

Admiral James D. Watkins, Ret.
Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, DC 20036

May 30, 2002

Dear Admiral Watkins:

Thank you for contacting me regarding additional input to the U.S. Commission on Ocean Policy on issues of concern to the ocean industries. It was my honor to be able to testify before the commission on March 8, 2002, just as it is with sincerest appreciation that I accept the opportunity to expand upon my remarks in writing.

In my experience with the offshore energy industry, I have often come across policy conflicts and governance issues that cry out for resolution, as well as general ocean issues that must be addressed. I applaud this commission's formation. The work of the U.S. Commission on Ocean Policy is both vital and timely and I thank you for the opportunity to present the views of the offshore energy industry before it.

Please see the attached document for a detailed response to each of the questions you requested that I expand upon. Also, please do not hesitate to contact me for any additional supporting information, or with any further requests or inquiries.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Michael Talbert". The signature is fluid and cursive, with a large loop at the end.

J. Michael Talbert

From the perspective of the oil and gas industry, what is the most serious impediment to the implementation of a predictable offshore energy program? By that, I mean an impediment on which this Commission could offer a recommendation in its final report?

In broad terms, the most serious impediment to a successful offshore energy program is the lack of predictability caused by implementing regulations and statutes that govern state/federal consistency determinations under the Coastal Zone Management Act (CZMA). This lack of predictability, in terms of delays in agency permitting and planning, is among the most significant, preventable problems facing industry today. Unfortunately the unpreventable problem of a declining resource base in the United States has converged with politically driven policy decisions that increasingly restrict access to prospective natural resources off our shores. Even in areas where development is permitted, oil and gas exploration and production activities are frequently stalled or halted by a progressively less predictable approval process. This lack of predictability stemming from the CZMA consistency process represents the most significant obstacle to industry's ability to explore for, and produce, U.S. oil and natural gas in an environmentally compatible, timely and cost-effective manner.

Industry recommends that the U.S. Commission on Ocean Policy examine the implementing regulations and statutes that govern state/federal consistency determinations under the Coastal Zone Management Act (CZMA). Originally enacted in 1972 with the laudable intention of balancing and managing the often competing and conflicting demands of coastal resource use, economic development and conservation, through cooperative partnerships among federal, state, and local governments, the CZMA has achieved many successes in its time, including acting as a vehicle for the distribution of nearly 100 million dollars per year for state coastal programs.

But the CZMA is also intended to facilitate the coordination and cooperation of state and federal agencies to ensure expedited governmental decisionmaking for the management of coastal resources. As a part of this process, the CZMA includes "consistency" provisions, which are intended to accomplish this federal/state coordination. The process is divided into two types of "consistency determinations:" those made directly by federal agencies when considering the effects of their own actions on a state's coastal zone, and those required for federal permits and licenses for activities that may impact a state's coastal zone. The federal consistency determination process impacts each federal OCS planning and leasing decision, and the state objection process impacts each expensive, high-risk exploration and development decision once a lease is acquired.

This process of federal-state checks and balances has generally worked well in the Central and Western Gulf of Mexico, where industry has compiled a strong record for good stewardship of public lands and for operating offshore in a safe and environmentally sensitive manner. This system of checks and balances stands in contrast to results in the Atlantic, Pacific, Alaskan and Eastern Gulf of Mexico OCS. Industry supports the purposes of the Coastal Zone Management Act. However, certain aspects of the statute and its implementing federal consistency regulations should be reexamined to

ensure that the law is fulfilling its intended purpose. Contrary to specific provisions within the law, implementation of the CZMA's consistency provisions have created regulatory uncertainty through costly permit delays and untenable investment uncertainty for OCS exploration and production projects as well as the siting of offshore energy infrastructure. It is the inconsistent implementation by states of these consistency provisions that threaten our nation's ability to satisfy future economic growth and energy security needs.

Industry urges the Commission to recommend the following improvements in the CZMA process with respect to energy-related actions and projects, through appropriate statutory, rule and/or policy amendments:

- **Limit a state's CZMA consistency review of private permits over activities outside of its own coastal zone.** The CZMA was intended to grant a state the right to conduct a consistency review of federal licenses and permits within the territorial boundaries of that state and oil and gas activities occurring on the OCS that would have direct impacts in the coastal zone of that state. However, the statute has been implemented to allow states to review activities and block permits issued for activities taking place in other states sometimes more than 100 miles from the affected state's coast. Each affected state would still be allowed to conduct a consistency review for all licenses and permits within its boundaries, but unnecessary "extraterritorial" state and resource use or permit conflicts with other states would be prevented.
- **Allow a single consistency certification for an Outer Continental Shelf (OCS) plan to cover all activities, including air and water permits.** The energy industry has experienced inordinate delays due to the lack of coordination between federal agencies in processing permits for OCS, especially involving separate state consistency reviews for the permits. The efficiency of state consistency reviews for OCS exploration or development plans would be improved by using a single consistency certification for all related permitted activities, including air and water discharges.
- **Grant the Secretary of the Interior the authority to determine information requirements for consistency certifications.** Some states have used findings of a lack of information to delay decisions, deny consistency certifications and obstruct OCS activity. However, the Secretary of the Interior has adopted detailed information requirements for OCS exploration and development plans under the provisions of the Outer Continental Shelf Lands Act (OCSLA). The OCSLA specifies requirements for the Department of the Interior's consultation with state coastal zone authorities regarding areas of particular state concern. Therefore, the Secretary of Interior is in the best position to conduct an analysis of the information requirements.
- **Provide the Secretary of the Interior with the authority to determine state appeals concerning OCS energy activities.** Again, the Secretary of the Interior's

expertise regarding OCS exploration and development plans and their environmental effects makes the Interior Secretary best suited to implement the law in this area.

- **Ensure timely decisions on override appeals. Appeals to consistency determinations are often drawn out by the Commerce Department's implementation requirement that the deadline for decision-making does not begin to run until the administrative record is closed.** The law needs a definite decision deadline governed by the date when the appeal was filed. The need for predictability in these override decisions mandates a predetermined time for review; otherwise, the decision making process will always be potentially subject to policy-driven delays.
- **Examine efficient state consistency permitting practices that are already in place.** Many states engage in practices that streamline the consistency review process. Some states allow for consistency reviews of projects that may impact the environment during the projects "scoping" phase. Another state practice that could have a streamlining effect is the provision of a conditional consistency finding, pending final mitigation and monitoring plans.

The OCS leasing program should ensure that lessees that comply with their lease terms and operational requirements and have a fair chance at a return on their lease investment. Instead, the CZMA consistency process has allowed states to unilaterally use the process as a tool in their philosophical opposition to offshore drilling. In a recent case-in-point involving a CZMA consistency dispute over a project offshore North Carolina, the Court of Federal Claims wrote in its opinion: "Common sense suggests that no sophisticated oil and gas company with many years of experience in drilling for oil in offshore leased tracts would knowingly agree to pay the huge, up-front considerations . . . for such tenuous and unilaterally interruptible drilling rights." [Conoco Inc. v. United States, 35 Fed. Cl. 309, 324 (Fed. Cl. 1996)] The court's opinion is correct; unless changes are made the CZMA consistency process could seriously impede the development of oil and natural gas from the OCS — an activity that currently accounts for approximately 25 percent of domestic energy production.

Industry remains committed to working to support the Coastal Zone Management Act's stated purpose of balancing the competing demands of coastal resource use, economic development, and conservation through cooperative partnerships among federal, state and local governments. The Commission has an opportunity here to make a genuine difference in the sustainability of the U.S. offshore energy program that could have beneficial impacts for years to come.

In your oral testimony, you mentioned the willingness of the offshore industry to cooperate in data collection and ocean observing systems work and individual research projects, so long as they did not interfere with operations. What is the

potential for an industry-wide (or at least Gulf of Mexico-wide) program to offer a broad range of research and data gathering, as well as data sharing options with the ocean research community?

Expanding the pool of knowledge through scientific research and exploration is important to the offshore oil and natural gas industry. Industry is interested in doing its part to advance the accumulation of scientific understanding with regard to the natural world. However, research is not industry's primary goal or function. Industry's primary goal is the production and marketing of energy. This process frequently involves companies in intensive research and technological development. U.S. industry continues to lead the world in innovation. The extensive infrastructure deployed throughout the Gulf of Mexico is an example of this innovation and presents significant opportunity for cooperative progress in the scientific arena.

However, industry is concerned that its willingness to contribute to data sharing and scientific research not be confused with any willingness to shoulder the financial or liability burden of non-industry related research. As noted, industry's function is not to support public sector research, nor to engage in non-business related monitoring or data accumulation. Industry collects large amounts of data in the course of its daily operations, some of which are non-proprietary, and there may be opportunities for cooperation in data accumulation and sharing.

Additionally, industry deploys vessels and platforms throughout the Gulf of Mexico, some of which may be suitable for the mounting of instrumentation. However, serious concerns with regard to safety, liability, maintenance, and data usage must be resolved before industry can move forward with a cooperative program. Industry is interested in the potential for partnerships that would use already-existing infrastructure toward the ocean observation effort. Assuming that all safety, environmental and economic concerns are met, industry could consider placement of instrumentation at its facilities and coordinate in cooperation with government, academic, and other industry researchers.

In fact many such cooperative efforts are already underway. Industry and government researchers have successfully collaborated on a number of research initiatives. Recently, the Minerals Management Service presented the prestigious Corporate Leadership Award to a team of three industry scientists who helped lead a coalition of industry, government and academic researchers in conducting a study of migratory neo-tropical birds and their interaction with offshore platforms. The study, which involved the placement of birdwatchers at ten offshore platforms, was one of the first large scale documentations of birds actually engaged in trans-Gulf migration.

Other collaborative public-private research efforts currently underway are looking into the short-term, high velocity "loop currents" as well as weather forecasting. Additionally, numerous fields of research have benefited from the use of Remotely Operated Vehicles (ROVs), a technology advanced primarily by the offshore energy industry as it moved into progressively deeper waters. Now industry, government, and

academic researchers alike use these unmanned vessels for oceanography, salvage and rescue, and biomedical marine research. This kind of investment in research and development by the petroleum industry will continue to provide scientific advancements with applications far beyond finding, producing and transporting natural gas and oil. These innovations begin with the natural gas and oil industry but they enrich the lives of all Americans.

Industry is interested in continuing to reach out to the scientific community in a meaningful way. Companies that are involved with OCS exploration and development rely on the oceans 24 hours a day, 365 days a year and are very interested in developing a greater understanding of the marine environment. Industry is studying ways in which it can better overcome concerns regarding the security of proprietary data in order that allow transfer of non-proprietary data to research and academic institutions.

Developing conduits for the free and rapid flow of such information would go far toward helping us better understand the ocean environment. But, the widely varying activities and equipment, safety and liability issues involved with OCS exploration and production mandates that such cooperation be approached on case-by-case basis.

We recommend that the Commission look into establishing a coordinating body composed of government agencies, academic representatives and industry trade groups could begin to tackle the complex logistics involved. An adequate framework for such an initiative may already exist in the National Oceanographic Partnership Program. A subgroup of this partnership, with Minerals Management Service as the lead agency might begin by tackling individual issues on a discrete basis and resolving concerns in a prudent manner.