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**Proposed Amendments to the Coastal Zone Management Act  
to Facilitate Permitting of Offshore Renewable Energy Facilities**

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This paper proposes potential amendments to the Coastal Zone Management Act of 1972 to facilitate the permitting of offshore renewable energy facilities. The first part provides a brief overview of the relevant provisions of the CZMA, and the second part proposes amendments to facilitate the permitting of offshore renewable energy facilities. The proposed amendments are directed at renewable energy facilities, so as not to limit the effect of the proposed amendments to offshore wind projects.

**I. Overview of the Coastal Zone Management Act**

The Coastal Zone Management Act (“CZMA”) was enacted to encourage the prudent management and conservation of natural resources in the nation’s coastal zone. 16 U.S.C. §§ 1451-1466. The “coastal zone” is defined as coastal waters and nearby shorelines extending to the outer limits of state jurisdiction, which is the territorial seas for states bordering an ocean and the international boundary with Canada for states bordering the Great Lakes. 16 U.S.C. § 1453(1). The seaward limit of the territorial seas is three miles, except for in the Gulf of Mexico where it is nine miles. See *United States v. States of Louisiana, Texas, Mississippi & Florida*, 363 U.S. 1, 8-10 (1960).

The CZMA seeks to achieve its objectives through a system of incentives to coastal states. States are encouraged to develop coastal management plans, which may be approved by the Secretary of Commerce if they meet certain substantive criteria. 16 U.S.C. §§ 1454-1455. Once its coastal management plan is approved, a state becomes eligible for federal grants to address issues in the coastal zone, such as conservation of recreational or ecologically-significant areas, redevelopment of urban waterfronts and ports, and public beach access. 16 U.S.C. § 1455(b).

The most important aspect of the CZMA for project development in offshore waters is that federal agencies and federal permit applicants are required to comply with the state plan. For an “agency activity,” federal agencies are required to carry it out “in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs.” 16 U.S.C. § 1456(c)(1)(A); see also § 1456(c)(2) (similar language applicable to federal “development projects”). This provision applies not just to activities “within the coastal zone” (i.e., the territorial seas and nearby coastlines) but also to activities “outside the coastal zone that affect[] any land or water use or natural resource of the coastal zone.” *Id.* Courts have found that energy-related activities on the outer Continental Shelf (such as oil and gas extraction) and offshore naval training exercises using sonar affect the coastal zone. See, e.g., *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 17 (2008) (sonar); *Environmental Defense Center v. Bureau of Ocean Energy Management*, 36 F.4th 850, 885-889 (9th Cir. 2022) (oil and gas).

To ensure compliance, a federal agency is required to prepare a “consistency determination” and provide it to the relevant state agency. 16 U.S.C. § 1456(c)(1)(C); 15 CFR § 930.34. If the state disagrees that the federal activity will have no effects on a state’s coastal

zone, and the federal agency and the state are not able to work through their disagreement, then the federal agency can still move forward. However, the state may file a lawsuit challenging the federal agency determination of consistency, and if the court rules for the state, then the federal agency can move forward only if “the President determines that the activity is in the paramount interest of the United States.” 16 U.S.C. § 1456(c)(2); see also *Amber Resources Co. v. United States*, 538 F.3d 1358, 1364 (Fed. Cir. 2008) (explaining process).

There is a similar provision applicable to “any applicant for a required Federal license or permit to conduct an activity in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state.” 16 U.S.C. § 1456(c)(3)(A). The applicant must submit to the federal agency “a certification that the proposed activity complies with the enforceable policies of the state’s approved program and that such activity will be conducted in a manner consistent with the program.” *Id.* The federal agency cannot grant the license or permit until the state has concurred with the applicant’s certification (or is presumed to occur due to lack of timely response), unless the Secretary of Commerce “finds ... that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interests of national security.” *Id.*

Historically, most disputes over compliance with the CZMA have related to offshore oil and gas activities. The CZMA directly addresses “coastal energy activities,” which are defined as oil, gas and coal activities, as well as “any outer Continental Shelf energy activity.” *Id.* § 1453(5). The statute has a consistency procedure specific to offshore oil and gas leasing, exploration and production activities that has similar requirements to those for other types of activities. *Id.* § 1456(c)(3)(B).

There are no provisions in the CZMA that directly address offshore renewable energy projects. There are Congressional findings about the national objective of “attaining a greater degree of energy self-sufficiency” and that “global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone,” but nothing specific to the siting of renewable energy projects. See 16 U.S.C. § 1451(j), -(l). There also is a substantive requirement for state plans that provides that “the management program [must] provide[] for adequate consideration of the national interest involving in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance,” but it only requires a demonstration that “the State has given consideration to any applicable national or interstate energy plan or program.” 16 U.S.C. § 1455(d)(8).

## **II. Proposed Amendments to Facilitate Permitting of Offshore Renewable Energy Facilities**

The primary way that the CZMA could slow or block offshore renewable energy projects (such as offshore wind projects) is through the consistency provisions found at 16 U.S.C. § 1456. It is possible that a state could include in its coastal management plan provisions that prohibit and seriously delay offshore renewable energy projects in the territorial sea or outer Continental Shelf (similar to what some states have done with regard to offshore oil and gas activities). If that were to happen, then it would limit the ability of federal agencies to approve such projects and private parties to obtain necessary federal permits and licenses. In addition, the provisions in the CZMA that allow for federal agencies to move forward regardless of inconsistency with a state plan are not a good fit for renewable energy projects, because they require a finding by the President that the project is “in the paramount interest of the United States,” 16 U.S.C. § 1456(c)(1)(b) (for “federal agency activities”), or a finding by the Secretary of Commerce that the “the activity is consistent with the objectives of this chapter or is otherwise

necessary in the interests of national security,” *id.* § 1456(c)(3)(A) (for “any applicant for a required Federal license or permit”).

There are at least two potential ways that the CZMA could be amended to avoid substantive obstacles or procedural delays to offshore renewable energy projects. This paper recommends the second approach because it is more consistent with the structure of the CZMA and maintains a role for states in the planning for offshore renewable energy projects.

**A. Exempt Renewable Energy Projects from CZMA Consistency Requirements**

The simplest way to avoid regulation or procedural delays associated with the CZMA would be to exempt renewable energy projects from the consistency provisions in 16 U.S.C. § 1456. This could be done by adding a new subsection 1456(c)(4) that provides, “Notwithstanding any provision of this chapter, the consistency requirements of this section do not apply to renewable energy facilities.” Such an amendment, combined with a new definition of “renewable energy facility” in section 1455 (an example of such a definition is below), would avoid any requirement for consistency determinations.

This approach has the obvious advantage of simplicity and because it would eliminate procedural requirements under the CZMA for renewable energy facilities. However, it would have the effect of removing any state role in the planning and regulation of offshore renewable energy facilities. This could limit the consideration of local factors in the planning of such facilities, and generate opposition of states that otherwise are not completely opposed to offshore renewable energy projects.

**B. Incorporate Into the CZMA Support for Offshore Renewable Energy Projects**

A second approach would be to incorporate into the CZMA requirements to encourage planning for renewable energy projects and that allow for easier federal agency override of state objections. The goals of this approach would be to preserve a state role in the planning for such projects, but limit the ability of a state to completely block them.

Under this approach, section 1455 of the CZMA could be amended to require that state coastal management plans affirmatively plan for and authorize the siting, approval and implementation of renewable energy projects. This would preserve a role for the states in planning for offshore renewable energy projects, but would make it less likely that such a project would be inconsistent with such a state plan. Such a provision also would make it easier for federal agencies to satisfy the consistency requirements in section 1456(c)(1)(A) that apply to “federal agency activities,” because federal activities would only have to be consistent with state plan provisions that affirmatively plan for renewable energy facilities.

In addition, several sections of the CZMA could be amended to limit the consistency provisions from being used to slow or block the issuance of licenses or permits for offshore renewable energy projects. Specifically, section 1451 could be amended to make clear that it is an objective of the CZMA to facilitate offshore renewable energy projects, because consistency with “the objectives of this chapter” is a basis for the Secretary of Commerce to override a state objection to issuance of a federal permit. 16 U.S.C. § 1456(c)(3)(A). Section 1456(c)(3)(C) could also be amended to make clear that the Secretary of Commerce can override a state objection to “an activity associated with a renewable energy facilities,” to ensure that a state cannot block an offshore project.

The proposed amendments to the CZMA to accomplish this approach are as follows.

## **1. Amendments to Congressional Findings and Declaration of Policy**

CZMA Section 302 (“Congressional Findings”), 16 U.S.C. § 1451, could be amended to include an affirmative statement that renewable energy facilities are an “objective of this chapter,” to fit the basis to override a state objection to a federal permit or license.

“The Congress finds that ---

\* \* \*

(n) It is an objective of this chapter to facilitate the planning, siting, approval and implementation of renewable energy facilities located in the territorial seas and outer Continental Shelf to address the threat of climate change.”

CZMA Section 303 (“Congressional Declaration of Policy”), 16 U.S.C. § 1452, could be amended to add a new subsection (7):

“The Congress finds and declares that it is the national policy –

\* \* \*

(7) to plan for and authorize the siting, approval and implementation of renewable energy facilities in the coastal zone and outer Continental Shelf to reduce the nation’s emission of greenhouse gases that are contributing to climate change.”

## **2. Amendments to Definitions**

CZMA Section 304 (“Definitions”), 16 U.S.C. § 1453, could be amended to define “renewable energy facility.” This proposed definition would incorporate an existing definition of “renewable energy resource” found elsewhere; nothing prevents the use of a different definition as appropriate. Note that any such definition needs to include facilities related to the actual energy generating equipment, such as transmission lines that connect the equipment to the onshore energy grid, so that a state cannot block an offshore project by limiting onshore activities.

“For purposes of this chapter –

\* \* \*

(19) The term “renewable energy facility” means any structure, equipment or activity designed to generate energy from a renewable energy resource as that term is defined in 42 U.S.C. § 7372(2). The term includes any structure, equipment or activity that is appurtenant to or that is necessary for the generation or transmission of energy from the facility.”

## **3. Amendments to Provisions Governing Development of Coastal Zone Management Plans**

CZMA Section 306 (“Administrative Grants”), 16 U.S.C. § 1455(d), could be amended to require that state management programs allow for renewable energy projects. The proposed language seeks to accomplish the goal with minimal changes to the existing statute, but there is room to add more language to make clear that a state plan cannot limit offshore renewable energy development. Note that this proposed language does not prohibit a state from restricting renewable energy projects in the territorial seas (i.e., less than three miles from shore on the

Atlantic and Pacific coasts) or on the Great Lakes. This is a judgment call regarding how much flexibility to give to the state plans, and the language could be changed to make more of a blanket requirement.

“Before approving a management program submitted by a coastal state, the Secretary shall find the following:

\* \* \*

(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance and the siting of renewable energy facilities. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program, and that the State does not restrict the siting of renewable energy facilities outside of the State’s coastal zone. The Secretary shall not approve provisions of a management plan that unreasonably interferes with or delays the planning, siting, approval or implementation of a renewable energy facility outside of the State’s coastal zone.”

#### **4. Amendments to the Consistency Provision**

CZMA Section 307 (“Coordination and cooperation”), 16 U.S.C. § 1456(c)(3)(A), should be amended to make clear that a state cannot unreasonably block issuance of permits or licenses related to renewable energy projects. This proposed edit is to the last sentence of section 1456(c)(3)(A).

“... No license or permit shall be granted ... unless the Secretary ... finds ... that the activity is consistent with the objectives of this chapter, that the activity is associated with renewable energy facilities, or is otherwise necessary in the interests of national security.”

Note that this paper does not suggest edits to the consistency provisions applicable to “federal agency activities” which are found at section 1456(c)(1)(A). Those consistency issues are addressed by the proposed amendments to section 1455(c), which prohibit the approval of state plans that restrict or unreasonable interfere with renewable energy facilities. Since such provisions cannot be part of a state’s “approved State management program,” a federal agency would not have to certify that its activity is consistent with them.