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Memorandum

To: Deputy Assistant Secretary, Policy, Budget and Administration

From: Associate Solicitor, Division of Energy and Resources

Subject: Outer Continental Shelf and Cultural Resource Lease Stipulation

This responds to your memorandum of April 25 on the above-captioned matter. As you probably know, the Department has decided not to petition the Supreme Court for review of the decision by the U.S. Court of Appeals for the Fifth Circuit in the case entitled Treasure Salvors, Inc. v. The Nuestra Senora de Atocha, No 76-2151 (5th Cir. 1978). Instead, the Department is considering formulating a legislative proposal which, if enacted, would establish a superior right in the United States government over that of United States citizens, to objects found on the outer Continental Shelf, such as the ship Nuestra Senora de Atocha.

We believe, notwithstanding the Court of Appeals' decision in Atocha, and the inapplicability of the "Antiquities Act" to the outer Continental Shelf, that the United States has adopted a policy of protecting cultural resources located on the outer Continental Shelf, and that the Department has the requisite statutory mandate to see that Federally authorized offshore oil and gas operations do not unnecessarily jeopardize the existence or condition of cultural resources situated within the area covered by an OCS oil and gas lease. Section 101 of the National Environmental Policy Act of 1969 (43 U.S. §4331) provides, inter alia:

In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, * * * to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may preserve important historic, cultural, and natural aspects of our national heritage, * * * (Emphasis added)

Executive Order No. 11593, Protection and Enhancement of the Cultural Environment, 16 U.S.C. §470, Note, in furtherance of the National Environmental Policy Act of 1969, supra, the National Historic Preservation Act of 1966 (16 U.S.C. §470 et seq.), the Historic Sites Act of 1935 (16 U.S.C. §461 et. seq.), and the Antiquities Act of 1906 (16 U.S.C. §431 et seq.), expresses the Federal policy on the "Protection and Enhancement of the Cultural Environment":

The Federal Government shall provide leadership in preserving, restoring and maintaining the historical and cultural environment of the Nation.

In the issuance of Federal OCS oil and gas leases, compliance with NEPA and the policy enunciated in Executive Order No. 11593 can be accomplished by the inclusion of a stipulation which has as its goal the preservation of "cultural resources" which might exist in the area being leased. By "preservation," we mean that the lessor-United States will require lessees to take whatever steps are feasible to insure that operations undertaken by a lessee pursuant to his lease, which must be approved by the lessor-United States, do not unnecessarily jeopardize or harm a "cultural resource" which has been identified or is believed to exist.

In conclusion, the Department should continue to provide for the protection of "cultural resources" situated on the outer Continental Shelf, through an appropriate stipulation in an OCS oil and gas lease.

cc:

A/S, Land and Water Resources

Director, Bureau of Land Management

Director, Heritage Conservation and Recreation Services

Assistant Solicitor, Parks and Recreation