

and States. This early coordination is important for identifying information needs and coordinating reviews with completed documents. The MMS Gulf of Mexico Region's recent efforts to coordinate reviews and information needs may provide a useful model. NOAA also agrees that the tiering of NEPA documents is beneficial, especially when the documents are ready as the State starts its CZMA review.

Comment 17. The regulations at section 930.60 contain a consistency review "start" provision, which begins when the State receives the consistency determination and supporting information under section 930.58. The problem is that unlimited requests for additional information can delay the start of this review period indefinitely. The regulations should be revised to provide that a State's requests for information do not stop the timeline without NOAA approval. The State should not be the final arbiter of when the timeline begins.

NOAA Response to Comment 17. NOAA proposes to clarify that consistency starts when the certification and necessary data and information described in § 930.58 are received by the State.

General Negative Determination

Comment 18. We are not aware of repetitive Federal agency activities related to the OCS, so it appears that no efficiency would be gained by this provision. The flexibility already exists in the existing regulations for negative determinations that would enable submittals covering multiple activities.

We support a regulatory provision for a general negative determination, similar to the existing regulation for general consistency determinations. This would improve the efficiency of the Federal Consistency process.

No objection provided scope of the activity covered and geographical area are agreed upon with the State and Federal agency.

NOAA Response to Comment 18. NOAA's regulations provide for a "general consistency determination" (general CD) which result in one State review for multiple occurrences of an activity where the actions are repetitive, do not have coastal effects when performed separately, but have cumulative effects. The general CD was created in 1979 as an administrative efficiency so that Federal agencies may avoid the necessity of issuing separate CD's for each repetitive action. There may be times when a Federal agency proposes repetitive activities that do not have coastal effects, when performed

separately or cumulatively. In such cases where an individual ND is required under 15 CFR 930.35, NOAA believes that the Federal agency should be able to issue a General Negative Determination (general ND). The Federal agency would have to provide supporting information as is the case for a ND. Since the use of a general ND would be an effects determination made by the Federal agency, as is the case for a CD, general CD or ND, State agreement to use a general ND would not be required. If a State objected, the resolution provisions of 15 CFR part 930, subpart C would apply.

Comment 19. We recommend that the Federal Consistency regulations be amended to grant "Negative Determination" status to any Federal agency activity meeting the definition of a categorical exclusion under its own agency's NEPA regulations. Second, we recommend that NOAA implement the proposed "General Negative Determination" process, but reserve it only for those Federal agency activities that are not covered by a NEPA Categorical Exclusion but still may be determined by the Federal agency to be repetitive and not reasonably likely to have either individual or cumulative coastal effects.

NOAA Response to Comment 19. A general ND would not be an exemption for any type of activity, including an "environmentally non-adverse" activity. Such an exemption, as discussed in the 2000 NOAA rulemaking, would not be authorized under the CZMA. Changing the CZMA Federal Consistency effects test to equate it with the NEPA test is not authorized by the CZMA because the NEPA test is different than the CZMA effects test (a categorical exclusion (CE) under NEPA is available when there is no potential for effects on the human environment, 40 CFR 1508.4). Like a CE, a general ND would still require a factual determination of coastal effects. (A CE is not an exemption from NEPA like an ND or general ND for the purposes of compliance with the CZMA, a CE is compliance with NEPA and a determination of no effect. See 65 FR 77124-77125, 77130-77133 (Dec. 8, 2000)(discussing effects test).

Comment 20. A general negative determination could obviate the need to revisit non-resolved issues and result in considerable savings to the Federal agencies and the States. Any such regulation must preserve the fact that the Federal agency determines whether there are coastal effects. NOAA's overly-broad definitions of some terms may hamper the use of a general negative determination.

NOAA Response to Comment 20. As discussed in NOAA's response to the general comments, NOAA disagrees that NOAA's CZMA consistency regulations are "over-broad." As noted in the preamble to the 2000 rule, consistency is based on the "effects test" and there are no exceptions to this Congressionally mandated principle. NOAA's regulations would not hamper the use of a general ND. If a Federal agency determines a project will have no coastal effects, and a negative determination (ND) is not required, then the Federal agency does not have to coordinate with the State at all. 15 CFR 930.35, 930.33(a)(2). Administrative activities have not been subjected to consistency review in the past, probably because they do not propose an action with coastal effects. Even in the rare case where a State requested consistency review for such an activity, NOAA's regulation provides the solution: a negative determination. NOAA has also addressed administrative actions in the proposed change to the definition of Federal agency activities in § 930.31.

Geographic Considerations

Comment 21. The CZMA establishes an effects-based evaluation process rather than categorizing activities based on geographic location or type. It would be particularly difficult to develop geographic criteria for activities conducted in the open ocean, where effects can occur hundreds of miles from the point of origin. The existing regulations adequately address this question. State agencies are already required to describe geographic areas within which federally permitted activities beyond State waters are subject to consistency review. Moreover, as the ANPR points out (at p. 44409), a coastal State's ability to review the activities stops where coastal effects are not reasonably foreseeable.

NOAA Response to Comment 21. NOAA has not proposed a regulatory change to address State review of OCS plans located far offshore. NOAA has determined that conflicts are isolated examples, would most likely only occur in the Gulf of Mexico, and can be dealt with on a case-by-case basis should an issue arise. To create a new regulatory process to determine when an OCS plan will have coastal effects on a particular State would be difficult to develop and would likely increase administrative and fact-finding burdens on industry, the States and Federal agencies.

The determination of coastal effects for federal license or permit activities is made by NOAA, in coordination and consultation with the States and the