

August 25, 2003

The Honorable Donald Evans  
Secretary, U. S. Department of Commerce  
Fourteenth and Constitution Avenues, N.W.  
Washington, DC 20230

Re: June 11, 2003 Proposed Rule to revise sections of the Federal Consistency Regulations  
(15 CFR Part 930) Docket Number 030604145-3145-01

Dear Secretary Evans:

Thank you for the opportunity to review NOAA's Proposed Rule changes for the Coastal Zone Management Act. The Coastal Management Division, Louisiana Department of Natural Resources (CMD), finds many of the changes to be worthwhile both in terms of clarity and streamlining the consistency process. In particular we note that many of the proposed changes are intended to speed the appeals process; CMD recognizes the need, for all parties involved, for an efficient and predictable process in to be place. We support NOAA's rule modification and guidance to develop an expedited appeals process that is fair and equitable both to states and to applicants.

We offer the following comments on specific issues.

930.31(d) [Change 5]

The proposed wording, while an improvement over the existing text, still leaves some room to interpret that a general permit program was not subject to consistency review. We recommend that the phrase "general permit program" be used, rather than the proposed "general permit," in order to clearly distinguish the permit program from individual authorizations under the program.

In addition, CMD strongly urges NOAA to revise paragraph 930.31(d) so that the federal agency may not issue authorizations under its general permit when the state's conditions were not made part of the general permit, or when the state does not concur with

the consistency determination for the general permit. The proposed rule change applies the CZMA to general permit programs in a way that is markedly different than that of other federal agency activities, by allowing the federal agency to proceed with the activity despite the state's objection, (albeit "transforming the general permit [program] into a series of case-by-case CZMA decisions"). Instead, CMD believes that the federal agency response to all state disagreements should be the same, as described at §930.43(d), i.e., the federal agency may not proceed with the activity in the face of a state objection unless the specified exceptions are appropriate. It would be a more uniform application of the CZMA to require the federal agency to revise the general permit program to be consistent with the approved state program, or to abandon the general permit program and rely on its usual case-by-case permitting authority.

CMD also recommends that this section include provision for the state to review, after concurring with the general permit program, individual projects proposed for approval under the general permit, to confirm that the general permit is used correctly. It is our experience that general permits on occasion are used by federal agencies for activities which do not meet the requirements or intent of the general permit, and a means of monitoring the usage should be incorporated into the regulations.

#### 930.35(d) [Change 6]

CMD recommends that this paragraph include consideration of situations in which an activity conducted under 'general negative determination' actually does have or may have coastal impacts. Specifically, we suggest that the federal agency should be required to immediately discontinue the use of the general negative determination and conduct a new review of the activities to see whether a general negative determination or individual consistency determinations is more appropriate.

#### 930.85(c) [Change 17]

The proposed revision to this paragraph eliminates all recourse by the state or by NOAA to seek compliance with the CZMA, in cases where an OCS operator may be acting in a manner that is not in accord with his approved operating plan. The MMS certainly should have primary responsibility for ensuring that OCS Plans are followed, however, compliance with the approved state program and the CZMA is also in question should an operator deviate from his approved plan. CMD recommends that the regulations give MMS a reasonable opportunity to review and act on a report that a person is failing to comply substantially with their OCS plan, but the regulations should retain some mechanism by which the state can seek review and intercession via NOAA authorities.

CMD appreciates the opportunity to review and comment on this proposed rule change. If you have any questions concerning our comments please contact Mr. Gregory J. DuCote of my staff at (225) 342-5052.

Sincerely,

Terry W. Howey  
Administrator

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