NO. 35 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1973

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF MAINE, ET AL.,

Defendants.

AMICUS CURIAE BRIEF OF THE SPECIAL COMMITTEE ON TIDELANDS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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Chairman, Tidelands
Committee of the National
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MOTION OF THE SPECIAL COMMITTEE ON TIDELANDS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL TO FILE A BRIEF AS AMICUS CURIAE

1. On or about August 27, 1974 the Special Master, Judge Albert B. Maris filed his report with this Honorable Court in the above captioned matter.

2. Judge Maris' Report purports to state that the coastal states concerned in these proceedings do not have an interest in offshore production other than what has been granted them by Congress or which has been left to them as the result of inaction on the part of the Federal Government.

3. Movers are Attorneys General of various coastal states as indicated hereinafter and compose the Special Committee on Tidelands of the National Association of Attorneys General.

4. Movers submit that the Special Master completely disregarded any and all reference to the burden which is borne by the coastal state in the support of offshore production.

5. Movers further submit that such burden takes the form of environmental, social and economic impact upon the coastal state which is not recompensed by the benefit of offshore production.

6. It is the position of Movers that as a result of the serious impact which offshore production has upon the coastal state the coastal states have a direct and important interest in offshore mineral development and further that this interest requires state ownership of those resources.

7. The environmental, social and economic impact caused by offshore production deserve consideration by this Honorable Court and the interest of the coastal states resulting therefrom deserve substantial weight in the present case.

8. Accordingly, Movers desire to be allowed to file a brief as Amicus Curiae in the present proceeding which brief will deal with the environmental, social and economic impact offshore production has upon the coastal state.

WHEREFORE, Movers pray that they be allowed to file a brief as Amicus Curiae in the proceedings now before the Honorable Court and that after due proceedings are had the Report of Special Master Albert B. Maris be rejected.

Respectfully Submitted:

Tidelands Committee
National Association of
Attorneys General

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BRIEF OF THE SPECIAL COMMITTEE ON TIDELANDS OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL AMICUS CURIAE

National Association of
Attorneys General

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PRELIMINARY STATEMENT

The Special Committee on Tidelands of the National Association of Attorneys General (hereinafter referred to as the Committee*) has filed this Amicus Curiae brief in response to certain conclusions drawn by Special Master, Judge Albert B. Maris, in his Report entitled *United States v. Maine, et al.*, No. 35, Original, which was filed with this Honorable Court on August 27, 1974. The Committee respectfully takes issue with the Special Master's assessment of the varying interest between the coastal states and the federal government in relation to the development of offshore minerals. Replete throughout the report

*The Special Committee on Tidelands consists of the following states:

Alaska
California
Louisiana
Massachusetts
South Carolina
Texas
Virginia
Washington

is the inference that the coastal states lack an interest in offshore production.

For example, on page 13 of the Special Master's Report (hereinafter Report) Judge Maris opines that "the predominance of national interests over state interests increases rather than diminishes as one moves farther seaward . . ." Additionally, on page 14 of Judge Maris' Report he states the law is to the effect that since the territorial sea is concerned with defense, international relations and foreign commerce—all incidents of national sovereignty which are vested in the federal government—full dominion over the resources of the soil of the territorial sea is an incident thereto. Judge Maris leaves little doubt that his opinion regarding the coastal states is that the states have no rights other than those found in the Submerged Lands Act, 67 Stat. 29, 43 U.S.C. sec. 1301 et seq., or that which descends to the various states as a result of an absence of federal legislation as in the case of the regulation of the sponge fishery. (Report at p. 16-17, 23 citing *Skiriotes v. Florida*, 313 U.S. 69 (1941). The Committee must strenuously take issue with Judge Maris' suggestion that the states lack substantial and diverse interest in the development and use of the offshore mineral resources of the Continental Shelf. On the contrary, the sacrifice and physical burdens which are borne by the coastal states are directly related to the development of offshore resources and deserve substantial weight in the present litigation. Moreover, the asserted federal interests do not in any way re-

quire federal ownership of the resources but can be adequately served by the normal exercise of the federal government's express constitutional powers over defense, foreign affairs, and commerce. The states' interests, however, involve direct economic burdens resulting from the environmental, social and economic impact of the development of the resources and necessarily require state ownership of the resources.

The Committee believes that the interest of the states is not dependent upon whether or not petroleum activity or other resource development is pursued on land or in the offshore domain. The states have a significant interest in this production because of the fact that they aid in the support of the total exploration and production activity without recompense in the form of tax revenues or other consideration. It is fundamentally fair and equitable that the coastal states benefit from their support effort, which is essential to production.

Hence, this brief is directed to the issues of environmental, social and economic impact upon coastal states and represents the Committee's belief that this burden supports the claim of coastal states to offshore production.*

The Committee would like to state, however, that the views expressed herein do not necessarily represent the views of the National Association of Attorneys General as a whole.

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*See Appendix IV authorizing the Committee to file this brief.

I.

THE FUTURE OF OFFSHORE DEVELOPMENT

Offshore petroleum development was born in 1897, when the first offshore platform was constructed off Santa Barbara, California. Naturally, in its early stages the petroleum industry concentrated its production efforts on land. Nevertheless, appromixately fifty years ago the first offshore platform constructed out of sight of land began operating off the coast of Louisiana. The trend in the industry since then has been the Gulf of Mexico basin.* However, there are by the dwindling of land resources and the development of sophisticated equipment utilized in the capture of oil and gas.

The area of our country which has been the focal point of most offshore exploration activity has been the Gulf of Mexico basin.* However, there are other areas which are subject to development and indeed there is really no part of the United States coast which would be considered as having no potential whatsoever.

With reference to the Atlantic outer continental shelf (OCS), actual petroleum development is nonexistent. Nevertheless, activity is certain to commence in this area in the near future. The Atlantic OCS is relatively broad and slopes gently. Along the eastern seaboard, the width of the OCS is generally 75 to 100 miles to a depth of around 200 meters. Major

* The magnitude of this development and its location, state vis-a-vis federal waters, is amply demonstrated by reference to Appendix V, consisting of map and data, "Annual Drilling and Production Report," *Offshore*, Vol. 34, No. 7 June 20, 1974 at 77 *et seq.*

areas of interest are the Baltimore Canyon Trough, stretching from Long Island, New York to Virginia, the Southeast Georgia Embayment, stretching from South Carolina to Cape Canaveral, and, of particular interest, the Georges Bank Trough whose center lies about 130 miles east of Nantucket, Massachusetts. Estimates of undiscovered economically recoverable crude oil and natural gas range from 5 to 20 billion barrels and from 35 to 110 trillion cubic feet, respectively.[1]

To underscore the future of OCS development, the following quote is pertinent:

> Although petroleum from the outer shelves has only been produced thus far from the Gulf of Mexico, each of the other shelves, except the Hawaiian shelf, has extensive areas that are broadly favorable for petroleum. Parts of the Artic Ocean, Bering Sea and Pacific Ocean shelves of Alaska, for example, are contiguous with known petroliferous areas; seismic surveys already have identified extensive areas broadly favorable for petroleum in each of them, and the rich discoveries already made on state lands in Cook Inlet support the speculation that offshore Alaska has a large petroleum potential. Onshore production and preliminary exploration on state and federal leases offshore Washington and Oregon are not so encouraging but large broadly favorable areas identified from seismic surveys remain to be tested . . . .

[1] *OCS Oil and Gas*—An Environmental Assessment, a Report to the President by the Council on Environmental Quality, April, 1974, at page 2-11. This publication treats in detail impact of OCS development along the eastern seaboard and in Alaska. When dealing with these areas it will be cited frequently as CEQ p._____.

> [Several areas offshore California have promising potential for petroleum.] . . .
>
> The production already coming from the Gulf OCS. . . speaks for its potential. . . .
>
> As yet there has been no production on the Atlantic coastal plain, but offshore seismic studies and drilling indicate a thicker sedimentary section [than the Gulf OCS] and several major structures that are favorable for the occurrence of petroleum in several large areas between southern Florida and Georges Bank. . . . In short, the favorable area for the presence of petroleum on the U.S. shelves is large. In fact, it appears to be nearly 55 percent as large as the area of favorable ground on land and to contain a volume of sediments that is about 90 percent as large as that in which petroleum occurs on land.[2]

II.

ENVIRONMENTAL IMPACT

Offshore OCS activity will undoubtedly affect the local environment regimen both in the offshore area itself and onshore adjacent to any OCS development.

Probably the most apparent ecological impact, at least in terms of public awareness, is the consequence of oil spills. The question of whether or not there will be spills is pretermitted for the simple reason that experience shows spills will occur from time

[2] See Appendix I, Offshore Revenue Sharing. An Analysis of Offshore Operations on Coastal States at Page 12.

to time. Where there is sustained petroleum activity, i.e. drilling and transporting crude oil either by pipeline or tanker, oil will be discharged into the ocean. The question is really when and how much of this oil will be lost and, of course, what effect it will have on the local environment.

Oil spills in any degree pose a potential threat to coastal wildlife. Along the Atlantic coast, thousands of species of birds, some quite rare, winter, breed and feed. Birds are particularly vulnerable to oil because the product can coat their inner feathers thus destroying their insulation. Furthermore, because many birds flock, an entire breeding population may be exposed to the threat of oil. The loss of a particular group of birds is compounded by the fact that many birds only produce two to three breeding pairs per year which severely limits a particular species in recouping its losses.[3]

There are numerous ways oil can damage the local fish population: (1) Eggs and larva die in spawning and nursery areas from coating and from exposure to concentrations of hydrocarbons in excess of 0.1 parts per million (SAD). These concentrations occur in unweathered spills of crude offshore and crude refined oil near shore. (2) Adults die or fail to reach spawning grounds if the spill occurs in a critical, narrow, or shallow waterway. Anadromous fish homing to an estuary are particularly vulnerable to this situation. (3) A local breeding population is

[3] CEQ Report, *supra* note 1, at p. 6-37.

lost due to contaminated spawning grounds or nursery area. (4) Tecundity and spawning behavior is changed. (5) Local food species of adults, juveniles, fry, or larvae are affected.[4]

Other marine organisms which can be affected by the presence of oil in the water are plankton, which form the basis of the ocean food chain.

There can also be little doubt that where marine life is affected, there will correspondingly be an impact on commercial fishing. It is estimated that the commercial fishing industry will be affected in the following ways:

(1) removal of the sea floor from use by trawlers;

(2) underwater obstructions;

(3) oil pollution (chronic or accidental);

(4) pipeline; and

(5) reefs[5]

The very presence of offshore rigs pose a threat to trawler navigation. Taking into account a navigational safety zone around each platform and using a two to five acres per platform figure, it has been estimated that trawlers may be denied up to ten acres of the sea floor per developed tract.[6] This problem will be particularly acute in areas where there is a large concentration of offshore platforms as in the Gulf of Mexico off the Louisiana coast.

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[4] CEQ Report, *supra* note 1, at p. 6-38.

[5] Draft Environmental Statement Vol. 1 of 4 prepared by the Bureau of Land Management, p. 571.

[6] id. at p. 572

A similar problem to fishermen is underwater obstructions such as pipeline stubs and underwater debris which can snag nets and trawls.

Additionally, in the event there is chronic spill such as the seeping or dripping of oil, fishing activity will naturally be inhibited.

ONSHORE

OCS activity has, and will have, a very real ecological effect on land adjacent to the development. Of major concern, considering the Santa Barbara spill of 1969, is the presence of oil on beaches and along the wetlands of our coasts. It is respectfully submitted that if a spill occurs whether by accident or natural phenomena as in the event of a hurricane, it is not an inland state which will have to suffer the consequences. A recent study completed by MIT indicates that along the eastern seaboard, the coastal state would suffer onshore oil depending on the distance from shore and time of year. (See Figure 1).

Anytime there is offshore activity, the coastal state will naturally be the mainstay of supportive industries and endeavors. Wetlands, which are uncommonly sensitive, will have to be exploited to some degree and the question actually becomes the degree to which undeveloped land will be developed. The most vulnerable of habitats is the estuarine wetland which is often used as a dump for dredged materials or solid waste, for farming, for industry or for homes. Portions of these important areas will be irretrievably lost wherever

Figure 1.

PROBABILITIES OF OIL SPILLS COMING ASHORE FROM HYPOTHETICAL SPILL SITES IN THE ATLANTIC OCEAN

Shore point	Season[1]	Distance from shore						Center of EDS
		10 miles east	25 miles east	50 miles east	75 miles east	100 miles east	125 miles east	
Nantucket	Spring	65%	45%	30%	25%	20%	20%	15% (EDS 1)
	Autumn	30	10	5	0-5	0-5	Near 0	Near 0 (EDS 1)
Nantucket Shoals	Spring	50	50	35	30	20	20	20 (EDS 2) 35 (EDS 3)
	Winter	5	5	5	5	5	4-5	Near 0 (EDS 2) Near 0 (EDS 3)
Davis South Shoal	Spring	55	50	35	25	20	–	50 (EDS 4)
	Winter	10	10	5	5	5	–	5-10 (EDS 4)
Great South Bay[2] (Long Island)	Summer	95-100	75	10	–	–	–	10 (EDS 5)
	Winter	30	15	Near 0	–	–	–	Near 0 (EDS 5)
Atlantic City	Spring	–	20	25	15	–	–	20 (EDS 6)
	Winter	–	0-5	0-5	0-5	–	–	0-5 (EDS 6)
Fenwick Island	Spring	–	15	20	20	–	–	20 (EDS 7)
	Winter	–	0-5	0-5	5	–	–	5 (EDS 7)
Chincoteague Inlet	Spring	–	5	15	25	–	–	20 (EDS 8)
	Autumn	–	0-5	0-5	0-5	–	–	0-5 (EDS 8)
Cape Henry, Va.	Spring	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 9)
	Autumn	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 9)
Cape Romain, S.C.	Spring	–	95	65	Near 0	–	–	95 (EDS 10)
	Autumn	–	Near 0	Near 0	Near 0	–	–	Near 0 (EDS 10)
Savannah	Spring	–	95-100	95	80	20	–	95-100 (EDS 11)
	Autumn	–	20	5	Near 0	Near 0	–	5 (EDS 11)
Fernandina Beach, Fla.	Spring	–	95	55	20	0-5	–	90 (EDS 12)
	Winter	–	15	10	Near 0	Near 0	–	15 (EDS 12)
Daytona Beach, Fla.	Summer	–	–	–	–	–	–	50 (EDS 13)
	Autumn	–	–	–	–	–	–	Near 0 (EDS 13)

– Computer model not run at this point.

[1] Two seasons are listed for each area. In the first season, oil spilled has the highest probability of reaching shore; in the second season, oil spilled has the lowest probability. Probabilities are intermediate in the unlisted seasons.

[2] The estimates for Great South Bay are distances south of the bay rather than east.

Source: The Massachusetts Institute of Technology Department of Ocean Engineering.

Source: The above is the result of tests conducted by MIT at the request of the Council on Environmental Quality and appears in the publication CEQ Report, supra note 1, at p. 6-6

there is OCS activity. Pressure to use these lands will be significant as exploration increases. For example, as the population grows, there will be greater demand

for more highways, houses and shopping centers which in turn create a need for additional land use. It has recently been postulated that

> in a relatively undeveloped area like Cumberland and Cape May Counties, New Jersey, the population growth and related industrial development could adversely affect one of the nation's most productive and ideally located coastal wetland areas and its productive estuarine zone. In contrast, in Solano/Contra Costa Counties, California, an area that is already relatively developed, even the small population increase and related development expected with OCS production could significantly increase the pressures on the limited remaining wildlife habitat.[7]

In general, it must be admitted that man's mere presence will affect the environment to some degree. And, necessarily, this will be the case where OCS activity is present.

The degree of impact will be determined by area and extent of activity. In Alaska, OCS activity will center in the Gulf of Alaska. Of considerable worry for the area is the fact that there is generally lower marine and coastal temperatures which in turn slow down microbial action—which means that oil on water will become thicker and will clump and thus impede bacterial attack. This is particularly significant because offshore drilling in this area poses increased hazards as a result of earthquakes and, more common, severe storms. Hence, the result of an oil spill is more acute,

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[7] CEQ Report, *supra* note 1, at p. 7-77

and, as previously stated, once the oil has been spilled it tends to remain for a longer period of time.

Wherever refineries are constructed, and it can be expected that they will be built as OCS production increases, wetland will be taken. Refineries will also contribute to pollution levels in both the air and water. This will effect the surrounding environment which will be as close to the coast as feasible and as acceptable to the general public. Again—it is the coastal state which will receive the impact of development.

III.

SOCIAL IMPACT

There is absolutely no question that measured OCS activity will create increased demands for services upon local governments. Wherever OCS activity is located, the population of the adjacent state will increase in proportion to the extent of the activity. Along the eastern seaboard, the population impact is predicted to be heaviest in the Charleston, South Carolina area.[8] Nevertheless, there will be a population impact along the entire coast.

The problems which accompany this increase in population are considerable with the demand for services—schools, hospitals, transportation, housing, commercial facilites, sewers, office space and public utilities—the most troublesome.

Along the Atlantic coast the extent of the problem will vary considering the nature of the community.

[8] CEQ Report, *supra* note 1, at p. 7-73

For instance, in the New England area it is postulated that under high OCS development conditions, demands for services would increase some 9% in 1985 and although this seems modest, it is stated that it is not. Thus, it is pointed out that,

> land around the major urban areas is almost fully utilized, so that growth would probably occur in the smaller communities or through redevelopment of the older cities and downtowns. If two or three of the country's dozen communities of about 10,000 people were to receive a majority of the projected 44,000 new inhabitants, existing facilities would be significantly strained . . .[9]

It is important to note that, although some areas may increase more than others, all areas supporting OCS activity will increase in population as a result of OCS development.

In the Middle Atlantic States, the area considered most vulnerable to population growth is the Cumberland and Cape May Counties about halfway between Washington, D.C., and New York City and about 60 miles southeast of Philadelphia. Because both counties are extensively rural, it is believed that the shift in population will have a profound effect. There would be a great demand for public facilities which do not exist at this time.[10]

In the southern Atlantic coast region, population increases would also place great strains upon local governments. In the Charleston, South Carolina area, high

[9] CEQ Report, *supra* note 1, at p. 7-20

[10] CEQ Report, ed. 1, at p. 7-31

OCS development would double the population between 1970 and 1985, placing great strain upon public bodies.

Accompanying any shift in population will be the natural problem of a changing economy from rural to urban. Traditional values and small town concepts will be confronted by an economic transition. Hence, many communities will be faced with the struggle of maintaining their traditional life styles and characters. This situation would seem to be particularly acute in Alaska where communities are normally small. Adding to the problem is the fact that many people go to Alaska looking for work which is unavailable.

OCS development will undoubtedly alter, in some fashion, the coastal states which are the focal point of the exploration and this alteration will manifest itself in a change on the people of the state as well as the state's environment and economy. The social impact that will occur as a result of this OCS development cannot be overlooked or ignored. Population shifts and changes are a striking example of society adapting to changing circumstances. The effect will be real.

IV.

ECONOMIC IMPACT

To allege that coastal states are not affected by offshore production or to aver that the farther one proceeds out onto the outer continental shelf, the less interest coastal states should possess, denies the economic realities of the situation. In any area where offshore drilling takes place, the coastal state adjacent

to this activity will bear the burden of supporting the exploration and drilling. As offshore activity increases in the future, as it surely will, coastal states, whether along the Atlantic seabord, Gulf or Pacific, will experience significant economic impact caused by the offshore activity.

Any OCS development will undoubtedly effect the local coastal economy. There will, of course, be an increase in employment, but not necessarily a reduction in unemployment. In Alaska, increased petroleum development has produced more workers than needed. It has also been postulated that new employment in primary industries may be offset by losses in traditional endeavors such as resort, tourism and fishing businesses.[11]

Furthermore, the economic impact of a region must be measured by more than the mere increase in jobs. Naturally, there will be more work. But in many cases there may be a shortage of skilled labor. Also, publicity will bring in more workers than necessary in an area, as has happened in the Kenai District of Alaska.

Jobs, of course, mean people. People demand governmental services. As the local population expands due to OCS activity, local governments and the state will have to provide essential services such as schools, hospitals, sewer systems, police and fire protection, etc.

As previously stated, high development along the eastern seaboard would increase demands on physical

[11] CEQ Report, *supra* note 1, at p. 7-13

and social systems some 9% which impact would be felt mostly in the smaller communities where the effect would be greatest.[12]

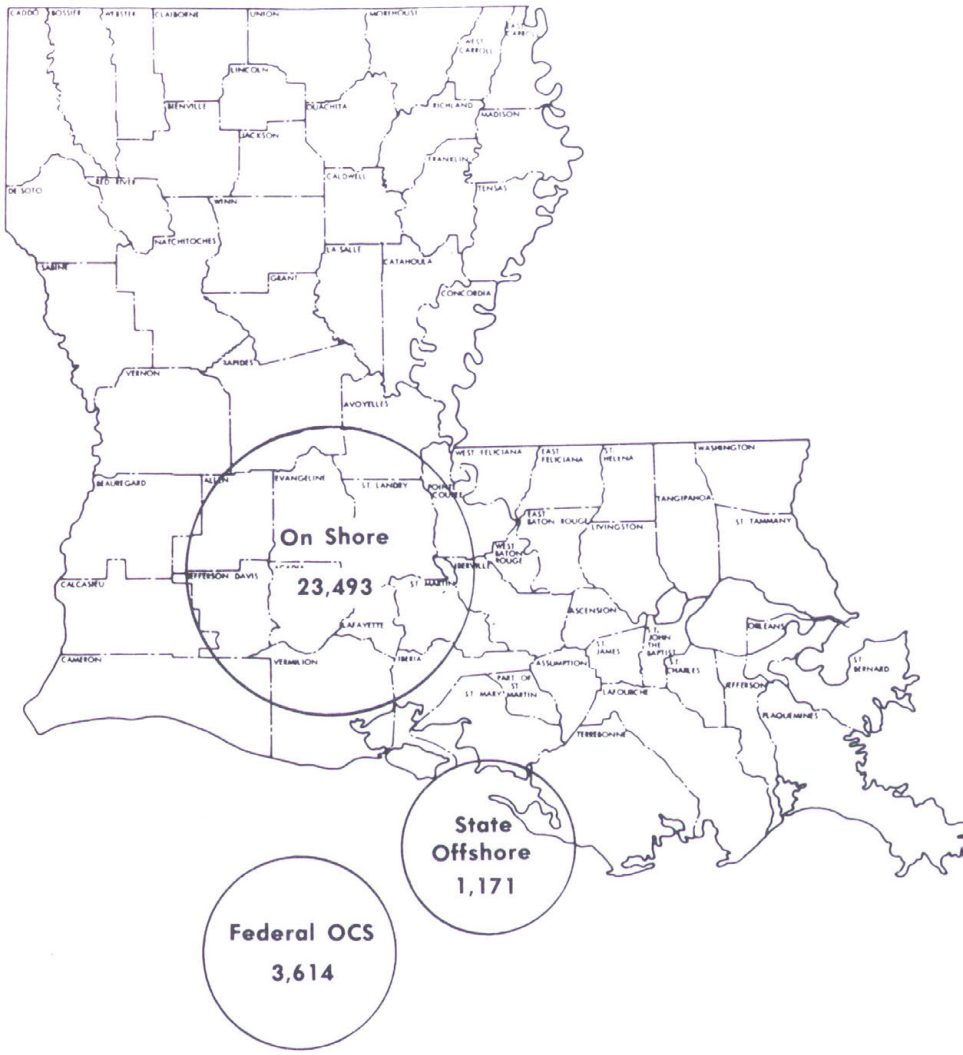
These smaller areas would feel the increase to a greater degree in that they would have to provide governmental services in towns designed for smaller populations. In the middle Atlantic area, the economic impact would be most felt in Cumberland and Cape May Counties, where for example, such growth would shift the area economy from tourism, fishing, etc., placing great strains on public facilities.

While no coastal producing state could be characterized as "typical," owing to considerable differences in geography and geology, Louisiana's long history of oil and gas production lends that state to further scrutiny regarding impact upon the local economy. For decades, Louisiana has had considerable exploration and production activity both onshore and in offshore waters, state and federal. However, the greatest number of offshore wells is located within the federal outer continental shelf area. (Figures 2, 3 and Appendix V). Additionally, production in these federal areas has increased over the years while production in state waters has decreased. (Figure 4).

It can safely be argued that this situation will hold true for most coastal states. As offshore production increases, the farther out the exploration proceeds. As a result, production in state waters is the first to decline, as it has in Louisiana. Also, in

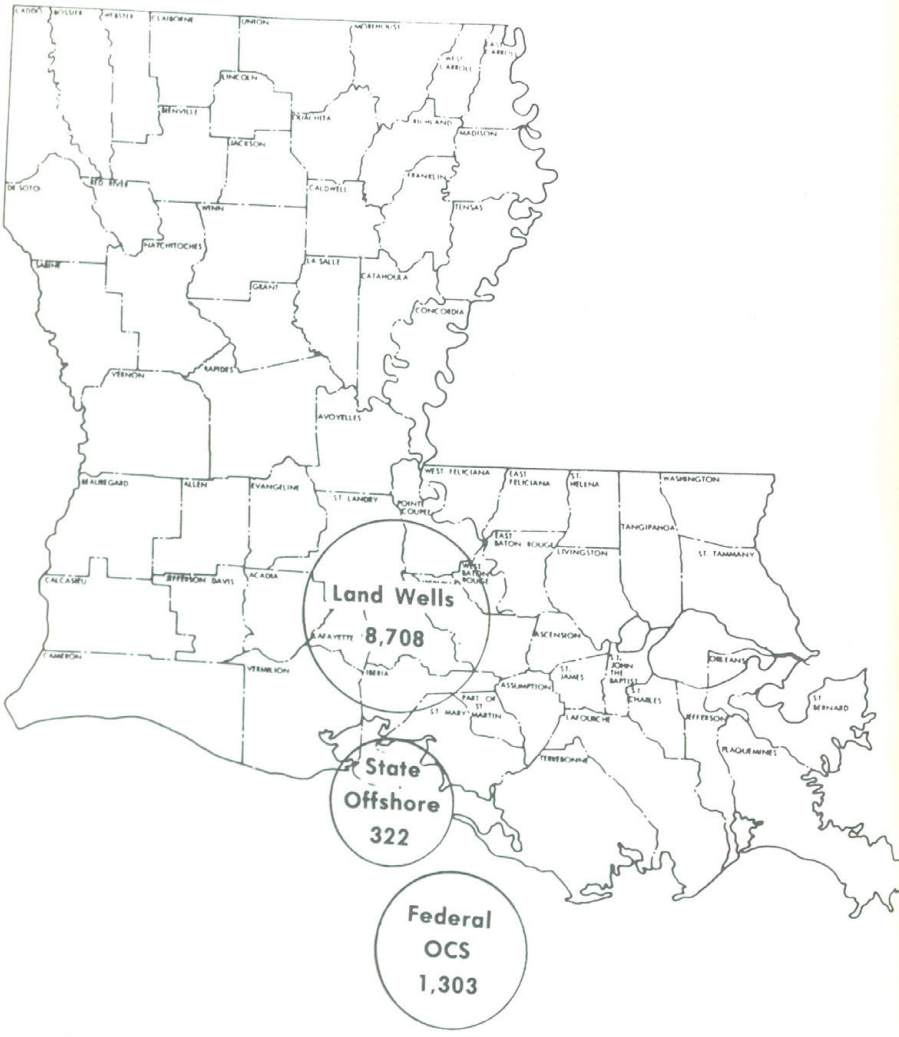
[12] CEQ Report, *supra* note 1, at p. 7-20

Figure 2. NUMBER AND GENERAL LOCATION OF PRODUCING OIL WELLS IN LOUISIANA, 1970



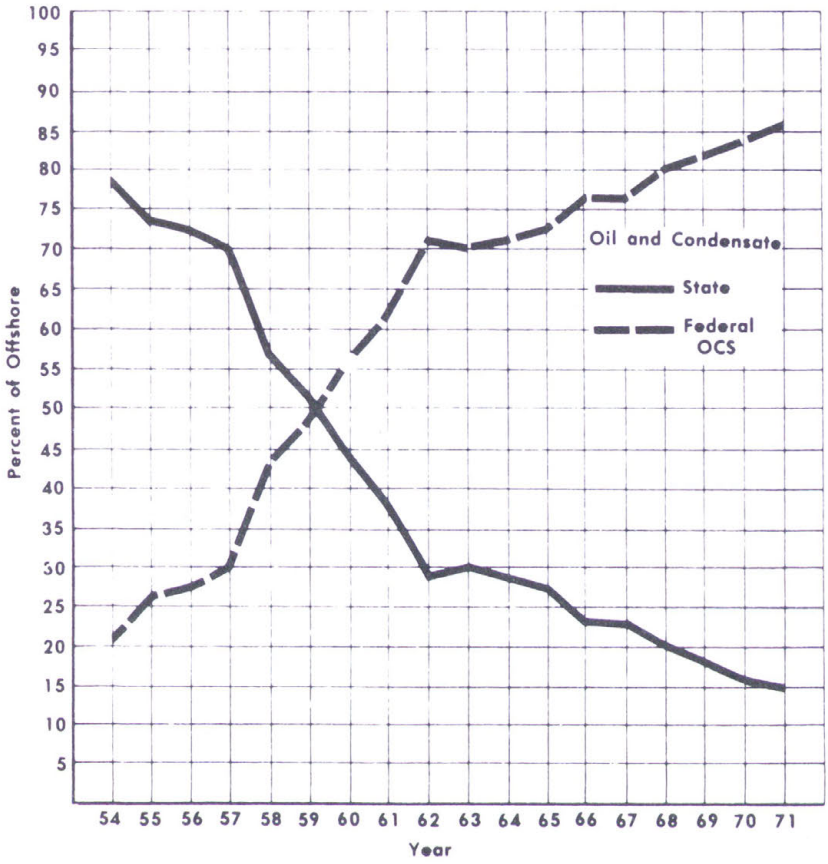
Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing,* at page 32, cited in this brief at note 2, page 7. Said publication also appearing as Appendix I in this brief.

Figure 3. NUMBER AND GENERAL LOCATION OF PRODUCING GAS WELLS IN LOUISIANA, 1970



Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing*, at page 33, cited in this brief at note 2, page 7. Said publication also appearing as Appendix I in this brief.

Figure 4. NUMBER OF BARRELS OF OIL AND CONDENSATE PRODUCED IN LOUISIANA (1954-1971)



Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing*, at page 36, cited in this brief at note 2, page 7. Said publication also appearing as Appendix I in this brief.

some areas such as Texas, federal production is considered to be the more promising in terms of actual discovery and therefore *will* receive the greater activity from the start.

In Louisiana, the impact of a shift in produc-

tion from state waters to federal waters is best reflected by the decrease in royalty payments to the State of Louisiana. Mineral leases, rentals, bonuses and royalties received by Louisiana as a percentage of total state revenue receipts received between the years of 1961 to 1971 show that there is a very serious decline in revenues received from petroleum production. (Figure 5).

Conversely, royalty payments to the federal government during the years 1967 to 1972 have more than doubled—from $140 million in 1967, to $336 million in 1972. This constantly decreasing source of revenue will have a profound effect on Louisiana's financial structure in the future.

As can be expected, the offshore industry is concentrated within the coastal parishes (counties) of the state. A recent study prepared by Gulf South Research Institute states that

> the number of persons employed in mining associated with OCS activity is estimated to be at least 15,000.[13]

This figure must be analyzed in conjunction with statistics which show employment pertaining to associated occupations which support federal offshore activity and are dependent upon it. (Figure 6).

When families of these workers are included, the population impact is estimated to be 391,000 people. These figures reflect the fact that there are a great

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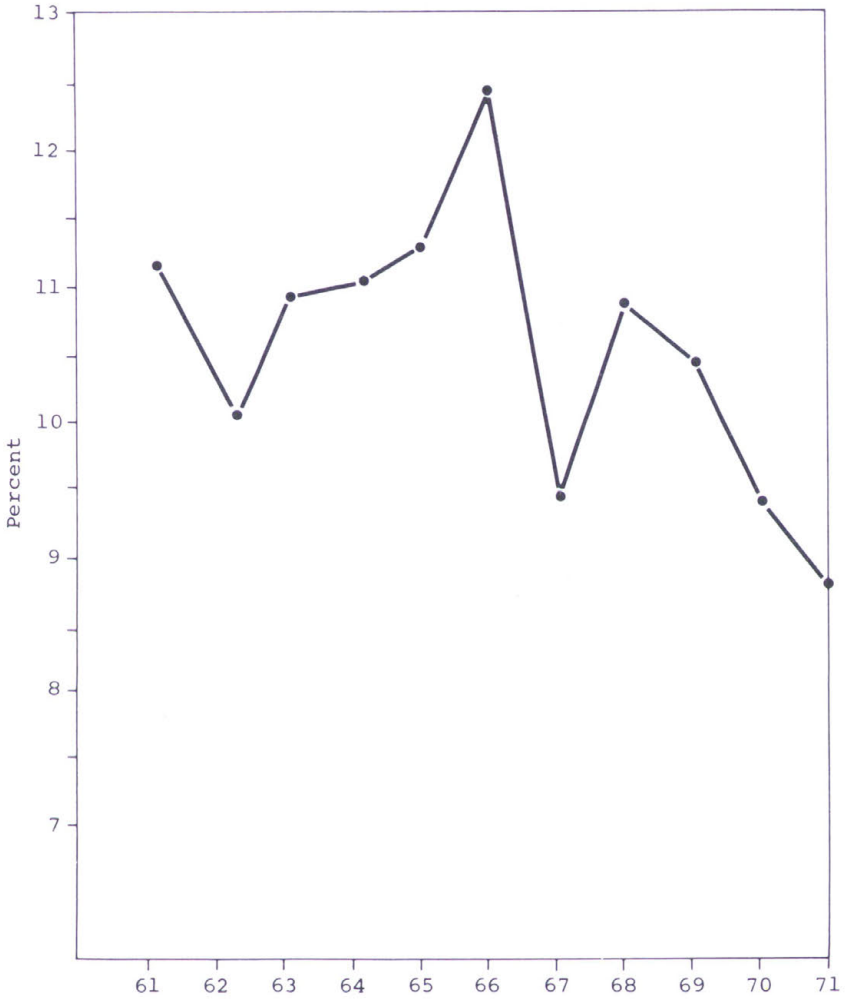
[13] GSRI Report, *supra* note 2, at p. 38

Figure 5.

MINERAL LEASES, RENTALS, BONUSES, AND ROYALTIES RECEIVED BY LOUISIANA AS A PERCENTAGE OF TOTAL STATE REVENUE RECEIPTS FISCAL YEARS 1961-71



Source: Financial Statements, State of Louisiana, Fiscal Years ending June 30, 1960-1971. Percentages computed by authors.

Source: Impact Costs to the State of Louisiana, cited herein at note 16, page 38 of this brief. Said publication also appearing as Appendix II of this brief.

Figure 6.

THE ESTIMATED NUMBER OF PERSONS EMPLOYED IN THESE VARIOUS CATEGORIES ARE SHOWN IN THE FOLLOWING TABULATION:

Employment Category	*Estimate of Number Employed as a Result of OCS Activity*
Mining	15,000
Manufacturing	10,500
Construction	4,700
Chemicals and allied products	7,300
Refining	2,800
Subtotal	40,300
Supporting employment	84,100
Total	124,400*

number of people affected, either directly or indirectly, by federal offshore activity. These individuals and the companies which employ them require and demand governmental services, such as police and fire protection, schools, sewer and water systems, civic and recreational facilities and transportation facilities, in the same fashion as the rest of the population at large. The paramount question which must be asked is how can these essential services be provided? It is axiomatic that a state may not tax the activity conducted on the outer continental shelf beyond state waters. Thus, as production activity moves outward into the federal domain, the coastal state loses the benefit of such taxes as severance, income, corporate franchise, sales and use, occupational licenses, ad valorem and miscellaneous taxes which

*The above figure as well as the following tax itemization are found in the GSRI Report at pp. 42 and 43 respectively.

would normally be levied in a situation of taxable jurisdiction. For the year 1972 alone, it has been estimated that Louisiana lost the sum of $183,488,000 in taxes as itemized below.

Tax Category	*Amount Foregone*
Severance	$127,210,000
Income	17,059,000
Corporate Franchise	11,968,000
Sales and Use	10,000,000
Occupational License	100,000
Ad Valorem	9,811,000
Miscellaneous	7,340,000
Total	$183,488,000

Thus, what is lost is a prime and very substantial source of revenue and over a period of time the sum can be even more considerable. For example, the annual amounts of taxes lost by Louisiana *since 1965* are shown in Figure 7.

Not only does the *state* lose revenue from the inability to tax, but so do the coastal parishes (counties). It is observed that most of the local parish taxes lost were sales and ad valorem taxes.

> On the assumption that the estimate of states sales tax foregone is reasonable, an estimate can be made of the amount of parish and municipal sales taxes foregone. The rate of municipal and parish sales taxes ranges from one per cent to three per cent, and the amount foregone depends upon the distribution of sales by locality for each year. However, if two percent represents a good estimate of the average rate that would be applied, the parish and municipal governments are foregoing approximately $6.7 million

Figure 7

SELECTED TAXES COLLECTED FROM OFFSHORE AND FOREGONE FROM OUTER CONTINENTAL SHELF
(1965-1972).

Year	Severance Taxes		Ad Valorem Taxes		Miscellaneous Taxes	
	Collected	Foregone	Collected	Foregone	Collected	Foregone
1965	$ 13,489,160	$ 50,157,750	$ 1,131,875	$ 3,332,561	NA*	$ 4,840,000
1966	15,758,691	63,103,993	1,267,709	3,849,400	NA	5,252,000
1967	18,458,854	74,343,831	1,386,771	4,163,106	NA	5,960,000
1968	21,798,110	90,350,636	1,397,230	4,497,553	NA	6,256,000
1969	23,039,837	105,102,868	1,515,070	5,396,734	NA	6,600,000
1970	25,617,228	123,515,864	1,834,345	8,286,711	NA	6,944,000
1971	25,679,138	131,728,474	1,811,754	9,513,196	NA	7,100,000
1972	30,963,365	127,209,836	1,841,572	9,811,094	NA	7,340,000

*NA = Not available. Most taxpayers do not separate inland and offshore sources of tax in their reports.

Source: State of Louisiana, Department of Revenue, February 1973.

Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing*, at page 44, cited in this brief at note 2, page 7. Said publication also appearing as Appendix I in this brief.

in sales taxes per year. The ad valorem tax represents an even larger opportunity loss. For every dollar of state ad valorem taxes collected in Louisiana, approximately $7.86 is collected on the local level, according to Bureau of Census date related to governmental finances in 1969-1970. Assuming that this relationship is relatively stable and recalling that the state is foregoing $9,811,000 of ad valorem taxes, the local governments are foregoing $77,100,000. *Thus, the total foregone by local governments in Louisiana is $83.8 million.* (Emphasis ours).

The total amount of taxes foregone by both the state government and the parish and municipal governments because of a lack of jurisdiction over the outer continental shelf offshore Louisiana is summarized as follows:[14]

State taxes foregone	$183,488,000
Parish and municipal taxes foregone	83,800,000
Total	$267,288,000

It is admitted that these figures pertain to just one coastal state. Nevertheless, it is submitted that wherever there is state and federal offshore activity, the coastal state will lose a certain portion of revenue from the mere fact that it cannot fully tax OCS related businesses as it could where the activity transpired within its jurisdiction. Regardless of the state or particular coastal area involved, the local governments will confront the same problems that have faced Louisiana increasingly over the years.

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[14] GSRI Report, *supra* note 2, at p. 43-45

It is important to note that even though the state loses its tax base as a result of lack of jurisdiction, the costs of governmental services remain. The *estimated* cost of governmental services in Louisiana as a result of federal offshore activity is $265,044,000, which figure represents the taxes needed to provide the normal governmental services. (Figure 8).

It is recognized, of course, that the state received a portion of these costs. For example, taxes are levied and revenues are received from individuals who, although working in the offshore federal area, live and raise families onshore. However, although individuals can be taxed, corporations *may not* be taxed on that portion of their offshore business attributed to the outer continental shelf. Therefore, some of the costs of services that should be borne by corporations are not paid, and, as a result, the state must provide the difference.

Accordingly, the *net cost* to Louisiana associated with outer continental shelf activity is said to be $38,000,000 or approximately twenty-four (24%) per cent of the total corporate share as determined in the following fashion:

1. Ninety percent of the cost of governmental services provided mining corporation operating in the OCS are uncompensated for due to the tax jurisdiction $17,259,300

2. Fifty percent of the cost of governmental services provided manu-

COST OF GOVERNMENTAL SERVICES ARISING AS A RESULT OF EMPLOYMENT ASSOCIATED WITH OCS ACTIVITY

Employment Category	Number of Employees Related to OCS Activity	Number of Employees and Dependents	Taxes Needed To Provide Governmental Services		
			Total	To Be Paid By Individuals	To Be Paid By Corporations
Mining	15,000	47,150	$ 31,962,000	$ 12,785,000	$ 19,177,000
Manufacturing	10,500	33,000	22,370,000	8,948,000	13,422,000
Construction	4,700	14,770	10,012,000	4,005,000	6,007,000
Chemicals and Allied Products	7,300	22,940	15,551,000	6,220,000	9,331,000
Refining	2,800	8,800	5,965,000	2,386,000	3,579,000
Supporting Employment	84,100	264,330	179,184,000	71,674,000	107,510,000
Total	124,400	390,990	$265,044,000	$106,018,000	$159,026,000

NOTE: Employment x 3.1431 = Employees + Dependents.

(Employees + Dependents) x $677.88 = Taxes needed to pay for governmental services.

Source: Gulf South Research Institute.

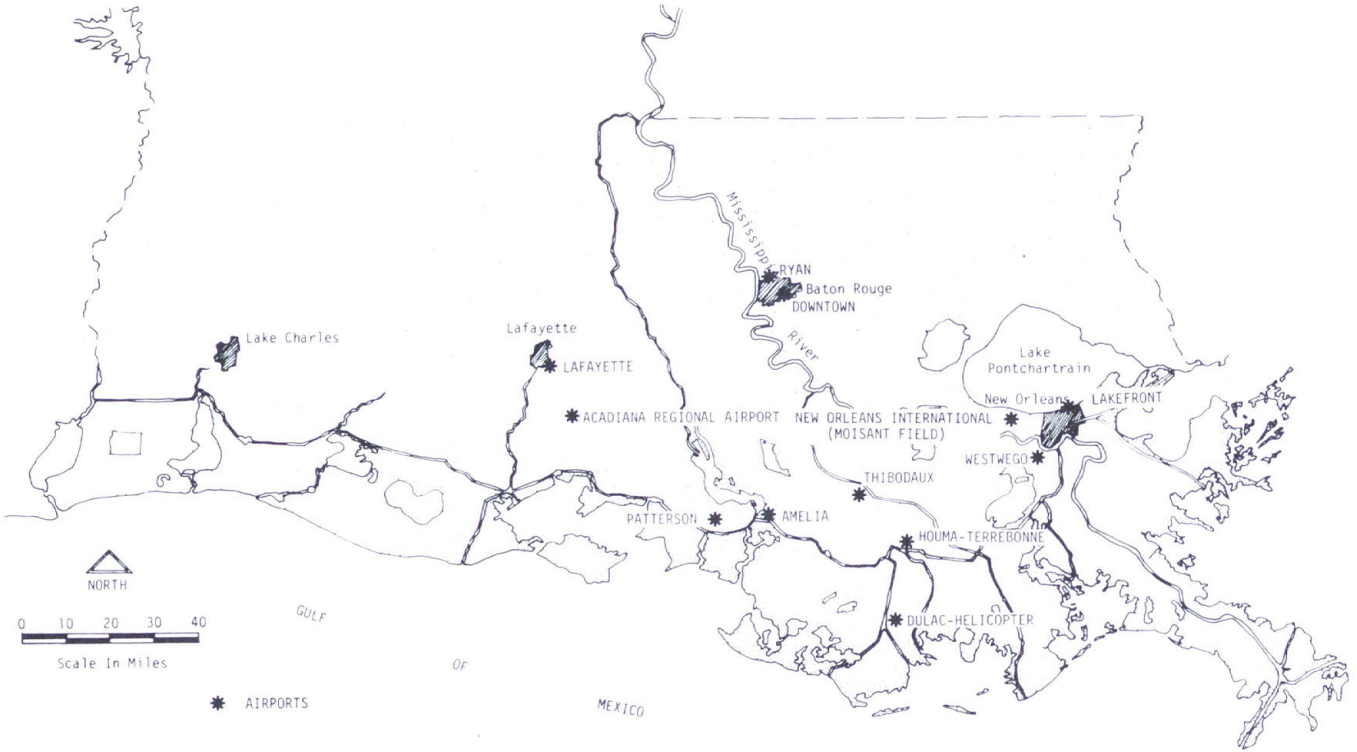
Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing* at page 46, cited in this brief at note 2, page 7. Said publication also appearing as Appendix I in this brief.

	facturing firms serving the OCS are uncompensated	6,711,000
3.	Fifty percent of the cost of governmental services provided construction firms serving the OCS are uncompensated	3,003,500
4.	Ten percent of the cost of governmental services provided supporting firms serving the OCS are uncompensated	10,751,000
	TOTAL	$37,724,800*

Furthermore, the offshore industry is a big user of ports, roads and airport facilities. The very nature of the offshore industry dictates a great demand for equipment and capital facilities. Boats and helicopters are needed to transport crews and equipment back and forth from the drilling platforms to shore. Highways are needed to transport drilling equipment from one base to another, which means that the coastal area of any state supporting offshore development will have to be developed and maintained. An example of the needs of the offshore industry can best be reflected in the following three diagrams which show the Louisiana facilities which are used for drilling and exploration. (Figures 9, 10 and 11). To meet the demands of the offshore industry relative to highways and harbors, the coastal state will encounter a substantial burden. The coastal areas of our country are unique. In each coastal area, the coastal regions provide different problems which are in themselves un-

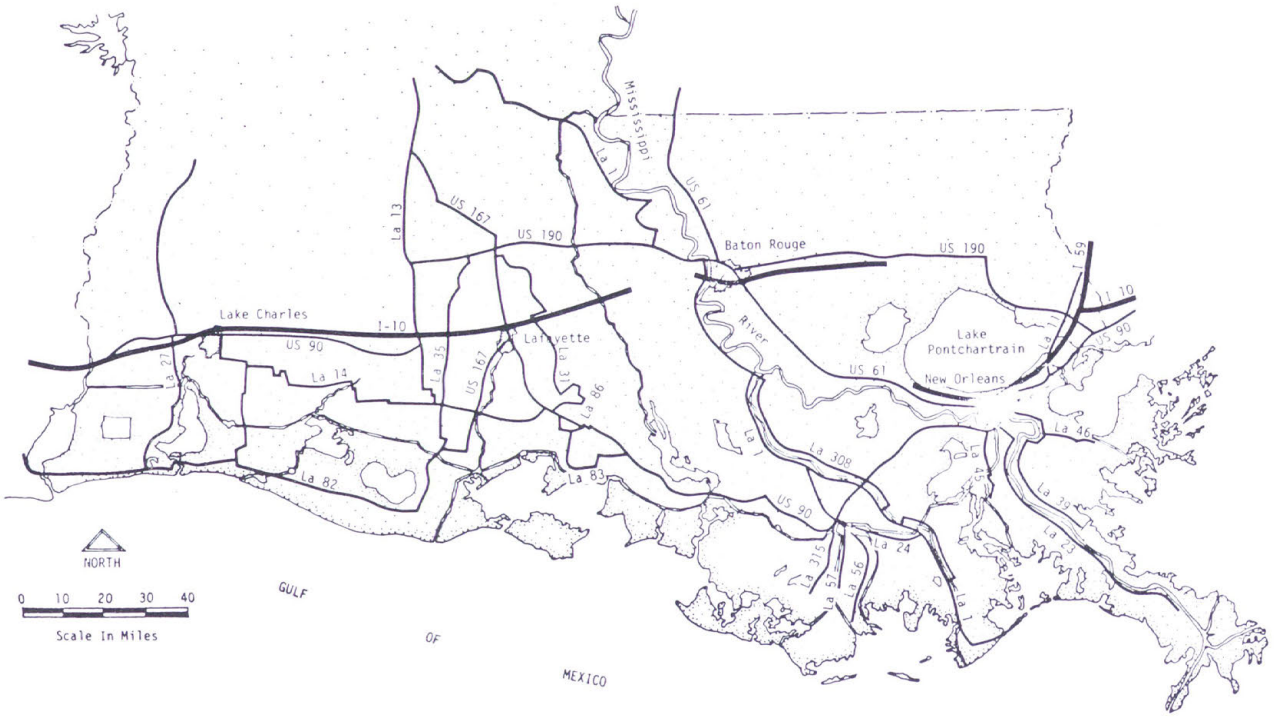
*See pp. 47 and 48 of GSRI Report, Appendix I of this brief for details and explanation of the various totals.

Figure 9. LOUISIANA AIRPORTS AND HELIPORTS USED BY OFFSHORE OPERATIONS



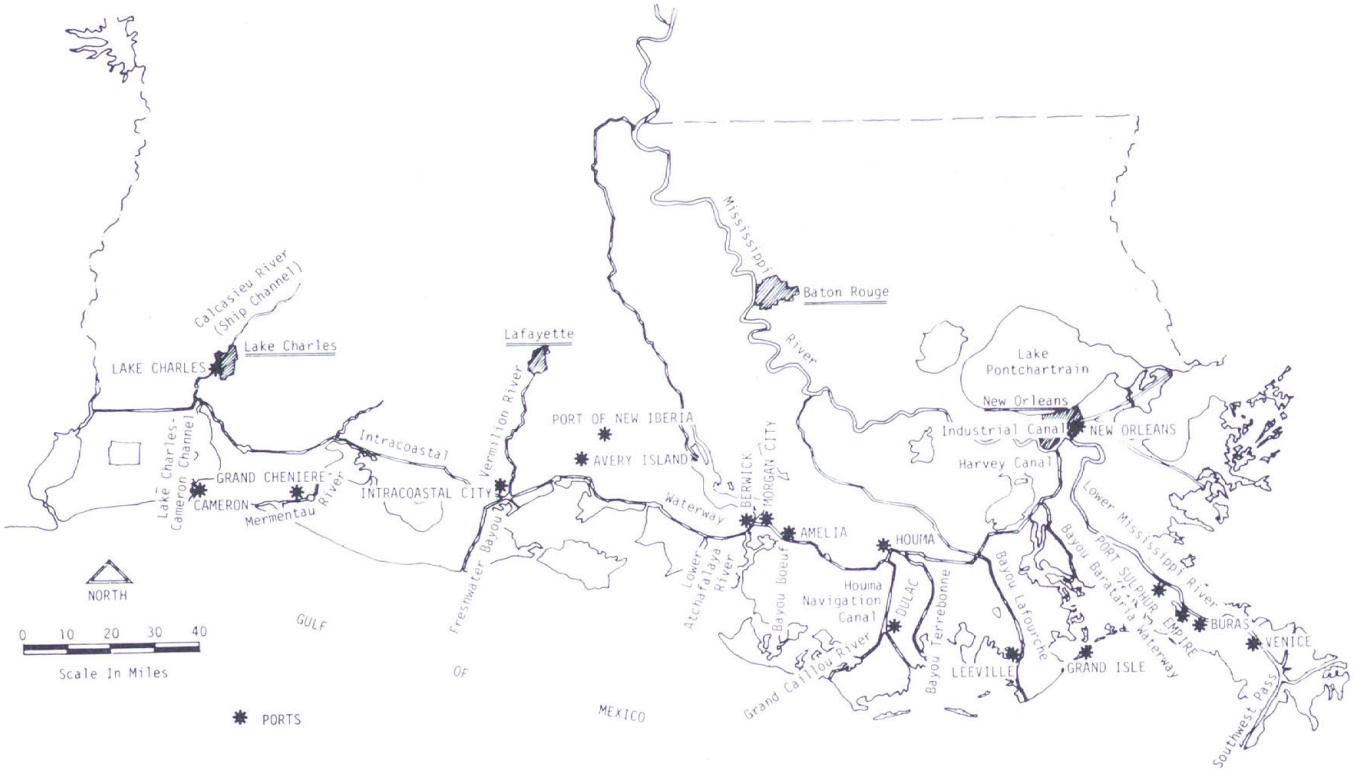
Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing* at page 49, cited in this brief at note 2, page 6. Said publication also appearing as Appendix I in this brief.

Figure 10. LOUISIANA HIGHWAYS USED BY OFFSHORE OPERATIONS



Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing* at page 50, cited in this brief at note 2, page 6. Said publication also appearing as Appendix I in this brief.

Figure 11. LOUISIANA PORTS AND WATERWAYS USED BY OFFSHORE OPERATIONS



Source: The above figure appears as an illustration in the publication *Offshore Revenue Sharing* at page 51, cited in this brief at note 2, page 6. Said publication also appearing as Appendix I in this brief.

associated with inland construction or maintenance of facilities. For example, Louisiana's coast is mainly marsh, which means many of these support facilities are more difficult to construct and maintain. The technology of road and bridge construction is more refined and more expensive to utilize in areas which are low and swampy as compared to those which are located in a more conventional setting. Along the eastern seaboard some of the area is developed, but much of it is not. Roads along the Atlantic Coast will naturally become major arteries for high OCS activity. They will need to be built and maintained. Parenthetically, the maintenance of highways is made doubly important because they are used as evacuation routes during the threat of hurricanes. It is also encumbent upon the coastal state, as has been the case with Louisiana, to maintain in first-rate condition coastal harbors and airports which are heavily used by offshore industry. In order to provide the proper facilities for offshore developers, the state must spend large sums. As the offshore exploration and development continue to increase, the demands for proper facilities and, in all probability, larger facilities, will also increase. It might also be added that although it is a position of the Committee that these demands manifest themselves in a monetary burden upon the state, there is also the distinct and real effect of ecological demand discussed previously, which is wrought upon any coastal area subjected to extensive channelization and dredging. As harbors are enlarged to service offshore companies and channels are dug deeper and wider, the fragile

coastal wetlands will undoubtedly suffer. This is a loss to the state which is incalculable.

This situation is a problem which will occur in most states. It is believed that if major Atlantic development occurs in the Middle Atlantic States area the Cape May and Cumberland Counties will be major focal points. It is stated that

> here are some of the most important wetlands in the Mid-Atlantic area, the prime nesting and feeding areas for the ducks and geese of the Atlantic flyway. Of the over 100,000 acres considered wetlands, 99% is rated high value for waterfowl. The New Jersey state government has been especially active in trying to protect and preserve these wetlands. Among the major areas are the Dennis Creek and Heislerville Egg Island Wildlife Management Areas, World Wildlife Trend South Jersey Wetlands, and several fishing areas. Additional valuable coastal areas are found in other parts of the Delaware River Regions.[15]

A further cost to the state which is not reflected in sums expended for capital improvement or construction is the very real cost of educating the children of offshore workers. For the year 1970, the State of Louisiana spent the sum of $5,281,434.37 in educating children of employees of the offshore industry. (Figure 12).[16]

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[15] CEQ Report, *supra* note 1, at p. 7-34

[16] IMPACT COSTS TO THE STATE OF LOUISIANA AND POLITICAL SUBDIVISIONS RESULTING FROM FEDERAL OFFSHORE PRODUCTION, A PRELIMINARY STUDY by Dr. David B. Johnson, Associate Professor, Department of Economics, Louisiana State University and Dr.

Figure 12.

EXPENDITURES IN COASTAL PARISHES-PUBLIC ELEMENTARY AND SECONDARY EDUCATION 1969-1970

Parish	[1] Total Revenue	[2] Federal Revenue	[3] State Revenue	[4] Parish and Local Revenues	[5] Employers' Retirement Contribution;Materials of Instruction	[6] State, Parish and Local Revenue (3 + 4 + 5)
ASSUMPTION	2,745,517.76	105,526.94	1,697,690.42	773,395.83	168,904.57	2,639,990.82
CALCASIEU	25,670,824.30	1,317,189.99	12,296,002.17	10,107,026.30	1,950,605.84	24,353,634.31
CAMERON	2,069,595.34	83,764.93	122,752.44	1,728,219.38	134,858.59	1,985,830.41
IBERIA	8,855,053.90	770,854.80	4,849,977.49	2,753,154.97	481,066.64	8,084,199.10
JEFFERSON	41,345,218.31	2,238,790.92	18,698,845.88	17,489,726.72	2,917,854.79	39,106,427.39
LA FOURCHE	11,475,985.02	829,646.77	6,135,311.94	3,891,126.46	619,899.85	10,646,338.25
PLAQUEMINES	2,217,248.02	425,309.03	1,034,947.34	602,001.47	154,990.18	1,791,938.99
ST BERNARD	7,936,262.60	453,627.10	4,161,367.42	2,875,115.71	446,152.37	7,482,635.50
ST MARTIN	5,832,941.31	1,110,130.50	2,927,028.68	1,526,572.41	269,209.72	4,722,810.81
ST MARY	8,677,160.34	640,371.62	4,477,364.73	3,013,137.81	546,286.18	8,036,788.72
TERREBONNE	6,621,390.69	604,064.94	1,214,579.50	4,018,872.45	783,873.80	6,017,325.75
VERMILION	7,030,952.16	765,056.41	3,208,910.89	2,651,253.57	405,731.29	6,265,895.75
TOTAL	130,478,149.75	9,344,333.95	60,824,778.90	51,429,603.08	8,879,433.82	121,133,815.80

Allocable Amount: $121,133,815.80 X .0436 = $5,281,434.37

Source: State Department of Education, Annual Report, 1969-70
Allocations by Source of Revenue - Federal, State and Parish
Computed by Authors

Source: The above figure appears as an illustration in the publication Impact Costs to Louisiana at page 42, cited in this brief at note 16, page 33. Said publication

The cost of public education is determined by taking the total revenue obtained from taxes, multiplied by the basic ratio [.0436] of federal offshore employment, divided by the total employment in the coastal parishes.

Of course, the expense for public education is only one cost which state and local authorities must bear. Using this same ratio, it is found that for the year 1970-71 the state and the coastal parishes expended the following sums for services to offshore workers. (Figure 13).

An additional cost to coastal states, but one which cannot easily be determined at this time, is the spectre of unemployment and related economic burdens. No figures are needed to justify the assertion that the coastal areas of coastal producing states contain many people who are dependent on the offshore industry for livelihood. And, as already stated, it is quite clear that offshore production in state waters, at least in Louisiana, is on the decline while it is on the increase in federal waters. As long as this trend continues, there is every reason to believe that offshore workers will find employment in the federal offshore domain.

G. Randolph Rice, Assistant Professor, Department of Economics, Louisiana State University. This report studies specific cost to the State of Louisiana for each offshore worker. The number of workers directly involved in OCS production is tabulated by this report to be approximately 13,250 people. Their families and all other employees not directly involved with OCS production have been excluded. Hence, cost figures cited will appear to be lower in some cases than the actual impact.

Figure 13.

SUMMARY OF LOUISIANA'S COSTS IN SERVICING EMPLOYEES ON FEDERAL OFFSHORE LANDS MOST DATA FOR FISCAL YEAR 1969-70 OR CALENDAR YEAR 1970

Costs to Coastal Parishes		
Parish Revenues		
Assumption	$ 37,267.54	
Calcasieu	372,128.51	
Cameron	43,297.67	
Iberia	98,427.40	
Jefferson	1,311,703.93	
Lafourche	41,180.64	
Plaquemines	88,710.41	
St. Bernard	176,528.67	
St. Martin	53,942.55	
St. Mary	189,439.40	
Terrebonne	232,109.98	
Vermilion	88,954.04	
		$ 2,733,690.75
Levee Districts		114,911.29
Costs to State		
Voc-Tech & Trade Schools	$ 60,306.82	
Public Elem & Secon Edu	5,281,434.37	
Institution of Higher Edu	1,189,056.12	
Dept. of Highways	2,506,911.54	
Dept. of Public Works	27,326.94	
Dept. of Conservation	496,385.27	
Dept. of Hospitals	153,310.00	
Dept. of Health	85,635.02	
Wildlife & Fisheries	79,855.67	
State Police	64,730.00	
Mineral Board	128,000.00	
		10,072,951.75
TOTAL		$12,921,553.79

Source: The above figure appears as an illustration in the publication Impact Costs to the State of Louisiana at page 56, cited in this brief at note 16, page 33. Said publication also appearing as Appendix II in this brief.

Nevertheless, it is equally clear that offshore production is on the decline overall and will continue to decline as the years go by. The reason is quite simple. Our natural resources are not regenerative, but are finite. As these resources dwindle, industry will gradually shrink and its employees will be left jobless, eventually looking to the state for assistance. The state will have no other alternative but to provide assistance to these people, resulting in additional burdens on the states.

Louisiana is not the only state faced with the inequitable situation of having to support an industry which does not pay its entire way. Louisiana is used as an illustration because its offshore activity has been the most active and detailed studies have been made as to the economic impact of that activity on the state. Nevertheless, another state which is beginning to feel the effect of federal offshore activity is Alaska. The specific area which is under exploration and production is Cook Inlet, which was the model for the Alaska Study.[17]

From 1965 to 1970 the population of the area increased from 8,000 to 14,000. School enrollment rose from 3,000 to 4,500. An example of the impact on Alaska is reflected in the experience of the City of

[17] Appendix III. Written Statement by Alaska Governor William A. Egan to the United States Senate Committee on Interior and Insular Affairs In Support of S. 2389, a bill to authorize certain revenues from leases on the Outer Continental Shelf to be made available to coastal and other states. Submitted May 10, 1974, for the record of a hearing in Washington, D. C.

Kenai. The city's population rose from a low in 1960 of 810 to 4,735 in 1970, or an increase of over 500%. In 1965-66, its capital expenditures were authorized at $21,615.00. In 1971-72, the Kenai budget indicated operating expenses of $1,611,634.00, and a capital improvements budget of $1,483,147.00. These capital expenditures were made for the following:

1. Water and sewer expansion
2. Public safety facilities (police and fire equipment, buildings, etc.)
3. Airport expansion and development
4. Street and drainage upgrading and improvements
5. Civic improvements (parks, small boat harbor, civic center, etc.)

The statement indicates that for every barrel of oil produced there was an equivalent cost of 8.4¢ per barrel for public expenditures.

In the Gulf of Alaska, the costs would seem to be greater considering the remoteness of the area and the fact that services there will not be one of expansion but of starting from the very beginning. Hence, complete new cities will have to be built as a base of operations. The report estimates that the cost of public expenditures for every barrel of oil produced will be 16.8¢ per barrel.

III.

CONCLUSION

The compiled technical data demonstrates the

inescapable and uncontroverted conclusion that coastal states bear a substantial and largely uncompensated burden in supporting federal offshore activity and that the environmental, social and economic impact of such development directly effects the vital interests of the state. To conclude that there is no relationship between this activity and the coastal state would be manifestly erroneous.

The Committee submits that because of the burden imposed upon the coastal states they indeed have an interest in offshore production.

It must be recognized that such an interest is admitted by the United States where the activity is on land and not offshore. The Mineral Leasing Act of February 25, 1920, (41 Stat. 436, 30 USC 181 *et seq.*) provides for the sharing of mineral leasing revenues from federal lands with the subject state to the extent of thirty-seven and one-half (37 ½%) per cent.

The intent of this Act, as stated in the GSRI Report at p. 58 (wherein it cites Mr. Mondel, Congressional Record [October 28, 1919] p. 7649) was to give to the states a certain portion of the revenues to partly reimburse them for their losses in taxes.

There can be no doubt that the offshore industry is an economic burden upon coastal states. There is a very definite loss in revenue from an inability to tax federal offshore activity which should be recompensed by giving to the states a percentage of the production from these federal lands. There would seem

to be no difference between land or offshore drilling and exploration. Each activity imposes a burden upon the subject state. Since this burden will increase in the future instead of decrease, the Committee urges the Court to consider the interest the coastal states have in offshore production.

In summary, the states have direct and important interests in offshore mineral development that require state ownership of those resources. We respectfully submit that those interests deserve substantial weight in the present case and require that the Master's Report not be accepted.

Respectfully submitted:

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CERTIFICATE

I hereby certify that the above and foregoing has been served upon all counsel of record by placing same in the United States mail, postage prepaid, this 29th day of Nov., 1974.

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