UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

APR 17 2002

Steven M. Seibert
Secretary
Department of Community Affairs
State of Florida
2555 Shumard Oak Blvd.
Tallahasee, Florida 32399-2100

Re: Dismissal Letter - Collier Resources Company Consistency Appeal

On April 3, 2000, Collier Resources Company (CRC) filed a Notice of Appeal to the Secretary of Commerce (Secretary) from an objection made by the State of Florida (Florida), pursuant to the Coastal Zone Management Act (CZMA). On March 3, 2000, Florida, sent a letter to CRC and the National Park Service (NPS) exercising its authority under the CZMA to object to CRC's Landing Strips Oil and Gas Plan of Operations (Landing Strips Plan) for oil and gas exploration activities in Big Cypress National Preserve pursuant to the regulations of the NPS at 36 CFR Part 9, Subpart B (9B regulations). CRC filed this appeal with the Secretary of Commerce pursuant to the regulations of the National Oceanic and Atmospheric Administration (NOAA) implementing the CZMA and found at 15 CFR Part 930, Subpart H.

CRC has raised three procedural challenges to Florida's CZMA objection. First, CRC claims that Florida's objection is premature because no consistency certification has been filed for Florida's review of the Landing Strips Plan. Second, CRC claims Florida's objection was inadequate because it failed to specifically state the ways in which the Landing Strips Plan is inconsistent with the enforceable policies of the Florida Coastal Management Plan (FCMP). Third, CRC claims that its request for approval of the Landing Strips Plan pursuant to the 9B regulations is not properly listed as a permit subject to Federal consistency review under the FCMP and therefore, CRC is not required to file a consistency certification with the NPS and Florida.

Florida responded to CRC's Notice of Appeal and procedural challenges by arguing that CRC's Landing Strips Plan is subject to Federal consistency review because such approvals for oil and gas drilling on public lands are properly listed in the FCMP. Second, Florida argues that CRC cannot evade consistency review simply by not filing a consistency certification and therefore Florida's objection to CRC's Environmental Assessment is supported by the CZMA. Lastly, in its reply brief, Florida argued that the Secretary lacks authority to decide whether Florida has complied with the Federal consistency provisions, the regulations implementing the CZMA, or regulations governing CZMA procedures for appeals to the Secretary. In essence, Florida asserts that the Secretary lacks authority to determine his own jurisdiction over this or any other appeal filed pursuant to 15 CFR Part 930 Subpart H.

THE ADMINISTRATOR

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After thorough review of the briefs and supporting information filed with me by the parties, I have concluded that the Secretary has the authority to determine procedural compliance with the CZMA, its implementing regulations, and his jurisdiction over CZMA appeals; the FCMP does not list or describe drilling and mining activities on the public lands "in terms of the specific license or permit" as required by the NOAA regulations, and therefore, CRC was not required to provide Florida with a consistency certification for the Landing Strips Plan; lastly, I find Florida's objection does not comply with the provisions of 16 U.S.C. 1456(c)(3)(A) and is, therefore, not a valid exercise of its authority under the Federal consistency provisions. Based on the foregoing conclusions, I dismiss this appeal for good cause pursuant to 15 CFR 930.128 (2000).

I

The Secretary of Commerce Has Authority to Determine Whether an Appeal is Properly Presented Pursuant to the Provisions of the CZMA and its Implementing Regulations

Florida argues that the Secretary lacks authority to "override" Florida's objection to CRC's appeal based on any ground other than a substantive finding that the Landing Strips Plan is consistent with the objectives of the CZMA or is otherwise in the interest of national security. Florida maintains that the CZMA did not confer authority to the Secretary to determine whether a State has complied with the requirements of the CZMA or its implementing regulations. Florida Reply Brf. 5-6. Florida also asserts that the Secretary has no mechanism, other than the recently revised regulations, for determining whether he has proper jurisdiction over a consistency appeal. Each of Florida's assertions is incorrect.[1]

Congress has directed that "[t]he Secretary shall develop and promulgate . . . such rules and regulations as may be necessary to carry out the provisions of this chapter." 16 U.S.C. 1463.[2] Congress has authorized the Secretary to adopt rules, through notice and comment rule making, to implement the provisions of the CZMA, pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq., and taking into consideration the views of relevant state, federal and local agencies, port authorities and private and public parties. Id. In conformance with this statutory

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[1]Florida correctly observes that CRC's appeal was filed on April 3, 2000, and is therefore subject to the CZMA regulations then in force at 15 CFR Part 930 (2000) and not the recently revised CZMA regulations which became effective on January 8, 2001. It is the Secretary's view and practice that the revised regulations apply only to appeals properly filed with the Secretary on or after January 8, 2001, and that they have no retroactive effect.

[2] See also, S. Rept. 92-753 and H. Rept. 92-1049 reprinted in *Legislative History of the Coastal Zone Management Act of 1972, as amended in 1974 and 1976, Committee Print, 94th Cong. 2d Sess. December 1976,* at pp. 206, and 327.

directive, the Secretary, acting through NOAA,[3] has promulgated regulations governing, inter alia, Coastal Management Plan (CMP) approval, CMP review, state and federal coordination through the Federal consistency provisions, and procedures for pursuing an appeal to the Secretary.

The formulation of administrative procedures is a matter left to the discretion of the administrative agency, in this case NOAA. Vermont Yankee Nuclear Power Corp. v. National Resources Defense Council, Inc., 435 U.S. 519, 523-25, 98 S.Ct. 1197, 1201-1202, 55 L.Ed.2d 460 (1978). Moreover, NOAA, as the agency charged with implementation of the statute, retains substantial discretion in formulating, interpreting, and applying its own rules. See, American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 539, 90 S.Ct. 1288, 1292, 25 L.Ed.2d 547 (1970). [4] NOAA has considerable latitude in designating and administering its procedures as long as fundamental aspects of due process are followed. Titusville Cable v. United States, 404 F.2d 1187, 1192 (3d Cir. 1968). NOAA has exercised this discretion by promulgating rules governing all aspects of Federal consistency review. See generally, 15 CFR Part 930. These rules explicitly provide for the Secretary to dismiss appeals where the requirements of the CZMA and its implementing regulations have not been met or for other "good cause" shown. 15 CFR 930.128. The Secretary's discretion extends to his decision to decide procedural issues prior to the development of an administrative record on the substantive issues in order to promote efficient use of departmental resources and those of the parties to the appeal.

The Secretary of Commerce has a long standing practice of deciding the procedural and jurisdictional issues of a consistency appeal before deciding the substantive questions posed by section 307(c)(3)(A). Perhaps the most well known exercise of the Secretary's discretion to determine such a jurisdictional issue is the L. J. Hooker (1989) appeal. In that case, the L.J.Hooker Development Company appealed an objection by the State of South Carolina (South Carolina) to the issuance of a permit from the Army Corps of Engineers to develop Hutchinson

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[3] The Secretary has delegated to NOAA "[t]he functions prescribed in the Coastal Zone Management Act of 1972, as amended . . . subject to the ruling necessary for the conduct of appeals under section 307 . . . ." U.S. Department of Commerce Department Organization Order 10-15(3)(w).

[4]See American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 539, 90 S.Ct. 1288, 1292, 25 L.Ed.2d 547 (1970). The Commission's decision to accord the government a right to voluntary dismissal in the administrative proceeding is entitled to deference from the courts. By granting this right, the Commission avoids the resolution of issues mooted by the government's decision to forego prosecution of the underlying safety citations. The Commission's approach is a rational means of advancing its procedural interest in the orderly and efficient resolution of safety disputes. It results in no substantial prejudice to other parties and is therefore not an abuse of discretion. Absent law to the contrary, agencies enjoy wide latitude in fashioning their procedural rules. See Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543-44, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978).[FN1]

Island located in the State of Georgia. The threshold question was whether South Carolina had authority, under the CZMA, to object to the issuance of a permit for an activity to be conducted in another state. Prior to the development of an administrative record on the substantive issues, the Secretary ordered extensive briefing on the legal questions presented by South Carolina's assertion of interstate consistency. On behalf of the Secretary, NOAA's Office of General Counsel issued a decision finding South Carolina's objection in compliance with the CZMA because the CZMA authorized the exercise of Federal consistency whenever an activity licensed or permitted by a Federal agency directly affected a state's coastal zone.[5] The decision in L.J.Hooker was subsequently codified in the revised regulations implementing the CZMA. See, 15 CFR 930 subpart I (2001).

There are many other examples of the Secretary's determination of CZMA procedural compliance or jurisdiction over a consistency appeal. In the matter of Yeamans Hall Club (1991), the Under Secretary for Oceans and Atmosphere, acting for the Secretary of Commerce, issued findings of fact and law on the threshold question of whether Yeamans Hall Club's Notice of Appeal was timely filed in compliance with the NOAA regulations. Yeamans Hall Club maintained that it did not receive notice of South Carolina's objection in a timely manner and therefore could not have filed its Notice of Appeal sooner than it did. Evidence and affidavits were filed and a decision finding in favor of Yeaman's Hall Club was issued. The appeal was subsequently decided on substantive grounds. Yeamans Hall Club (1992).

Other instances of the Secretary's threshold determination of procedural issues and jurisdiction abound. International Paper (1990); ERA, S.E. (1992); Eugene Dean (1992); Rushton/Codd (1993); and Gregory (1996). Most of the Secretary's threshold decisions involve questions of timeliness. When a Notice of Appeal is found untimely, the appeal is dismissed for good cause pursuant to 15 CFR 930.128, and the state's objection stands. 15 CFR 930.128(a).[6] When a

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[5] In 1990, Congress amended section 307(c)(3) to require Federal consistency review for any license or permit to conduct an activity "affecting any land or water use or natural resource of the coastal zone . . . ." 16 USC 1456(c)(3).

[6] The recent revisions to the NOAA consistency regulations addressed the variety of procedural problems encountered in the twenty years of CZMA implementation. See, 15 CFR 930 Subpart H (Note)(2001) and the Preamble to the revised regulations at 65 FR 77124, 77151 (December 8, 2000). "The purpose of this provision is [sic] improve the administration of the appeals process by addressing procedural deficiencies in the issuance of the State's objection early in the process before the parties and the Secretary have invested significant resources in the development of the administrative record. A State's objection is not properly issued if it fails to comply with the requirements of section 307 of the Act or with the regulations contained in subparts D, E, F and I. To dismiss an objection because the State has not followed the proper procedures is actually to override the State's objection on procedural grounds." The override language was chosen because it makes clear to the Federal agency that it may issue the permit or license because there is no valid State objection to a properly filed

state's objection is found untimely, then consistency is presumed by operation of section 307(c)(3)(A) of the CZMA.

Not only does the Secretary retain inherent authority through the CZMA and implementing regulations to determine jurisdiction over a consistency appeal, the Secretary also has discretion to determine and implement procedures governing the consistency appeal process to ensure efficiency and fairness to all parties, including the relevant federal agency. It is of no benefit to the state, the applicant or the Secretary to receive comments and detailed briefing on the substantive reasons an activity is consistent with the objectives of the CZMA or in the interest of national security, only to find the State's objection or the Notice of Appeal was filed out of time, the State's objection was not based upon an enforceable policy or a policy incorporated into the federally approved program, or that some other requisite of the Federal consistency process was not met.

If a State or appellant disagrees with the Secretary's final determination of a procedural or jurisdictional issue or believes the Secretary lacks the authority to decide whether an appeal is properly presented for his consideration pursuant to section 307(c)(3)(A), either the applicant or the State may seek a remedy in federal district court pursuant to the CZMA, the Administrative Procedure Act or such other law as may be applicable.

II
The FCMP Does Not List Approvals under 36 CFR Part 9 Subpart B as Requiring a Federal Consistency Certification

CRC argues that it need not provide Florida with a consistency certification pursuant to section 307(c)(3)(A) because permits issued pursuant to NPS 9B regulations governing exploitation of Non-Federal Oil and Gas Rights are not "listed" in the FCMP. In denying its obligation to comply with section 307(c)(3)(A), CRC asserts that Florida failed to comply with NOAA's regulations which provide that:

> State agencies shall develop a list of Federal license and permit activities which are likely to affect the coastal zone and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the Federal license and permit activities **shall be described in terms of specific licenses or permits involved (e.g. Corps of Engineers 404 permits, Coast Guard bridge permits, etc.)**

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consistency certification by the applicant, and therefore the operation of 307(c)(3)(A) does not stand in the way of the Federal agency's issuance of the permit or license. As described above, the previous regulations allowed the Secretary to dismiss "for good cause," but did not make clear that such a dismissal operates to allow the issuance of the Federal agency license or permit.

15 CRF 930.53(b)(2000)(emphasis added). The FCMP provides that "the following 'activities, uses and projects' shall be reviewed 'to ensure that such activities and uses are conducted in accordance with the State's coastal management program': **Permits and licenses required for drilling and mining on public lands**. Section 380.23(3)(c)10." Florida Brf. at 2 (emphasis added). CRC maintains that the FCMP's use of the phrase "permits and licenses required for drilling and mining on public lands" does not describe a specific license or specific federal agency issuing licenses or permits for oil and gas exploration on public lands and therefore is not sufficiently specific to meet the regulatory standard.[7]

I agree with CRC. Nowhere in the FCMP is there a reference to types, categories or specific permits and licenses issued by the NPS. The CZMA regulation is clear in requiring that federal agencies and applicants be provided reasonable notice that the license or permit or other approval for which they are applying is subject to the CZMA consistency provisions. See, 15 CFR 930.53 and 930.54 (notice for unlisted activities). Florida is correct to point out that the regulatory language requires that "[s]tate agencies shall develop a list of Federal licenses and permit activities" and that section 10 does include a description of "activities" which may require a federal license or permit. However, the NOAA regulation does not stop at a description of activities. NOAA's regulation also requires that the "Federal license and permit activities **shall be described in terms of specific** licenses and permits . . . ." 15 CFR 930.53(b)(emphasis added). In this case, a reference to either permits issued by the NPS, permits issued pursuant to the statutes NPS administers or under which NPS operates, or to the provisions establishing Big Cypress National Preserve, would probably have been sufficient to meet the NOAA regulation. In addition, the FCMP description of "licenses and permits required for drilling and mining on public lands" fails to recognize the illustrations provided in NOAA's regulation at 930.53(b), which describe either the statutory authority for the issuance of the license or permit or the name of the Federal agency issuing a permit for a described activity such as "Coast Guard bridge permits." 15 CFR 930.53(b). In the case of the FCMP's description of "oil and gas drilling on public lands" neither federal statute nor federal agency is referenced. The FCMP describes only an activity on "public lands."

While Florida could argue that it has provided sufficient notice to applicants such as CRC that their activities are subject to Federal consistency because the FCMP provides a separate listing for leases and permits for oil and gas drilling pursuant to the Outer Continental Shelf Lands Act,

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[7] CRC does not argue that the surface lands of the big Cypress National Preserve administered by the NPS are not "public lands" within the meaning of the FCMP provisions. For the purposes of this opinion, I assume that the lands administered by the NPS in Big Cypress National Preserve are public lands. Further, I agree with Florida that the NPS' approval of the Landing Strip Plan pursuant to the 9B regulations is a "license or permit" within the meaning of the CZMA and NOAA regulations at 15 CFR 930.51. Neither of these findings, however, bring Florida section 380.23(3)(c) into compliance with the requirement to describe license and permit activities subject to state consistency review "in terms of the specific licenses or permits involved." 15 CFR 930.53(b).

Florida 380.23(3)(c)11, and by process of elimination, section 10 could only refer to approvals for oil and gas drilling not on the Outer Continental Shelf, it does not obviate the requirement of 15 CFR 930.53 to provide specific information as to the Federal agencies or statutes to which the FCMP intends to apply the Federal consistency provisions. Further, the fact that Florida was specific with respect to the Outer Continental Shelf Lands Act in section 11, demonstrates that it understood NOAA's regulatory requirement and could comply with it.

Florida does not dispute that it has not used section 10 or the Federal consistency provisions to review NPS 9B permits in the past. If Florida had a long standing practice of reviewing NPS 9B permits, it could argue that CRC and NPS had reasonable notice of the need for a consistency certification and that the purpose and function of 15 CFR 930.53 had been fulfilled, despite the lack of specificity in the FCMP. However, according to the briefs, this is the first instance of Florida's assertion of section 10 to require Federal consistency review for 9B permits. In the past, apparently, Florida has reviewed 9B approvals through the state environmental review process. CRC Brf. at 5fn4. While, it is permissible to use the state environmental review process as an efficient mechanism to review a consistency certification, that process is neither a substitute for proper Federal consistency procedures nor does it preserve the rights and authorities of the applicant or the state under the CZMA.[20] Inconsistent interpretation and enforcement of the FCMP only contributes to the lack of notice concerning the application of the Federal consistency procedures to all parties undertaking activities affecting Florida's coastal resources.

CRC asserts its belief that Florida's consistency review for the Landing Strips Plan would occur at the time CRC applies for a section 404 Clean Water Act permit from the Army Corps of Engineers. CRC Brf. at 5. However, CRC should note that Federal consistency may be triggered by several different permits required to conduct a single activity. The fact that Federal consistency review would be required for the 404 permit would not have precluded the Federal consistency requirement from applying to approvals issued by the NPS under the 9B regulations, had such approvals been properly included on Florida's list.[21] The NOAA regulations encourage

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[20] Florida points out that many efficiencies are gained by combining the State's comments on the Environmental Assessment prepared by the NPS for the landing Strips Plan and the State's determination of consistency with the FCMP. I agree that much efficiency in environmental review can be obtained when the consistency determination (in the case of a federal agency activity) or a consistency certification (in the case of a federal license or permit) is combined with development of a NEPA document. However, the combination of the two documents for purposes of developing environmental information does not obviate the statutory requirement that the applicant certify that its activity is fully consistent with the enforceable policies of the state or the requirement that a federal agency certify that its activity is consistent to the maximum extent practicable with those same policies.

[21] The reason separate consistency review requirements can be triggered by multiple permits for the same activity is that different state enforceable policies are affected by different permit actions or analyses, i.e., the Florida enforceable policies applicable to fill of wetlands may

applicants, states and federal agencies to work together to consolidate the consistency review of multiple federal licenses and permits required to conduct a single activity to the maximum extent practicable. 15 CFR 930.59.

Although the Secretary approved the FCMP in 1981 and found the list at Florida 380.23(c) compliant with the requirements of the CZMA, there was evidently an oversight in reviewing both section 10 and section 12 ("permits for pipeline rights of way for oil and gas transmissions.") Both sections 10 and 12 of Florida Section 380.23(3)(c) describe activities the FCMP would like to review, but fail to describe those activities "in terms of the specific licenses and permits involved." 15 CFR 930.53(b). Suffice it to say, however, that previous oversights by this office or others, do not justify the continuance of those errors. A review of lists maintained by other coastal states participating in the CZMA program reveals that all lists of permits subject to Federal consistency provide either the name of the federal agency and type of permit or a specific statutory reference for the required approval. Since all but one other listing in the FCMP identifies the federal statutory citation or federal agency issuing the relevant license or permit, I must infer that Florida, like the other coastal states, was fully aware of the requirement in NOAA's regulations. [22]

For the foregoing reasons, I conclude that the approval sought by CRC pursuant to 36 CFR Part 9, Subpart B for the Landing Strips Plan of Operations is not listed in the FCMP as a license or permit requiring a certification of consistency with the enforceable policies of the FCMP pursuant to section 307(c)(30(A) of the CZMA. [23] However, because Florida relied on

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not be implicated by the Landing Strips Plan and vice versa.

[22] It is important to note that Florida has the opportunity to amend its list of federal licenses and permits subject to Federal consistency to include the necessary identification of relevant federal agencies or statutes. 15 CFR 930.53(d). I cannot require that Florida make a change in its approved program, nor can I revisit, in the context of issuing federal grants, the question of whether the FCMP as approved in 1981 continues to comply with the requirements of the CZMA today. See, California Coastal Commission v. Mack, 693 F. Supp. 821, 825 (N.D. Cal 1988). However, I can, in the context of deciding appeals to the Secretary pursuant to section 307(c)(3)(A), review the adequacy of the implementation and enforcement of the Federal consistency regulations by Florida and the adequacy of Florida's implementation of the FCMP. This appeal is the first instance of Florida's assertion of consistency review over permits issued pursuant to 36 CFR Subpart 9B to come to my attention. It is in this context, that I conclude that Florida 308.23(3)(c)(10) of the FCMP does not meet the requirements of the Federal consistency regulations and therefore, Florida's implementation of the FCMP is not adequate of the Federal consistency provisions using the "listing" provision does not meet the requirements of NOAA's regulations implementing the CZMA.

[23] Because I have determined that the NPS permit for Plan of Operations Approval was not listed as requiring a consistency certification from CRC, I need not determine whether

the application of the FCMP to the NPS' Plan of Operation Approval at 36 CFR Part 9 Subpart B, I also decide that Florida may seek NOAA approval to review CRC's Plan of Operations as an unlisted activity by operation of 15 CFR 930.54, if it does so within 30 days of the date of this decision. [24]

III
Florida's Objection is Not Valid

CRC claims that Florida's objection to the Landing Strips Plan is "premature" because it has preceded CRC's submission of a consistency certification. Florida argues that its objection was born of necessity because CRC exhibited no intent to provide Florida with a consistency certification on the Landing Strips Plan. Florida claims its objection is a proper exercise of its rights under the CZMA because the applicant's failure to provide the consistency certification cannot divest Florida of its Federal statutory prerogative to require consistency with the FCMP.

I agree with Florida that an applicant's failure to provide a state with a consistency certification cannot divest a state of its authority pursuant to CZMA section 307(c)(3)(A). However, filing a State objection without an underlying consistency certification provided by the applicant is neither a remedy for the applicant's failure to comply with the CZMA, nor a valid exercise of Florida's own CZMA authorities.

The statutory language and scheme of the CZMA presumes that the applicant has the first opportunity to demonstrate that its activity is consistent with the enforceable policies of the state CMP. Section 307(c)(3)(A) provides in pertinent part: "[a]t the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that **the state concurs with or objects to the applicant's certification**." The NOAA regulations also require a state objection be made in response to the applicant's consistency certification. 15 CFR 930.64. Likewise, consistency cannot be presumed without the receipt of a consistency certification. 16 USC 1456(c)(3)(A) and 15 CFR 930.63. Finally, NOAA's regulations anticipate that the applicant will have the first opportunity to provide the state with the necessary information and data to demonstrate consistency with the state CMP and that only after the receipt of that information can the state consistency review process begin. See, 15 CFR 930.58.

Given the language and structure of the statute and NOAA's implementing regulations, it is clear that an applicant's consistency certification is essential to a state's Federal consistency review. Therefore, I conclude that a State may not "object" within the meaning of the CZMA, to an

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Florida's objection contained sufficient detail pursuant to 15 CFR 930.64.

[24] CRC has raised a question as to whether Florida has the necessary state statutory authority to seek review of unlisted activities pursuant to 15 CFR 930.54. A state is not obligated to maintain a means to exercise its consistency authorities in this manner. It is a question of state law and interpretation of the FCMP whether Florida can assert this authority.

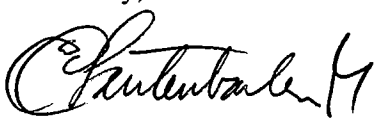
application for a federal license or permit when no consistency certification has been submitted. Florida's objection in this case has no effect or is not valid.

A coastal state is not without remedy, however, when a recalcitrant applicant declines to provide the necessary consistency certification. First, both the statute and the regulations make it clear that a Federal agency cannot issue a license or permit until "the state or its designated agency has concurred with the applicant's consistency certification or until by the state's failure to act, the concurrence is conclusively presumed." 16 U.S.C. 1456(c)(3)(A). In addition, a state may seek enforcement of the CZMA in federal court. Unlike the Secretary of Commerce, the federal courts have the authority to require compliance with federal law through the issuance of mandamus, injunction and other relief.

Optimally, in matters such as this, where an applicant disagrees that its permit or license activity is subject to the provisions of a state CMP can be resolved through the availability of mediation services of NOAA's Office of Ocean and Coastal Resource Management (OCRM), 15 CFR 930.55, or an advisory letter issued by OCRM pursuant to 15 CFR 930.142 (15 CFR 930.3(2001)). While these informal procedures do not carry the weight of a federal court order, they represent the views of the expert agency charged with the implementation of the CZMA. These informal remedies are also more expedient and less costly than the Secretarial appeals process or federal litigation.

Having found that the Secretary has sufficient discretion in the promulgation and implementation of rules governing procedures for the CZMA, including the authority to determine procedural and jurisdictional issues presented in Secretarial appeals, I conclude that CRC's application for approval of the Landing Strips Plan pursuant to 36 CFR Part 9 Subpart B is not a license or permit listed in the federally approved FCMP in conformance with 15 CFR 930.53. In addition, I find that Florida's objection was not valid because it was not based upon a consistency certification submitted by CRC. The requirements of the Federal consistency procedures have not been met in this case. Therefore, I dismiss this appeal for good cause pursuant to 15 CFR 930.128 (2000).

Sincerely,



Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
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cc: Cari L. Roth, General Counsel, Florida Department of Community Affairs
George W. Miller, Hogan & Hartson