CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Click here to go to original staff report

F8d

December 10, 2014

To: Coastal Commissioners and Interested Parties

From: Alison Dettmer, Deputy Director
Mark Delaplaine, Manager, Energy, Ocean Resources and Federal Consistency Division

Subject: **Revised Addendum to Proposed Changes to the California Coastal Management Program (CCMP) List of Federal Licenses and Permits Subject to Federal Consistency Review**

This addendum provides several clarifications to the staff report (and corrects a mis-numbering). Additions are shown below in underline and deletions in ~~strikethrough~~.

Proposed Revisions to the Staff Report

Page 14, Proposed NRC Listing:

2. Nuclear Regulatory Commission **(NRC)**:

a. Permits and licenses required for siting and operation of nuclear power plants, approvals of nuclear power plant license termination plans and, prior to the approval of such license termination plans, the approval to release part of a nuclear power plant facility for unrestricted use.

Page 15, Proposed STB Listing:

8. Department of Transportation - Surface Transportation Board (STB):

a. Permits for railroad construction (49 U.S.C. § 10901).

b. Exemption from service requirements for rail transportation and applications for rail line abandonments (49 USC. §§ 10502, 10903).

c~~b~~. Removal of trackage and disposition of right-of-way (49 USC. § 10101 et seq.).

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

F8d

November 20, 2014

TO: Coastal Commission and Interested Parties

FROM: Charles Lester, Executive Director
Alison Dettmer, Deputy Director
Mark Delaplaine, Manager, Energy, Ocean Resources and Federal Consistency Division

SUBJECT: Proposed Changes to the California Coastal Management Program (CCMP) List of Federal Licenses and Permits Subject to Federal Consistency Review

---

I. BACKGROUND

CZMA Listing Process
The Federal Coastal Zone Management Act (CZMA) authorizes states with Federally approved coastal management programs to review for consistency with those programs federal license and permit activities that affect land or water uses in the coastal zone (16 U.S.C. § 1456 (c)(3)(A)). On November 7, 1977, the U.S. Secretary of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), approved the California Coastal Management Program (CCMP), finding that the program met the requirements of the CZMA, as amended (16 USC §§ 1451-1464), and the CZMA regulations governing state program approvals (15 CFR Part 923).

The CZMA regulations governing the federal consistency review process (15 CFR Part 930) define "Federal license and permit activity" as "any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant" (15 CFR § 930.51). Federal leases other than Outer Continental Shelf (OCS) leases are included within this definition (as will be described below, OCS leases are treated separately under the CZMA and its regulations). Under the regulations (15 CFR §§ 930.53-930.54), to review federal licenses and permits, a state must either include a list of such licenses/permits in its approved program, or, for other federal licenses and permits, must request and obtain permission from NOAA's Office for Coastal Management (OCM) (formerly, Office of Ocean and Coastal Resources Management (OCRM)) to review the activity (as described below).

The Commission's CCMP List of Federal Licenses and Permits was part of the originally approved CCMP, published in the State of California Coastal Management Program and Final Environmental Impact Statement (CCMP/FEIS) (Chapter 11, pages 91-92 (**Appendix D**)). This list is also posted on the Commission's federal consistency page of its website (http://www.coastal.ca.gov/fedcd/listlic.pdf) and is included in **Appendix A**.

For activities on this list, the Federal agency may not issue the license/permit until the applicant for the license/permit has submitted a consistency certification to the Commission and has received Commission concurrence with that certification. If the Commission objects, the Federal agency may not issue the license/permit unless the applicant appeals the objection to the Secretary of Commerce, and the Secretary overrides the Commission's objection (15 CFR Part 930, Subpart H). If the Commission has not acted within six months of receiving (and filing) the certification, the Commission's concurrence may be presumed (15 CFR § 930.62)).

Under 15 CFR § 930.53(c), a state may amend its list, after consultation with the federal agency and after holding public hearings on any proposed changes, by submitting the change to OCM under the program change procedures (15 CFR Part 923, Subpart H).

The staff has developed the list described on the following pages in light of the experience gained since the Commission commenced conducting federal consistency reviews. The Commission's existing CCMP List is 36 years old, and during that period, a number of changes have taken place in the federal regulatory scheme. In addition, the Commission has gained experience in complying with the "unlisted permit" review process described above as to the types of federally-permitted activities likely to affect the coastal zone. Inclusion of activities on the CCMP List is intended to: (1) give notice to applicants of their consistency certification responsibilities under the CZMA and CCMP; (2) minimize the chance that an activity with significant coastal zone effects will avoid consistency review because it goes unnoticed during the brief (30-day) notice period provided by federal regulation for unlisted activities; and (3) eliminate uncertainty and reduce time-consuming procedures which must be followed to obtain OCM authorization on a case-by-case basis to review activities not on the CCMP List.

The paragraphs that follow describe how the various federal consistency procedures function, and other relevant matters, including: (1) the difference between "listed" and "unlisted" federal permits; (2) a later phase of proposed CCMP List modifications which will address federally permitted activities located fully outside the coastal zone; (3) the difference between federally permitted activities and federal agency activities; (4) several workload statistics; (5) the coordination the staff engaged in when compiling the proposed list additions; (6) comments received; and (7) responses to those comments. These background discussions are then followed by: (1) a **motion to adopt** the proposed list (page 8); (2) a summary of the proposed changes; (3) the existing CCMP List; and (4) the verbatim language of the proposed changes (in tracked changes mode). Correspondence received is attached as **Appendix E.**

Unlisted Permits

If a state wishes to review a federally licensed or permitted activity that is *not* on its approved list, within 30 days of receiving notice of the activity the state must notify OCM, the applicant, and the federal permitting agency, of the state's intention to review the activity for consistency with the CCMP (15 CFR § 930.54). After reviewing written comments from the parties, OCM will determine whether the activity "can be reasonably expected to affect the coastal zone of the state" and thus require consistency review (15 CFR § 930.54). If OCM grants the state's request

to review the "unlisted" activity, then the same stay on federal agency issuance of the license/permit applies (i.e., until the consistency review process is concluded, as described above in the first paragraph on this page).

Activities Outside the Coastal Zone and Geographic Location Descriptions (GLDs)
The same procedure for "unlisted" permits also applies to listed permits where the activity is located completely outside the coastal zone (15 CFR § 930.53(a)(2)), *unless* the state has included within its CMP (or amended it to include) a Geographic Location Description (GLD) describing activities and their locations outside its coastal zone that would cause "reasonably foreseeable effects" on the coastal zone (15 CFR § 930.53(a)(1)). The currently-approved CCMP does not contain any GLDs for its listed permits, as staff resources have not yet been available to complete this task. Staff resources permitting, the staff intends to develop GLDs for several of the licenses and permits on the CCMP List. Any such future changes to the CCMP List would follow the same process as discussed in this staff report for the currently-proposed changes.

Coastal Development Permits
Under the CCMP, receipt of a Commission-issued coastal development permit (CDP) replaces the need for a consistency certification for a "listed" federal permit.[1] If an applicant receives a locally-issued CDP, the applicant would be potentially subject to the requirements for a consistency certification for a listed permit; however, in practice, the Commission staff routinely waives such requirements. In terms of the volume of federal permits, the vast majority of CCMP-listed federal permits are U.S. Army Corps of Engineers "Section 404" (and some "Section 10") permits, and these are predominantly for activities located in the Commission's original or appeals jurisdiction, which provides the Commission with alternative review mechanisms under State law (i.e., CDPs and appeals reviews).

Federal Agency Activities
Under the consistency regulations, activities that are carried out by federal agencies are not reviewed under the "listed" federal permit procedures. The consistency regulations state: "The term 'applicant' does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part" (15 CFR § 930.52 (also reflected in §930.31(a)). This means, among other things, that the Commission reviews them as consistency determinations (not certifications), and that they are not subject to the "listing" requirement for federally permitted activities (i.e., they are reviewed under Subpart C, not Subpart D, of the CZMA regulations).

[1] The CCMP (Chapter 11, page 92) states: "The issuance of a Coastal Commission permit … will be deemed to be a determination by the State that the proposed Federal license or permit activity is consistent with the management program, and no further certification will be required." Also, a project consistent with a Port Master Plan (in the Ports of Hueneme, Los Angeles, Long Beach, or San Diego) that needs a listed federal permit would also be "deemed consistent" for federal consistency purposes (PRC 20 § 30719).

Historic Consistency Workload
The majority (73%) of the Commission's federal consistency reviews over the past 36 years have been of federal *agency* activities. Of the remaining 27% of the Commission's federally consistency review, (i.e., those of federally *permitted* activities), the vast majority (over 90% of these reviews) have been either offshore energy projects on the OCS, U.S. Army Corps of Engineers permits (i.e., "Section 404" permits for fill of "Waters of the U.S.", "Section 10" permits for structures affecting navigation, or "Section 103" permits for dredge disposal), and EPA NPDES permits for pollutant discharges.

Coordination and Consultation
The Commission staff initiated the process of updating and making changes to the CCMP List by providing written notice, on June 17, 2014, to each of the federal permitting agencies potentially affected, requesting their input and comments on proposed changes. The staff has made further refinements to the proposed changes in light of the federal agency responses and interagency discussions which ensued.

Preliminary Hearing/Correspondence
On October 10, 2014, the Commission scheduled a preliminary hearing on the proposed CCMP List changes is to seek public, other agency, or any interested party comments on tentatively proposed changes to the CCMP list. Prior to the hearing, the Commission staff received correspondence from a number of the federal permitting agencies and the Center for Biological Diversity (**Appendix E**).

Comments and Responses

Federal Agency Comments
The Commission staff received five letters from federal permitting agencies supporting the proposed CCMP List additions, and one raising concerns over the proposal. The staff contacted the remaining federal permitting agencies, which indicated their support for the proposal through email or telephone communications. The federal agency indicating it had concerns was the U.S. Fish and Wildlife Service (Service) (letter to Charles Lester, Sept. 26, 2014 – **Appendix E**). Those concerns were over the staff's initial proposal to add the following to the CCMP List:

> **U.S. Fish and Wildlife Service (USFWS):** Incidental take permits (ITP's) associated with Habitat Conservation Plans (HCPs) or Safe Harbor Agreements (SHAs).

The Service's concerns and questions can be summarized as follows:

1. The development of HCPs/SHAs can be a complex negotiative process. Without more clarity about how Commission consistency review would occur, Commission review could involve delays and serve as a disincentive to the development of these plans.

2. If the Commission pursues listing these permits, the Service requests that the Commission restrict its review and regulatory oversight to areas within the coastal zone (as opposed to an entire plan area). This Service believes this would simplify review and meet the intent of the CZMA.

3. The Service is concerned over the potential for the Commission to "veto" a plan. To address this concern the Service asks the Commission to develop standards for determining adequacy and a resolution process to bring a plan into compliance with such standards.

4. HCPs/SHAs are "significantly different" than the other types of federally permitted activities on the CCMP list, in that the goals of the plans are synonymous with Coastal Act broad habitat conservation/protection goals, and because other CCMP listed permits are "primarily for federal landowners (unlike HCPs/SHAs).

5. The Service urges the Commission to reconsider listing these permits and offers three alternative mechanisms the Commission might use to achieve its purposes. These alternatives could involve the Commission:

(a) becoming involved as a stakeholder during development of the plans, and providing public comments during official comment periods;

(b) working with the California Department of Fish and Wildlife and allowing it to be the Commission's "agent" during plan development; and

(c) identifying standards upfront that HCPs/SHAs could be held to (an example provided would be a setback from sensitive areas) that, if identified early could help inform the planning process.

Staff Response
The staff will provide brief responses to these comments at this time. However in light of the comments, the staff believes the most appropriate way to address the Service's concerns is to engage in further dialogue with the Service about how the Commission should be involved in future HCP/SHA planning efforts, and how future interagency coordination can be improved. To enable those discussions to occur, the staff has removed Service incidental take permits associated with HCPs/SHAs from the proposed CCMP List at this time, with the intention of adding (or considering adding) them at a later date, pending further discussions with the Service.

The staff agrees with the Service that the negotiations the Service conducts in developing these plans are complex, at least for those HCPs/SHAs that involve many landowners. The staff disagrees with the Service's statement that characterizes other federally *permitted* activities as being located predominantly on federal land. As discussed above (page 4), while it is true the majority of the Commission's federal consistency reviews are of federal agency activities, most of which occur on federal land, this not true of the Commission's federally permitted activity

reviews. Federal agency activities that are also federally permitted are not reviewed under the procedures applicable to federally permitted activities (see page 3). Thus, only a small percentage of the federally permitted activity reviews are for activities occurring on federal land.

In terms of timing, the Commission staff makes every effort possible to assure that the Commission's six-month (maximum) federal consistency review period (for Subpart D activities) runs as concurrently as possible with other regulatory and planning timeframes, such that it is rare that a federal consistency review would result in substantial delays to other planning, permitting, or environmental documentation processes. In fact, as explained on page 2, one of the benefits to listing a federal permit can be to shorten the review process, by eliminating the step of requesting permission to review an unlisted permit.

The staff intends to explore further with the Service ways in which to improve transparency and assure that Commission reviews of these activities would not create the disincentives the Service fears. To be thorough these discussions will necessarily involve consideration of all local coastal planning, coastal development permitting and appeals, and federal consistency reviews under the Coastal Act and the CZMA. At the same time the staff is sensitive to the reality that, if the Commission staff is *not* involved in a timely manner in the process, a subsequent Commission request to review an unlisted permit, or other Commission regulatory or planning decisions taken under the Coastal Act or the CZMA, can be perceived as a " late hit" because they were not anticipated earlier in the planning process. The staff believes the Service's letter reflects an understanding that greater clarity and transparency as to the relationship between the Service's and Commission's regulatory and planning functions would benefit all parties and processes. The staff also agrees with the Service that the overall broad Coastal Act habitat protection goals and Endangered Species Act (ESA) HCP/SHA planning goals are indeed harmonious.

At the same time it must be noted that there are significant differences between the Service's determinations under the ESA and the Coastal Act requirements, including differing definitions of species and habitats to be protected, as well as differing standards applied and conclusions reached. These differences were well illustrated during the Commission's review of the City of Carlsbad's Local Coastal Program amendment and Consistency Certification for its Habitat Management Plan, which was a subcomponent of a larger San Diego County Multiple HCP. While that plan was largely outside the coastal zone, the Commission was concerned over development of a golf course within the coastal zone that conflicted with the LCP and Coastal Act habitat policies. The Commission requested permission to review the Service's ITP for the Plan, OCRM granted the Commission's request, and the City submitted a combined LCP amendment and consistency certification to the Commission ((LCPA 1-03B/CC-007-03). In its findings, the Commission noted:

> *Implementation of this large-scale approach to habitat conservation will allow some development involving incidental take of listed species and/or environmentally sensitive habitat in those areas where it is most appropriate, in order to preserve the largest and most valuable areas of contiguous habitat and their associated populations of listed*

> *species. Although the goals of the HCP and NCCP[2] processes include maintenance of species viability and potential long-term recovery, impacts to habitat occupied by listed species are still allowed. This approach differs from Coastal Act policies regarding ESHA, which provides that when a habitat must be considered environmentally sensitive (e.g., because it has become especially rare and/or provides crucial habitat for listed species), impacts to the habitat should not be allowed except for uses that are dependent on that resource.*

During the Commission's review, the Commission and the City collaborated to strengthen coastal zone habitat protection. With that additional protection, the Commission was able to find the plan consistent with the Coastal Act under the "conflict resolution" policy (Section 30007.5). The Commission found:

> *The Commission finds that the draft HMP would allow impacts to individual areas of ESHA for uses that are not dependent on the ESHA, which is inconsistent with Sections 30240 of the Coastal Act. However, the Commission finds that the coastal resources of the LCP area will be, on balance, best protected by concentrating allowable development adjacent to existing urban services and other developed areas. Additionally, greater benefit will be obtained from preserving large contiguous areas of the most environmentally sensitive vegetation and wildlife areas rather than preserving all fragmented pieces of habitat in place.*
>
> *In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that a substantial conflict exists between two statutory directives contained in the Coastal Act. In this case, as described above, the draft HMP is inconsistent with Coastal Act policies that protect environmentally sensitive habitat area. Although the City has proposed changes to the HMP and associated policies of the certified land use plan that would delete potential impacts to wetlands in the coastal zone, impacts to environmentally sensitive habitat would still result. However, to deny the LCP amendment based on this inconsistency with the referenced Coastal Act requirements would reduce the City's ability to concentrate proposed development contiguous with existing urban development, and away from the most sensitive habitat areas, as required by Section 30250. If the LCP amendment is not approved, dispersed patterns of development will occur that are inconsistent with Section 30250. Denial of the LCP amendment would also prevent the resource protection policies of the LCP from being upgraded to clearly protect ESHA that is not located on steep slopes.*

The staff understands that it would simplify matters if the Commission could limit its review to areas within the coastal zone, and that a number of past HCPs have been adopted that only contain limited lands within the coastal zone. However, the standard for effects under the CZMA does not allow such simplification; an activity that affects the coastal zone is subject to consistency review regardless of location – the standard is simply whether the activity affects the

[2] Natural Communities Conservation Planning

resources of the coastal zone. In addition, the very complexity of the planning process the Service cites involving multiple landowners means that it is difficult to change one part of a plan without affecting another part; the plans are intentionally and carefully crafted to maximize habitat continuity and migration patterns, and must necessarily be looked at holistically. The Commission would certainly, as the CZMA intends, limit its review to *effects* on coastal zone resources. Thus, activities under plan areas located inland of the coastal zone boundary that do not involve effects on coastal zone resources would not be subject to Commission consistency reviews. At the same time, as the Carlsbad example discussed above illustrates, for the interim period while the Commission staff continues to explore interagency working options with the Service, the staff will continue to examine all proposed Service ITPs for HCPs/SHAs, and where the staff believes coastal effects are reasonably foreseeable, the staff will continue to request OCM permission to review these permits on an individual basis.

As to the matter of standards, the Commission's federal consistency actions are based on the enforceable policies of Chapter 3 of the Coastal Act. The staff does not believe it would be realistic to clarify specifically how those policies would be generically applied to specific (and as yet unknown) situations.

Non-Federal Agency Comments

The other comments received to date were two letters from the Center for Biological Diversity (CBD), dated October 7, 2014, and October 8, 2014. The first of these letters requested the addition of the following permits to the CCMP List:

- Exempted fishing permits, fishery plans, and plan amendments authorized by the National Marine Fisheries Service ("NMFS") under the Magnuson-Stevens Fishery Conservation and Management Act;

- Federally permitted activities triggering consultation and resulting in incidental take authorization for species that occur in the coastal zone under section 7 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), (b); and

- Incidental take authorizations used by NMFS under the Marine Mammal Protection Act ("MMPA") section 101(a)(5)(E).

The second CBD letter requested the addition of the following to the CCMP List:

- Applications for permits to drill and other federal license or permit activities that involve hydraulic fracturing ("fracking") and other unconventional well stimulation techniques not described in detail in an OCS Plan.

This CBD letter also suggests the geographic area for this activity could be defined as "The Santa Barbara Channel, and any other areas under OCS oil and gas leases in the Pacific Region."

Staff Response
Concerning exempted fishing permits (EFPs), which are permits issued by NMFS for research using fishing gear that would otherwise be prohibited under an approved fishery management plan (FMP), the Commission staff initially notified NMFS that it intended to include EFPs in this first round of CCMP List modifications. NMFS responded that it does not currently consider or issue EFPs within the coastal zone, but only in federal waters. (Appendix E, NMFS letter to CCC dated September 18, 2014). Consequently the staff agreed to defer these federal permits until the second phase of CCMP List modifications discussed above (page 3), which will involve describing, analyzing, and proposing "GLDs," within which the Commission would seek to review EFPs in federal waters.

Concerning fishery plans (and amendments) authorized by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act, the Commission staff has, to date, considered these to be federal *agency* activities, and NMFS does in fact regularly provide written notice of these activities to the Commission staff (under the federal agency activity Subpart of the federal consistency regulations (Subpart C)), with conclusions containing the requisite CZMA determination that the plans (or amendments) are consistent to the maximum extent practicable with the CCMP. The regulations also provide, as explained above (page 3), that when an activity is both a federal agency activity and a federally permitted activity, the state is to review it as a federal agency activity (15 CFR §§ 930.31(a) and 930.52).

Federal agency consultations under Section 7 of the Endangered Species Act also qualify as federal agency activities instead of federal permits. A federal agency Section 7 consultation is in the nature of a coordination between federal agencies, not a permit. Since the Commission already would have federal consistency review authority over any federal agency activity in or affecting the coastal zone that is also subject to Section 7 consultation, there would be no need for separate federal consistency review of the Section 7 consultation for that same underlying federal agency activity.

CBD's third recommendation is for the Commission to review NMFS incidental take authorizations under MMPA section 101(a)(5)(E). This section of the MMPA covers commercial fishing activities that involve incidental take of marine mammals. Review of such permits would involve workload implications for the Commission and its staff that would constitute a major undertaking; the staff does not believe such review, which would, among other things, need to entail extensive involvement in the proceedings of the Pacific Fisheries Management Council, could feasibly be accomplished under the Commission's current staffing and funding constraints.

CBD's final recommendation is for the Commission to review "fracking"-related permits issued on the OCS. As discussed above (page 1) and below (page 9), the OCS Subpart of the regulations (Subpart E) does not require the same type of listing that the other federal agency permits (Subpart D) requires. Parenthetically, these activities are located on the OCS, which means they are located outside the coastal zone and thus outside the scope of the modifications being proposed in this first phase of CCMP List modifications (see discussion above, page 3). Finally, as CBD is aware, the Commission staff' is currently working in a separate capacity with the three federal agencies that authorize "fracking"-related activities on the OCS and has written

letters to these agencies (**Appendix F** - CCC May 9, 2014 letter to EPA and CCC June 16, 2014 letter to BSEE and BOEM) proposing a number of recommendations for how Commission federal consistency review of these activities could best be assured. The Commission staff intends to continue to pursue these discussions and believes the Commission already has the necessary CZMA authority to review these activities, for the reasons explained in those letters (Appendix F).

Based on the above discussion, the staff is not proposing to add the items recommended by CBD to the CCMP List at this time.

II. MOTION

*I move that the Commission **adopt** the CCMP List modifications contained in Appendix B and **submit** the modifications to OCM to be incorporated into the CCMP in the form of a Routine Program Change (RPC).*

Staff recommends a **YES** vote on the motion. Passage of this motion will direct the Commission staff to submit the requested modifications to OCM for incorporation into the CCMP. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

III. SUMMARY OF PROPOSED CHANGES

The Commission's existing CCMP List is shown in **Appendix A**. **Appendix B**, which follows, is the staff's proposed CCMP List changes, shown in tracked changes mode (i.e., with proposed additions shown in **bold underlined text** and proposed deletions shown in ~~strikethrough text~~). The proposed changes to the CCMP List would consist of: (1) adding a number of federal permits to the CCMP List; (2) correcting outdated citations and updating the names of the federal agencies issuing the permits; and (3) making several other minor modifications and clarifications to existing permits on the list.

The federal permits to be added to the list would be:

1. **Bureau of Land Management (BLM):** Approvals of renewable energy production on public lands.

2. **Bureau of Ocean Energy Management (BOEM):** Approvals of renewable energy activities on the OCS, and seismic/geophysical survey permits (not covered by existing OCS Plans).

3. **Surface Transportation Board (STB):** Approvals of construction or abandonment of railroad lines, track removal, and disposition of rights-of-ways.

4. **Federal Highway Administration (FHWA):** Approvals for interconnections with the interstate highway system.

5. **National Atmospheric and Oceanic Administration (NOAA):** Ocean thermal energy conversion facilities.

6. **National Marine Fisheries Service (NMFS):** Incidental Harassment Authorizations (IHAs) and Letters of Authorization (LOAs).

Clarifications or minor changes to existing listed permits would consist of: (1) adding license terminations to nuclear power plant approvals by the Nuclear Regulatory Commission (NRC); and (2) adding/clarifying that "hydroelectric generating project" permits approved by the Federal Energy Regulatory Commission (FERC) would include both hydrokinetic and hydropower projects. The remaining changes would be limited to updating the federal permitting agency names and correcting several citations.

OCS Plans

Finally, the staff is proposing minor updates/"clean-up" language for the CCMP Chapter 11 section discussing OCS Plans. As noted above, OCS Plans are separate from the "§1456 (c)(3)(A)" CCMP Permit List discussed above. On the page following the existing CCMP List is a section describing permits issued under CZMA §1456 (c)(3)(B), which covers Department of the Interior approval of OCS Plans (CCMP Chapter 11, pages 93-94). To remain consistent with the current regulatory scheme, the staff proposes updating this section simply to reflect that BOEM is now the current federal agency that authorizes these plans. The changes to this section are shown in **Appendix C**.

Appendices

Appendix A – Existing List
Appendix B – Proposed Changes
Appendix C – Proposed OCS Plan Update
Appendix D – CCMP FEIS, pp. 91-94
Appendix E – Correspondence
Appendix F – CCC Letters to EPA, BSEE, and BOEM (concerning hydraulic fracturing)

Appendix A – Existing CCMP Federal License and Permit List

1. Department of Defense - U.S. Army Corps of Engineers:

    a. Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899;

    b. Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972;

    c. Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments; and

    d. Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f)).

2. Nuclear Regulatory Commission:

    a. Permits and licenses required for siting and operation of nuclear power plants.

3. Department of the Interior - Bureau of Land Management - U.S. Geological Survey:

    a. Permits and licenses required for drilling and mining on public lands (BLM).

    b. Permits for pipeline rights-of-way on the Outer Continental Shelf.

    c. Permits and licenses for rights-of-way on public lands.

4. Environmental Protection Agency:

    a. Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments.

    b. Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

5. Department of Transportation - U.S. Coast Guard:

    a. Permits for construction of bridges under 33 USC 401, 491-507 and 525-534.

    b. Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).

6. Department of Transportation - Federal Aviation Administration:

   a. Certificates for the operation of new airports. (Federal Aviation Regulations, Part 139)

7. Federal Power Commission:

   a. Licenses for construction and operation of hydroelectric generating projects including primary transmission lines.

   b. Certifications required for interstate gas pipelines.

   c. Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy.

Appendix B – Proposed Modifications to the CCMP Federal License and Permit List

1. Department of Defense - U.S. Army Corps of Engineers:

    a. Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899**, as amended (33 USC §§ 401 and 403)**;

    b. Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972**, as amended (33 USC § 1413)**;

    c. Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 ~~and amendments~~**, as amended (33 USC § 1344)**; and

    d. Permits for artificial islands and fixed structures located on the Outer Continental Shelf (~~Rivers and Harbors Act of 1899 as extended by~~ 43 U.S.C. **§**1333~~(f)~~).

2. Nuclear Regulatory Commission **(NRC)**:

    a. Permits and licenses required for siting**,** ~~and~~ operation**, or license termination** of nuclear power plants.

3. Department of the Interior **(DOI)** - Bureau of Land Management **(BLM)**, ~~U.S. Geological Survey~~ **Bureau of Safety and Environmental Enforcement (BSEE), and Bureau of Ocean Energy Management (BOEM)**:

    a. Permits and licenses required for drilling and mining**, or renewable energy production (e.g., wind or solar energy facilities),** on public lands (BLM).

    b. Permits for pipeline rights-of-way on the Outer Continental Shelf **(BSEE)**.

    c. Permits and licenses for rights-of-way on public lands **(BLM)**.

    d. Leases, easements, and rights-of-way for renewable energy-related uses granted pursuant to subsection 8 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1337), as amended by Section 388(a) of the Energy Policy Act of 2005 (EPAct) (Pub. L. 109–58) (BOEM).

    e. Geophysical survey permits not authorized through existing OCS Plans issued under OCSLA (43 U.S.C. 1331 et seq.) (BOEM).

4. Environmental Protection Agency:

   a. Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972~~ and amendments~~**, as amended (33 USC §§ 1342 and 1345)**.

   b. Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

5. Department of Transportation - U.S. Coast Guard:

   a. Permits for construction of bridges under 33 USC **§§** 401, 491-507 and 525-534 **(42 USC §§ 7470-7492)**.

   ~~b. Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).~~

6. **Department of Transportation - Maritime Administration (MARAD):**

   a. Permits for deepwater ports under the Deepwater Port Act of **1974, as amended (33 USC §§ 1501-1524). ~~(PL 93-627)~~**

7. Department of Transportation - Federal Aviation Administration:

   a. Certificates for the operation of new airports (**49 USC § 44706)**.~~Federal Aviation Regulations, Part 139)~~

8. **Department of Transportation - Surface Transportation Board (STB):**

   a. Permits for railroad construction (49 U.S.C. § 10901).

   b. Exemption from service requirements for rail transportation (49 USC. §§ 10502, 10903).

   b. Removal of trackage and disposition of right-of-way (49 USC. § 10101 et seq.).

9. **Department of Transportation - Federal Highway Administration (FHWA):**

   a. Final Interstate Access Approvals for access to the Interstate Highway System (23 U.S.C. §§ 109 and 111, 23 C.F.R. § 624.5, and 49 CFR § 1.48(b)(1)).

10. Federal ~~Power~~ **Energy Regulatory** Commission **(FERC)**:

    a. Licenses for construction and operation of hydroelectric **and hydrokinetic** generating projects including primary transmission lines.

    b. Certifications required for interstate gas pipelines.

    c. Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy.

11. **National Atmospheric and Oceanic Administration (NOAA):**

    a. Authorization to construct or operate an ocean thermal energy conversion facility under the Ocean Thermal Energy Conversion Act of 1980 (42 USC § 9101 et seq.).

12. **National Atmospheric and Oceanic Administration (NOAA)/National Marine Fisheries Service (NMFS):**

    a. Incidental Harassment Authorizations and Letters of Authorization required under the Marine Mammal Protection Act (MMPA) of 1972, as amended (Sections 101(a)(5)(A) and (D) (16 U.S.C. 1361 et seq.), and the Endangered Species Act of 1973 (ESA), as amended (Section 10 (16 U.S.C. 1531 et seq.)).

Appendix C – Proposed Modifications to the CCMP OCS Plan Discussion

Federal Licenses and Permits Described in Detail in OCS Plans

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 307(c)(3)(B) of the CZMA if the activity being licensed or permitted is described in detail in an OCS exploration or development plan and affects land or water uses in the coastal zone:

Department of the Interior (DOI) – ~~U.S. Geological Survey~~ **Bureau of Ocean Energy Management (BOEM)**:

Approval of offshore drilling operations.

Approval of design plans for the installation of platforms to permitted platforms.

Approval of gathering and flow lines.

Any other OCS-related Federal license or permit activities described in paragraph (b) (i)[3] (for example, ~~BLM~~ pipeline rights-of-way on the OCS) which ~~U.S.G.S.~~ **BOEM** determines should be described in detail in OCS plans.

[3] Note: the reference to "paragraph (b) (i)" in this sentence refers back to the CCMP Permit List described above (i.e., Appendices A and B).

If a Federal agency does not choose to participate in the voluntary memorandum of understanding process, the Federal agency must utilize some other procedure (OMB A-95 project notifications, Environmental Impact Statements, etc.) supplemented as necessary pursuant to the requirements of the CZMA. Regardless of the alternative notification process used by a Federal agency, it must assure that the Coastal Commission is notified of all Federal activities including development projects in the coastal zone at the earliest practicable time in the planning process. The process must also provide adequate opportunity for the Coastal Commission to hold a public hearing and to determine the consistency of the proposed action with the CCMP. The notification must include a description of the activity, a discussion relating the coastal zone effects of the action to the relevant requirements of the management program, and sufficient supporting information for the Coastal Commission to review the Federal agency's consistency determination.

(ii) Consistency of Federal Activities Not Requiring Coastal Permits.

Memoranda of understanding will not be requested with regard to Federal activities including development projects which would not otherwise require coastal agency permits. However, such actions conducted by any Federal agency which will directly affect coastal zone resources will be expected to be undertaken in a manner consistent, to the maximum extent practicable, with California's coastal program as required by the CZMA. The Coastal Commission, with the assistance of local government representatives, will review Federal agency decisions to determine whether Federal actions directly affect the coastal zone, and if there is such an impact, whether the Federal action is consistent to the maximum extent practicable with the coastal program. This review process will include a timely notice and public hearing, with the Federal agency and local governments having jurisdiction over the affected area being invited to participate in the public hearing. Local government representatives will be afforded the opportunity to assist the Coastal Commission in its consideration of the Federal agency's consistency determination by presenting a determination of the consistency of the Federal activity or project with the certified local coastal programs for the affected jurisdictions. If the Coastal Commission finds that the Federal activity or development project directly affects the coastal zone and is not consistent with the management program, and the Federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

(iii) State Monitoring and Review of Federal Activities Including Development Projects.

To assist in implementing the procedures set forth in paragraphs (i) and (ii) above, the Coastal Commission will monitor all Federal activities including development projects that may directly affect the coastal zone. This monitoring effort will rely upon existing inter-governmental coordination procedures - the A-95 notification and review process, review of environmental impact statements, and review of Corps of Engineers public notices - supplemented as necessary with special coordination with individual Federal agencies. The Coastal Commission will make every effort to notify Federal agencies of potential inconsistent Federal activities as early as possible in the Federal agencies' planning process. At the same time, it is expected that each Federal agency proposing to conduct Federal activities including development projects which may directly affect the coastal zone will notify the Coastal Commission at the earliest practicable time. These reciprocal efforts can assist the parties in identifying potential conflicts with the State's management program and, once identified, the Federal agency and the Coastal Commission can work towards early resolution of the problem.

(b) Federal Licenses and Permits Subject to Certification for Consistency.

(i) Federal License and Permit List.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program, under Section 307(c)(3) of the CZMA, if the activity being licensed or permitted affects land or water uses in the coastal zone:

Department of Defense - U.S. Army Corps of Engineers:

- Permits and licenses required under Sections 9 and 10 of the Rivers and Harbors Act of 1899;
- Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972;
- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments; and
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f)).

Nuclear Regulatory Commission:

- Permits and licenses required for siting and operation of nuclear power plants.

Department of the Interior - Bureau of Land Management - U.S. Geological Survey:

- Permits and licenses required for drilling and mining on public lands (BLM).
- Permits for pipeline rights-of-way on the Outer Continental Shelf.
- Permits and licenses for rights-of-way on public lands.

Environmental Protection Agency:

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments.
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

Department of Transportation - U.S. Coast Guard:

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534.
- Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).

Department of Transportation - Federal Aviation Administration:

- Certificates for the operation of new airports. (Federal Aviation Regulations, Part 139)

Federal Power Commission:

- Licenses for construction and operation of hydroelectric generating projects including primary transmission lines.
- Certifications required for interstate gas pipelines.
- Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy.

This listing is intentionally limited to those Federal licenses and permits that may significantly affect coastal land and water uses. This is desirable to minimize the administrative burdens on the governmental entities as well as on the applicant. If it is found that the issuance of other Federal permits and licenses causes significant effects on coastal land and water uses, the consistency requirements will be applied to those permits or licenses through administrative addition to the list above.

(ii) License and Permit Activities Within the Coastal Zone.

Within the coastal zone, a Coastal Commission permit will be required from non-Federal applicants for the above activities. A memorandum of understanding will be requested from Federal agency applicants for the above activities. The issuance of a Coastal Commission permit* or agreement on a memorandum of understanding will be deemed to be a determination by the State that the proposed Federal license or permit activity is consistent with the management program, and no further certification will be required. In cases where no Coastal Commission permit has been applied for but where one is required, the Coastal Commission will process a certification of consistency concurrent with the permit application. The Coastal Commission will not review whether a Federal license or permit activity in the coastal zone is consistent with the management program except in connection with a Coastal Commission permit application if a permit is required.

To ensure that the national interest is adequately protected, where the State's primary management authority over the above activities has been delegated to a local government upon the certification of a local coastal program, the local decision will be automatically reviewed by the Coastal Commission. The Coastal Commission's decision on the appeal, or on the review of a local permit that was not or could not be appealed, will be deemed to be the State's determination of the consistency of the proposed activity with the California Coastal Management Program. Consequently, the Coastal Commission will have the lead role and during its deliberations it will consider the views of local governments with certified local coastal programs for the affected areas.

---

*The issuance of a permit for an electric transmission line or a thermal power plant by the State Energy Resources Conservation and Development Commission pursuant to Section 30413 of the Coastal Act is considered a Coastal Commission permit for purposes of this section.

(iii) License and Permit Activities Outside of the Coastal Zone.

Outside of the coastal zone (for example, on excluded Federal lands or on uplands beyond the coastal zone boundary), consistency certifications for the above licenses and permits will be required only in cases where the Coastal Commission determines that the activity being licensed or permitted could have a substantial effect on land and water uses in the coastal zone. This determination will be made on a case-by-case basis in the course of the monitoring program described in paragraph (a)(iii). It is not anticipated that many licenses and permits outside of the coastal zone will require certification. At the same time, those that do will probably be of considerable interest to the public because of the potential for substantial impact on the coast. Consequently, consistency certifications for Federal license or permit activities outside of the coastal zone will be processed as much as possible as if they were applications for Coastal Commission permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. The local governments having jurisdiction over the area that would be affected by the proposed activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Commission's deliberations and to present a determination of the consistency of the proposed activity with the certified local coastal programs for the affected jurisdictions.

(iv) Coastal Commission Objections to Federal License and Permit Activities.

If, in connection with the review of proposed Federal license or permit activities under paragraphs (ii) or (iii), the Coastal Commission determines that a non-Federal applicant's proposed license or permit activity is not consistent with the State's management program as required by Section 307(c)(3)(A) of the CZMA, the Federal agency may not issue the license or permit unless the Secretary of Commerce, on her own initiative or upon appeal by the applicant, finds, after providing an opportunity for comments from the Federal agency involved and from the Coastal Commission, that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. If the Coastal Commission objects to the consistency of a Federal applicant's proposed license or permit activity, and the Federal agency decides to go forward with the activity, the Coastal Commission may use the mediation or judicial review dispute resolution procedures described in paragraph (a)(i). In its draft Section 307 regulations, NOAA has proposed to exclude Federal agencies from the license and permit certification requirements and the appeal provisions of the CZMA. While the Coastal Commission does not fully agree with this position, it will abide by NOAA's decision in the administration of the CCMP for purposes of the CZMP. The Coastal Commission, however, reserves the right to subject Federal agencies to the certification requirement in the event administrative, judicial, or legislative modification should occur.

(c) Federal Licenses and Permits Described in Detail in OCS Plans.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 307(c)(3)(B) of the CZMA if the activity being licensed or permitted is described in detail in an OCS exploration or development plan and affects land or water uses in the coastal zone:

Department of the Interior - U.S. Geological Survey

Approval of offshore drilling operations.

Approval of design plans for the installation of platforms.

Approval of gathering and flow lines.

Any other OCS-related Federal license or permit activities described in paragraph (b)(i) (for example, BLM pipeline rights-of-way on the OCS) which U.S.G.S. determines should be described in detail in OCS plans.

In accordance with the CZMA, Federal license and permit activities described in detail within exploration or development plans for OCS areas adjacent to California waters that have been leased under the Outer Continental Shelf Lands Act, will be subject to certification and State review. This process will assure that Federal license and permit activities described in detail in such plans, and affecting land or water uses in the coastal zone, are consistent with the State's management program. Consistency certifications for OCS plans will be processed as much as possible as if they were applications for coastal permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. Local governments having jurisdiction over areas affected by OCS activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Coastal Commissions deliberations and to present determinations of the consistency of the proposed OCS activity with the certified local coastal programs for the affected jurisdictions.

If the Coastal Commission determines that one or more of the Federal license or permit activities described in detail in an OCS plan are not consistent with the coastal management program as required by Section 307(c)(3)(B) of the CZMA, Federal agencies may not issue the licenses or permits described in detail in the OCS plan unless the Secretary of Commerce, on her own initiative or upon appeal by the lessee, finds, after providing an opportunity for comments from the Federal agencies involved and the Coastal Commission, that the Federal license or permit activities are consistent with the objectives of the CZMA or are otherwise necessary in the interest of national security.

(d) Federal Assistance Subject to Consistency with the Management Program.

To review State and local government applications for Federal assistance under Federal programs affecting the coastal zone, the Coastal Commission will use the Project Notification and Review System of OMB Circular A-95 authorized under Title IV of the Intergovernmental Coordination Act of 1968 and administered by Regional Clearinghouses and statewide by the Office of Planning and Research.

The scope of Coastal Commission review will be limited to ensuring that the proposed project is consistent with the coastal management program. In the event the Coastal Commission determines that the proposed project is not consistent with the management program, the Coastal Commission will attempt to resolve the inconsistency through negotiation with the applicant. If no resolution is possible, the Commission will forward its determination to the appropriate Federal agency and, as required by Section 307(d) of the CZMA, the Federal agency will not approve the proposed project unless the Secretary of Commerce finds that the project is consistent with the purposes of the CZMA or is in the interest of national security.

C. Incorporation of Federal Air and Water Quality Standards

Although the Coastal Plan recommended that California institute air or water quality standards more restrictive than Federal requirements in certain areas in order to address unique problems, the Coastal Act did not go as far. The Coastal Act does uphold Federal standards as enforced by existing State agencies. Local coastal programs must also incorporate as necessary the air and water quality standards prior to certification. Section 30522 of the Coastal Act states, "Nothing in this chapter shall permit the commission to certify a local coastal program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency." While the Coastal Commission cannot require local governments to incorporate more stringent standards, nothing prohibits the local governments from incorporating more stringent standards into their LCPs; however, these standards will not be applicable until they have been officially approved by the State regulatory agencies pursuant to the provisions of the Federal air and water quality laws. Section 30253(3) requires new development to be consistent with requirements imposed by an air-pollution control district or the State Air Resources Control Board.

The State Water Resources Control Board is recognized as having primary responsibility for the coordination and control of water quality and the administration of water rights pursuant to applicable law. The Coastal Commission is responsible for seeing that proposed development and local coastal programs do not frustrate the State Water Resources Control Board's programs. However, Section 15 of the Coastal Act amended the State Water Code to ensure that water agencies support the Coastal Commission's management program to protect the coastal marine environment. Treatment works within the coastal zone and those outside the coastal zone that serve the coastal zone require a coastal permit determined on siting and visual appearance, geographic limits, and development projections. The Coastal Commission must make the final determination on a permit prior to the time of final approval of the project by the State Water Resources Control Board. (30412)

The State Air Resources Board and local air pollution control districts, having been established pursuant to State law and consistent with Federal law, are the principal public agencies responsible for air quality, emission standards, and air pollution control programs. The Coastal Commission is not to modify air pollution standards set by the Air Resources Board, which, it is expected, will recommend ways that the Coastal Commission can assist in air quality programs. (30414)

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

In reply refer to:
FWS/R8/ES

SEP 2 6 2014

Charles Lester, Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105

Re: Notice of Intent, Proposed Amendments to the Listed Federal Permits Subject to Federal consistency Review in the California Coastal Management Program

Dear Mr. Lester,

Thank you for the opportunity to provide input on your proposed amendment to the Federal Permits consistency review program. We welcome the opportunity to work with the California Coastal Commission (Commission), however; we have some questions and concerns with what is proposed.

Habitat Conservation Plans and Safe Harbor Agreements (Section 10 plans) are important tools that further the mission of the Fish and Wildlife Service (Service). The mission of the Service is: "working with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." The development of Section 10 plans is a negotiated process working with non-federal landowners to balance the conservation needs of sensitive fish and wildlife species (and their habitats) with developmental interests. Non-federal entities rely heavily on Section 10 plans to resolve conservation issues and allow their communities to grow and economic growth to occur.

If the Commission amends the Federal Permits consistency review program as is proposed, we request the Commission provide more clarity on when and how the consistency review would occur. The development of Section 10 plans can be a long and complicated process with many steps that must occur at specific times that are often driven by applicant deadlines. The addition of the proposed requirement with an undefined process to reach a consistency determination could adversely affect the timeline of which Section 10 plans are being developed and could serve as a disincentive to the development of these plans.

If the Commission amends the Federal Permits consistency review program as is proposed, we request the Commission restrict its review and regulatory oversight to only those areas that fall within the Coastal Management Zone, as opposed to an entire plan area. This should simplify review and we feel meets the intent of the Coastal Zone Management Act.

An agency with 'veto' power over Section 10 plan adequacy is of concern to the Service. We ask

that the Commission develop standards that are advertised to all affected parties to make clear ahead of time to determine adequacy. We also ask that the Commission identify a resolution process to bring a plan to adequacy of Commission standards.

In looking at the list of approved California Coastal Management Program (CCMP) permits, the actions of those federal agencies issuing permits is significantly different than the actions of the Service associated with Section 10 plans. Section 10 plans are conservation plans, developed to achieve conservation of species and the habitat upon which they rely, which is consistent with the goals of the Commission. Additionally, the list of approved CCMP permits are primarily for federal landowners; Section 10 plans take place on non-federal lands for non-federal activities.

We urge the Commission to reconsider the proposed amendment to the Federal Permits consistency review program, and ask that the Commission consider alternative means to achieve the goals of collaboration in addressing Commission concerns in the development of Section 10 plans. We offer three alternatives for consideration to meet Commission needs.

1. The existing process to develop Section 10 plans has numerous opportunities for the Commission to engage and provide input, including two basic areas:
    a. Involvement as a stakeholder during development of the plans to help shape them to achieve Commission needs. Medium to large sized plans engage stakeholders during their development to ensure stakeholder needs are met. Engagement of stakeholders is a crucial part of ensuring plans 'work' for the local community.
    b. Provide public comments during official public comment periods. Public comments are a valuable part of Section 10 plan development and substantive comments and suggestions for change are incorporated into plans.
2. The Service works extensively with California Department of Fish and Wildlife (CDFW) throughout development of these plans; we recommend the Commission work with CDFW to use this agency as an 'agent' to represent Commission concerns during the HCP development process.
3. Can the Commission identify standards ahead of the development of any Section 10 plan that should be followed? For example: development of type x, needs to be set back ___ feet from sand dunes. Early understanding of Commission needs could be exceedingly useful in addressing them.

Thanks again for the opportunity to provide input on your proposed amendment to the Federal Permits consistency review program. If you have any questions or need more information, please contact Dan Cox, Section 10 Coordinator, at (916) 414-6539.

Sincerely,

Acting Assistant Regional Director

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

July 14, 2014

Mark Delaplaine, Manager
Ocean Resources and Federal Consistency Division
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Proposed Amendments to the List of Federal Permits Subject to Federal Consistency Review in the California Coastal Management Program

Dear Mr. Delaplaine:

Thank you for your June 17, 2014 letter informing me of your intent to amend the California Coastal Management Program's permit list (CCMP Permit List) to add authorizations for certain matters under the Surface Transportation Board's (Board) jurisdiction. As you know, the Board has significant responsibility to oversee rail restructuring transactions. This responsibility includes mergers and acquisitions, line sales, line constructions, and line abandonments. The Board's Office of Environmental Analysis (OEA) is responsible for conducting the environmental review process to ensure compliance with the National Environmental Policy Act (NEPA) and related environmental laws as part of the Board's licensing process.

OEA would be happy to work with your office in the future. We are assuming that when you refer to 49 U.S.C. §§ 10502, 10903 of our regulations in the list of Board authorizations in your letter, you mean constructions and abandonments. At this time, we have no additional comments on your notice of intent to amend the CCMP Permit List.

Again, thank you very much for your letter. If you have any questions or would like to discuss this matter further, please do not hesitate to call me at 202-245-0295 or Danielle Gosselin of my staff at 202-245-0300.

Sincerely,

Victoria Rutson
Director
Office of Environmental Analysis

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Suite W1623
Sacramento, CA 95825
www.blm.gov/ca

AUG 0 4 2014

In Reply Refer To:
9105 (CA930)P

Mr. Charles Lester
Executive Director
State of California-Natural Resources Agency
California Coastal Commission
San Francisco CA 94105

Dear Mr. Lester:

The Bureau of Land Management, California, appreciates the opportunity to comment on the California Coastal Commission's proposed amendments to the list of federal permits subject to review by the Commission. Your proposal to add renewable energy projects to the list of projects requiring licenses or permits that you would review seems reasonable and is acceptable to the Bureau of Land Management.

In the event that the Bureau of Land Management receives applications for renewable energy projects in the coastal zone, we would look forward to working with the Commission to fully analyze and consider all important issues. Again, thank you for the opportunity to comment on your proposed amendments.

Sincerely,

James G. Kenna
State Director

United States Department of the Interior
BUREAU OF OCEAN ENERGY MANAGEMENT
Pacific OCS Region
770 Paseo Camarillo, 2nd Floor
Camarillo, CA 93010-6064

JUL 22 2014

Mr. Charles Lester
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Proposed Amendments to the California Coastal Management Plan

Dear Mr. Lester:

Thank you for the opportunity to review the proposed amendments to the List of Federal Permits Subject to Federal Consistency Review in the California Coastal Management Plan. The Bureau of Ocean Energy Management (BOEM) provided comments on draft changes at an earlier stage in the process and requested clarification on one section; the clarification was addressed by Mr. Mark Delaplaine on July 17, 2014. The amendments as proposed make the necessary adjustments due to federal agency changes over the years and incorporate renewable energy appropriately. We have no further comments.

If any questions arise regarding BOEM approval authorities, please call Ms. Joan Barminski at (805) 389-7509 or email her at joan.barminski@boem.gov.

Sincerely,

Ellen G. Aronson
Regional Director
Pacific OCS Region

cc: Jaron Ming, BSEE Pacific Regional Director
James Kenna, BLM State Director

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
7600 Sand Point Way N.E.
Seattle, Washington 98115

September 18, 2014

Charles Lester
Executive Director
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Lester:

This letter provides the National Marine Fisheries Service's (NMFS) comments on the California Coastal Commission's (Commission's) intent, expressed in its July 7, 2014, letter, to propose that the following NMFS permits and authorizations be added to the California Coastal Management Program Permit List pursuant to 15 C.F.R. § 930.53:

a. Incidental Harassment Authorizations and Letters of Authorization required under the Marine Mammal Protection Act (MMPA) of 1972, as amended, §§ 101(a)(5)(A) and (D) (16 U.S.C. § 1361 et seq.)), and associated authorizations pursuant to the Endangered Species Act of 1973 (ESA), as amended, § 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B) – incidental take permits).

b. Exempted Fishing Permits required under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended (Public Law 94-265 (550 C.F.R. § 600.745(b)).

NMFS believes it is appropriate to add the MMPA permits and any associated ESA § 10 authorizations to the state of California's Permit List for Coastal Zone Management Act federal consistency for activities proposed within California's coastal zone.

With regard to adding the Exempted Fishing Permits to the Permit List, the MSA does not provide federal authority for NMFS to regulate fisheries in state waters. If the Commission believes there are Exempted Fishing Permits with reasonably foreseeable coastal effects outside of the coastal zone, 15 C.F.R. § 930.53(a)(1) provides that the Commission must generally describe the geographic location of such activities. Since no such description is provided at this time, NMFS recommends that the Commission not propose adding Exempted Fishing Permits to its Permit List at this time.

MMPA permits and authorizations are issued out of the NMFS headquarters Office of Protected Resources in Silver Spring, MD. Jolie Harrison, (301) 427-8401, is the branch chief and your point of contact for MMPA coordination. For matters regarding Exempted Fishing Permits, please contact Bob Turner, Assistant Regional Administrator for Sustainable Fisheries, NMFS West Coast Region, at (360) 753-5825. I look forward to our continued collaboration.

Sincerely,

William W. Stelle, Jr.
Regional Administrator

cc: NOAA/NOS/OCRM: David Kaiser, Kerry Kehoe
NOAA/NMFS/Office of Protected Resources: Donna Wieting
Administrative File: 10012WCR2014PR00162

U.S. Department
of Transportation
Federal Highway Administration

Office of the Administrator

1200 New Jersey Ave., SE
Washington, D.C. 20590

August 29, 2014

In Reply Refer To:
HEPE

Mr. Charles Lester
Executive Director
California Coastal Commission
45 Fremont
San Francisco, CA 94105-2219

Dear Mr. Lester:

Thank you for your letter regarding a Notice of Intent to add Federal Highway Administration (FHWA) Final Interstate Access Approvals to your California Coastal Management Program (CCMP) list.

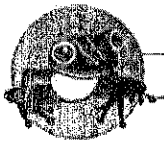
This letter confirms that FHWA does not object to adding our final approval of an Interstate access change to the CCMP Permit List for projects located wholly or partially within the California coastal zone. The approval process after the listing will be consistent with our current practice. Typically, we approve Interstate access changes in two stages: (1) a *conditional* or *conceptual* approval of the proposed design of the new ramps from an engineering and traffic safety standpoint, contingent on (2) completion of the National Environmental Policy Act review. Only after both stages are complete can FHWA give *final* approval to the request. For projects in the California coastal zone covered by the CCMP, we will ensure final approvals are issued only after both stages are complete and a consistency determination is in place.

Our California Division Administrator, Mr. Vincent P. Mammano, and his staff will work with the California Department of Transportation and the California Coastal Commission to ensure compliance with the Notice of Intent. Please feel free to contact Mr. Mammano directly at 916-498-5015 to discuss the transition to compliance.

If I can provide further information or assistance, please feel free to call me.

Sincerely,

Gregory G. Nadeau
Acting Administrator



CENTER *for* BIOLOGICAL DIVERSITY

F7a

October 7, 2014

Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Comments on Proposed Changes to the California Coastal Management Program (CCMP) List of Federal Licenses and Permits Subject to Federal Consistency Review

Dear Mr. Lester and Members of the Commission:

Thank you for the opportunity to comment on the proposed changes to the CCMP List of Federal Licenses and Permits Subject to Federal Consistency Review, currently calendared for the October 2014 meeting of the California Coastal Commission (Agenda Item F7a). The Center supports the Commission's proposed amendments to its CCMP List that would provide for consistency review of certain federal actions that allow the killing and harming of imperiled marine life. However, the Center for Biological Diversity ("Center") believes that the CCMP List should be further amended to ensure the protection of marine protected species. Specifically, the List ought to include:

- exempted fishing permits, fishery plans, and plan amendments authorized by the National Marine Fisheries Service ("NMFS") under the Magnuson–Stevens Fishery Conservation and Management Act;
- federally permitted activities triggering consultation and resulting in incidental take authorization for species that occur in the coastal zone under section 7 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), (b); and
- incidental take authorizations issued by NMFS under the Marine Mammal Protection Act ("MMPA") section 101(a)(5)(E).

Background

Vulnerable marine mammals and endangered marine life in California's coastal zone deserve special consideration by the Coastal Commission even when the activities affecting the marine mammals and endangered species are outside the coastal zone. At a minimum, sections 30230, 30240, 30220 and 30234.5 of the Coastal Act speak to protecting these resources. Section 30230 of the Coastal Act provides:

> Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall

> be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Similarly, section 30240 provides:

> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

Numerous marine resources and "species of special biological or economic significance" and "environmentally sensitive habitat values" protected by the Coastal Act may be threatened by fishing permits and plans, ESA incidental take statements and MMPA incidental take authorizations for commercial fishing.

1. **Fishing Permits, Plans and Plan Amendments**

The Center requests that the Commission amend its list to add the following to the National Marine Fisheries Service category: c. exempted fishing permits, fishery plans, and plan amendments authorized under the Magnuson–Stevens Fishery Conservation and Management Act.

Endangered leatherback sea turtles, loggerhead sea turtles, and sperm whales are but a few of the most vulnerable species taken incidentally in commercial fisheries off of California. Fisheries that interact with species that occur in the coastal zone should seek consistency review.

Importantly, exempted fishing permits must receive scrutiny for consistency with the coastal management plan. Interactions between endangered species and the California drift gillnet fishery caused the Pacific Fisheries Management Council this year to solicit application for exempted fishing permits to help find more selective alternative fishing gear. Because of the potential for fisheries to interact with these species and others like the short-tailed albatross that depend on highly productive foraging waters off California, the Coastal Commission should add exempted fishing permits to the CCMP list.

2. **Incidental Take Statements**

The Center supports the Commission's proposed amendment to its CCMP List that would add licenses and permits issued by the U.S. Fish and Wildlife Service ("FWS") to authorize the take of threatened and endangered species under the Endangered Species Act ("ESA"), 16 U.S.C. § 1531, *et seq.* The Commission should make it clear that section 10 permits issued by National Marine Fisheries Service are also included on the list. Additionally, the Center further requests that the Commission also include actions that trigger take authorizations issued pursuant to Section 7 of the ESA, *id.* § 1536(a)(2), (b), not just those issued pursuant to Section 10, *id.* § 1539.

The Center requests that the Commission amend its list to add the following to Fish and Wildlife Service and National Marine Fisheries Service's list: b. federally permitted activities triggering consultation and resulting in incidental take authorization for species that occur in the coastal zone under section 7 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), (b).

The requirements of Section 7 of the ESA – under which biological opinions and the accompanying incidental take statements are issued – are triggered only where there is a federal action that may affect ESA-listed species. *See id.* § 1536(a)(2). However, where the triggering federal action is FWS and/or NMFS review and approval of non-federal activities, the take authorization provided by the incidental take statement often applies to the non-federal entities. In such situations, it is not necessary for the non-federal entity to also obtain a Section 10 permit. *See Ramsey v. Kantor*, 96 F.3d 434, 440-42 (9th Cir. 1996). Adding actions that result in incidental take statements issued under Section 7 of the ESA to the CCMP List would therefore ensure that the Commission evaluates the full extent of federal activities that affect the coastal zone, and ensure that federal actions that allow the killing, injuring, harming, or harassment of California's imperiled marine life receive proper scrutiny under the CZMA. *See* 16 U.S.C. § 1532(19) (defining take).

3. Incidental Take Authorizations Required for Commercial Fisheries

Finally, the Center requests that the Commission amend its list to add the following to the National Marine Fisheries Service category: d. incidental take authorizations under the Marine Mammal Protection Act ("MMPA") section 101(a)(5)(E)

The Coastal Commission should review NMFS's authorizations of incidental take of marine mammals in commercial fisheries. Currently NMFS is proposing to amend an authorization to entangle and kill endangered fin, humpback and sperm whales in the California drift gillnet fishery and the Washington/Oregon/California (WA/OR/CA) sablefish pot fishery.[1] These large whales depend on state and federal waters for habitat and interact with state and federal fisheries. Because of the impact to California coastal resources, specifically large, migratory endangered whales, we urge these authorizations to be added to the CCMP List.

Conclusion

Thank you for consideration of these comments. We look forward to the hearing.

Sincerely,

Catherine Kilduff

Catherine W. Kilduff, M.S., J.D.
Staff Attorney, ckilduff@biologicaldiversity.org

[1] 79 Fed. Reg. 50626 (Aug. 25, 2014).

CENTER for BIOLOGICAL DIVERSITY Because life is good.

Via Hand Delivery and First Class Mail

October 8, 2014

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Phone: (415) 904-5200
Fax: (415) 904-5400

Re: Proposed Changes to the California Coastal Management Program List of Federal Licenses and Permits Subject to Federal Consistency Review; Agenda Item 7(a) on October 10, 2014

Dear Commissioners:

I am writing on behalf of the Center for Biological Diversity (the "Center") to request that the California Coastal Commission (the "Commission") take additional action to ensure that hydraulic fracturing ("fracking") and other unconventional well stimulation techniques used in offshore oil and gas operations receive proper scrutiny under the Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1451, *et seq.*

The Center applauds the Commission for asking the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement for information on instances in which the agency authorized fracking and other well stimulation techniques on the Outer Continental Shelf ("OCS"), and for urging the Bureaus to process applications to engage in such activities in a way that would ensure additional review under the CZMA and other relevant laws. But the Bureaus have not done so, and additional action on the part of the Commission is needed.

Specifically, the Center requests that the Commission amend the California Coastal Management Program Federal License and Permit List ("CMP List") to include applications for permits to drill and other applications for licenses or permits to engage in oil and gas extraction activities not described in detail in an exploration, drilling, or development plan, including fracking and other unconventional well stimulation techniques. Such action is necessary to safeguard California's beaches, air, water, and marine life from the myriad of threats posed by fracking, and ensure the continued health of our coastal ecosystem.

The Coastal Zone Management Act and Consistency Determinations

Enacted in 1972, the CZMA seeks "to protect and to give high priority to natural systems in the coastal zone" and thereby prevent "[i]mportant ecological, cultural, historic, and esthetic values in the coastal zone...[from] being irretrievably damaged or lost." 16 U.S.C. § 1451(e),

(h). To reach these goals, the CZMA enhances the ability of coastal states to assume planning and regulatory powers over their coastal zone. *Id.* § 1451(m); S. Rep. No. 92-753 (1972).

In particular, the CZMA authorizes states with federally approved coastal management programs to review federal license and permit activities in, or outside of, the coastal zone that affect land uses, water uses, or natural resources within the coastal zone to ensure the activity is fully consistent with the state's management plan. 16 U.S.C. § 1456(c)(3)(A); *see also* 15 C.F.R. § 930.53(a) (effects on coastal zone includes "reasonably foreseeable effects"). The Coastal Act – the Commission's enabling legislation – is part of California's federally approved coastal zone management program. Cal. Pub. Res. Code § 30008; *American Petroleum Institute v. Knecht*, 456 F.Supp. 889, 895 (C.D. Cal. 1978). Any qualifying federally permitted activity which affects the coastal zone must therefore be consistent with the goals of the Coastal Act. As such, if an activity does not "protect the ecological balance of the coastal zone and prevent[] its deterioration and destruction," Cal. Pub. Res. Code § 30001(c), the Commission must exercise its authority under the CZMA and deny consistency certification. 16 U.S.C. § 1456(c); *see also* Cal. Pub. Res. Code § 30230 ("[u]ses of the marine environment *shall be carried out in a manner that will sustain the biological productivity of coastal waters and* that will *maintain healthy populations of all species of marine organisms* adequate for long-term commercial, recreational, scientific, and educational purposes") (emphasis added).

In order to trigger the Commission's consistency review, however, the activity must typically be included on the CMP List. 15 C.F.R. § 930.53(a).[1] When a listed activity occurs outside the coastal zone, it can be subject to consistency review if it affects resources within the coastal zone and the Commission specifies the geographic location for such activities as part of its list. *Id.* The Commission can revise the listed activities that trigger consistency review following public notice and comment, and federal approval of the amendment. *Id.* § 930.53(c).

Typically, a federal agency cannot issue a permit for listed activities unless the applicant submits a consistency certification to the Commission and the Commission concurs with that certification. 16 U.S.C. § 1456(c)(1)(A), (3)(A); 15 C.F.R. § 930.53(d). If the Commission objects to the applicant's consistency certification, the federal government must deny the application, unless the applicant works with the Commission to develop conditions that will enable the activity to comply with the Coastal Act and otherwise satisfy the Commission's concerns, 15 C.F.R. § 930.4(a), or the U.S. Secretary of Commerce overrules the state's objection. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.64.[2]

The CMP List thus serves an important function – it puts federal permit applicants on notice as to what particular applications will require a consistency determination, and ensures the Commission is involved in the permitting of such activity as early as possible in the planning process (potentially leading the applicant to revise the scope of its proposed activity at the

[1] The Commission can also review particular unlisted activities on a case-by-case basis if it requests, and receives, authorization from the National Oceanic and Atmospheric Administration to do so. 15 C.F.R. § 930.54.

[2] The Secretary of Commerce has previously sustained two Commission objections to exploratory oil and gas drilling in the Santa Barbara Channel, which the Commission had objected to due to adverse impacts on coastal resources and commercial fishing facilities, and cumulative air quality impacts. *See* Decisions and Findings in the Consistency Appeal of Exxon, 1984, *available at:* http://www.coastal.ca.gov/fedcd/soc/Exxon_Thresher_Shark.pdf; Decisions and Findings in the Consistency Appeal of Chevron, 1990, *available at:* http://www.coastal.ca.gov/fedcd/soc/Chevron_USA.pdf.

outset). The CMP List thus helps to "[a]ssure orderly, balanced utilization and conservation of coastal zone resources" and prevent the "deterioration and destruction" of the coastal environment as required by the Coastal Act. Cal. Pub. Res. Code §§ 30001.5; 30001(c). The CMP List also ensures that federal activities that affect the coastal zone will be subject to public notice and comment, 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.41(a), thereby giving citizens of the state a say as to whether a particular activity that affects its unique coastal resources should go forward.

Requested Amendment to the CMP Federal License and Permit List

The Center requests that the Commission seek to amend its CMP List to add the following: (f) Applications for permits to drill and other federal license or permit activities that involve hydraulic fracturing ("fracking") and other unconventional well stimulation techniques not described in detail in an OCS plan.

The geographic area for this activity could be defined as follows:

The Santa Barbara Channel, and any other areas under OCS oil and gas leases in the Pacific Region.

The Commission's Authority to Request the Amendment

The Commission would be well within its authority under the CZMA to request this specific amendment to its CMP List. Under the regulations implementing the CZMA, there are essentially three elements that need to be satisfied in order for an authorization from a federal agency to constitute a "federal license or permit" subject to the state's consistency review. *See* 15 C.F.R. § 930.51(a). First, federal law requires that an applicant obtain a federal authorization in order to engage in a particular activity; second, the proposed activity has reasonably foreseeable effects on a state's coastal zone; and third, the proposed activity was not previously reviewed for federal consistency by the state. *Id.*

A permit to drill using fracking easily satisfies this test. First, the Outer Continental Shelf Lands Act ("OSCLA"), 43 U.S.C. § 1331, *et seq.*, requires an applicant to obtain a permit from the Bureau of Ocean Energy Management ("BOEM") in order to engage in oil and gas extraction activities on the OCS. 30 C.F.R. § 550.281.

Second, fracking has reasonably foreseeable effects on California's coastal zone. Indeed, fracking is an inherently dangerous activity that can cause a host of detrimental impacts to California's air, water, wildlife, and coastal communities. For example, exposure to ambient benzene – a known carcinogen – has been documented in people living within a ten-mile radius of fracked wells in Colorado,[3] indicating that offshore fracking in federal waters can affect air quality and residents within the coastal zone. Fracking also has reasonably foreseeable impacts on a variety of species whose ranges span both inside and outside the coastal zone. The federal

[3] Reutman, S.R. et al. 2002. Evidence of reproductive endocrine effects in women with occupational fuel and solvent exposures. Environ Health Perspectives 110:805-811; McKenzie, L. et al. 2014. Birth outcomes and maternal residential proximity to natural gas development in rural Colorado. Environmental Health Perspectives, doi:10.1289/ehp.1306722.

government currently allows offshore oil and gas facilities to dump more than nine billion gallons of wastewater directly into the ocean.[4] Scientific research has indicated that 40 percent of the chemicals added to fracking fluids have been found to have ecological effects, indicating that they can harm aquatic animals and other wildlife.[5] Some of the chemicals used in fracking operations can break down into nonylphenol, a very toxic substance with a wide range of harmful effects that include the development of intersex fish and altered sex ratios at the population level.[6] Nonylphenol can also inhibit the development, growth, and survival of marine invertabraes, and has been shown to bioaccumulate in sea otters – a species listed as threatened under the federal Endangered Species Act.[7] Water pollution associated with fracking could also significantly affect numerous species of endangered whales, including endangered blue, humpback, and gray whales, who feed in and migrate through the Santa Barbara Channel – the area where fracking in federal waters is known to have occurred.[8]

Finally, the Commission has not previously reviewed fracking for consistency with its coastal management program. Although the Coastal Commission currently reviews OCS exploration, development, and production plans for consistency, 15 C.F.R. § 930.73, the Center's review of the development and production plans of projects that have engaged in fracking in federal waters reveals that *none* of these plans specifically mention fracking.[9] In other words, fracking is not an activity contemplated under any of these plans. As such, the Commission has not previously reviewed this activity for consistency. The Commission should therefore seek to amend its CMP List to ensure that fracking and other unconventional well stimulation techniques used in offshore oil and gas operations receive proper scrutiny under the CZMA.[10]

---

[4] Environmental Protection Agency, Reissuance of National Pollutant Discharge Elimination System (NPDES) General Permit for Offshore Oil and Gas Exploration, Development and Production Operations Off Southern California, 79 Fed. Reg. 1643 (Jan 23, 2014); Commission Consistency Determination, General NPDES Permit From Discharges of Offshore Oil and Gas Platforms, http://documents.coastal.ca.gov/reports/2013/6/W13a-6-2013.pdf.

[5] California Council on Science and Technology. 2014. Advanced Well Stimulation Technologies in California: An Independent Review of Scientific and Technical Information. August 28, 2014, available at http://ccst.us/publications/2014/2014wst.pdf ("CCST").

[6] Diehl, J., et al. 2012. The distribution of 4-nonylphenol in marine organisms of North American Pacific Coast estuaries. Chemosphere 87:490-497.

[7] *Id.*

[8] *See also* Letter from the Center to the Commission, Re: The Coastal Commission's Regulatory Authority and Mandates Relating to Fracking in Oil and Gas Wells Offshore California, Nov. 14, 2013 (detailing other detrimental impacts of offshore fracking).

[9] BOEM's regulations implementing OSCLA state that applications for permits to drill and other "permits to conduct activities under...approved [exploration and development plans]...are not subject to separate State CZMA consistency review." 30 C.F.R. § 550.281(c). However, the regulation requires the activities proposed in such applications "to conform to the activities *described in detail*" in approved plans. *Id.* § 550.281(d) (emphasis added). Any activity that is *not* described in detail in an approved plan must therefore be subject to consistency review under the CZMA – the exemption for consistency review does not cover fracking because the practice is not described in detail in exploration or development plans. *See* 15 C.F.R. § 930.71 (defining "federal license or permit in context of OSCLA as "any activity requiring a federal license or permit...*described in detail within an OCS plan*.") (emphasis added).

[10] Although the Center believes that BOEM's processing of applications for permits to drill that involve fracking and other unconventional well stimulation techniques as minor amendments is improper under the CZMA, OSCLA, and the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*, adding such permits to the CMP List will ensure that fracking and other dangerous enhanced recovery techniques receive CZMA review, regardless of BOEM's classification.

Conclusion

Fracking is an inherently dangerous activity with a myriad of reasonably foreseeable detrimental impacts to California's coastal zone. Despite the fact that fracking has occurred numerous times in federal waters, the Commission has not reviewed the activity for consistency under the CZMA. The requested amendment would therefore implement the intent behind the CZMA that states review all federally permitted activities that can impact the coastal zone, and the intent of the Coastal Act that activities that will deteriorate or destroy California's unique coastal environment not be permitted.

Sincerely,

Kristen Monsell, Staff Attorney
Center for Biological Diversity
kmonsell@biologicaldiversity.org

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 221
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

Appendix F - CCC Letters to EPA/BOEM/BSEE

May 9, 2014

Jared Blumenfeld, Regional Administrator
Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105-3901

Re: **CD-001-13, U.S. Environmental Protection Agency (EPA) Consistency Determination for NPDES General Permit for discharges from oil and gas platforms**

Dear Mr. Blumenfeld:

On June 12, 2013, the Coastal Commission (Commission) concurred with EPA's General Consistency Determination (CD-001-13) for the issuance of a General National Pollutant Discharge Elimination System (NPDES) permit (No. CAG280000) for discharges from offshore oil and gas platforms located in federal Outer Continental Shelf (OCS) waters off Southern California.

Under the federal consistency regulations (15 CFR Part 930), a state can revisit a previously-adopted federal consistency concurrence in the event an activity as previously described has been modified, and/or if circumstances have changed, if a state determines that an activity is no longer being conducted in a manner consistent to the maximum extent practicable with the state's enforceable policies of that state's certified coastal management program.

This "reopener clause" is contained in 15 CFR §930.45 and §930.46, which provide:

> *§930.45 Availability of mediation for previously reviewed activities.*
>
> *(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.*
>
> *(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:*
>
> > *(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; ...*

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource

(3) Substantial changes were made to the activity during the period of the State agency's initial review and the State agency did not receive notice of the substantial changes during its review period, and these changes are relevant to management program enforceable policies and/or affect coastal uses or resources.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Since the Commission's June 2013 concurrence several events have transpired that warrant the revisiting of the Commission's concurrence under the above regulations. The Commission staff subsequently learned that hydraulic fracturing was occurring in State and federal waters. The growing public awareness of offshore fracking has led a number of state and federal agencies (including EPA) to begin to reexamine the adequacy of their regulatory practices. On September 20, 2013, the Governor of California signed legislation (Senate Bill (SB) 4) that expressed "paramount" concerns over the adverse environmental and social effects from hydraulic fracturing and other well stimulation activities, and called for updates to existing regulations, standards and practices, conducting additional studies and monitoring of impacts, and providing for increased public disclosure and transparency of information collected by the regulatory agencies reviewing these

activities. As you aware, EPA itself, in light of these growing concerns expressed both state- and nation-wide, informed the Commission staff in July 2013 that it would be modifying its general NPDES Permit to require inventories of chemicals used in the event discharges from hydraulic fracturing were to be commingled with other NPDES-related discharges. The final EPA General NPDES permit issued in December 2013 included language not contained in EPAs initial consistency determination and requiring such an inventory, as follows:

Chemical Inventory. The Permittee shall maintain an inventory of the quantities and concentrations of the specific chemicals used to formulate well treatment, completion and workover fluids. If there is a discharge of these fluids, the chemical formulation (including the concentrations for each chemical used) and discharge volumes of the fluids shall be submitted with the DMR. For discharges of well treatment, completion and workover fluids, the type of operations that generated the discharge fluids shall also be reported.

While we understand that a requirement for providing a chemical inventory is a necessary step in an effort to understand the effects of these discharges on the marine environment, we do not believe that by itself it is sufficient to protect the marine environment from harm from the chemicals used, and we believe that such an inventory would need to be accompanied by specific discharge limits on certain chemicals and by additional testing and monitoring. Without such additional measures we do not believe that discharges involving hydraulic fracturing and other fluids (as defined in SB 4) could be found consistent with the enforceable marine resources and water quality protection policies of the California Coastal Management Program (CCMP), specifically Sections 30230 and 30231 of the California Coastal Act, which provide:

> *Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. [30230]*
>
> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges....[30231]*

Our predominant concerns relate to the potentially toxic chemicals commonly found in hydraulic fracturing fluids and the potential for adverse impacts to aquatic organisms associated with exposure to these chemicals. Although there are not a great deal of data available on the types and concentrations of chemicals used in hydraulic fracturing, there are enough data to raise concerns about the potential effects of hydraulic fracturing fluids. Several oil operators have voluntarily submitted hydraulic fracturing fluid product component information disclosure forms to FracFocus, a national hydraulic fracturing chemical registry. These disclosure forms document the use, in state waters offshore of California, of proppants, gelling agents, buffers, surfactants and biocides, among

other types of compounds, which contain specific chemicals that are known to be toxic. For example, human exposure to phenol formaldehyde polymers, a compound found in fracking fluid, can irritate or damage respiratory organs, skin and eyes, compromise liver and kidney function, damage the nervous system, and result in an increased risk of cancer. Another fracking chemical, Hexamethylenetetramine, is highly flammable, has been shown to cause mutagenic effects and in high enough concentrations, is acutely toxic to fish. Petroleum distillates, also found in some fracking fluid formulations, are considered highly toxic to fish, aquatic crustacean and aquatic plants and have the potential to bioaccumulate, making this chemical especially dangerous in aquatic environments. Unfortunately, the data that are available do not provide enough information to determine whether these chemicals are present in quantities and concentrations that would adversely impact coastal resources. These data are sufficient, however, to question whether allowing hydraulic fracturing to continue without further study into the potential adverse impacts associated with releasing hydraulic fracturing fluids into the marine environment is sufficiently protective of coastal resources.

Finally, we would point that it is currently California policy to prohibit discharges of hydraulic fracturing fluids in State waters, due to the concerns expressed above. In light of these concerns, we are requesting that EPA submit a supplemental consistency determination to the Commission, and/or otherwise modify the General NPDES Permit to include: (1) provisions for Commission review of individual uses of hydraulic fluids authorized under the General NPDES Permit; and (2) additional limits, testing, and monitoring provisions to assure that the maximum concentrations of chemicals used in hydraulic fracturing activities (and other activities defined in SB 4) would avoid adverse marine resource and water quality effects. We would also request that any modified consistency determination and/or NPDES General Permit include greater scrutiny and additional analysis of the feasibility of reinjection.

We appreciate the open dialogue and communication we have had with your staff and urge you to continue to work with us in the spirit of cooperation to improve transparency and scrutiny of these matters which are of significant statewide public concern. If you have questions, please contact me at (415) 904-5205, or Kate Huckelbridge, our staff scientist, at (415) 396-9708.

Sincerely,

Alison Dettmer

ALISON DETTMER
Deputy Director

STATE OF CALIFORNIA—NATURAL RESOURCES AGENCY EDMUND G. BROWN, *GOVERNOR*

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

June 16, 2014

Jaron Ming
Pacific Region Director
Bureau of Safety and Environmental Enforcement
770 Paseo Camarillo, 2nd Floor
Camarillo, CA 93010-6064

Ellen Aronson, Regional Director
Bureau of Ocean Energy Management
Pacific OCS Region
770 Paseo Camarillo, 2nd Floor
Camarillo, CA 93010-6064

Re: Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy Management (BOEM) Coordination with the Coastal Commission Under the Coastal Zone Management Act (CZMA) for Activities Involving Hydraulic Fracturing and Other Well Stimulation Techniques on the Outer Continental Shelf (OCS)

Dear Mr. Ming and Ms. Aronson:

On September 20, 2013, the Governor of California signed legislation (Senate Bill (SB) 4) that expressed "paramount" concerns over the adverse environmental and social effects from hydraulic fracturing and other well stimulation activities[1], and called for updates to existing regulations, standards and practices, conducting additional studies and monitoring of impacts, and providing for increased public disclosure and transparency of information collected by the regulatory agencies reviewing these activities.

In light of these concerns, we have begun discussions with several federal and state agencies to examine our mutual practices and improve coordination. For activities on the Outer Continental Shelf (OCS), we began this discussion by requesting from BSEE instances where BSEE/BOEM have authorized hydraulic fracturing and other well stimulation techniques in recent years, including the review mechanism used to authorize such activities. You responded by informing us that four such authorizations have occurred over the past two years, and that these

[1] SB 4 defines well stimulation as the "Treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of a formation." This definition includes: (1) Hydraulic fracturing, (2) Acid matrix stimulation, and (3) Acid fracturing.

authorizations were granted as BSEE administrative approvals of Applications for Permits to Drill, or APDs. In these instances, Coastal Commission staff was not informed of the applications received or the final action taken by BSEE.

In the spirit of our mutual coordination responsibilities, which reflect the fundamental framework of the Coastal Zone Management Act, we wish to make several recommendations related to the process by which these activities are reviewed by your agencies, as well as potential additional federal consistency review for these activities.

Under the OCS Regulations, it appears your initial procedural determinations concerning recent hydraulic fracturing and other well stimulation activities have been limited to the question of whether the activities are considered covered by an existing OCS Plan, and either authorizable through an APD or an Application for Permit to Modify (APM). Activities involving more extensive BSEE/BOEM environmental review procedures (such as those described below) would automatically trigger potential federal consistency review under the CZMA (for the reasons we will explain further below).

The review of these applications has not, to date, included coordination with the Commission staff. Without specific knowledge of the proposed activities, we have no way of determining, or commenting to you, as to whether we agree that the existing OCS Plans do, in fact, cover these authorizations, or whether the activities should be considered modifications to existing OCS Plans. It appears to us that the OCS Regulations (30 CFR, Chapters II and V)) provide a fairly low bar for activities triggering the need for more extensive review and coordination than that performed in APD/APM reviews. For example, we note that 30 CFR § 550.283 lists at least eight situations where an OCS Plan revision would be required:

> **§ 550.283 When must I revise or supplement the approved EP, DPP, or DOCD[2]?**
>
> (a) *Revised OCS plans.* You must revise your approved EP, DPP, or DOCD when you propose to:
>
> (1) Change the type of drilling rig (*e.g.,* jack-up, platform rig, barge, submersible, semisubmersible, or drillship), production facility (*e.g.,* caisson, fixed platform with piles, tension leg platform), or transportation mode (*e.g.,* pipeline, barge);
>
> (2) Change the surface location of a well or production platform by a distance more than that specified by the Regional Supervisor;
>
> (3) Change the type of production or significantly increase the volume of production or storage capacity;
>
> (4) Increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD;

[2] Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD)

> (5) Significantly increase the amount of solid or liquid wastes to be handled or discharged;
>
> (6) Request a new H_2S area classification, or increase the concentration of H_2S to a concentration greater than that specified by the Regional Supervisor;
>
> (7) Change the location of your onshore support base either from one State to another or to a new base or a base requiring expansion; or
>
> (8) Change any other activity specified by the Regional Supervisor.

Fracking and well stimulation activities would appear to have the potential to trigger the need for OCS plan revisions under situations (3) and (5), above.

Furthermore, the same regulation requires "supplemental" OCS plans for any situation where you determine that any activities have not been authorized under an existing OCS Plan; 30 CFR § 550.283(b) provides:

> (b) *Supplemental OCS plans.* You must supplement your approved EP, DPP, or DOCD when you propose to conduct activities on your lease(s) or unit that require approval of a license or permit which is not described in your approved EP, DPP, or DOCD. These types of changes are called supplemental OCS plans.

Both revised and supplemental OCS Plans trigger formal Coastal Commission CZMA federal consistency review, as proscribed in 30 CFR § 550.285(c), which states:

> (c) *Procedures.* All supplemental EPs, DPPs, and DOCDs, and those revised EPs, DPPs, and DOCDs that the Regional Supervisor determines are likely to result in a significant change in the impacts previously identified and evaluated, are subject to all of the procedures under §§ 550.231 through 550.235 for EPs and §§ 550.266 through 550.273 for DPPs and DOCDs.

The procedures identified in the above subsection specifically include CZMA review, as follows:

> **§ 550.232 What actions will BOEM take after the EP is deemed submitted?**
>
> (a) *State and CZMA consistency reviews.* Within 2 working days after deeming your EP submitted under § 550.231, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the EP and its accompanying information to the following:

(2) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the State's CZMA agency receives a copy of your deemed-submitted EP, consistency certification, and required necessary data and information (see 15 CFR 930.77(a)(1)).

§ 550.267 What actions will BOEM take after the DPP or DOCD is deemed submitted?

(a) *State, local government, CZMA consistency, and other reviews.* Within 2 working days after the Regional Supervisor deems your DPP or DOCD submitted under § 550.266, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the DPP or DOCD and its accompanying information to the following:

(3) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA (16 U.S.C.1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the States CZMA agency receives a copy of your deemed-submitted DPP or DOCD, consistency certification, and required necessary data/information (see 15 CFR 930.77(a)(1)).

The above-discussed procedures apply to all of California's OCS Plans, regardless of their authorization date. For OCS Plans the Commission has previously reviewed (i.e., plans authorized after 1977, when the federal government (NOAA) certified the California Coastal Management Program (CCMP)), the CZMA regulations (15 CFR Part 930) provide *additional* coordination requirements. Department of Interior (DOI) approval of roughly half (11) of the 23 Platforms in California OCS waters predated the Commission's federal consistency authority. OCS Plans for the remaining 12 Platforms were subject to Commission consistency review[3], which also renders them subject to the CZMA's ongoing review and monitoring provisions.

For these 12 Platforms, the CZMA regulations contain both parallel and additional requirements to those described above in the OCS Regulations. Subpart E (the OCS Subpart) of the CZMA regulations (15 CFR § 930.82) provides for supplemental consistency review of Amended OCS Plans. In parallel fashion, Subpart D (15 CFR § 930.51) provides for supplemental consistency review for "major amendments" to federal license or permit activities not previously reviewed by the State. Beyond these requirements for amended and supplemental plans, the CZMA regulations also impose ongoing review, and additional coordination and monitoring obligations, as follows:

[3] Platforms Irene, Hidalgo, Harvest, Hermosa, Heritage, Harmony, Habitat, Gail, Gina, Gilda, Edith, and Eureka.

1. **Reporting.** Under 15 CFR § 930.79(b), even where BSEE/BOEM determine that an activity is considered covered under a previously-approved OCS Plan, for those 12 OCS Platforms the Commission has reviewed, applicants must notify the Commission of any subsequent application received, to assist the Commission in its efforts to monitor activities associated with previously-approved OCS plans. CFR § 930.79(b) states:

> *Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.*

We request, for the sake of efficiency, that BSEE/BOEM inform us when these applications are received, and either provide us copies, or once notified, we will contact the applicants to request copies. We also intend to work with BSEE/BOEM to identify which types of applications we wish to be notified about.

2. **Changed Circumstances.** Under 15 CFR § 930.85, BSEE/BOEM must cooperate and coordinate with the Commission to monitor authorized activities to assure that they "continue to conform to both federal and state requirements" § 930.85(a). This regulation also contains a "reopener clause" providing for further Commission review for activities that have been modified or if an applicant is failing to substantially comply with an approved OCS Plan. Sections 930.85(b) and (c) provide:

> *(b) If a State agency claims that a person is failing to substantially comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service[4] region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.*
>
> *(c) If a person fails to substantially comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall come into compliance with the approved plan or shall submit an amendment to such plan or a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, and the Secretary of the Interior or designee has made the determination required under 30 CFR §250.203(n)(2) or § 250.204(q)(2), as applicable, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.*

[4] BSEE/BOEM's predecessor DOI permitting agency.

We question whether activities associated with hydraulic fracturing and other well stimulation practices were described in previously authorized OCS Plans, and if they were, we would appreciate it if BSEE/BOEM could provide the information that would allow us to independently review such a conclusion. We also believe that activities are likely being conducted in a manner that is not consistent with California's approved management program, as they raise a host of not-previously-considered significant coastal marine resource protection concerns, including:

1. Potential adverse impacts to aquatic organisms associated with exposure to toxic chemicals commonly found in hydraulic fracturing fluids.

2. Geologic hazards associated with increasing subsurface pressures and additional fluid injection in seismically active areas (hazards that could involve release of hydrocarbons or chemicals to the marine environment).

3. Potential for spills (and related marine resource effects) related to accidental release of chemicals temporarily stored on oil and gas platforms, during transport to and from a platform, or from improperly abandoned wells.

4. Whether well casings and other well components have been designed to safely accommodate the increased pressures associated with the stimulation activities.

5. Whether platforms and wells have been designed for the extended life associated with continuing oil and gas production for the period the stimulation activities are intended, and/or whether impact/mitigation analyses needs to be revised to reflect longer platform life.

Consequently, we believe it is incumbent on BOEM and BSEE to conduct more detailed scrutiny of the available procedural review mechanisms, and to do so in a manner that will provide greater transparency of decision-making and information-sharing. We urge you to seriously consider whether applications to perform hydraulic stimulation should be considered revisions or supplements to the approved plan under BOEM/BSEE regulations, at least until such time as additional environmental analysis of these activities can be conducted. The latter determination would trigger the Commission's federal consistency review procedures.

Moreover, even if you do believe the applications qualify for administrative review, we wish to be informed and provided copies of all applications (and accompanying information) received, in accordance with 15 CFR § 930.79(b). In the spirit of cooperation envisioned by the CZMA, we are requesting all such information, not only for those activities associated with Platforms the Commission has reviewed, but also those whose approval predated the certification of the CCMP (i.e., for all 23 Platforms). As you are aware, we are also working with the Environmental Protection Agency (EPA) in the context of increasing coordination and information-sharing for discharges associated with all 23 OCS Platforms, since EPA NPDES permits are regularly re-issued (every 5 years) and cover all Platforms that discharge into the California OCS.

We appreciate the open dialogue and communication we have had with your staff and urge you to continue to work with us to improve transparency and scrutiny of these matters which are of significant statewide, and indeed national, public concern. If you have any questions, please call me at (415) 904-5205.

Sincerely,

ALISON DETTMER
Deputy Director

EPA Region IX
Department of Conservation