

David Bitts
President
Larry Collins
Vice-President
Lorne Edwards
*Secretary &
Treasurer*

**PACIFIC COAST FEDERATION
of FISHERMEN'S ASSOCIATIONS**



STEWARDS OF THE FISHERIES

www.pcffa.org

Noah Oppenheim
Executive Director
Glen H. Spain
Northwest Regional Director
Vivian Helliwell
Watershed Conservation Director
In Memoriam:
Nathaniel S. Bingham
Harold C. Christensen
W.F. "Zeke" Grader, Jr.

Please Respond to:

California Office

P.O. Box 29370
San Francisco, CA 94129-0370
Tel: (415) 561-5080
Fax: (415) 561-5464

Northwest Office

P.O. Box 11170
Eugene, OR 97440-3370
Tel: (541) 689-2000
Fax: (541) 689-2500

April 25, 2019

TO: Mr. Kerry Kehoe
Federal Consistency Specialist
NOAA Office for Coastal Management
1305 East-West Highway, 10th Floor
Silver Spring, Maryland 20910

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

Dear Mr. Kehoe,

Thank you for the opportunity to comment. I write on behalf of the Pacific Coast Federation of Fishermen's Associations, representing over 750 commercial fishermen on the West Coast, in response to your agency's Advance Notice for Proposed Rulemaking (ANPR), which seeks comments from industry and others on Procedural Changes to the Coastal Zone Management Act Federal Consistency Process. We believe that changes to NOAA's Coastal Zone Management Act (CZMA) federal consistency regulations to make the federal consistency process more efficient across all stages of OCS oil and gas projects from leasing to development, as well as renewable energy projects, are unwarranted.

Commercial fisheries on the West Coast are a vital component of the ocean economy, generating a cascade of additional jobs and functioning as a central driver of coastal commerce, communities, and culture throughout the region. The CZMA process has stood the test of time in serving to ensure that the states of California, Oregon, and Washington are able to protect and prioritize coastal-dependent uses like commercial fishing. Streamlining this process would diminish these states' ability to adequately consider their CZMA responsibilities and would diminish your agency's management of our nation's marine resources.

I am concerned that the term "efficiency" appears to be conceived in the ANPR as a proxy for speed. Prioritizing speed over the other important aspects of the consistency review process, such as scientific and environmental integrity and new information brought to bear by state review, consideration of alternatives, and the public input processes, is dangerous and could lead to the approval of poorly planned projects that jeopardize marine and coastal environments, coastal communities, and the economic wellbeing of our members. Regulatory changes that increase "predictability" seems to be a push for a set standard of what infrastructure and impacts will be approved. Consistency determinations are not one-size-fits-all. The reviews are context specific and the outcomes depend on the locations and actions proposed. We are deeply concerned that

increased “predictability” will alter the site-specific approval process and weaken states’ management and oversight of the coastal zone, contrary to the intention of the CZMA and to the potential detriment of our members.

Efficiency already exists as a fundamental principle in NOAA’s CZMA regulations. States are required to notify the Federal agency of their acceptance or rejection as soon as possible and there is a built-in timeline during which this must occur: “At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant’s certification.... If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant’s certification, the state’s concurrence with the certification shall be conclusively presumed.” 16 U.S.C. 1456

It is clear based on years of the CZMA process on the West Coast that months is a reasonable period of time that should not be shortened. Any changes to further expedite the process will result in states not having an appropriate amount of time to fully consider the impacts of the proposed project. A reduction of the six-month review period would inappropriately limit the extent of public participation in state processes.

Questions and Answers

1. *What changes could be made to NOAA’s federal consistency regulations at 15 CFR part 930 that could streamline federal consistency reviews and provide industry with greater predictability when making large investments in offshore renewable and non-renewable energy development?*

None; changes to NOAA’s consistency regulations are not appropriate at this time. They certainly would not provide greater predictability to commercial fishing businesses, the industry your agency is principally charged with serving and supporting. Any attempts to streamline the process will decrease the effectiveness of review and restrict the ability of our members to provide input on proposed projects that will affect their livelihoods and the living marine resources on which they depend. Shortening the duration, scope, or streamlining the requirements of the CZMA consistency determination process could result in the approval of poorly conceived or inappropriately scaled renewable and non-renewable ocean energy development projects. Such an outcome could result in the increased likelihood of legal challenges to objectionable or economically harmful projects.

2. *NOAA is seeking comments on whether and how NOAA could achieve greater efficiency to process an appeal in less time and increase predictability in the outcome of an appeal – while continuing to meet the requirements and purposes of the CZMA – by limiting the Secretary of Commerce’s review of an appeal of a state’s objection to an OCS oil and gas Development and Production Plan or Development Operations and Coordination Document, to information that the Secretary of Commerce had not previously considered in an appeal of an OCS oil and gas Exploration Plan for the same lease block. In addition, NOAA requests any comment on the types of new information that may be produced at different stages of OCS oil and gas projects to provide an indication of what information may be relevant to subsequent appeals... Therefore, NOAA is seeking*

comment on whether, in such a situation, it is efficient and effective to use the Secretary's override of the Exploration Plan as a precedent and limit the Secretary's review of an appeal of a state's objection to an OCS oil and gas Development and Production Plan or Development Operations and Coordination Document to information and issues not previously considered by the Secretary when deciding an appeal regarding the OCS Exploration Plan.

No, it is not effective to use the Secretary's override of the Exploration Plan as precedent or to limit the Secretary's review of an appeal.

The CZMA was constructed "To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied." 15 CFR 930.1

The CZMA already minimizes "duplicative effort and unnecessary delay". The proposed changes would instead minimize the Secretary's understanding of the proposal he is reviewing. In the example provided, time has passed between the initial Exploration Plan proposal and the Development and Production Plan or Development Operations and Coordination Document. Considering the amount of technical information in the document, it cannot be assumed that the Secretary can clearly recall the reasons for the initial appeal and for the override. Additionally, the Exploration Plan proposes different activities with different environmental, social, and economic effects than Development and Production Plan or Development Operations and Coordination Documents propose. It cannot be assumed that the override of the Exploration Plan rejection justifies the override of the Development and Production Plan or the Development Operations and Coordination Documents.

Thank you for your consideration. I appreciate the opportunity to provide feedback on behalf of our members and will continue to engage should you proceed in this effort.

Sincerely,



Noah Oppenheim
Executive Director