January 11, 2002

James D. Watkins
Admiral, U.S. Navy (Retired)
Chairman, Commission on Ocean Policy
1120 20th Street, N.W., Suite 200 North
Washington, D.C. 20036

Dear Admiral Watkins:

Thank you for your December 12 letter regarding API's presentation before the Commission on Ocean Policy. API appreciates this opportunity to respond to the commissioners' follow-up questions. Some of the points raised in these questions were addressed in the joint industry statement submitted to the Commission by API on behalf of seven industry trade associations (November 30, 2001). The attached responses incorporate many of the same points.

Issues associated with the Coastal Zone Management (CZM) process represent a significant threat to the energy industry's ability to explore for, and produce, offshore oil and natural gas and, consequently also represent a substantial impediment to development of domestic energy supplies. Overlapping jurisdiction of multiple government agencies, coupled with conflicting federal laws (or conflicting interpretations of these statutes) have resulted in serious problems with the CZM process. Companies trying to find and develop offshore energy resources frequently encounter duplicative requirements that result in costly delays in obtaining necessary access and permits through the federal OCS exploration and production regulatory process, even when these activities would not adversely impact states' coastal zones.

A thorough airing of these issues by the Commission, with recommendations for substantive improvements to the CZM process, would be an important step towards resolution of these issues. To assist the Commission, we offer the following suggestions on how to revise the CZMA consistency review process to bring its implementation into harmony with Congress' original goals:

- ensure timely decisions in Department of Commerce override appeals by establishing a specific decision deadline;
- allow OCS exploration and production plans to contain a single consistency certification and determination to cover all activities under the plans;
- specify that the Secretary of the Interior, as the lead federal official responsible for the orderly and environmentally compatible development of federal mineral resources would determine information requirements for consistency certifications and would be the decision-maker regarding override disputes involving OCS activities;
- limit the territorial scope of a state's consistency review to direct impacts on that state's coastal zone and clarify that a state's authority does not extend to activities in other states; and
- ensure that state coastal plans give priority consideration to the siting of major energy facilities, as required by law, before they are certified by the Department of Commerce.

API, representing more than 400 member companies from all sectors of the domestic oil and natural gas industry, remains committed to assisting the commission as it develops recommendations for a coordinated and comprehensive national ocean policy that will promote several goals, including strengthening the nation's energy security, protecting ocean and coastal resources, and enhancing

maritime commerce. If you have any additional questions or comments regarding these responses please contact Linda Bauch at API at 202-862-8170 or bauchl@api.org.

Sincerely,

Betty Anthony
General Manager - Upstream

Attachment

**RESPONSES TO QUESTIONS POSED BY MEMBERS OF THE OCEANS COMMISSION**

**1. Are you worried that Japan, India, Germany and perhaps Russia are outspending us on gas hydrate research?**

It is not clear that all of these countries are outspending the United States. The U.S. Congress passed the Methane Hydrate Research and Development Act of 2000, which authorized the DOE to spend $5 million on research this year, increasing to $12 million by 2005, for a total authorization of $47.5 million over 5 years. For fiscal year 2001, the Department of Energy's Office of Fossil Energy has $10 million to devote to its natural gas hydrates research program. This represents the sum of funds expressly appropriated for this purpose under the Act and other funds usable for this purpose that are included elsewhere in the Office's budget. For comparison, India's gas hydrate research program calls for the expenditure of $47.1 million over an extended time frame. Germany's program will apparently spend about $14 million per year over the next three years on the role of gas hydrates in the carbon cycle. Regarding Russia, while the Messoyakha gas field in northern Russia is often used as an example of a hydrocarbon accumulation from which gas has been produced from hydrates by simple reservoir depressurization, it is not clear that Russia has a centralized hydrate R&D program. These countries can act as partners rather than competitors. For example, the United States is participating with Canada, Japan, Germany and India in field experiments to assess how hydrates respond to various extraction techniques. Since R&D in this area can be risky and expensive, partnering makes economic sense. The United States also has many other energy options for investing R&D funds, such as clean coal, coal bed methane, etc., whereas for other countries (such as Japan and India), these options are not readily available and thus more of their energy R&D can go to methane hydrates.

**2. What are the most egregious interagency jurisdiction issues that hamper sound economic practices for the industry?**

**3. What are the most significant examples of duplicative legislation that need to be addressed?**

The Coastal Zone Management (CZM) consistency process represents the most significant obstacle to offshore operators' continued ability to explore for, and produce, U.S. oil and natural gas in an environmentally compatible, timely and cost-effective manner. The Coastal Zone Management Act's policy directs "priority consideration being given to coastal dependent uses and orderly processes for siting facilities related to national defense, energy, [and] fisheries development…" However, "consistency" provisions elsewhere in the CZMA have increasingly been interpreted in a way that precludes multiple and balanced uses of offshore areas. These consistency provisions have been used to impede, and even block entirely, oil and gas exploration and production in the federal OCS. By impeding the development of domestic energy resources, these interpretations have diminished national energy security and reduced U.S. jobs and government revenues associated with energy development.

The Department of Interior's Minerals Management Service (MMS) has regulatory authority to develop and manage the mineral resources on the OCS as prescribed in the OCS Lands Act. The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) administers and financially assists states in implementing approved coastal zone management programs as established by the 1972 Coastal Zone Management Act. Particularly in frontier areas, the overlapping jurisdiction of the two agencies jointly regulating the oil and natural gas industry leads to lengthy delays with the Department of Commerce making duplicative decisions about federal energy and exploration and production. Although created to provide due process and appropriate consultation with states, the "consistency" provisions of the CZMA, as currently implemented, have created substantial, and costly, delays in federal OCS leasing

and production activities, even when there would be no adverse environmental impacts on states' coastal zones.

Moreover, recent changes in CZMA regulations have the effect of extending coastal states' jurisdiction far out into federal ocean waters. The revised CZM Federal Consistency Regulations issued by NOAA became effective January 8, 2001. These revised regulations significantly broadened the potential scope of review for coastal states. States can now assert extra-territorial review authority through vague and unsubstantiated objections to federal development activities on the grounds that those activities are, by definition, inconsistent with a state's coastal zone management plan, and therefore prohibited in all circumstances.

Under current CZMA consistency procedures, any coastal state could effectively veto oil and gas activities in federal waters despite the fact that the proposed federal activity is seaward of other states' coastal zones. Some states are reaching out as far as 170 miles to review, and possibly object to energy exploration and production activities. We seriously question whether Congress intended for each coastal state to have unlimited authority over federal OCS activities.Such unlimited extension of coastal state authority thwarts the flexibility called for by the OCS Lands Act.

For example, a recent U.S. Minerals Management Service Draft Environmental Impact Statement (DEIS) proposed Floating Production, Storage and Offloading Systems (FPSOs) for use in the Gulf of Mexico (GOM). The DEIS explained that ship-based systems would be used mostly in deepwater areas of the OCS in the Central and Western GOM. The FPSO systems would produce the oil in the conventional fashion, but would store it on board rather than direct it into pipelines. The FPSO systems will be unloaded regularly by tankers that would transport the oil to Gulf Coast seaports in Louisiana, Texas and Mississippi, in a manner similar to common practices elsewhere in the world. Several states commented on the DEIS. These comments included an objection to the proposed activities in federal waters hundreds of miles from shore, invoking the consistency provisions of the CZMA. Such an intrusion creates the potential for unaffected states to threaten the viability of deploying the FPSO technology that is expected to be essential to production of ultradeep prospects too distant from shore to viably tie back to closer facilities via pipeline. As a consequence, it could threaten the economic viability of development of a significant segment of the offshore resource base.

CZMA was designed to enhance communication and resolve conflicts between federal agencies responsible for permitting activities on Federal lands and coastal states charged with managing competing uses of coastal resources. Under both the OCSLA and the CZMA, no federal agency may issue a permit to conduct any proposed OCS activity unless an affected coastal state concurs with the lessee's consistency certification or unless the Secretary of Commerce overrides the state's objection. As noted earlier, the Congressional Declaration of Policy in CZMA states that:

- priority consideration be given to . . . orderly processes for siting major national defense and energy related facilities and,
- that there should be coordination and simplification of procedures in order to ensure expedited governmental decision making for managing coastal resources. Sections 303(2)(D) and (G).

Contrary to these policy goals, some states have used their consistency authority to stifle offshore development. This creates regulatory uncertainty for OCS lessees and hinders their ability to make the long-term capital investments necessary to meet our nation's increasing energy needs. Moreover, a Secretary of Commerce has upheld state objections to offshore development without meaningful scientific or technological justification. Even where a Secretary has overridden the state's objection, the Department of Commerce appellate process has been hampered by undue delays. This clearly does not reflect expedited governmental decision-making.

The Oceans Act requires the Commission to recommend ways to resolve inconsistencies. To assist the Commission, we provide five suggestions as to how the CZMA consistency review process might be revised to bring its implementation into harmony with Congress's original goal of integrating the CZMA and the OCS Lands Act. The CZMA review process should be revised to:

- ensure timely decisions in Department of Commerce override appeals by establishing a specific decision deadline;
- allow OCS exploration and production plans to contain a single consistency certification and determination to cover all activities under the plans;
- specify that the Secretary of the Interior, as the lead federal official responsible for the orderly and environmentally compatible development of federal mineral resources would determine information requirements for consistency certifications and would be the decision-maker regarding override disputes involving OCS activities;
- limit the territorial scope of a state's consistency review to direct impacts on that state's coastal zone and clarify that a state's authority does not extend to activities in other states;
- ensure that state coastal plans give priority consideration to the siting of major energy facilities, as required by law, before they are certified by the Department of Commerce.

Over 20 years ago, Congress made an explicit finding in the CZMA that priority consideration be given to the siting of major energy facilities in coastal areas. However, several problems in the consistency process have hindered these policy objectives and adversely impacted domestic energy security. Correction of these problems would improve the efficiency and fairness of the consistency process and resolve conflicts between these important Federal laws and in their implementation.

**4. How will the industry participate in developing a national ocean observing system?**

Integrated, long-term measurements can address scientific questions regarding the interaction of physical, biological, chemical and geological processes in the oceans. Major environmental processes occur over periods ranging from hours to decades, and in areas ranging from meters to the entire globe.
The once sharp distinction between research and operational ocean observing systems is becoming less applicable. The most resilient ocean observing system will have a mixed research and operational character. Observations that must endure for years to accomplish their scientific goals have a greater chance of support if they also serve practical users.

Technological advances during the past decades have made a global ocean observing system possible. These advances include new sensors, platforms, and communications hardware and software; also, long-term measurements of ocean salinity, air-sea exchanges, surface and subsurface mooring technology, remote operated underwater vehicles (ROVs), and acoustic sampling methods. Satellites now observe the sea surface temperature, winds, elevation and color. New communications satellites will dramatically accelerate the flow of data from *in situ* ocean sensors and reduce the cost of collecting that data.

Industry is already engaged in promoting and enhancing arrangements where offshore platforms can provide a research tool for the academic and scientific community. As industry continues to develop exploration and production technology for deeper and deeper waters, and to add to its operational expertise in the deep ocean environment, the scientific community may be afforded an opportunity observe atmospheric and oceanic dynamics and ocean ecosystems. Scientific research may be conducted in the vicinity of producing platforms, provided that such operations are compatible with safety and environmental protection. Another potential opportunity is the use of platforms no longer producing as

offshore research stations. With a growing number of platforms reaching the end of production, there may be benefit in pursuing this concept. While questions remain about this concept, its goals and what, if any, opportunities there may be for establishing such a system, through partnerships of all sorts, the industry, the research community and the public can benefit from a better understanding of our ocean environment.