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Mr. David Kaiser
Federal Consistency Coordinator
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:

The National Ocean Industries Association (NOIA) appreciates the opportunity to respond to your request for comments on the proposed rule addressing the Coastal Zone Management Act federal consistency regulations. NOIA is the only national trade association representing all segments of the offshore energy industry. The NOIA membership comprises more than 300 companies engaged in activities ranging from producing to drilling, engineering to marine and air transport, offshore construction to equipment manufacture and supply, shipyards to communications, and geophysical surveying to diving operations. The proposed regulation, therefore, is of particular importance to NOIA.

NOIA is committed to securing reliable access to the nation's valuable offshore hydrocarbon resources in order that they may be developed, produced and supplied in an environmentally responsible manner. NOIA strongly supports the congressional intent of the Coastal Zone Management Act of 1972, which created a national program to manage and balance competing uses of, and impacts to, coastal resources and to provide the opportunity for states to comment on the direct impact to their coasts. Today, as we seek to ensure our energy security, it is more important than ever to allow for balanced, multiple uses of our coasts.

Natural gas and oil drive our economy – creating jobs, generating revenue for both federal and state governments, and serving as the foundation for economic growth. U.S. offshore wells supply more than 25% of the country's natural gas production and more than 30% of total domestic oil production. And, offshore production is likely to continue to play a substantial

role in providing the natural gas and oil needed to meet future demand. It is estimated that 59% of the natural gas and 60% of the oil yet to be discovered in the United States are located on the outer continental shelf.

The National Oceanic and Atmospheric Administration's (NOAA's) proposed regulations would have a significant impact on the offshore natural gas and oil industry, and on our ability to provide energy for the nation's homes and businesses. There are several changes proposed to the consistency review process that are intended to clarify and provide greater transparency and predictability to the federal consistency regulations. NOIA applauds the intent of these changes, and while we support several of the changes, we strongly recommend additional changes and clarifications to improve the process.

NOIA supports the following statements and clarifications outlined in the proposed regulation:

- Clarification is needed at the federal level on the information needed to start the 6-month consistency review process for outer continental shelf plans, and to ensure that requests for additional information will not delay the start of the time period, nor extend the length of the time period.
- Establishing clear information requirements for the consistency review and setting specific deadlines for acting upon appeals can reduce the time taken in reviewing projects without sacrificing the ability of states to review federal plans.
- A state's assessment of the sufficiency of the information for purposes of an application being complete is not a "substantive" review but a "checklist" review to ensure that certain information is included.

NOIA endorses the inclusion of this clarification in the preamble, and strongly encourages the agency to include the clarification in the regulatory language, as well. It is vital that this requirement hold full legal effect, so that the 6-month period is not delayed while a state requests extraneous information other than that specified in the checklist.

- Efficiencies can be made by allowing the use of a single consistency review for air and water permits.

Once again, NOIA endorses this finding, and further encourages NOAA to include this principle in the requirements of the regulatory language.

- Pre-leasing activity is typically in the nature of preliminary or interim agency action and is not considered to have reasonably foreseeable coastal effects.

- Application of the “effects test” for purposes of federal agency consistency determinations is to be conducted by the action agency.

While NOIA applauds the clarifications and findings outlined above, we believe that several additional changes are needed to achieve the regulation’s goal of providing “greater transparency and predictability to the Federal Consistency regulations.” Therefore, we recommend that the following additional changes be included in any final regulations promulgated by NOAA.

180 Day Closure of the Appeal Record

In 1996, Congress recognized the need to expedite the consistency appeals process and amended the Coastal Zone Management Act to add a section which provided that the Secretary should issue a final decision in an appeal 90 days after issuance of a notice that the decision record was closed. While the intent of this 1996 amendment was to accelerate the appeals process, the amendment has not accomplished this goal, primarily because issuance of the appeal decision is tied to the close of the record, which can remain open indefinitely.

The proposed regulation acknowledges that the decisionmaking record for Secretarial appeals should not remain open indefinitely. However, the proposal fails to ensure that consistency appeals are made in a timely fashion. The proposed regulation would provide for closure of the record, but it provides an unnecessarily long period of 270+ days. Closure of the appeals record in 180 days is appropriate. Rather than the 270+ days provided in the proposed regulation, we continue to recommend that a maximum of 180 days from notice of filing the appeal should be the deadline for closure of the record, and there should be no exceptions to this deadline.

In addition, the regulations should provide a clear process for closure of the record in appeals decisions that is governed by specific deadlines that cannot be extended indefinitely for receipt of additional National Environmental Policy Act (NEPA) and Biological Opinion documents. The NEPA and Biological Opinions “re-opener” diminishes the very certainty that a specific deadline is intended to provide. This language should be deleted from the appeals section.

NEPA and Biological Opinion documents would already have been prepared, finalized and submitted prior to any oil and gas lease sale. The data generated for review by the Minerals Management Service (MMS) prior to lease sales is comprehensive. Additional data is likely to be redundant and seems inconsistent with the congressional intent regarding the Coastal Zone Management Act which sought “the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal

resources.” We strongly urge that the NEPA and Biological Opinion “re-openers” not be adopted.

Data Requirements at the Beginning of the Process

Information needs of a state should be identified before the consistency review process begins so that the consistency process is predictable and transparent. Identifying those needs up front would not limit a state’s authority or prevent them from obtaining the necessary information because the information developed and submitted for the state by the applicant would be developed with early guidance from the state on what information is required.

We appreciate that the proposed rule provides that states’ additional request for information will not delay the start of, or extend the time-period for, consistency review. This will only work, however, if NOAA fully enforces the principle that the state’s review of the completeness of the information submitted is a “checklist” and not a substantive review. Moreover, the proposal leaves unlimited discretion for states to request additional information through numerous amendments to their state coastal zone management programs during the six-month review period, and to object to a proposed energy project based on the lack of information. This creates uncertainty for lessees and applicants and we urge NOAA to require, not just encourage, that states now specify in their coastal zone programs what information will be required, and not change these information requirements without full review by NOAA and public comment.

NOIA strongly recommends that final regulations require that states identify their information needs up front. Absent a requirement that states delineate the information needed up front, continual requests for new information could reduce the predictability of the consistency process.

Incorporate National Energy Policy and Executive Orders

Any revisions to the federal consistency process should incorporate a permanent mechanism for close consultation and coordination between NOAA and the Minerals Management Service, such as a formal Memorandum of Agreement (MOA). The MOA should outline the respective responsibilities of the two agencies and establish objective criteria for application of the “effects test”. Furthermore, the MOA and the final rule should institute procedures for ensuring that decisions are consistent with the 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.

The incorporation of the National Energy Policy and Executive Orders and coordination with the Minerals Management Service is not only required by the National Energy Policy and Executive Orders, but consistent with the intent of “coordination and simplification” outlined in the Coastal Zone Management Act. Therefore, we strongly recommend these changes be adopted in the final regulations.

We applaud NOAA’s efforts to improve the coastal zone management review process and urge that you carefully consider our comments and recommendations on additional changes that are needed to streamline the review process without sacrificing states’ rights to consider the effects of those projects that impact their coastal areas. Improvements in the coastal zone management process are essential to enhancing our energy supplies and strengthening national security.

We believe that improvements can be made in the coastal zone management process that would allow us to carefully consider the impacts on our coastal resources in a timely manner, while meeting our important national energy and economic goals of developing domestic energy supplies and diversifying our energy sources. And, this can be done while we continue to protect and preserve the environment.

In addition to the specific concerns highlighted here, NOIA concurs with the extensive comments submitted on behalf of several energy associations, including the American Petroleum Institute, Independent Petroleum Association of America, International Association of Drilling Contractors, Domestic Petroleum Council, the Natural Gas Supply Association and the U.S. Oil and Gas Association.

We are eager to work with NOAA to improve the review process and will be pleased to answer any questions you may have and/or provide additional information. Please do not hesitate to contact me at 202-737-0926.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Harb", with a stylized flourish at the end.

Kim Harb
Director, Government Affairs