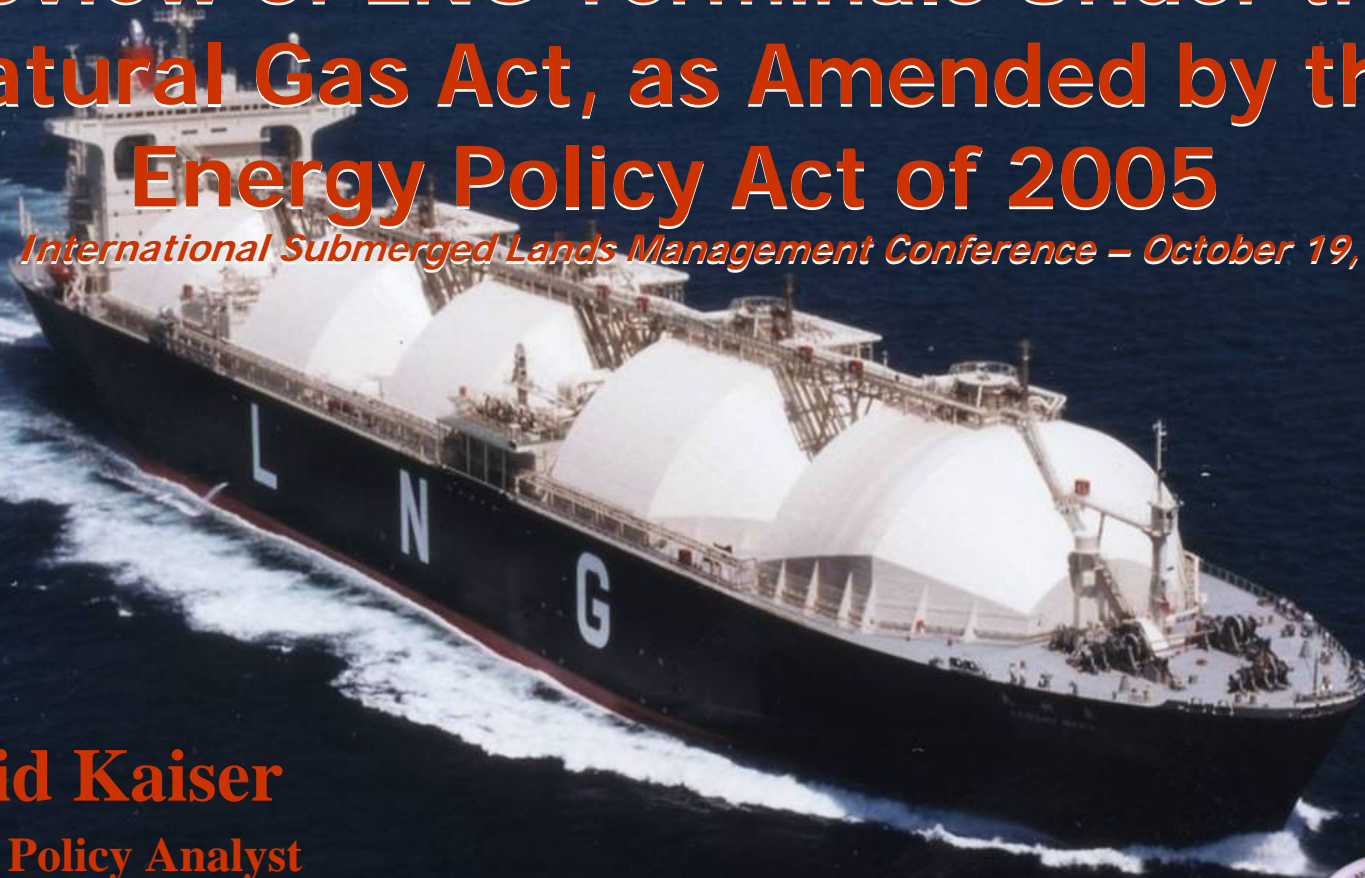


# State Coastal Zone Management Act Review of LNG Terminals Under the Natural Gas Act, as Amended by the Energy Policy Act of 2005

*International Submerged Lands Management Conference – October 19, 2006*



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# September 23, 2005 – OCRM Summary of Energy Policy Act of 2005 - § 311

- Likely preemption of State regulation for siting of LNG terminals under FERC's jurisdiction.
- States retain authority to review LNG projects through CZMA review.
- Existing State LNG Siting-Specific policies previously approved by NOAA would likely no longer be enforceable for purposes of CZMA federal consistency reviews.
- State policies that are coastal-effects based and not written to regulate LNG facilities would continue to be applied through CZMA review.

# November 2005 — OCRM, State, CSO, FERC Conference call

- OCRM's interpretation of Energy Policy Act consistent with past guidance to states on reviewing preempted activities under the CZMA.
- OCRM agreed to provide further information.

# October 4, 2006 — OCRM letter to New Jersey

- NOAA decided to provide additional detail on the Energy Policy Act and CZMA review in response to a *specific request* before the agency.
- New Jersey proposed to make changes to its CZMA policies that specifically address the siting of LNG facilities.

# **OCRM's October 4 Letter**

- **Preliminary Assessment of New Jersey's LNG Policies**
- **OCRM Reserves Right to make Final determination Upon Formal Submission**
- **Applicable to Other States**

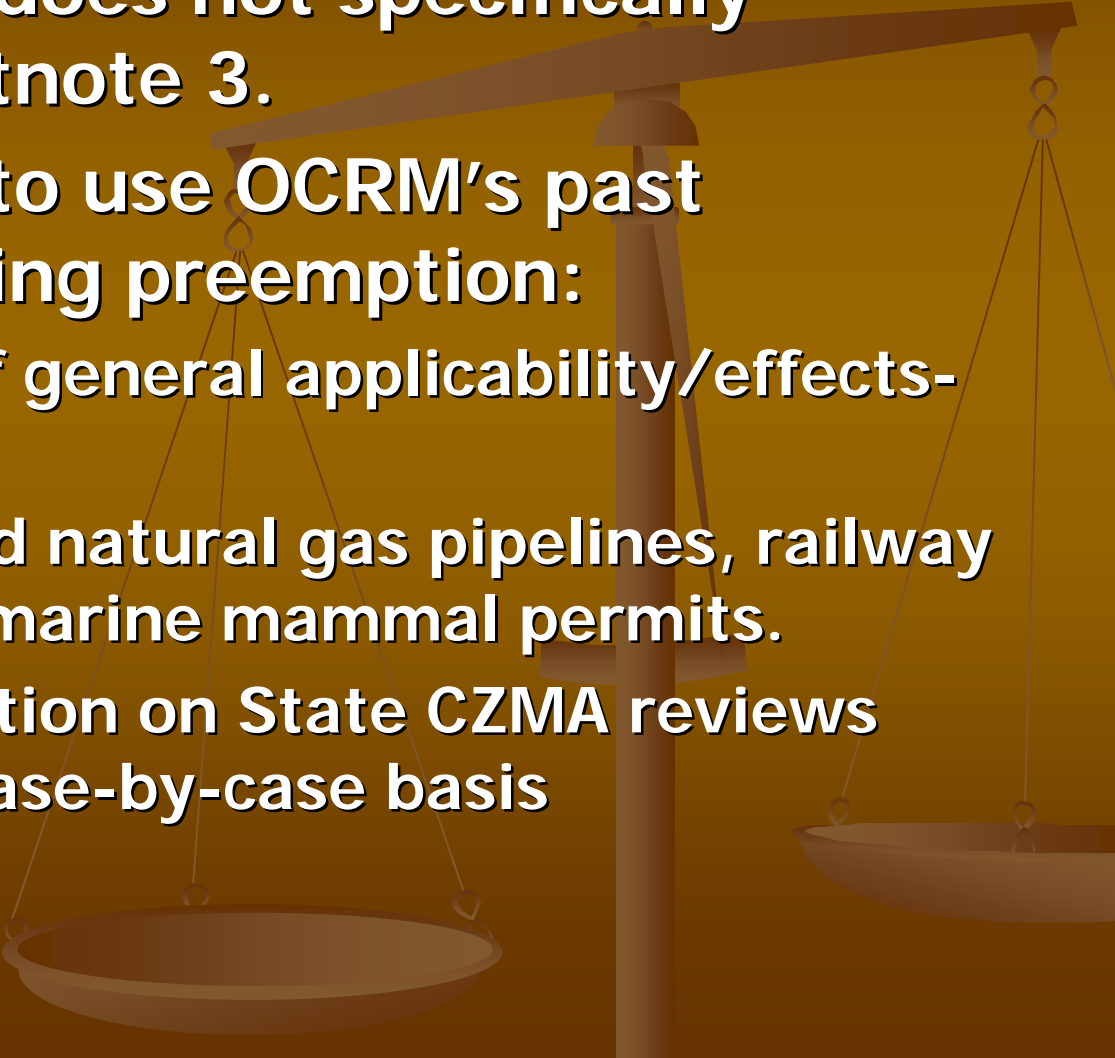
# Preemption & Program Changes

- **Natural Gas Act, as amended by EPA Act, likely preempts State LNG regulation.**
- **If so, OCRM could not approve the incorporation of such policies in State CZMA programs**

# Previously Approved State LNG Policies

- Earlier version of New Jersey's LNG policy remains part of NJ CZMA program
- Earlier version likely preempted as well; precluding NJ from enforcing through CZMA review.
- OCRM recommends that NJ remove the LNG-preempted policies from NJCMP

# Other State CZMA Policies

- October 4 letter does not specifically address, *see* footnote 3.
  - States continue to use OCRM's past guidance regarding preemption:
    - Use of policies of general applicability/effects-based policies.
    - Hydroelectric and natural gas pipelines, railway abandonments, marine mammal permits.
    - Effect of preemption on State CZMA reviews determined on case-by-case basis
- 

# Energy Facility Planning

- **CZMA requires States to have energy facility planning process**
- **CZMA and NGA / EPA Act must be read in concert with each other**
- **State “enforceable policies” under CZMA must be legally binding under State law; therefore preemption would leave State LNG siting-specific policies not enforceable**

# Where Does That Leave Us?

- We have a new (or clarified) preempted activity: FERC LNG authorizations
- CZMA review, generally, just like past reviews of preempted activities
- States should carefully apply CZMA policies
- Dialogue on Regional Energy Needs?

