

**SUPPLEMENTARY INFORMATION:****I. Background**

For nearly 30 years the CZMA has met the needs of coastal States, Great Lake States and United States Trust Territories and Commonwealths (collectively referred to as "coastal States" or "States"), Federal agencies, industry and the public to balance the protection of coastal resources with coastal development, including energy development. When States develop and amend their Coastal Management Programs (CMPs), and when making coastal management decisions, the CZMA requires the States to adequately consider the national interest in the CZMA objectives and to give priority consideration to coastal dependant uses and processes for facilities related to national defense, energy, fisheries, recreation, ports and transportation.

States have collaborated with industry on a variety of energy facilities, including oil and gas pipelines, nuclear power plants, hydroelectric facilities, and alternative energy development. States have reviewed and approved thousands of offshore oil and gas facilities and related onshore support facilities. On December 8, 2000, NOAA issued a comprehensive revision to the Federal Consistency regulations, which reflected substantial effort and participation by Federal agencies, States, industry, and the public, over a five year period. Given this recent broad-based review, NOAA is not re-evaluating the 2000 final rule, rather it is making improvements to address the issues raised in the ANPR and to make other technical modifications.

In February 2001, the Vice President established the National Energy Policy Development Group to bring together business, government, local communities and citizens to promote a dependable, affordable, and environmentally sound National Energy Policy. Vice-President Cheney submitted the Energy Report to President Bush on May 16, 2001.

The Energy Report contains numerous recommendations for obtaining a long-term, comprehensive energy strategy to advance new, environmentally beneficial technologies to increase energy supplies and encourage less polluting, more efficient energy use. The CZMA and the Outer Continental Shelf Lands Act (OCSLA), a statute administered by the Minerals Management Service (MMS) within the Department of the Interior (Interior), are specifically mentioned. The Energy Report found that the effectiveness of Commerce and Interior programs are "sometimes lost through a lack of

clearly defined requirements and information needs from federal and state entities, as well as uncertain deadlines during the process." To address these issues, the Energy Report recommended that Commerce and Interior "re-examine the current federal legal and policy regime (statutes, regulations, and Executive Orders) to determine if changes are needed regarding energy-related activities and the siting of energy facilities in the coastal zone and on the Outer Continental Shelf (OCS)." Energy Report at 5-7.

In July 2002, NOAA published the ANPR seeking comments on whether improvements could be made to NOAA's Federal Consistency regulations. This proposed rulemaking is the product of recommendations contained in the Energy Report and comments received in response to the ANPR.

**II. History of the CZMA and NOAA's Federal Consistency Regulations**

The CZMA was enacted in 1972 to encourage States to be proactive in managing natural resources for their benefit and the benefit of the Nation. The CZMA recognizes a national interest in the resources of the coastal zone and in the balancing of competing uses of those resources. The CZMA is a voluntary program for States. If a State elects to participate it must develop and implement a CMP pursuant to Federal guidelines. State CMPs are comprehensive management plans that describe the uses subject to the management program, the authorities and enforceable policies of the management program, the boundaries of the State's coastal zone, the organization of the management program, and other State coastal management concerns. The State CMPs are developed with the participation of Federal agencies, industry, other interested groups and the public. Thirty-five coastal States are eligible to participate. Thirty-four of the eligible States have federally approved CMPs. Illinois is not currently participating.

Once NOAA approves a State's CMP, then the CZMA Federal Consistency provision applies. Federal Consistency is a limited waiver of Federal supremacy and authority. Federal agency activities that have coastal effects must be consistent to the maximum extent practicable with the federally approved enforceable policies of the State's CMP. In addition, non-Federal applicants for Federal authorizations and funding must be fully consistent with the enforceable policies of State CMPs. The Federal Consistency provision is a cornerstone

of the CZMA program and a primary incentive for States to participate. While States have negotiated changes to thousands of Federal actions over the years, States have concurred with approximately 93% of all Federal actions reviewed.

NOAA's Federal Consistency regulations, first promulgated in 1979, are designed to provide reliable procedures and predictability to the implementation of Federal Consistency. In general, the regulations operate well for the Federal and State agencies and permit applicants and provide a reasonable interpretation of the CZMA's broad requirements. When Congress amended the CZMA in 1990, it specifically endorsed NOAA's consistency regulations and interpretation of the CZMA. However, changes to the CZMA in 1990 and 1996 also necessitated revisions to the regulations.

In late 1996, OCRM began a process to revise the regulations by informally consulting and collaborating with Federal agencies, States, industry, Congress, and other interested parties. NOAA submitted two sets of draft rules to States, Federal agencies and others for comments and produced written responses to comments to each draft, and then issued a proposed rule in April 2000. NOAA published a final rule on December 8, 2000, which became effective on January 8, 2001.

Most of the changes in the revised regulations were dictated by changes in the CZMA or by specific statements in the accompanying legislative history. For instance, the new regulations added language concerning the scope of the Federal Consistency "effects test." Prior to the 1990 amendments, Federal agency activities "directly affecting" the coastal zone were subject to Federal Consistency. The amendments broadened this language by dropping the word "directly" to include actions with "effects" on any land or water use or natural resource of the coastal zone. Other changes in the 2000 final rule improved and clarified procedural processes based on long-standing interpretive practice by NOAA.

**III. The Role of the CZMA in OCS Energy Development**

The CZMA and the OCSLA interact both by explicit cross-reference in the statutes and through their regulatory implementation. Both statutes mandate State review of OCS oil and gas Exploration Plans (EP's) and Development and Production Plans (DPP's). Both statutes and their corresponding regulations provide a