



**NORTH CAROLINA DEPARTMENT OF  
ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF COASTAL MANAGEMENT**



**JAMES B. HUNT JR.  
GOVERNOR**

**WAYNE McDEVITT  
SECRETARY**

**DONNA D. MORFITT  
DIRECTOR**

April 16, 1999

Attn.: Rules Processing Team  
Department of Interior  
Minerals Management Service  
MS 4024  
381 Elden Street  
Herndon, Virginia 20170-4817

Re: Proposed amendments to 30 C.F.R. §§ 250.203 & .204

Dear Rules Processing Team:

The Division of Coastal Management is the Governor's designee under the Coastal Zone Management Act, 16 U.S.C. §§ 1451-1465, for implementing North Carolina's Coastal Management Program (NC CMP). Since the adoption of the NC CMP in 1978, this division has reviewed hundreds of coastal zone consistency certifications submitted by various types of parties for a wide range of activities, including outer continental shelf (OCS) oil and gas exploration. Because North Carolina may again in the future be asked to review OCS exploration or development and production plans, we appreciate the opportunity to comment on your proposed changes to 30 C.F.R. §§ 250.203 & .204.

We applaud your efforts to coordinate MMS' regulations with those of the National Oceanic and Atmospheric Administration (NOAA) regarding information requirements and timing of consistency reviews. The inconsistencies between MMS' and NOAA's regulations have proved confusing. Your proposed amendments appear to present a more clear directive in this area.

Like many other states, we continue to be troubled by the failure of MMS' OCS plan review process to ensure that the states receive the level of information required to make informed consistency decisions. The decision whether to concur that an OCS plan is consistent with the state's CMP is one of the most complex, unique and technical tasks most state consistency programs will ever face. Therefore, it is imperative that the states receive in a timely manner complete and credible environmental impact data. Of course, the preparation of such information must not unduly compromise the efficiency of the OCS approval process.

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Initially, we suggest that paragraphs 250.203(f) and 250.204(i) be clarified to indicate that consistency review begins only when the state receives a copy of the OCS plan and consistency certification from the Regional Supervisor. The text of these sections could possibly be interpreted to mean that consistency review could begin when the state receives an OCS plan and certification from the applicant, regardless of whether MMS has deemed the plan submitted. We believe that the only sensible policy, and the only rule consistent with NOAA's regulations, is for the state review to begin after MMS has deemed the plan submitted. The state should not be forced to initiate its consistency review before MMS has even determined whether the plan meets the minimum federal requirements for submittal. Finally, NOAA's regulations plainly require that the Secretary of Interior, not the applicant, forward to the state a copy of the OCS plan and the consistency certification. 15 C.F.R. § 930.76(b).

Therefore, we suggest that paragraphs sections 250.203(f) and 250.204(i) be revised, in substance and in pertinent part, as follows:

“Consistency review begins when the State's CZM agency receives a copy of the plan, and consistency certification from the Regional Supervisor, and required necessary data and information as directed by 15 CFR 930.78.”

Secondly, we suggest that the proposed regulations be amended to require MMS to send to the state a final NEPA document -- either an EA/FONSI or an EIS -- when it forwards to the state a consistency certification for an OCS plan. In our experience, draft NEPA documents can be woefully incomplete and inaccurate. It is problematic for the state simultaneously to comment on the deficiencies and errors in a NEPA document, as permitted by NEPA, and to rely on that very document as the basis for its final consistency decision, as required by your regulations.

Requiring the Regional Supervisor to provide a final NEPA document in order to initiate state review will not delay the plan approval process and will improve state-applicant coordination. The process ought to proceed as follows: When MMS deems an OCS plan submitted, it forwards the plan to the state, pursuant to 30 C.F.R. 250.204(g). When the draft NEPA document is complete, MMS forwards that document to the state. Once the state has received the draft NEPA document, it provides a draft consistency review as soon as practicable. Upon completion of the NEPA document, MMS then forwards that document to the state along with the applicant's consistency certification, thus triggering the period for review by the state.

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This process should not delay either the exploration or development and production plan approval time tables. In either case, a draft NEPA document should be prepared and forwarded to the state well before MMS must take final action on the plan. As long as the final NEPA document does not vary significantly from the draft, the state would need little time in which to finalize its consistency decision after receiving the consistency certification and final NEPA document. *See* 15 C.F.R. § 930.79 (States must object or concur with certification “[a]t the earliest practicable time”).

Under this proposal, the state and the applicant will be required to exchange information and ideas during the decision-making process, which should foster closer coordination. Circulation of draft documents early in the process should ensure that all parties are aware of the others’ primary concerns. This should allow parties to identify and resolve potential conflicts early. Currently, we are using a process substantially similar to this for Corps of Engineers permits. We have found that it benefits all parties and does not delay the permitting process. We suggest that the proposed rule be revised accordingly.

Additionally, we request that the proposed process occur for all states, not just those whose “federally approved coastal management program requires a DPP EIS for use in determining consistency.” The language proposed by MMS would unnecessarily require each coastal state to engage in a rule amendment and approval process -- an extra procedural burden on the states which should not be required before they can benefit from the rule change.

I trust that these suggestions will add to the clarity and functionality of the proposed rules. If you have any questions, please call Kim Crawford or Steve Benton at 919/733-2293. Again, we thank MMS for its efforts in revising these regulations and for the chance to provide input drawn from our experience in this area.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donna D. Moffitt".

Donna D. Moffitt