



---

Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

---

## Feds Blocked From OK'ing Offshore Fracking Permits In Calif.

By **Juan Carlos Rodriguez**

Law360 (November 9, 2018, 8:26 PM EST) -- A California federal judge on Friday blocked the federal government from approving any offshore fracking permits or plans in the state, finding the agency violated the Endangered Species Act and Coastal Zone Management Act.

U.S. District Judge Philip S. Gutierrez said the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement violated the ESA and CZMA in crafting an environmental assessment of a plan to allow offshore well-stimulation treatments, also known as fracking or acidizing, in the state.

Specifically, the judge said BOEM and BSEE violated Section 7 of the ESA by failing to consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

He said the agencies fulfilled their obligation to consult with the NMFS about the impact of offshore fracking operations on various marine species, but said their discussions with the FWS did not fulfill its obligation because those discussions are not yet completed but it is possible for the agencies to approve plans or permits now.

"The ESA required the agencies to consult with FWS before issuing the final [environmental assessment], and they did not do so. Further, this violation has not yet been cured because the belated consultation has not been completed," Judge Gutierrez said.

And he said BOEM and BSEE violated the Coastal Zone Management Act by failing to consult with the California Coastal Commission, the state body responsible for managing the ocean up to three miles out, where the federal government's jurisdiction begins.

"Defendants do not dispute that the agencies failed to submit a determination to the commission for review," the judge said. "Instead, they argue that BOEM and BSEE have not yet taken any 'federal agency activity' within the meaning of the CZMA and therefore have not triggered the ... review requirements."

But he disagreed, saying that while private companies would actually conduct the offshore operations, actions such as approving plans and permits do qualify as federal agency activity under the act.

The **consolidated case** includes the first case challenging the environmental assessment, filed by the Environmental Defense Center. That case was consolidated with two similar suits: one from the state of California and the coastal commission, and the other from the Center for Biological Diversity and Wishtoyo Foundation.

Center for Biological Diversity attorney Kristen Monsell called the decision a big victory for California's coast and marine life.

"We're glad the Trump administration lost this round in its push to expand dangerous oil operations off California. This decision protects marine life and coastal communities from fracking's toxic chemicals," she said.

The other parties did not respond to requests for comment.

BOEM is represented by Joseph H. Kim of the U.S. Department of Justice.

The Environmental Defense Center is represented in-house by Margaret Morgan Hall, Linda Krop and Tara C. Messing.

The Center for Biological Diversity and Wishtoyo Foundation are represented by the Center for Biological Diversity's Kristen Monsell.

California is represented by Assistant Attorney General George Torgun.

The case is Environmental Defense Center et al. v. Bureau of Ocean Energy Management et al., case number 2:16-cv-08418, in the U.S. District Court for the Central District of California.

--Additional reporting by Adam Lidgett. Editing by Orlando Lorenzo.

*Update: This article was updated to include case information.*

---

All Content © 2003-2020, Portfolio Media, Inc.