

there are very few appeals to the Secretary. However, NOAA believes that improvements can be made to the regulations governing the consistency appeals process and still allow the Secretary to develop an adequate record under the Administrative Procedure Act (APA). NOAA's proposed change to § 930.130 would provide parties to an appeal with the flexibility to agree to stay the appeal process in order to negotiate a resolution. Under these parameters, no party would be prejudiced. NOAA's proposed change to close the decision record 270 days after it issues a Notice of Appeal (notice issued within 30 days of the filing of an appeal) would provide a workable time frame for OCS appeals, so long as NOAA makes the procedural adjustments proposed in the other sections of subpart H.

Comment 13. A definitive time frame within which the Secretary of Commerce must issue a decision can be established. At minimum, a known action time frame would give the appellant applicant an understanding of the term of the process. Additional environmental reviews should not be required for a consistency appeal. A copy of the completed EA or EIS should be included as part of the administrative record, since many of the criteria for a secretarial override involve consideration of environmental issues. It should be clear, however, that the Secretary's role does not involve review of the legal sufficiency of the EA or EIS. Rather, the Secretary should rely on the conclusions of the EA or EIS with respect to environmental impacts and mitigations, and should accept the document as sufficient unless a court determines otherwise.

NOAA Response to Comment 13. NOAA has proposed a limited consistency appeal review period. See proposed change to § 930.130. The Secretary may rely on relevant materials such as NEPA documents. NOAA is not suggesting that the Secretary create new NEPA or ESA documents. In some appeals the NEPA and ESA documents being prepared to support the decision on the Federal authorization will be needed for the Secretary's review. The Secretary needs flexibility to adjust the closure of the decision record to accommodate the Federal agency preparing the necessary document(s).

Comment 14. It is not the function of the Secretary, in deciding an appeal, to adjudicate the merits of the underlying activity. For OCS plans, that function is with MMS. If the Secretary overrides a State's objection, then MMS may approve the plan and is still required to complete environmental clearances

required by law. MMS supplies the Secretary with all relevant information including NEPA documents. Information contained in an EA or a draft EIS, added to the information provided by an applicant, is sufficient information for the Secretary to evaluate an appeal. An appeal before the Secretary will also include all the information that was before the State. We see no reason why the appeal process should be delayed in order to obtain additional information to add to that administrative record.

NOAA Response to Comment 14. The Secretary's review is *de novo*, to determine if the project is consistent with the CZMA or in the interest of national security. It is not a review of the basis for the State's objection or the basis for issuing the Federal agency authorization. The Secretary does not substitute the Secretary's judgement for that of the authorizing Federal agency regarding the merits of the project, nor does the Secretary determine whether a proposed project complies with other Federal law. However, because of the multiple national interest requirements of the CZMA, the Secretary must evaluate an authorization of a project in light of competing CZMA objectives. Varying levels of information and detail are required to make these determinations which are dictated by many factors such as the nature of the project, scale and scope of effects on coastal uses and resources, alterations to the proposal, etc. Normally, when the Secretary needs information, he waits for the authorizing Federal agency to complete some level of environmental review or generate a document. Since these documents are required by other federal law, there is no delay to the applicant or Federal agency.

Coordinated Federal Documents

Comment 15. While the CZMA regulations make an admirable attempt to coordinate CZMA and OCSLA requirements, problems with coordination of federal environmental review documents occur because of unrealistic timeframes imposed by OCSLA and its implementing regulations. The most troublesome requirement relates to comment deadlines imposed by OCSLA and the related regulations for reviews of EP's and DPP's. For EP's, the MMS has 30 days and for DPP's 60 days, to approve, disapprove or request modifications from the date the plan was deemed complete (30 CFR 250.204(i)). A change to OCSLA to allow the MMS to have a longer comment period before making a decision would alleviate this problem.

NOAA Response to Comment 15. While a change to the OCSLA timeframes might improve the CZMA-OCSLA interaction, that is beyond the scope of this rulemaking, which is to determine if there are improvements that can be made to NOAA's regulations.

Comment 16. Coordination is already a cornerstone of the Federal Consistency review process, and in practice it is the norm. Consistency reviews occur simultaneously with MMS and NEPA reviews to the degree practical under relevant statutes. If information problems (such as lack of NEPA documents) do occur, they can be resolved using the procedures available under 15 CFR 930.60, which clarify when the consistency time clock may begin. General consistency concurrences with the MMS help minimize the scope and duration of the review of an OCS plan for consistency. Coordination is best accomplished through the interaction of individual States and Federal agencies and this is what the CZMA consistency regulations recognize and encourage. Ambiguity and uncertainty can be eliminated by improved education on the part of the applicants as to the States' information requirements and consistency procedures.

States can use the analyses in the lease sale EIS to calibrate impacts from individual projects. Additionally, MMS has given notice of the preparation of a programmatic environmental assessment (EA) for exploratory drilling and associated activities in the Eastern Planning Area of the Gulf of Mexico. This programmatic EA is intended to consider the area wide environmental impacts of exploratory drilling. Subsequent site-specific EA's prepared by MMS for an operator's Exploration Plan can then be tiered from the programmatic EA and the analyses can be focused on specific activities proposed. This is a good example of a Federal agency working within the statutory framework of CZMA and OCSLA to coordinate the completion of environmental review documents with the information needs of the States. Industry recommends that this approach be adopted in the Federal Consistency requirements. Effective coordination is best achieved by maintaining the freedom and flexibility to enter into agreements and discussions among the parties. A regulatory mandate for such coordination may have a dampening effect and hinder the parties from negotiating resolution to specific cases.

NOAA Response to Comment 16. NOAA will continue to encourage early coordination between Federal agencies