1 of Fisheries Protection Institute, California Federation
2 of Fishermen Associations.
3 Mr. Hur.
4 MR. HUR: Good afternoon. Win Swint, President
5 of California Abalone Association, came up with me and we
6 thought we'd make this a joint effort to possibly save time
7 and make sure we could cover any questions.
8 ACTING CHAIRPERSON McCARTHY: Go ahead.
9 MR. HUR: There's a point I'd like to start off
10 with and it's bothering the California commercial fishing
11 industry, in particular, the people that comprise the
12 Pacific California Federation of Fishermen's Association
13 which is the largest organization in this state.
14 ACTING CHAIRPERSON McCARTHY: Excuse me. I notice
15 we also have Michael David Cox who's the attorney for the
16 South Central Coast Watch, Central Coast Commercial
17 Fishermen's Association. Mr. Cox, are you still here?
18 MR. COX: Yes, I am.
19 ACTING CHAIRPERSON McCARTHY: Why don't, if we're
20 going to be talking about commercial fishermens' interests,
21 why don't you join us at the table unless you think there's
22 some quite different testimony you're going to give than
23 these gentlemen. Why don't we provide a seat at the table.
24 FROM THE AUDIENCE: Could we get their names?
25 ACTING CHAIRPERSON McCARTHY: Sure. We have Mr.

1 Win Swint, California Abalone Association, Mr. Alan Hur,
2 the Director of the Fisheries Protection Institute of the
3 PCFFA, and we have Mr. Michael David Cox, attorney for the
4 South Central Coast Watch, Central Coast Commercial
5 Fishermen's Association.
6 Who would like to go first?
7 MR. HUR: Well, I guess I'll start. I want to
8 apologize if at first it seems a little unorganized. It's
9 because we've gone to four meetings in the bulk of this
10 week. In fact, we just came from the EPA meeting that was
11 in Santa Barbara yesterday.
12 One of the main concerns leading into the State
13 Lands' role in this process is the lack of data and
14 information that we feel the Fish and Game should be supplying
15 to you in particular in testimony at such hearings as this,
16 especially when we're talking about designing studies or
17 implementing studies that are going to involve the Fish
18 and Game.
19 It seems that once again in the process of
20 development of oil off our coast, through the Governor's
21 Office they have deemed that biological facts must be
22 consistent with political measures. That gives us a little
23 bit of concern. We rely on these people as guardians of
24 our resource and the people that manage our resource and
25 through whose branch we purchase our permits to have the

1 privilege to utilize this resource, and they're not being
2 allowed to come forward and testify and actually supply
3 pertinent and update more recent data at these hearings.
4 ACTING CHAIRPERSON McCARTHY: There's no
5 prohibition at this hearing that I'm aware of. Are you
6 giving us some information?
7 MR. HUR: It's my understanding through Gordon
8 Duffy that Fish and Game is not allowed to testify at any
9 hearing dealing with oil development. I am the fisheries'
10 representative to OTAC which is sanctioned by the State
11 Water Quality Board and Jim Steele, who is the biologist
12 for Fish and Game, is not allowed to testify at the EPA
13 hearings or this hearing.
14 ACTING CHAIRPERSON McCARTHY: All right.
15 Go ahead. We'll leave the administration to correct that.
16 MR. HUR: You may want to question that. They
17 may have pertinent information which I think should be
18 brought forward in regards to designing a lease sale program.
19 ACTING CHAIRPERSON McCARTHY: Fine.
20 MR. HUR: Before I enter into a few comments I
21 have on this document here, I'd like to give just a few
22 facts that I haven't had time because of the shortness of
23 notification for this hearing and I want to express a little
24 information on the 30 fathom curve and why the fisheries
25 is requesting that as a buffer zone. I remember when I

first took my first biology course and one of the basic points that they brought up when they were discussing the ocean, the life in the ocean, is that the majority of life along shore, in fact, it's in the high 90 percent range, is located within the first 200 feet of water. That is the depth at which light penetrates and various algae which are supportive of the biomass and the food web exists.

I have a list here of the fish that represent the staple fishery of, in particular, the Port of Santa Barbara. These fish are the fish that are primarily caught within 30 fathoms shoreward. I also have the months and peak times for these fisheries. This took about a year and a half to get this information actually where it's pretty on. It's within a day or two.

Okay. Halibut is year-around and the peak times is February through July and October through January 1st. White sea bass, June 15 to March 15. Peak times is June 15 to August 1st, October 1st through February 30th [sic]. soupfin shark and leopard shark, peak times, February 1st through March 15, July 1st to September 30th. Barracuda, peak times, November 1st through January 31st. Angel shark, year-around, usually caught with halibut. Lobster, the first Wednesday in October to the first Wednesday after the 15th of March. Crab are taken year-around. Abalone are taken year-around except for the months of August and

1 February. I think you notice by this list that if you go
2 into a restaurant, there are very few restaurants that serve
3 seafood that don't have at least some representative off
4 that list. This particular area of coastline from, well,
5 I can't be general in regards to or specific in regards
6 to Point Conception to Point Arguello because for us fishing
7 the area which represents the bulk of these fish to us is
8 from Gaviota, we recognize, to Point Arguello. Depending
9 on the time of year, the season, the seasonal weather pattern
10 or the currents, they'll be located at different areas along
11 that coastline.
12 Okay. What do these fish mean to the Port of
13 Santa Barbara? Well, first off, they represent 500 plus
14 jobs. To the State, in Santa Barbara, the port alone
15 represents $27 million to the State's economy. Sixty percent
16 of which of that 20 percent, the $27 million, is sold
17 directly and distributed throughout the Santa Barbara tri-
18 counties.
19 There's been a lot of talk by the oil industry
20 in regards to the platform serving as artificial reefs.
21 I want to take this moment now because we now have an actual
22 valid response to substantiate some concern we've had in
23 regard to this remark. Okay. Surface areas is at a premium
24 in the ocean. Thus an oil platform represents an artificial
25 reef which produces surface area. Okay. None of the staple

fish mentioned on that previous list of ~~the~~ commercial species taken in that area and inside of 30 fathoms are found in the platform communities. The majority of species are invertebrates: muscles, anemone , barnacles, worms and so on. These are attached to or are on the platform superstructure below the surface of the water. The fish that are attracted to the oil platforms are predominantly sport fishing species. So you might ask, is this adding to the already-established ecosystem? No, it doesn't really add anything to it. Okay. What it does is it creates an environment within an already-established ecosystem that has been in existence since the oceans came to be in existence.

Okay. I'll use a real good example that I got from Jim Steele. I wish he was here to testify, but he said that I could use this. In one oil platform case in particular off the Hollister Ranch, the squid come in in great numbers at certain times of the year. Okay. You have the halibut that follow the migration of the squid in and out of the depths and along the coastline and they feed on the squid. Okay. Now, you've created this artificial reef out there and in particular this is Platform Helen, and you have a population of fish out there that are feeding on the squid in competition with our halibut. This is an example where it actually takes away from the

1 future productivity of our halibut populations from being
2 in competition with them for food.
3 The physical presence of rigs causes problems
4 in many ways. Most we feel can be mitigated though.
5 Scheduling of rig placement along with its location,
6 traffic lanes for crew and supply vessels, scheduling of
7 subsea completion installations along with pipeline placement
8 these must be scheduled in conjunction with fishing seasons
9 and fishing requirements. We need to have access to these
10 areas throughout different periods of the year and we hope
11 that the developmental period of the oil field will take
12 this into consideration.
13 Things that cannot be mitigated are such incidences
14 as I explained where you have an artificial environment
15 created in the middle of an already-established ecosystem
16 and it in a sense takes away from it.
17 Drill muds, okay. The fishing industry is very
18 strong on this point. The drill muds, whether they're in
19 the OCS or particularly in this case in State waters, should
20 be hauled ashore. They shouldn't be dumped in the ocean
21 where they contain hazardous chemicals that hold the
22 potential to be passed on up the food chain. They hold
23 the potential to kill our juvenile fish stock, both
24 invertebrate and vertebrate, and thus destroy the future
25 of our fisheries.

On top of that, we don't want to be going out to fish for poisonous fish or bringing in fish that may be infecting the health of our society.

I would request that the commission, that this Commission request the transcript from the August 11th, 1983 EPA hearings in Santa Barbara for further details on drill muds and it will also give you an update as far as findings on studies that have been conducted. This is a hearing that we attended yesterday.

Okay. Seismic exploration. Claire, you mentioned that studies were being conducted by the feds. To my knowledge, Gordon Cota sits on that board that you discussed and the budgeting is going to be taken into consideration in 1985 and the feds at that time will start looking into allocating funds or looking into designing a study. So as of yet there has been no study undertaken that is looking into seismic concussion and the possible damage or fish dispersal which can result from that.

EXECUTIVE OFFICER DEDRICK: That is included in the Yankee Point study which is it ongoing or is it completed?

MR. FABER: Yankee Point study is --

ACTING CHAIRPERSON McCARTHY: Identify yourself if you're going to speak for the record, Mr. Faber.

MR. FABER: My name is Robert Faber. I'm counsel for the State Lands Commission.

1 The Yankee Point study covered whales. It doesn't
2 cover fish dispersal.
3 EXECUTIVE OFFICER DEDRICK: I apologize, Alan.
4 That's true.
5 MR. HUR: I just want to make sure that fact was
6 clear that as of yet there has been no timely studies looking
7 into the possible or potential damage that can be being
8 done to our fisheries.
9 In this case, the burden has been placed on us
10 to come up with proof that damage is being done. We would
11 like to ask that this burden be removed from us and that
12 the State assumes the responsibility for that. They can
13 do this by putting a moratorium on all seismic activity
14 until such a time that timely studies are conducted and
15 show that there's no damage being done to the future of
16 our fisheries.
17 There is laboratory evidence to show that pressure
18 shockwaves can cause cytoplasmic evacuation in juvenile
19 larva. What that means is it can cause them to explode.
20 It is utilized in the lab for removing delicate organelle.
21 It only takes between four and eight pounds of pressure
22 in the laboratory to dissect these creatures using this
23 pressure. Any further pressure can result in totally smashing
24 the creature or have shearing effects in which they're cut.
25 The pressure waves that are being utilized in seismic

1 exploration far exceed this pressure grading. In being
2 the fact that the majority of the zoa and phytoplankton
3 which carries the future of our fisheries is located within
4 the first 11 fathoms of water beneath the surface and the
5 shockwave conducted is going down to the bottom of the ocean
6 in the several ton range, hitting the bottom of the ocean,
7 continuing its shockwave and then coming back up, they're
8 getting a double pulse of energy going both ways. One out
9 of a thousand lobster, panular sineruptis, makes it to a
10 harvestable size.

11 These babies when they're born are carried by
12 the currents in large plumes. They're referred to as part
13 of the zooplankton. They're located within that depth of
14 60 feet or to the surface. Seismic vessels passing over
15 and using the shockwaves far exceed the normal effects of
16 natural selection.

17 We need some studies on this and we need some
18 protection to make sure that the future of our fisheries
19 isn't being damaged.

20 ACTING CHAIRPERSON McCARTHY: Is your study that
21 the seismic waves kill the small plankton that are necessary
22 to feed --

23 MR. HUR: There is no study to show that as of
24 today. What that is based on is the seismic vessel creates
25 pressure waves through various means. These pressure waves

1 are oscillated from the boat either, well, as I said, from
2 various means. It goes down and is picked up by a
3 transducer on a cable. Okay. In the laboratory, they use
4 pressure, various forms. It can be generated either by
5 a hand pump or a vacuum pump, but it's pressure. Pressure
6 is the same in all factors of physics. It is in these
7 laboratory experiments where pressure is used, it is used
8 for dissecting or removing the organelle. There has been
9 nothing to date looking at this, and it's these kinds of
10 studies and information that comes forward that gives us
11 concern.

12 ACTING CHAIRPERSON McCARTHY: Do the live studies
13 show that the feed for the fish that we want to grow into
14 commercial catches, it's the feed and not the commercial
15 fish?

16 MR. HUR: It's all aspects of it.

17 ACTING CHAIRPERSON McCARTHY: All right. So halibut,
18 other fishes?

19 MR. HUR: Correct.

20 ACTING CHAIRPERSON McCARTHY: All right. Go ahead,
21 please.

22 MR. HUR: Okay. Excuse me just a second. My
23 notes got a little mixed.

24 Okay. As an industry, the California commercial
25 fishing industry represented in 1982 a billion and a quarter

1 dollars of the state's economy. It employs thousands of
2 people all along the state's coastline and inland that are
3 involved in processing and transportation and distribution
4 of the fish. We pay our share in state's fees. On top
5 of paying our own personal state taxes, we pay boat licenses,
6 commercial license general for each person on the boat,
7 specific license permits for each species taken such as
8 lobster, abalone and swordfish. The lobster permit, for
9 example, is $125. The abalone is 200; swordfish, 150.
10 We pay property tax on our boat. In the last couple of
11 years we've been paying, let's see how I can pronounce that,
12 possessory tax, possessory use tax. That's tax on the state
13 lands in the harbor where our boats float over. We're paying
14 tax on the seabed underneath our boats. We pay processing
15 tax on the fish that's landed and processed. We pay state
16 sales tax on the goods that we buy that don't attach to
17 our boat.
18 We've been pitted against a very powerful political
19 and economic entity, and the burden of proof and justification
20 for our concerns is weighing very heavily on us. In good
21 faith, we have bought boats, bought these permits, created
22 businesses and helped add to the state's economy. Now another
23 user group has come along who we've been in competition
24 with for space in the ocean and it has bought up the last
25 remaining spaces or proposes to buy up the last remaining

1 spaces available to us as fishermen. The richest area on
2 the Santa Barbara tri-counties for the diversity of species
3 that I mentioned is between Gaviota and Point Arguello.
4 Sixty percent of the fish that is derived from the Santa
5 Barbara fish industry comes from this area.
6 It's a situation where we've invested all this
7 time and all this money and now somebody comes along and
8 represents more immediate revenue to the state and the United
9 States and the feds get to have rights that supersede ours.
10 We're not against them putting all the oil platforms they
11 want out there. We are against irresponsible development
12 that doesn't take into consideration the preserving and
13 protecting of our fishery. That responsibility is one thing
14 that I think is really being neglected by the oil industry
15 and in many cases it seems to be being neglected by various
16 representatives in our governments. We would ask that
17 we have some help in carrying that responsibility. We have
18 assumed it. It's well expected to be assumed. We use the
19 resource. But fish are our renewable resource and there's
20 very few renewable resources in this world. Long after
21 the oil well is scraped, there should still be fish out
22 there to be caught. It's a big ocean. There's room for
23 us all out there, but we got to take that responsibility
24 on it. So that's what I have to say in regards to that.
25 I have a little problem here with this Point

1 Conception lease area map that's in the thick handout that
2 you have. The halibut trawling ground now, I've never seen
3 a halibut make a right turn like that and head out to sea
4 or into the beach or whatever. I wonder if I can have that
5 explained to me. I showed this chart and then the original
6 chart to representatives in Santa Barbara of the fishing
7 community that actually do halibut fishing in that area
8 and they're not familiar with anything like that.
9 ACTING CHAIRPERSON McCARTHY: Miss Dedrick.
10 EXECUTIVE OFFICER DEDRICK: Yes. The halibut,
11 the legal halibut trawling grounds under state law are between
12 one mile from shore to the 25 fathom line. That outside
13 line is the 25 fathom line. The reason that the area is
14 shown where it is is based on data from the Department of
15 Fish and Game.
16 MR. HUR: Okay. Another thing I'll point out
17 is this is very inaccurate here as far as trawling. It's
18 virtually impossible is my message from the trawlers in
19 Santa Barbara to trawl this area because of the rock
20 formations and the geological structures that are there.
21 Although it's allowed, they do not trawl specifically in
22 that area. The area that is halibut fished is predominantly
23 between Hilama which is this reef right here that sticks
24 out and then up to the Boat House, what we refer to as the
25 Boat House, just below Point Arguello. That is probably

one of the more sandy and easily accessible areas for that type of fishery.

You know, one thing that's not taken into consideration when comments are made on the sandy bottom habitat. It's one of the things that biologists even having gone up there and looked at it have a hard time making a statement in regards to is the population there. I worked with OTAC helping them design their collecting technique for the first stage of their study for Texaco's Anita project, and they had a submarine up there and a collecting bucket and everything and they went down and they went all over the bottom and, God, they spent some money. They looked everywhere and there's nothing here. But, yet, there's traps all over the place and I don't think the fishermen are putting the crabs in the traps. But anyway, I arranged for some fishermen to go up there and place the crab traps where they had gone and done their site survey and we usually set the traps for three nights. Well, they were in a hurry because it was the end of their study. They ended up catching more crabs than they'd seen in two weeks up there in the three traps that we put in that area for them.

The point is this. The crabs burrow into the sand. As the sand currents move, they move with them as the feed's exposed. They migrate in and out. We fished them as deep as 35 fathoms is the extreme. We consistently

1 fished them 20 fathoms throughout the year. Sometimes they
2 move into ten or 15 fathoms for short periods when the squid
3 or anchovy move in. These are things that need to be looked
4 at and taken into consideration as far as studies.
5 Also, I'd like to make it known that the fisheries
6 is more than willing to come forward with that data and
7 to try and help the Fish and Game also, through the help
8 of the Fish and Game to give validity to this data that
9 we would present, where the resource is and how it moves
10 around. We have a real unique occurrence off the Santa
11 Barbara Coastline and it occurs up to Point Conception or
12 Point Arguello areas. It's one of the major spawning grounds
13 for California spawning of lobsters. At the beginning of
14 the season the lobsters are located in depths anywhere from
15 two to three feet out to 30 feet and then as they go through
16 dioecious , they molt, then they move into their reproductive
17 phase. They walk out and then they'll follow a lot of these
18 geologic formations out to 20, 30 fathoms and they walk
19 up the coastline. They concentrate at the Point Conception,
20 Point Arguello area. At the end of the season you'll see
21 maybe there's 400 traps along the whole coastline at the
22 beginning of the season and they're all concentrated mainly
23 up in the Hollister Ranch and around the corner. These
24 are things that are what we base the 30 fathom request on:
25 the migrational pattern of our crabs, the requirements of

our fishery as far as having access to catch the fish, and the biomass that is located within those depths. I'm sorry, the Fish and Game to my knowledge does not have the data to fully substantiate that and it's my understanding that the records are only as recent as 1976. I would like to see the data brought up to date, if possible, but they say they're having funding problems.

This is, I think has been pointed out, is a very rich area and it represents the future of the Santa Barbara fisheries. We need and are requesting a 30 fathom buffer zone to make sure that the biology and the ecosystem that exists there survives during oil development.

ACTING CHAIRPERSON McCARTHY: Thank you for your testimony.

Any specific data that you could give Fish and Game people would be helpful to us since you're clearly suggesting we should not rely on their data. Okay?

MR. HUR: I have one more thing here that I forgot. I'm sorry.

It's on page 022, (d).

ACTING CHAIRPERSON McCARTHY: Go ahead.

MR. HUR: It says: "Exploratory drilling shall not be conducted between October 1 and March 31 within halibut trawling grounds as shown on the sensitive biologic area map described in Special Operating Requirement 4(f)."

1 Well, we need to sit down with the Fish and Game
2 or the Fish and Game needs to sit down with you and update
3 that and make sure it's a little more accurate, as I pointed
4 out. By the same token, there's no mention of lobster or
5 crab and Fish and Game documentation shows that the Point
6 Conception to Point Arguello area and down to Gaviota is
7 the richest area on the entire California coastline for
8 rock crab, the entire California coastline. There is no
9 mention of that whatsoever. These are things that need
10 to be entered into consideration and before this can go
11 ahead.
12 There's one other thing on (c). It says --
13 EXECUTIVE OFFICER DEDRICK: Same page?
14 MR. HUR: On the same page. It says: "Lessees
15 shall comply with crew and work boat shipping corridors,
16 whenever established, to control ingress and egress to and
17 from drilling and production sites within the lease area."
18 Okay. The fishing industry would ask that the
19 verbiage or the wordage be changed to say "whenever" to
20 something along the lines of "to be." We need these
21 corridors established. I brought this to the fishermen's
22 forum last year and various assurances were given me that
23 corridors would be established. Claire has the information
24 on that.
25 EXECUTIVE OFFICER DEDRICK: That's what it's doing

in here.

MR. HUR: I very much appreciate that. But they have to be established.

ACTING CHAIRPERSON McCARTHY: "Whenever established" does not suggest that they're not going to be established. Is that your concern?

MR. HUR: We would like to have the State take on the role that when a rig is placed that a traffic corridor be established upon each permit application and site location. It's the oil industry representatives I've met with have had no problem with that. They just don't want to sit down and take the time to work it out as of yet. But I will reiterate and apologize for that statement. We are working towards a liaison office which might help to establish a means of communication in establishing mutual agreement on that.

ACTING CHAIRPERSON McCARTHY: Does staff have any comments on that?

MR. TROUT: Mr. Chairman, nothing other than it's the intention of the Lands Commission staff to work with the Coastal Commission staff, the Coast Guard and other people in establishing such corridors. That's a major concern to the Coastal Commission and it's been one of our concerns for some time. So we have no pride in that word other than the intention was that crew boat and work corridors

would be established and we want the lessee on notice that when established they've got to use them.

EXECUTIVE OFFICER DEDRICK: The Coast Guard having the authority to establish such things.

ACTING CHAIRPERSON McCARTHY: Okay. We don't do that unilaterally. I'm sure you appreciate that.

MR. HUR: Okay. That's fine.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, could we have a break for the paper change?

ACTING CHAIRPERSON McCARTHY: All right. 60-second break.

[Thereupon a recess was taken.]

ACTING CHAIRPERSON McCARTHY: Next witness.

EXECUTIVE OFFICER DEDRICK: I'd like to say one thing in regard to the Fish and Game. The Department has worked very closely with us throughout this entire process, has made available masses of information, a lot of time and work on the part of their biologists and the enforcement people. They couldn't have been more helpful to us throughout this whole process. I think the record should show that.

ACTING CHAIRPERSON McCARTHY: All right.

Mr. Win Swint.

MR. SWINT: Good afternoon. I'm here representing the California Abalone Association. I'm going to make my talk rather short.

1 I would like to first say that I concur on the
2 basis of being a member of the fisheries with most of Mr.
3 Hur's comments. Secondly, I'd like to express some of my
4 concerns. Basically that being, to reiterate, the seismic
5 testing, as abalone after spawning are in a larval state
6 and at the mercy of the currents in, through and about those
7 areas and, as Mr. Hur expressed, that a very few pounds
8 of pressure used to dissect the organelles of these
9 particularly gentle creatures in a laboratory situation
10 and seismic testing takes place at several thousand psi.
11 It's also my understanding that there are more than one
12 vessel. It's usually three vessels competing for the best
13 price and the areas that are sometimes covered as accurately
14 as almost every square foot. We find this a little bit
15 disturbing.
16 Secondly, as a diver, I see, and my people report
17 to me as they see, some disturbing things from time to time
18 and also experience some things. I have been diving in
19 this particular area between Point Conception and Point
20 Arguello in a depth of about 35 feet while outside of the
21 seismic testing was going on at a range of approximately
22 two miles from me. I can guarantee you it's a very
23 uncomfortable feeling for a mammal of my size to be within
24 two miles of seismic testing. I can substantiate this with
25 other diver's testimony. I don't know how the whales feel

about it. I understand they have the ability to communicate about over four or 5,000 miles. So they must be able to hear quite good. I'm quite deaf. But as I said, the shock-waves are very intense.

The other thing that I'm concerned about in particular, although I would like to point out at this time that I am also in no way against oil development. My fishery is a very heavy user of gasoline and oil. We have no intention of being included in trying to block any lease sales based on we don't want oil development. We are very concerned about the responsibilities that go along with it. One of them is: What are the consequences of seismic testing? Second is, we would like to know what the effects of drilling muds are on these development of larval animals. This also goes somewhat outside your jurisdiction I understand in the federal waters. But our evidence, the best that I've been able to come up with and have studied shows that on certain organisms between zero days and 16 days old exposed to 50 percent acquiesce mud fraction solution for a period of 100 hours, the surviving animals express a 93 percent development anomaly rate. Anomaly is defined by Heritage Dictionary as abnormality, unnormal, not developed as should be or normal or in other ways deficient from the normal. We're concerned about that. We support the fisheries and their loss of traditional

fishing areas. However, we are an in-shore fishery. We don't do very much fishing outside of a hundred and a hundred and twenty feet of water which is 11 fathoms, 12 fathoms --

MR. HUR: 20 fathoms.

MR. SWINT: 20 fathoms of water. However, we do support the fisheries and these things because we feel that what's happening is a setting of a precedent. So we do support the 30 fathom line.

Another thing that I'd like to bring up is that I worked on the Chamber's study. I have a great deal of respect for Dr. Davis and Russell who is previously and I believe still with the Army Corps of Engineers. However, as it came up at the time of that study, one of the problems that I saw with it and I would like to share with you is that a baseline study where a transect is stretched out across a particular area, a line -- I don't remember how long the line was; I'd say it's a thousand feet, perhaps -- and the divers swim along that line and every so often they snap a picture and they take samples from either side of that line.

My experience as a diver in these areas is that the pan or the bottom there has various outcroppings along it and it's covered over with sand. These little outcroppings that stick up are variously spaced and a diver, for instance, can go through them one day and swim through an area numerous

1 directions running search patterns and finding almost no
2 rocks at all, can come back on another day with a little
3 bit better visibility and move over just a little bit more
4 and he'll find strings of rocks. The life on these rocks
5 is also or outcroppings is sporadically placed. So, in other
6 words, a diver might work through an area specifically for
7 abalones two or three times and not find anything and then
8 on the fourth time apparently in the same area he'll find
9 a great deal. So the configuration at the bottom, and I'm
10 not talking about the hard reefs but in the sandier areas,
11 is often confounding to the most professional divers and
12 search people that are very experienced in searching.
13 Another thing that bothers me a great deal about
14 this is on either side of the transect lines that are shown
15 in that study, we have had very high population of abalones,
16 both at what is known as the Hilama reef if I could show
17 you on this map here, on this particular area here. This
18 is the outer reef. Point Arguello up in here. We have
19 in-shore reefs where there's a great deal of abalone. Now,
20 there's a breakwater being put in there. I don't know what
21 that affects the in-shore abalones. But we know that this
22 particular area has been profoundly rapid growth for shell
23 fish. I pointed out that there was a very high density
24 bed of abalones at this larger Hilama reef. Since that
25 time of that study these abalones have virtually disappeared.

1 I can also say that too of this reef here and that reef
2 there.
3 ACTING CHAIRPERSON McCARTHY: Why have they
4 disappeared?
5 MR. SWINT: I do not know, sir. I have reported
6 this to Russell Goodrich of the Department of Fish and Game
7 and the population has been totally disseminated. As you
8 know, we do have some problems with sea otters and there's
9 been some conflict. However, we do stand behind the sea
10 otter people on the issues that are here. I'm not blaming
11 this on sea otters. I'm not venturing to say why because
12 I did not see why. I did not participate in anything that
13 will cause the dissemination. However, I do know that this
14 was pointed out. Another thing that I'd like to point out
15 at this time is that in the areas these transects would
16 run, had some discussions with Dr. Davis about the fact
17 that the animals in that area seem to be extremely healthy.
18 Not only that, the teragofin (ph.) and other bottom plants exhibit
19 -- I don't know how to express it -- just an extreme heartiness
20 and value in their life apparently attributed to the up-
21 welling in that area. The upwelling in that area is what
22 makes it so tremendously rich. I would urge this panel
23 to be very cautious about examining the idea of having less
24 than the 30 fathom line because this is an unusually rich
25 area and I would hate to see future damage done to it. We

as the abalone association are the first fishery in the State of California, perhaps in the United States or the world, that has started a trend to replace animals with absolutely no outside funding, with no sources other than the money that we raise ourselves to contract for and purchase abalones and we place them out, we put out 9,200 abalones on August 2nd. Our members donate their boat times, their own fuel. We go out and we're trying to put back new breeding populations on public domain which we feel is a benefit to everyone. These are not leased areas, although we have done some of that. We're also doing it out in public domain. If the primary purpose is for us to create new breeding populations, we're currently doing this at the Channel Island and we have not done it in this area. Even so, we're concerned about the current movement and the ultimate effects of drilling mud. As you know, there's a great deal of conflict from Dr. Morris' version of what may be going on as compared to what some of the oil companies' versions may be going on. This deeply distresses me because if we're setting out new breeding populations in hopes of getting something started by putting out these extremely expensive populations of abalone, as they reach the larval state, between the seismic testing and the effects that may be caused on the larval by drilling muds, we would like to know because we certainly don't need to proceed in a

direction of rejuvenating resources if the effects are as some evidence seems to suggest.

MR. HUR: I just wanted to comment on one thing. Win made a point that we're looking into right now. It's a real baffling question. There's two or three shortbeds of abalone around the corner that are very --

ACTING CHAIRPERSON McCARTHY: For the record let it show that Mr. Hur is testifying again. Thank you, Mr. Swint.

Mr. Hur.

MR. HUR: And after the Chamber's study was completed, the abalone in that area disappeared, the juveniles along with the mature harvestable size. Now, Win, I think you clarified there was no inference as far as it being sea otters or anything like that.

ACTING CHAIRPERSON McCARTHY: We won't allow anybody to point an accusing finger.

MR. HUR: Now, the inference was it's way beyond whatever one, two, or ten or whatever sea otters could possibly eat. It raises some concern. We don't know why.

ACTING CHAIRPERSON McCARTHY: We don't have the answer to that.

MR. SWINT: We do not have the answer. One answer may be, from my observations in these areas, well, perhaps it's not an answer, but the populations of animals in these

areas seems to leapfrog. Rather than having set long-term populations in these areas, the way the bottom is set up, that small intense concentrations of abalones in particular, and I've noticed it with other animals in these areas, tend to leapfrog around in some sort of a rotating fashion that I don't quite understand myself. But we do find this area extremely rich and that's the bulk of my testimony.

ACTING CHAIRPERSON McCARTHY: Thank you very much. Mr. Cox.

MR. COX: Thank you, Mr. Chairman.

I would like to approach this by first talking about the modifications or clarifications that I think can be made in your conditions document. We feel that we can track the Commission on several items here. On C-5, page 18 of your document, line 11, you talk about biological surveys that will, and I quote, "Contains areas used as a breeding ground for commercially recoverable species," and we suggest that you modify that to "breeding, feeding and migration areas for commercially recoverable species."

ACTING CHAIRPERSON McCARTHY: Wait a minute, please. Staff understand what's being proposed?

EXECUTIVE OFFICER DEDRICK: Yes, sir, but I do not understand the significance of it at the moment.

You're proposing "breeding" --

ACTING CHAIRPERSON McCARTHY: "Feeding and

1 migratory areas."

2 MR. COX: "For commercially recoverable fish."

3 Fish not only breed but they also feed and move about.

4 We feel that those elements of the --

5 ACTING CHAIRPERSON McCARTHY: Well, migratory

6 areas could cover perhaps anything. I assume that this

7 could deal with movement of various species.

8 MR. COX: Yes.

9 ACTING CHAIRPERSON McCARTHY: Probably every square

10 foot would be very involved here. Maybe a migratory area

11 for one fish of one of the species.

12 MR. COX: And that is the sort of information

13 that I believe the Commission would want to have in terms

14 of analyzing the impacts of oil development on the commercial

15 fishing industry.

16 EXECUTIVE OFFICER DEDRICK: The migratory, that

17 doesn't sound appropriate.

18 MR. COX: What about the feeding areas?

19 EXECUTIVE OFFICER DEDRICK: Migratory sounds pretty

20 vague to me.

21 ACTING CHAIRPERSON McCARTHY: What about the

22 feeding?

23 MR. HUR: Migratory is used as a Fish and Game

24 term in all its texts. So it would cover all of it. It

25 would cover breeding, feeding and everything. Just a

suggestion.

EXECUTIVE OFFICER DEDRICK: I think we need some more data, Mr. Chairman, to determine what the effect is.

ACTING CHAIRPERSON McCARTHY: What about the word "feeding"?

EXECUTIVE OFFICER DEDRICK: My answer is the same. We know where the breeding areas are. Somewhere in our data we probably know the rest of those answers, but I don't have them in my mind.

ACTING CHAIRPERSON McCARTHY: Go ahead, Mr. Cox.

MR. COX: Yes. The second suggestion is C-6 on 19, line 15, in which we are adding the last sentence of Item (c), where it presently says: "Sample species collected shall be identified to the lowest possible taxonomic level." We would like to add that we also analyze the biomass and density of critical organisms with respect to the results that will be coming back from these studies.

ACTING CHAIRPERSON McCARTHY: Repeat that.

MR. COX: Add to: "Sample species collected shall be identified to the lowest possible taxonomic level," the fact that we will be gathering data on biomass and density of critical organisms. In other words, we will not only be identifying the type of species but the mass and their density at these particular sampling stations.

ACTING CHAIRPERSON McCARTHY: Isn't that included,

1 that kind of information included anywhere else in our
2 studies? I just assumed that that would be a pretty basic
3 form of information.
4 EXECUTIVE OFFICER DEDRICK: I need Dwight Sanders
5 to make sure I'm telling the truth.
6 ACTING CHAIRPERSON McCATHY: Mr. Sanders.
7 EXECUTIVE OFFICER DEDRICK: I think that that's
8 what is done now; isn't that correct?
9 MR. SANDERS: What will generally be done in the
10 box core is to not only determine -- my name is Dwight
11 Sanders. I'm on the staff of the State Lands Commission.
12 In a box core to determine not only the types
13 of animals within that box core but their density and so
14 forth. As Mr. Cox has testified, that information has been
15 provided to us through the biological studies that have
16 been done and we see no difference in any studies to be
17 done in the future.
18 ACTING CHAIRPERSON McCARTHY: Is that mentioned
19 anywhere in any conditions of the lease, the proposed lease
20 agreement?
21 MR. SANDERS: It is not mentioned specifically
22 to my knowledge, Governor. It is a standard operating
23 procedure, a valid and bonafide biological --
24 ACTING CHAIRPERSON McCARTHY: Is there any problem
25 with mentioning it specifically at this point?

MR. SANDERS: I don't see any.

EXECUTIVE OFFICER DEDRICK: Not that I see.

ACTING CHAIRPERSON McCARTHY: Would you give us the wording that you have in mind, Mr. Cox?

MR. COX: "Sample species collected shall be identified to the lowest possible taxonomic level and the biomass and density of critical organisms shall be analyzed."

ACTING CHAIRPERSON McCARTHY: Staff have any further comment on that?

EXECUTIVE OFFICER DEDRICK: No.

ACTING CHAIRPERSON McCARTHY: Any objections by my two fellow commissioners on that language change?

All right. That's adopted.

Go ahead, Mr. Cox.

MR. COX: On line 17, right below the area we've just been discussing, as presently worded, "The marine mammal surveys shall be performed by a qualified marine mammalogist..." We suggest that you add in there a study of the sea birds in addition to the marine mammals.

EXECUTIVE OFFICER DEDRICK: We started out with this a while back with a qualified biologist, with qualified biologists. We changed it to marine mammalogists at the request of the people who are interested in mammals and that inadvertently left out the sea birds. Maybe we better go back to biologists.

1 MR. COX: What we'd like to do here is just clarify
2 the intent here and I would believe that adding in sea birds
3 would certainly make the studies comprehensive enough to
4 include not only mammals but also birds.
5 ACTING CHAIRPERSON McCARTHY: I think they should
6 be included. Now, you're saying they're excluded by the
7 way we describe our experts?
8 MR. COX: That's correct.
9 ACTING CHAIRPERSON McCARTHY: Not necessarily
10 excluded, but you're saying this expert may not be qualified
11 to --
12 MR. COX: That's correct.
13 EXECUTIVE OFFICER DEDRICK: Well, a marine mammal
14 survey is for marine mammals and birds are not marine
15 mammals. Biological survey covers everybody else we thought.
16 ACTING CHAIRPERSON McCARTHY: Let's take care
17 of it. I think it was intended that they be included. How
18 do we do it?
19 EXECUTIVE OFFICER DEDRICK: Well, I would suggest
20 that you put forward your intent which you just have. If
21 the Commission concurs in that, give the staff the latitude
22 to write the precise wording.
23 ACTING CHAIRPERSON McCARTHY: All right.
24 MR. COX: Yes. Thank you.
25 On page C-7, this is a matter that may involve

1 a policy question, but I will approach it now. The last
2 sentence on page 7 reads: "In lease areas where adverse
3 effects cannot be mitigated to the satisfaction of the State,
4 the State may prohibit development." We suggest that you
5 change the word "may" to read "shall." Because if you do
6 find that adverse impacts have not been mitigated to your
7 satisfaction, the proper course would then be to actually
8 prohibit such development. I believe that that is your
9 intent. Changing the word from "may" to "shall" will make
10 that clear.

11 EXECUTIVE OFFICER DEDRICK: It is indeed a policy
12 question.

13 ACTING CHAIRPERSON McCARTHY: I'm for changing
14 it to "shall." How do the other commissioners feel about
15 that?

16 I think it's the clear intent that we're trying
17 to encourage mitigation actions. If mitigation cannot be
18 accomplished, then the option that's pretty strongly implied
19 in this is that the development and that specific site will
20 not go forward.

21 I'd recommend we change "may" to "shall."

22 EXECUTIVE OFFICER DEDRICK: Would you give me
23 a moment to concur with counsel?

24 ACTING CHAIRPERSON McCARTHY: Go ahead.

25 Go ahead, Mr. Cox, your next point.

1 MR. COX: The next point concerns page C-20 which
2 talks about the meteorological studies. In particular,
3 we would like to recommend that you include, with respect
4 to currents, at the surface and at depths because knowledge
5 of currents at depth is necessary in understanding what
6 will happen to oil that is spilled, where that oil will
7 go. Not only in terms of the surface, but also subsurface
8 migration.
9 ACTING CHAIRPERSON McCARTHY: I'm not following
10 you clearly.
11 MR. COX: It's line 8.
12 ACTING CHAIRPERSON McCARTHY: Yes, go ahead. What
13 point are you trying to make? I missed it.
14 MR. COX: The point is that we should study
15 currents at the surface and at depth. This was a suggestion --
16 ACTING CHAIRPERSON McCARTHY: We're on --
17 MR. COX: This is a suggestion made to me.
18 MR. TROUT: Mr. Chairman, page C-20, Operating
19 Requirement 14, the line that starts with "Necessary to
20 obtain high quality measurements of wave, wind, current
21 and temperature," the intention was that both temperature
22 and currents would be studied throughout the water column
23 and the results of the studies indicate what long-term,
24 where for the long term the on-time real-time reporting
25 information needs to be collected. I don't know that we

would argue it all. I guess I don't think we need to change it. I wouldn't argue with Mr. Cox only to say that that's our intention.

ACTING CHAIRPERSON McCARTHY: Is it our intent to collect the data as to surface and subsurface currents?

EXECUTIVE OFFICER DEDRICK: Yes.

MR. TROUT: Yes.

ACTING CHAIRPERSON McCARTHY: All right. Make that a part of the record, Mr. Cox.

MR. COX: Thank you.

ACTING CHAIRPERSON McCARTHY: Go ahead.

You want to revert back to the last item?

EXECUTIVE OFFICER DEDRICK: Yes. I think, Mr. Chairman, that the Commission should hear from the Attorney General, in this case, Rick Frank, on the question of the "shall" versus "may."

ACTING CHAIRPERSON McCARTHY: Mr. Frank.

MR. FRANK: Thank you, Mr. Chairman. This refers back to the previously suggested amendment on pages C-7 and C-8. The only concern we would raise is that this carries over under into the Commission's obligations and duties under the California Environmental Quality Act. Under that Act, and in the approved initial lease proposal last December, the Commission on several circumstances indicated mitigation measures might be appropriate if they were properly and

1 legally within the responsibility of other agencies. Under
2 this document we use the term "state" -- state is defined
3 as the State Lands Commission -- to adopt the suggested
4 change may preclude or prevent some of those other agencies
5 from exercising their discretion within their regulatory
6 sphere. The Commission's only ability under CEQA and under
7 existing laws is to make recommendations as to suggested
8 mitigation measures which are properly within the jurisdiction
9 of those other agencies.

10 ACTING CHAIRPERSON McCARTHY: Are you talking
11 about the Coastal Commission primarily?

12 MR. FRANK: Any number of agencies. The Air
13 Resources Board, Local Air Quality Management Districts,
14 State Water Resources Control Board. It's an overriding
15 concern.

16 ACTING CHAIRPERSON McCARTHY: What are you
17 suggesting, that we limit how they may define mitigating
18 circumstances?

19 MR. FRANK: Well, we suggest that the best course,
20 given the options and the duties under CEQA, would be to
21 leave the language as it is in its present condition. The
22 Commission adopting the proposed change might be reducing
23 its own discretion, more importantly, the discretion of
24 other regulatory agencies that have a say with respect
25 to this project.

1 MR. COX: That really doesn't address our
2 question of what happens if the State does determine that
3 mitigation measures are not being implemented to your
4 satisfaction. If you say that the State shall prohibit
5 development, then you are making the decision that oil
6 development can't go forward unless it is in fact mitigated
7 to your satisfaction.
8 COMMISSIONER ORDWAY: May I ask a question of
9 counsel? In order to proceed with development, wouldn't
10 lessee require a permit from some other agency?
11 MR. FRANK: Yes. That's fully requested in the
12 existing lease.
13 COMMISSIONER ORDWAY: So if they were unable,
14 because of environmental matters, to obtain a permit,
15 therefore, they would be prohibited from developing; is
16 that correct?
17 MR. FRANK: Yes.
18 COMMISSIONER ORDWAY: Thank you.
19 MR. COX: I'm not really clear I understand why
20 the Attorney General is objecting to the change. It seems
21 pretty clear that if it's your intent not to allow oil
22 development if significant impacts are going to result,
23 then why the wishy language?
24 MR. FRANK: Well, just giving out one possible
25 scenario, it may be that there are some mitigation measures

1 that might be available for adoption by, say, the State
2 Water Resources Control Board. The State Lands Commission
3 would not have the ability to do that. The Commission might
4 want to condition any approval or recommend mitigation
5 measures to be adopted by the appropriate regulatory agency.
6 In that case, the State Water Board.
7 I'm just concerned that the language being proposed
8 here might circumscribe this Commission's ability to adopt
9 that either/or course of action.
10 ACTING CHAIRPERSON McCARTHY: Let me ask the
11 question. If any of those agencies adopt mitigating actions
12 that can be taken by the lessee, then we're not put in the
13 position of prohibiting development?
14 MR. FRANK: That's correct.
15 ACTING CHAIRPERSON McCARTHY: So if we did change
16 this from "may" to "shall," why would they be prohibited
17 from framing mitigating actions that could be accomplished
18 or not accomplished by the lessee?
19 MR. FRANK: I'm not sure I fully understand the
20 question you're raising.
21 ACTING CHAIRPERSON McCARTHY: Well, the language
22 is in the lease areas where adverse effects cannot be
23 mitigated. So if they put forward required mitigating action
24 and that was followed, then this sentence wouldn't be
25 applicable to the lessee in that circumstance.

1 MR. FRANK: I think you have to read the continuing
2 language "to the satisfaction of the State," the State here
3 being the State Lands Commission. The problem is you're
4 maybe asking the State Lands Commission --
5 ACTING CHAIRPERSON McCARTHY: You're saying that
6 we in this sentence would restrict all judgments about
7 whether the mitigating circumstances is proper or not to
8 this State agency?
9 MR. FRANK: That's the way the language currently
10 reads.
11 ACTING CHAIRPERSON McCARTHY: In effect we would
12 be holding ourselves as the judge of whether each of the
13 other agencies might require certain mitigating actions
14 had acted properly or not.
15 MR. FRANK: And that might require a degree of
16 technical expertise this Commission does not have on various
17 of those subjects.
18 MR. COX: That's clearly not what we intend. We
19 intend that an environmental review of each one of these
20 production phases as they come in, if you determine that
21 the environmental impacts cannot be mitigated within the
22 purview of your discretion, then this language would
23 indicate that you would prohibit development. In other
24 words, you would not, for example, with Class I impacts
25 make a statement of overriding consideration.

I think that the intent of changing that word to "shall" is to place potential lessees on notice that if environmental impacts cannot be mitigated, then it's clear that development cannot go forward. That's important in terms of our contention that there may be a parcel here that is so significant environmentally or from the commercial fishermen's perspective that oil development would be inappropriate. That's why we feel that it's very important to clarify that basic core concept.

ACTING CHAIRPERSON McCARTHY: Yes, Commissioner Ordway.

COMMISSIONER ORDWAY: Has there ever been a case where the State Lands Commission has allowed development to a lessee who has not been able to acquire the appropriate environmental permits?

EXECUTIVE OFFICER DEDRICK: I'm sure not.

MR. HIGHT: No.

COMMISSIONER ORDWAY: I don't see where this is an issue.

ACTING CHAIRPERSON McCARTHY: Mr. Cox, I must confess I'm a little bit concerned about the statement made by the Attorney General as to whether or not we circumscribe unintentionally the actions that might be taken by some other state agencies. I do understand your basic thrust and maybe we can try to pursue this to see if there's a