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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 CENTER FOR BIOLOGICAL
18 DIVERSITY,

19 *Plaintiff,*

20 v.

21 DEBRA HAALAND, Secretary of the
22 Interior; BUREAU OF OCEAN ENERGY
23 MANAGEMENT; BUREAU OF SAFETY
24 AND ENVIRONMENTAL
25 ENFORCEMENT; GINA RAIMONDO,
26 Secretary of Commerce; NATIONAL
27 MARINE FISHERIES SERVICE,

28 *Defendants.*

Case No. 2:22-cv-555

**COMPLAINT FOR DECLARATORY
AND OTHER RELIEF**

**(Endangered Species Act, 16 U.S.C.
§§ 1531, et seq.; Administrative
Procedure Act, 5 U.S.C. §§ 551, et seq.)**

INTRODUCTION

1. In this case, Plaintiff Center for Biological Diversity challenges the failure of Defendants the Secretary of the U.S. Department of the Interior, Bureau of Ocean

1 Energy Management, Bureau of Safety and Environmental Enforcement, (collectively,
2 the “Bureaus”) and the Secretary of Commerce and National Marine Fisheries Service
3 (collectively, the “Service”) to comply with the Endangered Species Act (“ESA”), 16
4 U.S.C. §§ 1531–1544, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–
5 706, in authorizing and managing offshore oil and gas activities in federal waters off
6 California.

7 2. Specifically, the Bureaus and the Service are failing to ensure that
8 continued oil and gas development and production on the Pacific Outer Continental
9 Shelf will not jeopardize the continued existence of humpback whales, blue whales,
10 sperm whales, leatherback sea turtles, black abalone, and other threatened and
11 endangered species, in violation of section 7 of the ESA, 16 U.S.C. § 1536(a)(2). The
12 agencies’ failures deprive species already struggling to survive of important, legally
13 required protections.

14 3. Oil companies have been drilling off California for more than 50 years. The
15 first platforms were installed in 1968 and production continues today. Much of this
16 infrastructure has outlived its expected lifespan and is well beyond the age scientists say
17 significantly increase the risk of oil spills.

18 4. Indeed, just months ago a pipeline connected to a platform in federal waters
19 off Huntington Beach ruptured and spilled tens of thousands of gallons of oil into the
20 marine environment. The spill fouled sensitive marine, beach, and wetland habitat;
21 forced closure of fisheries; and harmed and killed birds, fish, plants, invertebrates, and
22 marine mammals.

23 5. The spill was a tragic reminder of the harmful impacts of offshore oil
24 drilling. It also highlighted how the existing ESA analyses on the Bureaus’ authorization
25 and management of oil and gas activities off California’s coast is inadequate and fails to
26 properly examine the numerous risks of offshore drilling on threatened and endangered
27 species and their habitats.

1 6. In 2017, the Service issued a decision under the ESA concluding that
2 continued oil and gas development and production activities on the Pacific Outer
3 Continental Shelf may affect, but are not likely to adversely affect, any threatened or
4 endangered whale, seal, sea turtle, fish, or invertebrate species off California.

5 7. It was the first ESA consultation the Service had completed on the impacts
6 of oil and gas activities in federal waters off California in over 30 years. But that
7 analysis is not based on the best available science and makes a series of erroneous
8 assumptions that leave imperiled marine species at increased risk of harm from these
9 inherently dangerous practices.

10 8. For example, the Service’s analysis assumes there is only a “low
11 likelihood” of an oil spill, and that in the event one did occur, it would be “small,”
12 consisting of no more than 8,400 gallons of oil. The Service relied on these assumptions
13 for all its conclusions regarding the effects of the action on threatened and endangered
14 species. The recent October 2021 spill—which was at least 3.5 times this amount—
15 reveals that these key assumptions and conclusions are very wrong.

16 9. And this spill was not an isolated incident. Since October 2021 alone,
17 several oil sheens have been observed off Huntington Beach, at least one of which is
18 believed to have come from another offshore pipeline. This follows a 2015 spill from a
19 coastal pipeline that served several platforms in federal waters that dumped more than
20 123,000 gallons of oil into the coastal environment.

21 10. In addition to the recent spill, a slew of other new information—including
22 the frequency with which endangered whales are getting run over and killed by ships, the
23 designation of humpback whale critical habitat, and how continued oil drilling is
24 deepening the climate crisis—has triggered the Bureaus’ and the Service’s duty to
25 reinstate consultation to ensure that ongoing oil and gas activity does not threaten the
26 continued existence of ESA-protected marine life. Yet the agencies have failed to do so.

27 11. The Bureaus’ reliance on the Service’s flawed decision violates the ESA.
28 The Bureaus’ and Service’s failure to reinstate and complete consultation on the impacts

1 of oil and gas drilling activities in federal waters off California on humpback whales,
2 blue whales, leatherback sea turtles, and other threatened and endangered species and
3 their critical habitat violates the ESA.

4 12. Accordingly, Plaintiff requests an order from the Court declaring that
5 Defendants are in violation of the ESA and the APA, vacating the Service’s 2017 ESA
6 analysis, and prohibiting the Bureaus from authorizing new oil and gas activities on the
7 Pacific Outer Continental Shelf unless and until Defendants comply with the ESA.

8 **JURISDICTION AND VENUE**

9 13. The Court has jurisdiction over this matter under 28 U.S.C. § 1331 because
10 this action arises pursuant to the laws of the United States. An actual, justiciable
11 controversy now exists between Plaintiff and Defendants, and the requested relief is
12 proper under 28 U.S.C. §§ 2201–2202, 5 U.S.C. §§ 701–706, and 16 U.S.C. § 1540(g).

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

16 15. Plaintiff provided 60 days’ notice of intent to file this suit pursuant to the
17 citizen suit provision of the ESA, 16 U.S.C. § 1540(g), by letter to Defendants dated
18 October 8, 2021. Defendants have not taken action to remedy their continuing violations
19 by the date of this complaint’s filing. Therefore, an actual controversy exists between the
20 parties under 28 U.S.C. § 2201.

21 **PARTIES**

22 **Plaintiff**

23 16. Plaintiff Center for Biological Diversity (the “Center”) is a national
24 conservation organization and California nonprofit corporation that advocates for the
25 protection of threatened and endangered species and their habitats through science, law,
26 and policy. The Center’s mission also includes protecting air quality, water quality, and
27 public health. The Center has over 89,000 members worldwide, including thousands in
28 California. The Center brings this action on behalf of itself and its members.

1 17. The Center's Oceans Program focuses specifically on conserving marine
2 ecosystems and seeks to ensure that imperiled species such as marine mammals, sea
3 turtles, and fish are properly protected from destructive practices in our oceans. The
4 Oceans Program also works to protect coastal communities from the air pollution, water
5 pollution, and other impacts that result from such practices. In pursuit of this mission,
6 the Center has been actively involved in protecting the California coastal environment
7 from offshore oil and gas drilling activity.

8 18. Plaintiff's members regularly visit California beaches, including Huntington
9 Beach; the Santa Barbara Channel and its islands; and the waters near offshore
10 platforms, for vocational and recreational activities such as swimming, surfing,
11 kayaking, hiking, fishing, camping, viewing and studying wildlife, and photography.
12 Plaintiff's members and staff derive recreational, spiritual, professional, scientific,
13 educational, and aesthetic benefits from their activities in these areas. Plaintiff's
14 members and staff intend to continue to use and enjoy these areas frequently and on an
15 ongoing basis in the future.

16 19. Offshore oil and gas drilling activities degrade these habitats and threaten
17 wildlife and the coastal environment. For example, offshore drilling activities increase
18 air pollution that is harmful to public health and discharges wastewater that contaminates
19 the ocean with pollutants that are toxic to marine species. It also requires the shipment of
20 equipment to oil platforms, thereby increasing port and ship traffic, which in turn
21 increases ocean noise and the risk of ship strikes of whales and other marine life.

22 20. Offshore oil and gas activities also cause oil spills. Oil spills have a wide
23 array of lethal and sublethal impacts on marine species, both immediate and long term.
24 Direct impacts to wildlife from exposure to oil can include behavioral alteration, disease,
25 suppressed growth, and death. Oil can also harm wildlife through reduction of key prey
26 species. Oil destroys the water proofing and insulating properties of feathers and fur of
27 birds and mammals, respectively, compromising their buoyancy and ability to
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1 thermoregulate. Oil spills can also lead to closures of beaches and recreational and
2 commercial fisheries, causing widespread economic harm.

3 21. The risk of oil spills is especially heightened off California, where oil
4 companies have been drilling from platforms and pipelines installed between 30 to 50
5 years ago. Scientists have determined, for example, that the risk of a spill more than
6 doubles as a pipeline ages from 20 to 40 years.

7 22. Continued oil and gas drilling off California also increases the greenhouse
8 gas emissions driving climate change. Scientists have determined that each barrel of
9 federal California oil left in the ground would equate to roughly half a barrel reduction in
10 net oil consumption, with associated reductions in greenhouse gas emissions.

11 23. Offshore oil and gas drilling degrades the Center's members' recreational,
12 spiritual, scientific, cultural, and aesthetic enjoyment of the Santa Barbara Channel,
13 Huntington Beach, and other waters and coastal areas near where offshore drilling
14 occurs. It harms water quality and wildlife that they study and observe and decreases
15 their ability to view species that are impacted by offshore drilling activities or abandon
16 the area because of these activities.

17 24. For example, one Center member who lives in Santa Barbara regularly
18 recreates in the area, including in coastal areas and waters near offshore oil platforms.
19 He regularly surfs in places like Rincon and Sands Beach near Santa Barbara, Naples on
20 the Gaviota Coast, Jalama Beach near Point Conception, and Oxnard Shores and Silver
21 Strand in Ventura. He goes as often as possible, generally twice a week. He also surfs off
22 Huntington Beach and hikes, sails, and scuba dives on and around the Channel Islands.
23 While on these trips he enjoys looking for and enjoying wildlife in the area, including
24 fur seals, blue whales, humpback whales, black abalone, and other animals. He derives
25 aesthetic, emotional, and physical benefits from these activities that are essential to his
26 well-being. Noise pollution, water pollution, vessel strikes, oil spills, and other impacts
27 from oil and gas drilling disturb and harm the animals he enjoys and is interested in
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1 seeing and make it less likely he can see these animals in the future. Oil spills that close
2 beaches or ocean waters impede his ability to enjoy recreational activities.

3 25. Defendants' management and authorization of offshore drilling activities
4 without proper review of the related impacts on threatened and endangered species or
5 their critical habitats means Defendants are failing to adequately protect California's
6 already imperiled wildlife, exposing them and the coastal environment to increased risk
7 of harm. Such risks include, but are not limited to, increased risk of death and injury to
8 humpback whales, blue whales, and other animals from ship strikes, and increased risk
9 of oil spills, which could have devastating environmental and economic consequences.

10 26. The above-described aesthetic, recreational, professional, spiritual, and
11 other interests have been, are being, and will continue to be adversely affected and
12 irreparably injured by Defendants' authorization and management of offshore drilling on
13 the Pacific Outer Continental Shelf without complying with the ESA.

14 27. The Center and its members have no adequate remedy at law and the
15 requested relief is proper. Relief in this case would ensure Defendants engage in new
16 consultation under section 7 of the ESA to analyze the impacts of continued offshore
17 drilling activities and ensure the authorization and management of such practices does
18 not jeopardize any threatened or endangered species or adversely modify their critical
19 habitat. The requested relief could result in additional mitigation and oversight of
20 offshore drilling that would better protect the ocean and imperiled wildlife and alleviate
21 the injuries of the Center's members. An order prohibiting Defendants from authorizing
22 new offshore drilling activity unless and until Defendants comply with the ESA would
23 redress the injuries of the Center's members.

24 **Defendants**

25 28. Defendant Debra Haaland is the Secretary of the U.S. Department of the
26 Interior and is sued in her official capacity. The Interior Department is responsible for
27 managing and overseeing the development of oil and gas resources on the Outer
28 Continental Shelf in accordance with the ESA. Secretary Haaland is the official

1 ultimately responsible under federal law for ensuring that the actions and management
2 decisions of the Interior Department and its Bureaus comply with all applicable laws and
3 regulations, including the ESA and APA.

4 29. Defendant Bureau of Ocean Energy Management (“BOEM”) is a federal
5 agency within the U.S. Department of the Interior. BOEM is charged with managing the
6 development of offshore resources, including oil exploration, development, and
7 production in federal waters.

8 30. Defendant Bureau of Safety and Environmental Enforcement (“BSEE”) is a
9 federal agency within the U.S. Department of the Interior. BSEE is charged with
10 permitting offshore drilling operations in federal waters and ensuring such activities
11 comply with safety and environmental regulations.

12 31. Defendant Gina Raimondo is the Secretary of the Department of Commerce
13 and is sued in her official capacity. The Commerce Department is responsible for
14 conserving most marine species under the ESA. Secretary Raimondo is the official
15 ultimately responsible under federal law for ensuring that the actions and management
16 decisions of the Commerce Department and its agencies comply with all applicable laws
17 and regulations, including the ESA and APA.

18 32. Defendant National Marine Fisheries Service is an agency of the
19 Department of Commerce, sometimes referred to as NOAA Fisheries. The Service is the
20 agency to which the Secretary of Commerce has delegated the authority to conserve
21 most endangered and threatened marine and anadromous species under the ESA.

22 STATUTORY BACKGROUND

23 **Endangered Species Act**

24 33. Considered “the most comprehensive legislation for the preservation of
25 endangered species ever enacted by any nation,” the ESA embodies Congress’s “plain
26 intent . . . to halt and reverse the trend toward species extinction, whatever the cost.”
27 *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 184 (1978). The ESA reflects “a conscious
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1 decision by Congress to give endangered species priority over the ‘primary missions’ of
2 federal agencies.” *Id.* at 185.

3 34. The ESA’s fundamental purposes are “to provide a means whereby the
4 ecosystems upon which endangered species and threatened species depend may be
5 conserved, [and] to provide a program for the conservation of such endangered species
6 and threatened species.” 16 U.S.C. § 1531(b).

7 35. To achieve these objectives, the ESA directs the Secretary of Commerce,
8 through the Service, to determine which species of plants and animals are “threatened”
9 and “endangered” and place them on the list of protected species. *Id.* § 1533. An
10 “endangered” or “threatened” species is one “in danger of extinction throughout all or a
11 significant portion of its range” or “likely to become an endangered species within the
12 foreseeable future throughout all or a significant portion of its range,” respectively. *Id.*
13 § 1532(6), (20).

14 36. Once a species is listed, the ESA provides a variety of procedural and
15 substantive protections not provided by any other law, including the designation of
16 critical habitat, the preparation and implementation of recovery plans, the prohibition
17 against the “taking” of listed species, and the requirement for interagency consultation.
18 *Id.* §§ 1533(a)(3), (f), 1538, 1536. Each of these protections seek to ensure not only the
19 species’ continued survival, but its ultimate recovery.

20 37. Section 9 of the ESA prohibits any person from “tak[ing]” any individual of
21 an endangered species without a permit. *Id.* § 1538(a)(1)(B), (C); *see also id.* § 1532(13)
22 (defining person). “Take” includes both direct and indirect harm and it need not be
23 purposeful. The ESA broadly defines take to mean “to harass, harm, pursue, hunt, shoot,
24 wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” *Id.*
25 § 1532(19). The ESA also makes it unlawful for any person, including federal agencies,
26 to “cause to be committed” the take of a listed species. *Id.* § 1538(g).

27 38. Section 7(a)(2) of the ESA generally prohibits agency actions that
28 jeopardize the continued existence of listed species or result in the adverse modification

1 or destruction of their critical habitat. 16 U.S.C. § 1536(a)(2). The term “jeopardize”
2 means an action that “reasonably would be expected . . . to reduce appreciably the
3 likelihood of both the survival and recovery of a listed species in the wild by reducing
4 the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02

5 39. To comply with these substantive obligations, the ESA requires that “[e]ach
6 Federal agency shall, in consultation with . . . [the Service], insure that any action
7 authorized, funded, or carried out by such agency . . . is not likely to jeopardize the
8 continued existence of any endangered species or threatened species or result in the
9 destruction or adverse modification of [critical habitat].” 16 U.S.C. § 1536(a)(2). This
10 section 7(a)(2) consultation process has been described as the “heart of the ESA.” *W.*
11 *Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011).

12 40. The Service and the action agency must utilize the “best scientific and
13 commercial data available” during the consultation process. 16 U.S.C. § 1536(a)(2); 50
14 C.F.R. § 402.14(d).

15 41. Actions subject to section 7 are broadly defined to include “all activities or
16 programs of any kind authorized, funded, or carried out, in whole or in part,” by federal
17 agencies. 50 C.F.R. § 402.02. This includes granting permits and licenses, as well as
18 actions that may directly or indirectly cause modifications to the land, water, or air. *Id.*
19 An agency is required to review its actions “at the earliest possible time to determine
20 whether any action may affect listed species or critical habitat.” *Id.* § 402.14(a).

21 42. The Bureaus must request from the Service a list of any threatened or
22 endangered species that may be present in the area of any agency action. 16 U.S.C.
23 § 1536(c)(1); 50 C.F.R. § 402.12(c).

24 43. If listed species may be present, the Bureaus must prepare a “biological
25 assessment” or engage in “informal consultation” with the Services to determine whether
26 the listed species is likely to be adversely affected by the proposed action. 16 U.S.C.
27 § 1536(c)(1); 50 C.F.R. §§ 402.12, 402.13.

1 44. During informal consultation, the Service may suggest modifications to the
2 action that the Bureaus could implement to avoid the likelihood of adverse effects to
3 listed species or critical habitat. 50 C.F.R. § 402.13(b).

4 45. If the Bureaus determine that a proposed action “may affect” any listed
5 species or critical habitat, the agencies must engage in formal consultation with the
6 Service unless the biological assessment or informal consultation concludes that the
7 action is not likely to adversely affect any listed species or critical habitat and the
8 Service concurs in writing with that finding. 50 C.F.R. § 402.14(a), (b).

9 46. The “may affect” standard broadly includes “[a]ny possible effect, whether
10 beneficial, benign, adverse, or of an undetermined character.” 51 Fed. Reg. 19,926,
11 19,949 (June 3, 1986).

12 47. To complete formal consultation, the Service must provide the Bureaus
13 with a “biological opinion” that explains how the proposed action will affect the listed
14 species or habitat. 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14(g), (h).

15 48. If the Service concludes that the proposed action will jeopardize the
16 continued existence of a listed species or result in the destruction or adverse
17 modification of critical habitat, the biological opinion must outline “reasonable and
18 prudent alternatives” to avoid jeopardy. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R.
19 § 402.14(h)(2).

20 49. A biological opinion must include an incidental take statement if the
21 Service concludes an agency action is not likely to jeopardize the continued existence of
22 a listed species but is reasonably certain to result in take that is incidental to the agency
23 action. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(g)(7). Absent a valid incidental take
24 statement, the take of a listed species is unlawful under section 9 of the Endangered
25 Species Act. *See* 16 U.S.C. § 1536(b)(4), (o)(2); 50 C.F.R. § 402.14(i)(5).

26 50. The incidental take statement must specify the amount or extent of
27 incidental taking on such listed species; identify “reasonable and prudent measures that
28 the [Service] considers necessary or appropriate to minimize such impact;” and set forth

1 “terms and conditions” with which the action agency must comply to implement the
2 reasonable and prudent measures. 16 U.S.C. § 1536(b)(4)(C); 50 C.F.R. § 402.14(i).
3 Additionally, if marine mammals will be incidentally taken, the Service must first
4 authorize the take pursuant to the Marine Mammal Protection Act, and the incidental
5 take statement must include any additional measures necessary to comply with that take
6 authorization. 16 U.S.C. § 1536(b)(4)(C); 50 C.F.R. § 402.14(i)(1)(iii).

7 51. The Bureaus’ and Service’s consultation duties do not end with the
8 completion of formal or informal consultation. Instead, the Bureaus and Service must
9 reinitiate consultation on agency actions over which they retain, or are authorized to
10 exercise, discretionary involvement or control when (1) the amount of take specified in
11 an incidental take statement is exceeded; (2) new information reveals that the action may
12 have effects to an extent or in a manner not previously considered; (3) the action is
13 modified in a way not previously considered; or (4) new species are listed or critical
14 habitat designated that may be impacted by the agency’s action. 50 C.F.R. § 402.16.

15 52. The duty to reinitiate consultation lies with both the action agency and the
16 expert wildlife agency. *Id.*

17 53. “[T]he strict substantive provisions of the ESA justify . . . stringent
18 enforcement of its procedural requirements, because the procedural requirements are
19 designed to ensure compliance with the substantive provisions.” *Thomas v. Peterson*,
20 753 F.2d 754, 764 (9th Cir. 1985).

21 **Outer Continental Shelf Lands Act**

22 54. The Outer Continental Shelf Lands Act (“OCSLA”) establishes a
23 framework under which the Secretary of the Interior may lease areas of the outer
24 continental shelf (“OCS”) for purposes of exploring and developing the oil and gas
25 deposits of the OCS’s submerged lands. 43 U.S.C. §§ 1331–1356b. The OCS generally
26 begins three miles from shore—the outer boundary of state waters—and extends
27 seaward to the limits of federal jurisdiction. *Id.* § 1331(a).

1 55. OCSLA specifically requires that oil exploration and production be “subject
2 to environmental safeguards” and balanced “with protection of the human, marine, and
3 coastal environments.” 43 U.S.C. §§ 1332(3), 1802(2).

4 56. OCSLA authorizes the Secretary to “prescribe such rules and regulations as
5 may be necessary” to manage oil and gas rights and activities, including regulations
6 governing “drilling or easements necessary for exploration, development, and
7 production.” *Id.* § 1334(a). The Secretary can also issue regulations necessary to ensure
8 safety, environmental protection, and conservation of natural resources. *Id.*

9 57. There are four separate stages to developing an offshore oil well:

10 (1) formulation of a 5-year leasing plan by the Department of the
11 Interior; (2) lease sales; (3) exploration by the lessees; [and] (4)
12 development and production. 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.

13 *Sec’y of the Interior v. California*, 464 U.S. 312, 337 (1984).

14 58. At the fourth stage, OCSLA requires lessees to submit development and
15 production plans to the Secretary of the Interior. 43 U.S.C. § 1351(a). Prior to drilling a
16 well, an oil company must also obtain a permit to drill. 30 C.F.R. §§ 550.281(a)(1),
17 250.410. An oil company must also obtain approval in the form of a permit to modify if
18 it intends to “revise [a] drilling plan, change major drilling equipment, or plugback” a
19 well. *Id.* § 250.465(a)(1).

20 59. The Secretary of the Interior has delegated its responsibilities under
21 OCSLA to the Bureaus. Specifically, the Bureau of Ocean Energy Management is
22 responsible for managing leasing, exploration, development, and production of oil and
23 gas resources on the OCS. *Id.* § 550.101. The Bureau of Safety and Environmental
24 Enforcement is responsible for enacting and enforcing safety and environmental
25 standards under OCSLA, as well as issuing drilling permits and permits to modify. *Id.*
26 § 250.101.

1 **Administrative Procedure Act**

2 60. The APA governs judicial review of federal agency actions. 5 U.S.C.
3 §§ 701–706.

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

6 62. Also under the APA, courts “shall . . . hold unlawful and set aside agency
7 action, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion,
8 or otherwise not in accordance with law” or “without observance of procedure required
9 by law.” *Id.* § 706(2)(A), (D).

10 **FACTUAL BACKGROUND**

11 **Oil and Gas Drilling in Federal Waters off California**

12 63. There are 30 active oil and gas leases on the Pacific OCS. Oil and gas
13 companies conduct drilling and extraction activities under these leases from 23 platforms
14 and 208 miles of pipeline off the coast of Southern California.

15 64. Oil companies installed the platforms between 1967 and 1989 and the first
16 production began in 1969.

17 65. Oil companies have drilled more than 1,615 exploration and development
18 wells in the area with more than 1.3 billion barrels of oil and 1.8 trillion cubic feet of
19 natural gas produced through April 2020.

20 66. The platforms range from approximately four to ten miles from shore.
21 Fifteen of the platforms are in the Santa Barbara Channel, four are off Huntington
22 Beach, and four are in the Santa Maria Basin.

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Platforms Ellen and Elly off Huntington Beach. Photo: BSEE



Oil platforms off California. Photo: Drew Bird Photo

67. Of the 23 platforms on the Pacific OCS, 15 platforms are operational, while eight are on leases that are no longer active. Of the operational platforms, 11 are in the Santa Barbara Channel and four are off Huntington Beach (one of which is a processing facility).

1 68. Three of these platforms are temporarily shut down due to the 2015 oil spill
2 from a coastal pipeline; while three others are temporarily shut down due to the October
3 2021 oil spill from a pipeline connected to Platform Elly.

4 69. The platforms are located in one of the most significant and diverse
5 seascapes in the world. The area supports a vast array of habitats and coastal and marine
6 species. For example, endangered blue whales have important foraging grounds in the
7 Santa Barbara Channel and in the summer the area hosts the world's densest
8 congregation of blue whales. The endangered Central America humpback whale distinct
9 population segment ("DPS") and the threatened Mexico humpback whale DPS also
10 congregate in the area in the spring and summer to feed.

11 70. Other listed marine species that can be found in and near California waters
12 where offshore drilling activities occur include the fin whale, North Pacific right whale,
13 sei whale, Guadalupe fur seal, leatherback sea turtle, North Pacific loggerhead sea turtle
14 DPS, East Pacific green sea turtle DPS, olive ridley sea turtle, white abalone, black
15 abalone, Southern DPS of green sturgeon, and the South-Central and Southern California
16 Evolutionary Significant Units ("ESUs") of steelhead trout.

17 71. Coastal and ocean waters off California are also home to federally
18 designated critical habitat for some of these species. In April 2021, the Service
19 designated critical habitat for the endangered Central America humpback whale DPS and
20 the threatened Mexico humpback whale DPS. The designation includes the Santa Barbara
21 Channel where most oil and gas platforms on the Pacific OCS are located.

22 72. The Service designated leatherback sea turtle critical habitat in 2012 from
23 Point Arena to Point Arguello east of the 3,000-meter depth contour. The Service
24 designated critical habitat for the black abalone in 2011 along the California coast
25 between Del Mar Landing Ecological Reserve to the Palos Verdes Peninsula, as well as
26 on the offshore islands.

27 73. Minke and killer whales, dolphins, porpoises, seals, and sea lions also
28 depend on waters off California, including the Santa Barbara Channel and waters off

1 Huntington Beach. The Channel is also home to giant kelp forests and hundreds of birds,
2 fish, and invertebrate species.

3 74. The Santa Barbara Channel includes the Channel Islands Marine Sanctuary
4 and Channel Islands National Park. The Park was established, in part, to protect
5 nationally significant cultural resources, including “archaeological evidence of
6 substantial populations of Native Americans.” 16 U.S.C. § 410ff.

7 75. Since time immemorial, the Chumash Peoples have depended upon the
8 cultural resources within marine waters of the Santa Barbara Channel, from Point
9 Conception to Malibu and out to an around the Channel Islands, to maintain their ways of
10 life, cultural practices, and ancestral connections.

11 76. The Santa Barbara Channel, Huntington Beach area, and other waters off
12 California’s coast provide important economic drivers for the state, including fishing,
13 recreation, and tourism.

14 **Oil and Gas Drilling off California Threatens**
15 **Imperiled Wildlife and their Habitats**

16 77. Oil and gas development and production activities on the Pacific OCS have
17 numerous harmful effects on coastal and marine species in California.

18 78. For example, oil and gas drilling exacerbates climate change, which is
19 already threatening many species with extinction.

20 79. Oil and gas drilling also includes the discharge of drilling muds and cuttings,
21 produced wastewater, and well treatment and workover fluids. The federal government
22 permits platforms off California to discharge more than nine billion gallons of produced
23 wastewater into the ocean each year. These discharges can contain toxic chemicals like
24 benzene, a known carcinogen; heavy metals; and radioactive materials.

25 80. The impacts also include noise pollution from vessel and air traffic,
26 conductor installation and pile driving, and production operations on platforms. Noise
27 pollution can interfere with important biological functions of marine mammals like
28 feeding, mating, and rearing young.

1 81. Vessel traffic from offshore oil and gas activity can also lead to vessel
2 strikes of large whales and other marine animals. Vessel strikes can kill or injure large
3 whales and other animals by causing blunt force trauma, resulting in fractures,
4 hemorrhage, and/or blood clots. Direct propeller strikes can result in fatal blood loss,
5 lacerations, and/or amputations.

6 82. Oil spills are another impact of offshore drilling. Drilling off California has
7 been accompanied by spills and other accidents since its first days, including a spill of
8 more than 2,000 gallons from Platform Hogan in 1968 and the infamous 1969 spill from
9 Platform A in the Santa Barbara Channel that dumped upwards of 4.2 million gallons of
10 oil into the ocean.

11 83. Spills have occurred since. This includes, for example, a May 2015 spill
12 from Line 901 of the Plains All American Pipeline that spewed over 123,000 gallons of
13 crude oil into California's coastal environment, tens of thousands of which spilled into
14 the Pacific Ocean. The pipeline was transporting oil from platforms in the Santa Barbara
15 Channel. Additionally, in October 2021, an offshore pipeline connected to Platform Elly
16 in federal waters off California spilled between 25,000 and 132,000 gallons of oil into the
17 ocean.

18 84. Oil spills can have devastating impacts on a wide variety of wildlife. Oil
19 spills cause lethal and sublethal impacts on marine species, both immediate and long-
20 term. Direct impacts to wildlife from exposure to oil include behavioral alteration;
21 suppressed growth; induced or inhibited enzyme systems; reduced immunity to disease
22 and parasites; lesions; tainted flesh; and chronic mortality. Oil can also exert indirect
23 effects on wildlife by reducing key prey species. Oil destroys the waterproofing and
24 insulating properties of feathers and fur of birds and mammals, respectively, thereby
25 compromising their buoyancy and ability to thermoregulate.

26 85. Marine mammals can be exposed to oil externally by swimming in oil and
27 internally by inhaling volatile compounds at the surface, swallowing oil, and consuming
28 oil-contaminated prey. Exposure to toxic fumes from petroleum hydrocarbons during oil

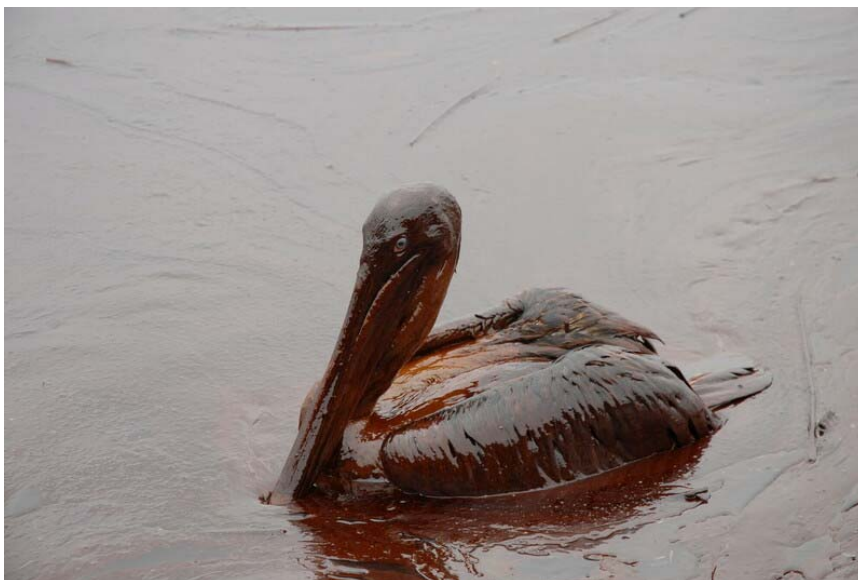
1 spills have been recently linked to mortality in cetaceans, even years after spills occur.

2 86. Exposure to crude oil also adversely affects fish at all stages. Early-life
3 stages of fish are particularly sensitive to the effects of toxic oil components such as
4 polycyclic aromatic hydrocarbons, which can cause larval deformation and death. Adult
5 fish exposed to oil can suffer from reduced growth, enlarged liver, changes in heart and
6 respiration rates, fin erosion, and reproductive impairment. Additionally, fish and sharks
7 are at risk from lethal coating of their gills with oil and declines in and contamination of
8 their food sources. Exposure to crude oil has also been linked to long-term population
9 effects in fish. A study based on 25 years of research demonstrated that embryonic
10 salmon and herring exposed to very low levels of crude oil can develop heart defects that
11 impede their later survival.

12 87. Official reports document that the 2015 Plains pipeline spill killed at least
13 558 dead birds and 232 mammals, including 19 dolphins and over 94 sea lions. A wide
14 variety of nearshore fish species were impacted by the spill, including surfperch and
15 grunion, which were spawning at the time of the spill. The actual number of birds killed
16 is likely to be four times the number of birds recovered. The spill also impacted a variety
17 of coastal habitats including kelp wrack, feather boa kelp, surfgrass, and eelgrass.
18 Humpback whales were seen swimming in the spilled oil.

19 88. The recent Platform Elly pipeline spill in October 2021 killed or injured at
20 least 124 birds and mammals, including several dolphins and sea lions. At the time of the
21 spill, Whale Safe—a technology-powered mapping and analysis tool displaying near real-
22 time whale data for the Santa Barbara Channel—indicated that the presence of humpback
23 whales off southern California was “very high” at the time of the spill. Scientists predict
24 the ecological impacts of these spills will be felt for years to come.

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An oil covered pelican following Deepwater Horizon oil spill. Photo: Gov. Jindal's Office



A dead sperm whale following the Deepwater Horizon oil spill. Photo: NOAA

89. Oil spills not only harm wildlife, but public health, commercial fisheries, tourism, and recreation. For example, following the 2015 Plains pipeline spill, the California Department of Fish and Wildlife closed 138 square miles of marine waters to fishing and shellfish harvesting, two State Parks were closed, and the Governor declared a state of emergency in Santa Barbara County. And the 2021 Platform Elly pipeline spill closed approximately 650 square miles of marine waters to fishing; closed 45 miles of

1 shoreline, including Orange County beaches; and caused a noxious odor that affected
2 coastal communities.

3 90. While oil spills occur wherever offshore drilling activities occur, the risk of
4 spills is especially great off California because of the age of the oil and gas infrastructure.

5 91. For example, the Plains pipeline that ruptured in 2015 was built in 1987. The
6 environmental impact statement that the Bureau of Land Management and California
7 State Lands Commission prepared in 1985 for the construction and operation of the
8 pipeline acknowledged that spills happen and determined that the risk of a spill would
9 more than double as the pipeline aged from 20 to 40 years. Many of the offshore
10 pipelines in the Pacific Ocean have reached 40 years of age.

11 92. According to scientists, aging poses risks of corrosion, erosion, and fatigue
12 stress to subsea pipelines. These impacts accelerate over time and can act synergistically
13 to increase the rate of crack propagation. Marine environments are especially known to
14 produce significant corrosion on steel surfaces, and when a steel structure is at or beyond
15 its elastic limit, the rate of corrosion increases 10 to 15 percent. One offshore pipeline
16 study found that after 20 years the annual probability of pipeline failure increases rapidly,
17 equating to a probability of failure of 10 percent to 100 percent per year. Another study
18 covering 1996 to 2010 found that accident incident rates, including spills, increased
19 significantly with the age of infrastructure.

20 93. A recent analysis of federal records from the Pipeline and Hazardous
21 Materials Safety Administration found that from 1986 to July 2021, nearly 1,400 oil and
22 gas pipeline leaks, spills, and other similar incidents in California caused at least \$1.2
23 billion in damages, as well as 230 injuries and 53 deaths.

24 94. Older wells can also lead to oil spills or other accidents. For example, one
25 study found that 30 percent of offshore oil wells in the Gulf of Mexico experienced well
26 casing damage in the first five years after drilling, and damage increased over time to 50
27 percent after 20 years. Another study determined about five percent of oil and gas wells
28 leak immediately, 50 percent leak after 15 years, and 60 percent leak after 30 years.

1 95. Federal inspection reports reveal problems with corrosion and leaks at
2 platforms in federal waters off California.

3 **The Bureaus' 2017 Biological Assessment on Pacific OCS**
4 **Oil and Gas Activities and the Service's 2017 Concurrence**

5 96. In March 2017, the Bureaus completed a Biological Assessment purporting
6 to analyze the impacts of continued oil and gas development and production activities off
7 California on threatened and endangered species and their critical habitat. The issuance of
8 the Biological Assessment followed a lawsuit from Plaintiff and others challenging the
9 Bureaus' approval of offshore hydraulic fracturing and acidizing on the Pacific OCS
10 without ever examining the impacts of those practices on ESA-listed species.

11 97. The Biological Assessment assumes drilling and production activities off
12 California will continue, provided oil and gas can be produced in paying quantities.

13 98. The Biological Assessment identifies numerous routine activities that can
14 impact ESA-listed species, including water pollution discharges and air pollution from
15 offshore platforms; vessel traffic and aircraft activity to transport personnel and supplies;
16 installation of well conductors (large pipes that carry oil and gas from the seafloor to the
17 deck of an offshore platform); well stimulation treatments; and sidetracking and working
18 over wells.

19 99. The Biological Assessment states that these activities can impact ESA-listed
20 species through noise pollution, discharge of toxic waste production, vessel collisions,
21 and oil spills.

22 100. The Biological Assessment claims that the risk of an oil spill off California
23 has declined over time. It estimates there is an 84.4 percent probability of 1.86 small
24 spills occurring during the remaining production period. The Biological Assessment
25 estimates that the most likely maximum spill volume is less than 200 barrels, or 8,400
26 gallons of oil, based on the distribution of past spill sizes.

27 101. It concludes that noise pollution, vessel collisions, and oil spills may affect
28 but are not likely to adversely affect the blue whale, fin whale, humpback whale, North

1 Pacific right whale, sei whale, sperm whale, or Western North Pacific gray whale DPS. It
2 also concludes that vessel collisions and oil spills may affect but are not likely to
3 adversely affect leatherback sea turtles, loggerhead sea turtles, green sea turtles, or olive
4 ridley sea turtles. It further concludes that oil spills may affect but are not likely to
5 adversely affect the Guadalupe fur seal, green sturgeon, steelhead trout, white abalone, or
6 black abalone. The Biological Assessment also concluded that offshore oil and gas
7 activities are not likely to destroy or adversely modify critical habitat for the leatherback
8 sea turtle or black abalone.

9 102. In December 2017, the Service sent the Bureaus a letter concurring with the
10 Bureaus' determination that continued oil and gas development and production on the
11 Pacific OCS may affect but is not likely to adversely affect the blue whale, fin whale,
12 Central America humpback whale DPS, Mexico humpback whale DPS, North Pacific
13 right whale, sei whale, sperm whale, Western North Pacific gray whale, Guadalupe fur
14 seal, leatherback sea turtle, North Pacific loggerhead DPS, East Pacific green turtle DPS,
15 olive ridley sea turtle, white abalone, black abalone, Southern DPS of green sturgeon, and
16 the South-Central and Southern California ESUs of steelhead trout. The Service's
17 Concurrence also concluded that oil and gas development and production activities on the
18 Pacific OCS would not affect the North Pacific right whale, sei whale, sperm whale, or
19 Western North Pacific gray whale due to the rarity of each of these species near where
20 offshore drilling activities occur. The analysis also concluded that such activities would
21 not adversely affect designated critical habitat for the black abalone or the leatherback
22 sea turtle.

23 103. As such, the Bureaus and the Service completed only informal consultation
24 on these species and their critical habitats.

25 104. The Service relied on the Bureaus' Biological Assessment in issuing its
26 Concurrence.

27 105. The Service's Concurrence states that because the Bureaus concluded that
28 wastewater discharges from oil and gas development and production would have no

1 effect on listed species, the Service did not consider the effects of discharges on
2 endangered and threatened species or their critical habitat.

3 102. The Service’s Concurrence states that vessel strikes, noise pollution, and oil
4 spills from the proposed action may affect blue whales, humpback whales, fin whales,
5 Guadalupe fur seals, leatherback sea turtles, loggerhead sea turtles, green sea turtles, and
6 olive ridley sea turtles; and oil spills may also affect white abalone, black abalone and its
7 critical habitat, steelhead, and green sturgeon.

8 103. In its Concurrence, the Service based its analysis on the Bureaus’ estimate
9 that any potential oil spill would be limited to 200 barrels of oil. The Service relied on
10 this assessment for its conclusion regarding the effects of the action on each of the listed
11 species considered. For example, in analyzing the impacts to large whales and sea turtles,
12 the Service concluded that the likelihood that a small spill of up to 200 barrels would
13 contact a large whale or sea turtle “is extremely low, and therefore discountable.” The
14 Service further concluded that the likelihood of a 200-barrel spill adversely affecting
15 white abalone “to be extremely low and therefore discountable” because the species are
16 generally found in water 40 to 50 meters deep that such a small oil spill would not reach.
17 The Service based its conclusion that Guadalupe fur seals would not be adversely
18 affected on the “low likelihood” of a spill occurring, among other reasons.

19 104. The Service also concluded that a 200-barrel oil spill, if it were to come into
20 contact with leatherback prey, would not significantly affect that prey and therefore
21 would have insignificant impacts to leatherback sea turtle critical habitat. The
22 Concurrence notes that the 2015 Plains pipeline spill did adversely affect some black
23 abalone and its habitat, but that spill was nearly two orders of magnitude greater than the
24 200-barrel spill assumed in the Concurrence.

25 105. In its Concurrence, the Service also noted that the day-to-day offshore oil
26 and gas development and production operations off California require routine personnel
27 and equipment transfers, with crew and supply vessels departing the coast approximately
28 30 times per day, or nearly 11,000 round trips per year.

1 106. Vessels range in size between 80 to 100 feet and travel at speeds between 10
2 to 20 knots, during both daytime and nighttime hours. This is above the speed scientists
3 say significantly increases the risk of lethal vessel strikes. A historical analysis of ship
4 strikes involving large whales found none were seriously injured or killed by ships
5 moving slower than 10 knots.

6 107. The Service's Concurrence concludes that the risk of a vessel strike to an
7 ESA-listed whale from Pacific OCS oil and gas activities "is extremely low and therefore
8 discountable." The Service's conclusion is based on its assumption that less than one
9 whale per year is reported struck by vessels in the area.

10 108. The Service also concluded that noise pollution from offshore oil and gas
11 activity will not adversely affect ESA-listed whales because whale populations off
12 California are increasing despite noise in their environments.

13 109. In contrast to the Service, the U.S. Fish and Wildlife Service—the Service's
14 sister agency with ESA jurisdiction over terrestrial animals, sea birds, and sea otters—is
15 in the process of engaging in formal ESA consultation with the Bureaus.

16 110. Upon receiving the Bureaus' Biological Assessment, the Fish and Wildlife
17 Service questioned several of the Bureaus' conclusions including the estimated size of an
18 oil spill of 200 barrels. In doing so, the Fish and Wildlife Service stated that this
19 "estimated size is of particular concern given six of the wells have daily flow rates
20 without pumping that meet or exceed 200 barrels per day." The agency further noted that
21 "[13] of the 23 facilities have more than 200 barrels in their pipelines to shore, and 22 of
22 23 rigs have storage exceeding the 200 barrels" and that "[t]hese facilities are also aging,
23 which may affect where and how spills occur."

24 **New Information on the Impacts of Pacific OCS Oil and Gas Drilling on**
25 **Threatened and Endangered Species and Their Habitats**

26 111. New information reveals that oil and gas development and production
27 activities on the Pacific OCS are having greater impacts on ESA-listed species than the
28 Bureaus and the Service previously considered.

1 112. For example, the October 2021 Platform Elly pipeline oil spill demonstrates
2 that the agencies' key assumptions regarding the "low likelihood" of an oil spill and the
3 "small" size of a spill in the event one did occur are both wrong.

4 113. In addition, new information reveals that whales are increasingly being
5 struck by vessels off California and that these incidents may be negatively affecting
6 whale recovery. The Service found a 400 percent increase in humpback mortality and
7 serious injury from human activities, including vessel strikes, since 2018 estimates.

8 114. In 2020, scientists determined that in 2018, there were 13 reports of vessels
9 strikes killing or seriously injuring large whales off California—the highest number on
10 record number since the Service began keeping records in 1982. From 2014 to 2018,
11 vessel collisions off the U.S. West Coast were documented as the cause of death of 13
12 humpback whales; 8 fin whales; and 3 blue whales. Most of these incidents were
13 observed off California.

14 115. New information also reveals that reported collisions underestimate the
15 actual number of vessel strikes. This is because most whale carcasses are not observed,
16 and if they are, they may not have obvious signs of trauma. Scientists estimate that the
17 actual number of vessel strikes could be ten to twenty times higher than suggested by the
18 reported numbers. Scientists have determined, for instance, that humpback mortality from
19 vessel strikes from January to April in Southern California alone was 6.5 whales (or 1.63
20 per month). When added to the estimated mortality from July to November, this means
21 that the total estimated annual humpback mortality from vessel strikes in California alone
22 is an average of 23.4 deaths per year. Scientists also estimate that 18 blue whales and 43
23 fin whales are killed each year by ship strikes off the U.S. West Coast during the peak
24 whale season from July to December, the majority of which occur off California.
25 Scientists have identified waters off California near where drilling occurs as areas posing
26 an increased risk of vessel strikes due to heavy traffic.

1 116. This level of vessel strike mortality is well above the potential biological
2 removal level for each species—i.e., the level of human-caused mortality the Service says
3 the population can sustain and still recover.

4 117. Other new information demonstrates that noise pollution harms ESA-listed
5 whales and other marine mammals to an extent not previously considered. For example,
6 one new study found that because blue whales migrate to maximize their feeding
7 opportunities throughout the year, they are highly sensitive to environmental changes.
8 The study stated that anthropogenic disturbance rapidly worsened when it occurs in the
9 context of an environment that is also changing, concluding that for a wide-ranging
10 species like blue whales, reducing repeated or continuous exposure to a stressor is critical
11 to ensure individuals can compensate for missed foraging opportunities. Another new
12 study concluded that short-finned pilot whales decrease resting and nursing behavior
13 when exposed to vessel engine noise. It noted that such impacts could lead to long-term
14 effects, including altering the population abundance.

15 118. New information also reveals the extent to which continued oil and gas
16 activity harms ESA-protected species off California by exacerbating climate change. The
17 climate crisis is already causing devastating impacts from rising seas and coastal erosion;
18 more destructive hurricanes and wildfires; increasing heatwaves, droughts, and floods;
19 imperiling food and water security; and the collapse of ecosystems. The overwhelming
20 scientific consensus has conclusively determined that without significant, rapid emissions
21 reductions, warming will exceed 1.5 degrees Celsius and will result in catastrophic
22 damage around the world. Every fraction of additional warming above 1.5 degrees
23 Celsius will worsen these harms.

24 119. Drilling off California contributes to the climate emergency. One study
25 estimated, for example, that for each unit of federal oil production cut, other oil supplies
26 would substitute for about half a unit (0.56 QBtu) and net oil consumption would drop by
27 nearly half a unit (0.44 QBtu). This means that every barrel of federal oil left
28 undeveloped would result in nearly half a barrel reduction in net oil consumption, with

1 associated reductions in greenhouse gas emissions. Another recent study confirms these
2 findings for California. In particular, the study found that for each barrel of California oil
3 left in the ground, only 0.4 to 0.8 barrels would be produced elsewhere, yielding a net
4 reduction in global oil consumption of between 0.6 and 0.2 barrels.

5 120. The Service has repeatedly identified climate change as a risk for species off
6 California. For example, in its 2018 Five-Year Status Review of black abalone, the
7 Service stated that warming waters caused by climate change reduces the quantity and
8 quality of the species' prey and increases disease and disease-related mortality,
9 particularly considering black abalone's susceptibility to withering syndrome. The
10 Service's 2021 critical habitat designation for humpback whales off California also
11 concluded that climate change is negatively affecting the species' prey, potentially
12 leading to poor body condition, reproductive failures, and even death. Scientists
13 hypothesize that reduced prey availability because of warming waters from climate
14 change is the likely cause of emaciated whales and reduced calving rates for some
15 whales.

16 121. In addition to this new information, the Service also recently designated
17 critical habitat for the Central America and Mexico humpback whale DPSs, including in
18 the Santa Barbara Channel where offshore drilling occurs. In doing so, the Service
19 identified oil and gas activities has an activity that has the potential to affect the essential
20 prey feature that was the basis of the critical habitat designation. The Service stated that
21 oil and gas activities have the potential to affect this habitat feature by altering or
22 reducing the quantity, quality, or accessibility of the prey essential to the conservation of
23 one or more of the DPSs.

24 122. The Service and the Bureaus have not engaged in ESA consultation on the
25 impacts of Pacific OCS oil and gas development activities on critical habitat for the
26 Central America humpback whale DPS or the Mexico humpback whale DPS.

1 **CLAIMS FOR RELIEF**

2 **First Claim for Relief**

3 **The Bureaus and the Service’s Not Likely to Adversely**
4 **Affect Determinations Violate the ESA and APA**

5 123. Plaintiff realleges and incorporates the allegations in Paragraph 1 through
6 122 of this Complaint.

7 124. The Bureaus’ Biological Assessment and the Service’s concurrence that
8 offshore oil and gas development and production activities on the Pacific OCS are not
9 likely to adversely affect blue whales, fin whales, the Central America humpback whale
10 DPS, the Mexico humpback whale DPS, North Pacific right whales, sei whales, sperm
11 whales, Western North Pacific gray whales, Guadalupe fur seals, leatherback sea turtles
12 (including critical habitat), the North Pacific loggerhead DPS, the East Pacific green
13 turtle DPS, olive ridley sea turtles, white abalone, black abalone (including critical
14 habitat), the Southern DPS of green sturgeon, and the South-Central and Southern
15 California ESUs of steelhead trout are final agency actions within the meaning of the
16 APA.

17 125. The Bureaus’ Biological Assessment, the Service’s Concurrence, and the
18 agencies’ determination that offshore oil and gas development and production activities
19 on the Pacific OCS are not likely to adversely affect these threatened and endangered
20 species or their critical habitat are arbitrary, capricious, an abuse of discretion, and not in
21 accordance with the ESA or its procedures. 5 U.S.C. § 706(2)(A), (D). The Bureaus’ and
22 the Service’s analyses and conclusions are not based on the best scientific and
23 commercial data available. The Bureaus and the Service ignored relevant factors and
24 failed to analyze and develop projections based on information and methodology that
25 were available, in violation of the ESA and the APA. 16 U.S.C. § 1536(a)(2); 50 C.F.R.
26 § 402.14; 5 U.S.C. § 706(2)(A), (D).

27 126. Because the Service concurred with the Bureaus’ “not likely to adversely
28 affect” determination, the agencies did not engage in formal consultation and the Service

1 failed to determine whether the action, in combination with the environmental baseline
2 and cumulative effects, will jeopardize these ESA-listed species or adversely modify their
3 critical habitat, in violation of the ESA and APA. 16 U.S.C. § 1536(a)(2); 50 C.F.R.
4 §§ 402.12, 402.14; 5 U.S.C. § 706(2)(A), (D). Additionally, the Service failed to prepare
5 an incidental take statement that would have required that impacts to these threatened and
6 endangered species be minimized through reasonable and prudent measures, terms and
7 conditions, and monitoring and reporting requirements. 16 U.S.C. § 1536(b)(4); 50
8 C.F.R. § 402.14(g)(7), (i).

9 127. Plaintiff and its members are injured by the Bureaus' and the Service's
10 violations of ESA section 7(a)(2) and the APA.

11 **Second Claim for Relief**

12 **The Bureaus' and the Service's Failure to Reinitiate and** 13 **Complete Consultation Violates the ESA and APA**

14 128. Plaintiff realleges and incorporates the allegations in Paragraph 1 through
15 122 of this Complaint.

16 129. The Bureaus retain ongoing discretionary control and involvement over
17 offshore drilling activities on the Pacific OCS. The Bureaus' management and
18 authorization of offshore oil and gas development and production activities on the
19 Pacific OCS constitute "agency action" subject to consultation under section 7 of the
20 ESA. 16 U.S.C. § 1536; 50 C.F.R. §§ 402.02, 402.03.

21 130. New information reveals that the Bureaus' 2017 Biological Assessment and
22 the Service's 2017 Concurrence are flawed for the reasons explained herein. Those
23 documents therefore cannot and do not relieve the Bureaus of their independent duties to
24 avoid jeopardy and destruction or adverse modification of critical habitat, thereby
25 resulting in ongoing violation of section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2).

26 131. The duty to reinitiate consultation lies with both the Bureaus and the
27 Service.

1 132. The Bureaus and the Service have failed to reinitiate and complete
2 consultation on the impacts of offshore oil and gas development and production
3 activities on the Pacific OCS on blue whales, fin whales, the Central America humpback
4 whale DPS (including critical habitat), the Mexico humpback whale DPS (including
5 critical habitat), North Pacific right whales, sei whales, sperm whales, Western North
6 Pacific gray whales, Guadalupe fur seals, leatherback sea turtles (including critical
7 habitat), the North Pacific loggerhead DPS, the East Pacific green turtle DPS, olive
8 ridley sea turtles, white abalone, black abalone (including critical habitat), Southern DPS
9 of green sturgeon, and the South-Central and Southern California ESUs of steelhead
10 trout. This violates section 7(a)(2) of the ESA and its implementing regulations. 16
11 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.14, 402.16.

12 133. The refusal to reinitiate and complete consultation on the impacts of offshore
13 oil and gas development and production activities on the Pacific OCS on these
14 threatened and endangered species and their critical habitats despite new evidence of
15 impacts from these activities in a manner or to an extent not previously considered
16 constitutes arbitrary and capricious agency action, agency action “unlawfully withheld
17 or unreasonably delayed,” and/or agency action made “without observance of procedure
18 required by law” under the APA. 5 U.S.C. § 706(1), (2)(A), (D).

19 134. The refusal to reinitiate and complete consultation on the impacts of offshore
20 oil and gas development and production activities on the Pacific OCS despite newly
21 designated critical habitat for the endangered Central America DPS and the threatened
22 Mexico DPS of humpback whales constitutes arbitrary and capricious agency action,
23 agency action “unlawfully withheld or unreasonably delayed,” and/or agency action
24 made “without observance of procedure required by law” under the APA. 5 U.S.C.
25 § 706(1), (2)(A), (D).

26 135. Plaintiff and its members are injured by the Bureaus’ and the Service’s
27 violations of ESA section 7(a)(2) and failure to reinitiate and complete consultation.
28

REQUEST FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests that this Court

1. Declare that the Bureaus' Biological Assessment and the Service's Concurrence are unlawful under the ESA and arbitrary and capricious under the APA;
2. Declare that the Service's failure to reinitiate and complete consultation violates the ESA and APA;
3. Declare that the Bureaus' failure to reinitiate and complete consultation violates the ESA and APA;
4. Vacate the Bureaus' Biological Assessment and the Service's Concurrence;
5. Order the Bureaus and the Service to reinitiate and complete ESA consultation on the effects of continued offshore oil and gas drilling on the Pacific OCS on endangered and threatened species and their designated critical habitats;
6. Prohibit the Bureaus from authorizing new oil and gas drilling activity on the Pacific OCS unless and until a new ESA consultation is completed;
7. Award Plaintiff its costs of litigation, including reasonable attorneys' fees; and
8. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 26th day of January, 2022,

/s/ Kristen Monsell

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