

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

South Carolina Coastal Conservation League; <i>et al.</i> ,)	
)	Civil Action No. 2:18-cv-03326-RMG
)	(Consolidated with 2:18-cv-3327-RMG)
Plaintiffs,)	
)	ORDER
v.)	
)	
Wilbur Ross, in his official capacity as the Secretary of Commerce; <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

This matter is before the Court on the three Motions for a Preliminary Injunction filed by three sets of plaintiffs in this case: Motion for a Preliminary Injunction filed by the Organizational Plaintiffs (Dkt. No. 124),¹ Motion for a Preliminary Injunction filed by the Municipality Plaintiffs (Dkt. No. 143), and a Motion for a Preliminary Injunction filed by the State of South Carolina (Dkt. No. 146).

By way of background, on December 11, 2018, two cases were filed challenging the decision of the National Marine Fisheries Service (“NMFS”) to issue incidental harassment authorizations to five companies to conduct seismic airgun surveys for oil and gas in the coastal waters of the Mid- and South Atlantic Ocean. As alleged in the Complaint, as soon as the Bureau of Ocean Energy Management (“BOEM”) issues permits to the five companies, they will be free to begin seismic airgun surveys. (Dkt. No. 1 at ¶ 99.) The Plaintiffs, nine environmental organizations, seek declaratory relief that the Defendants violated the Marine Mammal Protection

¹ The Plaintiff-Intervenor States joined the Organizational Plaintiffs’ Motion for a Preliminary Injunction. (Dkt. No. 148.)

Act (“MMPA”), the Endangered Species Act (“ESA”), the National Environmental Policy Act (“NEPA”) and the Administrative Procedure Act (“APA”). Plaintiffs further request that the Court vacate three agency actions authorizing the surveys and enjoin Defendants from authorizing takings of marine mammals incidental to the airgun surveys. On December 28, 2018, the Court granted a motion to consolidate this case with a related case, *City of Beaufort et al. v. National Marine Fisheries Service*, 2:18-cv-3327-RMG, brought by South Carolina municipalities. (Dkt. No. 57.) Maryland, Connecticut, Delaware, Maine, New Jersey, New York, North Carolina, Massachusetts, Virginia and South Carolina have joined as Intervenor-Plaintiffs. (Dkt. No. 118.)

A plaintiff seeking a preliminary injunction must establish:

- (1) that the plaintiff is likely to succeed on the merits;
- (2) that the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief,
- (3) that the balance of equities tips in the plaintiff’s favor, and;
- (4) that an injunction is in the public interest.

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008). Regarding the second factor, “the required “irreparable harm” must be “neither remote nor speculative, but actual and imminent.” *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991); *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002) (same).

The Motions for a Preliminary Injunction, and notice of joinder from the Intervenor-Plaintiffs, were filed between February 20, 2019 and March 5, 2019. (Dkt. Nos. 124, 143, 146, 148.) Over five and a half months have now passed since the motions were filed. While the Organizational Plaintiffs argued in March that they could meet their burden to show that irreparable harm was “imminent” as government officials “repeatedly stated that BOEM permits are imminent,” (Dkt. No. 233 at 40) it is clear now, over five and half months later, that those

statements were inaccurate. Without further information, the Court therefore cannot determine whether the permits are imminent, which is a necessary precondition for the alleged irreparable harm here, namely the proposed seismic testing of vast amounts of ocean waters from Delaware to Florida.

The Court therefore **DENIES WITHOUT PREJUDICE WITH LEAVE TO REFILE** the Motions for a Preliminary Injunction. (Dkt. Nos. 124, 143, 146, 148.) The Court notes that, to the extent BOEM permits are issued or there is other definitive evidence of imminent irreparable harm, the Plaintiffs and Plaintiff-Intervenors have leave to refile their motions for a preliminary injunction, and, in that instance, the Parties may submit the same, or substantially similar, briefs to the extent they remain relevant to the issues.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

August 26, 2019
Charleston, South Carolina