

# OCEAN CONSERVATION RESEARCH



*Science and technology serving the sea*

April 23, 2019

Mr. Kerry Kehoe  
Federal Consistency Specialist  
Office for Coastal Management, NOAA  
1305 East-West Highway, 10th Floor, N/OCM6  
Silver Spring, MD 20910  
Attention: CZMA Federal Consistency ANPR Comments

Cc: Sen. Kamala Harris  
Secretary Wilbur Ross  
Secretary David Bernhard  
Acting Director Walter Cruikshank

Re: Advanced notice of proposed rulemaking for procedural changes to the Coastal Zone Management Act federal consistency review process.

Dear Mr. Kehoe,

We appreciate the opportunity to comment on the Advance Notice of Proposed Rulemaking (ANPR) regarding procedural changes in the Coastal Zone Management Act (CZMA).<sup>1</sup> The original intent of the act was “preserve, protect, develop, and where possible, to restore or enhance the resources of the nation’s coastal zone” and since 1972 the Act has served very effectively to do just that. We are now in a time where all coastal states have reconciled their state interests with the federal protective mandate in such a manner that all coastal states have robust coastal economies, catering to diverse interests – from commercial and recreational fishing, to tourism, and commercial enterprises, while allowing access to the world markets through ports, and the protection of our nation by way of advanced US Naval facilities.

It is clear that the original intent of the act was to balance conservation with enterprise, with an ultimate objective of stabilizing coastal development so as to encourage conservation of the beauty of the coasts as an enduring legacy of our judgement without hobbling States Rights, or fettering the needs of all of the states of this Great Nation to pursue their respective interests.

The results of these efforts and regulatory framework have been successful to the degree that all US Coastal States are proud of their coastal assets, and love them to the extent that without exception, none of these states want to significantly modify how their coasts

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<sup>1</sup> Procedural Changes to the Coastal Zone Management Act Federal Consistency Process, 84 Fed. Reg. 8,628 (Mar. 11, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-03-11/pdf/2019-04199.pdf>.

are governed, and have clearly expressed that they do not want Federal interference in the way they manage their coastal assets.

It is abundantly clear that in wanting to preserve their coasts, ALL coastal states have decided that they do not want offshore oil and gas development off their shores, and they do not want to support it with on-shore fossil-fuel infrastructure. And it is not just the state governors who have answered to their citizen's concerns, over 2100 elected officials, 350 municipalities, 46,000 businesses, and 500,000 fishing families are opposing offshore oil and gas development.<sup>2</sup> And this opposition is growing daily with municipal resolutions, and public outcry.

So what is it about representative democracy that NOAA does not understand?

It seems that the only stakeholders interested in offshore oil and gas development are the very industries that stand to profit from these activities (and the Federal politicians that they have purchased) at the expense of the long-term health of our planet. In fact, it has become painfully apparent that the driving factor behind the proposed changes in the CZMA is that the Citizens of the Coastal States and their elected representatives are "interfering" with the oil and gas industry's development desires.

This has nothing to do with "streamlining" the process, and everything to do with handing our National Coastal Assets over to a private industry; an industry which has a very lousy track record in preserving the long-term natural values of these assets.

So in response to NOAA's request for comments:<sup>3</sup> Firstly, as indicated above, we believe that the CZMA has served, and continues to serve all US Citizens well. It has provided a reasonable balance between States Rights and National needs and therefore does not need to be modified or "streamlined" to better serve private industry.

Secondly,<sup>4</sup> NOAA could achieve greater efficiency in the appeal process if they didn't advance proposals that will inevitably end up in court due to Federal over-reach. The Agency can avoid lengthy litigation over attending to the Petroleum Industry's desires against the welfare and desires of US Citizens. It must be understood that by attempting to tie the hands of public opinion, and then forcing activities that the public doesn't want upon them, that the public will not just "sit down and shut up." By ignoring the overwhelming opinion of the public, NOAA and the Department of Commerce are setting themselves up for extra-regulatory court battles that would potentially last for years.

Regarding the types of new information admissible to initial and subsequent reviews and appeals to a State's objection to an exploration and development plan under CZMA<sup>5</sup>, it should be thoroughly established in the initial appeal to a State's objection, that the

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<sup>2</sup> <https://usa.oceana.org/climate-and-energy/grassroots-opposition-offshore-drilling-and-exploration-atlantic-ocean-and>

<sup>3</sup> <https://www.federalregister.gov/d/2019-04199/p-34>

<sup>4</sup> <https://www.federalregister.gov/d/2019-04199/p-36>

<sup>5</sup> <https://www.federalregister.gov/d/2019-04199/p-37>

Secretary has reviewed, and *understood* the data provided by the State (and the public) to substantiate their objection to an exploration and development plan.

We are still waiting responses to the over-arching Outer Continental Shelf Five-year plan. But what we have seen repeatedly is that the agencies have either not read, or not understood our critiques. Our critiques have included much more comprehensive examinations and mathematical models of seismic survey plans, (on the recently released Incidental Harassment Authorizations for the Atlantic Geophysical and Geological Surveys, for example), though the agency - NOAA in this case, had fallen back on extremely reductionist impact models and exposure metrics.

Without verifying that any information submitted for an initial State objection under the CZMA is understood, while nonetheless “including it into the record,” it might lead to the omission of this data in subsequent objections and appeals.

The leading directive in any objection and appeals process should be advanced under the rubric of “the best available science,” A rubric that the Agencies are currently failing to meet. It should also include the entire record of objections and appeals to a given project or proposal, so that any decisions of an Agency Secretary in “over-ruling” a State objection has a traceable provenance.

We understand that the Fossil Fuel industry has a lot of momentum and does not want to take “no” for an answer. But at some point they will be held liable for the disruption of our planetary climate along with all of the other toxic byproducts of their industry – from pesticides and synthetic fertilizers, to plastic pollution and smog. They will be indicted and convicted for destroying the quality of life for all living things on the planet. And as coastal cities and towns are subsumed by a rising sea; as hypoxic blooms increasingly kill our river deltas, coasts, and estuaries, and as ocean plastic increasingly shows up on our dinner tables, people will ask “why did we not stop this wanton destruction sooner?”

And those accessories to their crimes will also be held responsible – not only by the court of public opinion, but also by their own children and their own grandchildren.

We need to do better. And modifying the CZMA against the will of the people is not the way. We recommend dropping this proposal altogether.

Sincerely,

A handwritten signature in black ink that reads "Michael Stocker". The signature is written in a cursive, flowing style.

Michael Stocker  
Director