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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION

18 CENTER FOR BIOLOGICAL  
19 DIVERSITY,

20 *Plaintiff,*

21 v.

22 DEBRA HAALAND, Secretary of  
23 the Interior, *et al.*,

24 *Defendants.*

No. 2:22-cv-555

Hon. Sherilyn Peace Garnett

**STIPULATED  
AGREEMENT TO  
STAY CASE**

25 Plaintiff Center for Biological Diversity and Federal Defendants Debra  
26 Haaland, in her official capacity as Secretary of the Interior; the Bureau of Ocean  
27 Energy Management (“BOEM”); the Bureau of Safety and Environmental  
28 Enforcement (“BSEE”); Gina Raimondo, in her official capacity as Secretary of  
Commerce; and the National Marine Fisheries Service (“Service”) (collectively,

1 “the Parties”) hereby agree and stipulate as follows:

2 WHEREAS, in 2017, BOEM and BSEE (together, “the Bureaus”) and the  
3 Service (together with the Bureaus, “the agencies”) completed consultation on the  
4 effects to marine and anadromous species listed under Section 7(a)(2) of the  
5 federal Endangered Species Act (“ESA”), 16 U.S.C. § 1536(a)(2), from the  
6 proposed continuation of offshore oil and gas development and production  
7 activities in the Southern California Planning Area of the Pacific Outer Continental  
8 Shelf. That consultation found that the oil and gas activities on which the agencies  
9 consulted were not likely to adversely affect threatened or endangered species or  
10 their designated critical habitat. These species included blue whale, fin whale,  
11 Central America humpback whale distinct population segment (“DPS”), Mexico  
12 humpback whale DPS, North Pacific right whale, sei whale, sperm whale, Western  
13 North Pacific gray whale, Guadalupe fur seal, leatherback sea turtle, North Pacific  
14 loggerhead sea turtle DPS, East Pacific green sea turtle DPS, olive ridley sea turtle,  
15 white abalone, black abalone, southern green sturgeon DPS, and South-Central and  
16 Southern California Evolutionarily Significant Units of steelhead trout.

17 WHEREAS, in April 2021, the Service designated critical habitat for the  
18 Central America humpback whale DPS and the Mexico humpback whale DPS.  
19 These critical habitat designations include portions of federal waters off California  
20 where offshore oil and gas activities on the Pacific Outer Continental Shelf occur.

21 WHEREAS, in October 2021, an offshore pipeline connected to Platform  
22 Elly, an oil processing platform on the Pacific Outer Continental Shelf off  
23 California, leaked, spilling oil into the ocean.

24 WHEREAS, on January 26, 2022, Plaintiff filed a Complaint alleging that  
25 the agencies’ determinations in the 2017 consultation that offshore oil and gas  
26 activities on the Pacific Outer Continental Shelf off California are not likely to  
27 adversely affect ESA listed species violate the ESA and Administrative Procedure  
28 Act (“APA”) and that the agencies’ failure to reinitiate consultation regarding the

1 impacts of offshore oil and gas activities on the Pacific Outer Continental Shelf off  
2 California on ESA listed species also violates the ESA and APA. ECF 1.

3 WHEREAS, the Bureaus sent a letter dated April 19, 2022 to the Service  
4 requesting reinitiation of consultation on offshore oil and gas activities on the  
5 Pacific Outer Continental Shelf off California, thereby reinitiating ESA Section 7  
6 consultation.

7 WHEREAS, during reinitiated consultation, the Bureaus intend to update the  
8 oil spill risk analysis in the 2017 Biological Assessment to account for new  
9 information related to the October 2021 pipeline spill and to consider newly  
10 designated critical habitat for the Central America humpback whale DPS and the  
11 Mexico humpback whale DPS in portions of the action area.

12 WHEREAS, during reinitiated consultation, BSEE intends to continue to  
13 review proposed actions for potential impacts to listed marine species, and to  
14 consider imposing vessel-based conditions, including 10 knot speed restrictions  
15 and night travel restrictions, on a permit-by-permit basis when those measures are  
16 deemed appropriate to safeguard against potential impacts to marine life.

17 WHEREAS, the Parties have engaged in settlement discussions in an effort  
18 to resolve this dispute without further litigation.

19 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND  
20 AGREE AS FOLLOWS:

- 21 1. The Parties agree to a stay of this litigation to allow the Bureaus and the  
22 Service to complete reinitiated consultation, as described in the following  
23 paragraphs.
- 24 2. The Bureaus anticipate providing their consultation package to the Service  
25 by February 28, 2023.
- 26 3. If the Bureaus require additional time to provide their consultation package  
27 to the Service, they will notify Plaintiff to discuss. If Plaintiff does not agree  
28 that additional time is warranted, Plaintiff's sole remedy is to terminate this

1 Stipulated Agreement and petition the Court to lift the stay and recommence  
2 the litigation.

3 4. The Service agrees to conclude the consultation within 180 days of receiving  
4 a complete consultation package from the Bureaus. The Service has the sole  
5 right to determine whether the package is complete.

6 5. If the Service requires additional time to conclude the consultation, it will  
7 notify Plaintiff to discuss. If Plaintiff does not agree that additional time is  
8 warranted, Plaintiff's sole remedy is to terminate this Stipulated Agreement  
9 and petition the Court to lift the stay and recommence the litigation.

10 6. The Parties may modify the deadlines in Paragraphs 2 and 4 of this  
11 Stipulated Agreement by mutual agreement, as described in Paragraphs 3  
12 and 5.

13 7. If the Bureaus submit their consultation package to the Service in  
14 accordance with this Stipulated Agreement and the Service concludes the  
15 consultation in accordance with this Stipulated Agreement, the Parties will  
16 promptly stipulate to the dismissal of Plaintiff's claims in this litigation with  
17 prejudice. The Parties agree that, in the event of such dismissal, Plaintiff  
18 fully reserves its right to challenge any aspect of the completed ESA  
19 consultation in a separate suit, and Federal Defendants reserve any and all  
20 defenses to any such challenge. However, Plaintiff may not bring any claims  
21 that arise from the 2017 ESA consultation. Other than claims expressly  
22 described in this Paragraph, this Stipulated Agreement does not cover and  
23 has no effect on any claims of any kind, known or unknown, past, present, or  
24 future, that the Parties may have against each other. This Stipulated  
25 Agreement represents the entirety of the Parties' commitments with regard  
26 to the matters addressed herein.

27 In light of the above Stipulated Agreement, the Parties respectfully request  
28 that the Court stay this case and enter their Proposed Order.

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DATED: August 24, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing to be served upon counsel of record through the CM/ECF electronic filing system.

/s/ Astrid Stuth Cevallos  
ASTRID STUTH CEVALLOS