

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, et al.,	)	
	)	
Plaintiffs,	)	Civ. No. 2:18-cv-3326-RMG
	)	
v.	)	(Consolidated with 2:18-cv-3327-RMG)
	)	
WILBUR ROSS, in his official capacity as the Secretary of Commerce, et al.,	)	<b>FEDERAL DEFENDANTS’ STATUS REPORT</b>
	)	
Defendants.	)	
	)	

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In response to the Court’s Order dated September 10, 2020 (Dkt. No. 445), requiring Federal Defendants to advise the Court “whether the President’s Memorandum alters in any way the Government’s proposed plan<sup>[1]</sup> to proceed with seismic testing by the five companies with pending applications before the [Bureau of Ocean Energy Management] and the Department of Interior and/or the Incidental Harassment Authorizations previously issued by [the National Marine Fisheries Service] and the Department of Commerce relating to those proposed surveys,” Federal Defendants and the Bureau of Ocean Energy Management (“BOEM”)<sup>2</sup> provide the following information:

1. Under the Presidential Memorandum, no offshore energy leasing and development, including oil and natural gas, will occur in the Straits of Florida and South Atlantic

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<sup>1</sup> The Court’s Order refers to the Government’s proposed plan. To clarify, the agencies’ roles here are in a regulatory capacity. The Government itself does not have a proposed plan to proceed with seismic testing. Private companies have filed applications to conduct seismic testing; these applications are not plans to conduct testing by the Government.

<sup>2</sup> Neither the Department of the Interior nor BOEM are parties to the lawsuit, and are providing this information at the Court’s direction.

Planning Areas and a portion of the eastern Gulf of Mexico for a period of ten years, commencing on July 1, 2022. Geological and geophysical permits, including for seismic surveys, are authorized by BOEM under a section of the Outer Continental Shelf Lands Act (“OCSLA”) that is separate from the leasing provisions in that statute. *See* 43 U.S.C. § 1340(a) and (g). Congress has previously stated that issuance of geological and geophysical permits are separate decisions not considered part of the OCSLA pre-leasing steps. *See* H.R. Rep. No. 101-120, “Department of the Interior and Related Agencies Appropriation Bill, 1990” pp. 41-42 (June 28, 1989). Thus, the authorization of geological and geophysical permits, including for seismic surveys, by BOEM is a separate decision process from whether to offer oil and gas lease sales.

2. Furthermore, BOEM can authorize seismic surveys in the Outer Continental Shelf (“OCS”) even in areas of the OCS that are not open to oil and gas exploration under the OCSLA leasing process. Entities seeking to conduct seismic surveys can therefore obtain a permit in any area of the OCS, including those areas that have been withdrawn from leasing. *See* 43 U.S.C. § 1340; 30 C.F.R. pt. 551; *see also* Dkt. No. 281-1 (Declaration of W. Cruickshank (May 9, 2019)).

3. In light of these distinct processes, the Presidential Memorandum, which withdrew “from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032. . . the areas currently designated by [BOEM] as the South Atlantic and Straits of Florida Planning Areas” has no legal effect on the status of the applications to conduct seismic surveys in the Atlantic OCS that are pending before BOEM.<sup>3</sup> The Presidential Memorandum

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<sup>3</sup> On September 4, 2020, WesternGeco withdrew its permit application with BOEM, and terminated the Incidental Harassment Authorization that was issued by NMFS. Dkt. No. 446.

may affect the interest of private entities to proceed with their applications to conduct seismic surveys in the region, however, to date the applications at issue have not been withdrawn.

4. In response to the Court's inquiry, NMFS has reviewed the Presidential Memorandum and determined that the Memorandum has no legal impact on the Incidental Harassment Authorizations ("IHAs") previously issued by NMFS and the Department of Commerce relating to these proposed surveys. Pursuant to their terms, the IHAs will expire on or before November 30, 2020. *See* Declaration of Donna Wieting ¶ 5 (attached as Exhibit A).

5. To date, the Department of the Interior has not made final determinations on the four pending applications. Federal Defendants will notify the Court if and when the Department of the Interior takes final action with respect to those four pending applications.

Respectfully submitted this 21st day of September, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

/s/ Alison C. Finnegan