

**WRITTEN TESTIMONY OF  
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U.S. DEPARTMENT OF COMMERCE**

**BEFORE THE  
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES  
COMMITTEE ON NATURAL RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES**

**JULY 28, 2015**

Good morning, Mr. Chairman and members of the subcommittee. I am Dr. Holly Bamford, Assistant Administrator for NOAA's National Ocean Service and currently performing the duties of the Assistant Secretary for Conservation and Management in the National Oceanic and Atmospheric Administration. Thank you for this opportunity to testify on the Coastal Zone Management Act (CZMA or the Act), which has served as a cornerstone for national coastal policy for more than 40 years. We appreciate the efforts of the Committee to explore CZMA issues related to energy projects.

The CZMA consists of two principal programs: the National Estuarine Research Reserve System and the National Coastal Zone Management Program. NOAA administers and oversees both programs and provides a wide range of technical, educational, management and conflict resolution assistance to coastal states and territories, federal agencies and others.

The National Estuarine Research Reserve System is a network of 28 coastal sites designated to protect and study estuarine systems and represent a partnership program between NOAA and the coastal states. NOAA provides funding and national guidance, and each site is managed on a daily basis by a lead state agency or university with input from local partners. The research reserves collectively cover 1.3 million acres of estuaries and are focused on: **Stewardship** to keep the estuary healthy; **Research** to aid conservation and management efforts on local and national levels; **Training** local and state officials; and **Education** of thousands of children and adults through hands-on laboratory and field-based experiences.

My testimony covers the National Coastal Zone Management Program, specifically the importance of the CZMA in fostering state-federal coordination and cooperation through the Act's "federal consistency" provision, focusing on coastal and ocean energy projects. I will also briefly describe NOAA's CZMA responsibility for the Geological and Geophysical (G&G) seismic survey permits issued by the Department of the Interior's Bureau of Ocean Energy Management (BOEM).

## **THE CZMA AND THE NATIONAL COASTAL ZONE MANAGEMENT PROGRAM**

Our nation's coastal zone is vital to the well-being of our country. It is home to roughly half of the nation's population, supports ecologically important habitats and natural resources, and is essential to our economic vitality. According to the Bureau of Labor Statistics and Bureau of Economic Analysis 2012 economic data, the ocean and Great Lakes economy employed 2.9 million people – more employees than telecommunications, agriculture, and building construction combined. Businesses tied to the ocean and Great Lakes grew by 10.5 percent in GDP from 2011 to 2012—more than four times as fast as the U.S. economy as a whole. Coastal ports along our oceans and Great Lakes facilitated the import and export of \$1.5 trillion in waterborne cargo in 2012.

The CZMA created an innovative intergovernmental National Coastal Zone Management Program to address coastal issues of national importance, including planning for coastal community resilience, sustaining coastal economies, and planning for energy facilities and development, all in the face of the effects of climate change, coastal storms and man-made environmental accidents. The program is a voluntary partnership between the federal government and U.S. coastal and Great Lakes states and territories (collectively “coastal states”) authorized by the Act to address national coastal issues. The program is administered by NOAA. 34 of the 35 eligible coastal states participate in the program, with Alaska being the one exception.

To meet the goals of the CZMA, the national program takes a comprehensive approach to coastal resource management—balancing the often competing and occasionally conflicting demands of coastal resource use, economic development, and conservation. The program's key elements include:

- Protecting natural resources;
- Managing development in high hazard areas;
- Giving development priority to coastal-dependent uses;
- Providing public access for recreation;
- Prioritizing water-dependent uses; and
- Coordinating state and federal actions.

While the Act includes basic requirements for state partners, it also allows states the flexibility needed to design programs that best address local challenges and work within state and local laws and regulations. By using both federal and state funds, the program strengthens the capabilities of each partner to address coastal issues. The Act set forth national objectives to achieve these interests and recognizes that coastal management decision-making should be at the state-level with assistance and oversight from the federal government. These federally approved state coastal management programs promote sustainable coastal development, resilient coastal communities and long-term conservation, while recognizing national objectives related to military activities, energy, ports and transportation, fishing, recreation and other economic activity.

## **THE CZMA FEDERAL CONSISTENCY PROVISION**

There are many federal actions and decisions that affect coastal uses and resources. Recognizing this, Congress included a provision to mandate state-federal coordination and cooperation for coastal

management so that federal actions are consistent with the federally-approved state coastal management programs. This is called the “federal consistency” provision under section 307 of the Act (16 U.S.C. § 1456).

The consistency provision applies to federal agencies, as well as non-federal entities applying for federal permits and funding. While federal consistency does not authorize states to *regulate* federal agencies, lands, waters or activities, the consistency provision requires any proposed federal or federally authorized activities that have reasonably foreseeable effects on any land, water use or natural resource of the coastal zone (referred to as “coastal uses or resources” or “coastal effects”) to be consistent with the enforceable policies of federally-approved state coastal management programs. Pursuant to the CZMA, the coastal zone includes coastal waters and shorelands under state jurisdiction and varies state-by-state.

Under NOAA’s CZMA regulations, states may review activities outside of the coastal zone, including in federal waters, if the activity has reasonably foreseeable effects on the coastal uses or resources of the state. In order to review such activities, both the activity and the activity area that occurs outside of the coastal zone must be listed by the state in its coastal management program and the list must be approved by NOAA.

NOAA’s regulations also provide that unlisted activities may be reviewed on a case-by-case basis with NOAA approval. In order to obtain NOAA approval to review unlisted activities, a state must submit a request to review the activity and show that the activity may have reasonably foreseeable effects on the coastal uses or resources of the state.

There are four possible outcomes from a state’s CZMA review:

1. Concurrence (no further action by the state);
2. Conditional concurrence (if the applicant or federal agency does not agree to the conditions, the conditional concurrence becomes an objection);
3. Objection; or
4. No action (upon which state concurrence is conclusively presumed).

For those project areas that span the waters off more than one state, an objection by any one state would prevent the activity in the entire project area, even if other affected states concur.

Additionally, the CZMA establishes an appeal process for applicants to challenge a state’s consistency determination. Specifically, an applicant aggrieved by a state’s objection may, within 30 days of the state’s decision, appeal to the Department of Commerce to request an override of the state’s objection. The Secretary of Commerce has delegated authority to review the appeal to the NOAA Administrator. A decision on the appeal must be made within 265 days of receiving the notice of appeal, and the NOAA decision on appeal constitutes final agency action.

The consistency provision has worked effectively and efficiently; states have concurred with about 95 percent of the projects they have reviewed under the provision. NOAA regularly conducts federal consistency workshops that have helped state and federal agencies to better coordinate and collaborate on CZMA consistency requirements and improve the efficiency of the process.

The federal consistency provision is a unique statutory authority that gives states a strong voice in federal decision-making. The long-standing statutory provisions and NOAA's regulations provide an effective balance for state reviews, requirements of federal laws, national interest considerations and notice to federal agencies, applicants for federal permits, and the public. NOAA's federal consistency regulations were overhauled in 2000 and were further revised in 2006 to address issues related to offshore oil and gas— specifically, to impose timeframes for NOAA to decide appeals of state CZMA objections and to clarify other procedural requirements and deadlines to facilitate an expeditious process for state CZMA reviews.

## **THE CZMA AND OFFSHORE OIL AND GAS**

Whether an area of the outer continental shelf (OCS) will be open to oil and gas leasing is not a CZMA issue but rather a decision of the Secretary of the Interior in determining a five year leasing schedule in consultation with other interested Federal agencies (including the Attorney General and the Federal Trade Commission) and the Governors of potentially affected states. The Department of the Interior's (Interior's) Bureau of Ocean Energy Management (BOEM) also uses the lease sale planning processes, as well as the National Environmental Policy Act process, to ensure the States are aware and engaged early and have the opportunity to raise any concerns related to CZMA consistency.

For oil and gas activities on the OCS, there have been over 10,000 exploration plans and 6,000 development and production plans for the Gulf of Mexico, California and Alaska. Most of these have been in the Gulf of Mexico. State CZMA objections occurred mostly in the 1980s into the early 1990s; the last in 1995. These objections resulted in only fourteen CZMA appeals to the Secretary of Commerce. The Secretary overrode the state's objection in seven appeals, and sustained the state's objection in the other appeals. See <http://www.coast.noaa.gov/czm/consistency/media/appealslist.pdf> . As described below, Interior is currently determining whether it will hold lease sales for oil and gas exploration in the Mid- and South-Atlantic. The states will continue to have opportunities to review proposed OCS lease sales in the Mid- and South-Atlantic, should lease sale activity go forward.

## **BUREAU OF OCEAN ENERGY MANAGEMENT AUTHORIZATION OF GEOLOGICAL & GEOPHYSICAL SEISMIC SURVEYS UNDER THE OCSLA AND STATE CZMA REVIEW**

In January 2015, Interior issued a draft proposed 2017-2022 Outer Continental Shelf (OCS) Oil and Gas Leasing Program. The Draft Proposed Program, if finalized, would schedule fourteen potential lease sales in eight OCS planning areas: Ten sales in the three Gulf of Mexico planning areas (including the eastern Gulf); one sale each in the Chukchi Sea, Beaufort Sea, and Cook Inlet Planning Areas, offshore Alaska; and one sale in a portion of the combined Mid-Atlantic and South Atlantic Planning Areas. (<http://www.boem.gov/Five-Year-Program/>).

In anticipation of potential oil and gas leasing in the Atlantic, in the summer of 2014, several companies filed applications with Interior's Bureau of Ocean Energy Management (BOEM) under the OCSLA for permits to conduct Geological & Geophysical (G&G) seismic surveys in federal waters to determine resource potential. NOAA initiated coordination with BOEM, the applicants and the coastal states to

determine whether the G&G applications would be subject to review by coastal states under the CZMA federal consistency provision. Seven states (New York, Delaware, Maryland, North Carolina, South Carolina, Georgia, and Florida) submitted requests, pursuant to requirements in NOAA's federal consistency regulations, to NOAA's Office for Coastal Management to review the permits under CZMA. *See* 15 C.F.R. Part 930, Subpart D, § 930.54.

In November 2014, NOAA authorized six states (DE, MD, NC, SC, GA, FL) to conduct CZMA reviews of proposed G&G seismic surveys in the Mid-Atlantic and South Atlantic. The attached table shows the states that were authorized to review some of the applications and the disposition of those state reviews. With limited exceptions, state CZMA concurrence or presumed concurrence is a prerequisite for BOEM to issue G&G permits for the surveys. No state objected to any of the G&G applications and states have either concurred, conditionally concurred or the state's concurrence was presumed because the state failed to respond within the required timeframe. For conditional concurrences, the applicants and BOEM have agreed to the conditions. With no state CZMA objections, there will be no appeals to the Secretary of Commerce and BOEM may authorize the G&G surveys, pending other federal requirements.

NOAA found that these six states (DE, MD, NC, SC, GA, FL) were able to show that there could be reasonably foreseeable effects to commercial and recreational fisheries from the survey operations. Those survey operations involved the use of towed arrays of mechanical sound devices discharging pulses of compressed air followed by streamers that could be several miles in length and could result in potential user conflicts with fishing. For Florida, Georgia and South Carolina, NOAA further found that the surveys which used towed arrays and streamers could have reasonably foreseeable effects on turtles migrating to shore for nesting purposes.

However, NOAA did not approve the New York request because of the location of the survey sites and the fact that the state failed to show that the survey would have reasonably foreseeable effects on state uses or resources.

## **CONCLUSION**

In conclusion, NOAA believes that its CZMA procedures and assistance to states, federal agencies and applicants have worked well, in general and in the context of the G&G applications. Federal consistency has been a cornerstone of the national CZMA program and has strengthened the ability of coastal states to address the many challenges to provide for resilient coastal communities and healthy ecosystems, both of which are needed for the economic well-being of our coasts. Historically and as applied in the recent G&G reviews, the CZMA has improved the coordination and collaboration between states, federal agencies, NOAA and industry.

## Attachment I: Table of State CZMA G&G Reviews

**State Reviews of Geological and Geophysical Seismic Survey Applicants Submitted to the Bureau of Ocean Energy Management**  
National Oceanic and Atmospheric Administration – Office for Coastal Management  
July 22, 2015

In accordance with the Coastal Zone Management Act, states must complete their federal consistency review within three months of receiving the consistency certification (CC) and all necessary data and information (NDI) from the applicant unless the state and applicant enter into a “stay” agreement.

Applications	DE	MD	NC	SC	GA	FL
TGS E14-001	Conditionally Concurred 7/17/15	Conditionally Concurred 6/29/15	Conditionally Concurred 6/16/15		Concurred 5/26/15	Presumed Concurrence
SeaBird E14-002				Application withdrawn from BOEM.	Application withdrawn from BOEM.	Application withdrawn from BOEM.
GXT E14-003	Conditionally Concurred 5/19/15	Conditionally Concurred 5/11/15	Conditionally Concurred 4/23/15	Conditionally Concurred 5/16/15	Concurred 4/23/15	Presumed Concurrence
Western E14-004			No CC submitted yet.	No CC submitted yet.		
CGG E14-005	DE declined review following CGG’s changes in geographic scope of the project 2/20/2015.	MD declined review following CGG’s changes in geographic scope of the project 3/26/2015.	Conditionally Concurred 5/22/15	Conditionally Concurred 5/22/15	Concurred 5/26/15	Presumed Concurrence
Spectrum E14-006	Conditionally Concurred 5/1/15	Conditionally Concurred 4/30/15	Conditionally Concurred 4/22/15	Conditionally Concurred 5/1/15	Concurred 5/13/15	Presumed Concurrence
PGS E14-007			No CC submitted yet.			
ARKeX E14-008						
Spectrum E14-009	Conditionally Concurred 5/1/15	Conditionally Concurred 4/30/15	Conditionally Concurred 4/22/15			
TDI-Brooks E14-010						
GXT E15-001						Application withdrawn from BOEM.

*Color Code: Gray (no review); Yellow (no action by the applicant); White (review in progress); Green (state concurred or conditionally concurred); Red (state objected).*