

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

APPEAL FROM THE BUREAU OF OCEAN ENERGY MANAGEMENT

Application for Permit to Conduct Geophysical Exploration for Mineral Resources on the
Outer Continental Shelf
E14-001, E14-003, E14-004, E14-005, E14-006 & E14-007

IBLA Case Nos. 2017-0135, *et al.* & 2017-0140

CGG Services Inc., International Association of Geophysical Contractors, Ion/GX Technology
Corporation, MultiKlient Invest AS, Spectrum Geo, Inc., TGS and WesternGeco LLC,

Appellants,

vs.

Bureau of Ocean Energy Management,

Appellee.

MOTION TO INTERVENE

The Business Alliance for Protecting the Atlantic Coast (“BAPAC”) hereby moves to intervene
in the two pending appeals before the Interior Board of Land Appeals (“IBLA”) contesting the January
6, 2017, decisions of the Bureau of Ocean Energy Management (“BOEM”) to deny appellants’ permit

applications to conduct airgun seismic surveys for oil and gas reserves on the Atlantic Outer Continental Shelf (“OCS”).¹

I. Statement of the Case

On January 5, 2017, while six applications to conduct airgun seismic surveys in the Mid- and South Atlantic Planning Areas were pending before BOEM, its Director issued a memorandum directing denial of those pending applications. On January 6, 2017, BOEM denied all six pending permit applications. On March 2, and March 3, 2017, those six applicants and the IAGC filed appeals to this Board. On March 30, 2017, BAPAC representatives met with BOEM’s Acting Director and were informed of the appeals to this Board.² (Ex. 1, Knapp Decl. ¶ 17.) This motion to intervene follows.

II. Standard of Review

The regulation governing intervention before the IBLA is as follows:

- (a) A person who wishes to intervene in an appeal must file a motion to intervene within 30 days after the person knew or should have known that the decision had been appealed to the Board.
- (b) A motion to intervene must set forth the basis for the proposed intervention, including:
 - (1) Whether the person had a right to appeal the decision under § 4.410 or would be adversely affected if the Board reversed, vacated, set aside, or modified the decision; and

¹International Association of Geophysical Contractors (“IAGC”) is a membership organization to which the other appellants belong, but which does not have its own permit application on review. IAGC was granted standing in these cases in the April 21, 2017, order of this Board.

² Those six appeals were consolidated into two cases by order of this Board on March 31, 2017. On that date, appellants were also granted an extension of time to file their statements of reasons until sixty days after the IBLA receives the administrative record, which is currently being compiled by BOEM.

- (2) How and when the person learned of the appeal.
- (c) The Board may:
 - (1) Grant the motion to intervene;
 - (2) Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal;
 - or
 - (3) Grant the motion to intervene but limit the person's participation in the appeal.

43 C.F.R. § 4.406. Thus, this Board has broad power to grant intervention. *See Alder Gulch, LLC*, 184 IBLA 48, 2013 WL 6162254 (July 3, 2013) (allowing intervention *sua sponte* after deciding that a person was not a party but would be an appropriate intervenor if such a motion had been made); *Klamath-Siskiyou Wildlands Center, et al.*, IBLA 2012-155, 2012 WL 5900116, at n.12 (Nov. 7, 2012) (granting a motion to intervene for one party with a financial stake in the outcome and allowing *amicus curiae* status for the county); *HELPHINKLEY.ORG*, IBLA 2012-98, 2012 WL 3757008, at *4 (July 10, 2012) (granting a motion to intervene).

III. Manner of Notice and Timeliness of Intervention

As an initial matter, BAPAC is filing this motion to intervene in compliance with 43 C.F.R. §§ 4.406(a)-(b) & 4.22 (e). On March 30, 2017, at 4:00 p.m. Frank Knapp, President and CEO, and other BAPAC members met with BOEM Acting Director Walter Cruickshank and his staff, along with Jim Schindler of the Department of Interior. (Knapp Decl. ¶ 17.) At that time Mr. Cruickshank advised BAPAC that the seismic companies had appealed their permit denials. (*Id.*) That meeting was the first time that BAPAC had notice of the appeals. (*Id.*) Because BAPAC learned of the decision on March 30, 2017, and is filing this motion on May 1, 2017, in accordance with 43 C.F.R. § 4.22(e), it has complied with the timeliness requirements for intervention in 43 C.F.R. § 4.406(a), and has hereby laid out how and when it learned of the appeal as required by 43 C.F.R. § 4.406(b)(2).

IV. BAPAC's Business Interests

BAPAC works “to ensure the long term health and economic vitality of the Atlantic seaboard through responsible stewardship of the coastal and ocean waters.”³ It is a membership organization that consists of over 41,000 businesses and business organizations, and over 500,000 commercial fishing families that depend upon the Atlantic Ocean to maintain economic viability. (Knapp Decl. ¶ 4.) These businesses include commercial fishing, recreational fishing rentals/sales, hotels/vacation rentals, restaurants, realtors, and retail. (*Id.* at. ¶ 14.) Overall, businesses along the Atlantic in fishing, recreation, and tourism provide nearly 1.4 million jobs and over \$95 billion in gross domestic product.⁴

Commercial fishing businesses and business organizations rely on healthy populations of marketable fish, which they catch and sell. BAPAC has over half a million such business interests. Some examples include Main Coast Fishermen's Association,⁵ Murrells Inlet Seafood, Duna Fisheries, LLC, and Maine Clammers Association, to name a few. (Ex. 2, Letters to Pres. Obama.) The commercial fishing businesses in BAPAC catch and sell fish in the Atlantic OCS areas where seismic airgun surveys would occur if the appellants' permits were granted.⁶

³ Business Alliance for Protecting the Atlantic Coast, “Who We Are,” *available at* <http://protectingtheatlanticcoast.org/about-us/> (last visited May 1, 2017).

⁴ Menaquale, Andrew, *Offshore Energy by the Numbers* (January 2015), *available at* <http://oceana.org/publications/reports/offshore-energy-numbers> (last visited May 1, 2017).

⁵ Business Alliance for Protecting the Atlantic Coast, “Business Organizations,” *available at* <http://protectingtheatlanticcoast.org/business-organizations/> (last visited May 1, 2017).

⁶ See OCEANA, *Overlap of Proposed Seismic Airgun Blasting Areas and Essential Fish Habitat and Critical Habitat in the Atlantic*, *available at* http://usa.oceana.org/maps-show-risk-marine-life-threatened-unnecessary-seismic-airgun-blasting?_ga=1.236735553.1966431777.1455746623 (last visited May 1, 2017).

The tourism businesses and organizations in BAPAC rely on an attractive, inviting and healthy Atlantic Ocean and its beaches to draw tourists. The tourism businesses provide goods and services to tourists when they visit, including hotels and other accommodations, restaurants, retail stores, and many others. Some examples of tourism businesses in BAPAC include the Bently Inn, the Inn at Pamlico Sound, Koru Village Resort and Spa, Tautogs Restaurant, Sheila's Carolina Kitchen, Luther Marine Maintenance, Dough Boy's Pizza Restaurants, Aurora Wellness Services, Shuckin Shack Oyster Bar, Naples Beach Hotel and Golf Club, Crystal Blue Productions, and Windswept Massage, to name a few. (Ex. 2, Letters to Pres. Obama.) Additionally many chambers of commerce and associations are part of BAPAC because of their members' interests in the tourism industry, such as Cape May County Chamber of Commerce, Carteret County Chamber of Commerce, Miami Beach Chamber of Commerce, Outer Banks Chamber of Commerce, South Carolina Small Business Chamber of Commerce, New Jersey Tourism Industry Association, Virginia Beach Hotel Association, and Virginia Beach Restaurant Association.⁷ BAPAC tourism businesses operate in or near the Atlantic OCS waters where seismic airgun surveys would occur if the appellants' permits were granted.

The recreational businesses and organizations in BAPAC offer services such as fishing tours, boating tours, kayaking tours, surfing lessons, diving tours, and other services to their customers. Some of the BAPAC recreational businesses advertise activities which are reliant upon viewing or catching marine animals, such as catching sport fish or viewing whales and sea turtles. For example, recreational business in BAPAC include Blue Planet Scuba, Cocoa Beach Parasail, Charleston Outdoor

⁷ Business Alliance for Protecting the Atlantic Coast, "Business Organizations," available at <http://protectingtheatlanticcoast.org/business-organizations/> (last visited May 1, 2017).

Adventures, Delmarva Board Sport Adventures, Dive Services Inc., Paddle Surf New Jersey LLC, Sage Sailing, Inc., Sealand Adventure Sports, Sunrise Surf & Skateboard Shop, Surf City Surf School, Tula Adventure Sports, Hatteras Island Board Sports, Hatteras Island Surf and Sail Shop, Just for the Beach Rentals, Long Beach Surf Shop, Off the Hook Fishing Charters, and Rover Tours, Inc. (Ex. 2, Letters to Pres. Obama.) These businesses provide their services in and/or near the Atlantic OCS waters where seismic airgun surveys are proposed to occur if the permits are granted.⁸

V. Adverse Effects of a Reversal on BAPAC

BAPAC “would be adversely affected if the Board reversed, vacated, set aside, or modified the decision,” to deny the permits at issue, and thus, should be allowed to intervene. 43 C.F.R. § 4.406 (b)(1). The seismic airgun surveys at issue would entail loud, repetitive, explosive sounds that can travel up to 2,500 miles every ten seconds for as long as the permits are issued along the Atlantic OCS.⁹ If this Board were to reverse BOEM’s permit denial decisions, BAPAC members would go out of

⁸ See OCEANA, *Overlap of Proposed Seismic Airgun Blasting Areas and Essential Fish Habitat and Critical Habitat in the Atlantic*, available at http://usa.oceana.org/maps-show-risk-marine-life-threatened-unnecessary-seismic-airgun-blasting?_ga=1.236735553.1966431777.1455746623 (last visited Apr. 27, 2017); *Overlap of Proposed Seismic Airgun Blasting Areas and Critical Habitat for Loggerhead Sea Turtles*, available at http://usa.oceana.org/sites/default/files/4046/overlap_of_proposed_seismic_airgun_blasting_areas_and_critical_habitat_for_loggerhead_sea_turtles.jpg (last visited Apr. 27, 2017); *Overlap of Proposed Seismic Airgun Blasting Areas and Critical Habitat for North Atlantic Right Whales*, available at http://usa.oceana.org/sites/default/files/4046/overlap_of_proposed_seismic_airgun_blasting_areas_and_critical_habitat_for_north_atlantic_right_whales.jpg (last visited Apr. 27, 2017).

⁹ Nieukirk, S. L., Mellinger, D. K., Moore, S. E., Klinck, K., Dziak, R. P., & Goslin, J. (2012). *Sounds from airguns and fins whales recorded in the mid-Atlantic Ocean, 1999-2009*. The Journal of the Acoustical Society of America, 131(2), 1102-1112; *Seismic Surveys at Sea: The contributions of airguns to ocean noise*. (2004) Backgrounder: Acoustic Ecology Institute; National Research Council. *Ocean Noise and Marine Mammals*. Washington, DC: The National Academies Press. (2003). doi:10.17226/10564.

business and/or lose significant revenue that is currently generated by and reliant upon the Atlantic OCS.

For example, commercial and recreational fishing are dependant upon the abundance of fish and shellfish in the Atlantic waters. Seismic airgun surveys have been shown to cause a decline in fish that are caught for commercial and recreational purposes. That decline is significant, ranging from 40% to 80% of the populations in and near areas where seismic airgun blasting occurs.¹⁰ Seismic airgun

¹⁰ Dalen, J., & Knutsen, G. (1987). *Scaring effects in fish and harmful effects on eggs, larvae and fry by offshore seismic explorations*. Progress in underwater acoustics (pp. 93-102); Springer; Engas, A., Lokkeborg, S., Ona, E., & Soldal, A.V. (1996). *Effects of seismic shooting on local abundance and catch rates of cod (Gadus morhua) and haddock (Melanogrammus aeglefinus)*. Canadian Journal of Fisheries and Aquatic Sciences, 53(10), 2238-2249. doi: 10.1139/cjfas-53-10-2238; Hassel, A., Knutsen, T., Dalen, J., Skaar, K., Lokkeborg, S., Misund, O., Ostensen, O., Fonn, M., & Haugland, E. (2004). *Influence of seismic shooting on the lesser sandeel (Ammodytes marinus)*. ICES Journal of Marine Science: Journal du Conseil, 61(7), 1165-1173; Lokkeborg, S. (1991). *Effects of a geophysical survey on catching success in longline fishing* ICES CM Documents; Skalski, J., Pearson, W., & Malme, C. (1992). *Effects of sounds from a geophysical survey device on catch-per-unit-effort in a hook-and-line fishery for rockfish (Sebastes spp.)*. Canadian Journal of Fisheries and Aquatic Sciences, 49(7), 1357-1365; Slotte, A., Hansen, K., Dalen, J., & Ona, E. (2004). *Acoustic mapping of pelagic fish distribution and abundance in relation to a seismic shooting area off the Norwegian west coast*. Fisheries Research, 67(2), 143-150. doi: 10.1016/j.fishres.2003.09.046; Paxton, A. B., Taylor, J. C., Nowacek, D. P., Dale, J., Cole, E., Voss, C. M., & Peterson, C. H. 2017. *Seismic survey noise disrupted fish use of a temperate reef*. Marine Policy.78:68 - 73. <https://doi.org/http://dx.doi.org/10.1016/j.marpol.2016.12.017> ; McCauley, R., Fewtrell, J., Duncan, A., Jenner, C., Jenner, M., Penrose, J., Prince, R., Adhitya, A., Murdoch, J., & McCabe, K. (2000). *Marine seismic surveys: Analysis of airgun signals; and effects of air gun exposure on humpback whales, sea turtles, fishes and squid*. Rep. from Centre for Marine Science and Technology, Curtin Univ., Perth, WA, for Austral. Petrol. Prod. Assoc., Sydney, NSW, 8-5; McCauley, R., Fewtrell, J. & Popper, A. (2003). *High intensity anthropogenic sound damages fish ears*. The Journal of the Acoustical Society of America, 113(1), 638-642; McCauley, Robert D, et al. "High Intensity Anthropogenic Sound Damages Fish Ears." The journal of the acoustical society of America 113, no. 1 (2003): 638-42.

surveys have also caused shellfish that are commercially harvested, such as crabs and scallops, to both decline and become deformed, which would make such catches unmarketable.¹¹

For all of these commercial or recreational fishing businesses, including the over 500,000 fishing families in BAPAC, a decline in the fish that they catch and/or sell means a decline in revenue. If the decline is significant enough, the commercial and recreational fishing businesses in BAPAC will go out of business. Therefore, if seismic airgun surveys were conducted along the Atlantic OCS, then BAPAC commercial and recreational fishing businesses and business associations would be directly injured by lost revenue and business.

The BAPAC businesses and business associations that rely on recreation along the Atlantic OCS will also be directly impacted through lost revenues if seismic airgun surveying is allowed. Activities such as diving will not be possible due to the noise.¹² Businesses that offer other recreational activities tied to viewing marine life will suffer because seismic airguns have been shown to cause a reduction in marine life.¹³ In addition to losing fish for sport fishing or consumption, seismic airgun

¹¹Moriyasu, M., et al. 2004. *Effects of seismic and marine noise on invertebrates: A literature review*. Canadian Science Advisory Secretariat. Research document 2004/126. 26DFO (Department of Fisheries and Oceans). 2004; *Potential impacts of seismic energy on snow crab*. DFO Can. Sci. Advis. Sec. Habitat Status report No. 2004/003; Aguilar de Soto, N., Delorme, N., Atkins, J., Howard, S., Williams, J. and Johnson, M.2013. *Anthropogenic noise causes body malformations and delays development in marine larvae*. Scientific Reports 3: 283 DOI:10.1038/srep02831.

¹² The Diving Medical Advisory Committee advises conducting a joint risk assessment for any diving within ten kilometers of seismic operations. DMAC, "Safe Diving Distance from Seismic Surveying Operations," (July 2011), available at <http://www.dmac-diving.org/guidance/DMAC12.pdf>.

¹³ See *supra* n.10.

surveying harms and drives away whales and sea turtles.¹⁴ These recreational businesses will lose revenue if the permit denials are reversed because their customers pay to engage in activities along and near the Atlantic OCS that rely upon fish, whales and sea turtles that would be physically harmed, beached or driven away from viewing areas and natural habitat by seismic airgun surveys.

These examples are just some of the ways in which the members of BAPAC, as part of the coastal economy along the Atlantic, will be harmed.¹⁵ BAPAC and its members have a strong interest in the permits at issue in this case because if this Board were to reverse BOEM and allow seismic airgun blasting, BAPAC members will lose revenue. Therefore, BAPAC is adversely affected, and should be allowed to intervene in these appeals. 43 C.F.R. § 4.406 (b)(1); *see also Alder Gulch*,

¹⁴ Gordon, J., Gillespie, D., Potter, J., Frantzis, A., Simmonds, M. P., Swift, R., and Thompson, D. 2004. *A review of the effects of seismic surveys on marine mammals*. Mar. Technol. Soc. J. 37(4):16 – 34; Rolland, R. M., et al. "Evidence That Ship Noise Increases Stress in Right Whales." Proceedings of the Royal Society B-Biological Sciences 279, no. 1737 (Jun 22 2012): 2363-68; Miller, P., et al. "Using at-Sea Experiments to Study the Effects of Airguns on the Foraging Behavior of Sperm Whales in the Gulf of Mexico." Deep-Sea Research Part I-Oceanographic Research Papers 56, no. 7 (Jul 2009): 1168-81; Castellote, M., et al. "Acoustic and Behavioural Changes by Fin Whales (*Balaenoptera Physalus*) in Response to Shipping and Airgun Noise." Biological Conservation 147, no. 1 (3// 2012): 115-22; McCauley, R., Fewtrell, J., Duncan, A., Jenner, C., Jenner, M., Penrose, J., Prince, R., Adhitya, A., Murdoch, J., & McCabe, K. (2000). *Marine seismic surveys: Analysis of airgun signals; and effects of air gun exposure on humpback whales, sea turtles, fishes and squid*. Rep. from Centre for Marine Science and Technology, Curtin Univ., Perth, WA, for Austral., Petrol. Prod. Assoc., Sydney, NSW, 8-5; Weir, C. (2007). *Observations of marine turtles in relation to seismic airgun sound off Angola*. Marine Turtle Newsletter, 116, 17-20.

¹⁵ Other examples of BAPAC businesses that will suffer if the Atlantic OCS is subjected to seismic airgun surveys include the following: Hotels and vacation rentals will have reduced bookings with marine mammal strandings on beaches and less demand from recreational fisherman; restaurants will suffer from increased costs for fresh fish and loss of customers; realtors will have reduced sales and rentals due to fewer showings and less demand; and retail stores will have reduced sales due to reduced number of tourists. All of these businesses would suffer from the negative publicity resulting from marine mammal and fish losses associated with seismic surveys.

LLC, 184 IBLA 48, 2013 WL 6162254 (July 3, 2013); *Klamath-Siskiyou Wildlands Center, et al.*, IBLA 2012-155, 2012 WL 5900116, at n.12 (Nov. 7, 2012); *HELPHINKLEY.ORG*, IBLA 2012-98, 2012 WL 3757008, at *4 (July 10, 2012).

VI. BAPAC is a Party due to its Participation in the Process

In the alternative to finding intervenor status, BAPAC asserts that it may be considered a “party” to these appeals because of its participation in the process and opposition to seismic testing on the Atlantic OCS. A party is broadly defined as anyone who “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).

BAPAC has been advocating against seismic airgun surveying on the Atlantic OCS since its formation in September 2016. (Knapp Decl. ¶¶ 2, 7.) The BAPAC Board of Directors met with BOEM officials on November 14, 2016. (*Id.* at ¶ 15.) In that meeting each BAPAC representative had an opportunity to speak to BOEM officials. (*Id.*) Each BAPAC representative provided industry-specific information based on their own areas of expertise and places in the business community. (*Id.*) However, all BAPAC representatives had the same request: for permanent protection of the Atlantic Ocean from offshore drilling activities, which include denying all pending seismic airgun blasting permits. (*Id.*) BAPAC was thanked by BOEM for providing comments and encouraged to continue to stay active and engaged. (*Id.*)

BAPAC also sent two letters to President Obama in opposition to seismic testing, on October 27, 2016 and December 13, 2016. (Attached as Ex. 2). In these letters, BAPAC expresses its strong

opposition to seismic airgun surveying in the Atlantic OCS. (*Id.*) BAPAC also asks President Obama to deny all permits for any type of geological and geophysical (G&G) activities in the Atlantic Ocean, including seismic testing. (*Id.*) These letters are signed by hundreds of members and supporters of BAPAC, in addition to the association itself. (*Id.*)

In this very case, this Board has allowed a membership organization to be considered a party because of its participation in the process. (April 21, 2017, Order.) “IAGC participated in the process leading to BOEM's decisions by providing comments on environmental documents and permit applications relevant to BOEM's decisions.” (*Id.* at 1-2.) Thus, this Board granted IAGC party status in these appeals. Similarly, BAPAC participated in the process by providing comments. BAPAC even took the initiative to have its entire board of directors meet and discuss the permit applications with BOEM. Therefore, BAPAC may also be considered a party pursuant to 43 C.F.R. § 4.410(b).

VII. Conclusion

For all of the above reasons, BAPAC respectfully requests that this Board grant its motion to intervene.

Respectfully submitted,



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