

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

SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, et al.,	)	Civ. No. 2:18-cv-3326-RMG
	)	
Plaintiffs,	)	(Consolidated with 2:18-cv-3327-RMG)
	)	
v.	)	<b>FEDERAL DEFENDANTS’ RESPONSE TO</b>
	)	<b>ENVIRONMENTAL PLAINTIFFS’</b>
	)	<b>“RESPONSE TO FEDERAL</b>
WILBUR ROSS, in his official capacity as the Secretary of Commerce, et al.,	)	<b>DEFENDANTS’ STATUS REPORT”</b>
	)	<b>(DKT. NO. 448)</b>
Defendants.	)	
	)	

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As explained in response to the Court’s Order of September 10, 2020, the September 8, 2020, Presidential Memorandum does not, as a legal matter, affect the seismic permit applications pending before the Department of the Interior, or the Incidental Harassment Authorizations (“IHAs”) issued by the National Marine Fisheries Service (“NMFS”) that are the subject of this case.<sup>1</sup> *See* Dkt. No. 447. Federal Defendants, however, agree with Plaintiffs South Carolina Coastal Conservation League et al. (“the Environmental Plaintiffs”) that there are reasons apart from the Presidential Memorandum that could soon raise mootness questions. Namely, as Federal Defendants have informed the Court, the IHAs that NMFS issued on November 30, 2018—and that are challenged in this case—will expire on or before November

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<sup>1</sup> On September 25, 2020, a Presidential Memorandum was issued that withdrew from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032, the portion of the area designated by the Bureau of Ocean Energy Management as the Mid Atlantic Planning Area that lies south of the northern administrative boundary of North Carolina. *See* <https://www.whitehouse.gov/presidential-actions/presidential-determination-withdrawal-certain-areas-united-states-outer-continental-shelf-leasing-disposition/> (last visited Sept. 28, 2020). The information provided by Federal Defendants in their September 21, 2020 status report applies equally to the September 25, 2020 Presidential Memorandum.

30, 2020. Dkt. No. 447 at ¶ 4; Dkt. No. 447-1 ¶ 5. Once the IHAs expire, there are no statutory or regulatory mechanisms for extending the specific IHAs at issue here and no basis for re-issuing or renewing them. *See* Declaration of D. Wieting at ¶ 4 (Sept. 29, 2020) (attached as Exhibit A).

If an applicant wished to move forward with survey activities after expiration, it would have to submit a new application for an incidental harassment authorization in accordance with the regulations implementing the Marine Mammal Protection Act (“MMPA”) for issuance of IHAs. *Id.* Upon receipt of such applications, NMFS would have to undertake a new administrative process and review under the MMPA, the National Environmental Policy Act, and the Endangered Species Act, which would result in a new agency action(s). *Id.* Among other steps, NMFS would have to review any application in accordance with its implementing regulations; publish a notice of proposed IHA in the Federal Register; make any proposed IHA available for public comment; and publish notice of issuance of any final IHA in the Federal Register. *Id.* ¶ 5.

It is not yet November 30. However, to date the Department of the Interior has not acted on any of the pending seismic permit applications. Federal Defendants therefore propose a short stay of the litigation until 14 days after November 30, 2020 (up to and including December 14). This will allow the parties time to confer after any expiration of the IHAs and report to the Court, jointly or separately, their positions on if or how the litigation should proceed. Should the Department of the Interior issue any permits during the pendency of any such stay, Federal Defendants’ counsel would inform the other parties and the Court.<sup>2</sup> As an alternative to a stay,

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<sup>2</sup> As set forth in two prior declarations submitted by Walter Cruickshank, Acting Director of the Bureau of Ocean Energy Management (“BOEM”), if BOEM ultimately issues permits to any of the applicants for the then pending five, now four, permits for geological and geophysical

Federal Defendants are willing to confer with the parties to explore other procedures that could for the time being conserve the resources of the parties and the Court in light of the near-term expiration of the IHAs.

Respectfully submitted this 29th day of September, 2020.

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By: /s/ Alison C. Finnegan  
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activities on the Atlantic Continental Shelf, BOEM will require as a condition of approval that the permittee submit a notice to BOEM at least 30 days prior to when it plans to initiate survey activities. Dkt. No. 358-1 at ¶ 7 (Decl. of W. Cruickshank (Feb. 18, 2020)); Dkt. No. 72-1 at ¶ 9 (Decl. of W. Cruickshank (Jan. 17, 2019)). BOEM will require the permittee to submit the notice at least 30 days prior to conducting any activities under the permit. *Id.*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 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