

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,  
378 N. Main Avenue  
Tucson, AZ 85701

Plaintiff,

v.

SALLY JEWELL  
Secretary, U.S. Department of the Interior  
1849 C Street, NW  
Washington, DC 20240,

U.S. DEPARTMENT OF THE INTERIOR  
1849 C Street, NW  
Washington, DC 20240,

BUREAU OF OCEAN ENERGY  
MANAGEMENT  
1849 C Street, NW  
Washington, DC 20240,

BUREAU OF SAFETY AND  
ENVIRONMENTAL ENFORCEMENT  
1849 C Street, NW  
Washington, DC 20240,

Defendants.

Civ. No. 1:16-cv-00738

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Six years ago, on April 20, 2010, BP's *Deepwater Horizon* oil rig exploded in the Gulf of Mexico, killing 11 people and unleashing the worst environmental disaster in U.S. history. More than 200 million gallons of oil spewed out of a damaged well over the course of 87 days. The spill fouled more than 1,000 miles of coastline; killed hundreds of thousands of marine species, including birds, sea turtles and dolphins; forced the closure of nearly 90,000 square

miles of ocean to commercial and recreational fishing; and sickened Gulf coast residents.

2. The federal government invoked an exception under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321, *et seq.*, to approve BP’s exploratory drilling plan and drilling permit without conducting environmental review. The use of categorical exclusions from environmental review was one of the causes of the Deepwater Horizon disaster.

3. To try and help prevent future spills, other accidents, and environmental harm, Plaintiff Center for Biological Diversity (the “Center”) submitted a rulemaking petition to Defendants Secretary of the U.S. Department of the Interior Sally Jewell, the U.S. Department of the Interior, the Bureau of Ocean Energy Management, and the Bureau of Safety and Environmental Enforcement (collectively, “Interior”) on June 15, 2010.<sup>1</sup> The petition requested that Interior substantially revise its NEPA procedures for authorizing offshore oil and gas activities, and eliminate the categorical exclusions used to fast track drilling approvals and evade needed environmental review.

4. Yet nearly six years later, Interior has failed to take final action on the Center’s petition or make the requested regulatory changes to its NEPA procedures.

5. During this protracted delay, significant new information reveals that granting the Center’s petition and promulgating amendments to Interior’s NEPA procedures are even more necessary.

6. For example, an independent commission charged with determining the reasons behind the Deepwater Horizon disaster cited the “systemic” breakdown in Interior’s environmental review processes for authorizing offshore oil and gas activities as one of the

---

<sup>1</sup> At the time the Center submitted its petition, the Bureau of Ocean Energy Management and the Bureau of Safety and Environmental Enforcement were known as the Mineral Management Service. The agency was renamed and reorganized twice following the Deepwater Horizon oil spill. *See* 75 Fed. Reg. 61,051 (Oct. 4, 2010); 76 Fed. Reg. 64,431 (Oct. 18, 2011).

causes and recommended Interior make “significant revisions” to its NEPA procedures.

7. Moreover, Interior is now authorizing oil companies to use practices such as hydraulic fracturing (“fracking”) — which involves blasting water and dangerous chemicals into the earth at enormous pressure to crack rock formations beneath the ocean floor — throughout the Gulf of Mexico. These practices increase the risk of oil spills and earthquakes and cause toxic water and air pollution beyond that of conventional offshore oil and gas drilling.

8. Nevertheless, Interior continues to approve offshore drilling activities and rubber-stamp drilling permits with no meaningful environmental review.

9. Interior’s protracted failure to take final action on the Center’s petition and make regulatory changes to its NEPA procedures threatens our oceans, marine life, and coastal communities and constitute agency action unlawfully withheld or unreasonably delayed under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(1).

10. Accordingly, the Center seeks an order from the Court establishing prompt deadlines for Interior to take final action on the Center’s petition, and for Interior to complete its review of its NEPA procedures for permitting offshore oil and gas activities and issue the necessary changes.

### **JURISDICTION AND VENUE**

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which grants the district courts original jurisdiction over “all civil actions arising under the . . . laws . . . of the United States.”

12. Venue in this Court is proper under 28 U.S.C. § 1391(e) because all Defendants reside in this District and a substantial part of the events or omissions giving rise to the Center’s claims occurred in this District.

## **PARTIES**

### **Plaintiff**

13. Plaintiff Center for Biological Diversity (the “Center”) is a nonprofit corporation that advocates for the protection of threatened and endangered species and their habitats through science, policy, and environmental law. The Center’s mission also includes protecting air quality, water quality, and public health.

14. The Center’s Oceans Program focuses specifically on conserving marine ecosystems and seeks to ensure that imperiled species such as marine mammals, sea turtles, corals, and fish are properly protected from destructive practices such as the use and development of fossil fuels. The Oceans Program also works to protect coastal communities from the air pollution, water pollution, and other impacts that result from such practices. In pursuit of this mission, the Center has been actively involved in protecting the Gulf of Mexico and Pacific Ocean from dangerous offshore oil and gas drilling. The Center brings this action on behalf of itself and its members.

15. Center members and staff live in and regularly visit the Gulf of Mexico and the Southern California coast for swimming, kayaking, hiking, camping, viewing and studying wildlife, photography, and other vocational and recreational activities. Center members and staff derive recreational, spiritual, professional, scientific, educational, and aesthetic benefit from their activities in these areas. Center members and staff intend to continue to use and enjoy these areas frequently and on an ongoing basis in the future.

16. Center members’ and staff’s use and enjoyment of these areas is affected by the health and condition of those environments, including the health and condition of wildlife that live in or migrate through these areas, such as whales, sea turtles, and fish. Any activities, such

as oil and gas drilling, which destroy, degrade or diminish habitat, or which kill, injure, harm, harass, or displace wildlife also by extension interfere with the Center's and its members' use and enjoyment of wildlife species in the Gulf and the Southern California coast. As such, these activities directly and irreparably injure the interests of the Center and its members and staff.

17. Additionally, Center members and staff reasonably fear that Interior's failure to take action on the Center's petition or complete its review of NEPA procedures to ensure comprehensive environmental review of each stage of offshore oil and gas activities, means Interior is failing to adequately protect the Gulf of Mexico and the Southern California coast, the wildlife that lives in or travels through these environments, and are exposing them and coastal environments to increased risk of harm from offshore drilling. Such risks include, but are not limited to, increased emissions of hazardous water and air pollutants, as well as increased risk of oil spills and other leaks, both of which could have devastating environmental and economic consequences. Such reasonable fears negatively impact their use and enjoyment of these areas.

18. The Center's and its members' aesthetic and recreational interests are therefore harmed by Interior's failure to take action on the Center's petition and ensure comprehensive environmental review of offshore oil and gas drilling activities.

19. Moreover, the Center and its members regularly comment on agency actions that affect the environments of the Gulf of Mexico and the Southern California coast and regularly comment on and participate in decisions regarding offshore oil and gas activities and environmental analyses under NEPA.

20. Interior's failure to take action on the Center's petition and ensure comprehensive environmental review of offshore oil and gas drilling activities harms and will continue to harm the Center and its members' procedural and informational interests.

21. These injuries will be redressed by an order of this Court finding Interior's actions to be unlawfully withheld or unreasonably delayed and compelling Interior to expeditiously take action on the Center's petition and complete its review of its NEPA procedures and issue necessary changes. Moreover, if and when Interior initiates additional processes regarding permitting of offshore oil and gas drilling, the Center and its members will participate in the regulatory processes that result, will contribute to and gain information from such proceedings, and will advocate in favor of reducing environmental harm from offshore drilling.

### **Defendants**

22. Defendant Sally Jewell is the Secretary of the U.S. Department of the Interior, and is sued in her official capacity. Ms. Jewell is the official ultimately responsible under federal law for ensuring that the actions and management decisions of the U.S. Department of the Interior comply with all applicable laws and regulations, including NEPA.

23. Defendant U.S. Department of the Interior is a federal agency within the executive branch. The Department of the Interior is responsible for managing and overseeing the development of oil and gas resources in federal waters in accordance with NEPA.

24. Defendant Bureau of Ocean Energy Management ("BOEM") is a federal agency within the U.S. Department of the Interior. BOEM is one of the agencies to which the Secretary of the Interior has delegated responsibilities over federal resources. BOEM is charged with managing the development of offshore oil and gas resources, including oil leasing, exploration, development, and production in federal waters.

25. Defendant Bureau of Safety and Environmental Enforcement ("BSEE") is a federal agency within the U.S. Department of the Interior. BSEE is one of the agencies to which the Secretary of the Interior has delegated responsibilities over federal resources. BSEE is

charged with permitting offshore oil and gas drilling in federal waters and ensuring such activities comply with safety and environmental regulations.

## **STATUTORY BACKGROUND**

### **Outer Continental Shelf Lands Act**

26. The Outer Continental Shelf Lands Act (“OCSLA”) establishes a framework under which the Secretary of the Interior may lease areas of the outer continental shelf (“OCS”) for purposes of exploring and developing the oil and gas deposits of the OCS’s submerged lands. 43 U.S.C. §§ 1331, *et seq.*

27. OCSLA specifically requires that oil and gas drilling be balanced “with protection of the human, marine, and coastal environments.” *Id.* § 1802(2).

28. Interior has established four primary OCS regions, including the Atlantic OCS Region, the Gulf of Mexico OCS Region, the Pacific OCS Region, and the Alaska OCS Region. Active offshore oil and gas drilling and permitting is occurring in the Gulf of Mexico OCS Region and in the Pacific OCS Region off the coast of Southern California.

29. There are four separate stages to developing an offshore oil well: (1) Interior’s formulation of a national plan that establishes where and when it will offer areas of the OCS for oil and gas leasing; (2) lease sales; (3) exploration by the lessees; and (4) development and production. *See Sec’y of the Interior v. California*, 464 U.S. 312, 337 (1984). “Each stage involves separate regulatory review that may, but need not, conclude in the transfer to lease purchasers of rights to conduct additional activities on the OCS.” *Id.*

30. Prior to drilling a well, an oil company’s must have an approved exploration or production plan; the plan must describe the anticipated schedule of drilling activities, the location of each well to be drilled, and the equipment to be used, among other requirements. 43 U.S.C. §§

1340(c); 1351(a). An oil company must also obtain approval of an application for permit to drill, known as an “APD” from Interior. 30 C.F.R. § 550.281(a)(1). If an oil company intends to revise its drilling plan or change major equipment, it must first obtain approval of an application for permit to modify (“APM”). *Id.* § 250.465(a)(1). APMs must include a “detailed statement of the proposed work that would materially change from the approved APD.” *Id.* § 250.465(b)(1).

31. Interior must comply with NEPA and other environmental laws when approving exploration plans, development and production plans, APDs, and APMs.

### **National Environmental Policy Act**

32. The National Environmental Policy Act (“NEPA”) is the nation’s “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA seeks to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken,” and “help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* §§ 1500.1(b)-(c).

33. Under NEPA, a federal agency must prepare an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). The Council on Environmental Quality has promulgated regulations implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1. The regulations specify the factors an agency must consider in determining whether an action may significantly affect the environment warranting preparation of an EIS. *Id.* § 1508.27.

34. Specifically, whether an action may have “significant” impacts on the environment is determined by considering the “context” and “intensity” of the action. *Id.* “Context” means the significance of the project “must be analyzed in several contexts such as

society as a whole (human, national), the affected region, the affected interests, and the locality.” *Id.* § 1508.27(a).

35. The “intensity” of the action is determined by considering the ten “significance factors” enumerated in the regulations, which include the degree to which the proposed action affects public health or safety; the degree to which the effects on the environment are likely highly controversial; the degree to which the possible effects involve unique or unknown risks; whether the action has cumulatively significant impacts; and the degree to which the action may adversely affect a species listed under the Endangered Species Act, among others. *Id.* §§ 1508.27(b)(1)-(10).

36. NEPA’s regulations provide that an agency may first prepare an environmental assessment (“EA”) aimed at determining whether the environmental impact of a proposed action is “significant,” warranting an EIS. 40 C.F.R. § 1501.3. If, pursuant to the EA, an agency determines that an EIS is not required, it must issue a “finding of no significant impact” that briefly presents the reasons why the proposed agency action will not have a significant impact on the human environment. *Id.* §§ 1501.4(e), 1508.13.

37. The regulations contain a narrow exception. Specifically, a federal agency may also adopt a “categorical exclusion” through rulemaking for “a category of actions which do not individually or cumulatively have a significant effect on the human environment.” *Id.* § 1508.4.

38. If a federal action falls within an agency’s categorical exclusion, it is not required to prepare an EIS or EA. *Id.* However, an agency invoking a categorical exclusion must “provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.” *Id.* In such circumstances, a typically excluded action would nevertheless trigger preparation of an EIS or an EA.

39. Interior has promulgated its own NEPA regulations that supplement those issued by the Council on Environmental Quality. Interior's regulations include a list of the types of activities for which categorical exclusions may be invoked. 43 C.F.R. § 46.210.

40. Interior's regulatory list of categorical exclusions does not include approval of offshore oil and gas activities. Instead, Interior's Department Manual includes a categorical exclusion for "[a]pproval of an offshore lease or unit exploration, development/production plan or a Development Operation Coordination Document in the central or western Gulf of Mexico." 516 DM 15.4(10). The categorical exclusion does not apply in "relatively untested deep water or remote areas;" in areas of high seismic activity or risk; in proposed or established marine sanctuaries or wildlife refuges; in areas of high biological sensitivity; in areas with hazardous bottom conditions; or when an oil company is using "new or unusual technology." *Id.*

41. The Department Manual also includes a categorical exclusion for approval of a drilling permit, an APD, when appropriate mitigation measures are described in an approved exploration plan, development plan, production plan, or development operations coordination document. 516 DM 15.4(12).

42. In addition, NEPA regulations require all federal agencies to "review their policies and procedures and. . . to revise them as necessary to ensure full compliance with the purposes and provisions of the Act." 40 C.F.R. § 1507.3(a).

### **Administrative Procedure Act**

43. The Administrative Procedure Act ("APA") provides general requirements for the issuance of proposed and final regulations by federal agencies. 5 U.S.C. §§ 551–706.

44. The APA requires that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." *Id.* § 553(e).

45. The APA also requires that, “within a reasonable time, each agency shall proceed to conclude a matter presented to it.” *Id.* § 555(b).

46. Under the APA, a person may seek judicial review to “compel agency action unlawfully withheld or unreasonably delayed . . .” *Id.* § 706(1).

## **FACTUAL BACKGROUND**

### **Offshore Oil and Gas Drilling and the Deepwater Horizon Disaster**

47. The Gulf of Mexico is an incredibly productive — and fragile — environment, with a diverse set of ecosystems including coral reefs, wetlands, oyster beds, and deep-water seeps. These ecosystems support a staggering array of marine life and significantly contribute to the Gulf coast economy.

48. The Gulf is home to thousands of marine species, including many federally-listed threatened and endangered species, such as marine mammals like sperm whales; leatherback, green, hawksbill, Kemp’s ridley, and loggerhead sea turtles; several species of beach mice; bird species like piping plovers and whooping cranes; and elkhorn and staghorn corals.

49. The Gulf of Mexico is also home to more than 4,200 offshore oil and gas leases encompassing more than 23 million acres of ocean, making it one of the most highly exploited continental shelf regions in the world.

50. There are also 43 oil and gas leases off the coast of Southern California encompassing more than 217,000 acres of ocean, most of which are in the Santa Barbara Channel. The Channel is one of the most biologically productive ecosystems on earth and is home to a wide variety of marine life, including threatened and endangered species like sea otters, blue whales, and black abalone.

51. These leases — and the attendant industrial network of oil rigs, platforms,

pipelines, service vessels, and drilling operations — create a significant risk of harm to the environment, wildlife, and coastal communities.

52. The Deepwater Horizon catastrophe highlights these risks all too well. The incident occurred on April 20, 2010 when BP was drilling the Macondo well, which blew out and caused the *Deepwater Horizon* oil rig to explode.

53. The Deepwater Horizon disaster resulted in the deaths of 11 workers and caused a spill of approximately 206 million gallons of oil over the course of at least 87 days. Roughly 1,100 miles of shoreline were contaminated with oil and 88,522 square miles of ocean — totaling one-third of the Gulf of Mexico — were closed to commercial and recreational fishing.

54. While the full scale of the devastation may never be known, scientists estimate that the spill killed or injured hundreds of thousands of animals, including up to 800,000 birds; 6,000 sea turtles; and nearly 30,000 dolphins and whales; as well as an untold number of fish, invertebrates, and plants. Corals suffered bleaching and tissue loss from the oil plume.

55. Six years later, the Gulf is still reeling from the effects of the spill. Recent studies demonstrate severe lung disease in dolphins; near-record lows of critically endangered Kemp's ridley sea turtle nesting; oil dispersants that are toxic to corals and jellyfish; and a “bathtub ring” of oil on the seafloor.

56. In addition, the 50,000 people involved in cleanup efforts suffer from an increased risk of physical and psychological injury. Gulf residents are still suffering from increased symptoms of depression, anxiety, mental illness, and posttraumatic stress. And scientists estimate the total economic loss for fisheries because of the spill could be \$8.7 billion by 2020.

57. Interior used categorical exclusions to approve BP's initial and revised exploration plan, as well as its permit to drill the Macondo well. Interior did not conduct a site-

specific EA or EIS under NEPA for BP's exploration plan or permit to drill the Macondo well.

### **Events Following Deepwater Horizon, Including the Center's Rulemaking Petition**

58. After the Deepwater Horizon disaster, on May 22, 2010, President Obama announced the establishment of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling — an independent entity charged with providing a thorough analysis of the causes of the disaster and recommend reforms to make offshore energy production safer.

59. The Council on Environmental Quality then published a notice in the Federal Register stating that it was conducting a review of Interior's NEPA process for offshore oil and gas exploration and development. 75 Fed. Reg. 29,996 (May 28, 2010).

60. Congress held a series of hearings about the causes of the spill from May to June, 2010 during which representatives of the federal government and the oil industry testified. Documents obtained by Congress revealed that, five days before the explosion and spill, BP encountered obstructions in the Macondo well and requested a permit to revise its drilling plan to deal with the blockage. Interior approved the permit less than 10 minutes after it was submitted.

61. In response to the information that came to light shortly after the oil spill, the Center submitted a rulemaking petition to Interior on June 15, 2010. The petition requested that Interior "initiate rulemaking requiring NEPA compliance at every stage of offshore oil and gas activities. . . thus eliminating the categorical exclusion that has allowed fast track drilling approvals to evade needed environmental review." Center for Biological Diversity, *Petition for Rulemaking Under the National Environmental Policy Act for Environmental Review of Offshore Oil and Gas Activities* (June 15, 2010) at 5.

62. Specifically, the petition requested that Interior adopt a rule pursuant to NEPA stating that:

The Secretary's approvals of (1) five-year leasing plans; (2) lease sales; (3) exploration plans; (4) development and production plans, or DOCDs [development operation coordination documents] in the central or western Gulf of Mexico, (5) geological and geophysical permits and (6) applications to drill are major Federal actions requiring full compliance with NEPA, 42 U.S.C. § 4332(2)(C). This analysis requires the agency to prepare, at minimum, a detailed environmental assessment ("EA") of the proposed action (42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9) or a more detailed environmental impact statement ("EIS") for actions with significant environmental effects, including opportunity for public participation.

An EIS should be prepared for exploration plans and development and production plans, or DOCDs, with facilities: (1) In areas of high seismic risk or seismicity, relatively untested deep water, or remote areas; or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or areas of high biological sensitivity; or (3) in areas of hazardous natural bottom conditions; or (4) utilizing new or unusual technology. *Id.* at 6.

63. The petition also requested that Interior revise its Department Manual to eliminate the categorical exclusions for approval of exploration, development and production plans, and development operation coordination documents in the Gulf of Mexico. *Id.* at 5.

64. On August 16, 2010, Interior announced that it would require an environmental assessment for the review of exploration or development plans for drilling wells that require the use of a subsea blowout preventer or surface blowout preventer on a floating facility. Memorandum from Michael R. Bromwich, Director, Bureau of Ocean Energy Management, Enforcement and Regulation, *Use of Categorical Exclusions in Gulf of Mexico Region*, Aug. 16, 2010. Interior's categorical exclusion would still apply to all other oil and gas activities, including exploration and development plans for drilling wells that do not require a subsea or surface blowout preventer, and the approval of all drilling permits (APDs and APMs). *Id.* The announcement also stated that Interior would soon publish a notice in the Federal Register stating its intent to review its use of categorical exclusions for offshore activities under NEPA and its implementing regulations. *Id.*

65. Also on August 16, 2010, the Council on Environmental Quality issued a report based on its review of Interior's NEPA process for offshore drilling. The report recommended significant changes, including the need to conduct more site-specific environmental analyses. Council on Environmental Quality, *NEPA Policies, Practices, and Procedures as They Relate to Outer Continental Shelf Oil and Gas Exploration and Development* (Aug. 16, 2010).

66. Interior then published a notice in the Federal Register on October 8, 2010, announcing that it was conducting a formal review under NEPA and its implementing regulations of its use of categorical exclusions for offshore oil and gas activities. 75 Fed. Reg. 62,418 (Oct. 8, 2010). Interior has not completed that review.

#### **Offshore Oil and Gas Permitting Continues**

67. Since the Center filed its rulemaking petition and Interior announced the commencement of its categorical exclusion review under NEPA, significant new information indicates that promulgating the Center's requested regulatory amendments are all the more necessary and urgent.

68. For example, in January 2011 the President's Commission on the BP Deepwater Horizon Oil Spill issued its final report. The report highlighted the need for fundamental reforms to Interior's management of offshore drilling even beyond the changes Interior had already made following the spill.

69. Specifically, the report concluded "the breakdown of the environmental review process for OCS activities was systemic and that Interior's approach to the application of NEPA requirements in the offshore oil and gas context needs significant revision." National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling* (Jan. 2011) at 260. The report cited

Interior's use of categorical exclusions and its failure to conduct site-specific environmental analysis of drilling activities as examples of the systemic breakdown of the NEPA process. It recommended that Interior "revise and strengthen [its] NEPA review procedures to improve the level of environmental analysis, transparency and consistency at all stages of the OCS planning, leasing, exploration and development process." *Id.* at 261. The report emphasized that such changes were needed to ensure adequate protection of public safety and the environment.

70. In addition, Interior has been permitting oil companies to use unconventional well stimulation techniques, like fracking, in the Gulf of Mexico. Offshore fracking involves injecting a mixture of water and chemicals into a well at extremely high pressure to artificially propagate fractures in a rock layer and create cracks through which oil and gas can flow. The use of fracking in oil and gas extraction has changed and significantly increased due to advancements in technology in recent years.

71. Offshore fracking causes environmental harm and risks beyond that of conventional offshore oil and gas drilling. For example, fracking uses toxic chemicals that scientists say cause significant health problems in humans, including cancer and genetic mutations. Scientific research demonstrates that many chemicals used in fracking can harm aquatic animals and other wildlife, including some chemicals considered the most toxic in the entire world with respect to aquatic life. In addition, scientists have found that fracking increases the risk of earthquakes and oil spills.

72. Nevertheless, since 2010, Interior has approved hundreds of initial, revised, and supplemental exploration plans and development operation coordination documents in the Gulf of Mexico pursuant to categorical exclusions. Interior has also approved hundreds of drilling

permits (APDs and APMs) pursuant to categorical exclusions for drilling activities in the Gulf of Mexico and in the Pacific Ocean off the coast of Southern California.

73. The permitting of oil and gas activities, including offshore fracking in the Gulf of Mexico, would be subject to additional scrutiny and public participation under NEPA if the Center's petition were granted and Interior revised its NEPA procedures to require further environmental review of offshore oil and gas activities.

### **CLAIMS FOR RELIEF**

#### **First Claim for Relief -- Violation of the Administrative Procedure Act**

74. The Center re-alleges and incorporates, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

75. Interior's protracted, ongoing failure to respond to or take final action on the Center's petition constitutes an agency action "unlawfully withheld or unreasonably delayed" within the meaning of the APA. 5 U.S.C. § 706(1). Interior's failure violates the APA. *Id.*

#### **Second Claim for Relief -- Violation of the National Environmental Policy Act**

76. The Center re-alleges and incorporates, as if fully set forth herein, each and every allegation in the preceding paragraphs of this Complaint.

77. Interior's protracted and ongoing failure to complete the legally required review of its NEPA procedures and revise those procedures to ensure compliance with NEPA constitute agency action "unlawfully withheld or unreasonably delayed" within the meaning of the APA. 5 U.S.C. § 706(1). Interior's failures violate the APA and/or NEPA. *Id.*; 40 C.F.R. § 1507.3(a).

### **PRAYER FOR RELIEF**

For the reasons stated above, the Center respectfully requests that the Court:

1. Declare that Interior's ongoing failure to take final action on the Center's petition

constitutes an agency action unlawfully withheld or unreasonably delayed and violates the APA;

2. Declare that Interior's ongoing failure to complete its review of its NEPA procedures and revise those procedures to ensure compliance with NEPA constitute agency action unlawfully withheld or unreasonably delayed and violate the APA and/or NEPA;
3. Order Interior to act on the Center's petition within thirty (30) days;
4. Order Interior to complete its review of its NEPA procedures within ninety (90) days and issue the necessary revisions within one hundred twenty (120) days;
5. Award the Center its costs of litigation, including reasonable attorney fees; and
6. Provide such other relief as the Court deems just and proper.

DATED: April 20, 2016

Respectfully submitted,

/s/ Catherine Kilduff

Catherine Cain Ware Kilduff, DC Bar No. 1026160  
CENTER FOR BIOLOGICAL DIVERSITY  
1411 K Street NW; Suite 1300  
Washington, DC 20005  
Phone: 202-780-8862  
Fax: 510-844-7150  
Email: ckilduff@biologicaldiversity.org

/s/ Kristen Monsell

Kristen Monsell, CA Bar No. 304793  
Application for admission *pro hac vice* pending  
CENTER FOR BIOLOGICAL DIVERSITY  
1212 Broadway, Ste. 800  
Oakland, CA 94612  
Phone: 510-844-7137  
Fax: 510-844-7150  
Email: kmonsell@biologicaldiversity.org

*Attorneys for Plaintiff Center for  
Biological Diversity*