



M.J. "MIKE" FOSTER, JR.  
GOVERNOR

JACK C. CALDWELL  
SECRETARY

**DEPARTMENT OF NATURAL RESOURCES**

October 2, 2002

David Kaiser  
Federal Consistency Coordinator  
Coastal Programs Division,  
Office of Ocean and Coastal Resource Management  
NOAA  
1305 East-West Highway, 11<sup>th</sup> Floor  
Silver Springs, Maryland 20910

Attention: Federal Consistency Energy Review Comments

RE: C20020249, Solicitation of Views  
NOAA request for comments on the Advanced Notice of Proposed Rulemaking, Federal Register/Vol. 67, No 127/ July 2, 2002

Dear Mr. Kaiser:

This office has reviewed the above referenced proposed procedural changes to the federal consistency process as pertains to Outer Continental Shelf (OCS) energy leasing and development. We offer the following comments for your consideration as you contemplate the necessity of procedural changes to the federal consistency process.

It is stated on page 44409, Section IV of the Federal Register that NOAA is not considering significant changes to the federal consistency regulations. We are in wholehearted agreement with this intent, in that we are of the firm conviction that states must retain the full and appropriate authority vested in these regulations for OCS and indeed, all consistency issues. We feel that the recent extensive revision of NOAA regulations has appropriately addressed the issue of review of OCS activities. New NOAA guidance may be worthwhile to address specific problems that may exist, but the December, 2000, revisions to the CZM regulations were comprehensive and thorough.

Further regulatory measures are unnecessary for the additional reason that NOAA has not described, in the Advanced Notice, any actual problems which the potential changes would remedy. Broad statements concerning long review periods and uncertain information requirements are not supported by Louisiana's extensive experience in OCS review. This state has been reviewing OCS projects for over 20 years. To our knowledge the offshore industry has sustained no losses of revenue due to delays on our part. It is our position that states have far

Kaiser  
Page 2  
2 October 2002

more expertise in the types of information they require in order to assess potential impacts, than does a non-energy agency located in Washington.

Section III. of the Advance Notice (page 4408) deals with NOAA's evaluation of the National Energy Report submitted by Vice-President Cheney to President Bush on May 16, 2001, and of NOAA's responsibility to address the national interest in effective coastal management. Louisiana has for many years supported energy development, and is fully cognizant of the current energy needs of the country as embodied in the recommendations of the Energy Report. Since the inception of our CZM program, Louisiana has found essentially all of the several thousand exploration and development plans in the Gulf of Mexico to be consistent with our program. The State has fully supported responsible mineral leasing in the Gulf of Mexico and has found all but one of the numerous annual lease sales consistent with our program. This despite the adverse effects to our coastal resources, the absence of compensatory mitigation from the primary beneficiary of these activities (i.e., the federal government), and an offshore leasing program geared to short term revenue rather than optimal long range return from finite resources.

NOAA indicates that they are primarily addressing the scope of information needed by states and the Secretary in their respective reviews of OCS oil and gas activities, and the regulatory timing requirements that can delay oil and gas development projects. It should be noted that Louisiana and the MMS Regional Office for the Gulf of Mexico have just completed a lengthy review and revision of information requirements and review procedures for OCS projects. MMS has led similar reviews of all of the Gulf states, and prepared a comprehensive Notice to Lessees which addresses many of the same issues as NOAA's proposed rule-making. This effort can be used as a model for those states and regions outside the Gulf of Mexico region, precluding the need for NOAA to further revise regulations on these issues.

With regards regulatory timing requirements or delays, it has been our experience that applicants normally adjust to the time frame allowed for review, and will always perceive the review period as too long no matter what that period is. A realistic time for thorough review must be retained. Much of the ambiguity and uncertainty can be eliminated by improved education on the part of the applicants as to the states' information requirements and consistency procedures, and again we cite the MMS Gulf of Mexico Region's review as a more direct and appropriate means of addressing such problems.

We strongly feel that a "general negative consistency determination" for OCS exploration and development would be too broad a brush for activities that span thousands of square miles, over water depths varying from a few to thousands of meters, and climates ranging from subtropical to arctic. Also, it is our considered opinion that the types of industry activity vary too widely for a general negative consistency determination, encompassing such elements as ship and aircraft traffic; discharge of solids, liquids and gasses both on site and ashore; oil spills and blowouts; setting platforms; constructing islands; laying pipelines; and conveying hydrocarbons by various means. Individual states already possess the ability to issue "general negative consistencies" if they find it in their best interest. It is clear that the action under consideration by NOAA would merely reduce states' abilities to review and regulate impacts to their specific coastal zones, in favor of an overly generalized authorization to make permitting more uniform

Kaiser  
Page 3  
2 October 2002

across states' boundaries.

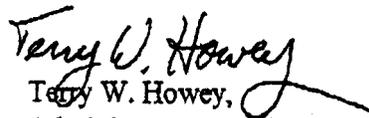
The "listing" and "geographic location" provisions of the NOAA regulations were addressed during the recent lengthy revision of the regulations. There was ample opportunity for public and state comment as to whether the provisions were adequate and effective at that time. The existing regulations clearly describe the procedures for review of listed and unlisted activities. Further regulatory measures are not necessary.

Constraining the review period for appeals to the Secretary of the Department of Commerce should not be done without first demonstrating how proposed modifications will address the causes of actual problems. The Advanced Notice does not document any extant problems, much less their causes. Louisiana has little experience with appeals to the Secretary, but it is our understanding that much of the delay is a result of charges, countercharges, and rebuttal citing information which was not available or was not provided in the initial application. It seems to us that restrictions on the information that can be submitted for Secretarial review, or on the time permitted for response to an appellant's statements, is not conducive to the good stewardship of coastal resources. Further, the time allotments for appeals is largely in the control of the Secretary already, so changes in regulation are unnecessary.

A final issue raised in the proposed procedural changes is whether the multiple approvals needed for an OCS plan should be consolidated into a single consistency review. We do not believe multiple permits for a given project can be effectively consolidated because different agencies at both the state and federal level have responsibility for enforcement of various laws and regulations. Efforts should rather be placed on encouraging simultaneous review of the varying permits by the different regulatory agencies.

Thank you for the opportunity to comment on these important energy regulatory issues. If you should have further questions with regards this matter, please call Gregory J. DuCote of my staff at 225-342-5052.

Sincerely,

  
Terry W. Howey,  
Administrator

TWH: jdh

CC: Jack C. Caldwell, Secretary  
Kerry Kehoe, Coastal States Organization