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9  
10 **IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

11 CENTER FOR BIOLOGICAL DIVERSITY, )

) Case No.: 2:15-cv-1189

12 Plaintiff, )

13 v. )

) **COMPLAINT FOR**

) **DECLARATORY**

) **AND OTHER RELIEF**

14 BUREAU OF OCEAN ENERGY )  
MANAGEMENT; BUREAU OF SAFETY )  
AND ENVIRONMENTAL ENFORCEMENT; )

15 U.S. DEPARTMENT OF THE INTERIOR; )  
SALLY JEWELL, Secretary of the Interior; )

) **(Outer Continental Shelf Lands Act,**

) **43 U.S.C. § 1331, et seq. National**

) **Environmental Policy Act, 42 U.S.C.**

16 ABIGAIL HOPPER, Director, Bureau of Ocean )  
Energy Management; ELLEN ARONSON, )  
17 Pacific Region Director, Bureau of Ocean )

) **§ 4321 et seq., Coastal Zone**

) **Management Act, 16 U.S.C. § 1451,**

) **et seq., Administrative Procedure**

18 Director, Bureau of Safety and Environmental )  
Enforcement; JARON E. MING, Pacific Region )

) **Act, 5 U.S.C. § 551 et seq.)**

19 Director, Bureau of Safety and Environmental )  
Enforcement, )

20 )

Defendants.



1 Zone Management Act (“CZMA”), 16 U.S.C. §§ 1451, *et seq.*, in connection with  
2 their approval of fracking off the California coast.

3 4. Offshore fracking raises several significant environmental and public  
4 health concerns. The impacts associated with offshore fracking include the  
5 discharge of toxic wastewater, the emission of hazardous air pollutants, increased  
6 risk of earthquakes and oil spills, and threats to a variety of marine species, such as  
7 imperiled blue whales and sea otters. Nevertheless, the Bureaus have permitted  
8 fracking in the Pacific Ocean on numerous occasions.

9 5. The Bureaus have a pattern and practice of rubber-stamping permits to  
10 frack with no analysis of the environmental impacts, no determination of whether  
11 such activities are consistent with the plans governing oil development and  
12 production in the Pacific Region or California’s Coastal Management Program,  
13 and no public involvement. The Bureaus’ actions — or lack thereof — violate a  
14 myriad of laws.

15 6. Specifically, the Bureaus violated OCSLA when they approved  
16 drilling permits that involve offshore fracking because fracking is not described or  
17 mitigated in the relevant plans governing the development and production of  
18 offshore oil and gas in the Pacific. Additionally, the Bureaus’ approval of such  
19 permits without conducting a comprehensive analysis of the environmental impacts  
20 of offshore fracking violates NEPA. Finally, the Bureaus’ approval of such permits

1 without a determination from the state of California of whether offshore fracking is  
2 consistent with California's Coastal Zone Management Program violates CZMA.  
3 These violations of law damage California's unique and economically significant  
4 coastal environment, threaten the health and welfare of coastal communities, and  
5 deprive the public of information and participation to which it is legally entitled.

6 7. Accordingly, the Center requests an order from the Court declaring  
7 the Bureaus to be in violation of OCSLA, NEPA and CZMA, and prohibiting them  
8 from issuing future permits allowing fracking unless and until the Bureaus comply  
9 with OCSLA, NEPA and CZMA.

#### 10 **PARTIES**

11 8. Plaintiff the Center is a nonprofit corporation that advocates for the  
12 protection of threatened and endangered species and their habitats throughout the  
13 United States and around the world through science, policy, and environmental  
14 law. The Center's mission also includes protecting air quality, water quality and  
15 public health. The Center's Oceans Program focuses specifically on conserving  
16 marine ecosystems, and seeks to ensure that imperiled species such as marine  
17 mammals, sea turtles, corals and fish are properly protected from destructive  
18 practices, such as the use and development of fossil fuels. The Oceans Program  
19 also works to protect coastal communities from the air pollution, water pollution  
20 and other impacts that result from such practices. In pursuit of this mission, the

1 Center has been actively involved in protecting the California coastal environment  
2 from offshore fracking since it first learned the practice was occurring a little over  
3 a year ago. The Center brings this action on behalf of itself and its members.

4 9. The Center has more than 50,000 members, nearly 12,000 of which  
5 live in California. Center members and staff live in and regularly visit California  
6 beaches, as well as the Santa Barbara Channel, its islands and the waters in and  
7 around offshore platforms for swimming, surfing, kayaking, hiking, camping,  
8 viewing and studying wildlife, photography and other vocational and recreational  
9 activities. Center members and staff derive recreational, spiritual, professional,  
10 scientific, educational and aesthetic benefit from their activities in these areas.  
11 Center members and staff intend to continue to use and enjoy these areas  
12 frequently and on an ongoing basis in the future.

13 10. Center members' and staff's use and enjoyment of these areas is  
14 affected by the health and condition of those environments, including the health  
15 and condition of wildlife that live in or migrate through these areas, such as blue  
16 whales, gray whales, sea lions, sea otters, sea turtles, fish and abalone. Offshore  
17 fracking degrades these habitats and threatens wildlife and the coastal environment  
18 and therefore adversely affects Center members' and staff's use and enjoyment of  
19 these areas. For example, offshore fracking contaminates the ocean with pollutants  
20 that are toxic to aquatic organisms as endocrine disruptors that can inhibit

1 development, behavior and survival. It also requires the shipment of fracking  
2 chemicals to the oil platforms and extends the life of wells, thereby increasing  
3 shipping traffic and the attendant ocean noise and risk of ship strikes – one of the  
4 primary causes of death of blue whales in the Santa Barbara Channel. In this way,  
5 offshore fracking degrades Center members’ and staff’s recreational, scientific, and  
6 aesthetic enjoyment of the Santa Barbara Channel and other areas by harming  
7 water quality and the wildlife populations that they study and observe there, and  
8 decreasing their ability to view species that are harmed by the practice or leave the  
9 area. Additionally, Center members and staff reasonably fear that the Bureaus’  
10 actions fail to adequately protect California’s wildlife, air quality and water  
11 quality, and expose them and the coastal environment to increased risk of harm  
12 from offshore fracking. Such risks include but are not limited to, increased  
13 emissions of hazardous air pollutants such as benzene, as well as increase risk of  
14 earthquakes and an increased risk of oil spills and other leaks, both of which could  
15 have devastating environmental and economic consequences. Such reasonable  
16 fears negatively impact their use and enjoyment of these areas.

17       11. The above-described aesthetic, recreational, professional and other  
18 interests have been, are being and will continue to be adversely affected and  
19 irreparably injured by the Bureaus’ failure to comply with OCSLA, NEPA and  
20 CZMA in authorizing offshore fracking.

1           12. In addition, the Center and its members regularly comment on agency  
2 actions that affect California's coastal environment and regularly comment on and  
3 participate in the Bureaus' decisions under OCSLA, their environmental analyses  
4 under NEPA, and consistency determinations under CZMA. The Bureaus' failure  
5 to comply with OCSLA, NEPA and CZMA deprives them of these rights, and  
6 causes them procedural and informational injuries.

7           13. The Center and its members have no adequate remedy at law, and thus  
8 the requested relief is proper. Relief in this case would ensure environmental  
9 review of offshore fracking that would inform the public and decisionmakers about  
10 the environmental impacts and extent of fracking used in offshore oil and gas  
11 drilling. The requested relief could result in additional mitigation and oversight of  
12 offshore drilling practices that would better protect the ocean environment and  
13 wildlife and alleviate the injuries of the Center and its members. Further, an order  
14 prohibiting the Bureaus from further implementing the permits that authorized  
15 fracking unless and until the Bureaus comply with OCSLA, NEPA and CZMA  
16 would redress the injuries of the Center and its members.

17           14. Defendant Sally Jewell is the Secretary of the U.S. Department of the  
18 Interior, and is sued in her official capacity. Ms. Jewell is the official ultimately  
19 responsible under federal law for ensuring that the actions and management  
20

1 decisions of the Bureaus comply with all applicable laws and regulations,  
2 including OCSLA, NEPA and CZMA.

3 15. Defendant U.S. Department of the Interior is a United States agency  
4 within the executive branch. The Department is responsible for managing and  
5 overseeing the development of oil resources on the Outer Continental Shelf in  
6 accordance with OCSLA, NEPA and CZMA.

7 16. Defendant Bureau of Ocean Energy Management (“BOEM”) is a  
8 federal agency within the U.S. Department of the Interior.<sup>1</sup> BOEM is one of the  
9 agencies to which the Secretary of the Interior has delegated responsibilities under  
10 OCSLA. BOEM is charged with managing the development of offshore resources,  
11 including oil exploration, development and production in federal waters.

12 17. Defendant Bureau of Safety and Environmental Enforcement  
13 (“BSEE”) is a federal agency within the U.S. Department of the Interior. BSEE is  
14 one of the agencies to which the Secretary of the Interior has delegated  
15 responsibilities under OCSLA. BSEE is charged with permitting offshore drilling  
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17 <sup>1</sup> BOEM, formerly known as the Mineral Management Service, was renamed the  
18 Bureau of Ocean Energy Management, Regulation and Enforcement in 2010  
19 following the *Deepwater Horizon* oil spill. *See* 75 Fed. Reg. 61,051 (Oct. 4, 2010).  
20 In 2011, the agency was again reorganized. Pursuant to this organization, BOEM is  
responsible for managing development of offshore resources and the Bureau of  
Safety and Environmental Enforcement was created to enforce safety and  
environmental regulations.



1 operations in federal waters and ensuring such activities comply with safety and  
2 environmental regulations.

3 18. Defendant Abigail Hopper is the Director of BOEM, and is sued in  
4 her official capacity. Ms. Hopper has responsibility for implementing and fulfilling  
5 BOEM's duties under OCSLA, NEPA and CZMA.

6 19. Defendant Ellen Aronson is the Pacific Region Director of BOEM,  
7 and is sued in her official capacity. Ms. Aronson has responsibility for  
8 implementing and fulfilling BOEM's duties under OCSLA, NEPA and CZMA.

9 20. Defendant Brian Salerno is the Director of BSEE, and is sued in his  
10 official capacity. Mr. Salerno is responsible for implementing and fulfilling  
11 BSEE's duties under OCSLA, NEPA and CZMA.

12 21. Defendant Jaron Ming is the Pacific Region Director of BSEE, and is  
13 sued in his official capacity. Mr. Ming has responsibility for implementing and  
14 fulfilling BSEE's duties under OCSLA, NEPA and CZMA.

## 15 **STATUTORY BACKGROUND**

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

17 22. OCSLA establishes a framework under which the Secretary of the  
18 U.S. Department of the Interior may lease areas of the outer continental shelf  
19 ("OCS") for purposes of exploring and developing the oil and gas deposits of the  
20 OCS's submerged lands. 43 U.S.C. §§ 1331, *et seq.* The OCS generally begins

1 three miles from shore — the outer boundary of state waters — and extends  
2 seaward to the limits of federal jurisdiction. *Id.* § 1331(a).

3 23. OCSLA specifically requires that oil exploration and production be  
4 balanced “with protection of the human, marine, and coastal environments.” *Id.* §  
5 1802(2). OCSLA also requires that states “have timely access to information  
6 regarding activities on the Outer Continental Shelf, and opportunity to review and  
7 comment on decisions relating to such activities. . . .” *Id.* § 1802(5).

8 24. There are four separate stages to developing an offshore oil well: (1)  
9 formulation of a 5-year leasing plan by the Department of the Interior; (2) lease  
10 sales; (3) exploration by the lessees; and (4) development and production. *See*  
11 *Sec’y of the Interior v. California*, 464 U.S. 312, 337 (1984). “Each stage involves  
12 separate regulatory review that may, but need not, conclude in the transfer to lease  
13 purchasers of rights to conduct additional activities on the [Outer Continental  
14 Shelf].” *Id.*

15 25. At the fourth stage, OCSLA requires lessees to submit development  
16 and production plans (“DPPs”) to the Secretary of the Interior. 43 U.S.C. §  
17 1351(a). Prior to drilling a well, an oil company must also obtain approval of an  
18 application for permit to drill (“APDs”). 30 C.F.R. § 550.281(a)(1). The Bureaus  
19 must comply with NEPA, CZMA and other environmental laws when issuing  
20 DPPs and APDs.

1           26. OCSLA requires that DPPs include a description of the specific work  
2 to be performed, all facilities and operations located on the Outer Continental  
3 Shelf, the environmental safeguards that will be implemented and how those  
4 safeguards will be implemented, an expected rate of development and production  
5 and a time schedule for performance, among other requirements. *Id.* § 1351(c).  
6 OCSLA also requires the plans to include detailed descriptions of the types,  
7 quantity and composition of wastes that will be generated by development and  
8 production activities; how such wastes will be disposed of; the frequency, duration  
9 and amount of emissions of volatile organic compounds and other pollutants that  
10 will be generated by development and production activities; and mitigation  
11 measures designed to avoid or minimize the take of protected species, among other  
12 information. 30 C.F.R. §§ 550.241-550.262.

13           27. The activities proposed in an APD “must conform to the activities  
14 described in detail” in an approved DPP. *Id.* § 550.281(b). The regulations also  
15 provide for authorization of drilling activities via approval of an application for  
16 permit to modify (“APM”) when a company intends to revise its drilling plan or  
17 change major drilling equipment. *Id.* § 250.465(a)(1). APMs must include a  
18 “detailed statement of the proposed work that would materially change from the  
19 approved APD.” *Id.* § 250.465(b)(1). The Bureaus must comply with NEPA,  
20 CZMA and other environmental laws when issuing APMs.

1           28. OCSLA also mandates that the Secretary of the Interior periodically  
2 review DPPs. *Id.* § 1351(h)(3). The reviews are to be based on changes in available  
3 information, or other onshore or offshore conditions that impact development and  
4 production; if such review indicates that a DPP should be revised to ensure the  
5 plan complies with OCSLA, the Secretary must require such revision. *Id.*

6           29. OCSLA regulations require revision of DPPs when a company  
7 proposes to, *inter alia*, change the type of production or significantly increase the  
8 volume of production; increase the emissions of an air pollutant to a degree that  
9 exceeds the amount specified in the approved plan; or significantly increase the  
10 amount of solid or liquid wastes to be handled or discharged. 30 C.F.R. §  
11 550.283(a). The regulations also require a company to supplement a DPP when it  
12 proposes to conduct activities that require approval of a license or permit that is not  
13 described in the approved DPP. *Id.* § 550.283(b). These requirements help to  
14 ensure that oil and gas development and production activities are balanced with the  
15 protection of the human, marine and coastal environments, as mandated by  
16 OCSLA. *See* 43 U.S.C. §1802(2).

17           30. Additionally, the Secretary must forward the DPP to the governor of  
18 any affected state for comment and review. 43 U.S.C. § 1351(a)(3). The governor,  
19 as well as the executive of any affected local government, can make  
20 recommendations regarding the scope of activities conducted under the plan, and

1 propose modifications. *Id.* § 1345(a), (c). The Secretary can adopt such  
2 recommendations or proposed modifications if she determines, after consultation,  
3 that they provide for a reasonable balance between the national interest and the  
4 well-being of the citizens of the affected. *Id.* The DPPs must also be consistent  
5 with state’s coastal management program. The state can reject the plan as  
6 inconsistent with its management plan, and the veto can be overridden only by the  
7 Secretary of Commerce upon a finding that the activity is necessary for national  
8 security, or is consistent with the CZMA. *Id.* § 1351(d).

9       31. A plan can also be disapproved and the lease canceled by the  
10 Secretary of the Interior “if implementation of the plan would probably cause  
11 serious harm or damage to life (including fish and other aquatic life) . . . or to the  
12 marine, coastal or human environments”; the threat of damage or harm will not  
13 decrease within a reasonable period of time; and the advantages of disapproving  
14 the plan outweigh any advantages of approving it. *Id.* §§ 1351(h)(1)(D), (2).

15       32. Finally, OCSLA gives the Secretary of the Interior the authority to  
16 order the suspension of all development and production activities “if there is a  
17 threat of serious, irreparable, or immediate harm or damage to life (including fish  
18 and other aquatic life) . . . or to the marine, coastal, or human environment” among  
19 other reasons. 43 U.S.C. § 1334(a)(1); 30 C.F.R. § 250.172.



1           36. Specifically, whether an action may have “significant” impacts on the  
2 environment is determined by considering the “context” and “intensity” of the  
3 action. *Id.* “Context” means the significance of the project “must be analyzed in  
4 several contexts such as society as a whole (human, national), the affected region,  
5 the affected interests, and the locality.” *Id.* § 1508.27(a).

6           37. The intensity of the action is determined by considering the ten factors  
7 enumerated in the regulations, which are: (1) impacts that may be both beneficial  
8 and adverse; (2) the degree to which the proposed action affects public health or  
9 safety; (3) unique characteristics of the geographic area such as proximity to park  
10 lands or ecologically critical areas; (4) the degree to which the effects on the  
11 human environment are likely to be highly controversial; (5) the degree to which  
12 the possible effects on the human environment are highly uncertain or involve  
13 unique or unknown risks; (6) the degree to which the action may establish a  
14 precedent for future actions with significant effects; (7) whether the action is  
15 related to other actions with individually insignificant but cumulatively significant  
16 impacts; (8) the degree to which the action may cause loss or destruction of  
17 significant scientific, cultural, or historical resources; (9) the degree to which the  
18 action may adversely affect a species listed under the Endangered Species Act or  
19 its designated critical habitat; and (10) whether the action threatens a violation of  
20 federal, state or local environmental laws. *Id.* §§ 1508.27(b)(1)-(10).

1           38. NEPA’s regulations provide that an agency may first prepare an  
2 environmental assessment (“EA”) aimed at determining whether the environmental  
3 impact of a proposed action is “significant,” warranting preparation of an EIS.  
4 40 C.F.R. § 1501.3. If, pursuant to the EA, an agency determines that an EIS is not  
5 required, it must issue a “finding of no significant impact” that briefly presents the  
6 reasons why the proposed agency action will not have a significant impact on the  
7 human environment. *Id.* §§ 1501.4(e), 1508.13.

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

12           40. If a federal action falls within an agency’s categorical exclusion, it is  
13 not required to prepare an EIS or EA. *Id.* However, an agency invoking a  
14 categorical exclusion must “provide for extraordinary circumstances in which a  
15 normally excluded action may have a significant environmental effect.” *Id.* In such  
16 circumstances, a typically excluded action would nevertheless trigger preparation  
17 of an EIS or an EA. The fact that the exceptions *may apply* is all that is required to  
18 prohibit the use of the categorical exclusion.

19           41. The Department of the Interior (the “Department”) has promulgated  
20 its own NEPA regulations that supplement those issued by the Council on



1 Environmental Quality. The Department’s regulations include a list of the types of  
2 activities for which categorical exclusions may be invoked. 43 C.F.R. § 46.210.  
3 The regulations also include a list of activities that constitute “extraordinary  
4 circumstances” and thereby prohibit the use of a categorical exclusion. *Id.* §  
5 46.215. These circumstances include the NEPA significance factors listed in  
6 Paragraph 37, among others.

7 42. The Department’s regulatory list of categorical exclusions does not  
8 include issuance of APDs and APMs. *See id.* § 46.210. Instead, the Department’s  
9 Manual includes a categorical exclusion for the “Approval of an Application for  
10 Permit to Drill (APD) an offshore oil and gas exploration or development well.”  
11 516 DM 15.4(12). The categorical exclusion only applies “when said well and  
12 appropriate mitigation measures are described in an approved exploration plan,  
13 development plan, production plan, or Development Operations Coordination  
14 Document.” *Id.* The categorical exclusion does not apply to APMs.

### 15 **Coastal Zone Management Act**

16 43. In enacting CZMA in 1972, Congress found that the “increasing and  
17 competing demands upon the lands and waters of our coastal zone” had “resulted  
18 in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and  
19 adverse changes to ecological systems, decreasing open space for public use, and  
20 shoreline erosion.” 16 U.S.C. § 1451(c). Accordingly, CZMA seeks “to protect and

1 to give high priority to natural systems in the coastal zone” and thereby prevent  
2 “[i]mportant ecological, cultural, historic, and esthetic values in the coastal zone . . .  
3 [from] being irretrievably damaged or lost.” *Id.* §§ 1451(e), (h).

4 44. To reach these goals, CZMA enhances the ability of coastal states to  
5 assume planning and regulatory powers over their coastal zone. *Id.* § 1451(m).  
6 Specifically, when entities apply for federal licenses or permits to conduct  
7 activities that affect land uses, water uses or natural resources within a state’s  
8 coastal zone, CZMA authorizes the state to review the applications to ensure the  
9 activities are fully consistent with the state’s coastal management plan. *Id.* §  
10 1456(c); *see also* 15 C.F.R. § 930.53(a) (effects on the coastal zone includes  
11 “reasonably foreseeable effects”). The state may conduct the consistency review  
12 for any action that affects its coastal zone, regardless of whether the action is  
13 within or outside of the coastal zone itself. 16 U.S.C. 1451(c).

14 45. California has a federally approved coastal management program,  
15 pursuant to which the California Coastal Commission is charged with making  
16 consistency determinations under CZMA. *See* Cal. Pub. Res. Code § 30008.

17 46. CZMA expressly requires consistency review of DPPs, and generally  
18 prohibits the federal government from issuing any permits under such plans unless  
19 and until the DPPs are deemed consistent with the coastal management program of  
20 the states that will be affected by the activities to be conducted under the plans. *Id.*

1 § 1456(c)(3)(B). Similarly, CZMA generally prohibits the issuance of permits  
2 unless and until the activities to be conducted under such a permit are described in  
3 detail in an approved DPP. *Id.*; *see also* 15 C.F.R. § 930.51.

4 47. In addition, CZMA’s implementing regulations require that changes  
5 to a previously reviewed and approved DPP, as well as issuance or renewals of  
6 APDs and APMs, must be subject to additional consistency review when they  
7 represent a “major amendment” to an approved plan. 15 C.F.R. § 930.51(a), (b).

8 48. What constitutes a “major amendment” depends on whether the  
9 particular activity to be conducted under the license or permit received prior  
10 CZMA review. A “major amendment” of an activity that did not receive prior  
11 review is one that will “affect any coastal use or resource.” *Id.* § 930.51(b)(1). A  
12 “major amendment” of an activity that received prior CZMA review is one that  
13 will “cause an effect on any coastal use or resource substantially different than  
14 those originally reviewed.” *Id.* § 930.51(b)(3). Whether an effect is “substantially  
15 different” is to be determined on a case-by-case basis by the agency reviewing the  
16 permit application after consultation with the state. *Id.* § 930.51(e). The agency is  
17 required to give “considerable weight” to the state’s opinion. *Id.*

18 49. The regulations specifically require that the terms “major amendment”  
19 and “substantially different” “be construed broadly to ensure that the state...has the  
20 opportunity to review activities and coastal effects not previously reviewed.” *Id.*

1 **Administrative Procedure Act**

2 50. The Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551-706,  
3 provides for judicial review of final agency action. Under the APA, a person may  
4 seek judicial review to “compel agency action unlawfully withheld or  
5 unreasonably delayed. . . .” *Id.* § 706(1). The APA also requires that a reviewing  
6 court “hold unlawful and set aside agency action, findings, and conclusions found  
7 to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance  
8 with law. . . .” *Id.* § 706(2)(A).

9 **FACTUAL BACKGROUND**

10 **Offshore Fracking**

11 51. There are 23 platforms on the Pacific Outer Continental Shelf from  
12 which oil drilling and extraction activities occur. Oil companies installed the  
13 platforms between 1967 and 1989, and the first production began in 1969.

14 52. The platforms range from approximately four to ten miles from shore.  
15 Fifteen of these platforms are located in the Santa Barbara Channel, four are  
16 located off Long Beach, and four are located in the Santa Maria Basin. The  
17 Bureaus have permitted offshore fracking from some of these platforms.

18 53. Hydraulic fracturing, or fracking, involves injecting a mixture of  
19 water, sand and chemicals into a well at extremely high pressure to artificially  
20 propagate fractures in a rock layer and create cracks and passages through which

1 oil, gas and other liquids can flow. The use of fracking in oil and gas extraction has  
2 changed and significantly increased due to advancements in technology in recent  
3 decades.

4 54. On land, fracking has been linked to chemical and oil spills, air and  
5 water pollution, earthquakes and property damage. The damages from fracking to  
6 public health and the environment have often been severe. Offshore fracking raises  
7 similar concerns and adds further risks due to the unpredictable nature of the ocean  
8 environment. Offshore fracking may significantly impact the quality of the human  
9 environment.

10 55. Water contamination is a particular hazard of fracking because toxic  
11 chemicals are used in fracking fluids. Offshore fracking harms water quality along  
12 the California coast. The water pollution permit used by the oil platforms in federal  
13 waters allows more than nine billion gallons of produced water, including fracking  
14 chemicals, to be dumped each year into the Pacific Ocean. The General Permit has  
15 no limits on the amount of fracking chemicals that can be discharged when  
16 combined with produced water. Roughly half the platforms in the Santa Barbara  
17 Channel use this wastewater disposal method. This disposal method can result in  
18 wastewater plumes. These plumes can rise to the surface of the sea or become  
19 trapped below the surface.

1           56.    When wastewater is not dumped into the ocean, it is reinjected into  
2 the seafloor or transported via pipelines or ships for onshore underground  
3 injection. This disposal method can result in leaks during transport or after  
4 injection. For example, in January 2015 three million gallons of fracking  
5 wastewater spilled from a leaking pipe in western North Dakota. Loss of well  
6 casing integrity is another pathway for contamination of ground and surface  
7 waters.

8           57.    The chemicals used in fracking operations are undisclosed. However,  
9 what is known is cause for alarm. The chemicals used in fracking fluids can cause  
10 adverse health effects. For example, more than 75 percent of the chemicals used  
11 can affect the skin, eyes and other sensory organs, and respiratory and  
12 gastrointestinal systems; approximately 40 to 50 percent can affect the  
13 brain/nervous system, immune system, cardiovascular system and the kidneys; 37  
14 percent can affect the endocrine system; and 25 percent could cause cancer and  
15 mutations. Groundwater near fracking sites in Texas have heightened levels of  
16 arsenic and heavy metals, and California aquifers have been contaminated with  
17 billions of gallons of oil industry wastewater.

18           58.    Air pollution from fracking is also well documented. Pollutants  
19 released during offshore fracking pose serious health risks, including  
20 carcinogenicity and endocrine disruption. Volatile organic compounds (“VOCs”)

1 emitted during offshore fracking include the “BTEX compounds” — benzene,  
2 toluene, ethyl benzene and xylene — which Congress has declared Hazardous Air  
3 Pollutants. *See* 42 U.S.C. § 7412(b). Many of these VOCs are associated with  
4 serious short-term and long-term effects to the respiratory, nervous and circulatory  
5 systems. Additionally, VOCs create ground-level ozone, or smog, which can  
6 contribute to asthma, premature death, stroke, heart attack and low birth weight.  
7 Benzene is also a known carcinogen, and has been documented in people living  
8 within a 10-mile radius of fracked wells in Colorado.

9       59. In addition to posing a significant risk to humans, fracking can harm a  
10 wide variety of marine life, including some of California’s most iconic wildlife  
11 species. Some fracking chemicals are harmful to aquatic life. Scientific research  
12 has indicated that 40 percent of the chemicals added to fracking fluids have been  
13 found to have ecological effects, indicating that they can harm aquatic animals and  
14 other wildlife. And compared to fracking in other areas, oil companies in  
15 California use fracking fluids with more concentrated chemicals, including  
16 chemicals acutely toxic to mammals. Transportation of chemicals to offshore  
17 platforms can result in spills and vessel collisions with whales — a leading cause  
18 of mortality for blue whales in the Santa Barbara Channel.

19       60. The Santa Barbara Channel, where offshore fracking has occurred, is  
20 important habitat for numerous species of whales, seabirds, sea turtles and fish.

1 Between June and November, high densities of endangered blue whales spend time  
2 feeding on the abundant planktonic krill in the area of these oil and gas activities.  
3 The Santa Barbara Channel hosts the world's densest summer seasonal  
4 congregation of blue whales. Another endangered whale, the humpback whale,  
5 congregates in the area from May to September. Gray whales migrate through the  
6 region in the late fall on their way south to breeding grounds and again in the late  
7 winter and early spring on their way north to feeding areas, and minke whales are  
8 known to occupy the region year-round. Endangered sperm, right and killer whales  
9 occasionally occur in the area as well. Further, the area where fracking has  
10 occurred is near federally designated critical habitat for endangered black abalone  
11 and endangered leatherback sea turtles, and near the Channel Islands Marine  
12 Sanctuary, Channel Islands National Park, and other marine protected areas.

13 61. In addition to causing a risk to wildlife, fracking also increases the  
14 risk of earthquakes. Roughly half of the platforms on the Pacific Outer Continental  
15 Shelf dispose of their wastewater via injection into underground wells. Wastewater  
16 injection has been linked to increased earthquake activity. The U.S. Geological  
17 Survey has cited wastewater disposal from fracking as a "contributing factor" to  
18 the six-fold increase in the number of earthquakes in Oklahoma. Wastewater  
19 injection is also responsible for the dramatic rise in the number of earthquakes in  
20 Colorado and New Mexico since 2001. In fact, wastewater injection has been



1 scientifically linked to earthquakes of magnitude three and greater in at least six  
2 states: Arkansas, Colorado, Ohio, Oklahoma, Texas and New Mexico.

3 62. Over half of California's 1,553 active and new wastewater injection  
4 wells are within ten miles of recently active faults, and at least thirty of  
5 California's offshore wastewater injection wells are located within three miles of a  
6 fault.

7 **Approval of Offshore Fracking in the Pacific Region**

8 63. The Bureaus have authorized offshore fracking through approval of  
9 applications for permits to drill or modify. Drilling permits are major federal  
10 actions. However, the Bureaus do not make drilling permits in the Pacific Outer  
11 Continental Shelf Region publicly available or allow for public notice and  
12 comment on applications for permits to drill or modify. As such, neither the public  
13 nor state regulators were aware that fracking was occurring off the coast of  
14 California until recently.

15 64. A review of documents obtained through requests under the Freedom  
16 of Information Act reveals that the Bureaus have authorized fracking on numerous  
17 occasions. In particular, the Bureaus issued permits authorizing fracking of various  
18 wells from Platforms Gilda, Hildalgo and Gail on at least the following occasions:  
19  
20

- 1 a) Platform Gilda; Well S-89; APM<sup>2</sup> issued on 10/03/1996
- 2 b) Platform Hidalgo; Well C-1; APM issued on 02/18/1997
- 3 c) Platform Hidalgo; Well C-11; APM issued on 02/18/1997
- 4 d) Platform Gilda; Well S-87; APM issued on 03/10/1997
- 5 e) Platform Gilda; Well S-62; APM issued on 05/01/1997
- 6 f) Platform Gilda; Well S-28; APM issued on 11/14/1997
- 7 g) Platform Gilda; Well S-61; APM issued on 04/17/1998
- 8 h) Platform Gilda; Well S-65; APM issued on 04/02/2001
- 9 i) Platform Gilda; Well S-44; APM issued on 07/30/2001
- 10 j) Platform Gilda; Well S-44; APM issued on 08/22/2001
- 11 k) Platform Gilda; Well S-62; APM issued on 11/21/2001
- 12 l) Platform Gilda; Well S-44; APM issued on 02/20/2003
- 13 m) Platform Gilda; Well S-44; APM issued on 02/26/2003
- 14 n) Platform Gail; Well E-8; APM issued on 11/23/2009
- 15 o) Platform Gail; Well E-8; APM issued on 12/23/2009
- 16 p) Platform Gail; Well E-8; APM issued on 01/28/2010
- 17 q) Platform Gilda; Well S-005; APD issued on 03/17/2013
- 18 r) Platform Gilda; Well S-005; APM issued on 6/18/2013

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19 <sup>2</sup> At the time of issuance, these permits were called “sundry” notices, the  
20 equivalent of APMs today, *see* 30 C.F.R. § 250.1618 (2000), and are referred to as  
APMs for purposes of this Complaint.

1 s) Platform Gilda; Well S-033; APM issued on 6/18/2013

2 t) Platform Gilda; Well S-071; APM issued on 6/18/2013

3 u) Platform Gilda; Well S-075; APM issued on 6/18/2013

4 65. On information and belief, the Bureaus approved and continue to  
5 approve additional APDs and APMs that allow fracking without necessary  
6 compliance with OCSLA, NEPA and CZMA.

7 66. Platform Gilda is located in the Santa Barbara Channel. The DPP for  
8 drilling from Platform Gilda was approved in 1980, and the platform installed in  
9 1981. The Bureaus have not required a revision of the DPP for Platform Gilda to  
10 discuss or mitigate the impacts of fracking.

11 67. Platform Hidalgo is located in the Point Arguello field in the Santa  
12 Maria Basin. The DPP for Platform Hidalgo was originally approved in 1985 as  
13 part of the development plan governing all platforms in Point Arguello, and the  
14 platform installed in 1986. The Bureaus have not required a revision of the DPP for  
15 Platform Hidalgo to discuss or mitigate the impacts of fracking.

16 68. Platform Gail is located in the Santa Barbara Channel. The DPP for  
17 drilling from Platform Gilda was approved in 1986, and the platform installed in  
18 1987. The Bureaus have not required a revision of the DPP for Platform Gail to  
19 discuss or mitigate the impacts of fracking.



1 of an APM in order to make a change to drilling activities previously approved in  
2 an APD. 30 C.F.R. §§ 550.281; 250.465.

3 73. OCSLA requires that the DPP must detail the particular activities in  
4 which a company intends to engage, the liquid wastes and air emissions generated  
5 by these activities, and any necessary mitigation measures. 43 U.S.C. § 1351; 30  
6 C.F.R. §§ 550.241-550.262. Such requirements help to ensure, *inter alia*, that  
7 “environmental safeguards” are in place and help to “balance orderly energy  
8 resource development with protection of the human, marine, and coastal  
9 environments,” as required by OCSLA. 43 U.S.C. §§ 1332(3), 1802(2)(B).

10 74. Accordingly, OCSLA’s implementing regulations specify that in order  
11 to obtain approval of an APD or an APM to conduct drilling activities under an  
12 approved DPP, “the activities proposed in the . . . permits must “conform to the  
13 activities described in detail” in the plan. 30 C.F.R. § 550.281(b). The DPPs for the  
14 Platforms Gilda, Hildalgo and Gail do not describe fracking in detail, or even  
15 mention the practice.

16 75. The Bureaus’ issuance of each of the permits in Paragraph 64 is  
17 therefore arbitrary, capricious, an abuse of discretion and not in accordance with  
18 OCSLA or its implementing regulations. 5 U.S.C. § 706(2).

19 76. Moreover, offshore fracking meets several of the triggers that mandate  
20 revision of a DPP. *See* 43 U.S.C. § 1351(h)(3); 30 C.F.R. § 550.283. Offshore

1 fracking changes the type of production or significantly increases the volume of  
2 production, increases the emissions of air pollutants and significantly increases the  
3 amount of solid or liquid wastes to be handled or discharged. *See* 30 C.F.R. §  
4 550.283(a). However, the Bureaus have not reviewed, nor required revision of, the  
5 DPPs for the platforms where fracking has occurred to ensure such plans describe  
6 and mitigate the impacts of offshore fracking. The Bureaus' failure to do so before  
7 issuing the permits in Paragraph 64 violates OCSLA and its implementing  
8 regulations, and constitutes an agency action unlawfully withheld or unreasonably  
9 delayed. 43 U.S.C. § 1351(h)(3); 30 C.F.R. § 550.283; 5 U.S.C. § 706(1).

## 10 **Second Claim for Relief**

### 11 **Failure to Prepare an Environmental Assessment or 12 Environmental Impact Statement**

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

15 78. NEPA requires federal agencies to take a “hard look” at the  
16 environmental consequences of their actions *before* taking action. *See* 40 C.F.R. §  
17 1500.1(a). To comply with this mandate, a federal agency must prepare an EIS for  
18 all “major Federal actions significantly affecting the quality of the human  
19 environment.” 42 U.S.C. § 4332(2)(C). NEPA’s implementing regulations specify  
20 factors that must be considered in determining when an action may significantly  
affect the environment warranting an EIS. 40 C.F.R. §§ 1508.27(b)(1)-(10).



1 of the human environment. Offshore fracking triggers several of the “extraordinary  
2 circumstances” for which the use of a categorical exclusion is prohibited. *See* 43  
3 C.F.R. § 46.215. Offshore fracking may have significant impacts on public health  
4 and safety; offshore fracking involves unique and unknown risks, involves  
5 controversy, may impact ecologically critical areas, and may negatively impact  
6 several species listed under the Endangered Species Act and their designated  
7 critical habitats. *See id.* Thus, the Bureaus may not lawfully approve fracking  
8 under a categorical exclusion.

9       83. Moreover, on its face, the categorical exclusion only applies to APDs  
10 — it does not apply to APMs. *See* 516 DM 15.4 C(12). Further, the categorical  
11 exclusion only applies when an activity to be approved will be mitigated in  
12 accordance with the measures described in an approved DPP. *See id.* The DPPs for  
13 Platforms Gilda, Hildalgo and Gail do not mention fracking, or mitigate the  
14 impacts from offshore fracking.

15       84. As such, the Bureaus’ issuance of the permits in Paragraph 64 is  
16 arbitrary, capricious, an abuse of discretion and not in accordance with NEPA or  
17 its implementing regulations. 5 U.S.C. § 706(2).



1 **Fourth Claim for Relief**

2 **Violations of the Coastal Zone Management Act**

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

5 86. One of CZMA’s primary functions is to ensure that coastal states and  
6 their citizens have a say in whether activities that affect coastal zones and their  
7 unique natural and cultural resources should be allowed to occur. *See* 16 U.S.C.  
8 § 1451(m). Accordingly, CZMA specifically requires the federal government to  
9 involve states in the planning of the exploration, development and production of oil  
10 on the Outer Continental Shelf, and prohibits the issuance of drilling permits unless  
11 and until the state determines that the activities to be conducted under those  
12 permits are consistent with their coastal management programs. *Id.*  
13 § 1456(c)(3)(B); 15 C.F.R. § 930.51.

14 87. However, the Bureaus permitted offshore fracking without a  
15 determination from California that fracking is consistent with California’s Coastal  
16 Management Program. Further, the Bureaus permitted fracking without first  
17 consulting the state to determine whether it believes fracking constitutes a major  
18 amendment to previously reviewed DPPs.

19 88. The Bureaus’ issuance of the permits in Paragraph 64 is therefore  
20 arbitrary, capricious, an abuse of discretion and not in accordance with CZMA or

1 its implementing regulations. 5 U.S.C. § 706(2). Similarly, the Bureaus’ failure to  
2 process such permits as “major amendments” or consult the state of California  
3 constitutes an agency action unlawfully withheld or unreasonably delayed, and/or  
4 is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with  
5 law. *Id.* §§ 706(1), (2).

6 **PRAYER FOR RELIEF**

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

- 8 1. Declare that the Bureaus’ issuance of the permits at issue in this litigation  
9 violates OCSLA and its implementing regulations, and that the Bureaus’ failure  
10 to review and require revision of the DPPs for the platforms that have engaged  
11 in offshore fracking prior to issuing the permits at issue in this litigation violates  
12 OCSLA and/or constitutes an agency action unlawfully withheld or  
13 unreasonably delayed;
- 14 2. Declare that the Bureaus’ approval of the permits at issue in this litigation  
15 without first preparing an EA or EIS violates NEPA and its implementing  
16 regulations;
- 17 3. Declare that the Bureaus’ use of a categorical exclusion to approve the permits  
18 at issue in this litigation violates NEPA and its implementing regulations;
- 19 4. Declare that the Bureaus’ issuance of the permits at issue in this litigation  
20 without a determination from the state of California that offshore fracking is

1 consistent with California's Coastal Management Program and/or its failure to  
2 consult the state of California before issuing such permits violates CZMA and  
3 its implementing regulations;

4 5. Prohibit the Bureaus from further implementing the permits at issue in this  
5 action unless and until the Bureaus comply with OCSLA, NEPA, CZMA and  
6 all other applicable laws;

7 6. Award the Center its costs of litigation, including reasonable attorneys' fees;  
8 and

9 7. Grant such other relief as the Court deems just and proper.  
10

11 Dated: February 19, 2015

Respectfully submitted,

12 /s/ Miyoko Sakashita

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