

descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency review for activities located far offshore.

6. Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EP's and DPP's, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP.

NOAA received comments from States, environmental groups, industry, the public, members of Congress, and Federal agencies. This proposed rule is based on NOAA's evaluation of the ANPR issues, comments submitted in response to the ANPR, and some technical and clarifying changes that should be made to the regulations. Below are NOAA's response to comments on the ANPR.

General Comments. All commenters except two Federal agencies and the oil and gas industry representatives urged NOAA to take no action because the recent 2000 rulemaking was comprehensive and further rulemaking is unwarranted as no problems have emerged with the existing regulations. The majority of the commenters urged additional stakeholder meetings first, and noted that Congress has sought to broaden, not narrow, the scope of CZMA review. They also stated that the consistency process has worked well for many years, and that any controversy was not the result of the CZMA process, but the proposed projects and their effects on coastal uses and resources were themselves controversial. Commenters also suggested that any lack of effectiveness in CZMA-OCSLA interactions is the result of a project proponent's lack of early coordination, familiarity and experience with the CZMA. Further, these commenters urged NOAA to commit additional resources to its Federal Consistency education and outreach efforts. Many of these commenters also felt that changes to address many of the ANPR questions could jeopardize the CZMA effects test and public review. A few of these commenters, while generally opposing any changes, did offer some rulemaking suggestions on the six ANPR questions.

Federal agency and industry comments urged NOAA to make many changes to the regulations to refine and improve the partnership between Federal and State agencies. These commenters believe that NOAA's 2000 rule was overly broad and inconsistent

with the CZMA's objective to consider the national interest. Further, the two Federal agencies that commented believe that States can use the CZMA for the cancellation of energy projects, even after a Federal agency has approved the project. NOAA's proposed changes address Federal agency and industry concerns.

NOAA Response to General Comments. As stated in the ANPR, NOAA is not seeking to alter the balance of State and Federal interests provided for in the CZMA and the 2000 rule. Neither the Energy Report nor the ANPR suggest changing the States' or public's rights under the CZMA or 2000 rule. NOAA does believe, however, that there are some improvements that can be made to the Federal Consistency regulations.

NOAA agrees that the Federal Consistency process is not primarily a source of conflict, but that the projects reviewed through the CZMA process are often controversial. Most projects are approved by the coastal States and there is little litigation.

Early coordination was stressed in NOAA's 2000 revision to the regulations and in recent Federal Consistency Workshops conducted by NOAA. NOAA hopes to continue its education and outreach efforts, as budget and resources allow. Through workshops and web based information NOAA intends help stakeholders avoid problems arising from inadequate knowledge of the consistency requirements, limited experience with consistency, or insufficient State-federal coordination.

NOAA agrees that some improvements can be made to the regulations, but does not believe that NOAA's regulations are overly broad. The 2000 rulemaking reflects CZMA directives and Congressional intent and was finalized after four years of coordination and collaboration with all stakeholders. It may be that some of the issues raised in the comments are not really problems with NOAA's regulations, but result from requirements and policy set forth by Congress in the statute. For example, NOAA does not have the authority to exempt federal actions from CZMA review and States have the authority to object to the issuance of federal licenses or permits to be issued by Federal agencies.

The figures discussed above and those provided by some of the State commenters demonstrate that offshore oil and gas exploration and development not only continues to occur, but flourishes. Coastal States continue to ensure that both the

CZMA's energy development and resource protection objectives are met. There has, of course, been negotiation between coastal States, MMS and industry, and there have been some issues. NOAA is attempting to address some of those issues through this rulemaking.

NOAA appreciates the concern raised in the example provided by industry where a State required changes to oil and gas project to be located on an ice-platform. It may be that some of the changes proposed by NOAA will address those concerns or that better coordination is needed between the State, industry and MMS. However, the State's use of consistency to ensure that the ice-platform met State enforceable policies is in fact how a State is authorized by Congress to use Federal Consistency. Through the CZMA, Congress gave the States the ability to review federal actions, independent of the Federal agencies' reviews. It is important to note the statistics referred to above and acknowledge that States concur with most projects reviewed, including oil and gas projects.

ANPR Questions

Information Needs

Comment 1. Existing provisions in the CZMA regulations address information needs for most projects. Describing specific documents in the regulations that a State may need would be ineffective and cumbersome because information needs change from project-to-project. The type of information needs of a State can vary from project-to-project depending on how detailed the EP or DPP is and the complexity of a project. One of the fundamental attributes of the CZMA is that it allows each State to develop its own coastal management program in light of the individual characteristics and priorities of the States. Thus, the development and imposition of detailed nationwide information requirements appears to be incompatible with the statutory framework of the CZMA.

Most of the OCSLA information requirements ask for fairly specific and physical descriptions, while the CZMA requires an analysis of the proposed project's consistency with the enforceable policies of a State's CMP. Where there is a problem, the proper remedy is the development of guidance or memoranda of understanding coordinating information requirements between the State and Federal agencies. There have been few instances where the lack of availability of an EIS or other NEPA document led to an objection based on lack of information. If