

with the enforceable policies of the management program. This is not a change in standards or practice, only a clarification. As in the 2000 rule, both the State and appellant and commenters on the appeal will be able to provide the Secretary with information concerning an alternative. The addition of this sentence, however, would make clear that any alternative, whether submitted to the Secretary by the appellant, the State, a third party, or identified by the Secretary from previous appeal decisions, will not be considered by the Secretary as "reasonable" or "available" unless the State submits a statement to the administrative record of the appeal that the alternative will allow the activity to be conducted in a manner consistent with the enforceable policies of the management program. To allow otherwise would require the Secretary to make a finding that the alternative would be consistent with the management program and would effectively substitute the Secretary's judgement for that of the State. The Secretarial appeals process is a *de novo* consideration of whether a proposed activity is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. It does not review whether the proposed activity is consistent with the State's enforceable policies. Likewise, the Secretary relies on the State to determine whether an alternative is consistent with the enforceable policies of the management program.

Rule Change 19: § 930.125 Notice of appeal and application fee to the Secretary. In order to process an appeal within the proposed time frames under § 930.130, necessary changes are proposed to various sections (§§ 125, 127, 128, 129 and 130) to ensure that briefs, information, and public and Federal agency comment periods accommodate a shorter time period for developing the decision record and issuing a decision. These proposed procedures will provide sufficient due process to all parties, but will be strictly adhered to, otherwise NOAA will not be able to meet the proposed appeal time frames.

Rule Change 20: § 930.127 Briefs and Supporting Materials. The proposed changes in § 930.127 are to reflect changes in practice necessary to accommodate the proposed time frames for the closure of the decision record in § 930.130 and to make the administration of the appeals process more efficient and transparent to the public, States and potential appellants. These changes would likely mean that States, appellants, Federal agencies and the public will have to be more diligent

in providing thorough and complete information to the Secretary in a shorter amount of time. The proposed changes would allow each party and the public, in most cases, only one opportunity to provide their arguments to the Secretary. The proposed changes reflect the fact that the Secretary needs only sufficient time and information required to make a rational and well-reasoned determination of each of the elements in 15 CFR 930.121 or 930.122.

The proposed change to § 930.127(d) would move language from § 930.130(d) regarding the appellant's burden to support its appeal, and makes clear the State's burden of submitting evidence when asserting an alternative to the proposed action is reasonable, available and consistent with the State management program. This has been the Secretary's long-standing practice in accordance with the Secretary's decision in *Korea Drilling Inc.* (1989). This change would codify existing practice and consistency appeal precedent.

Rule Change 21: § 930.128 Public notice, comment period, and public hearing. The proposed changes to § 930.128 would accommodate the proposed 270-day period to develop the decision record in § 930.130. Other changes are intended to promote clarity and efficiency, obtaining comments from the public and interested Federal agencies, and in processing the appeal. In addition, NOAA proposes to make explicit the Secretary's practice of giving additional weight to Federal agencies' comments when they concern topics within the area(s) of the Federal agency's technical expertise.

Rule Change 22: § 930.129 Dismissal, remand, stay, and procedural override. The proposed additions to § 930.129 would accommodate the proposed 270-day period to develop the decision record in § 930.130.

Rule Change 23: § 930.130 Closure of the decision record and issuance of decision. This proposed change would provide 270 days as a definitive date by which the Secretary shall close the decision record in appeals filed from State objections under 15 CFR part 930, subparts D, E and F. Three exceptions to the 270-day period are proposed to allow the parties to mutually agree to stay the 270-day period and to ensure that the Secretary has relevant NEPA and ESA documents, if the Secretary determines that such information is needed to decide the appeal. These exceptions would not mean that the Secretary would create NEPA or ESA documents for the appeal. The stay of the 270-day decision record period would apply *only* when the NEPA and/

or ESA documents are *required* to issue for the Federal agency authorization or funding subject to the appeal. If the parties to an appeal wanted to provide comments on the NEPA and/or ESA document to the Secretary as part of the decision record for an appeal, then the parties could avail themselves of proposed section 930.130(a)(2)(i) and mutually agree to stay the closing of the decision record.

Other changes are proposed to more accurately track the existing statutory language.

V. Comments Received by NOAA on the ANPR

NOAA issued an ANPR on July 2, 2002, primarily to address issues raised by the Energy Report related to the scope of information needed by the States and the Secretary in their respective reviews of OCS oil and gas activities. In the ANPR NOAA sought public comment on the following six questions:

1. Whether NOAA needs to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements.

2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards.

3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA.

4. Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process.

5. Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location"