



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 10009, Richmond, Virginia 23240

Fax (804) 698-4500 TDD (804) 698-4021

www.deq.state.va.us

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

September 23, 2002

Mr. David W. Kaiser
Federal Consistency Coordinator
Office of Ocean and Coastal Resource Management (N/ORM3)
National Oceanic and Atmospheric Administration
1315 East-West Highway
Silver Spring, Maryland 20910

RE: Procedural Changes to the Federal Consistency Process
DEQ-02-125F

Dear Mr. Kaiser:

The Commonwealth of Virginia has completed its review of the Advance Notice of Proposed Rulemaking for Procedural Changes to the Federal Consistency Process, which appeared in the July 2, 2002 Federal Register (Volume 67, No. 127) at pages 44407-44410 (hereinafter "the Notice"). The Department of Environmental Quality is responsible for coordinating Virginia's review of federal environmental documents, as well as for coordinating Virginia's review of consistency determinations and certifications under the Coastal Zone Management Act of 1972. DEQ is the lead agency for the Virginia Coastal Resources Management Program.

The following state agencies and planning district commissions took part in this review (agencies with asterisks (*) administer Enforceable Programs of the Virginia Coastal Resources Management Program):

Department of Environmental Quality*
Department of Game and Inland Fisheries*
Department of Conservation and Recreation*
Department of Health*
Virginia Institute of Marine Science
Chesapeake Bay Local Assistance Department*
Northern Virginia Regional Commission
Northern Neck Planning District Commission
Hampton Roads Planning District Commission.

30

In addition, the following agencies and planning district commissions were invited to comment:

Marine Resources Commission*
Department of Historic Resources
RADCO Planning District Commission
Middle Peninsula Planning District Commission
Accomack-Northampton Planning District Commission

Description of Proposal

According to the Notice, the National Oceanic and Atmospheric Administration (NOAA) is asking for public comments on whether, and to what extent, NOAA should make procedural adjustments to the Federal Consistency regulations (15 CFR Part 930, revised and promulgated in the Federal Register on December 8, 2000 (Volume 65, No. 237, pages 77124-77175) in order to address issues raised by the report of the National Energy Policy Development Group, submitted to the President on May 16, 2001 (hereinafter "Energy Report"). (See the Notice, pages 44409, section IV and 44408, section III.)

The issues raised by the Energy Report are related to the scope of information needed by the States and by the Secretary of Commerce in their respective reviews of Outer Continental Shelf (OCS) oil and gas activities, and whether these needs, and the timing requirements under the Coastal Zone Management Act (CZMA) and the Outer Continental Shelf Lands Act (OCSLA) can result in procedural delays or delayed information requests. NOAA has specified a number of questions on which it seeks public comments in order to address these issues (Notice, pages 44409-44410, section IV). The questions are repeated below to organize our discussion.

General Comments

DEQ's Water Permits Support Office supports procedural changes that improve the overall efficiency of the process, provided that such changes do not conflict with other requirements of the Coastal Zone Management Program. The Northern Virginia Regional Commission has no objection to NOAA's engaging in a review process, so long as changes do not result in a weakening of the federal consistency review procedures.

The Chesapeake Bay Preservation Act (*Virginia Code* sections 10.1-2100 et seq.) and its implementing regulations, the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.) is one of the Enforceable Programs of the Virginia Coastal Resources Management Program (listed as Coastal Lands Management in our listing, first attachment). The Chesapeake Bay Local Assistance Department provides administrative oversight for the Act, whose purpose is to protect

and improve the water quality of the Chesapeake Bay and its tributaries through measures which reduce adverse impacts of land use and development. Offshore oil projects do not fall under the purview of this program, but on-shore support facilities would be subject to its Regulations.

Comments Responding to the Specific Questions Raised

The following comments respond to four of the questions raised in the Notice (page 44410). Comments are preceded by italicized question statements copied from the Notice.

1. Whether NOAA needs to further describe the scope and nature of the information necessary for a State CMP [coastal management program] and the Secretary [of Commerce] to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

According to the Chesapeake Bay Local Assistance Department, which is addressing land-based activities within its jurisdiction, our reviews would be facilitated if the following information were provided during the federal consistency review process:

- Detailed maps showing the layout of the proposed facilities and other elements of the project (i.e., transmission lines, reservoirs, borrow areas, waste disposal locations, etc.);
- Delineation of Chesapeake Bay Preservation Areas on the properties under study. Site-specific determinations of Chesapeake Bay Resource Protection Areas (the more stringent of the two designation categories under Preservation Areas) should be made, and reflected on the maps or drawings.
- The consistency certifications should address how the performance criteria of the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.) will be met.

The Hampton Roads Planning District Commission wants the information requirements to allow states the flexibility to request information to address questions unique to their own coastal management programs.

2. (Fourth question in Notice) Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations" (15 CFR Part 930, section 930.36(c)), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal

Mr. David W. Kaiser

Page 4

effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

The Chesapeake Bay Local Assistance Department expressed its wish to have an opportunity to review any proposed categorical listing of activities contemplated under a regulatory provision for a "general negative determination." The Department of Environmental Quality supports this position, if such a provision were to be proposed.

3. (Fifth question in Notice) Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location" descriptions in section 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

The Hampton Roads Planning District Commission, stating that the term "foreseeable coastal effects" is ambiguous, recommends that guidance be developed to assist in making this determination.

4. (Sixth question in Notice) Whether multiple federal approvals needed for an OCS EP [exploration plan] or DPP [Development and Production Plan] should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in EPs and DPPs, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

The Hampton Roads Planning District Commission recommends that required multiple federal approvals be consolidated into a single review process in order to reduce procedural delays. DEQ supports the consolidation of consistency reviews to the extent that it is practicable to do so.

Thank you for the opportunity to comment on this matter.

Sincerely,



Michael P. Murphy, Director
Division of Environmental Enhancement

Enclosures
cc: (next page)

Mr. David W. Kaiser
Page 5

cc: Thomas F. Wilcox, DGIF
Derral Jones, DCR
K.S. Narasimhan, DEQ-Air
Thomas A. Barnard, Jr., VIMS
Catherine M. Harold, CBLAD
Susan E. Douglas, VDH
David L. Davis, DEQ-Water
Martin G. Ferguson, DEQ-Water
Thomas D. Modena, DEQ-Waste
David L. Bulova, NVRC
Paul E. Fisher, Richmond Regional PDC
Jerry W. Davis, Northern Neck PDC
John M. Carlock, Hampton Roads PDC
Ethel R. Eaton, DHR
Stephen H. Manster, RADCO PDC
Dan Kavanaugh, Middle Peninsula PDC
Paul F. Berge, Accomack-Northampton PDC

Ellis, Charles

From: Synthia Waymack [swaymack@dcr.state.va.us]
Sent: Friday, August 16, 2002 11:09 AM
To: Ellis, Charles
Subject: 02-125F Procedural Changes to the Federal Consistency Process

Charlie,

We have reviewed DEQ#02-125F: Procedural Changes to the Federal Consistency Process. While we have no specific comments at this time, we are supportive of clarification of the procedural issues involving Coastal Zone Management Federal Consistency Review.

Synthia Waymack
Environmental Review Coordinator
Department of Conservation and Recreation
swaymack@dcr.state.va.us <<mailto:swaymack@dcr.state.va.us>>

If you cannot meet the deadline, please notify CHARLIE ELLIS at 804/698-4488 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for your comments. IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.

Please return your comments to:

MR. CHARLES H. ELLIS III
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL IMPACT REVIEW
629 EAST MAIN STREET, SIXTH FLOOR
RICHMOND, VA 23219
FAX #804/698-4319

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DEQ Office of Environmental
Impact Review


Charles H. Ellis III
Environmental Program Planner

COMMENTS

The Virginia Department of Health believes that the Dept. of Environmental Quality is most qualified to comment on procedural issues related to the Federal Consistency Process - NOAA, and defers to DEQ on this request.

(signed) Susan E. Douglas (date) 7-11-02
(title) Field Services Engineer (acting)
(agency) Virginia Dept. of Health



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COMMONWEALTH of VIRGINIA

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DEPARTMENT OF ENVIRONMENTAL QUALITY

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Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

MEMORANDUM

TO: Charles Ellis

FROM: Thomas Modena *JDM*

DATE: August 13, 2002

COPIES: Kevin Greene

SUBJECT: Proposed Procedural Changes to the Federal Consistency Process

The Office of Remedial Programs has reviewed the Proposed Procedural Changes to the Federal Consistency Process. Since these changes are proposed for energy development on the Outer Continental Shelf, the Waste Division has no comments.

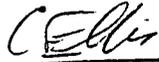
If you have any questions or need further information, please let me know

informal memo

August 9, 2002

TO: File

FROM: C. Ellis



SUBJECT: NOAA Advanced Notice of Proposed Rulemaking, Consistency
Process Changes (DEQ-02-125F)

Kotur Narasimhan, Air Division, tells me they have no comments on this matter.

Review Instructions:

- A. Please review the document carefully. If the proposal has been reviewed earlier (i.e. if the document is a federal Final EIS or a state supplement), please consider whether your earlier comments have been adequately addressed.
- B. Prepare your agency's comments in a form which would be acceptable for responding directly to a project proponent agency.
- C. Use your agency stationery or the space below for you comments. **If you use the space below, the form must be signed and dated.**

Please return your comments to:

Mr. Charles H. Ellis, III
Dept. of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, VA 23219
Fax: (804) 698-4319

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Impact Review

Charles H. Ellis, III
Environmental Program Planner

Comments: VWPP: NOAA is evaluating whether limited and specific procedural changes are needed to improve efficiencies in the Federal Consistency Review process, particularly for review of projects associated with energy development on the Outer Continental Shelf (OCS). The primary issues involve:

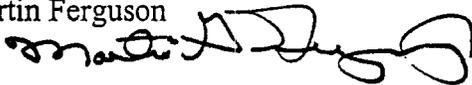
- Clearly defined information needs and requirements necessary to complete a consistency review
- Clearly defined deadlines for completing the review process
- How far offshore from State waters an activity must be to have reasonably foreseeable coastal effects
- Whether multiple federal approvals can be consolidated into a single consistence review

It appears that these proposed procedural changes are specifically targeted for energy development projects on the OCS. We support procedural changes that improve the overall efficiency of the federal consistency review process, provided that they do not conflict with other requirements of the Coastal Zone Management program.

VPDES/VPA: No Comments

Name: Martin Ferguson

Signature:



Title:

Agency: DEQ - Water Permits Support

Date: August 22, 2002

Project: 02-125F

If you cannot meet the deadline, please notify CHARLIE ELLIS at 804/698-4488 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

REVIEW INSTRUCTIONS:

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- C. Use your agency stationery or the space below for your comments. IF YOU USE THE SPACE BELOW, THE FORM MUST BE SIGNED AND DATED.

Please return your comments to:

MR. CHARLES H. ELLIS III
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL IMPACT REVIEW
629 EAST MAIN STREET, SIXTH FLOOR
RICHMOND, VA 23219
FAX #804/698-4319


Charles H. Ellis III
Environmental Program Planner

COMMENTS

I have reviewed the Procedural Changes to the Federal Consistency Process submitted for review by the Department of Commerce/National Oceanic Atmospheric Administration and have no comment.

(signed)

D. Bamard

(date)

8/1/02

(title)

Assistant Professor

(agency)

VIMS/CCRM



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COMMONWEALTH of VIRGINIA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

James Monroe Building
101 North 14th Street, 17th Floor
Richmond, Virginia 23219
FAX: (804) 225-3447

C. Scott Crafton
Acting Executive Director
(804) 225-3440
1-800-243-7229 Voice/TDD

August 6, 2002

Mr. Charles H. Ellis, III
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, VA 23219

**RE: NOAA Proposed Procedural Changes to the Federal Consistency Process
CBLAD Project Review No. FSPR-NOAA-01-02**

Dear Mr. Ellis:

As you requested, we have reviewed the Federal Register notice regarding the National Oceanic and Atmospheric Administration's (NOAA) proposed rulemaking concerning changes in the federal consistency procedures, particularly as it relates to development on the Outer Continental Shelf. The following are our comments and recommendations.

The Chesapeake Bay Preservation Act and its implementing regulations, the Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations), is a core enforceable program of Virginia's Coastal Resources Management Program. The Chesapeake Bay Local Assistance Department provides administrative oversight for the Chesapeake Bay Preservation Act, which is implemented at the local government level. The purpose of the Act is to protect and improve the water quality of the Chesapeake Bay and its tributaries through measures to reduce adverse impacts of land use and development. Offshore projects such as those on the Outer Continental Shelf do not fall within the purview of this program. However, onshore support facilities would be subject to the Regulations of the program.

NOAA seeks comments as to how to best to expedite reviews of projects. For purposes of our program and assuming the activity is land-based, expediency of our reviews could be facilitated if the following information were provided during the federal consistency review process:

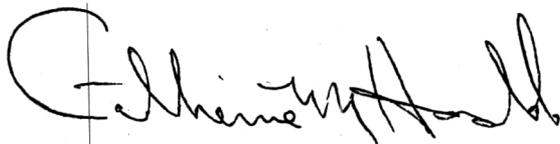
Mr. Ellis
August 6, 2002
Page 2 of 2

- Detailed maps showing the layout of the proposed facilities and other elements of the project (e.g., transmission lines, reservoirs, borrow areas, waste disposal locations, etc.).
- Delineation of Chesapeake Bay Preservation Areas on the properties under study. Site-specific determinations of the Chesapeake Bay Resource Protection Areas should be made and reflected on the maps or drawings.
- The documents should address how the performance criteria of the Regulations will be met.

If NOAA proposes a regulatory provision for a “general negative determination,” for repetitive Federal agency activities, this agency would like to be provided with the opportunity to review and comment on any proposed categorical listing of activities contemplated under such a provision.

We appreciate the opportunity to provide our comments on this project. Please do not hesitate to contact us at 1-800-CHESBAY should you have any questions.

Sincerely,



Catherine M. Harold
Environmental Engineer

Cc: Scott Crafton, CBLAD
Martha H. Little, CBLAD



Northern Virginia Regional Commission

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Town of Leesburg

Hon. Kristen C. Umstattd

Town of Purcellville

Hon. John D. Marsh

Town of Vienna

Hon. Albert J. Boudreau

(as of May 13, 2002)

July 24, 2002

Mr. Charles H. Ellis III
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, Sixth Floor
Richmond, VA 23219

Re: Project Number 02-125F

Dear Mr. Ellis:

The Northern Virginia Regional Commission staff has reviewed the application described below and has no comment on the proposal, so long as changes do not result in a weakening of Federal Consistency review procedures.

A copy of this letter should be included with your submission to indicate that review by this agency has been completed.

Your cooperation in this intergovernmental review process is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David Bulova", is written over a large, stylized scribble.

David Bulova
Director, Environmental Services

Project: Procedural Changes to the Federal Consistency Process
Sponsor: DOC/National Oceanic Atmospheric Administration

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Ellis, Charles

From: David L. Bulova [dbulova@novaregion.org]
Sent: Thursday, September 19, 2002 3:32 PM
To: Ellis, Charles
Subject: Supplement to Project #02-125F

Dear Mr. Ellis,

With regard to Federal Project Number 02-125F titled "Procedural Changes to the Federal Consistency Process," the Northern Virginia Regional Commission wishes to clarify in our July 24, 2002 comments that by no comment, the Commission means "We have no objection to NOAA engaging in a review process, so long as changes do not result in a weakening of Federal Consistency review procedures."

Thank you for the opportunity to comment on this project. Please feel free to contact me if you have any questions.

David L. Bulova
Director of Environmental Services
Northern Virginia Regional Commission
7535 Little River Turnpike, Suite 100
Annandale, Virginia 22003
(703) 642-4624
F (703) 642-5077
dbulova@novaregion.org



Planning District Commission

Metropolitan Planning Organization

Town of
Ashland
Counties of
Charles City
Chesterfield
Goochland
Hanover
Henrico
New Kent
Powhatan
City of
Richmond
Executive Director
Paul E. Fisher

MEMORANDUM

TO: Charles H. Ellis, III
Department of Environmental Quality

FROM: Paul E. Fisher
Executive Director 

DATE: July 24, 2002

SUBJECT: ENVIRONMENTAL REVIEW AND COMMENT

DEQ-Div. of Environmental
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Project Title: NOAA Procedural Changes to the Federal Consistency Process

Description: NOAA Advance Notice of Proposed Rulemaking

CCN: VA02-0724-719-015-00760



The RRPDC staff has no comment on this project

The RRPDC staff has no major concerns with this project; however, see attached comments.

The RRPDC staff has major concerns (see attached comments) with the project as proposed; because it:

- duplicates an existing and programmed project;
- is inconsistent with adopted RRPDC plans and policies; and/or
- has potentially significant adverse impacts which require mitigation.

PEF/keb

If you cannot meet the deadline, please notify CHARLIE ELLIS at 804/698-4488 prior to the date given. Arrangements will be made to extend the date for your review if possible. An agency will not be considered to have reviewed a document if no comments are received (or contact is made) within the period specified.

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 DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL IMPACT REVIEW
 629 EAST MAIN STREET, SIXTH FLOOR
 RICHMOND, VA 23219
 FAX #804/698-4319


~~Charles H. Ellis III~~
 Environmental Program Planner

COMMENTS

NO COMMENT

(signed)  (date) 7/9/02
 (title) EXECUTIVE DIRECTOR
 (agency) NORTHWEST DC



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ARTHUR L. COLLINS, EXECUTIVE DIRECTOR/SECRETARY

DEQ-Office of Environmental
Impact Review

August 15, 2002

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Clarence V. Cuffee, *Acting City Manager*
Debbie Ritter, *Council Member*
William E. Ward, *Mayor*

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Mark S. Fetherolf, *Council Member*
Rowland L. Taylor, *City Manager*

GLOUCESTER COUNTY

John J. Adams, Sr., *Board Member*
William H. Whitley, *County Administrator*

HAMPTON

Mamie E. Locke, *Mayor*
George E. Wallace, *City Manager*
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W. Douglas Caskey, *County Administrator*
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Edgar E. Maroney, *City Manager*

NORFOLK

Paul D. Fraim, *Mayor*
Daun S. Hester, *Council Member*
Regina V.K. Williams, *City Manager*
Barclay C. Winn, *Council Member*
W. Randy Wright, *Council Member*

POQUOSON

Charles W. Burgess, Jr., *City Manager*
Gordon C. Helsel, Jr., *Mayor*

PORTSMOUTH

J. Thomas Benn, III, *Council Member*
P. Ward Robinett, Jr., *Council Member*
Daniel M. Stuck, *City Manager*

SOUTHAMPTON COUNTY

Michael W. Johnson, *County Administrator*
Charleton W. Sykes, *Board Member*

SUFFOLK

Dana E. Dickens, III, *Council Member*
Myles E. Standish, *City Manager*

SURRY COUNTY

Ernest L. Blount, *Chairman*
Terry D. Lewis, *County Administrator*

VIRGINIA BEACH

Margaret L. Eure, *Council Member*
W. W. Harrison, Jr., *Council Member*
Louis R. Jones, *Council Member*
Robert C. Mandigo, Jr., *Council Member*
Meyera E. Oberndorf, *Mayor*
Nancy K. Parker, *Council Member*
James K. Spore, *City Manager*

WILLIAMSBURG

Jackson C. Tuttle, II, *City Manager*
Jeanne Zeidler, *Mayor*

YORK COUNTY

James O. McReynolds, *County Administrator*
Sheila S. Noll, *Board Member*

Mr. Charles H. Ellis, III
Environmental Program Planner
Department of Environmental Quality
Office of Environmental Impact Review
629 Main Street, Sixth Floor
Richmond, Virginia 23219

Re: Procedural Changes to the
Federal Consistency Process
DEQ# 02-125F (ENV:GEN)

Dear Mr. Ellis:

Pursuant to your request of July 8, 2002, the staff of the Hampton Roads Planning District Commission has reviewed the Procedural Changes to the Federal Consistency Process. Based on this review, we present the following recommendations for your consideration.

The proposed changes are attempting to address issues arising from the information being requested by State Coastal Management Programs. The Federal Register notice notes that information requested by Coastal Management Programs has resulted in procedural delays or delayed information requests. To prevent delays in the review process, NOAA asks whether it needs to specify the scope and nature of information necessary for a State to review a proposal in the Outer Continental Shelf. However, we are concerned that in specifying the information necessary to review OCS proposals, NOAA may infringe upon the State's authority to request information it deems appropriate to address issues specific to its coastal zone. In specifying the scope and nature of information necessary to review OCS proposals, NOAA should provide States with flexibility to request information to address questions unique to the State's Coastal Management Program.

Mr. Charles H. Ellis, III
August 15, 2002
Page 2

If not already part of the review process, we also recommend a scoping meeting prior to the development of Exploration Plans and Development and Production Plans. This scoping meeting should include the applicant, NOAA, representatives of the State Coastal Zone Management Program, and other stakeholders. During this meeting, issues significant to the State Coastal Program can be identified in advance, and these issues can then be addressed during Plan development. Because issues are identified in advance, delays due to late information requests would be minimized.

NOAA also asks whether guidance or regulatory action is needed to assist in determining when activities far offshore from State waters have "foreseeable coastal effects." This term is ambiguous, and we recommend that guidance be developed on making this determination.

NOAA also requests comment on whether multiple federal approvals needed for OCS Plans should be consolidated into a single review. We recommend that required multiple federal approvals should be consolidated into a single review process. This would reduce procedural delays, which NOAA is seeking to minimize.

We appreciate the opportunity to review this project. If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur L. Collins". The signature is fluid and cursive, with a large initial "A" and "C".

Arthur L. Collins
Executive Director/Secretary

HRV:fh