

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

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE et al.,)
)
Plaintiffs,)
)
v.)
)
WILBUR ROSS, IN HIS OFFICIAL)
CAPACITY AS THE SECRETARY OF)
COMMERCE, et al.,)
)
Defendants.)
_____)

No. 2:18-cv-03326-RMG
(Consolidated with 2:18-cv-3327-RMG)

**RESPONSE OF PLAINTIFFS-INTERVENORS STATES OF MARYLAND,
CONNECTICUT, DELAWARE, MAINE, NEW JERSEY, NEW YORK, AND
NORTH CAROLINA AND COMMONWEALTHS OF MASSACHUSETTS
AND VIRGINIA TO FEDERAL DEFENDANTS’ STATUS REPORT**

In response to the Status Report (ECF 281) filed by the Federal Defendants in response to the Court’s order dated May 2, 2019 (ECF 266), Plaintiffs-Intervenors the States of Maryland, Connecticut, Delaware, Maine, New Jersey, New York, and North Carolina and the Commonwealths of Massachusetts and Virginia (“the States”) respectfully state as follows:

1. The Court requested that the Federal Defendants provide a status report regarding “what impact, if any, Secretary Bernhardt’s announcement has on this case, including on the pending permit requests.” ECF 266. Although that report hedges on the status of the 2019-2024 National Outer Continental Shelf (OCS) Oil and Gas Leasing Program, it makes one thing crystal-clear: the Bureau of Ocean Energy Management (BOEM) has continued to process permits for the seismic testing activities at issue in this case. ECF 281, at 2 (stating that “the permit applications submitted by Spectrum GEO Inc., TGS-NOPEC Geophysical Company, ION GeoVentures, West-

ernGeco, LLC, and CGG are still under review by BOEM and the Department of Interior”). Accordingly, preliminary injunctive relief remains every bit as necessary as it was prior to the Secretary’s announcement.

2. The Federal Defendants state that the Department of the Interior “is evaluating what, if any, effect” the decision in *League of Conservation Voters v. Trump* “may have on planning for OCS lease sales in the National OCS Oil and Gas Leasing Program.” ECF 281, at 2. They further state that “[t]he Department of Interior is reviewing all its options,” without providing any indication of how long that review will take. *Id.* To the extent that the Department’s review and evaluation result in a delay in the issuance of a Proposed Program for 2019-2024, as recent media reports have indicated, that delay undercuts any argument that it is urgent to conduct seismic testing *now*, and underscores that an injunction would serve the public interest. *See* ECF 148-1, at 6-7.

3. The Federal Defendants assert that “[e]ntities seeking to conduct geological and geophysical surveys can . . . obtain a permit in *any* area of the OCS, including those areas that have been withdrawn from leasing,” ECF 281, at 2 (emphasis in original), and that *League of Conservation Voters v. Trump* “has no legal effect on any proposed seismic activities (in the Atlantic OSC or elsewhere),” *id.* at 1-2. The States reserve the right to respond more fully once they can evaluate these assertions in the concrete setting of any permits that BOEM issues. At an absolute minimum, however, the permanent withdrawal of particular areas from oil and gas leasing necessarily means that seismic testing for oil and gas in those areas would be “*unduly* harmful to aquatic life,” 43 U.S.C. § 1340(a) (emphasis added), and thus barred by statute. *See id.* (allowing Secretary of the Interior to authorize “geological and geophysical explorations” on the OCS only if, among other things, those explorations “are not unduly harmful to aquatic life in such area”); *cf.* ECF 282-3, at

2 (BOEM Director’s January 5, 2017 instruction to deny seismic testing permits “in light of the removal of the Atlantic from consideration for leasing during the next five years”). Because the only purpose of such testing is to explore for oil and gas, *any* harm to aquatic life resulting from testing in withdrawn areas necessarily would be “undue.” In addition, although the statute does contemplate testing in areas that *have not* been leased, *see* 43 U.S.C. § 1340(a)(1)-(2), it does not follow—nor would it be logical to conclude—that BOEM may authorize testing in areas, including those in the Atlantic Ocean, that have been *permanently removed* from leasing. *See League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013, 1031 & n.97 (D. Alaska 2019) (making clear that specified withdrawals, including the December 2016 withdrawal of certain areas off of the Atlantic coast, “will remain in full force and effect”).

4. In all events, and as explained above, no aspect of the Federal Defendants’ status report diminishes the need for preliminary injunctive relief.

May 17, 2019

Respectfully submitted,

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General Information

Court	United States District Court for the District of South Carolina; United States District Court for the District of South Carolina
Federal Nature of Suit	Environmental Matters[893]
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