



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

November 19, 2002

Dear Admiral Watkins:

In support of the Commission's development of recommendations for a coordinated and comprehensive national ocean policy and final report in 2003, the American Petroleum Institute, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the National Ocean Industries Association, the Petroleum Equipment Suppliers Association, and the United States Oil and Gas Association, are pleased to submit the following recommendations on ocean governance.

Basic Principles of Ocean Governance

The Commission has identified governance as one of four major issue areas under consideration, specifically the roles of federal, state, and local governments as they relate to the oceans and the management of living and nonliving marine resources. The Commission's September 2002 mid-year report, concluded that "[w]hat is lacking is a comprehensive strategy that would allow for the management of ocean resources within an integrated framework: one that would balance the protection of marine resources with responsible use. . ." The Commission noted that the current system includes 60-plus congressional committees and subcommittees overseeing almost 20 federal agencies and permanent commissions, governed by more than 140 federal ocean-related statutes.

The energy industry has participated fully in the Commission's year-long comment and education process. We have focused on the need to reform the Coastal Zone Management Act (CZMA) consistency review process in testimony and comments dealing with governance issues. Industry continues to recommend that the Commission should exercise caution in considering broad new ocean governance laws. Although problems such as delays in the CZMA process are well documented, the existing framework of federal law and agency responsibilities is generally adequate and appropriate to protect the marine environment and balance the use of ocean and coastal resources.

We also support the need for improvement, well-expressed in your September 17 letter to the President:

“...As the Commission completes its regional hearing schedule and enters its deliberative phase, we will use the wealth of information and advice we have received to develop recommendations to you and the Congress. These recommendations will set the foundation for the coherent, comprehensive, and long-range national policy to explore, protect, and use ocean and coastal resources as called for in the Commission’s enabling legislation. Implementation of such a policy may well call for new and creative governance mechanisms, which we fully intend to address in our final report to you in June 2003.

Coordination of ocean governance is the key. This can be accomplished under existing government structures, laws and regulations. An Ocean Policy Coordinator could be established in the Executive Office of the President, such as in the Office of Management and Budget. The purpose of this coordinator would be to establish and maintain a collaborative mechanism through which the various Federal agencies would agree upon and implement policy goals and objectives. The output of this process would be coordinated agreements with clear lines of authority and accountability, and a distinct improvement in overall ocean governance.

Recommendations for new and creative governance mechanisms should be guided by the following basic principles:

- Recognition of the role of clear national ocean resource priorities such as OCS energy production, and the need for mixed and balanced use of all resources;
- Maintenance of the DOI/ MMS role as manager of offshore energy development;
- Maintenance of existing federal administrative agency authorities and substantive ocean governance laws as the foundation for enhanced policy coordination and conflict resolution mechanisms;
- Utilization of existing federal administrative mechanisms to the greatest degree practicable, such as the Executive Office, Office of Management and Budget;
- Establishment of new or enhanced federal government roles as needed by Executive Order, without statutory or regulatory change;
- Evaluation of potential recommendations against well-documented resource and interagency problems to ensure that real potential for improvement;
- Equal consideration of environmental, economic, technical feasibility and scientific factors in conflict resolution and policy coordination;
- Enhancement of regulatory process certainty in ocean resource management;
- Enhancement of a public/ industry customer-based approach by government to ocean resource management (MMS/energy, NOAA/fisheries);
- Enhancement of interagency coordination based on accountability for advancement of national ocean resource priorities.

The Link between Ocean Governance and U.S. Energy Policy

One of the most important outcomes of the Commission’s ocean governance recommendations should be clear support for the President’s National Energy Policy. Industry and government must work together to demonstrate that energy production does not compromise environmental quality. The Commission’s recommendations should focus on placing fair and accurate information

regarding energy and the environment before the American people so that we can fashion a truly forward thinking energy policy. As President George W. Bush has stated, “America must have an energy policy that plans for the future, but meets the needs of today. I believe we can develop our natural resources and protect our environment.”

The Administration’s May 2001 National Energy Policy establishes several basic principles, which should be the foundation for the Commission’s recommendations relative to OCS energy resources. The Commission has a unique opportunity to focus America’s citizens and political leaders on these clear directions and critical choices in ocean and coastal resource policy. The following principles are as applicable to a successful national ocean policy as they are to a successful national energy policy:

- *“The Policy is a long-term, comprehensive strategy. Our energy crisis has been years in the making, and will take years to put fully behind us.”* Citizens of our coastal communities and states, and their elected representatives, recognize the need for domestic energy supplies and the problems caused by the leasing and drilling moratoria. As things currently stand, less than 20% of the federal OCS is open to offshore energy exploration and development — either currently under lease or scheduled for lease sales through the next five-year plan. We must move away from these self-defeating moratoria on natural resources and toward the sound management of our nation’s energy needs and supply.
- *“The Policy will advance new, environmentally-friendly technologies to increase energy supplies and encourage cleaner, more efficient energy use.”* Citizens of our coastal communities and states, and their elected representatives, need to understand the true environmental, economic and societal effects, impacts and consequences of OCS energy development. Industry too, must do its part to demonstrate that the new technological advances in drilling allow it to develop needed domestic supplies in an environmentally sensitive manner. In the same decade that we have seen phenomenal advances in offshore technology, the barriers to offshore oil and natural gas exploration have actually increased. We hope that the growing technological potential will motivate our policymakers to identify and recommend policies that will remove barriers to access and the development of offshore energy supplies.
- *“The Policy seeks to raise the living standards of the American people, recognizing that to do so our country must fully integrate its energy, environmental, and economic policies.”* This requires the citizens of our coastal communities and states, and their elected representatives, to recognize that America’s OCS resources, and the promise of American living standards, belong to all Americans. It requires the federal government leadership to implement a U.S. energy policy that takes a balanced approach to natural resource use, conservation, and preservation. Our ocean and coastal policy must recognize that citizens are also resources; an educated public may be our most valuable ocean and coastal resource.

The Governance Problem from an Energy Perspective

As we have previously put forth to the Commission, the most serious governance impediment to the nation’s offshore energy program currently is the lack of predictability caused by implementing regulations and statutes that govern state/federal consistency determinations under the Coastal Zone Management Act (CZMA). This lack of predictability, in terms of delays in agency permitting and planning, is among the most significant, preventable problems facing industry today.

Unfortunately the unpreventable problem of a declining resource base in the United States has converged with politically-driven decisions that increasingly restrict access to prospective natural resources off our shores. Even in areas where development is permitted, oil and gas exploration and production activities are frequently stalled or halted by a progressively less predictable approval process. This lack of predictability stemming from the CZMA consistency process represents the most significant obstacle to industry's ability to explore for, and produce, U.S. oil and natural gas in an environmentally compatible, timely and cost-effective manner.

You have previously been provided industry's detailed recommendations to assist you in examining and improving the implementing regulations and statutes that govern state/federal consistency determinations under the Coastal Zone Management Act. Enacted in 1972 with the goal of balancing and managing the often competing and conflicting demands of coastal resource use, economic development and conservation, through cooperative partnerships among federal, state, and local governments, the CZMA has achieved many successes in its time, including acting as a vehicle for the distribution of nearly 100 million dollars per year for state coastal programs.

The CZMA is also intended to facilitate the coordination and cooperation of state and federal agencies to ensure expedited governmental decisionmaking for the management of coastal resources. This presents an opportunity to support new and creative governance approaches as well. Industry 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:

- *Limit a state's CZMA consistency review of private permits over activities outside of its own coastal zone.* The CZMA was intended to grant a state the right to conduct a consistency review of federal licenses and permits within the territorial boundaries of that state and oil and gas activities occurring on the OCS that would have direct impacts in the coastal zone of that state. However, the statute has been implemented to allow states to review activities and block permits for activities taking place in and seaward of other states, sometimes more than 100 miles from the reviewing state's coast. Each affected state would still be allowed to conduct a consistency review for all licenses and permits within its boundaries, but unnecessary "extraterritorial" state and resource use or permit conflicts with other states would be prevented.
- *Allow a single consistency certification for an Outer Continental Shelf (OCS) plan to cover all activities, including air and water permits.* The energy industry has experienced inordinate delays due to the lack of coordination between federal agencies in processing permits for OCS, especially involving separate state consistency reviews for the permits. The efficiency of state consistency reviews for OCS exploration or development plans would be improved by using a single consistency certification for all related permitted activities, including air and water discharges.
- *Grant the Secretary of the Interior the authority to determine information requirements for consistency certifications.* Some states have used findings of a lack of information to delay decisions, deny consistency certifications and obstruct OCS activity. However, the Secretary of the Interior has adopted detailed information requirements for OCS exploration and development plans under the provisions of the Outer Continental Shelf Lands Act (OCSLA). The OCSLA specifies requirements for the Department of the Interior's consultation with

state coastal zone authorities regarding areas of particular state concern. The Secretary of Interior is in the best position to conduct an analysis of the information requirements.

- *Provide the Secretary of the Interior with the authority to determine state appeals concerning OCS energy activities.* Again, the Secretary of the Interior's expertise regarding OCS exploration and development plans and their environmental effects makes the Interior Secretary best suited to implement the law in this area.
- *Ensure timely decisions on override appeals. Appeals to consistency determinations are often drawn out by the Commerce Department's implementation requirement that the deadline for decisionmaking does not begin to run until the administrative record is closed.* The law needs a definite decision deadline governed by the date when the appeal was filed. The need for predictability in these override decisions mandates a predetermined time for review; otherwise, the decisionmaking process will always be potentially subject to policy-driven delays.
- *Examine efficient state consistency permitting practices that are already in place.* Many states engage in practices that streamline the consistency review process. Some states allow for consistency reviews of projects that may impact the environment during the projects "scoping" phase. Another state practice that could have a streamlining effect is the provision of a conditional consistency finding, pending final mitigation and monitoring plans.

The OCS leasing program should ensure that lessees that comply with their lease terms and operational requirements should have a fair chance at a return on their lease investment. Instead, the CZMA consistency process 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 a 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." [Conoco Inc. v. United States, 35 Fed. Cl. 309, 324 (Fed. Cl. 1996)] The court's opinion is correct; unless changes are made, the CZMA consistency process could seriously impede the development of oil and natural gas from the OCS — an activity that currently accounts for approximately 25 percent of domestic energy production.

Industry remains committed to working to support the Coastal Zone Management Act's stated purpose of balancing the competing demands of coastal resource use, economic development, and conservation through cooperative partnerships among federal, state and local governments. The Commission has an opportunity here to make a genuine difference in the sustainability of the U.S. offshore energy program that could have beneficial impacts for years to come.

The Governance Opportunity: Creative, Common-Sense Improvements

In "*DEVELOPING A NATIONAL OCEAN POLICY A Mid-Term Report of the U.S. Commission on Ocean Policy*", the Commission documented the following highest- priority ocean and coastal resource issues and problems, and observed that the comment process has "also exposed the Commission to a wide range of new and exciting opportunities to address those troubles":

- "Dramatic increases in population and pollution along our shorelines continue
- The depletion of our fish stocks continues

- Ocean pollution is a growing problem, much of it caused by nonpoint sources
- Water-borne commerce is essential to the Nation's economic wellbeing
- Oceans and climate are inextricably linked and climate change affects everyone
- Particularly important features of our ocean and coastal environment may require special protection
- Jurisdictional and legal confusion and ambiguity are not uncommon in our coastal laws.
- Multiple use problems are exacerbated by growing litigation, regulatory confusion and delay, and uncoordinated policy.
- The Commission is optimistic that it can provide answers to many serious challenges, yet it is concerned whether there is a sufficient sense of national urgency to implement a coordinated and comprehensive national ocean policy to address these challenges as contemplated by the Oceans Act of 2000.”

Industry endorses the development of a more comprehensive, integrated approach to these issues within the existing federal resource management structure; it supports a wide variety of new and creative solutions. These include a number of innovations before the Commission such as the following from the DOI and others:

- Expanded use of appropriate economic incentives to achieve goals beyond traditional regulatory schemes;
- Utilization of existing agency experience and identification of successful models/ best practices of coordination and management, such as resource management and energy development in the Central and Western Gulf of Mexico;
- Development of performance measures to evaluate improvements in federal ocean policy management and agency coordination;
- Enhanced coordination of cooperative programs to improve the scientific and technical base for reduction of hazards impacting coastal and marine environments;
- Enhanced, federally-led collaborative efforts to characterize the EEZ marine environment, and to provide the science and information base required to protect and develop coastal and marine resources;
- Establishment of protocols and mechanisms to consistently monitor resource protection programs and support realistic management adaptations as needed;
- Development of resource protection, use, and pollution reduction strategies based on improved understanding of the linkage across terrestrial, coastal, and marine systems, and human impacts;
- Development of a comprehensive assessment of the future EEZ energy resource potential, including identification of areas in which expanded deployment of existing technology is protective of the environment;
- Development of broadly acceptable and adaptable models of marine resource systems, supported across government, academic and resource user communities; and
- Improve coordination among federal and state agencies on watershed and oceanic research, sampling, and mapping.

The Foundation of Governance: Ocean Observation, Information, and Knowledge

Many of the innovations before the Commission to enhance ocean governance are based on expanding the pool of knowledge through scientific research and exploration. Industry is interested in doing its part to advance scientific understanding of ocean resources. While research

is not industry's primary goal or function, the production of energy frequently involves companies in intensive research and technological development. U.S. industry continues to lead the world in innovation. The extensive infrastructure deployed throughout the Gulf of Mexico is an example of this innovation and presents significant opportunity for cooperative progress in the scientific arena.

However, industry willingness to contribute to data sharing and scientific research should not be confused with willingness to shoulder the financial or liability burden of non-industry related research. Industry collects large amounts of data in the course of its daily operations, some of which are non-proprietary, and there may be opportunities for cooperation in data accumulation and sharing.

Additionally, industry deploys vessels and platforms throughout the Gulf of Mexico, some of which may be suitable for the mounting of instrumentation. However, serious concerns with regard to safety, liability, maintenance, and data usage must be resolved before industry can move forward with a cooperative program. Industry is interested in the potential for partnerships that would use already-existing infrastructure toward the ocean observation effort. Assuming that all safety, environmental and economic concerns are met, industry could consider placement of instrumentation at its facilities and coordinate in cooperation with government, academic, and other industry researchers.

In fact many such cooperative efforts are already underway. Industry and government researchers have successfully collaborated on a number of research initiatives. Recently, the Minerals Management Service presented the prestigious Corporate Leadership Award to a team of three industry scientists who helped lead a coalition of industry, government and academic researchers in conducting a study of migratory neo-tropical birds and their interaction with offshore platforms. The study, which involved the placement of birdwatchers at ten offshore platforms, was one of the first large scale documentations of birds actually engaged in trans-Gulf migration.

Other collaborative public-private research efforts currently underway are looking into the short-term, high velocity "loop currents" as well as weather forecasting. Additionally, numerous fields of research have benefited from the use of Remotely Operated Vehicles (ROVs), a technology advanced primarily by the offshore energy industry as it moved into progressively deeper waters. Now industry, government, and academic researchers alike use these unmanned vessels for oceanography, salvage and rescue, and biomedical marine research. This kind of investment in research and development by the petroleum industry will continue to provide scientific advancements with applications far beyond finding, producing and transporting natural gas and oil. These innovations begin with the natural gas and oil industry but they enrich the lives of all Americans.

Industry is interested in continuing to reach out to the scientific community in a meaningful way. Companies that are involved with OCS exploration and development rely on the oceans 24 hours a day, 365 days a year and are very interested in developing a greater understanding of the marine environment. Industry is studying ways in which it can better overcome concerns regarding the security of proprietary data in order that allow transfer of non-proprietary data to research and academic institutions.

Developing conduits for the free and rapid flow of such information would go far toward helping us better understand the ocean environment. But, the widely varying activities and equipment,

safety and liability issues involved with OCS exploration and production mandates that such cooperation be approached on case-by-case basis.

We recommend that the Commission support establishing a coordinating body composed of government agencies, academic representatives and industry trade groups could begin to tackle the complex logistics involved. An adequate framework may already exist in the National Office for Integrated and Sustained Ocean Observation (“Ocean. US”) and the National Oceanographic Partnership Program. A sub-group of this partnership, with Minerals Management Service as the lead agency might begin by tackling individual issues on a discrete basis and resolving concerns in a prudent manner.

The Key to Governance Improvement: Ocean Literacy and Future Leadership

Another critical element in developing and sustaining innovative approaches to ocean governance is the much-needed improvement in U.S. ocean literacy, and in the nation’s ability to attract people to ocean science and leadership positions.

Industry is also concerned about future talent and leadership in both the ocean and energy sciences. The offshore oil and natural gas industry has undergone a sea change in the type of talent that we need to attract. Thanks to revolutionary technological advancements, the industry’s workforce must now be more technically proficient than ever before. Contrary to the prevailing conception of the offshore oil workers as brawny roughnecks, companies now rely on teams of engineers, geoscientists, marine biologists and other highly skilled and highly trained technicians to run the mechanical marvels that drill and produce oil and natural gas in thousands of feet of water.

While technological advances have increased efficiency, safety and environmental performance, they have also uncovered a serious need for a new generation of young leaders in science and technology. Enrollment in petroleum engineering schools in the United States has fallen from a peak in 1983, when the two largest petroleum engineering schools in the country — Texas A&M University and the University of Texas — had a combined enrollment of 2,738 undergraduates in their petroleum engineering departments. Currently that number stands at 411.

Part of this decline is rooted in the dated perceptions of the oil industry. What many in this country still understand as a smokestack industry is now a knowledge-based commercial process that increasingly relies on the rapid development and application of technology to maintain competitiveness. At a recent World Energy Conference, the noted economist Lester Thurow stated, “The oil industry still produces oil, but it has been infused by so many new technologies that it should be thought of as one of the new manmade brainpower industries like biotechnology.” This change has shifted the industry’s focus to high-tech expertise.

Industry’s recruiting efforts at campuses are shifting into high gear and partnerships with academic institutions are beginning to turn this trend around. Companies are sponsoring scholarships at prestigious universities and working with masters and doctoral programs to ensure that promising students are aware of the challenges and opportunities that await them in offshore energy production. Some of the National Sea Grant programs are actively engaged in this effort. Each year the Texas A&M Sea Grant program sponsors an Industry Outlook Conference in which industry leaders and executives discuss economic and technological forecasts for the offshore industry before an audience of students and professionals.

Conclusion

The offshore energy industry will continue to support and assist the commission as it develops final recommendations for a coordinated and comprehensive national ocean policy. All Americans agree that we must including strengthen the nation’s energy security, protect ocean and coastal resources, and enhance maritime commerce. If you have any additional questions or comments regarding these responses please contact Tom Fry, National Ocean Industries Association at (202) 347-6900.

Sincerely,



National Ocean Industries Association



American Petroleum Institute



Independent Petroleum Association of America



Domestic Petroleum Council



International Association of Drilling Contractors



U.S. Oil & Gas Association