

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATURAL RESOURCES DEFENSE
COUNCIL, INC.
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New York, NY 10011

AMERICAN ASSOCIATION OF
ZOOLOGICAL PARKS AND
AQUARIUMS INC. d/b/a Association of Zoos
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HEALTHY GULF
1010 Common Street, #902
New Orleans, LA 70112

SURFRIDER FOUNDATION
942 Calle Negocio, Suite 350
San Clemente, CA 92673

Plaintiffs,

v.

JANET COIT,
in her official capacity as
Assistant Administrator for Fisheries,
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
(Montgomery County)

No. 21-cv-01827

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, MD 20910
(Montgomery County)

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
1401 Constitution Avenue, NW, Room 5128
Washington, DC 20230

GINA RAIMONDO, in her official capacity
as Secretary of Commerce,
United States Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

BUREAU OF OCEAN ENERGY
MANAGEMENT
1849 C Street, NW
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AMANDA LEFTON,
in her official capacity as Director,
Bureau of Ocean Energy Management
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DEB HAALAND,
in her official capacity as Secretary of the
Interior,
United States Department of the Interior
1849 C Street, NW
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Defendants.

INTRODUCTION

1. This case arises from the federal government’s approval of seismic airgun surveys that will “take” – that is, disturb, injure, and even kill – countless marine mammals and other protected ocean species, some already on the brink of extinction. These federal approvals violated the Endangered Species Act, Marine Mammal Protection Act, and National Environmental Policy Act, and flouted the Administrative Procedure Act’s standards for reasoned agency decision-making.

2. The ocean is an acoustic world. Sound travels far more efficiently underwater than through the air, and whales, dolphins, and other marine mammals depend on sound to find mates, forage, avoid predators, navigate, and communicate – in short, for virtually every life function. These animals are acutely sensitive to acoustic disturbance.

3. The oil and gas industry uses seismic airgun surveys to locate fossil fuel deposits beneath the ocean floor. These surveys typically deploy arrays of airguns, which are towed behind ships across broad swaths of the ocean. While seismic surveys are useful for oil and gas prospecting, they have devastating impacts on marine life.

4. Seismic airgun arrays fire intense blasts of energy into the water about every 10 to 12 seconds for days, weeks, or months at a time depending on the length of the survey. A large seismic array can produce effective levels of sound – above 250 decibels – greater than that of virtually any other man-made source, save explosives. These noise blasts penetrate deep into the seafloor and rebound to the surface for analysis.

5. At close range, the intensity of the energy blasts fired from seismic airgun arrays can kill or physically injure marine life. The sound then radiates outward and is so powerful that it can still be heard thousands of miles away. Seismic surveys can therefore disrupt entire acoustic habitats, masking sound signals and interfering with behaviors that are essential to marine species' feeding, mating, and rearing of young.

6. In the Gulf of Mexico, seismic surveys are the dominant source of noise pollution, particularly in the low frequencies that are crucial for baleen and sperm whales. Due in substantial part to these surveys, ambient noise levels in the Gulf are among the highest measured anywhere on earth.

7. At the core of this case is the government's failure to satisfy its duties, under multiple statutes, to assess, minimize, and prevent unlawful harm from this highly disruptive activity.

8. In March 2020, the National Marine Fisheries Service ("the Service") issued a Biological Opinion under the Endangered Species Act (ESA) that found that anticipated seismic surveys in the Gulf of Mexico would contribute to the extinction of the endangered Gulf of Mexico Bryde's whale, of which only about 50 individual whales remain. Despite that conclusion, the Service then arbitrarily decided that minor mitigation measures – measures that would not reduce the number, location, or intensity of seismic surveys in any way – would nevertheless eliminate the extinction risk. This unexplained conclusion did not follow from the Service's own factual findings, violated the Administrative Procedure Act's standards for reasoned agency decision-making, and contravened the Service's unequivocal statutory duty to assist

federal agencies in “insur[ing] that [their actions] [are] not likely to jeopardize the continued existence of any endangered species,” 16 U.S.C. § 1536(a)(2), (b).

9. In January 2021, the day before a new administration took office, the Service published a rule (“the Seismic Rule”) that authorizes harm from five years of seismic airgun blasting in the Gulf of Mexico under the Marine Mammal Protection Act (MMPA), 16 U.S.C. § 1361 *et seq.* 86 Fed. Reg. 5322 (Jan. 19, 2021). The extent of harm allowed under the Seismic Rule is enormous. Under the rule, multiple airgun surveys may traverse the Gulf, on average, every hour of every day for the next five years, disrupting and in some cases injuring marine mammals more than eight *million* times over that period.

10. The MMPA allows the Service to authorize the “incidental” take of “small numbers” of marine mammals only if certain conditions are met. 16 U.S.C. § 1371(a)(5)(A)(i). Among other requirements, the incidental take must have no more than a “negligible impact” on marine mammal species or populations. *Id.* And the Service must require mitigation to minimize the impact to the species and their habitat to the “least practicable” level. *Id.* The Service violated those standards, authorizing the “take” of up to one-third of each species during each survey. The Service rested that decision on an unscientific surmise that the taking of a third of any species is a “small” number. The Service then compounded that error by failing to evaluate potentially practicable mitigation measures. For several of the Gulf’s marine mammals, including the endangered Gulf of Mexico Bryde’s whale, the authorized harm will not be “negligible.” *See id.* It will be devastating.

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