



GOVERNOR GRAY DAVIS

August 21, 2003

The Honorable Don Evans
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: June 11, 2003 Federal Register Notice, Procedural Changes to the Federal
Consistency Process 15 CFR Part 930

Dear Secretary Evans:

The State of California has reviewed the proposed procedural changes to the federal consistency regulations published in the Federal Register on June 11, 2003. California has long supported the Coastal Zone Management Act (CZMA) and several years ago participated in the broad-based evaluation and subsequent revision to the federal consistency regulations that involved the full participation of federal and state agencies, industry and the public. We question the need for additional changes at this time and believe that the Department of Commerce (Department) is seeking solutions to problems that don't exist. The case has not been made that the proposed changes are necessary, and, in fact they will be detrimental in numerous ways. The proposed changes should not be adopted.

The California Coastal Commission and San Francisco Bay Conservation and Development Commission have also reviewed the proposed changes and jointly provided specific comments, which are attached. These comments raise substantial questions and concerns while also providing evidence of the continuing success of the existing consistency process. Of particular concern to the State of California is the apparent effort to undermine a recent court decision on lease suspensions by attempting to virtually eliminate them as a reviewable federal activity by a state. The Ninth Circuit Court of Appeals was clear in its ruling that lease suspensions are subject to federal consistency review and we continue to support states' rights to review such activities.

In addition, the CZMA created a partnership and balance between federal and state government that would be adversely affected by the proposed changes. Examples of changes that would weaken states' role in the state/federal partnership envisioned by the Congress include:

Shifting primarily to federal agencies the authority to determine whether a new or amended consistency certification is required and weakening a state agency's authority to assert jurisdiction over amendments, modifications and changed circumstances;

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- Removing the opportunity for a state to request an independent review from the Director of the Office of Ocean and Coastal Resource Management if the U.S. Minerals Management Service fails to take remedial action at the request of the state, and
- Modifying the definition of federal agency activities to significantly narrow the types of activities subject to consistency requirements under CZMA.

We believe that these and other proposed changes are contrary to the express intent of the Congress in adopting and subsequently amending the CZMA. Congress intended for the states to play a significant role in determining the management of their coastal resources. The proposed changes, however, appear to be expressly designed to narrow that role.

Thank you for the opportunity to comment on the proposed procedural changes to the federal consistency process. We continue to believe and hope you will agree that there is no justification at this time for moving forward with this proposal.

Sincerely,



GRAY DAVIS

Attachment

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cc: David M. Kaiser, Federal Consistency Coordinator, OCRM