



State of New Jersey

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David Kaiser
Federal Consistency Coordinator
Coastal Programs Division
Office of Ocean and Coastal Resource Management
NOAA
1305 East-West Highway
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Silver Spring, MD 20910

Dear Mr. Kaiser:

Attention: Federal Consistency Energy Review Comments

Subject: Advance notice of proposed rulemaking
Procedural Changes to the Federal Consistency Process, 15 CFR Part 930
Federal Register, Volume 67, Number 127, July 2, 2002.

The following comments are offered in response to the Advance notice of proposed rulemaking regarding Procedural Changes to the Federal Consistency Process, 15 CFR Part 930, published in the Federal Register, Volume 67, Number 127 on July 2, 2002. The notice seeks comments in six specific areas related to implementing the federal consistency provisions of the Coastal Zone Management Act (CZMA). It is unclear whether the changes on which information is sought would apply only to Outer Continental Shelf (OCS) activities or to all activities subject to Federal consistency review. In the absence of such clarification, I assume that the changes would apply to all activities. The six issues and comments are as follows:

- 1. Whether the scope and nature of information necessary for a State Coastal Management Program (CMP) and the Secretary to complete their CZMA review needs to be further described.** The regulations do characterize the nature of the information required. The information required needs to be tailored to the specific activity proposed and the elements of the state's enforceable policies. At times, New Jersey has received consistency review requests, which have not been accompanied by necessary data because other environmental review documents have not yet been completed or published. Although New Jersey has successfully worked with Federal agencies to come to agreement on the information needed, it cannot proceed to public comment or complete review without the required information. No change to the regulations is needed; rather an effort by Federal agencies to submit their Federal consistency certifications only after all necessary information has been compiled. This could take the form of policy guidance from NOAA.

On occasion, federal consistency certifications have been received for proposed federal actions agreed to in a settlement resulting from litigation. An example is fishery management plans and suits brought by conservation/environmental groups. This may create a problem if the agreed upon action is inconsistent with the state coastal management program. Such a settlement should be preceded by consultation with the affected state or contain a caveat that the federal action is subject to Federal consistency review by the state. This, too, could take the form of policy guidance.

- 2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA can be established and which, if any Federal environmental reviews should be included in the administrative record to meet the standards of the Administrative Procedures Act.** The Secretary's decision is based on different criteria than the state's Federal consistency determination, necessitating considerable time to gather information to establish a record. The regulations must include sufficient time for the Secretary to gather such information and to allow the affected state, the petitioner and the public to respond to information submitted for the record. Any promulgated regulation must provide that the effect of a failure to meet established time frames would be to uphold the state's consistency determination.
- 3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the states, MMS and the Secretary within the various statutory time frames of the CZMA and OCS Lands Act.** No comment.
- 4. Whether a regulatory provision for a "general negative determination," for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve efficiency of the Federal consistency process.** New Jersey has no objection to the establishment of such a process, provided the scope of both the

specific activity and the geographical area in which the general negative determination would apply are agreed upon with the Federal agency.

5. **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 the regulations at 15 CFR 930.53 should be modified to provided additional clarity and predictability to the applicability of State Federal consistency review for activities far offshore.** The guidance currently provided in the regulations is sufficient for states to develop a list of Federal license or permit activities which affect a coastal use or resource and which the state agency wishes to review for consistency. The regulations explain that the geographic areas must be those where coastal effects are reasonably foreseeable, and provide good examples where such a determination has been made.

6. **Whether multiple Federal approvals needed for an OCS Exploration Plan or Development and Production Plan should or can be consolidated into a single consistency review.** Consolidated consistency review would be acceptable if sufficient information were available to inform all state and Federal agencies as needed, and the permit applicant were pursuing all Federal permits and processes within a time frame that allows for simultaneous review. This may require a Federal agency to extend the time frame provided in the regulations for state review of the Federal consistency certification.

On a general note, New Jersey has found the regulations, as revised January 2001 to provide sufficient clarity and guidance to successfully conduct Federal consistency reviews and work with Federal agencies to address any state needs. The Advance notice of proposed rulemaking fails to provide any specific examples of problems with the regulations, and without such specifics it is difficult to understand the magnitude of the problem and the appropriate change, if any.

If you have any questions on the above, please contact me at the above address or at 609-292-2662.

Sincerely,



Ruth Ehinger
Coastal Program Manager