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Admiral James D. Watkins, Ret.
Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Suite 200 North
Washington, DC 20036

January 21, 2002

Dear Admiral Watkins:

Thank you for contacting me regarding additional input to the U.S. Commission on Ocean Policy on issues of concern to the ocean industries. On behalf of the more than 300 members of the National Ocean Industries Association, it was my honor to be able to testify before the commission on November 14, 2001, just as it is with sincerest appreciation that I accept the opportunity to expand upon my remarks in writing.

In our capacity as the only national trade association that represents all segments of the ocean industries with an interest in the exploration and production of hydrocarbon resources on the nation's Outer Continental Shelf, NOIA can offer a unique perspective on several crucial issues before the U.S. Commission on Ocean Policy. The NOIA membership comprises companies engaged in numerous business activities ranging from producing to drilling, engineering to marine and air transport, offshore construction to equipment manufacture and supply, telecommunications to finance and insurance.

NOIA feels that the mission of the U.S. Commission on Ocean Policy is both vital and timely, and we are eager to support the commission in any way that we can. Please see the attached document for a detailed response to each of the questions you requested that I expand upon. Also, please do not hesitate to contact us for any additional supporting information, or with any further requests or inquiries.

Again, we greatly appreciate the opportunity to present our concerns to the commission.

Sincerely,

Tom Fry

1. What has been the impact of the recent expansion of marine protected areas on offshore industry? Do you think that equal weight has been given to environmental and economic considerations in establishing these areas?

Environmental protection and maintenance of the ecological balance in the ocean is of critical concern to NOIA and its members. NOIA's members are integrally involved in, and dependent on, marine resources 24 hours a day, 365 days a year. As such, maintaining environmental integrity and quality is of primary concern to us.

That being stated, NOIA finds it difficult to comment on the designation and expansion of marine protected areas (MPAs) with any specificity because of the numerous varying definitions of MPAs. Even on the National Oceanic and Atmospheric Administration's MPA website, it is stated, "A marine protected area has come to mean different things to different people, based primarily on the level of protection provided by the MPA. Some see MPAs as sheltered or reserved areas where little, if any, use or human disturbance should be permitted. Others see them as specially managed areas designed to enhance ocean use."

Within the last year, this confusion has in some sense been settled. In May of 2000, President Clinton issued the Marine Protected Areas Executive Order 13158. This defines an MPA as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." The effect of this Executive Order was to settle confusion about MPAs by making the MPA designation all things to all people. However, NOAA acknowledges that if it is to be meaningful, the MPA designation must have some formal defining operational criteria — a criteria that is as yet only in draft form.

However, to return to the Commission's question, some varieties of marine protected areas have been created and administered with a high degree of stakeholder consultation,

MPAs currently include, but are not limited to, designations such as National Marine Sanctuaries, National Estuarine Research Reserves, national parks, critical habitats, state conservation areas, state reserves and many others. Some of these areas are designated with equal consideration of both environmental and economic factors, while others are not.

At NOIA we are not in the business of designating protected areas, and as such we are reluctant to engage in a case-by-case critique of the appropriateness, or inappropriateness of past designations. However, as an association of businesses large and small, that live in, explore, and depend on the oceans and the natural resources that they harbor, we do feel that stakeholder consultation is critical to the success of any ecological protection initiative.

By way of demonstrating what we mean by 'stakeholder consultation', I would like to highlight a specific marine protected area that has shown a demonstrated record of

success with regard to protecting the environment, while taking into account both economic and energy concerns. That exemplary area is the Flower Garden Banks National Marine Sanctuary.

The Flower Garden Banks, which are located about 110 miles south of Galveston, Texas in the Gulf of Mexico, are home to one of the most pristine coral reef systems in the world. This sanctuary boasts a living, growing ecosystem that is entirely unique and thriving. It is also flanked on all sides by areas rich in hydrocarbon deposits — resources that have been developed for more than 18 years. Since monitoring began nearly two decades ago, no statistically significant changes have been documented that might be attributed to the industrial activity taking place nearby. In fact, coral growth rates have remained enviable.[1]

What has happened at the Flower Garden Banks offers an example of a program that has utilized science and partnerships to achieve the multiple-use goals of a healthy marine ecosystem and continued opportunities for resource development. NOIA would like to place what has happened there before the commission as a way of meeting the twin goals of energy security and environmental conservation.

From a philosophical standpoint, NOIA knows that conservation and protection of resources are critically important. We also believe that we must care for the land and oceans that support us now, so that they can continue to support future generations. However, too often the goal of resource protection is portrayed as an end in and of itself, rather than as a means of elevating the quality of life on our planet. Reliable and abundant supplies of energy are a primary reason that civilization is insulated in no small degree from harsh and unpredictable natural cycles. While this may seem like an academic point, we at NOIA believe that it is important to underscore why resource utilization must be balanced with resource protection.

2. Are you worried that Japan, India, German and perhaps Russia are outspending us on gas hydrate research?

In terms of public sector funding, the United States actually leads the world in gas hydrate research. According to the Department of Energy's Office of Fossil Energy, the U.S. has invested $17 million in gas hydrate research in FY 2001 alone, as compared to approximately $5 million in Germany and $10 million in Japan. India has committed to spend $56 million over the next five years on gas hydrate research, and Japan has committed $50 million — sure indications that two nations without our ready access to abundant hydrocarbons recognize the potential of this as-yet untapped resource.

It is difficult for NOIA to say how much is enough. However we steadfastly support research and development on this important issue. While the world's currently known natural gas reserves are estimated at approximately 5,000 trillion cubic feet, a 1995 U.S.

[1]Gittings, S.R. 1992 Historic data on Gulf of Mexico reef shows compatibility with drilling, production. Offshore May: 33-36.

Geological Survey appraisal of the onshore and offshore natural gas hydrate resources of the United States found that the mean (expected value) is estimated to be 320,000 trillion cubic feet of gas. This is in the United States alone!

While this assessment did not address the problem of hydrate recovery, clearly the potential of such an enormous resource is astonishing. Just as clear however, is the magnitude of the challenges still before us.

The growing recognition that natural methane hydrates exist on a massive scale presents numerous issues that require immediate and focused investigation. First, we need to know if gas hydrates can be part of the solution for the nation's long-term energy security. Also, because we now know that ongoing natural events result in the continual, and sometimes massive, release of methane from hydrate, we need to re-evaluate our current understanding of processes such as global climate and the evolution of the sea floor so that future policies may be based on sound scientific information.

The United States leads the world today in terms of technology and science. Our researchers and research institutions are second to none. However, NOIA feels that industry, government and universities must collaborate to maintain this leadership. Furthermore, our nation must continue to commit significant resources toward research and development. Technological predominance does not come on the cheap. Its rewards, however, are boundless.

3. You said, "At the end of the day we {Oil & Gas folks} need a simple yes or no answer from NOAA-MMS." "The CZM-OCS process [is broken]." Can you provide us a paper that lays out your concern?

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

Due to the serious nature of industry's concerns with the Coastal Zone Management Act, we felt that would answer both of these questions at once with a detailed summary of our problems and recommendations on this important topic.

Allow us to begin by stating that NOIA supports the Coastal Zone Management Act (CZMA) and its stated purpose of balancing the often competing and conflicting demands of coastal resource use, economic development, and conservation, through cooperative partnerships among federal, state, and local governments. In addition to acting as the vehicle for the distribution of nearly 100 million dollars per year for state coastal programs, the CZMA is intended to facilitate the coordination and cooperation of state and federal agencies in order to ensure expedited governmental decisionmaking for the management of coastal resources. As a part of this process, the CZMA includes "consistency" provisions, which are intended to accomplish this federal/state coordination. It is these provisions that are the primary focus of our remarks.

The consistency process is broadly divided into two types of consistency "determinations," i.e., those made directly by federal agencies when considering the effects of their own actions on a state's coastal zone, and those required for federal permit and license applicants whose activities may impact a state's coastal zone.

While NOIA supports the CZMA, we feel that there are certain aspects of the statute and the recently issued implementing regulation that must be fixed in order for the law to fulfill its intended purpose. Contrary to the specific legislative provisions within the law[2], implementation of the CZMA's consistency provisions have created regulatory uncertainty and unreasonably impeded outer continental shelf (OCS)[3] exploration and production projects as well as the siting of offshore energy infrastructure.

NOIA urges the Commission to recommend the following improvements in the CZMA process with respect to energy-related actions and projects, through appropriate statutory, rule and/ or policy amendments:

- clarification of the territorial scope of a state's consistency review of private permits;
- authorization of a single consistency certification determination for all permitting activities related to an OCS plan of exploration or development;
- authorization of the Secretary of the Interior to determine information requirements for consistency certification and legal criterion for overrides; and
- imposition of objective, functional deadlines to ensure timely decisions in override appeals.

If the direction that the CZMA consistency process has taken with regard to OCS activity is allowed to stand, all OCS lessees, as well as bidders at future OCS lease sales, will face stark uncertainties. The OCS leasing program should work to ensure that lessees that comply with their lease terms and operational requirements have a fair chance at a return on their lease investment. Instead, the CZMA consistency program has allowed states to unilaterally use the process as a tool in their philosophical opposition to offshore drilling. In a recent case-in-point involving a CZMA consistency dispute over the Manteo project offshore North Carolina, the Court of Federal Claims wrote in its opinion: "Common sense suggests that no sophisticated oil and gas company with many years of experience in drilling for oil in offshore leased tracts would knowingly agree to pay the huge, up-front considerations . . . for such tenuous and unilaterally interruptible drilling rights." The court's opinion is absolutely correct; unless changes are made the CZMA consistency process could seriously foil the cultivation of oil and natural gas from the

[2] The CZMA mandates state and federal cooperation "in order to ensure expedited governmental decisionmaking for the management of coastal resources". [Section 303(2)(G)] Furthermore, the CZMA statute mandates that "priority consideration be given to coastal-dependent uses and orderly processes for siting major facilities relating to national defense, energy, …in or adjacent to areas where such development already exists." [Section 302 (2)(D)]

[3] As used here, the term "outer continental shelf" is not a geologic term, but instead refers to an offshore area in the United States that begins at the line of demarcation at which state ownership of mineral rights ends and ends where international treaties dictate, typically 200 nautical miles seaward of the coast as stipulated under Presidential Proclamation 5030 which created the U.S. Exclusive Economic Zone.

OCS — an activity that currently account for approximately 25 percent of domestic energy production!

States have used the act's consistency provisions to delay and ultimately block offshore energy activities many miles seaward of their coastal zone. From the Destin Dome project offshore Florida to the Manteo project offshore North Carolina, states have demonstrated their willingness to use the consistency provisions as a de facto veto power over energy cultivation activities on federal lands.

How does this happen? Typically because the implementing regulation does not establish firm guidelines on the timing and finality of the decisionmaking process, or because the Secretary of Commerce has not acted in a timely manner to make decisions on consistency appeals, often dragging the appeals process out over several years. Below we have provided detailed analyses of the problem and made recommendations for solutions that we believe would maintain the integrity and original intent of the Act, while allowing for the continuance and enhancement of our vital domestic energy production.

Consistency Determinations and Appeals: Timeframes and Process

Currently, the state can revoke its consistency determinations if it deems that the activities have changed substantially, and deference is accorded to the state's opinion on this issue. This is nettlesome because it can impact projects already underway. For a deepwater exploration project, billions of dollars can be at stake. An operator should not be in fear that an inconsequential change to an otherwise approved drilling plan will cause the entire project to grind to a halt without justification. Changes in drilling plans are not uncommon. Even after test wells are drilled, drilling plans sometimes have to be changed because of problems that develop. Re-completions and facility de-bottlenecking are common operations. Drilling plans have to be flexible to allow an operator to efficiently develop a reservoir. Some threshold needs to be established before a state can arbitrarily shutdown an offshore operation.

Furthermore, by allowing a state to require a supplemental consistency determination (essentially restarting the consistency process) at its discretion, the regulations put offshore projects in a never-ending loop of approval. Changes necessarily occur between the time an activity starts and the time when the lengthy consistency process is finished. When a state has the ultimate control to determine when supplemental coordination will be required; as soon as one consistency process is finished, a state is able to require the start-up of another. This vastly increases uncertainty in critical projects that are already costly and cumbersome to get underway.

With regard to the CZMA implementing regulation, which was issued by the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) in December of 2000, NOIA feels that NOAA largely ignored ann important objective of the Coastal Zone Management Act (CZMA) when it proposed these regulations. That objective is, "the coordination and simplification of procedures in order to ensure

expedited governmental decisionmaking for the management of coastal resources", CZMA Section 1452(2)(G). The proposed rule complicates rather than simplifies the administrative process. Even in spite of Congress's 1996 amendment to the CZMA to add 16 U.S.C. § 1465, which was specifically intended to expedite the override decisionmaking process, these appeals continue to be drawn out by overlong agency commenting.

Commerce's implementation of the present requirement that the deadline for decisionmaking does not begin to run until after the administrative record is "closed." A CZMA amendment is needed to institute a definite deadline that is governed only by the time an appeal is filed. In practice the materials that comprise the administrative record for the Secretarial override decision are fully developed by the time a state's consistency objection is lodged. The override criteria can be readily applied to the already-assembled information. If unusual situations arise where legitimate reasons exist for an extension of the decisionmaking deadline, the 1996 amendment already allows a 45-day "safety valve" extension.

There is no foundation to any suggestion that the change could result in Secretarial decisions based on "incomplete information" regarding possible coastal impacts. Indeed, speculation regarding such vague and lingering information concerns essentially makes the case for the need for this new amendment. There will always be a federal regulatory mindset, shared by certain of the coastal states, that tilts towards preferring "one more study to be completed" before ever reaching a final decision. The need for predictability in these override decisions mandates a preordained time for review; otherwise, continuing abuse will be endemic to the decisional process.

Having the ability to obtain permit authorization for environmentally sound drilling activities within a reasonable timeframe is critical. Under the current CZMA framework, exploration and production (E&P) companies do not have a means of receiving timely authorization for drilling activities. Delays entail significant economic loss for businesses, the government, and the public.

Territorial Expansion of Consistency Review Authority

One problem that has grown more pressing recently is the expansion of the territorial scope of a state's consistency review. Although the legislative history of the 1990 CZMA amendments is clear that Congress did not intend to allow the expansion of the territorial scope of state consistency review of federal licenses and permits. Nevertheless, a number of states, as well as Commerce in its recent rulemaking, have taken the position that states may review activities and block permits issued for activities taking place in *other* states.

This concern was illustrated in dramatic relief when the State of Florida indicated that it would likely call for a consistency review if the use of floating, production, storage and offloading (FPSO) vessels were approved in federal waters seaward of Alabama and

Louisiana in its comments on the Minerals Management Service's Environmental Impact Statement on the use of FPSOs.

Another case that illustrates the obstacles created by this territorial expansion of consistency review authority is that of Marathon Oil Company's proposed Barracuda project, which is located more than 150 miles from both Alabama and Florida and about 104 miles southeast of the Mississippi River delta (Louisiana). The State of Florida has identified concerns and information deficiencies regarding Marathon's Initial plan of exploration on three separate occasions. While Marathon is currently working to address these concerns, none of which appear insurmountable, the area in question can hardly be described as relevant to Florida's coastal zone. This is an area south of Alabama and at least 150 miles seaward of any point in Florida. A Florida-initiated consistency review of this project is duplicative, obstructive, and clearly outside the intent of the CZMA.

The record is quite clear that the predominant federal government position rejected a state's authority to conduct consistency review for private permit applicants' activities outside of its boundaries. When passing the 1990 amendments to the CZMA, Congress made clear that no change to the scope of existing state review authority over private permits would occur. Accordingly, an amendment to the CZMA to change the definition of "enforceable policy" is necessary to overturn the Department of Commerce's newly minted and untenable position that expands a state's consistency authority outside its boundaries.

Secretarial Override Appeals Concerning OCS Activities

The already mentioned consistency review process of the Manteo project off North Carolina led to the Secretary of Commerce making unprecedented rulings declining to override North Carolina's objections and putting into question the Secretary's very recognition of the importance of future exploration of frontier OCS areas in environmentally sound ways. Commerce's recent CZMA rulemaking has now further put into question the application of the legal criterion for Secretarial overrides in a way that would work presumptively against frontier OCS exploration. These experiences, as well as consideration of the greater expertise possessed by the Secretary of the Interior with regard to OCS plans and their environmental effects, support an amendment to the CZMA to allow the Secretary of the Interior, as opposed to the Secretary of Commerce, to handle appeals of state objections to OCS Plans.

Single Agency Consistency Certification and "Adequate" Information

The oil and gas industry has experienced inordinate delays due to the lack of coordination between federal agencies in processing permits for OCS activities, especially delays involving separate state consistency reviews for those permits. There are also serious concerns raised by the recent CZMA rulemaking indicating that new "licenses or permits" involving heretofore-routine approvals of OCS activities will be subject to separate consistency review.

NOIA recommends enhancing the efficiency of state consistency reviews for OCS plans by developing a single consistency certification for all related permitted activities, including air and water discharges, conducted pursuant to either an exploration plan, or a plan of development and production. Contrary to any suggestion that such a change would unacceptably limit state consistency review information, DOI regulations require an exacting explanation of the federal applicant's plans, including air and water discharges.

Such a change would go far toward streamlining both federal and state bureaucratic processes, while also lending more predictability and certainty to industry and to coastal states.

Closely related to the issue of a single consistency certification determination, is our recommendation that the information supplied in support of a consistency determination be allowed to conform to a known set of information requirements identified by the Department of the Interior.

In the past, the consistency process has broken down too frequently based on unreasonable and unceasing information requests made unilaterally by a state. Moreover, certain states have lodged such consistency objections even while refusing to respond to the OCS permit applicant's request for a simple itemization of the information that the state may find lacking.

In the past, the Commerce Department's uncritical endorsement of state demands for "adequate information" ignores the realpolitik of state consistency review information requests. The CZMA experience has shown to any disinterested observer that certain coastal states have used purported findings of "lack of information" to deny consistency certifications and to obstruct OCS activity on very questionable grounds, especially considering the abundance of information on OCS oil and gas exploration and development that has been accumulated over the last 50 years.

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

In terms of duplicative laws that negatively impact not only the industry but the energy future of the nation as a whole, no better example can be found than the Executive Order and Congressional statute that have placed the entirety of the OCS lands off our East and West coasts totally off limits to hydrocarbon cultivation. These laws have placed moratoria on development in many areas where energy production could take place in accordance with our highest environmental standards — this impacts not only industry, but also our nation’s energy security and the American energy consumer.

The first congressionally imposed moratoria was put in place in fiscal year 1982 and encompassed 736 thousand acres in the Central California OCS planning area. Since

1982, congressional moratoria and administrative withdrawals by the Department of the Interior and the White House have grown to cover 266.5 million acres. This includes the entire east and west coasts of the lower 48 states, parts of the Alaska OCS and the majority of the Eastern planning area in the Gulf of Mexico

In June 1990, President Bush issued an Executive Order canceling lease sales and prohibiting future lease sales off the coasts of California, Florida, New England, Washington and Oregon for ten years and until necessary scientific studies could be completed. The president's decision was mirrored by Congress, which has imposed legislative moratoria in these same areas, renewing them every year since 1990.
In June 1998, President Clinton issued an Executive Order extending the existing moratorium on offshore oil and gas leasing until June 30, 2012 and permanently barred any new leasing in the 12 national marine sanctuaries. Clinton's decision included all areas currently covered by the legislative moratoria but did not expand the prohibitions to offshore areas where industry had access or to existing leases in moratorium areas.

What remains available for leasing includes the Central and Western Gulf of Mexico and a relatively small portion of the Eastern Gulf of Mexico planning area, and most of the Alaska OCS. It is in those areas that industry has achieved an unparalleled record of industrial safety and environmental performance, operating safely and efficiently for more than 50 years.

However, to return to the question of legislative duplication, the fact is that neither the Presidential nor the Congressional moratoria are necessary or required. Under the OCS Lands Act, the Secretary of the Interior is required to prepare and maintain a 5-year schedule of lease sales. Areas included in the 5-Year Plan are considered for leasing, but need not be leased. Areas not included in the plan, however, may not be leased — unless they are included in the next plan five years later.

NOIA understands that in certain cases, leasing areas of the OCS is not practicable for a variety of safety, political and environmental reasons. However, we feel that the current web of overlapping laws leaves the country in a situation where our policymakers have effectively denied themselves the flexibility necessary to effectively plan for and manage our energy future.

6. How will industry participate in developing a national ocean observing system?

The United States leads the world in its commitment to exploring and understanding the oceans. However, only a small fraction of research funding is available for ocean observations. At NOIA we believe that funding an ocean observing system to study and monitor the system that supports life on this planet should be made a priority. Such a system is essential to accomplish the task of expanding our pool of knowledge regarding the marine system. Furthermore it would aid our efforts to better manage marine resources, monitor the oceans relation to climate change, reduce ocean pollution, improve maritime safety and efficiency, and study natural hazards and phenomena.

Industry is eager to support the development and implementation of such a system in any way that we can. Already, NOIA members are studying ways in which we can better overcome concerns regarding the security of proprietary data to transfer non-proprietary data collected by industry to research and academic institutions. Developing conduits for the free and rapid flow of such information would go far toward helping us monitor the oceans, where our companies operate 24 hours a day, 365 days a year.

Furthermore, the ocean industries operate nearly 4000 producing platforms and drilling rigs in the Gulf of Mexico alone. Additionally we have miles of pipeline on the seabed, and thousands of vessels in the air and sea at any given time. We are interested in developing a cooperative partnership that would utilize this already existing infrastructure toward the ocean observation effort. Assuming that all safety, environmental and economic concerns are met, we could allow for the placement of instrumentation at our facilities and coordinate our research with government, academic, and other industry researchers.

We are interested in exploring what we can do to facilitate this issue further and we will work with our fellow ocean stakeholders toward this end.