

February 14<sup>th</sup>, 2018

Brian Cameron  
U.S. Department of the Interior  
Bureau of Ocean Energy Management  
Gulf of Mexico OCS Region (GM 623E)  
1201 Elmwood Park Boulevard  
New Orleans, LA 70123-2394

Braxton Davis  
NC Division of Coastal Management  
Dept. of Environment and Nat.  
Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Re: Response to North Carolina Coastal Management Request for Supplemental Consistency Certification

Dear Messrs. Cameron and Davis:

We have received the request from the North Carolina Division of Coastal Management (“DCM”) for a supplemental consistency certification under 15 C.F.R. § 930.66 (the “Request”). We respectfully disagree with the state’s assertion that a supplemental consistency certification is needed and request that the Bureau of Ocean Energy Management (“BOEM”) issue the offshore seismic exploration permit without further review of consistency with North Carolina’s coastal management program.

The coastal management regulations, 15 C.F.R. part 930, provide that an applicant shall prepare a supplemental consistency certification if the proposed activity will affect a coastal use or resource substantially different than originally described. 15 C.F.R. § 930.66(a). The regulations further provide that a state may give notice that it believes a supplemental certification is needed, but such notice does not trigger an obligation to provide the supplemental certification.<sup>1</sup> As the permitting agency, BOEM must decide how it will proceed with respect to the pending permit applications.

Under the Coastal Zone Management Act (“CZMA” or “Act”), a federal agency generally cannot issue a federal license or permit for an activity that requires a consistency certification until the state has concurred with, or is deemed to have concurred with, the applicant’s consistency certification. 16 U.S.C. § 1456(c)(3)(A). Here, DCM concurred with GXT’s consistency certification on April 23<sup>rd</sup>, 2015 (“DCM Concurrence”), and a copy of DCM’s concurrence is attached for your convenience. Unless BOEM determines that the proposed surveys will have substantially different impacts than those previously analyzed,

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<sup>1</sup> DCM has not complied with the requirement in 15 C.F.R. § 930.66 that DCM notify the applicant, BOEM, and the Director. DCM’s request was addressed only to the applicant and a copy was sent to BOEM, but there is no

no further review under the CZMA is needed before BOEM issues the offshore seismic exploration permit.

As the record demonstrates, the full range of potential impacts to commercial and recreational fishing off the North Carolina coast has already been reviewed and analyzed. In issuing its consistency concurrence in 2015, DCM recognized that “disturbances could impact local fish abundance by deterring foraging, refuge, and spawning activities, possibly affecting economically valuable commercial and recreational fisheries operations throughout the proposed survey area.” DCM Concurrence at 2. Nonetheless, DCM found that “the proposed project is consistent with the relevant enforceable policies [sic] of North Carolina’s approved coastal management program, specifically 15A NCAC 07H and 15A NCAC 07M, when performed in accordance with the conditions outlined below.” *Id.* The only condition requires a pre-survey coordination meeting with DCM and others.

DCM now suggests that recently published studies regarding the potential impacts of seismic activities on fish and other marine species indicate substantially different effects than were described in the original consistency certification. This is not the case. As more fully explained below, the potential impacts that DCM claims to be “new” or “substantially different” are, in fact, the same types of impacts that were already considered. DCM claims that:

The recently-published research [] shows that sound produced from the proposed G&G surveys activities has a direct impact on fishes by masking biologically relevant sounds and altering normal behaviors, and can possibly affect the survival of individuals or populations. Sound-related disturbances in areas of concentrated fish and sensitive fish habitat *could impact local fish abundance by deterring foraging, refuge, and spawning activities.*

See Request at 4 (last paragraph; emphasis added). Although, as explained below, we disagree with this characterization of the recently published research, even assuming DCM’s characterization is accurate, DCM identifies *exactly the same potential impacts* that it already addressed in its consistency concurrence:

We recognize that disturbances *could impact local fish abundance by deterring foraging, refuge, and spawning activities*, possibly affecting economically valuable commercial and recreational fisheries operations throughout the proposed survey area.

DCM Concurrence at 2 (emphasis added). Accordingly, DCM has made no demonstration that the proposed activity will affect a coastal use or resource substantially different than originally described in the original consistency certification and DCM’s consistency

concurrence. Consequently, no supplemental certification is warranted. 15 C.F.R. § 930.66(a).

Even though DCM has not identified any new or different potential impacts, we have nevertheless reviewed the five papers referenced by DCM. Our analyses, set forth in Appendix 1 (an analysis prepared by Dr. Sarah Courbis and Dr. Melissa Snover) and Appendix 2 (a detailed analysis of McCauley et al. (2017) that was previously sent to the National Marine Fisheries Service and BOEM), demonstrate that these five papers do not present any new or substantially different potential impacts.

The potential effects of the proposed seismic survey were disclosed and considered when DCM issued its consistency concurrence. Because no coastal use or resource will be affected substantially differently than originally described, no supplemental consistency certification is needed or warranted. We respectfully request that BOEM proceed with the offshore seismic exploration permit process without further coastal management review.

Please contact me if you have any questions or concerns regarding the matters discussed in this letter.

Sincerely,

Daniel Virobik

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cc: Joe Balash, DOI Assistant Secretary for Land and Minerals Management  
Chris Oliver, NOAA Assistant Administrator for Fisheries  
Kelly Hammerle, National Program Manager, BOEM