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July 10, 2019

VIA U.P.S. OVERNIGHT DELIVERY

Mr. Wilbur L. Ross, Jr., Secretary
United States Department of Commerce
Herbert C. Hoover Building
14th Street and Constitution Avenue, NW
Washington, DC 20230

Oceans and Coasts Section
NOAA, Office of General Counsel
Attn: Section Chief Adam Dilts
1305 East-West Highway
SSMC-4, Room 6111
Silver Spring, MD 20910

Re: WesternGeco's Notice of Appeal of North Carolina's Coastal Zone Management Act Consistency Objection

Dear Secretary Ross:

WesternGeco respectfully requests that you override the State of North Carolina's objection to consistency with the state coastal management program for WesternGeco's proposed seismic survey in the Mid- and South Atlantic Ocean regions. This notice of appeal sets out the bases for overriding the state determination and is filed pursuant to 15 C.F.R. § 930, Subpart H.

SUMMARY OF APPEAL BASES

1. North Carolina's objection does not comply with 15 C.F.R. § 930.63(b) because it fails to describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The Secretary may override the objection on this basis as a threshold matter under 15 C.F.R. § 930.129(b).
2. WesternGeco's proposed seismic survey is consistent with the objectives and purposes of the Coastal Zone Management Act (CZMA) under 15 C.F.R. § 930.121.

FACTUAL BACKGROUND

In April 2014, WesternGeco submitted an application to the Bureau of Ocean Energy Management (BOEM) for a Geological and Geophysical (G&G) Survey permit. WesternGeco proposes to conduct a two-dimensional (2D) seismic survey in the Mid- and South Atlantic Outer Continental Shelf (OCS). The proposed seismic survey area extends from 19 miles offshore of the southeast coast of Maryland south to 50 miles offshore of St. Augustine, Florida.

Seismic surveys are critical to obtaining geophysical data that can be used to characterize geological features below the seafloor. Surveys are conducted by vessels that send acoustic waves into the rock layers beneath the seafloor and tow receivers that record the time it takes for each wave to bounce back while measuring the characteristics of each returning wave. The return signals are then analyzed to create an image of the geologic layers underlying the seafloor. A seismic vessel typically travels at 4 to 5 knots along a set survey track line, acquiring seismic data along the way.

Sections 307(c)(3) and (d) of the CZMA require applicants for federal license or permit activities that have reasonably foreseeable effects on any coastal use or resource to certify that the proposed activities are consistent with the enforceable policies of state coastal management programs. 16 U.S.C. § 1456(c)(3)(A). Each state's coastal management program lists federal license and permit activities that are expected to impact the state's coastal zone. For unlisted activities, a state can request approval to review the activity for consistency with the state coastal management program.

North Carolina requested review of nine applications to BOEM to conduct G&G surveys off the North Carolina coast. The National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Management determined that the proposed activities would have reasonably foreseeable effects on North Carolina's commercial and recreational fisheries and granted review of WesternGeco's application (and six others) as an unlisted activity pursuant to CZMA § 307(c)(3)(A) (16 U.S.C. § 1456(c)(3)(A)) and 15 C.F.R. Part 930, Subpart D.

WesternGeco's survey is substantially similar to seismic surveys proposed by CGG Services, Inc., Spectrum Geo, Inc., GX Technology Corporation, and TGS-NOPEC Geophysical Company. The North Carolina Division of Coastal Management (DCM) determined in 2015 that all four of these proposed surveys are consistent with the enforceable laws and policies of the North Carolina Coastal Zone Management Program.¹

¹ See DCM Concurrence Letters to GX Technology Corp. (Apr. 23, 2015), https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/Seismic_Testing/GXT%20NC%20consistency%20determination.pdf; CGG Services (May 22, 2015), https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/Seismic_Testing/CGG%20NC%20consistency%20determination.pdf; Spectrum Geo (Apr. 22, 2015),

(continued . . .)

On March 12, 2019, WesternGeco certified that its proposed survey is consistent with the North Carolina coastal management program and requested DCM's concurrence.² After holding a public hearing, receiving comments from North Carolina's Division of Marine Fisheries (DMF) and Wildlife Resources Commission (WRC), and receipt of additional information from WesternGeco, DCM objected to WesternGeco's consistency certification on June 11, 2019.

Pursuant to 16 U.S.C. § 1456 and 15 C.F.R. § 930.125, WesternGeco now files this timely notice of appeal.

PROCEDURAL CONTEXT FOR APPEAL

Under the CZMA and implementing federal regulations, when a state objects to a consistency certification, the applicant may appeal the state's objection to the Secretary of Commerce.³ 16 U.S.C. § 1465; 15 C.F.R. Part 930, Subpart H. An appellant must file a notice of appeal, accompanied by payment of an application fee, within 30 days of receipt of the objection. 15 C.F.R. §§ 930.125(a), (c). The notice of appeal must contain "a statement explaining the appellant's basis for appeal of the State agency's objection under §§930.121 and/or 930.122 of this title, including any procedural arguments pursuant to §930.129(b)." 15 C.F.R. § 930.125(b).

The Secretary may override a state's objection on procedural or substantive grounds. As a "threshold matter," under 15 C.F.R. § 930.129(b), the Secretary shall override any state objection that does not comply with the procedural requirements of CZMA Section 307 or its implementing regulations. Even if the Secretary determines that the state's objection is procedurally sound under 15 C.F.R. § 930.129(b), he may override the objection if the activity is "consistent with the objectives of [the CZMA] or is otherwise necessary in the interest of national security." 16 U.S.C. § 1456(c)(3)(a); 15 C.F.R. §§ 930.121, 930.122.

(. . . continued)

https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/Seismic_Testing/Spectrum%20NC%20consistency%20determination.pdf; and TGS-NOPEC (June 16, 2015),
https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/Seismic_Testing/TGS%20NC%20consistency%20determination.pdf.

² See WesternGeco's Request for Concurrence with Consistency Certification (Mar. 12, 2019), https://files.nc.gov/ncdeq/Coastal%20Management/documents/PDF/Seismic_Testing/WesternGeco-Consistency-Certification-North-Carolina.pdf.

³ The Secretary has delegated CZMA appeal decision authority to the NOAA General Counsel regarding threshold issues and to the Under Secretary for Oceans and Atmosphere for substantive appeal decisions, Dep't of Commerce Organizational Order 10-15, § 3.01(u) (Dec. 12, 2011), http://www.osec.doc.gov/opog/dmp/doos/doo10_15.html; see also "Appeals to the Secretary of Commerce Under the Coastal Zone Management Act (CZMA)" Guidance Document, NOAA, Office for Coastal Management 1 (Apr. 26, 2018).

The regulations establish deadlines for filing the appellant’s principal brief and supporting information, the state’s principal brief and supporting information, and any reply brief by the appellant. 15 C.F.R. § 930.127(a)-(c). The Secretary may bifurcate the appeal by requiring the appellant and the state agency to submit briefs and supporting materials relevant only to procedural or jurisdictional issues. 15 C.F.R. 930.127(e)(2). After deciding the procedural or jurisdictional issues, if necessary, the Secretary may require briefs on substantive issues raised by the appeal. *Id.*

The appeal decision record is compiled differently for an appeal of an “energy project” than for other appeals. For non-energy projects, the Secretary establishes the record composed of the briefs and supporting materials submitted by the appellant and state agency, public comments, and any comments submitted by interested federal agencies. 15 C.F.R. § 930.127(e)(1). For appeals of energy projects, the notice of appeal must be accompanied by the consolidated record⁴ maintained by the lead federal permitting agency. 15 C.F.R. § 930.127(i)(2). Whether the seismic survey constitutes an energy project for purposes of this appeal is discussed in Part III below.

The Secretary must issue an appeal decision within 60 days after the administrative record is closed, unless it publishes a notice in the Federal Register explaining why a decision cannot be issued within the 60-day deadline. 16 U.S.C. § 1465(c)(1)-(2). In such a case, the Secretary has an additional 15 days to issue the decision. 16 U.S.C. § 1465(c)(2).

BASES OF APPEAL

I. North Carolina’s consistency objection is procedurally defective.

The appeal regulations at 15 C.F.R. § 930.129(b) direct the Secretary to override North Carolina’s objection if the objection does not comply with CZMA Section 307 (16 U.S.C. § 1456) and the applicable regulations in 15 C.F.R. § 930, Subpart D. This determination may be made as a threshold matter. WesternGeco respectfully requests that the Secretary make a threshold determination that North Carolina has failed to comply with the requirements of 15 C.F.R. § 930.63(b).

⁴ The CZMA requires that, for appeals “related to any Federal authorization for the . . . authorization of an energy project, the lead Federal permitting agency for the project shall, with the cooperation of Federal and State administrative agencies, maintain a consolidated record of all decisions made or actions taken by the lead agency or by another Federal or State administrative agency or officer.” 16 U.S.C. § 1466; *see also* 15 C.F.R. § 930.127(i)(1) (“The Secretary shall use the consolidated record maintained by the lead Federal permitting agency as the initial record for an appeal under this subpart for energy projects.”).

A. North Carolina failed to describe how the project is inconsistent with the enforceable policies.

15 C.F.R. § 930.63(b) requires North Carolina's objection to "describe how the proposed activity is inconsistent with specific enforceable policies of the management program." North Carolina's objection identifies five applicable enforceable policies but fails to describe how the proposed G&G survey is inconsistent with any of them. After listing the five enforceable policies, North Carolina goes on to identify a number of "concerns" expressed by the state's DMF and WRC. North Carolina also describes the concerns of a panel of "scientific subject matter experts on the impacts of seismic testing" retained to review certain information submitted by other applicants for G&G surveys in the Atlantic Ocean off North Carolina.

Nowhere in this list of concerns does North Carolina assert that the concerns create an inconsistency with any specific policy of the state coastal management program. A list of enforceable policies and a list of concerns regarding potential impacts does not satisfy the requirement to "*describe how* the proposed activity is inconsistent with specific enforceable policies of the management program." 15 C.F.R. § 930.63(b) (emphasis added). The plain reading of this regulatory language dictates that, at a minimum, North Carolina describe a nexus linking its concerns regarding impacts of the proposed activity to the enforceable policies. Because North Carolina does not do so, the Secretary must override the state's objection.

The threshold determination whether North Carolina has satisfied the regulatory requirements for objection promotes decision-making efficiency. Had North Carolina analyzed its concerns against its enforceable policies, it would have found consistency as it did for other proposed seismic surveys. Instead, it summarily concludes that concerns constitute inconsistencies. The CZMA requires more from North Carolina.

North Carolina's objection repeatedly sets forth concerns expressed by state agencies and others. The text is rife with the words "expressed concern with," "may," "can affect," "could cause," and similar words and phrases. While some of these concerns are based on scientific studies, none of them are linked to specific enforceable policies. Only one statement arguably even refers to an enforceable policy. Specifically, Policy 15A NCAC 07H .0206(c) discusses safeguarding and perpetuating the "biological, social, aesthetic, and economic values" of estuarine waters. Using similar language, North Carolina's objection states that "DMF expressed concern 'that the cumulative effects of the 2D geophysical survey activities will severely impact the biological, social and economic value of North Carolina's commercial and recreational fisheries.'" Objection at 6. While some of the words are the same, the policy relates to estuarine waters while the concern is about impacts to commercial and recreational fisheries. Again, North Carolina fails to "describe how" the activity is inconsistent with this specific policy, as the CZMA requires.

B. North Carolina previously found the same activities to be consistent.

One possible explanation for the lack of a nexus between the enforceable policies and the concerns expressed in North Carolina's objection is that North Carolina has already found other 2D seismic surveys to be consistent with its coastal management plan. Between April 22, 2015 and June 16, 2015, North Carolina found that four other geophysical surveys of the OCS off North Carolina's coast were consistent with the state's coastal management plan. North Carolina's consistency concurrence letters state:

DCM reviewed the information you provided and find that the proposed project is consistent with the relevant enforceable policies 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.

Numerous comments were received concerning the potential impacts of seismic surveys on marine organisms and habitats Many of these concerns were magnified by the potential for cumulative impacts to fisheries, if as many as nine seismic surveys were to be independently conducted within the same geographic area over a relatively short time frame. Given the possibility that multiple surveys may be conducted offshore of North Carolina, 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. Therefore, given uncertainty over the precise survey timing and transect locations, and the potential for overlapping surveys by multiple companies, as well as limited species-specific data and research regarding possible impacts of seismic surveys in the South Atlantic region, we strongly recommend the following:

- Where practical, relocate proposed survey transects to avoid South Atlantic Fishery Management Council-designated Habitat Areas of Particular Concern, and important foraging, spawning and refuge areas;
- Time surveys in a manner that avoids potential use conflicts with commercial fishing efforts, offshore fishing tournaments, major recreational fishing areas, and seasonally-focused fishing efforts . . .;⁵ and

⁵ Two of North Carolina's concurrence letters omit "commercial fishing efforts" from this bullet point. WesternGeco, however, has committed to implement this timing restriction as set forth above.

- Follow the mitigation measures outlined in the Final Atlantic Geological and Geophysical (G&G) Activities Programmatic Environmental Impact State (PEIS) that [BOEM] established in 2014 for offshore oil and gas exploration.

To ensure adequate communication between [the applicant] and the State, our agreement that the proposed project is consistent with North Carolina's certified coastal management program is contingent on your adherence to the following Condition:

- 1) We require a pre-survey meeting with representatives of the DMF and DCM so that precise survey transects and timing can be reviewed and discussed in advance to avoid, minimize, and mitigate any possible impacts or conflicts with the above-referenced resources.

Because WesternGeco's application was submitted after North Carolina issued these four consistency concurrences for other seismic surveys, WesternGeco committed, in its request for concurrence, to implement the first two recommendations, to implement the third to the extent consistent with its other regulatory approvals, and to conduct the pre-survey meeting North Carolina required of the others. Thus, WesternGeco's project design incorporated all measures that North Carolina had previously indicated would make its project consistent.

North Carolina does not assert that WesternGeco's survey is different from the other surveys that the state found to be consistent with 15A NCAC 07M .0401(a). The state seems to have simply changed its mind. Absent new information, a different project design, or modifications to the enforceable policies, North Carolina's objection to WesternGeco's survey after approving the same survey activities when proposed by others is arbitrary and capricious. North Carolina provides no rational basis whatsoever for its change in position.

WesternGeco respectfully requests that the Secretary find, as a threshold matter, that North Carolina has failed to describe how the proposed activity is inconsistent with specific enforceable policies of the coastal management program as required by 15 C.F.R. § 930.63(b) and override the objection pursuant to 15 C.F.R. § 930.129(b).

II. WesternGeco's Survey is consistent with the objectives and purposes of the CZMA.

Even if North Carolina's objection procedurally passes muster, WesternGeco's proposed survey may be federally approved if it is consistent with the CZMA's objectives or purposes. 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.120. A federal license or permit activity is consistent with the objectives or purposes of the CZMA if it satisfies each of the following:

- (a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner.

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

15 C.F.R. § 930.121.

As described below, WesternGeco's proposed survey satisfies each of these criteria.

A. WesternGeco's proposed survey will significantly or substantially further the national interest as articulated in the CZMA.

The first criterion for demonstrating consistency with the objectives or purposes of the CZMA requires that the activity further the national interest, as set forth in Section 302 or 303 of the CZMA, in a significant or substantial manner. The national interests include development of coastal resources and of the nation's energy resources.

The CZMA begins with a Congressional finding that “[t]here is a national interest in the effective management, beneficial use, protection, and development^[6] of the coastal zone.” CZMA § 302(a); 16 U.S.C. § 1451(a). This very first sentence recognizes the inherent tension between protection and development of coastal resources, as well as competing uses of those resources. When read as a whole, the subsequent statements of national interest and policy establish an objective to effectively manage and balance these interests. As one court has stated, “it is well-established that, although initially aimed at conservation, the [CZMA] is a balancing statute—that is, it balances conservation with commercial development.” *Connecticut v. U.S. Dep't of Commerce*, No. 3:04cv1271, 2007 WL 2349894, at *5 (D. Conn. Aug. 15, 2007). While the state may focus on those policies and objectives that address protection and management of coastal resources, the national interest is in managing for each of the beneficial uses identified in the policies, not for some to the exclusion of others.

The national interest statements set forth as Congressional findings in Section 302 also recognize:

⁶ As used in the CZMA, the term “develop” has been defined to “encompass a wide variety of activities, such as . . . oil and gas exploration, development, and production activities,” *AES Sparrows Point LNG Appeal Decision* at 12, or even more broadly, the “use” of a coastal resource, *Islander East Appeal Decision* at 5.

- increasing and competing demands on the coastal zone, including extraction of mineral resources and fossil fuels have resulted in certain impacts (CZMA § 302(c));
- new and expanding demands for food, energy, minerals, recreation, and other uses of the exclusive economic zone and OCS create the need to resolve serious conflicts among important and competing uses (CZMA § 302(f)); and
- to advance the national objective of energy self-sufficiency, states require federal assistance to meet needs resulting from new or expanded energy activity in or affecting the coastal zone (CZMA § 302(j)).

The proposed activity furthers these national interests by providing valuable data for oil and gas exploration with minimal impact on the coastal zone. Seismic surveys allow oil and gas explorers to “see” geologic structures below the earth’s surface and determine where these energy resources are most likely to be found. By taking these seismic “pictures,” the proposed survey prevents the need for random drilling of wells to determine what might be under the surface. This type of “wildcat” drilling is much less effective, more costly, and generates significantly more environmental impacts than conducting a seismic survey to see below the surface prior to drilling.

By using seismic data, an explorer will significantly reduce the number of wells needed to locate and delineate an oil and gas reservoir. Targeting oil and gas exploration drilling to the most prospective areas for oil and gas, as determined through seismic testing, minimizes the number of wells drilled. Reducing the number of wells lessens the impact on and competition for coastal resources. Scientific studies show that when proper mitigating measures are implemented, seismic surveys have minimal impact on coastal resources. WesternGeco’s proposed survey balances the competing policies of the national interest.

The primary national policy set out in Section 303 also mandates both preservation and development of coastal resources. 16 U.S.C. § 1452(1). The next policy seeks to achieve “wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development.” 16 U.S.C. § 1452(2). With respect to energy resources, the national policy is that a state’s management program “should at least provide for . . . priority consideration being given to . . . orderly processes for siting major facilities⁷ related to . . . energy.” 16 U.S.C. § 1452(2)(D).

⁷ WesternGeco’s proposed seismic survey is an “energy facility” under the CZMA definition, which includes “equipment . . . which is or will be used primarily . . . in the exploration for . . . any energy resource.” CZMA § 304(6); 16 U.S.C. § 1453(6); *AES Sparrows Point LNG Appeal Decision* at 11.

Thus, Congress has articulated in the CZMA that energy-related activities are of particular national interest. As the Secretary has previously explained,

Stated broadly, Congress has defined the national interest in coastal zone management to include both protection and development of coastal resources. A wide variety of activities has been found to meet the competing goals of resource protection and development, and past decisions have held that . . . coastal-dependent energy facilities further[] the national interest sufficiently for CZMA purposes. Additionally, in interpretive guidance in the preamble to the Department's 2000 CZMA regulatory amendments, NOAA identified . . . coastal dependent energy facilities as an example of an activity that furthers the national interest in a significant or substantial manner.^[8]

As the Secretary referenced, NOAA proffered the siting of energy facilities or OCS oil and gas development as an "example of an activity that significantly or substantially furthers the national interest" in the preamble to the CZMA regulatory amendments establishing this criterion. 65 Fed. Reg. at 77150. NOAA further explained that "such activities are coastal dependent industries with economic implications beyond the immediate locality in which they are located." *Id.*

Because WesternGeco's survey constitutes exploration for energy resources, it substantially furthers the national interests set out in the CZMA.

B. The national interests furthered by the Survey outweigh any adverse coastal effects.

The national interests furthered by the survey outweigh any potential adverse coastal effects. In determining whether the national interests in an activity outweigh adverse coastal effects, the Secretary examines the preponderance of the evidence in the record. *AES Sparrows Point LNG Appeal Decision* at 16, 41; *Islander East Appeal Decision* at 35; *Mobil Exploration and Producing U.S., Inc. Appeal Decision* at 41 (June 20, 1995).

North Carolina asserts that the seismic pulses will decrease fish species and zooplankton abundance, which could in turn impact commercial and recreational fishing industries, and the use of a vessel exclusion zone will affect access to fishing and diving grounds. *See North*

⁸ *AES Sparrows Point LNG Appeal Decision* at 10 (June 26, 2008) (overriding a state's consistency objection to an energy facility and citing the Secretary's prior CZMA appeal decisions in *Virginia Electric and Power Company* at 19 (May 19, 1994); *Islander East Pipeline Company, L.L.C.* at 8-10 (May 5, 2004); and *Mobil Oil Exploration and Producing U.S. Inc.* at 11-12 (June 20, 1995) and 65 Fed. Reg. 77123, 77150 (Dec. 8, 2000)).

Carolina's Objection Letter at 5-9.⁹ As described above, both BOEM in its PEIS and NMFS in its Incidental Harassment Authorization found these impacts to be minor even when considered cumulatively with other similar activities. Thousands of seismic surveys have been conducted around the world over several decades, and there is not a single instance of sound from a seismic survey having any negative impact on a fishery or local economy dependent on tourism. The adverse effects from the surveys are also minor when compared to the impacts of drilling blindly for oil and gas on the OCS. The number of wells that would be needed to learn what the survey will show, and the corresponding noise and exclusion areas around drill sites for safety, would have a much greater impact than the proposed surveys. North Carolina's concerns do not outweigh the strong national interests furthered by the proposed seismic survey. Thus, the criterion set out in 15 C.F.R. § 930.121(b) is met.

C. North Carolina has not submitted any alternative that would permit the survey to be conducted in a manner consistent with North Carolina's enforceable policies.

North Carolina has not identified an alternative that would make the survey consistent with its enforceable policies. Under 15 C.F.R. § 930.121(c), the "Secretary shall not consider an alternative unless the State agency submits a statement, in a brief or other supporting material, to the Secretary that the alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program."

A state objection may include alternative measures to make the project consistent. 15 C.F.R. §§ 930.63(b), (c). Such alternative measures must be sufficiently described to allow the applicant to determine whether to adopt the alternative, abandon the project, or file an appeal. 15 C.F.R. § 930.63(d). North Carolina did not describe in its objection alternative measures that would make WesternGeco's proposed survey consistent with North Carolina's enforceable policies. Because North Carolina has not described any alternative that would achieve consistency with North Carolina's enforceable policies, 15 C.F.R. § 930.121(c) is satisfied.

For all of the reasons stated above, WesternGeco's proposed project is consistent with the objectives or purposes of the CZMA and may be federally approved pursuant to 15 C.F.R. § 930.120.

⁹ Although North Carolina complains at length that it was not allowed to require additional information from WesternGeco nor obtain an extension of its review period, it ultimately found that the project was inconsistent with its management program without finding that it had insufficient information to determine consistency.

III. If determined to be an “energy project,” WesternGeco requests an extension of time to file a consolidated record.

As summarized above, appeals to the Secretary are governed by Subpart H of 15 C.F.R. § 930. The requirements for a notice of appeal, set forth in 15 C.F.R. § 930.125, require a statement explaining the bases for appeal including procedural arguments and payment of an application fee. An appeal of an “energy project” requires that the notice of appeal be accompanied by the consolidated record maintained by the lead federal permitting agency. 15 C.F.R. § 930.127(i)(2). The Secretary may extend the time for filing the notice of appeal to allow additional time to prepare the consolidated record.

After consultation with BOEM, WesternGeco has concluded that its proposed G&G survey activities do not constitute an “energy project” as defined in 15 C.F.R. § 930.123(c). As defined in Subpart H, the term “energy project” means “projects related to the siting, construction, expansion, or operation of any facility designed to explore, develop, produce, transmit or transport energy or energy resources that are subject to review by a coastal State under subparts D, E, F or I of this part.” 15 C.F.R. § 930.123(c).

Although the term “facility” is not defined, the vessel and equipment to be used in the proposed survey is not a “facility” under the common understanding of that term. Nonetheless, WesternGeco acknowledges that the Secretary may consider the proposed seismic survey to be an energy project and require a consolidated appeal record.

In the event that the Secretary determines that the proposed G&G activities do constitute an energy project, WesternGeco respectfully requests an extension of time to allow coordination with BOEM, as the lead federal permitting agency, and to prepare the consolidated record for filing. *See* 15 C.F.R. § 930.127(i)(2) (“[T]he Secretary may extend the time for filing a notice of appeal in connection with an energy project for good cause shown to allow appellant additional time to prepare the consolidated record for filing.”). Good cause for an extension exists because the regulations are ambiguous as to whether the proposed seismic survey is an “energy project,” making it unclear whether a consolidated record is required and what should be included in that record. WesternGeco and BOEM require a reasonable amount of time to prepare the consolidated record for this appeal.

CONCLUSION

WesternGeco requests that the Secretary override North Carolina’s consistency objection as a threshold matter pursuant to 15 C.F.R. § 930.129(b) or as consistent with the objectives and purposes of the CZMA pursuant to 15 C.F.R. § 930.120.

As required by 15 C.F.R. § 930.125, WesternGeco has set forth in this notice of appeal the bases for appeal, including procedural defects in North Carolina’s objection. WesternGeco intends to

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file its principal brief and appendix within 30 days pursuant to 15 C.F.R. § 930.127(a), unless it receives from the Secretary a schedule and instructions to bifurcate the brief regarding the procedural issues as provided in 15 C.F.R. § 930.127(e)(2).

Sincerely,



Ramona L. Monroe

cc: Braxton Davis
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