

*NOAA Response to Comment 26.* As discussed throughout this proposed rule and the preamble to the 2000 rule, the CZMA applies to federal actions that have reasonably foreseeable coastal effects. The CZMA does not provide a “significance” threshold for such effects, and in fact the 1990 CZMA amendments removed thresholds by removing “direct” effects from the statute. Thus, NOAA has no authority to exempt an activity from consistency review. Likewise, regarding the “significance” of a coastal effect, the CZMA prohibits such a distinction. See 65 FR 77125, 2d col., 77129–77130, 77135–77136 (Dec. 8, 2000). The policy purposes of the CZMA are best fulfilled by the required analysis of the relationship between coastal effects and the State’s enforceable policies.

*Comment 27.* We strongly object to the development of guidance or regulations that would extend State review to any Federal maritime activities that occur well beyond a State’s lawful jurisdiction.

*NOAA Response to Comment 27.* NOAA is not extending in any way State review to activities that do not have coastal effects. Federal Consistency applies to a Federal agency activity, regardless of location, if coastal effects are reasonably foreseeable. NOAA’s existing regulations provide geographic location considerations for the application of the effects test.

#### *Consolidated Permit Reviews*

*Comment 28.* Existing regulations already encourage, and many States already implement, to the extent practical, substantial interagency coordination and multiple-permit consolidated reviews. The requirements of the CZMA are independent of other Federal requirements, and mandatory consolidation would be inconsistent with the CZMA. In addition, industry often will not invest resources into the level of detailed design required for some permits, such as air permits, until they have secured overall discretionary approvals first.

*Comment 29.* Acceptable if sufficient information were available to inform of all the permits.

*Comment 30.* Multiple Federal authorizations should be consolidated into a single review process in order to reduce procedural delays.

*Comment 31.* A single consistency certification for an OCS EP or DPP should cover associated approvals such as air and water permits necessary to the EP or DPP. Ideally, MMS should issue a directive making it clear that air and water permits are required to be described in detail in the OCS plan, and

are therefore covered under one consistency certification. Likewise, Federal Consistency regulations should be revised to clarify that the States must provide consistency review and, if applicable, Commerce should issue a decision on an override appeal of the OCS plan and OCS-related activities at the same time.

*Comment 32.* Such consolidation may prove impractical for a number of reasons. When a DPP is submitted to a State, the CZMA time clock starts. In order to consolidate reviews of all permits, the lessee would have had to submit all its applications to the appropriate agencies and certifications to the States at the same time. There would be a problem if not all applications were ready to go or if there was a problem with just one. It would not be appropriate to withhold consistency on all permits or the DPP while a State’s objection for one permit was appealed to the Secretary.

*NOAA Response to Comments 28–32.* NOAA agrees that consolidation may not be practicable or desirable in some cases. One way to address consolidating as many permits as is practicable is to ensure that the permits “described in detail” in EP’s and DPP’s include air and water permits and other applicable federal authorizations, appropriate for inclusion in the EP’s or DPP’s as described in detail.

NOAA notes that the existing regulations allow Federal agencies to issue permits described in detail in an EP or DPP determined by the State agency to be consistent, even though the State may have objected to other permits in an OCS plan. See 15 CFR 930.81(b)(2).

*Comment 33.* The definition of “Federal license or permit” is too broad and the use of the term “certification” may encompass ministerial paperwork that does not grant any authorization to anyone to do something that otherwise would be impermissible. Also, the definition exposes other OCS approvals to the consistency process and includes OCS lease suspensions.

*NOAA Response to Comment 33.* The definition of Federal license or permit in § 930.51(a) does not expand the definition based on the 1990 CZMA amendments. The term “required” in the definition is self-explanatory: a Federal authorization is subject to consistency only if Federal law requires the applicant to obtain that Federal authorization in order to conduct the activity. As for OCS oil and gas approvals, all Federal authorizations described in detail in an EP or DPP are covered under the States’ review of the plans under 15 CFR part 930, subpart E.

Subpart E only applies to Federal authorizations described in detail in the OCS EP or DPP.

If an offshore operator is also required by Federal law to obtain a Federal authorization that is not described in detail in an EP or DPP, and the activity covered by the authorization will have coastal effects, then that Federal authorization may also be subject to State consistency review under 15 CFR part 930, subpart D, if the State has either listed the Federal authorization in its federally approved management program, or NOAA has approved the State’s review on a case-by-case basis as an “unlisted activity” under 15 CFR 930.54. In both cases, the State would have to show, and NOAA would have to find, that the activity to be allowed under the Federal authorization would have reasonably foreseeable coastal effects. If the authorization is a “purely ministerial paperwork,” then it is extremely unlikely NOAA would approve the State’s proposed listing of the Federal authorization or request to review as an unlisted activity because coastal effects would not be reasonably foreseeable and the ministerial action would be incidental or related to an action receiving Federal Consistency review.

However, as provided in the proposed change to § 930.51(a) and discussed in the accompanying explanation, NOAA proposes to remove the various descriptions of Federal license or permit types and have the phrase “any required authorization” become a catch-all for a Federal license or permit for an activity that would have a coastal effect. Further, NOAA notes that there are ministerial certifications which do not have coastal effects or are incidental/related to a Federal license or permit activity that was already reviewed by a State, and therefore would not be reviewed as a “Federal license or permit.”

The Energy Report directs Commerce and Interior to re-examine CZMA and OCSLA requirements. While the OCSLA is under the purview of Interior and changes to the OCSLA or Interior’s regulations are best left to Interior, Interior could help improve the efficiency and effectiveness of the OCSLA programs by including more Federal authorizations as “described in detail” in OCS plans.

In the preamble to the 2000 rule, NOAA posited that lease suspensions granted by Interior are Federal license or permit activities. Lease suspensions are not listed in any State’s management program and NOAA has never approved a request to review a lease suspension as an unlisted activity (there was only