

California Management of Its Coast: Federal-State Issues

U.S. Commission on Ocean Policy Southwest Regional Meeting

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Cabrillo Marine Aquarium

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Mrs. Sara Wan

Chair, California Coastal Commission

Thank you for inviting me to be here this afternoon. It represents the first opportunity in a long while for those of us involved at both the State and Federal levels in issues affecting the coast and ocean to sit down and discuss them.

There are many topics that the Coastal Commission deals with that overlap the charge of this Ocean Commission. Today I would like to look at just a few issues relating to coastal and OCS management and the way the State and Federal governments deal with and interact on these issues.

By way of background, the California Coastal Commission was established by public initiative, Proposition 20, in 1972 and made permanent by the legislature in 1976 through the passage of the Coastal Act. California's coastal management program is one of the most if not the most sweeping coastal management programs in the nation. The Commission is both a planning and regulatory agency recognized around the world as a model of success. As you know, we derive our authority from both the State, through the Coastal Act, and the Federal Government through the Coastal Zone Management Act.

Our jurisdiction is over the State's Coastal Zone, which extends seaward 3 miles and inland to a boundary that is specifically mapped and varies in distance up to 16 miles inland. Beyond the State's mapped coastal zone boundary the Commission, through the CZMA, has Federal Consistency review authority. Jurisdiction extends seaward as far as necessary to address federal activities that could affect coastal zone resources, whether a Federal agency project or a Federal Permit or license. The Commission has asserted jurisdiction over a variety of permits and activities for example: the use of seismic surveys for the purpose of oil exploration, an EPA proposal to incinerate toxic waste several hundred miles off San Francisco, a Navy proposal to scuttle obsolete nuclear submarines several hundred miles off the northern California coast and the extension of leases for oil and gas exploration.

The Coastal Commission has dealt with OCS issues even before the Department of Commerce approved the State's program in 1978. Uses of the OCS that affect coastal zone resources include oil and gas development, (including leasing, exploration and development), ocean discharge of municipal waste (including review of EPA secondary treatment waivers), disposal of dredge materials (that is the designation of dump sites)

routing of oil tanker traffic, placement of fiber optic cables, acoustic testing and noise impacts (including seismic surveys and use of sonar by the Navy), expansion of marine protected areas and marine sanctuaries, and reuse of offshore platforms. Many of these federal activities have potentially significant affects on the ocean and the coast, including impacts on the local coastal communities, whose only effective voice is through the Coastal Commission and the Commission's federal consistency review authority.

I should emphasize here, the most important coastal management tool the CZMA provides California is federal consistency review authority. Consistency review gives states, and local coastal communities, acting through their CZM agency, a strong say in what uses are carried out on the OCS and inland on federal property within and adjacent to the State's Coastal Zone. Consistency review mandates a process for coordination between federal activities and the State's coastal management program and is the keystone of the federal-state partnership in coastal management. We realize this consistency authority is controversial but it does not give states an outright veto over federal activities, the way some interest groups would suggest to you. We also understand that the oil industry and the Department of Defense have recently asked for amendments to the CZMA to weaken this provision.

My key message today is that not only should you oppose any weakening of federal consistency authority under the CZMA, you should recommend strengthening it. Federal agencies should not be allowed to simply ignore States by claiming that they "attempted" to be consistent to the "maximum extent practicable".

First, the federal consistency provision of the CZMA should be strengthened to preclude the use of inadequate federal funding as an excuse for non-compliance with a state's CZM program. The Commission was recently forced to sue the Navy on this very point. The issue here was the use of dredged sand for beach replenishment in San Diego. The Navy agreed, as a condition of approval of its plans to homeport nuclear carriers in San Diego, that they would use the dredged material for beach replenishment, since the large increase in Navy personal would place additional strain on the use of the area's beaches for recreation. During the dredging process the Navy discovered un-exploded ammunition, which they previously had stated was not present, and they argued that because of the cost of finding a replacement source of sand they should not be required to comply with the mitigation. The federal court agreed with us. The CZMA should explicitly state that inadequate federal funding shall not be a basis for determining the practicability in the context of consistency with the State's enforceable policies.

Another strengthening change to CZMA that we recommend is to make clear that any renewal of federal permits and licenses for OCS uses are subject to consistency review. The Commission is currently embroiled in litigation with the Department of Interior over just this question in relation to 36 old OCS leases for oil and gas development, offshore Santa Barbara and southern San Louis Obispo counties. These leases were approved without any review by the State, which subsequently received, through the 1990 amendments to the CZMA, the authority to review federal activities outside the Coastal Zone, including such lease renewals, that affect the resources of the Coastal Zone. The

State's coastal zone management agency should have the opportunity to examine fully the potential effects of the proposed new exploration and development activities on coastal zone resources. Circumstances have changed since their initial approval and we know much more today about potential adverse impacts from OCS oil exploration and development than we did decades ago when these leases were first granted. (For example, the range of the California sea otter has extended south into the Santa Barbara Channel, the Monterey Bay National Marine Sanctuary has been designated by Congress, the 1990 Clean Air Act Amendments make the emissions generated by the proposed OCS exploration and development activities now subject to standards set by the local air pollution control districts, and the new exploratory wells will also be required to comply with the 1993 U.S. EPA stricter water quality standards. Other changed circumstances include new information concerning the impacts of drilling muds and cutting discharges to hard bottom habitat, new awareness of the impacts of undersea noise generated from subsea surveys, well drilling and other activities of exploration and development as well as new technological advances in extended reach drilling, 3D seismic surveys and other technologies related to oil field exploration and development.)

Our concerns over OCS oil and gas development uses also include onshore impacts. Onshore we are concerned about individual and cumulative land use impacts resulting from construction and installation of necessary infrastructure. Issues raised in this regard include impacts on habitat, scenic resources, landform alteration, water quality, agricultural lands, public access and recreation, public safety and transportation.

To deal with these issues, we must preserve and strengthen the provisions that provide us with the ability to look at impacts beyond the 3 mile limit seaward and the coastal zone landward. These artificial boundaries limit the ability to look at watersheds and the ocean's ecosystem and thus to take appropriate action to protect resources of the coastal zone as mandated in the federal CZMA.

In addition to these OCS issues, there are a host of other issues of concern relative to the health of the coast and ocean. I strongly urge you to recommend strengthening of the CZMA policies to improve our ability to manage resources. For example, development, growth and un-wise land-use practices along the coast lead to the declining health of our ocean habitats and resources and have significant impacts on aquatic ecosystems. In fact one cannot separate land use issues from the health of the coast and ocean. When impervious surfaces cover more than 10% of a watershed, the rivers, creeks and estuaries they surround become biologically degraded. Nonpoint source pollution is increased and along with that comes a whole host of impacts to the marine ecosystem. We know that wetlands serve as the natural filters for run-off and as major fish hatcheries. Their protection should be an integral part of any program. Along with that, we now know that wetlands do not function properly without uplands, since many species spend only part of their life cycle in the wetlands. Protection of these upland environmentally sensitive areas must also be included in any over-all program of ocean protection. Thus, habitat protection on land must be considered to be a part of any overall ocean ecosystem approach.

In addition to concerns about land-use practices and non-point source pollution, we continue to be concerned about point source pollution such as EPA waivers from secondary treatment and pollution from platform discharges, about destruction of the sea floor as a result of a variety of practices, including various fishing practices and the laying of fiberoptic cables, about over fishing and impacts to wild fish stocks from aquaculture and about dealing with invasive species.

Unfortunately, there is currently no ecosystem approach to the protection of ocean resources. Governmental jurisdiction over ocean resources is fragmented and makes comprehensive, integrated management of marine resources difficult, if not impossible. We must change the fundamental priority of our policy and focus, to an ocean policy that no longer seeks to maximize extraction but looks to protect and restore a healthy ecosystem- one that is based on the management of ocean habitats and living marine resources for their protection. We should enact a national Ocean Policy that establishes ecosystem protection standards that must be followed by all ocean activities and all agencies with jurisdiction.

Whatever ocean governance regime you ultimately recommend to the President and Congress, it should include a strong role for coastal states and an effective federal-state partnership. This partnership must, in the least, contain strong federal consistency review provisions, strengthened as suggested and a strengthened CZMA that provides stronger habitat protection by establishing a process to create Marine Protected Areas, that contains strengthened water quality protection policies, and that ends over fishing by establishing scientifically based conservation limits for fisheries. In addition, CZMA Sections 302 and 303 should specifically recognize coastal watersheds and in general place greater emphasis on the conservation of ocean resources.

Unless you can develop a workable, comprehensive policy that protects the ocean's natural resources, future generations will suffer the economic, cultural and spiritual consequences.