

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS

IBLA 2017-135, *et al.*

TGS, *et al.*

E14-001, *et al.*

Offshore Oil & Gas Exploration Permit
Denied

RESPONSE TO ORDER TO SHOW
CAUSE

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In its Order dated March 31, 2017, the Board directed the International Association of Geophysical Contractors (“IAGC”) “to show cause why the organization should not be dismissed as a party for lack of standing.” To have standing to appeal an agency decision to the Board, an appellant must be a “party to a case” and “adversely affected” by the decision. 43 C.F.R. § 4.410; *see* 30 C.F.R. § 590.2. As set forth below, and in the Declaration of Nikki C. Martin, IAGC meets both of these requirements and, therefore, has standing to appeal the Bureau of Ocean Energy Management’s (“BOEM”) decision, as challenged in these consolidated appeals, to deny applications to conduct offshore seismic exploration in the Atlantic Ocean (the “Denial Decision”).

I. IAGC is a party to this case because it participated in the administrative process leading to the Denial Decision.

A “party to a case” is “one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.” 43

C.F.R. § 4.410(b) (emphasis added). IAGC is party to this case because it fully participated in the administrative process leading to the Denial Decision.

Specifically, as described in the Declaration of Nikki C. Martin, IAGC filed detailed comments on behalf of itself and its members in response to: (1) the draft programmatic environmental impact statement (“PEIS”) for proposed geological and geophysical (“G&G”) exploration on the Mid- and South Atlantic Outer Continental Shelf (“OCS”); (2) the final PEIS for proposed G&G exploration on the Mid- and South Atlantic OCS; (3) requests by coastal states to review the proposed activities under the Coastal Zone Management Act; (4) BOEM’s request for public comments on permit applications to conduct G&G surveys on the Mid- and South Atlantic OCS, including the permit applications at issue in this appeal; and (5) the National Marine Fisheries Service’s request for public comments on applications for marine mammal incidental harassment authorizations related to the pending G&G permit applications to conduct exploratory surveys on the Mid- and South Atlantic OCS. Martin Decl. ¶ 6, Exhibits A-E.¹ IAGC therefore provided substantive, detailed comments on every environmental document, permit application, and administrative process relevant to the Denial Decision. *Id.* Based on its comprehensive participation in the administrative process, IAGC is a party to this case. *See, e.g., Roseburg Res. Co.*, 186 IBLA 325, 331 (2015) (commenting on NEPA documents established the “party to a case” requirement).

¹ BOEM prepared the PEIS pursuant to the National Environmental Policy Act (“NEPA”) and with the express intent to evaluate the environmental impacts of G&G exploration activities in the Mid- and South Atlantic OCS, including the seismic exploration activities proposed in the permit applications. Indeed, the Denial Decision expressly relies, in part, on the PEIS. *See* Memorandum in support of Denial Decision at 5-6 (a copy of which is enclosed with the Notices of Appeal filed in this matter).

II. IAGC is adversely affected by the Denial Decision because each permit applicant is a member of IAGC and IAGC has associational standing.

IAGC is “adversely affected” by the Denial Decision. To be “adversely affected,” a party must have a “legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” 43 C.F.R. § 4.410(d). To demonstrate these elements, a party must make “colorable allegations of an adverse effect, supported by specific facts, set forth in an affidavit, declaration, or other statement of an affected individual, that are sufficient to establish a causal relationship between the approved action and the injury alleged.” *Front Range Equine Rescue*, 187 IBLA 28, 33 (2015).

An organization may establish standing by demonstrating “that one or more of its members has a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be negatively affected by the decision.” *W. Watersheds Project*, 187 IBLA 316, 320 (2016) (internal quotation marks and citations omitted); *see Roseburg Res. Co.*, 186 IBLA at 332 (granting standing to timber trade association). As set forth below, and in the Declaration of Nikki C. Martin, IAGC has associational standing based on immediate and concrete injuries to its members.

All five permit applicants in this consolidated appeal are members of IAGC. Martin Decl. ¶ 5. It is undisputed that all five permit applicants had their applications denied in whole by BOEM. *Id.* ¶ 7. BOEM’s denial plainly causes legally cognizable injury to the interests of these permit applicants because it eliminates their ability to lawfully conduct seismic exploration activities on the Atlantic OCS, as proposed in each of their permit applications. *Id.* ¶ 8; *see Parker v. District of Columbia*, 478 F.3d 370, 376 (D.C. Cir. 2007) (“a license or permit denial pursuant to a state or federal administrative scheme [constitutes] an Article III injury”). These interests squarely coincide with IAGC’s interests because IAGC—the only trade organization

dedicated solely to the geophysical industry—advocates to ensure the long-term viability of the geophysical industry, including the ability of its members to lawfully and responsibly conduct seismic exploration on the U.S. OCS and, specifically, on the Atlantic OCS. Martin Dec. ¶¶ 3-6.

Moreover, the Denial Decision has adverse effects on all of IAGC's members that extend at least into the near future. The Denial Decision prevents any lawful seismic exploration of the Atlantic OCS at this time because it denies all of the pending permit applications to conduct seismic exploration of the Atlantic OCS. The Denial Decision also effectively forecloses any lawful seismic exploration of the Atlantic OCS until at least 2022 because it is premised on the fact that there are no Atlantic OCS leases included in the 2017-22 Five Year Program. *See* Memorandum in support of Denial Decision at 4, 6. Accordingly, as BOEM intended, so long as the Denial Decision remains in effect, it serves as a direct and concrete obstacle to any lawful seismic exploration of the OCS until at least 2022. *See* Martin Decl. ¶ 8-9.

For the above reasons, IAGC has associational standing based on the undisputed legally cognizable injuries of its members. *See Roseburg Res. Co.*, 186 IBLA at 332 (timber trade association had associational standing based upon the harm suffered by one of its company members from a Bureau of Land Management decision); *see also Safari Club Int'l v. Jewell*, 842 F.3d 1280, 1287 (D.C. Cir. 2016) (associational standing exists for de facto future permit denials where federal agency indefinitely suspended issuance of permits for importation of certain sport-hunted trophies); *Am. Forest & Paper Ass'n v. U.S. E.P.A.*, 137 F.3d 291, 296 (5th Cir. 1998) (trade association has standing to challenge agency action affecting future issuance of permits to its members).² These injuries will persist unless and until the Denial Decision is vacated or otherwise reversed. Martin Decl. ¶ 9.

² The Board may look to federal court standing decisions for guidance. *See W. Watersheds Project v. Bureau of Land Mgmt.*, 182 IBLA 1, 7 (2012).

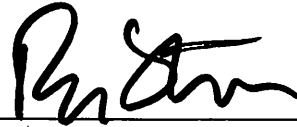
III. Conclusion.

For the foregoing reasons, IAGC meets applicable standing requirements and respectfully requests that the Board not dismiss IAGC from these consolidated appeals.³ Although IAGC is of the firm belief that it meets applicable standing requirements, should the Board conclude otherwise, IAGC respectfully requests leave to file a motion to intervene in these consolidated appeals.

DATED: April 19, 2017.

Respectfully submitted,

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³ IAGC and all five permit applicants plan to file joint pleadings in these consolidated appeals.

CERTIFICATE OF SERVICE

I certify that on April 19, 2017 the foregoing Response to Order to Show Cause was sent
by email to:

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