the analogously broad implications of lease sales to (c)(1) review and specific plans to (c)(3) review.”⁶⁶

AFTERMATH OF *STATE OF CALIFORNIA V. NORTON*

As a result of these rulings, the leases were placed under a “directed suspension,” meaning that all activities on the leases were halted. In February 2005, MMS issued final Environmen-

tal Assessments and “Findings of No Significant Impact” under NEPA, again deferring review of future exploration and development activities until submittal of EPs and DPPs.⁶⁷ In March 2005, EDC and the Natural Resources Defense Council filed a lawsuit under NEPA on behalf of several environmental organizations.⁶⁸ In April 2005, MMS submitted proposed “consistency determinations” to the Coastal Commission pursuant to the CZMA. Although MMS claimed to address future activities that may occur on the leases, when the Coastal Commission requested more specific information and analysis of the effects of such activities, MMS again stated its refusal to conduct such an evaluation at this stage in the process.

The court hearing on the NEPA claim and the Coastal Commission hearing on the CZMA issue were scheduled one day apart in August 2005. In each case, the environmental groups argued that MMS should not be allowed to defer review of future activities that may occur on the leases. EDC pointed out that NEPA requires federal agencies to consider not just the “direct effects” of an action, but also the “indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁶⁹ Similarly, the

legislative history of the 1990 CZMA amendments supported the same standard for assuring timely review of activities that may affect the State’s coastal resources. The environmental groups noted that without the suspensions, the leases would expire. Therefore, they argued, the State should be allowed to consider the full range of impacts that may flow from such a decision.

On August 11, 2005, the Coastal Commission agreed that the scope of its review encom-

passed all future activities on the leases.⁷⁰ Accordingly, the Commission unanimously objected to the consistency determinations submitted by MMS. The next day Judge Wilken ruled from the bench that MMS “violated NEPA by failing to prepare environmental analyses of future exploration and development activities under the leases.”⁷¹ The Judge found not only that future development activities on the leases are reasonably foreseeable, but that the very purpose of the lease suspensions is to allow such activities. Accordingly, the Judge remanded the matter to MMS, ruling that the agency must complete adequate NEPA analyses of the lease suspensions. MMS appealed this decision and the case is currently pending before the Ninth Circuit Court of Appeals.

These decisions reflect the shared opinions of the legislative and judicial branches of the federal government that coastal states should be granted the right to review any federal agency activities that may have a direct or indirect effect on the State’s coastal zone. This perspective—so integral to Congress’s amend-

States should be granted the right to review any federal agency activities that may have a direct or indirect effect on the state’s coastal zone.

ments of the CZMA in 1990, and confirmed by the court's decision in *State of California v. Norton*—was further endorsed by the executive branch, under the Clinton Administration, when it published final revisions to the CZMA regulations.⁷² Although the purpose of the update was to allow a comprehensive review of the CZMA regulations, a critical component of the new regulations was focused on the need to comply with the 1990 amendments to the Act.

Thus, the three branches of government subscribed to the broad right of coastal states to review activities that may affect their coastal resources. Despite this unanimity, a change in the executive branch muddied the waters in 2002. Under the Bush Administration, the federal government proposed to revise the CZMA regulations again, less than two years after the comprehensive revisions were made in December 2000. The new regulations, which were finalized on January 5, 2006, appear to undermine both the Congressional intent in 1990 as well as the Ninth Circuit's ruling in 2002.⁷³ For example, the Federal Register notice announcing the new regulations characterizes OCS lease suspensions as "interim or preliminary" and states that "in all foreseeable instances, lease suspensions would not be subject to federal consistency review since (1) in general, they do not authorize activities with coastal effects; and (2) if they did

contain activities with coastal effects, the activities and coastal effects would be covered in a State's review of a previous lease sale, an EP or a DPP."⁷⁴ This language appears to conflict with the 1990 CZMA amendments, which provide for early review, similar to NEPA, so that even future, indirect effects shall be considered in the context of a proposed federal activity.

CONCLUSION

As the courts have stated, the CZMA must be applied on a case-by-case basis. There are no exclusions from state consistency review; if the facts of a particular case indicate that the proposed activity may result in a direct or indirect effect on a state's coastal zone, a consistency determination or certification must be submitted to the state for review. Any limitations set forth in the CZMA regulations must be implemented consistent with the intent of the Act itself. Thus, if the current or any future administration attempts to rely on the 2006 regulations to limit state review, the judicial branch may be brought into the fray again to determine whether Congress's intent is being undermined. In the meantime, California and other coastal states should follow the 1990 amendments to the CZMA and the court's interpretation of such amendments, as set forth in *State of California v. Norton*.



Endnotes: Defending State's Rights

¹ *California v. Norton*, 311 F.3d 1162 (9th Cir. 2002).

² Coastal Zone Management Act, 16 U.S.C. § 1451 *et seq.*

³ *Norton*, 311 F.3d at 1173.

⁴ See generally ROBERT SOLLEN, AN OCEAN OF OIL: A CENTURY OF POLITICAL STRUGGLE OVER PETROLEUM OFF THE CALIFORNIA COAST (Denali Press, 1998) (providing an excellent history of the conflicts between state and federal regulation over offshore oil and gas development).

⁵ Proclamation No. 2667, 10 Fed. Reg. 12,303 (Sept. 28, 1945) (proclaiming that the United States "regards the natural resources of the subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control").

⁶ *United States v. California*, 332 U.S. 19, 38-39 (1947).

⁷ Submerged Lands Act, 43 U.S.C. §§ 1301-1315 (1952).

⁸ Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356 (1952).

⁹ Keith C. Clarke & Jeffrey J. Hemphill, *The Santa Barbara Oil Spill: A Retrospective*, in YEARBOOK OF THE ASSOCIATION OF PACIFIC COAST GEOGRAPHERS, VOL. 64, 157-162, available at <http://www.geog.ucsb.edu/~kclarke/Papers/SBOilSpill1969.pdf> (last visited Nov. 4, 2007); see also ROBERT EASTON, BLACK TIDE: THE SANTA BARBARA OIL SPILL AND ITS CONSEQUENCES (Delacorte, 1972).

¹⁰ Clarke & Hemphill, *supra* note 9; see also Miles Corwin, *The Oil Spill Heard 'Round the Country!*, L.A. TIMES, Jan. 28, 1989, at A1.

¹¹ See generally County of Santa Barbara Energy Division, Blowout at Union Oil's Platform A, <http://www.countyofsb.org/energy/information/1969blowout.asp> (last visited Nov. 14, 2007).

¹² Clarke & Hemphill, *supra* note 9.

¹³ Clarke & Hemphill, *supra* note 9.

¹⁴ Clarke & Hemphill, *supra* note 9.

¹⁵ Clarke & Hemphill, *supra* note 9 (noting that the Santa Barbara oil spill led to the enactment of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 *et seq.* and the creation of the Environmental Protection Agency ("EPA")).

¹⁶ The CZMA defines the coastal zone as waters seaward of state title and ownership under the Submerged Lands Act, as well as Great Lakes waters. See 16 U.S.C. § 1453(l) (2007).

¹⁷ 16 U.S.C. § 1456(a).

¹⁸ 16 U.S.C. § 1456(c).

¹⁹ See 16 U.S.C. § 1452. Pursuant to 16 U.S.C. § 1455, the federal government offered funding to help states prepare their coastal management programs.

²⁰ 16 U.S.C. § 1452.

²¹ Legislation, NOAA Office of Legislative Affairs website, <http://www.legislative.noaa.gov/Legislation/czma.html> (last visited Nov. 4, 2007).

²² 16 U.S.C. § 1456(c) (2007). See also *Exxon Corp. v. Fischer*, 807 F.2d 842, 844 (9th Cir. 1987) (defining CZMA as "a mechanism for resolving conflicts between state coastal zone plans and federally-approved activities").

²³ 16 U.S.C. § 1456(c).

²⁴ 16 U.S.C. § 1456(c)(1)(A).

²⁵ 16 U.S.C. § 1456(c)(1)(C).

²⁶ 16 U.S.C. § 1456(c)(3)(A).

²⁷ 16 U.S.C. § 1456(c)(3)(A).

²⁸ 16 U.S.C. § 1456(c)(3)(A).

²⁹ 16 U.S.C. § 1456(c)(3)(B).

³⁰ 16 U.S.C. § 1456(c)(3)(B)(ii).

³¹ 16 U.S.C. § 1456(c)(1)(A) (emphasis added).

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³² Compare 16 U.S.C. § 1456(c)(1)(B), with § 1456(c)(3)(A). For a federal agency activity, the state must file a legal challenge if the agency decides to proceed with an action over the state's objection.

³³ The President may also exempt a federal agency activity from the CZMA if the President determines that the activity is "in the paramount interest of the United States." 16 U.S.C. § 1456(c)(1)(B). For a privately proposed activity, including oil exploration or development, the Secretary of Commerce may override a state's objection by finding that the activity is consistent with the objectives of the CZMA or "is otherwise necessary in the interest of national security." 16 U.S.C. § 1456(c)(3)(A), (B)(iii).

³⁴ See *Sec'y of the Interior v. California*, 464 U.S. 312, 319 (1984), *superceded by statute*, Act of Nov. 5, 1990, as amended by § 2205(13) of Act Nov. 4, 1992, Pub. L. No. 102-587.

³⁵ Minerals Management Service website, <http://www.mms.gov/mmshome.htm> (last visited Nov. 4, 2007)

³⁶ *California*, 464 U.S. at 319.

³⁷ *California, id.* at 318.

³⁸ *California v. Norton*, 150 F. Supp. 2d 1046 (N.D. Cal. 2001), *aff'd*, 311 F.3d 1162 (9th Cir. 2002).

³⁹ *California*, 464 U.S. 312.

⁴⁰ *California, id.* at 315-18.

⁴¹ *California, id.* at 342-43.

⁴² *California, id.*

⁴³ Act Nov. 5, 1990, as amended by § 2205(13) of Act Nov. 4, 1992, Pub. L. No. 102-587. Congress' specific attack on *Sec'y of the Interior v. California* was apparent in the statements of the legislature, including the notation that "the 'directly affecting' standard which was the central feature of the Court's decision has been struck and replaced with a new triggering standard: 'affecting any natural resources, land uses, or water uses in the coastal zone.'" Congress also stated that "the interpretation that an OCS lease sale is not subject to subsection (c)(1) because it is not an activity 'conducted or supported' by a federal agency is addressed by striking those words." 136 CONG. REC. H8068, H8076 (1990).

⁴⁴ Essentially, MMS is asked to suspend the expiration of the lease, so that the lessee may continue to pursue production of the lease.

⁴⁵ Some of the leases were part of Lease Sale 53, the sale that was challenged in *Sec’y of the Interior v. California*.

⁴⁶ MMS, FINAL CALIFORNIA OFFSHORE OIL AND GAS ENERGY RESOURCES (“COOGER”) STUDY, OCS Report MMS 99-0043, Jan. 26, 2000, *available at* <http://www.mms.gov/itd/abstracts/95-0059a.html> (last visited Nov. 10, 2007).

⁴⁷ *See generally* CAL. COASTAL COMM’N, CAL. OFFSHORE OIL & GAS LEASING AND DEV. STATUS REPORT (1999), *available at* <http://www.coastal.ca.gov/pubs.html> (last visited Nov. 10, 2007).

⁴⁸ The EDC is a non-profit public interest environmental law firm headquartered in Santa Barbara, California; see www.EDCnet.org for more information.

⁴⁹ *See* Letter from Sara J. Wan, Chair of the Coastal Commission, to Bruce Babbitt, Secretary of the Interior and Walt Rosenbusch, Director of MMS (July 27, 1999), *available at* <http://www.coastal.ca.gov/energy/ocs/8-2005-Th5j-exhibits.pdf> (last visited Nov. 10, 2007).

⁵⁰ *See* Letter from Bruce Babbitt, Secretary of the Interior, to Sara J. Wan, Chair of the California Coastal Commission (Aug. 13, 1999) (explaining that in August 1999, the federal government allowed four of the leases to expire, leaving 36 leases that were suspended in November, 1999). Subsequently, it was discovered that an additional partial lease was included in the suspensions, bringing the total number of suspended leases to 37.

⁵¹ *California v. Norton*, *supra* note 38.

⁵² EDC represented the Sierra Club, Friends of the Sea Otter, CALPIRG, California Coastkeeper, Santa Barbara Channelkeeper, Santa Monica Baykeeper, Get Oil Out!, and Citizens Planning Association of Santa Barbara County, and the Natural Resources Defense Council represented itself and the League for Coastal Protection.

⁵³ *Norton*, 150 F. Supp. 2d at 1053, *aff’d*, 311 F.3d 1162 (9th Cir. 2002).

⁵⁴ *Norton*, *id.* at 1052.

⁵⁵ *Norton*, *id.* (citing H.R. Rep. No. 101-964 at 2675).

⁵⁶ *Norton*, *id.*

⁵⁷ *Norton*, 150 F. Supp. 2d at 1053, *aff’d*, 311 F.3d 1162 (9th Cir. 2002).

⁵⁸ *Norton*, *id.* at 1054.

⁵⁹ *Norton*, 311 F.3d at 1162.

⁶⁰ *Norton*, *id.* at 1167.

⁶¹ *Norton*, *id.*

⁶² *Norton*, *id.* at 1172-73.

⁶³ *Norton*, 311 F. 3d at 1173.

⁶⁴ *Norton*, *id.*

⁶⁵ *Norton*, *id.* at 1174.

⁶⁶ *Norton*, *id.* at 1174. The Court also noted that the leases in question were sold prior to the 1990 amendments to the CZMA, and reserved the issue of whether a state has the right to review a suspension that had been subject to review at the initial lease sale phase. Such a determination would be made “on the particular facts” of the case. *Norton*, *id.* at 1175.

⁶⁷ MMS, ROCKY POINT UNIT FINDING OF NO SIGNIFICANT IMPACT, Leases OCS-P 0452 & 0453 (Feb. 11, 2005), *available at* <http://www.mms.gov/omm/pacific/lease/final-eas/Rocky-Point-Final-EA-2-01-05.pdf> (last visited Nov. 13, 2007).

⁶⁸ *League for Coastal Prot. v. Norton*, 2005 U.S. Dist. LEXIS 32379 (N.D. Cal. Aug. 31, 2005).

⁶⁹ *E.g.*, *Norton*, *id.* at *10 (citing 40 C.F.R. §1508.8).

⁷⁰ CAL. COASTAL COMM’N, STAFF REPORT & RECOMMENDATION ON CONSISTENCY DETERMINATION, CD-050-05: MMS OCS LEASE SUSPENSIONS 11-14 (Aug. 11, 2005), *available at* www.coastal.ca.gov/energy/ocs/8-2005-Th5i.pdf (last visited Nov. 10, 2007).

⁷¹ *Norton*, 2005 U.S. Dist. LEXIS 32379 at *14 (“NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.”) (citing *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1072 (9th Cir. 2002)).

⁷² Coastal Zone Management Act Federal Consistency Regulations, Final Rule, 65 Fed. Reg. 77,124 (Dec. 8, 2000).

⁷³ Coastal Zone Management Act Federal Consistency Regulations, Final Rule, 71 Fed. Reg. 788 (Jan. 5, 2006).

⁷⁴ Fed. Reg., *id.* at 792.