

**Testimony of
Kristen M. Fletcher
Executive Director, Coastal States Organization
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Committee on Natural Resources
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Chairwoman Bordallo, Ranking Member Brown, and distinguished members of the subcommittee, my name is Kristen Fletcher and I am Executive Director of the Coastal States Organization. For the last 40 years, CSO has represented the interests of the Governors of the 35 coastal states and territories in Washington, DC on legislative and policy issues relating to the sound management of coastal, Great Lakes, and ocean resources. Thank you for the opportunity to testify regarding state preparedness for offshore energy development and response. Please include my written testimony in the record.

CSO recognizes the consistent leadership of this subcommittee in ensuring that states have the appropriate authorities and resources to address natural resource needs, especially on the coast. There is no more critical time than now to renew this commitment to coastal states' ability to plan, prepare and respond to impacts from offshore energy development. While the Deepwater Horizon blow-out was not deliberate, it is our obligation as a nation to be deliberate in our response to it, to be bold in looking ahead and putting in place the resources, authorities and plans in order to reduce the chances for such an environmental disaster in the future.

My testimony on behalf of the coastal state and territory governors will focus first on state planning efforts and existing authorities, especially consistency review under the Coastal Zone Management Act and how the CZMA works with the Oil Pollution Act to present a more thorough planning and response effort. Second, I will offer recommendations for federal action to assist the states. Both of these points will be placed in context by examples from Alaska and California showing why these efforts are so critical to state preparedness.

I. Planning Efforts and Existing Authority

While each U.S. coastal state has different planning and response authorities, consistency review under the Coastal Zone Management Act (CZMA) serves as a valuable tool among the nation's 34 states with approved coastal programs. Throughout the history of the CZMA, one of the greatest incentives for states to participate in the nation's coastal management program is the ability to review federal activities in and beyond state waters that have an impact on the coastal zone. This review indicates whether the project is consistent with the state's coastal program and policies. This authority has become even more vital in light of the spill and its myriad impacts on state coastal resources – in the Gulf and potentially beyond. A Gulf of Mexico oil leak releasing thousands of barrels per day that may reach to the Northeast U.S. within a few months

is a prime example of the interconnectedness of coastal and ocean ecosystems and the need for state review even if potential impacts seem unlikely.

CZMA consistency can be employed in a proactive manner to review plans developed by the federal government in preparation for incident response. The coordination role of state CZMA consistency coordinators is also a valuable tool in the development or updating of those plans. State coastal programs, through their partnerships with NOAA, are uniquely set up to facilitate the coordination of government agency technical staff, elected officials, and other stakeholders in preparation for disasters such as these as well as natural disasters. This coordination identifies available resources and potential needs for additional resources for adequate, timely responses to such incidents.

For example, CZMA consistency is a critical part of State of Alaska review of Outer Continental Shelf (OCS) oil and gas project proposals. Within Alaskan waters, the issuance of permits, certifications, approvals, and authorizations of the Alaska Department of Environmental Conservation establishes consistency with the Alaska Coastal Management Program for oil spill planning. In federally administered lands and the OCS, state environmental statutes and regulations serve as the basis to determine consistency of proposed oil and gas activities. The CZMA consistency review process for OCS oil and gas exploration provides public input opportunities in order to fine tune spill contingency plans so that they incorporate appropriate Arctic conditions into response scenarios, and adequately address logistical obstacles that could affect response capabilities.

California's federal consistency authority, as authorized by the CZMA and the federally certified California Coastal Management Program, has been very important for requiring offshore oil and gas development projects to provide for systems safety and oil spill prevention and response measures. The oil spill equipment and response standards developed during the California Coastal Commission's CZMA federal consistency review and approval of the offshore oil and gas platforms during the 1980s provided a foundation for the development of California's Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 and the implementation of its statewide regulations and programs. The Coastal Act Policy 30232 compliments it by requiring: "Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur."

II. Case Studies for Preparedness: OPA and the CZMA

A. Statewide Efforts

Both Alaska and California provide excellent case studies of coordination, capacity, and lessons learned and demonstrate the assistance needed from the federal government in order to better prepare for emergencies related to offshore energy development. Much of the current federal and state law regarding spill response in Alaska is based upon the State of Alaska's experience with

the Exxon Valdez oil spill. State and Federal response and preparedness planning is guided by the National Contingency Plan and state law.

As the law that establishes the federal response and supports state responses, the Oil Pollution Act of 1990 (OPA 90) requires the development of Area Contingency Plans. In Alaska, this applies to four main regions. State law divides Alaska into ten separate regions for spill response planning, which addresses the OPA requirements through the publication and regular update of the Unified Plan. In addition, Alaska has developed a number of specific spill response tools to supplement the information provided in the Unified Plan. The Department of Natural Resources is the lead agency for coastal zone management plans and regularly coordinates with state resources agencies, coastal district management plan representatives, cities and boroughs, Native organizations, federal agencies, regional citizen advisory councils, and the public.

Oil spill drills and exercises provide valuable opportunities to identify gaps in response readiness and capability. In a large spill incident Alaska's State On-Scene Coordinator works closely with the U.S. Coast Guard and the Environmental Protection Agency as part of the Unified Command. In incidents where an oil spill is located outside of state waters, but poses an imminent threat to state waters, Alaska is notified by the U.S. Coast Guard and the two agencies work closely to identify priority protection sites by coordinating them with both state and federal agencies. A prime example of the coordination efforts between state and federal agencies can be seen in the CANUS North Joint Pollution Contingency Plan exercises in the Beaufort Sea north of Alaska which includes state and federal agencies as well as Canadian agencies and regional stakeholders. These exercises are held regularly to improve joint response capabilities.

The California Office of Spill Prevention and Response (OSPR) is the State's lead Trustee agency for natural resource damage assessment (NRDA) and restoration. OSPR uses the federal NOAA NRDA process and calculations developed under OPA 90. OSPR confers with the other state and local agencies within California – e.g., Coastal Commission, State Parks, State Lands Commission, Native American Council, Counties and Cities – to ensure that all resources that may have been impacted by an oil spill have been included in the NRDA. This coordination works well to ensure that CZMA resources issues are adequately addressed in the NRDA process. For example, in a past spill, the Coastal Commission requested the addition of assessments for public access impacts, beach closures, and tourism loss in addition to the already identified NRDA impacts for seafood industry loss, fishery closures, oiled bird and wildlife losses. After the NRDA process has reached litigation or settlement, then the monies go to restoration projects with the federal and state trustee agencies. The Coastal Commission, pursuant to the California Coastal Act and as the CZMA representative for California, is often involved in the development and review/permitting of post-oil spill restoration projects in the coastal zone.

One example of the critical interplay between OPA and the CZMA is the review of flow rates from an offshore well. The initial Deepwater Horizon incident flow rate estimates were 1,000 barrels per day, subsequently increased to 5,000 barrels per day, and now appear to be greater than 25,000 barrels per day, possibly as great as 60,000 barrels per day. In Alaska's consistency review of Shell's Chukchi Sea Exploration Plan, there was not sufficient well data to determine

historical well flow rates, so the state made the following requirement a condition for finding Shell's Exploration Plan and C-Plan consistent with Alaska standards: "If the actual flow rate of a well exceeds 5,500 barrels per day, and Shell is to continue drilling, the response planning standard (RPS) volume must be increased for subsequent exploration wells drilled to an RPS volume taking into account the actual flow rate of the well." The CZMA consistency authority complements the requirements under OPA, allowing for a more thorough state, federal, and private response.

B. Building Local Capacity

The CZMA enables effective local response as well. The Local Coastal Program component of California's statewide program gives added strength to the review and oversight of the onshore facilities supporting offshore oil and gas development. The County of Santa Barbara has certified Local Coastal Program policies and ordinances that mirror and expand upon the Coastal Act's policies for resource protection and oil spill prevention and response. The County's coastal development permits for the onshore facilities supporting offshore oil and gas development have explicit conditions for frequent inspections, operation manuals, safety systems requirements, and oil spill prevention and response requirements. As an example, the County's System Safety Program requires monthly inspections of the onshore facilities, and has public meetings for the review of oil and gas facility safety deficiencies. The County also reviews all changes to the oil spill contingency/response plans for the platforms, and all changes to response equipment configurations.

In Alaska, two Regional Citizen's Advisory Councils were created under OPA 1990 and both are quite actively engaged and involved with oil spill response planning efforts in Prince William Sound and Cook Inlet. A new Advisory Council for the Arctic Ocean would presumably benefit planning efforts for that region of Alaska. Good coordination also exists in Alaska among state and federal agencies including the U.S. Coast Guard, the Environmental Protection Agency and the Minerals Management Service. For example, oil spill drills and table-top exercises are routinely coordinated among the state and federal agencies, plan holders and response action contractors to demonstrate competency with the incident command system procedures, communications, planning, logistics, operations, equipment maintenance and tactics.

III. Recommendations for Federal Action

Even though the CZMA and OPA provide adequate authorities for planning and response, the effectiveness of these statutes is limited by limited capacity and resources. CSO recommends that Congress consider updates to these laws along with federal assistance in research and implementation.

A. Legislative Actions and Appropriations

As the CZMA plays such a vital role in planning for management of coastal resources and responses to environmental emergencies such as the Deepwater Horizon Spill, the fact that it has been overdue for reauthorization since 2000 shows a crack in the foundation for state

preparedness. With unanimous support from its members, CSO issued a draft bill in 2008 which provides for more thorough planning at the state level, regional collaboration, and management of renewable energy development. While the existing CZMA provides enough flexibility for states to develop effective responses to a spill, the need for reauthorization is evident.

With respect to the Outer Continental Shelf Lands Act, it currently provides a 30-day window for the review and approval of OCS Exploration Plans. It is impossible for the CZMA state agencies to conduct a federal consistency review within a 30-day window. CSO recommends that Congress extend the 30-day review period to allow for CZMA state agencies to conduct federal consistency reviews.

Finally, most states do not have the funds or staff to implement their own inspection program of the offshore oil and gas platforms, and therefore have relied on reports from the MMS inspection of the federal platforms. CSO recommends that Congress provide funds for CZMA state agency and applicable local government agencies to participate in the MMS inspections of the offshore oil and gas operations to enable a more thorough and objective review.

B. Research and Information Dissemination

The Deepwater Horizon spill has starkly illustrated the research needs in the planning and response for oil spills. For example, conventional containment and exclusion booms begin to fail when currents exceed $\frac{3}{4}$ knots. This limitation makes spill containment and protection of environmentally sensitive areas difficult if not impossible. Many states need a deployable boom that operates effectively in complex, high-velocity currents and high waves that are frequently encountered in coastal environments. CSO recommends that Congress call for enhanced boom technology that can operate in high currents and in high waves.

In light of the heavy dispersant use in the BP Deepwater Horizon oil spill, states and their citizens have concerns about the potential adverse effects of dispersants on the ocean's sensitive ecosystem, especially the deep ocean. CSO recommends that Congress provide for the evaluation of the impacts of dispersants on natural resources in the water column, at depth, offshore, nearshore and along the coast and how it affects different life stages of finfish and shellfish. Such an evaluation should include impacts of dispersants on the persistence of oil in ecosystems due to oil settling and being re-suspended.

Alaska has particular needs in this area as applied research efforts are needed to establish and distribute information about the current best available technology for oil spill response activities under Arctic and sub-arctic conditions. Examples include technology for tracking oil spills under ice, blowout prevention, toxicity and effectiveness of dispersants in cold, marine waters, in-situ burning and other response techniques during broken ice conditions, and improved weather and storm prediction in Arctic waters. Grants could assist communities with spill protection of subsistence resources and with planning, coordination and communication efforts. Federal funding could help the U.S. Coast Guard acquire Arctic-capable assets and could help construct port facilities in Arctic Alaska, which would improve response capabilities and simplify planning logistics.

Finally, CSO recommends that Congress provide NOAA the resources to serve as a Portal for Dissemination of Lessons Learned from BP Oil Spill. As a result of the BP Deepwater Horizon oil spill, the Gulf of Mexico Sea Grant Programs' website (http://gulfseagrant.tamu.edu/oilspill/GMRP_oil_spill_research.htm) has posted an addendum of research topics that will be added to its Gulf of Mexico Research Program. The research topics include ecosystem impacts, community resilience, fisheries, restoration post-spill, tourism, ecosystem services, impacts from dispersants, displaced people and workers, seafood industry, etc. The lessons learned from this research will be beneficial to the coastal states and territories for oil spill preparedness, response, recovery and restoration. This portal could provide a valuable mechanism for coastal states to review and offer input and could be paired with funding for NOAA or the Gulf States Sea Grant Programs to hold research and policy conferences for the information dissemination to other coastal states and communities.

Closing

In closing, thank you again for your leadership on these issues and for inviting me to testify today. The coastal states and territories look forward to continued work with committee staff, nongovernmental partners, federal agencies and others to ensure healthy oceans in the future. I welcome any questions you may have.