

**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARING AND APPEALS  
BOARD OF LAND APPEALS**

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| TGS; WesternGeco, LLC; CGG Services           | ) |   |
| (U.S.), Inc.; Spectrum Geo, Inc.; MultiKlient | ) | IBLA Appeal No.: 2017-135(consolidated) |
| Invest AS; and International Association of   | ) | IBLA Appeal No.: 2017-140               |
| Geophysical Contractors,                      | ) |   |
|   | ) | Offshore Oil & Gas Exploration Permit   |
| Appellants (Nos. 2017-135)                    | ) | Denials                                 |
| (consolidated)                                | ) |   |
|   | ) | <b>MOTION TO INTERVENE</b>              |
| Ion/GX Technology Corp.,                      | ) |   |
|   | ) |   |
| Appellant (No. 2017-140),                     | ) |   |
|   | ) |   |
| v.  | ) |   |
|   | ) |   |
| Bureau of Ocean Energy Management,            | ) |   |
|   | ) |   |
| Respondent,                                   | ) |   |
|   | ) |   |
| and   | ) |   |
|   | ) |   |
| Surfrider Foundation,                         | ) |   |
|   | ) |   |
| Proposed Intervenor-Respondent.               | ) |   |
| _____   | ) |   |

Pursuant to 43 C.F.R. §§ 4.406 and 4.407, Surfrider Foundation (Surfrider) moves to intervene in support of the Bureau of Ocean Energy Management’s (BOEM) denials of six companies’ applications for permits under the Outer Continental Shelf Lands Act (OCSLA) to conduct geophysical surveys to map oil and gas deposits in the Atlantic Ocean using seismic airguns. The companies—TGS; WesternGeco, LLC; CGG Services (U.S.), Inc.; Spectrum Geo, Inc.; MultiKlient Invest AS; and Ion/GX Technology Corp.—and industry trade group International Association of Geophysical Contractors (collectively, “the Companies”), have appealed the denials. This motion is being filed both in Ion/GX’s appeal, No. 2017-140, and the

consolidated appeals, No. 2017-135. BOEM properly denied the Companies' applications, and Surfrider seeks to ensure that the Interior Board of Land Appeals (Board) upholds the agency's decision because it protects Surfrider's recreational and conservation interests in a healthy Atlantic Coast ecosystem.

Surfrider is a nonprofit environmental organization dedicated to the protection and enjoyment of the world's ocean, waves and beaches whose members would be adversely affected by a ruling reversing BOEM's decision. Surfrider timely seeks to intervene to protect vital interests at stake in these proceedings. 43 C.F.R. § 4.406(a).

### **I. Standards Governing Surfrider's Intervention**

Intervention in a Board proceeding is permitted upon a showing that a prospective intervenor (1) "would be adversely affected if the Board reversed or . . . modified the decision," and (2) the intervention is sought within 30 days after the prospective intervenor "knew or should have known that the decision had been appealed to the board." 43 C.F.R. § 4.406(a), (b).

The regulations governing appeals to the Board permit intervention by a person who "would be adversely affected if the Board reversed, vacated, set aside, or modified the decision" under review. *Id.* § 4.406(b)(1); *see also* 30 C.F.R. part 590 (adopting appeals procedures in 43 C.F.R. part 4, subpart E, for offshore mineral management appeals).<sup>1</sup> The Board's manual states that the Board will normally grant a motion for intervention if the prospective intervenor "demonstrates that . . . its interests could be adversely affected by the outcome of the appeal (e.g., if the agency decision were overturned)." Interior Bd. of Land Appeals Manual 33. Although the term "adversely affected" is not defined in the intervention context, the term is defined by the regulation specifying who may appeal decisions to the Board. *Id.* § 4.410(d). In

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<sup>1</sup> Party status is not a prerequisite to intervening in support of a decision. *See* 43 C.F.R. § 4.406(b)(1).

that context, an appellant is adversely affected if it “has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.” *Id.*

Legally cognizable interests include recreational, aesthetic, and conservation values. *See WildEarth Guardians*, 183 IBLA 165, 170-71 (2013); *W. Watersheds Project*, 182 IBLA 1, 7 (2012); *see also, e.g., Coal. of Concerned Nat’l Park Retirees*, 165 IBLA 79, 87 (2005) (finding that environmental groups had a legally cognizable interest because their members enjoy viewing wildlife in the areas at issue). Such interests may be deemed injured by an agency decision where the appellant asserts “colorable allegations of adverse effect and . . . a causal relationship between the action taken and the injury alleged.” *N.M. Wilderness All.*, No. IBLA 2013-204, 2013 WL 7790487, at \*3 (IBLA 2013) (quoting *Santa Fe Nw. Info. Council*, 174 IBLA 93, 103 (2008)). The appellant “need not prove that an adverse effect will, in fact, occur;” the threat of injury must simply be “more than hypothetical.” *Santa Fe Nw. Info. Council, Inc.*, 174 IBLA at 103. To make this showing, an appellant may present evidence either of actual use of areas that are the subject of a decision, or of interests in other areas or resources affected by the decision, showing how the decision has caused or is substantially likely to cause injury to those interests. *N.M. Wilderness All.*, 2013 WL 7790487, at \*3; *WildEarth Guardians*, 183 IBLA at 170; *W. Watersheds Project*, 182 IBLA at 9.

**II. Surfrider has legally protected interests that could be adversely affected by the Board’s decision.**

Under these principles, Surfrider has a longstanding interest in the protection of the marine ecosystem, and would be adversely affected if the Board reversed BOEM’s denial of the permits. Surfrider’s mission embraces the protection and enjoyment of the oceans, waves, and beaches throughout the United States, and its members work towards marine protection through activities such as beach clean ups, water quality testing, public education, and advocacy for

environmental protection. Surfrider and its members have legally cognizable interests in the areas of the Atlantic Ocean in which the Companies are proposing to conduct seismic blasting in their permit applications.

Surfrider has more than 500,000 members nationwide that use and enjoy the Atlantic Ocean, including members that live in coastal Atlantic states. Its members recreate in and use areas that would be affected if the Board reverses BOEM's decision to deny the Companies' seismic permit applications. Surfrider's members' use and enjoyment of these areas depends on populations of marine life supported by a healthy marine environment in the Atlantic Ocean. Its members use the Atlantic Ocean, its coastal resources, and marine species for aesthetic, and recreational, and commercial purposes through a myriad of activities, including but not limited to: surfing, swimming, stand up paddleboarding, kite boarding, wind surfing, body boarding, body surfing, coastal hiking, coastal biking, scuba diving, snorkeling, beach walking, coastal and marine wildlife viewing and/or general beach going.

While Surfrider Foundation has over 80 grassroots local chapters and 60 school clubs across the nation, Surfrider maintains 27 of those chapters on the East Coast of the United States, where it has operated for decades to protect the Atlantic Ocean's coastal and marine resources. The East Coast chapters are run by volunteer members who are committed to upholding Surfrider's mission, including the priority initiative of ocean protection. East Coast Surfrider members seek to protect and enjoy marine wildlife, coastal recreation, coastal aesthetics, and other ocean resources. Since 2015, Surfrider's efforts on the Atlantic Coast have included an extensive grassroots campaign working with partners to advocate for over 120 local government resolutions against offshore drilling and seismic exploration and working with over 1,000 coastal

recreation industry businesses in opposition to offshore drilling in the Atlantic. *See* Ex. 1 (Stauffer Decl.) ¶ 9).

Surfrider's members will be adversely affected if the Board reverses or modifies BOEM's decision to deny the permit applications at issue. Stauffer Decl. ¶¶ 9-10; Ex. 2 (Gove Decl.) ¶¶ 6, 9. Members of Surfrider regularly surf and visit beaches along the East Coast near the areas where the Companies seek to engage in seismic blasting, and intend to continue these activities into the future. Gove Decl. ¶¶ 5,7; Stauffer Decl. ¶ 4. Healthy and vibrant populations of whales, dolphins, and other marine life that would be harmed by the oil and gas activities connected with the permit applications form an essential part of Surfrider members' enjoyment of their recreational activities. Gove Decl. ¶¶ 5-8; Stauffer Decl. ¶¶ 5-7. Surfrider's members also have an interest in conserving the ecological values of these areas and protecting species that are integral to a healthy Atlantic coast ecosystem for future aesthetic and recreational uses. Stauffer Decl. ¶ 4; Gove Decl. ¶¶ 5-7.

All of these interests are protected by BOEM's decision to deny the Companies' permits to conduct unduly harmful seismic airgun surveys in search of oil and gas deposits. Gove Decl. ¶¶ 8-9. Surfrider's members are concerned that reversing or modifying BOEM's denials of these permits would pose a heightened and prolonged threat to their interests in marine wildlife and recreation as well as the corresponding detriment to ocean activities, businesses that rely on ocean resources, and coastal tourism activities. Stauffer Decl. ¶¶ 6, 7, 10; Gove Decl. ¶ 8.

The Atlantic Ocean near the East Coast serves as an important location for breeding, feeding, staging, and habitat for numerous marine species, including a number of endangered species. Seismic exploration would flood a vast swath of these biologically rich coastal waters with unprecedented levels of intense industrial noise. The airguns used in these surveys produce

blasts of sound up to 230 decibels, repeating every 12-16 seconds, 24 hours a day, for weeks or months on end. Biological Opinion: Programmatic Geological and Geophysical Activities in the Mid- and South Atlantic Planning Areas from 2013 to 2020 (July 19, 2013) (“G&G BiOp”) at 6-7. This activity would affect thousands of threatened and endangered marine mammals, including blue, humpback, sei, fin, and sperm whales, as well as critically endangered North Atlantic right whales and other, more abundant (but no less sensitive) marine life. *Id.* at 297; 203–207, 209. Marine mammals like whales and dolphins depend on their hearing for basic life functions like communication, navigation, and finding prey. The impacts to these animals range from repeated behavioral harassment to physical injury.<sup>2</sup> *Id.* In addition to causing temporary and permanent hearing loss, repeated exposures to this level of noise from airguns can cause these animals to abandon valuable habitat areas and migratory routes, and can disrupt communication, mating, feeding, nursing, and other vital activities over vast areas of ocean.

BOEM denied the Companies’ six permit applications, in part, after finding that members of the critically endangered North Atlantic right whale population “would doubtless be disturbed by seismic activity;” that “the continually emerging science” demonstrated the sensitivity of all marine mammals to the industrial noise levels from airgun testing; and that there was a “lack of certainty” that mitigation measures could avoid the harms caused by airgun surveys.

Memorandum from Abigail Ross Hopper, Director, to Michael Celato, Regional Director, Gulf of Mexico, Re: Airgun Seismic Permit Applications at 6-7 (Jan. 5, 2017).

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<sup>2</sup> For example, the population of endangered sperm whales in the Atlantic is estimated between 2,200-4,800 animals. NMFS found that these airgun surveys would “take” these animals over 85,000 times (mostly through behavioral harassment but including up to 979 injuries and instances of permanent hearing loss) over a five-year period. G&G BiOp at 297 (total take); 203–207, 209 (potential Level A harassment estimates using NMFS’s then-current thresholds).

Surfrider's legally cognizable interests will be adversely affected unless the Board affirms BOEM's well-supported decision. The health of marine mammals, sea turtles, and other marine life is linked directly to Surfrider's members' use and enjoyment of the Atlantic Coast, and the resulting increased risk of seismic surveys would adversely affect the surfing, swimming, recreational beach going, wildlife viewing, and other uses that Surfrider and its members enjoy.

**III. Surfrider's motion is timely and would not disadvantage the existing parties.**

A prospective intervenor has thirty days from the time it "knew or should have known" about the appeal to the Board to file its motion 43 C.F.R. § 4.406(a); *see also* 30 C.F.R. § 590.2 (adopting appeal procedures from 43 C.F.R. part 4, subpart E, for offshore minerals management decisions). Surfrider's counsel learned that these appeals had been docketed with the Board on April 14, 2017.<sup>3</sup> Surfrider did not learn of the appeals prior to speaking with counsel after April 14, 2017 and there is no publicly available information that should have alerted Surfrider or its counsel to the appeals any earlier. Surfrider did not receive direct notice of the appeal from the Companies or BOEM, *see* 43 C.F.R. 4.401(c), the Board's website does not contain any information on pending appeals,<sup>4</sup> and BOEM's website does not indicate that any companies filed appeals of BOEM's decision to deny the permits. Accordingly, April 7 is the earliest date on which Surfrider arguably could have had enough information to begin acting to protect its interests in these appeals, and Surfrider is filing this motion within thirty days of April 7, 2017.

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<sup>3</sup> Counsel learned of these appeals on April 14, 2017 through verbal communications with staff at Natural Resources Defense Council, which has separately moved to intervene. *See* Motion to Intervene by Natural Resources Defense Council, Inc., North Carolina Coastal Federation, South Carolina Coastal Conservation League, One Hundred Miles, Defenders of Wildlife, and Center for Biological Diversity, at 8 (filed May 1, 2017) (explaining that NRDC received notice of these appeals on April 7, 2017 and informed other organizations).

<sup>4</sup> The Board's website contains a database of decisions but not of pending cases. *See* Office of Hearing and Appeals, Dep't of the Interior, <https://www.oha.doi.gov:8080/index.html> (last visited May 7, 2017).

Where a proposed intervenor otherwise meets the regulatory criteria, the Board may deny a motion to intervene only for good cause, such as when intervention would disadvantage the rights of existing parties or unduly delay adjudication of the appeal. 43 C.F.R. § 4.406(c)(2). Denial may thus be appropriate when a person files a motion to intervene after all briefs have been submitted and the appeal is ripe for adjudication. *See* 72 Fed. Reg. 10,454, 10,457 (Mar. 8, 2007).

Here, at the early stage of the proceedings, there is no good reason to deny Surfrider's participation in this case. Surfrider seeks to intervene in a timely fashion, before BOEM has filed the administrative record and before the agency's response to the Companies' statements of reasons is due, *see* 43 C.F.R. § 4.414(a)—indeed before the Companies have even filed their statements of reasons. Surfrider's participation would in no way diminish the Companies' rights or unduly delay adjudication. Surfrider will focus solely on the validity of BOEM's decisions to deny the Companies' permit applications. Further, Surfrider's participation will avoid duplication and minimize the number of filings. To that end, counsel for Surfrider has conferred with counsel for proposed intervenor-defendants Natural Resources Defense Council, North Carolina Coastal Federation, South Carolina Coastal Conservation League, One Hundred Miles, Defenders of Wildlife, and Center for Biological Diversity and confirmed that Surfrider may join these organizations in submitting consolidated joint filings that will include the distinct recreational interests and Surfrider concerns implicated by this appeal.



In sum, Surfrider's full participation in this appeal is timely, comports with applicable regulations, would not disadvantage the Companies, and would help inform the Board's decision through a fuller understanding of the interests at stake.<sup>5</sup>

For the foregoing reasons, Surfrider requests that the Board grant its motion to intervene.

Respectfully submitted this 8th day of May, 2017.

/s/ Stephen D. Mashuda

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<sup>5</sup> Surfrider believes that it satisfies the standards for intervention. However, should the Board disagree, it respectfully moves for permission to participate as an amicus in both appeals. 43 C.F.R. § 4.406(d)(2); *see also id.* § 4.406(d) ("A person may file a motion at any time to file a brief as an amicus curiae."); Interior Bd. of Land Appeals Manual 33.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2017, a copy of foregoing MOTION TO INTERVENE, with attachments was served in accordance with the applicable rules by Fed Ex Overnight delivery on:

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