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August 25, 2003

Mr. David Kaiser, Federal Consistency Coordinator  
Coastal Programs Division, Office of Ocean and Coastal Resource Management  
National Oceanic and Atmospheric Administration  
1305 East-West Highway, 11th Floor  
Silver Spring, MD 20910

Re: The National Oceanic and Atmospheric Administration's proposed rulemaking on "Coastal Zone Management Act Federal Consistency Regulations"  
(Federal Register, Vol. 68, No. 112, Wednesday June 11, 2003)

Dear Mr. Kaiser:

Murphy Exploration & Production USA ( Murphy ) appreciates this opportunity to comment on the National Oceanic and Atmospheric Administration's (NOAA) proposed regulations, "Coastal Zone Management Act Federal Consistency Regulations" (Federal Register, Vol. 68, No. 112, Wednesday June 11, 2003). The additional time granted by NOAA for the submission of comments was essential in our being able to offer the following input to your process. Murphy E&P USA is part of a corporation which helped pioneer the offshore oil and natural gas industry and is currently involved in domestic exploration, production, refining and marketing activities. We have a direct and substantial interest in this rulemaking, since these regulations have significant impact on the operations of the domestic offshore oil and natural gas industry and our ability to provide energy for the nation's homes and businesses.

As an active member of the American Petroleum Institute ( API ), Murphy hereby endorses the API comment filed on the above-referenced NPR and, in addition, we request that API's previous comments on the Advanced Notice of Proposed Rulemaking be incorporated by reference into the record.

Murphy supports the open, orderly, scientific, reasonable and predictable implementation of the Coastal Zone Management Act (CZMA) of 1972. The CZMA should produce state laws which fairly manage and balance all competing uses of our rich coastal resources. The CZMA was intended to encourage states to engage in comprehensive land use planning with the intended result being the balanced, multiple use of our coastal areas and resources. It was not written, nor should it now be interpreted, so that it can be used as a legal instrument for frustrating the very intent of Congress so clearly expressed in the Findings and Purposes of the Act.

Recent events make it clear that positive, balanced implementation of the CZMA is more important than ever, as we seek to find, develop and distribute our domestic energy supplies, such as clean-burning natural gas and the crude oil which is essential to our economy. A properly administered CZMA process would make it clear that energy production and distribution

activities are compatible with our society's goals of assuring the continued availability of renewable resources and a healthy environment.

As highlighted by Federal Reserve Chairman Alan Greenspan's recent Congressional testimony, there is no doubt that oil and natural gas drive our economy, creating jobs, generating revenue for both federal and state governments and serving as the foundation for economic growth. According to a U.S. Department of the Interior, Minerals Management Service, paper published in 2002, domestic offshore wells supply more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. Offshore production is essential in providing the oil and gas needed to meet our present and future demand for fuels and the chemical feedstocks on which many industries, such as the electrical power companies, depend. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS. We call on NOAA and the Office of Coastal Resource Management to issue a final rule which will prevent the CZMA from being used to keep our Nation from benefiting from these essential resources

We are heartened that NOAA has recognized that improvements should be made to the consistency review process that it implements. In this proposed rule, NOAA has responded to comments submitted to the advanced notice of proposed rulemaking, and has proposed several important rule changes with the stated intent of clarifying and providing greater transparency and predictability for all parties involved in the crucial federal consistency process.

NOAA has recognized a number of important points, such as the fact that clarification is needed at the federal level to both define the type and scope of information needed to begin the 6-month state consistency review process for OCS plans and to ensure that requests for additional information will not delay the start of, nor extend, this review time-period.

It is important for NOAA to make sure that this and other points described in the API's cover letter and comments are not simply mentioned in the preamble to the rule, but are reflected in the language of the final rule. Care should be taken to eliminate any potential for a state or third party to delay the start of the 6-month state review period by claiming that information, other than that specified in the checklist in the regulations, is missing.

#### Need For Further Changes

In addition to the important positive steps taken by NOAA, Murphy joins the API in its conclusion that several additional changes are needed to the proposed rule in order to achieve the CZMA's goal of providing "greater transparency and predictability to the Federal Consistency regulations" and endorses the specific proposals included in the API comment, including changes in the language which guarantees that closure of the record in appeals decisions is governed by specific deadlines that cannot be extended indefinitely.

Information for Decision-making: Decisions by their very nature mean that a choice is made. That means that at some point no more information can be factored into the process. In our highly advanced, technological civilization, there is always the promise of "new" information.

However, at some point, decisions have to be made based on the best information available or no decisions would ever be made and society would grind to a halt. Furthermore, NOAA should bear in mind that Congress spelled out that the implementation of the CZMA is emphasize "the coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources."

**NEPA and Biological Opinions:** We urge that NOAA delete the new NEPA and Biological Opinion language from the final rule. Agencies which are conducting National Environmental Policy Act (NEPA) and Biological Opinion documents are supposed to have their work completed in time for the permitting agency for the proposed project to make its decision in accordance with its regulatory time line. NEPA documents and Biological Opinions are designed to be of use to a federal permitting or acting agency in determining whether or not to permit or carry out a specific proposed activity. The Secretary's decision on an appeal under the CZMA is not related to the permitting considerations for which the NEPA documents are created. Biological opinions are highly specific scientific documents designed to guide federal agency Marine Mammal Act decisions. The set of information the Secretary needs to determine whether or not to overrule the State as part of it's on-going CZM review process should be determined by what the proposed action entails, not by information designed to show whether or not the original agency should or should not permit the activity in the first place.

**Minerals Management Service Data:** The data generated for review by the Minerals Management Service (MMS) prior to lease sales is both extensive and comprehensive and should be given full consideration and seems likely to provide the information the Secretary needs in deciding the appeal.

**Appeal Time Limit:** In 1996, Congress considered how long an appeal should take and enacted language giving the Secretary of Commerce exactly 90 days to make the decision on an appeal of a state's inconsistency determination. Clearly Congress considered the closing of the record to be a nearly automatic, clerical function which would be concluded in a short period of time. Unfortunately, the Secretary's failure to close the record in a recent appeal involving an offshore natural gas development plan has caused this function to become a primary focus of regulatory concern. Time limits three or four times longer than the time allotted by Congress for the completion of the entire decision-making process are discussed as being necessary simply to close the record! The Findings and Purposes of the CZMA certainly shouldn't take much time to compile. Information needed to shed light on the national security implications of the proposed activity might take a little longer. Given past experience, Murphy is convinced that NOAA must include a specific time limit for closing the record in this final rule.

Therefore, we join with the API in continuing to recommend that 180 days from notice of filing the appeal should be the deadline for closure of the record; and that there should be no exceptions to this deadline

**Front Loading the CZMA Consistency Process:**

NOAA and the Outer Continental Shelf Lands Act ( OCSLA ) permitting agency have both

recognized the need for and worked with coastal States to help them delineate consistency-related data and information needs so those needs are clear and available to all parties which seek to conduct activities which could be subject to consistency review. This will enhance the coordination and simplification of the overall process while also eliminating the need for last minute information requests by a state involved in a consistency appeal. States have had years of experience with the consistency process and should be able to identify in their CZMA programs, early on, the types of information they need. Identifying those needs up front would not limit a state's authority or prevent them from obtaining the necessary information. In fact, it would assure that the information developed and submitted to the state by the applicant would be more accurate and helpful because it was, in effect, developed from the start with a focus on the information the state needs. We appreciate that NOAA's proposed rule provides that states' additional requests for information cannot delay the start of, or extend the time-period for consistency review and believe that this will go a long way towards refining and expediting the consistency review process.

The proposed rule does not address National Energy Policy Directives and Presidential Executive Orders on streamlining permitting and actions affecting energy projects. Any revisions to the Federal consistency process should incorporate a permanent mechanism for close consultation and coordination between NOAA and the MMS. An MOA should be signed to specifically outline the respective responsibilities of the two agencies, establish objective criteria for application of the "effects test", institute procedures for ensuring decisions consistent with national energy policy (especially the development of domestic energy resources) and explain how each agency would meet the objectives of the National Energy Policy and Executive Orders 13211 (Actions to Expedite Energy-Related Projects, May 18, 2001), on streamlining energy project permitting, and 13212 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use, May 18, 2001), stressing the importance of assessing impacts of government decisions on energy supplies.

#### Conclusion:

We applaud NOAA's efforts to improve the CZMA review process and urge that you carefully consider our industry's detailed comments explaining the additional changes that we feel are needed to the consistency review process. These can be accomplished without sacrificing states' rights to act if they conclude that the effects of proposed activities will have unacceptable levels of adverse impact on their coastal areas and interests. The overall emphasis of the administration of the CZMA should be refocused on the accommodative, positive, cooperative aspects of the consistency process. Good faith, openness, consistency of application and full consideration of what science tells us are the real world implications of proposed activities should virtually eliminate the need for appeals. Such improvements in the CZMA process are essential to enhancing our energy supplies and strengthening national security.

Unfortunately, the CZMA process has been used to block development of oil and clean-burning natural gas projects, which could have now been on line providing the Nation with much needed domestic energy supplies and chemical feedstocks. Destin Dome, for example, was expected to be able to provide enough natural gas to fuel all the homes in Florida for at least 10 years. That

case is an example of how an unnecessarily complicated and prolonged CZMA review process hurts America. Every opportunity should be taken to remove unnecessary unpredictability and additional costs from affecting oil and natural gas exploration and production projects, the outcome of which is always, at best, uncertain. The chilling effect from the existing CZMA system has caused American jobs to be lost and companies to undertake projects outside the United States, where regulatory outcomes are more predictable.

Murphy joins the API in the belief that improvements can be made in the CZMA process that allow us to carefully consider the impacts on our coastal resources in a timely manner. Meeting our important national energy and economic goals of developing domestic energy supplies and diversifying our nation's oil and natural gas resource base is not a question of forcing someone to make an either/or decision. The record shows that our oil and natural gas activities are being done in such a way as to actually improve the fisheries and environment in the vicinity of our platforms. Murphy is dedicated to working closely with NOAA, the Minerals Management Service, other federal agencies, the individual states, the Coastal States Organization and other stakeholders to improve the review process and the effectiveness of the Coastal Zone Management Act. We will be pleased to answer any questions you may have and/or provide additional information.

Please do not hesitate to contact me at (504) 561-2449.

Sincerely,

Charles A. Bedell

Charles A. Bedell, Manager  
Environment & Government Affairs