



Oregon

Kate Brown, Governor

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April 24, 2019

Mr. Kerry Kehoe

Federal Consistency Specialist

Office for Coastal Management

National Oceanic and Atmospheric Administration

1305 East-West Highway, 10th Floor, N/OCM6

Silver Spring MD 20910

RE: CZMA Federal Consistency ANPR Comments - NOAA-NOS-2018-0107

Dear Mr. Kehoe:

Oregon submits these comments to the National Oceanic and Atmospheric Administration (NOAA) in response to the Advanced Notice of Proposed Rulemaking “Procedural Changes to the Coastal Zone Management Act Federal Consistency Process” (ANPR) published in the Federal Register March 11, 2019. Oregon understands NOAA’s objective is to seek the public and regulated community’s input on what changes could be made to NOAA’s regulations that implement the federal consistency provisions of the Coastal Zone Management Act (CZMA) to make the process more efficient throughout outer continental slope (OCS) leasing for oil and gas projects and renewable energy development. NOAA is also seeking comments on whether the appeals process could be made shorter and more predictable, while continuing to meet the requirements and purposes of the CZMA. In addition, NOAA requests comment on the types of new information that may be produced throughout OCS oil and gas projects to provide an indication of what information may be relevant to subsequent appeals. NOAA will consider comments to determine whether to propose changes to the CZMA federal consistency regulations, noting that input could result in numerous regulatory modifications that could also apply to other types of federal activities, not just leasing activities on the OCS.

The CZMA of 1972 is a landmark law that has substantially increased the coordination between states, industry, and the federal government. Through the CZMA, Congress recognized that the most effective way to further the national interest in a thriving coastal zone is to ensure that federal activities and permits incorporate applicable state requirements early in the process of project planning and development. The process for doing so is the federal consistency process regulated by 15 CFR Part 930.

Oregon’s holistic land use planning system is based on 19 planning goals that are applied statewide. Four goals were created explicitly for managing resources in the coastal zone; an unparalleled achievement in state land use planning to protect important coastal resources. Oregon’s Statewide Planning Goals 16, 17, 18 and 19 help conserve coastal resources and ecosystem function for current and future Oregonians and visitors to experience the state’s spectacular natural heritage. They also expressly protect critical aspects of coastal economies that residents rely on. Oregon has a strong coastal management program supported by these goals and a network of 11 committed state agencies and 40 local jurisdictional coastal partners that comply with the goals while implementing planning and regulatory decisions. Networked partners also participate in the federal consistency review process. Oregon’s land use agency administers the federal consistency review through the Oregon Coastal Management Program (OCMP). Second in the nation to establish an approved management program, Oregon remains committed to participation in a

voluntary federal program that is equal to the statewide planning goals in foresight, and that spurs communication and thoughtful coordination between the state, industry, and federal government for the betterment of coastal communities.

Oregon is open to constructive dialogue between industry, federal agencies, and NOAA. However, Oregon requests that NOAA, through any regulatory changes, does not frustrate this process in any way that would make it more difficult to protect coastal resources, uses, and the coastal communities dependent on them. Oregon is one of few coastal states that does not have a major metropolitan area on its coast. The economies of Oregon's coastal communities are closely tied to water-dependent uses, coastal resources that support a vibrant fishing industry, and aesthetic qualities that support tourism. Commercial and recreational fisheries are the 'bread and butter' of Oregon's coastal economies. Impacts to coastal resources from poorly coordinated federal actions that are inconsistent with protections provided by statewide planning goals and state law could negatively impact coastal communities.

Oregon requests that NOAA preserve the functional balance established by the CZMA, as well as the relationships within Oregon that have been cooperatively built between the relevant federal agencies, industry, and the state over the past 40 years. Oregon is acutely concerned that NOAA will consider comments to determine whether regulatory changes "could also apply to other types of federal actions and not just renewable and non-renewable energy projects." Any changes that NOAA considers should be narrowly designed to address projects on the OCS.

Approved by NOAA in 2015, Oregon established a Geographic Location Description (GLD) for renewable energy projects proposed on the OCS. Oregon worked with NOAA to establish this agreement to allow for automatic federal consistency review for the state. Efforts to streamline the federal consistency process should not undermine or circumvent this agreement.

NOAA should not make changes to benefit one industry over other industries or one coastal use over another. The integrity of the process will be damaged, as well as NOAA's current neutral position as facilitator when differences arise. However, if NOAA moves forward with regulatory changes, it should consider modifications that would improve coordination between states, federal agencies, industries, and permit applicants. Oregon provides the below recommendations to achieve the greatest efficiencies and predictability, which occurs when federal agencies and industries collaborate early, frequently, and openly with states, respecting the partnership established by the CZMA that helps identify and resolve issues that will negatively affect coastal resources and uses proactively.

Recommendations for Improvement

For federal actions regulated by Subpart C, Oregon recommends increasing the state review time under 15 CFR § 930.41 from 60 days with one 15-day extension to 90 days and maintaining the option for federal agencies and the state to agree to extend the deadline further. The extension is nearly always used and lengthening review time to 90 days will provide the necessary time to complete review and eliminate an unnecessary procedure to request an extension. A 90-day period is consistent with the CZMA (16 USC § 1456(c)(1)(C)). Also, in this subpart, the federal agency has the ability to extend the review even further if necessary or desired. In several instances, the flexibility to extend the review time (15 CFR §930.41(c)) for critical information to arrive (*i.e.* biological opinions) has benefitted both state and federal agencies and should not be affected if the review timeframe is lengthened to 90 days.

The Subpart D process by which a state requests to review an unlisted activity and must also separately request to classify the activity as a listed activity is duplicative, cumbersome and inefficient. If a state demonstrates interest in an unanticipated activity through an unlisted activity request, it is highly likely that the activity has merit as a listed activity and likely that the state will make that request too. Streamlining these two 'request processes' into a single request process (*such that a state may request that NOAA consider its request to review an unlisted activity additionally to be a formal request to classify the activity as a listed activity*) would afford the state and future applicants a much more streamlined process for future permit applications of the same or similar activities. Furthermore, it would

provide greater predictability for the applicant, and more timely and cost-effective efficiencies for the state(s) and affected federal agencies.

Currently, under Subpart C, a federal agency submits a consistency determination for a general permit if the activity (listed or unlisted) will likely affect coastal resources (15 CFR §930.34). Oregon recommends that if an activity has been subject to Subpart C and becomes subject to Subpart D, through a state objection to a general permit, the activities under the general permit should not be subject to 15 CFR §930.54 (request to review an unlisted activity). The state should automatically receive the ability to review the activity under the general permit that has previously received an objection. In this instance, the federal agency has demonstrated reasonably foreseeable affects within the consistency determination document and the state has demonstrated reasonably foreseeable affects in the decision document. Requiring a state to produce an unlisted activity request for an activity under the same general permit that received an objection is redundant and is burdensome on all parties.

In light of quickly changing ocean conditions from a rapidly changing climate, new technologies that may be deployed in marine waters to increase energy or food security need appropriate coordination between states, industry, and the federal agencies. Coastal states have expertise in implementing federal consistency and can provide valuable input that should not be overlooked during this process. OCMP supports the Coastal States Organization comment letter and looks forward to a constructive discussion to improve federal-state-industry coordination, while preserving OCMP's ability to protect coastal communities, ocean-dependent uses, and marine ecosystems.

Sincerely,



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Oregon Coastal Program Manager
Oregon Department of Land Conservation and Development

Cc: Governor Kate Brown
Ocean Policy Advisory Council
Oregon Department of Fish and Wildlife
Oregon Department of Environmental Quality
Oregon Department of State Lands
Oregon Parks and Recreation Department
Oregon Water Resources Department
Oregon Department of Energy
Oregon Department of Geology and Mineral Industries