UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 10-1866
	)	
	)	
BP America, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiffs move for a temporary restraining order to stop defendants BP America, et al. ("BP") from continuing to engage in activities in the Gulf of Mexico that result in endangered and threatened sea turtles being burned to death, seriously injured, and otherwise impaired, as part of BP's effort to contain the Deepwater Horizon oil spill that has been going on since April 20, 2010. The burning of the endangered and threatened sea turtles, without a permit from the federal government, as required under the Endangered Species Act, constitutes an unlawful "take" of those sea turtles, including the rare Kemp's Ridley sea turtle, as well as the endangered Leatherback sea turtles, endangered Green sea turtles, threatened Loggerhead sea turtles, and endangered Hawksbill sea turtles. Those violations of the ESA in turn constitute violations of BP's lease with the United States government that governs the Deepwater Horizon facility, which requires BP to comply with all federal environmental laws.

Accordingly, plaintiffs may avail themselves of the citizen suit provision of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(a)(2)(A), which allows them to bring a case to compel compliance with those lease provisions.

Because BP has already killed and otherwise harmed many endangered and threatened sea turtles with its burning activities – which has only added to the hundreds of other endangered sea turtles that have already been killed as a direct result of BP's oil spill in the Gulf – **plaintiffs request an immediate hearing on this motion**. In support of their motion, plaintiffs submit the accompanying memorandum of law, the Declarations of Mike Ellis, Kevin Aderhold, and Todd Steiner, and Exhibits A - J. Plaintiffs have electronically served BP's General Counsel, as well as outside counsel handling BP's environmental matters related to the Deepwater Horizon oil spill, with the Complaint, this motion, and the accompanying memorandum of law, Declarations and Exhibits.

Respectfully submitted,

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Counsel for Plaintiffs

Dated: June 30, 2010

UNITED STATES DISTRICT COURT
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	)	
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	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiffs Animal Welfare Institute, Center for Biological Diversity, Turtle Island Restoration Network, and Animal Legal Defense Fund, submit this memorandum in support of their motion for a temporary restraining order to stop defendants BP America, et al. ("BP") from continuing to engage in activities in the Gulf of Mexico, in connection with BP's efforts to contain the Deepwater Horizon oil spill, that kill, harm, and harass endangered and threatened sea turtles, in violation of the Endangered Species Act ("ESA"), 16 U.S.C. 1538(a), and hence in violation of BP's lease with the United States. As demonstrated below, BP is using "controlled burns" in an effort to contain the oil spill that in turn are killing, harming, and harassing endangered and threatened sea turtles, including the extremely rare endangered Kemp's Ridley turtle, as well as endangered Leatherback sea turtles, endangered Green sea turtles, threatened Loggerhead sea turtles, and endangered Hawksbill sea turtles. BP is killing and harming these endangered and threatened sea turtles without obtaining permission from the

federal government as required by the ESA.

Because the killing of these sea turtles is happening now, it is imperative that this Court immediately enter a temporary restraining order requiring BP to stop the unlawful killing and maiming of these animals and to undertake measures that will ensure that the endangered and threatened sea turtles are removed from the areas where these controlled burns are taking place, so that they are no longer killed or otherwise harmed or impaired by such activities.

BACKGROUND

A. Relevant Laws

1. The Outer Continental Shelf Lands Act And BP's Deepwater Horizon Lease.

The United States, through the Department of Interior ("DOI"), leases the right to explore, develop, and produce the oil and gas contained within certain designated areas, subject to the requirements of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.A. § 1331 et seq. Pursuant to OCSLA, BP has executed a lease with DOI that allows it to extract oil and gas at the Deepwater Horizon facility. That lease provides, inter alia, that the lessee is "subject to the Act [OCSLA]; all regulations issued pursuant to the Act and in existence upon the Effective Date of [the] lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein; and all other applicable statutes and regulations." See, e.g., Lease (Exhibit A) at 2 (emphasis added).

The Secretary of DOI has delegated his duties under OCSLA to the Director of the Minerals Management Service ("MMS"). See 30 C.F.R. § 250.101. Regulations issued by the MMS provide that "all operations" subject to that statute must be conducted pursuant to OCSLA,

MMS regulations, "the lease or right-of-way, and other applicable laws, regulations, and amendments." Id.

OCSLA also contains a broad citizen suit provision that provides that "any person having a valid legal interest which is or may be adversely affected may commence a civil action against any person, including the United States . . . for any alleged violation of any provision" of OCSLA "or any regulation" promulgated under the statute, "or the terms of any permit or lease issued by the Secretary" under OCSLA. 43 U.S.C. § 1349(a)(1).

2. The Endangered Species Act

Section 9 of the Endangered Species Act ("ESA") prohibits the "taking" of any endangered or threatened species. 16 U.S.C. § 1538(a). The ESA defines the term "take" to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). The term "harm" includes an act which "kills or injures" an endangered or threatened animal. 50 C.F.R. § 17.3. The term "harass" includes an "intentional or negligent act or omission which creates the likelihood of injury [to an endangered or threatened animal] by annoying it to such extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering." 50 C.F.R. § 17.3.

Section 10(a)(1)(B) of the ESA, 16 U.S.C. § 1538(a)(1)(B), authorizes the Secretary of Commerce through the National Marine Fisheries Service ("NMFS") (with respect to marine species) to issue a "permit" for any act that is otherwise prohibited by Section 9, when the taking of the species is "incidental" to an otherwise lawful activity – i.e., when the taking of the species is not the purpose of the activity. The Act provides that the NMFS "shall publish notice in the

Federal Register of each application for an exemption or permit which is made under [section 10]." 16 U.S.C. § 1539(c). Moreover, "[e]ach notice shall invite the submission from interested persons, within thirty days after the date of the notice, of written data, views or arguments with respect to the application . . . ." Id.

B. Relevant Facts

The Deepwater Horizon rig and wells conduct offshore oil exploration and production in the Gulf of Mexico, and are subject to OCSLA, MMS regulations, and the lease entered into between BP and DOI. Defendants began drilling operations at this facility in February 2010.

On April 20, 2010, an explosion and fire erupted on the Deepwater Horizon drilling rig, which had just completed an exploratory well 52 miles from shore in 4,992 feet of water. See DOI Report, "Increased Safety Measures For Energy Development On The Outer Continental Shelf" (May 27, 2010) at 1 (Exhibit B). Eleven members of the crew are missing and presumed dead. The fire destroyed the rig, which sank on April 22, 2010. The resulting oil spill – which continues to this day – has wreaked devastation on the Gulf of Mexico environment. Crude oil continues to flow from a broken pipe on the seafloor, has spread across thousands of square miles, and is damaging local communities, sensitive coastlines, and wildlife throughout the Gulf region. Id.

In mid-June, 2010, in an effort to contain the spill, BP began using "controlled burns" in the Gulf of Mexico. See Declaration of Mike Ellis (Exhibit C) ¶ 5; Declaration of Kevin Aderhold (Exhibit D) ¶ 4. This involves using shrimp boats to create a corral of the oil by dragging together fire-resistant booms and then lighting the enclosed "burn box" on fire. Id. The "burn boxes" are approximately 60-100 feet in diameter. See Ellis Decl. ¶ 5; Aderhold

Decl. ¶ 4.

Unfortunately, there are endangered and threatened sea turtles who live in the Gulf of Mexico who are also being caught in the corrals being created by BP, including the Kemp's Ridley sea turtle, which is listed as endangered, see 50 C.F.R. § 17.11, and is one of the rarest sea turtles on earth, see Declaration of Todd Steiner (Exhibit E) ¶ 14, as well as endangered Leatherback sea turtles, endangered Green sea turtles, threatened Loggerhead sea turtles, and endangered Hawksbill sea turtles. See 50 C.F.R. § 17.11 (all of these species are listed as endangered or threatened); see also Steiner Decl. ¶ 11 (each of these species are located in the areas where BP is conducting its oil burning containment efforts); Ellis Decl. ¶ 4 and Aderhold Decl. ¶ 3 (describing the turtle species they have observed near the oil burning areas); see also DOI website, http://www.fws.gov/home/dhoilspill/pdfs/FedListedBirdsGulf.pdf (listing each of these endangered and threatened sea turtle species as being adversely affected by the Deepwater Horizon oil spill). As a result, endangered and threatened sea turtles are likely being burned alive, and otherwise harmed and harassed by BP's burning activities. See Ellis Declaration ¶¶ 4-7 (boat captain in the Gulf of Mexico who has seen endangered and threatened sea turtles on the same "oil lines" that are being burned by BP, and explaining that "marine animals that are found on one part of a line are very likely to be found going in either direction on that same line"); Steiner Decl. ¶¶ 10-11 ("endangered sea turtles (Kemp's Ridley, Hawksbill, and potentially others) are not only present in the areas where BP-hired boats are conducting prescribed burns, but are also being killed, harmed, and forced into a flight response that depletes critical energy reserves and can cause stress-induced trauma" . . . "to a near certainty, some endangered sea turtles are in fact being burned (and thus killed) by this containment strategy . . .

even the turtles that manage to free themselves from the oil muck and escape the burn box prior to combustion are harmed by intake of the thick oil sludge and noxious oil vapors, and it is almost certain that many of these turtles ultimately die within a relatively short time after being present in the burn box from these various life-threatening risks") (emphasis added). Such activities constitute a "take" of these listed species. See 16 U.S.C. § 1532(19); 50 C.F.R. § 17.3.

Plaintiffs have checked the Federal Register and have found no indication that BP has ever applied for an "incidental take permit" pursuant to Section 10 of the ESA that would allow it to kill or otherwise harm or harass endangered or threatened species in this manner. See Declaration of Michelle Sinnott (Exhibit F) ¶ 2. Accordingly, it is apparent that BP is engaged in the unauthorized "take" of these species.

BP could engage in controlled burns without taking endangered or threatened sea turtles – this would require it to spend resources removing the turtles from the relevant areas before burning them, or allowing others to remove the turtles from those areas before the burning takes place. See e.g., Report by National Oceanic and Atmospheric Administration (2003) at 56 (requiring "find[ing] means other than *in-situ* burning to deal with spill" where "animal or fish habitats could be [adversely] affected by *in-situ* burning") (emphasis added). However, to date, BP has not taken such measures. See also Ellis Decl. ¶ 8 (explaining that BP's current efforts to spot the turtles before it ignites the burn boxes are not adequate to locate and remove the turtles).

By letter dated June 28, 2010, plaintiffs gave notice to BP, Secretary of DOI Ken Salazar, and the Attorney General of each of the states bordering the Gulf of Mexico, and others that BP

is engaged in an unlawful "take" of endangered and threatened species in violation of the ESA and hence BP's lease for the Deepwater Horizon facility, and the MMS regulations that require compliance with that lease and all applicable laws, 30 C.F.R. § 205.101. See Letter to Salazar, et al. (June 29, 2010) (Exhibit G). Because the burning activities are ongoing and will continue to be used by BP in the immediate future to contain the Deepwater Horizon spill, the threat of danger and harm to these endangered and threatened species – and hence to the aesthetic, educational, and research interests of the plaintiffs and their members – is immediate. See, e.g., Steiner Decl. ¶¶ 3-9 (explaining aesthetic, educational, and research harm to him, his organization and its members from the taking of the turtles); Complaint, ¶¶ 3-6 (setting forth plaintiffs' aesthetic interests and how they are injured by defendants' actions); Steiner Decl. ¶ ("The need to immediately eliminate and/or significantly reduce burn box-related mortalities is especially important considering that GPS tracking information demonstrates that multiple Kemp's Ridley and other endangered turtles are swimming towards the oil spill, and specifically towards the oil lines where burn boxes have been utilized") (emphasis added).

Accordingly, plaintiffs have satisfied the notice requirement of OCSLA, 43 U.S.C. § 1349(a)(3), which provides that plaintiffs may file suit immediately after giving notice when the alleged legal violation "constitutes an immediate threat to the public health or safety or would immediately affect a legal interest of the plaintiff." See also Energy Action Educational Foundation v. Andrus, 654 F. 735, 757 (D.C. Cir. 1980), rev'd on other grounds, Watt v. Energy Action Educational Foundation, 454 U.S. 151 (1981) (language in notice provision of OCSLA that allows suits by persons with "a valid legal interest which is or may be adversely affected" applies to those "who may have a definable aesthetic or environmental interest"); Chevron

U.S.A., Inc. v. FERC, 193 F. Supp.2d 54, 64-65 (D.D.C. 2002) ("A plaintiff provides adequate notice under OCSLA when its legal interests will be immediately affected by . . . [a] violation of the statute so long as the plaintiff gives notice prior to filing the action.").

ARGUMENT

An applicant for a temporary restraining order must normally demonstrate (1) that it has raised a serious, substantial issue; (2) that it and the interests its seeks to protect will suffer irreparable injury if the injunction is not granted; (3) that other interested parties will not suffer substantial harm if the injunction is granted; and (4) that injunctive relief is in the public interest. Wash. Metro. Area Transit Comm'n v. Holiday Tours, 559 F.2d 841, 842-44 (D.C. Cir. 1977); see also Apple Barrel Productions, Inc. v. R.D. Beard, 730 F.2d 384, 386 (5th Cir. 1984) (setting forth similar standards for preliminary relief). The Court may issue an injunction where there is a particularly strong showing of any one of these factors, and a comparatively lesser showing of the other three factors. See City Fed Fin. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995); Bristol-Myers Squibb Co. v. Shalala, 923 F. Supp 212, 215 (D.D.C. 1996); Chambers v. Coventry Health Care of Louisiana, Inc., 318 F. Supp.2d 382, 389 (E.D. La. 2004) (citing Holiday Tours).

Furthermore, in cases involving endangered and threatened species, the traditional balancing test does not apply because, as the Supreme Court explained in the landmark case Tennessee Valley Authority v. Hill, the "language, history, and structure of the [ESA] indicates beyond doubt that Congress intended endangered species to be afforded the highest of priorities." 437 U.S. 153, 174 (1978) (emphasis added). Thus, when plaintiffs demonstrate the likelihood of harm to an endangered or threatened species – as plaintiffs do here – preliminary

relief is required irrespective of the economic consequences that may flow from such relief, since Congress itself has determined that the "balance of hardships and the public interest tip heavily in favor of endangered species." Sierra Club v. Marsh, 816 F.2d 1376, 1383 (9th Cir. 1987) (emphasis added); see also Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982) (in enacting the ESA "Congress [] foreclosed the exercise of the usual discretion possessed by a court of equity") (citing TVA. v. Hill, 437 U.S. at 173); Nat'l Wildlife Fed'n v. NMFS, 422 F.3d 782, 793-94 (9th Cir. 2005) ("[T]he traditional preliminary injunction analysis does not apply to injunctions issued pursuant to the ESA"); Strahan v. Coxe, 127 F.3d 155, 160 (1st Cir. 1997), cert. denied, 525 U.S. 830 (1998) ("[U]nder the ESA, . . . the balancing and public interest prongs have been answered by Congress"); Friends of the Earth v. U. S. Navy, 841 F.2d 927, 933 (9th Cir. 1988) (in cases involving endangered and threatened species, "Congress removed from the courts their traditional discretion in injunction proceedings").

In any event, here, plaintiffs easily meet all of the criteria governing the issuance of a temporary restraining order.

A. Plaintiffs Have A Strong Likelihood Of Prevailing On The Merits.

As explained supra, BP's lease for the Deepwater Horizon facility requires it to comply with "all" of the environmental laws. See Lease (Exhibit A). As also explained, activities that kill or otherwise harm or harass an endangered or threatened species constitute a violation of Section 9 of the ESA, unless the entity engaged in such activities has received an "incidental take" permit from the NMFS. See 16 U.S.C. § 1539(a)(2); see also 16 U.S.C. § 1532(19) (definition of "take"); 50 C.F.R. § 17.3 (definition of "harm" and "harass").

Here, there can be no question that BP's "controlled burns," by which it corrals oil into "burn boxes" and then lights those boxes on fire "takes" endangered and threatened sea turtles, since these listed species are being trapped inside the "burn boxes" and hence are being either burned to death, injured, or otherwise seriously impaired by the burning. See Ellis Decl. ¶¶ 4-6 ; Steiner Decl. ¶¶ 10-13; see also Babbitt v. Sweet Home Chapter of Cmtys. for a Greater Or., 515 U.S. 687, 705 (1995) (noting that the term "take" is "'defined . . . in the broadest possible manner to include every conceivable way in which a person can take or attempt to take any fish or wildlife.'") (quoting S. Rep. No. 93-307, at 7 (1973)) (emphasis added).

These listed species are also being "harassed" by the burning activities – i.e., those activities are "creating the likelihood of injury" to the sea turtles by "annoying [them] to such an extent as to significantly disrupt their normal behavioral patterns," 50 C.F.R. § 17.3, by causing the turtles to use much needed energy to try and escape the areas that are being burned. See Steiner Decl. ¶ 10 (explaining that turtles are not only being "killed and harmed" by the burning activities, but that other turtles are forced into a flight response that depletes critical energy reserves and can cause stress-induced trauma"); id. at ¶ 11 ("even those turtles that escape the burn box and somehow survive the oil intake are forced to alter their essential biological functions such as swimming and eating because the burn boxes present impassable obstacles hindering the turtles' ability to carry out their normal life cycle functions"); see also Babbitt v. Sweet Home Chapter, 515 U.S. at 705 (noting that the definition of "take" is so broad that it would apply to "the activities of birdwatchers where the effect of those activities might disturb the birds and make it difficult for them to hatch or raise their young").

In addition, to date, NMFS has not published in the Federal Register any notice that BP has applied for or received any "incidental take permit" that would allow it to engage in these activities, as is required by Section 10 of the ESA. See Sinnott Decl. ¶ 2; see also 16 U.S.C. § 1539(c) (requiring the publication of permit applications in the Federal Register).

Hence, there can be no question that BP is in violation of the ESA, and therefore, its lease provisions. See also Animal Welfare Institute v. Beech Ridge Energy LLC, 675 F. Supp. 2d 540, 568 (D. Md. 2009) (to demonstrate a "take" of a listed species, the plaintiff need demonstrate that the challenged activity "is reasonably certain" to imminently kill, harm, or harass members of the species); Loggerhead Turtle, 896 F. Supp. at 1180 (the "future threat of even [a] single taking is sufficient" to require the issuance of an injunction); Seattle Audubon Soc'y v. Sutherland, No. C06-1608MJP, 2007 WL 2220256, at *17 (W.D. Wash. Aug. 1, 2007) (to obtain injunctive relief plaintiffs need only show that without such an injunction "it is reasonably likely that [a] take will occur" as a result of the defendant's activities); Marbled Murrelet v. Babbitt, 83 F.3d at 1064 ("we have repeatedly held that an imminent threat of future harm is sufficient" for the issuance of an injunction involving an endangered or threatened species). Because the "take" of the listed sea turtles is occurring now and is likely to continue to occur in the absence of injunctive relief, plaintiffs can easily meet their burden of likelihood of success on the merits. See also NMFS Biological Opinion On Effects of the Five-Year Outer Continental Shelf Oil and Gas Leasing Program (June 29, 2007) at 82 (Exhibit H) (noting that "[s]ea turtles are generally known to not avoid oil slicks, and are often found near oil and gas operations").

B. A Temporary Restraining Order Is Appropriate And Necessary.

In view of the likelihood that plaintiffs will prevail on their claim that BP is in violation of its lease with respect to the illegal "take" of the endangered and threatened sea turtles, preliminary injunctive relief is plainly required, since, as discussed earlier, the presumption in cases involving harm to an endangered or threatened species is "that the balancing of harms and effect on the public interest tips in favor of protecting the endangered animals." Strahan v. Pritchard, 473 F. Supp. 2d 230, 240 (D. Mass. 2007) (citing National Wildlife, 23 F.3d at 1511); see also Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982) ("Congress foreclosed the exercise of the usual discretion possessed by a court of equity" in cases involving endangered species); TVA v. Hill, supra (upholding injunction of operation of nearly completed $100 million dam because it would destroy the critical habitat of an endangered fish species); Pac. Coast Fed'n of Fishermen's Ass'n of Gutierrez, 606 F. Supp. 1195, 1213 (E.D. Cal. 2008) ("The district court is constrained from balancing the competing interests of protecting endangered species against the economic costs of an injunction, because 'Congress has decided that . . . the balance of hardships always tips sharply in favor of the endangered or threatened species.') (emphasis added) (internal citations omitted).

Indeed, here, the harm to these listed species is particularly acute, not only because they are very likely being burned to death by BP's oil containment measures, but because these deaths are cumulative to the hundreds of deaths of endangered and threatened sea turtles and other devastating impacts on these species that have already occurred as a result of the Deepwater Horizon spill that has been going on for over two months now. Thus, according to DOI, **there have already been over four hundred and thirty deaths of listed turtles that the federal**

government knows about, see "Consolidated Fish and Wildlife Collection Report" (June 28, 2010) (Exhibit I) (reporting 434 listed sea turtles as "collected dead" to date as a result of the Deepwater Horizon spill), and this does not include the deaths that have gone undetected, as well as the injuries and disruptions of the turtles' normal behavioral patterns, that also constitute "takes" of these marine species, that, by definition, were already on the brink of extinction. See Steiner Decl. ¶12 ("Considering that all of the sea turtle species in the Gulf of Mexico are rare species that were already on the brink of extinction . . . the oil spill constitutes a remarkably devastating blow to these species that could prove to be the ultimate factor leading to the species extirpation if additive sources of mortality, such as those occurring in burn boxes and from the concentrated oil in those burn boxes, are not immediately eliminated of reduced significantly"); see also 16 U.S.C. § 1532(19) (an "endangered" species is defined as one that is already "in danger of extinction") (emphasis added).

Indeed, in light of the extent of the carnage that BP has already wreaked upon these fragile sea turtles and the entire ecosystem on which they depend for survival, BP should not be permitted to add insult to injury by engaging in activities that not only increase the number of deaths these poor creatures must suffer, but may very well be the tipping point that causes the extinction of some of these species that have existed on our planet for millions of years. See Steiner Decl. ¶ 12.

In any event, here, while the harm to the endangered and threatened sea turtles – and hence the aesthetic, educational, and research interests of plaintiffs – are also grave and irreparable, any injury to BP from issuing a temporary restraining order is at most economic only, which simply pales in comparison to the harm at stake here for the plaintiffs. See Nat'l

Wildlife Fed. v. Nat'l Marine Fish. Serv., 422 F.3d 782, 793-94 (9th Cir. 2005) (because "[t]he traditional preliminary injunction analysis does not apply" to cases seeking injunctions to protect an endangered species, the Court is not required to "weigh economic harm . . . in reaching its conclusion"); Amoco Productions Co. v. Gambell, 480 U.S. 531, 545 (1987) ("[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent . . . [i]f such injury is sufficiently likely, therefore, the balance of harms will usually favor the issuance of an injunction . . .").

Moreover, BP could continue to engage in containment activities that do not involve burning, e.g., skimming the oil from the surface of the Gulf or the corrals being generated by BP, without altering the waters' physical and/or chemical characteristics. See, e.g., Report by National Oceanic and Atmospheric Administration (2003) (Exhibit J) at 56 (acknowledging that there are "means other than *in-situ* burning to deal with [an oil] spill" that must be employed where animal or fish habitats could be adversely affected by burning) (emphasis added); see also Fact Sheet: Skimmers (Joint Information Center), www.deepwaterhorizonresponse.com. And, BP could also continue with its "controlled burn" activities, as long as it undertakes additional measures to ensure that listed species are removed from the "burn boxes" before they are ignited.

For all of these reasons, the order sought by plaintiffs is also in the public interest. Indeed, as the Supreme Court observed more than thirty years ago, the value of these endangered and threatened species to the national interest is "incalculable," and deserving of our highest priority. TVA v. Hill, 437 U.S. at 178, 185. Accordingly, it is imperative to "halt and reverse the trend toward species extinction, whatever the cost." Id. at 184.

Therefore, this Court should issue an immediate injunction to ensure that no more of these already sorely depleted endangered and threatened sea turtles are killed or otherwise harmed or harassed by BP's oil containment activities.

CONCLUSION

For all of the foregoing reasons, plaintiffs' motion for a temporary restraining order should be granted.[1]

Respectf ully submitted,

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(D.C. Bar No. 987036)
(m otion for pro hac vice pending)

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[1] Plaintiffs have Article III standing to seek the requested relief. Thus, for example, all four of the organizational plaintiffs have members who live near or recreate in the Gulf of Mexico and enjoy observing and having the opportunity to observe the endangered sea turtles who are being killed and otherwise harmed and harassed by BP's oil containment activities. See Verified Complaint ¶¶ 3-6; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (individuals who enjoy observing species at risk by challenged action have standing to assert their claims); accord Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221, 231 n.4 (1986) (people who enjoy whale watching have standing to challenge actions that threaten killing whales); Hunt v. Washington States Apple Advertising Comm'n, 432 U.S. 333 (1977) (organizations have standing to assert the standing of their members).

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Counsel for Plaintiffs

Dated: June 30, 2010

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit A

United States Department of the Interior

MINERALS MANAGEMENT SERVICE

Gulf of Mexico OCS Region
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394

OCS-G 32306

Offering Date	Map Area and Block Number
03/19/2008	NH16-10 - Mississippi Canyon - 252

DECISION

Rental	Balance of Bonus
$54,720.00	$27,202,742.40

Total Amount Due $27,257,462.40

BP Exploration & Production Inc.
501 WestLake Park Boulevard
Houston, Texas 77079

LEASE FORMS TRANSMITTED FOR EXECUTION

Pursuant to Section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1337) as amended (92 Stat. 629), and the regulations pertaining thereto (30 CFR 256), your bid for the above block is accepted. Accordingly, in order to perfect your rights hereunder, the following actions must be taken:

1. Execute and return the three copies of attached lease. *(If lease is executed by an agent, evidence must be furnished of agent's authorization.)*

2. Pay the balance of bonus and the first year's rental indicated above in accordance with the attached Instructions for Electronic Transfer. Payment must be received by the Federal Reserve Bank of New York no later than noon, eastern standard time, on the 11th business day after receipt of this decision (30 CFR 256.47). That day is **May 20, 2008.**

3. [ ] Comply with bonding requirements according to 30 CFR 256, Subpart I.

Compliance with requirements 1, 2, and 3 above must be made not later than the 11th business day after receipt of this decision. Failure to comply with above requirements will result in forfeiture of the 1/5 bonus deposit and your rights to acquire the lease.

IMPORTANT: *The lease form requires the attachment of the* CORPORATE SEAL *to all leases executed by corporations.*

John L. Rodi
Acting Regional Director

Attachments

Date May 2, 2008

TAKE PRIDE IN AMERICA

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

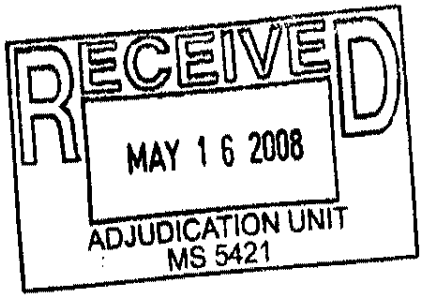
OIL AND GAS LEASE OF SUBMERGED LANDS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require approval by the Office of Management and Budget.

Office	Serial number
New Orleans, LA	**OCS-G 32306**
Cash bonus **$34,003,428.00**	Rental rate per acre, hectare or fraction thereof **$9.50 per acre**
Minimum royalty rate per acre, hectare or fraction thereof **$9.50 per acre**	Royalty rate **18 3/4 percent**
	Profit share rate

This lease is effective as of **JUN 01 2008** (hereinafter called the "Effective Date") and shall continue for an initial period of **ten** years (hereinafter called the "Initial Period") by and between the United States of America (hereinafter called the "Lessor"), by the **Regional Director, Gulf of Mexico OCS Region**, Minerals Management Service, its authorized officer, and

BP Exploration & Production Inc. **100%**



(hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered **8** attached hereto, the Lessee and Lessor agree as follows:

Sec. 1. Statutes and Regulations. This lease is issued pursuant to the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C. 1331 et seq., as amended (92 Stat. 629), (hereinafter called the "Act"). The lease is issued subject to the Act; all regulations issued pursuant to the Act and in existence upon the Effective Date of this lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein; and all other applicable statutes and regulations.

Sec. 2. Rights of Lessee. The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to drill for, develop, and produce oil and gas resources, except helium gas, in the submerged lands of the Outer Continental Shelf containing approximately **5,760.00** acres or hectares (hereinafter referred to as the "leased area"), described as follows:

All of Block 252, Mississippi Canyon, OCS Official Protraction Diagram, NH 16-10.

This lease instrument is amended by this addendum pursuant to the Final Notice of Sale for OCS Oil and Gas Lease Sale 206 and in accordance with debarment and suspension (nonprocurement) regulations.

These rights include:

(a) the nonexclusive right to conduct within the leased area geological and geophysical explorations in accordance with applicable regulations;

(b) the nonexclusive right to drill water wells within the leased area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Director of the Minerals Management Service or the Director's delegate (hereinafter called the "Director"); and

(c) the right to construct or erect and to maintain within the leased area artificial islands, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws and regulations.

Sec. 3. Term. This lease shall continue from the Effective Date of the lease for the Initial Period and so long thereafter as oil or gas is produced from the leased area in paying quantities, or drilling or well reworking operations, as approved by the Lessor, are conducted thereon, or as otherwise provided by regulation.

Sec. 4. Rentals. ~~The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, a rental as shown on the face hereof.~~ **See attached Lease Addendum for Rentals, under Sec. 4.**

Sec. 5. Minimum Royalty. ~~The Lessee shall pay the Lessor, at the expiration of each lease year which commences after a discovery of oil and gas in paying quantities, a minimum royalty as shown on the face hereof or, if there is production, the difference between the actual royalty required to be paid with respect to such lease year and the prescribed minimum royalty if the actual royalty paid is less than the minimum royalty.~~ **See attached Lease Addendum for Minimum Royalty, under Sec. 5.**

Sec. 6. Royalty on Production.

(a) The Lessee shall pay a fixed royalty as shown on the face hereof in amount or value of production saved, removed, or sold from the leased area. Gas (except helium) and oil of all kinds are subject to royalty. Any Lessee is liable for royalty payments on oil or gas lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order, or citation issued under the Federal Oil and Gas Royalty Management Act of 1982 or the Act. The Lessor shall determine whether production royalty shall be paid in amount or value.

(b) The value of production for purposes of computing royalty on production from this lease shall never be less than the fair market value of the production. The value of production shall be the estimated reasonable value of the production as determined by the Lessor, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field or area, to the price received by the Lessee, to posted prices, to regulated prices, and to other relevant matters. Except when the Lessor, in its discretion, determines not to consider special pricing relief from otherwise applicable Federal regulatory requirements, the value of production for the purposes of computing royalty shall not be deemed to be less than the gross proceeds accruing to the Lessee from the sale thereof. In the absence of good reason to the contrary, value computed on the basis of the highest price paid or offered at the time of production in a fair and open market for the major portion of like-quality products produced and sold from the field or area where the leased area is situated will be considered to be a reasonable value.

(c) When paid in value, royalties on production shall be due and payable monthly on the last day of the month next following the month in which the production is obtained, unless the Lessor designates a later time. When paid in amount, such royalties shall be delivered at pipeline connections or in tanks provided by the Lessee. Such deliveries shall be made at reasonable times and intervals and, at the Lessor's option, shall be effected either (i) on or immediately adjacent to the leased area, without cost to the Lessor, or (ii) at a more convenient point closer to shore or on shore, in which event the Lessee shall be entitled to reimbursement for the reasonable cost of transporting the royalty substance to such delivery point **See attached Lease Addendum for Royalty Suspension Provisions, under Sec. 6.**

Sec. 7. Payments. The Lessee shall make all payments (rentals, royalties and any other payments required by this lease) to the Lessor by electronic transfer of funds, check, draft on a solvent bank, or money order unless otherwise provided by regulations or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the Minerals Management Service and tendered to the Director. Determinations made by the Lessor as to the amount of payment due shall be presumed to be correct and paid as due.

Sec. 8. Bonds. The Lessee shall maintain at all times the bond(s) required by regulation prior to the issuance of the lease and shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor deems such additional security to be necessary.

Sec. 9. Plans. The Lessee shall conduct all operations on the lease area in accordance with approved exploration plans and approved development and production plans as are required by regulations. The Lessee may depart from an approved plan only as provided by applicable regulations.

Sec. 10. Performance. The Lessee shall comply with all regulations and Orders. After due notice in writing, the Lessee shall drill such wells and produce at such rates as the Lessor may require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.

Sec. 11. Directional Drilling. A directional well drilled under the leased area from a surface location on nearby land not covered by this lease shall be deemed to have the same effect for all purposes of the lease as a well drilled from a surface location on the leased area. In those circumstances, drilling shall be considered to have been commenced on the leased area when drilling is commenced on the nearby land for the purpose of directionally drilling under the leased area, and production of oil or gas from the leased area through any directional well surfaced on nearby land or drilling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease. Nothing contained in this Section shall be construed as granting to the Lessee any interest, license, easement, or other right in any nearby land.

Sale 206 Lease Addendum – RS18
Leases in Water Depths from 1600 – 2000 Meters

This lease instrument is amended by this addendum pursuant to the Final Notice of Sale for OCS Oil and Gas Lease Sale 206 and in accordance with debarment and suspension (nonprocurement) regulations.

Sec. 1. Statutes and Regulations.

Notwithstanding the language in Sec. 1 of the lease instrument, and in accordance with regulations at 2 CFR Parts 180 and 1400, the Lessee shall comply with the U.S. Department of the Interior's nonprocurement debarment and suspension requirements and agrees to communicate this requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease by including this term as a condition to enter into their contracts and other transactions.

Sec. 4. Rentals.

Annual rental as shown on the face of this lease shall be paid on or before the 1st day of each lease year until determination of well producibility is made, then at the expiration of each lease year until the start of royalty-bearing production.

Sec. 5. Minimum Royalty.

After the start of royalty-bearing production, regardless of the year of the lease and notwithstanding any royalty suspension that may apply: $9.50 per acre or fraction thereof per year, to be paid at the expiration of each lease year with credit applied for actual royalty paid during the lease year. If actual royalty paid exceeds the minimum royalty requirement, then no minimum royalty payment is due.

Sec. 6. Royalty on Production.

Notwithstanding the language in Sec. 6 of the lease instrument, and in accordance with regulations at 30 CFR Part 260, this lease may be eligible for royalty relief under the Energy Policy Act of 2005 (EPAct05), Section 345 (Royalty Relief for Deep Water Production). The following Royalty Suspension Provisions for deepwater oil and gas production apply to this lease. In addition to these provisions, and the EPAct05, refer to 30 CFR 218.151 and applicable provisions of Sections 260.120-260.124 for regulations on how royalty suspensions relate to field assignment, product types, rental obligations, and supplemental royalty relief.

1. This lease will receive a royalty suspension of 12 million barrels of oil equivalent (BOE).

2. In any calendar year during which the arithmetic average of the daily closing prices for the nearby delivery month on the New York Mercantile Exchange (NYMEX) for the applicable product exceeds the adjusted product price threshold, the Lessee must pay royalty on production that would otherwise receive royalty relief under 30 CFR Part 260 or supplemental relief under 30 CFR Part 203, and such production will count towards the royalty suspension volume (RSV).

   a) The base level price threshold for light sweet crude oil is set at $35.75 per barrel in 2006. The adjusted oil price threshold in any subsequent calendar year is computed by changing the price threshold applicable in the immediately preceding calendar year by the percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

b) The base level price threshold for natural gas is set at $4.47 per million British thermal units (MMBTU) in 2006. The adjusted gas price threshold in any subsequent calendar year is computed by changing the price threshold applicable in the immediately preceding calendar year by the percentage by which the implicit price deflator for the gross domestic product has changed during the calendar year.

c) As an example, if the implicit price deflator indicates that inflation is 2.5 percent in 2007 and 2 percent in 2008, then the price threshold in calendar year 2008 would become $37.37 per barrel for oil and $4.67 for gas. Therefore, royalty on oil production in calendar year 2008 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2008 exceeds $37.37 per barrel, and royalty on gas production in calendar year 2008 would be due if the average of the daily closing prices for the nearby delivery month on the NYMEX in 2008 exceeds $4.67 per MMBTU.

d) The MMS plans to provide notice in March of each year when adjusted price thresholds for the preceding year were exceeded. Once this determination is made, based on the then-most-recent implicit price deflator information, it will not be revised regardless of any subsequent adjustments in the implicit price deflator published by the U.S. Government for the preceding year. Information on price thresholds is available at the MMS web site http://www.mms.gov/econ.

e) In cases where the actual average price for the product exceeds the adjusted price threshold in any calendar year, royalties must be paid no later than 90 days after the end of the year (see 30 CFR 260.122 (b)(2) for more detail), and royalties must be paid provisionally in the following calendar year (See 30 CFR 260.122 (c) for more detail).

f) Full royalties are owed on all production from a lease after the RSV is exhausted, beginning on the first day of the month following the month in which the RSV is exhausted.

Stipulation No. 8 - Protected Species

The Outer Continental Shelf Lands Act (OCSLA) at 43 U.S.C. 1333 extends the laws of the United States to the subsoil and seabed of the OCS and to all artificial islands, and all installations and other devices erected thereon for the purpose of exploring for, developing, producing resources, or transporting such resources. The laws of the United States include the Endangered Species Act and the Marine Mammal Protection Act, which are designed to protect threatened and endangered species and marine mammals. The OCSLA at 43 U.S.C. 1332 also requires expeditious and orderly development of the OCS, subject to environmental safeguards. The MMS implements those laws in 30 CFR part 250, Subpart A (250.101, 250.106) and Subpart B Plans and Information ("implementing regulations").

In response to these laws and MMS implementing regulations, the lessee and its operators must:

(a) collect and remove flotsam resulting from activities related to exploration, development, and production of this lease;

(b) post signs in prominent places on all vessels and platforms used as a result of activities related to exploration, development, and production of this lease detailing the reasons (legal and ecological) why release of debris must be eliminated;

(c) observe for marine mammals and sea turtles while on vessels, reduce vessel speed to 10 knots or less when assemblages of cetaceans are observed, and maintain a distance of 90 meters or greater from whales, and a distance of 45 meters or greater from small cetaceans and sea turtles;

(d) employ mandatory mitigation measures prescribed by MMS or National Oceanic and Atmospheric Administration for all seismic surveys including the use of an "exclusion zone" based upon the appropriate water depth, ramp-up and shutdown procedures, visual monitoring, and reporting;

(e) immediately report all sightings and locations of injured or dead protected species (marine mammals and sea turtles) to the appropriate stranding network. If oil and gas industry activity is responsible for the injured or dead animal (e.g., because of a vessel strike), the responsible parties should remain available to assist the stranding network. If the injury or death was caused by a collision with the lessee's vessel, the lessee must notify MMS within 24 hours of the strike; and

(f) identify important habitats, including designated critical habitat,- used by listed species (e.g., sea turtle nesting beaches, piping plover critical habitat), in oil spill contingency planning and require the strategic placement of spill cleanup equipment to be used only by personnel trained in less-intrusive cleanup techniques on beach and bay shores.

The lessee and its operators, personnel, and subcontractors are responsible for carrying out the specific mitigation measures outlined in the most current MMS Notices to Lessees, which interpret requirements in the above-mentioned implementing regulations.

Sec. 12. Safety Requirements. The Lessee shall:

(a) maintain all places of employment within the leased area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the lease area;

(b) maintain all operations within the leased area in compliance with regulations or orders intended to protect persons, property, and the environment on the Outer Continental Shelf; and

(c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and shall provide any documents and records which are pertinent to occupational or public health, safety, or environmental protection as may be requested.

Sec. 13. Suspension and Cancellation.

(a) The Lessor may suspend or cancel this lease pursuant to section 5 of the Act, and compensation shall be paid when provided by the Act.

(b) The Lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

Sec. 14. Indemnification. The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee shall not be held responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

(a) negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal Agency whether or not the discretion involved is abused; or

(b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

Sec. 15. Disposition of Production.

(a) As provided in section 27(a)(2) of the Act, the Lessor shall have the right to purchase not more than 16 2/3 percent by volume of the oil and gas produced pursuant to the lease at the regulated price or, if no regulated price applies, at the fair market value at the wellhead of the oil and gas saved, removed, or sold, except that any oil or gas obtained by the Lessor as royalty or net profit share shall be credited against the amount that may be purchased under this subsection.

(b) Pursuant to section 27(b) and (c) of the Act, the Lessor may offer and sell certain oil and gas obtained or purchased pursuant to a lease. As provided in section 27(d) of the Act, the Lessee shall take any Federal oil or gas for which no acceptable bids are received, as determined by the Lessor, and which is not transferred to a Federal Agency pursuant to section 27(a)(3) of the Act, and shall pay to the Lessor a cash amount equal to the regulated price or, if no regulated price applies, the fair market value of the oil or gas so obtained.

(c) As provided in section 8(b)(7) of the Act, the Lessee shall offer 20 percent of the crude oil, condensate, and natural gas liquids produced on the lease, at the market value and point of delivery as provided by regulations applicable to Federal royalty oil, to small or independent refiners as defined in the Emergency Petroleum Allocation Act of 1973.

(d) In time of war or when the president of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the oil or gas produced from the leased area, as provided in section 12(b) of the Act.

Sec. 16. Unitization, Pooling, and Drilling Agreements. Within such time as the Lessor may prescribe, the Lessee shall subscribe to and operate under a unit, pooling, or drilling agreement embracing all or part of the lands subject to this lease as the Lessor may determine to be appropriate or necessary. Where any provision of a unit, pooling, or drilling agreement, approved by the Lessor, is inconsistent with a provision of this lease, the provision of the agreement shall govern.

Sec. 17. Equal Opportunity Clause. During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60-1.4(a)), and the implementing regulations which are for the purpose of preventing employment discrimination against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

Sec. 18. Certification of Nonsegregated Facilities. By entering into this lease, the Lessee certifies, as specified in 41 CFR 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontrators prior to award of contracts or subcontracts unless they are exempt under 41 CFR 60-1.5.

Sec. 19. Reservations to Lessor. All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights included:

(a) the right to authorize geological and geophysical exploration in the lease area which does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the leased area as may be necessary or appropriate to the working of other lands or to the treatment and shipment of products thereof by or under authority of the Lessor;

(b) the right to grant leases for any minerals other than oil and gas within the leased area, except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease;

(c) the right, as provided in section 12(d) of the Act, to restrict operations in the leased area or any part thereof which may be designated by the Secretary of Defense, with approval of the President, as being within an area needed for national defense and, so long as such designation remains in effect, no operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within any designated area are suspended pursuant to this paragraph, any payments of rentals and royalty prescribed by this lease likewise shall be suspended during such period of suspension of operations and production, the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

Sec. 20. Transfer of Lease. The Lessee shall file for approval with the appropriate field office of the Minerals Management Service any instrument of assignment or other transfer of this lease, or any interest therein, in accordance with applicable regulations.

Sec. 21. Surrender of Lease. The Lessee may surrender this entire lease or any officially designated subdivision of the leased area by filing with the appropriate field office of the Minerals Management Service a written relinquishment, in triplicate, which shall be effective as of the date of filing. No surrender of this lease or of any portion of the leased area shall relieve the Lessee or its surety of the obligation to pay all accrued rentals, royalties, and other financial obligations or to abandon all wells on the area to be surrendered in a manner satisfactory to the Director.

(Continued on reverse)

Sec. 22. **Removal of Property on Termination of Lease.** Within a period of 1 year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations and Orders of the Director. However, the Lessee may, with the approval of the Director, continue to maintain devices, works, and structures on the leased area for drilling or producing on other leases.

Sec. 23. **Remedies in Case of Default.**

(a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of section 5(c) and (d) of the Act and the Lessor may exercise any other remedies which the Lessor may have, including the penalty provisions of section 24 of the Act. Furthermore, pursuant to section 8(o) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation.

(b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under paragraph (a) of this section for any other violation or for the same violation occurring at any other time.

Sec. 24. **Unlawful Interest.** No member of, or Delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified and during their continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431-433, relating to contracts made or entered into, or accepted by or on behalf of the United States, form a part of this lease insofar as they may be applicable.

BP Exploration & Production Inc.
(Lessee)

(Signature of Authorized Officer)

Kemper Howe
(Name of Signatory)

Attorney-in-Fact
(Title)

May 8, 2008
(Date)

THE UNITED STATES OF AMERICA, Lessor

(Signature of Authorized Officer)

Lars Herbst
(Name of Signatory)

Regional Director
Gulf of Mexico OCS Region
Minerals Management Service
(Title)

14 MAY 2008
(Date)

501 WestLake Park Boulevard
Houston, Texas 77079
(Address of Lessee)

If this lease is executed by a corporation, it must bear the corporate seal.

DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
RECEIPT CONFIRMATION REPORT LIST FOR
GULF OF MEXICO LEASE SALE 206

DCN: 051408

OCS-G#	QUAL#	COMPANY	AMOUNT
32395	02079	Nexen Petroleum Offshore U.S.A. Inc.	$2,014,470.40
32636	01207	Petrobras America Inc.	1,855,120.00
32656	01207	Petrobras America Inc.	3,382,720.00
32608	02748	Statoil Gulf of Mexico LLC	855,137.60
32306	02481	BP Exploration & Production Inc.	27,257,462.40
32557	02481	BP Exploration & Production Inc.	51,333,744.00
32637	02481	BP Exploration & Production Inc.	937,462.40
32623	00276	Exxon Mobil Corporation	507,120.00
32444	02873	Cobalt International Energy, L.P.	4,893,120.00
32458	02873	Cobalt International Energy, L.P.	1,989,831.20
32459	02873	Cobalt International Energy, L.P.	647,336.00
32460	02873	Cobalt International Energy, L.P.	9,989,831.20
32465	02873	Cobalt International Energy, L.P.	807,336.00
32540	02873	Cobalt International Energy, L.P.	1,189,831.20
32608	02748	Statoil Gulf of Mexico LLC	855,137.60

TOTAL $107,660,522.40

The above leases were **paid in full on May 14, 2008.**

Sue Dickson
SIGNATURE

Adjudication Assistant
TITLE

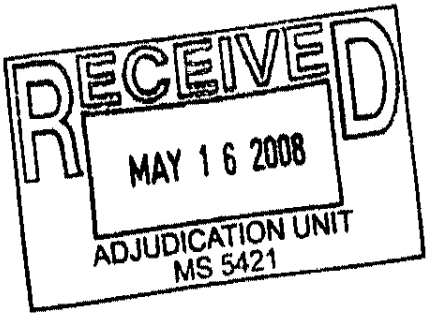
May 15, 2008
DATE

bp

BP Exploration & Production Inc.
501 WestLake Park Boulevard
Houston,Texas 77079

Via Overnight Delivery

May 15, 2008



Minerals Management Service
1201 Elmwood Park Boulevard
New Orleans, LA 70123-2394

ATTN: Debbie Armond -- MS5421

Dear Ms. Armond:

We have executed and affixed the corporate seat to the following lease(s) which are being returned for your further handling:

OCS Number	Area/Block
G 32557	Atwater Valley 47
G 32637	Keathley Canyon 561
G 32306	Mississippi Canyon 252

The balance of the bonus due and first year rental for these lease(s) will be submitted by Electronic Funds Transfer (EFT) on or before May 20, 2008

Please acknowledge receipt of this letter and enclosures by stamping "RECEIVED" on the enclosed copy of this letter and return it to my attention.

Also enclosed are three Designations of Operator forms whereby Woodside Energy (USA) Inc. designates BP as the Operator of Atwater Valley Block 47.

Very truly yours,

BP Exploration & Production Inc.

Dianna Stein

Sale Coordinator

Enclosures

 32306

BID FORM

Regional Director
Minerals Management Service, DOI
Gulf of Mexico OCS Region
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394

Oil and Gas Lease Sale 206
Date of Lease Sale: March 19, 2008
Company Submitting Bid:
BP Exploration & Production Inc.
GOM Company Number: 02481

Oil and Gas Lease Bid

It is understood that this bid legally binds the bidder(s) to comply with all applicable regulations, including paying the 1/5th bonus on all high bids, as provided in the Final Notice of Sale.

The following bid is submitted for an oil and gas lease on the area and block of the Outer Continental Shelf specified below:

Map Name	Map Number	Block Number	Amount Bid
Mississippi Canyon	**NH16-10**	**252**	**$34,003,428.00**

GOM Company Number	Percent Interest	Company Name(s), Address(es), and Signature(s)
02481	**100.00%**	**BP Exploration & Production Inc.** 501 WestLake Park Boulevard Houston, Texas 77079 By:  O. Kirk Wardlaw Attorney-in-Fact

Total: 100.00%

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit B

DEPARTMENT OF THE INTERIOR

INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF

MAY 27, 2010

INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF

EXECUTIVE SUMMARY

Overview

On April 20, 2010, an explosion and fire erupted on an offshore drilling rig in the Gulf of Mexico called the *Deepwater Horizon*, which had just completed an exploratory well 52 miles from shore in 4,992 feet of water. Eleven members of the crew are missing and presumed dead. The remainder of the crew abandoned the rig and was rescued by a nearby supply vessel, the *Damon Bankston.* The fire destroyed the rig, which sank on April 22, 2010. The resulting oil spill has been declared "a spill of national significance" and could become one of the oil industry's gravest disasters. Crude oil continues to flow from a broken pipe on the seafloor, has spread across thousands of square miles, and is damaging local economies, sensitive coastlines and wildlife throughout the Gulf region. On April 30, 2010, the President directed the Secretary of the Interior to conduct a thorough review of this event and to report, within 30 days, on "what, if any, additional precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the outer continental shelf." This report responds to the President's directive.

Recommendations

The Secretary recommends a series of steps immediately to improve the safety of offshore oil and gas drilling operations in Federal waters and a moratorium on certain permitting and drilling activities until the safety measures can be implemented and further analyses completed.

The report recommends a number of specific measures designed to ensure sufficient redundancy in the blowout preventers (BOPs), to promote the integrity of the well and enhance well control, and to facilitate a culture of safety through operational and personnel management (see Table ES-1). Recommended actions include prescriptive near-term requirements, longer-term performance-based safety measures, and one or more Department-led working groups to evaluate longer-term safety issues. The recommendations take into account that drilling activities conducted in the deepwater environment create increased risks and challenges.

Key recommendations on BOPs and related safety equipment used on floating drilling operations include:

- *Mandatory inspection of each BOP to be used on floating drilling operations to ensure that the BOP:* meets manufacturer design specifications, taking into account any modifications that have been made; is compatible with the specific drilling equipment on the rig it is to be used on, including that the shear ram is compatible with the drill pipe to be used; has not been compromised or damaged from previous service; is designed to operate at the planned operating depth. Certification of these requirements will be made publicly available.

- *Requirement of new safety features on BOPs and related backup and safety equipment including*: a requirement that BOPs have two sets of blind shear rams spaced at least four feet apart to prevent BOP failure if a drill pipe or drill tool is across on set of rams during an emergency; requirements for emergency back-up control systems; and requirements for remote operating vehicle capabilities. *The Department will develop new surface and subsea testing requirements to verify reliability of these capabilities.*

- *Overhaul of the testing, inspection and reporting requirements for BOP and related backup and safety equipment to ensure proper functioning, including new means of improving transparency and providing public access to the results of inspections and routine reporting.*

Key recommendations on well control systems include:

- *Development of enhanced deepwater well-control procedures.*

- *Verification of a set of new safeguards that must be in place prior to displacement of kill-weight drilling fluid from the wellbore.*

- *New design, installation, testing, operations, and training requirements relating to casing, cement or other elements that comprise an exploratory well.*

- *A comprehensive study of methods for more rapid and effective response to deepwater blowouts.*

Key recommendations on a systems-based approach to safety:

- *Immediate, enhanced enforcement of current regulations through verification within 30 days of compliance with the April 30, 2010, National Safety Alert.*

- *Enhanced requirements to improve organizational and safety management for companies operating offshore drilling rigs.*

- *New rules requiring that offshore operators have in place a comprehensive, systems-based approach to safety and environmental management.*

The Secretary also recommends temporarily halting certain permitting and drilling activities. First, the Secretary recommends a six-month moratorium on permits for new wells being drilled using floating rigs. The moratorium would allow for implementation of the measures proposed in this report and for consideration of the findings from ongoing investigations, including the bipartisan National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

The Secretary further recommends an immediate halt to drilling operations on the 33 permitted wells, not including the relief wells currently being drilled by BP, that are currently being drilled using floating rigs in the Gulf of Mexico. Drilling operations should cease as soon as safely

practicable for a 6-month period.

The recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering. Those experts, who volunteered their time and expertise, are identified in Appendix 1. The Department also consulted with a wide range of experts from government, academia and industry.

Relationship to Ongoing Investigations

This 30-day review has been conducted without the benefit of the findings from the ongoing investigations into the root causes of the explosions and fire on the Deepwater Horizon and the resulting oil spill (collectively "BP Oil Spill") including if there were any violations of existing safety or construction law, gross negligence, or willful misconduct. In the coming months, those investigations will likely suggest refinements to some of this report's recommendations, as well as additional safety measures. Nevertheless, the information currently available points to a number of specific interim recommendations regarding equipment, systems, procedures, and practices needed for safe operation of offshore drilling activities.

Furthermore, because the purpose of this review is to recommend immediate measures to improve the safety of offshore drilling activities, nothing in this report should be used to influence or prejudice any ongoing investigations, or impact any current or future litigation.

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No.
	)	
BP America, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF MICHAEL ELLIS

1. My name is Michael Ellis and I am a charter boat captain. I own Relentless Sportfishing Charters, which is headquartered in Venice, Louisiana. I have been involved in offshore fishing for more than 20 years, and I have been chartering boats, including in the Gulf of Mexico, since 1992.

2. Because of the BP Deepwater Horizon oil spill and its consequences, many of the Gulf's unique marine resources have been irreversibly harmed. Like many other charter fisherman, I answered the call of duty to assist with the oil spill cleanup efforts. I have entered multiple Vessel Of Opportunity ("VOO") contracts with BP since the spill occurred to provide services aimed at reducing the environmental damage and related impacts to the Gulf's ecosystem and economy.

3. The first VOO contract I entered into with BP required me to lead a boat of Coast Guard officials, media, and other individuals to various locations of interest related to the oil

spill. When that contract expired, I entered into a second VOO contract with BP (Requisition # TOM-12227), which required me to charter a boat with conservation biologists and other turtle rescuers attempting to save endangered sea turtles that had been affected by the oil spill.

4. For example, a few weeks ago (on approximately June 13, 2010), I chartered a boat that included Dr. Brian Stacy of the National Oceanic and Atmospheric Administration, and we were involved in a turtle rescue effort with other charter boats that included Dr. Blair Witherington of the Florida Fish and Wildlife Conservation Commission. On that particular day, our team rescued approximately ten turtles (by scooping them up with a net) – which the scientists identified as eight Kemp's Ridley turtles, one Hawksbill turtle, and one Loggerhead turtle. That day we also recovered four dead turtle carcasses – all of which the scientists identified as Kemp's Ridley turtles. Because of the thickness of the oil in the oil line – which is where large amounts of oil accumulate at the convergence of two differing currents – many of the live sea turtles were stuck and were effectively immobilized until we rescued them and returned them to safety.

5. On the day described above, as well as on other trips, I have personally observed BP's practice of controlled burning. In short, this practice consists of two shrimp trawlers paralleling an oil line with fire-resistant booms (which are spars swung out from the side of a vessel) to collect a concentrated volume of leaked oil, and then the trawlers turn around and effectively corral the oil and any entangled debris into a circular or oblong shape, typically 60-100 feet in diameter. The ignitor boat then ignites a flame that burns the combustible oil muck that has been collected, including anything stuck in the thick material in this "burn box," which includes any sea turtles stuck in the oil sludge and immobilized by the sludge. I have been very close to multiple fires in these burn boxes (as close as approximately 1/4 mile from the nearest

fire, and at one point 200 yards from the shrimp boat pulling the boom), and the oil collected at these oil lines is very thick. Based on my many years of marine experience, it would be difficult for an oil-soaked sea turtle to dislodge itself from the thick oil in a burn box to swim to safety before being burned.

6. The threat to various species of endangered sea turtles is especially disconcerting here because of the close proximity of documented turtle captures to BP's controlled burns in its burn boxes. For example, on the trip described above where approximately ten endangered turtles were rescued, we were very near multiple burns, and, more importantly, those burns were on the same oil line as the turtles that we were able to rescue. As any marine scientist or professional sea fisherman knows, species of marine animals that are found on one part of an oil line (or any current line for that matter) are very likely to be found going in either direction on that same line in close proximity. Therefore, based on my years of experience in the Gulf of Mexico, it is almost certain that endangered turtles were present in the burn boxes that I observed on the same oil line where our rescue team saved ten endangered turtles, and that these turtles will continue to be present in similar burn boxes that continue to be used by BP as part of its practice of controlled burns.

7. Because BP has refused to let me and other boat captains get close enough to examine the burn boxes prior to igniting the fires, I expect that turtles will continue to be burned in the burn boxes. Indeed, considering the frequency with which our rescue team was finding and saving turtles on the same oil lines where the burns occur, it is almost certain that turtles will continue to be burned and harmed by BP as part of its current practice of controlled burns.

8. Based on my personal observations, BP has not adopted a regular practice of

including scientists and turtle rescuers as observers on every ignitor boat prior to burns. To the extent that BP has occasionally allowed observers on its ignitor boats, it is my opinion that, despite the difficulty of spotting the turtles stuck in the thick oil muck in a burn box, this practice would successfully allow rescuers to collect most of the stuck turtles prior to ignition. For the turtles that our team rescued, we had to get very close to observe and identify turtles in the oil, and that occurred in areas where a thick volume of oil had not been collected as the case in burn boxes; however, once a turtle was spotted it was a relatively simple task to collect it.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Mike Ellis

Michael Ellis

June 29, 2010

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No.
	)	
BP America, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF KEVIN ADERHOLD

1. My name is Kevin Aderhold and I am a charter boat captain in Venice, Louisiana. I ~~co-own~~ operate Strike Zone Charters, which provides charter fishing services in the Gulf of Mexico. I have chartered offshore fishing trips since '98, which has included numerous trips in the Gulf of Mexico and to Central America.

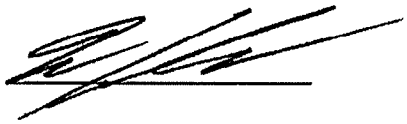
2. In response to the BP oil spill related to its Deepwater Horizon rig, I have offered my services to BP to assist in the cleanup effort. I was initially hired by BP, and then I was subsequently hired by Unified Command. Under contract with Unified Command, I now work in conjunction with the National Oceanic and Atmospheric Administration and other state and federal employees involved in endangered sea turtle rescue. In recent weeks, I have been chartering a boat almost daily that includes various biologists and sea turtle rescue teams. Most of the turtles that we have rescued have been discovered in the oil lines where heavy concentrations of oil collect at the collision of divergent currents.

3. To date, our rescue team has rescued and saved many endangered turtles. According to the scientists who accompanied us on these trips, approximately 90% have been Kemp's Ridley, and the remainder have been Hawksbill and Loggerhead turtles. So far, none of the turtles discovered by our rescue team have been dead, but all of the turtles we rescued have been heavily oiled – which makes it more difficult for the turtles to swim. In fact, because the concentrated oil in the oil lines is extremely viscous, many of the turtles we have rescued appeared to have difficulty breaking free of the oil and muck before we saved them, and some had trouble moving at all.

4. Our team has been within approximately two miles of the "burn boxes," which are the areas where BP-hired boats use booms to corral a large volume of oil and then the oil is burned as a containment strategy. The burn boxes are approximately 100 square feet or slightly larger. Because of the viscosity of the oil in these burn boxes, and based on my observations of sea turtles in the same oil lines in close proximity (and where the oil is not even as thick as in the burn boxes), I would expect that some sea turtles of the same species are getting stuck in the thick oil in these burn boxes and are not able to free themselves prior to being burned. Although I assume that such acts are an unintentional consequence of BP's controlled burning strategy, I expect that these incidental burnings are almost certainly occurring – based on my personal observations of endangered sea turtles of the same species struggling or immobilized in the oil lines in very close proximity to the burn boxes.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing

is true and correct to the best of my knowledge and belief.



Kevin Aderhold

June 29 2010

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.	)	
	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	Civ. No.
	)	
	)	
BP America, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF TODD STEINER

1. I am the Executive Director and a member of Turtle Island Restoration Network ("TIRN"). I have held this position since 1997. I am a wildlife biologist with an M.S. degree in biology from Florida International University and a B.S. in Individual Studies (Nature Conservation and Interpretation) from the University of Maryland. More information about my background and expertise can be found on my curriculum vitae (Attachment A).

2. TIRN is a nonprofit corporation with its principal place of business in Olema, California. TIRN is an environmental organization with approximately 17,000 members and supporters throughout the United States and the world, each of whom shares a commitment to the study, protection, enhancement, conservation, and preservation of the world's marine and terrestrial ecosystems, including protection of sea turtles.

3. The Sea Turtle Restoration Project ("STRP"), established in 1989, operates under TIRN's fiscal sponsorship. The purpose of the Sea Turtle Restoration Project is to restore and

protect endangered and threatened species of sea turtles. TIRN and STRP operate a web page (www.seaturtles.org) that provides information worldwide to the public about marine ecosystems and species including sea turtles (receiving hundreds of thousands of visits per year), promotes eco-tours to leatherback and other sea turtle nesting beaches, provides opportunities for its members to participate in nesting beach protection and research programs, and provides funding for nesting beach protection.

4. The staff and members of TIRN and STRP include marine and research biologists who are engaged in the study, protection, enhancement, conservation, and preservation of marine biodiversity, including sea turtles, seabirds, whales, dolphins and fish, as well as professional wildlife photographers, whose livelihoods depend in part on the survival of sea turtles and the ability to photograph them in the wild.

5. TIRN and its members have a personal stake in the protection of marine and terrestrial ecosystems and the protection of sea turtle species. Harm to and mortality of such species, including harm resulting from defendants' various legal violations at issue in this lawsuit, will adversely affect TIRN's and its members' ability to study and enjoy endangered and threatened sea turtles, impair TIRN's and its members' efforts to protect, enhance, and conserve these species' populations, and impair TIRN's members' economic interests.

6. TIRN has engaged and continues to engage in numerous efforts to protect loggerhead, leatherback, Kemp's Ridley, green, and hawksbill sea turtle species in the United States and around the world. Specifically, TIRN and STRP also engage in many efforts to protect loggerhead and leatherback sea turtles in U.S. waters and nesting beaches. For example, TIRN and STRP were plaintiffs in a suit challenging the National Marine Fisheries Service's

("NMFS") failure to protect loggerhead sea turtles in the Gulf of Mexico from unsustainable levels of take in the bottom longline component of the Gulf of Mexico Reef Fish fishery. *Caribbean Conservation Corp. v. Locke*, 09-cv-0100 (SPM-AK) (N.D. Fla.). TIRN has also had a long-standing program to protect Gulf sea turtles, especially the endangered Kemp's ridley turtle. We have worked to create a Kemp's Ridley marine reserve in the Gulf, to encourage the use of turtle excluder devices (TEDs), a trap door that allow turtles to escape drowning in shrimp nets, and the enforcement of TEDs rules throughout the world. TIRN has a Gulf of Mexico program, based in Houston, TX, and employs Carole Allen, the founder of "Help Endnagered Animals- Sea Turtles, or HEART, as its Gulf of Mexico director. TIRN has also participated extensively in opposing efforts to remove limits on the Hawai'i longline swordfish fishery, a proposal that would nearly triple the number of North Pacific loggerheads injured and killed by that fishery, and allow continued unlawful take of many Pacific leatherbacks. In addition, TIRN has successfully worked to block efforts to open U.S. waters off the California coast to longline fishing within key foraging habitat for leatherback sea turtles.

7. I am a member of the IUCN Marine Turtle Specialist Group and have attended the past two IUCN international meetings (Thailand 2004, Spain in 2008) to promote policies to protect leatherback, loggerhead, Kemp's Ridley, and other species of sea turtles. I am also a longstanding member of the International Sea Turtle Society and have attended the majority of the past 25 annual meetings.

8. I have conducted sea turtle research and monitoring for the National Park Service, Everglades National Park in the Gulf of Mexico's Florida Bay, and in the Dry Tortugas, as well as other places in Central America.

9. In the past two years, I have traveled to Florida several times to view sea turtles in the Gulf of Mexico and Atlantic Ocean, including loggerhead and Kemp's Ridley sea turtles. I plan to return at least twice this year. I have also viewed nesting loggerheads in Florida and Georgia, and have taken trips to view them in North Carolina. I also have viewed leatherback, green, and olive ridley sea turtles on many occasions in the Pacific, and will undoubtedly continue to do so, as this activity is a critically important part of my personal and professional life.

10. TIRN and STRP have been actively involved in the aftermath of BP's Deepwater Horizon oil spill in the Gulf of Mexico. In addition to providing advice to and consulting with various scientists rescuing turtles from the spill, STRP has sent Dr. Chris Pincetich, a wildlife toxicologist, to assist on the ground with ongoing turtle rescue efforts. He reports directly to me, and I am thus routinely reviewing up-to-date information related to the spill and its effect on turtle species.

11. I have reviewed various materials related to the oil spill including GPS tracking information for endangered sea turtles, and have discussed these issues with colleagues in the Gulf, and it is my expert biological opinion that endangered sea turtles (Kemp's Ridley, Loggerhead, Hawksbill, and potentially others) are not only present in the areas where BP-hired boats are conducting prescribed burns, but are also being killed, harmed, and forced into a flight response that depletes critical energy reserves and causes stress-induced trauma. As a containment strategy, BP has hired boats to collect a concentrated mass of oil near known oil lines (where currents converge and create a collection of oil and debris), which is then ignited to burn off everything within the burn zone or the "burn box" as it is often referred to – including

any turtles that are unable to dislodge their oil-covered bodies from the thick oil and sludge in the burn box.

12. Based on firsthand discussions, and GPS data, it is my scientific opinion that, to a near certainty, some endangered sea turtles are in fact being burned (and thus killed) by this containment strategy. In addition, even the turtles that manage to free themselves from the oil muck and escape the burn box prior to combustion are harmed by intake of the thick oil sludge and noxious oil vapors, and it is almost certain that many of these turtles ultimately die within a relatively short time after being present in the burn box from these various life-threatening risks. Moreover, even those turtles that escape the burn box and somehow survive the oil intake are forced to alter their essential biological functions such as swimming and eating because the burn boxes present impassable obstacles hindering the turtles' ability to carry out their normal life cycle functions. As such, even these displaced turtles are at a grave disadvantaged to survive unless they are rescued and provided immediate rehabilitative attention.

13. The deaths and injuries that are almost certainly occurring in the burn boxes, or as a result of the concentration of oil in the burn boxes, are particularly troubling because each and every death and injury adds to the cumulative total number of turtle mortalities that have already occurred as a result of the oil spill. Thus, as of June 28, 2010, the federal government has conservatively estimated 434 sea turtle deaths as a result of the oil spill. *See* http://www.fws.gov/home/dhoilspill/pdfs/collection_06282010.pdf. That likely only represents a tiny fraction of the actual mortality rate because countless other dead turtles have not been discovered in the vast Gulf. The most alarming statistic presented by the government is that 75% (434 out of 580) of the turtles recovered in rescue efforts were already dead when collected.

These mortality numbers are consistent with the reduced nest counts this year on Gulf shores of Kemp's Ridley turtles and other turtle species affected by the spill, where we are only seeing approximately 70% of the number of nests counted last year. Considering that all of the sea turtle species in the Gulf of Mexico are rare that were already on the brink of extinction (and thus all are federally listed as endangered or threatened), the oil spill constitutes a remarkably devastating blow to these species that could prove to be the ultimate factor leading to species extirpation if additive sources of mortality, such as those occurring in burn boxes and from the concentrated oil in those burn boxes, are not immediately eliminated or reduced significantly.

14. The need to immediately eliminate and/or significantly reduce burn box-related mortalities is especially important considering that GPS tracking information demonstrates that multiple Kemp's Ridley and other endangered turtles are swimming towards the oil spill, and specifically towards the oil lines where burn boxes have been utilized. *See* http://www.seaturtle.org/tracking/index.shtml?project_id=495; http://www.seaturtle.org/tracking/?project_id=389. Considering that endangered turtles are moving towards these areas (including Kemp's Ridley turtles – possibly the most endangered of all sea turtles), and that the scientists on the ground continue to find high concentrations of endangered sea turtles in very close proximity to burn boxes, it is critical that BP devise a new strategy (that may or may not include prescribed burns) that can ensure a substantially reduced rate of turtle mortality, injury, and displacement while still providing for appropriate oil containment under the circumstances.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Todd Steiner

Dated: June 29, 2010

Declaration of Todd Steiner

ATTACHMENT A

Todd M. Steiner
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Education:

M.S., Biology, Florida International University, 1987 (Ecology, Herpetology, Evolution)
B.S., Conservation, University of Maryland, 1978

Employment:

Director, Salmon Protection and Watershed Network (SPAWN), Forest Knolls, 1997 to present

Executive Director, Sea Turtle Restoration Project, San Francisco, 1990-present.

Director, Dolphin Project, Earth Island Institute, San Francisco, 1986-90.

Adjunct lecturer and teaching assistant, Florida International University, for Biology I, II, Ecology of South Florida, Herpetology and Fundamentals of Ecology, 1983-86.

Wildlife Biologist, South Florida Research Center (SFRC), Everglades National Park, 1984.

Biological Technician (Entomology), U.S.D.A. Subtropical Research Sta., Miami, Florida, 1982-83.

Wildlife Technician (Wetlands Ecology), SFRC, Everglades N.P., 1981-82.

Research Assistant (Endangered Species), Archbold Biological Station, FL, 1980-81.

Wildlife Technician (Endangered Species), SFRC, Everglades N.P., 1980.

Research Technician (Fire Ecology), SFRC, Everglades N.P., 1979.

Park Technician (Environmental Education), Everglades National Park, 1978-79.

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Steiner, T.M. Implementation of TEDs Law PL 101-162 by the U.S. Government: Fact or Science Fiction? 1994. Thirteenth Annual Sea Turtle Symposium, Feb. 1993, Jekyl Island, Georgia. Proceedings XIII Annual Sea Turtle Symposium, Feb. 1993, Jekyl Island, Georgia.

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Dalrymple, G.H., T.M. Steiner, R.J. Nodell and F.S. Bernadino, Jr. 1991. Seasonal Activity of the snakes of Long Pine Key, Everglades National Park. Copeia. 1991 (2):294-302.

Dalrymple, G.H., F.S. Bernadino, Jr., T.M. Steiner, R.J. Nodell. 1991. Patterns of species diversity of snake community assemblages, with data on two Everglades assemblages. Copeia. 1991 (2):517-521.

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Dalrymple, and T.M. Steiner, 1988. The status and ecology of the amphibians and reptiles of the Long Pine— Paradise Key region of Everglades national Park. Pp. 4 *In*: Dalrymple et al. (eds.) Wildlife in the Everglades and Latin American Wetlands. Abstr. Of Proceedings of the first Everglades National Park Symposium, February, 1985, Florida International Univer., Maimi, FL.

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Steiner, T.M. 1985. Annotated checklist of the amphibians and reptiles of Everglades National Park. Everglades Natural History Association.

Layne, J.N. and T.M. Steiner. 1984. Sexual dimorphism in dorsal scales of the eastern indigo snake (*Drymarchon corais couperi*). Copeia 1984(3):776-778.

Steiner, T.M. 1984. The ecology of the eastern indigo snake (*Drymarchon corais couperi*) in south Central Florida. Archbold Biological Station Report.

Steiner, T.M. 1983. Life History Note: *Hemidactylus garnoti* predation. Herpetol. Review 14(3):74.

Steiner. T.M., O.L. Bass, Jr., and J.A. Kushlan. 1983. Status of the eastern indigo snake in southern Florida National Parks and vicinity. South Florida Research Center Report SFRC-83/01. 25pp.

Steiner, T.M. and L. McLamb. 1982. Geographic Distribution: *Hemidactylus garnoti*. Herpetol. Review 13(1):25.

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Steiner, T.M. 1981. Geographic Distribution: *Pituophis melanoleucus mugitus*. Herpetol. Review 12(2):64.

Steiner, T.M. and O. L. Bass. 1980.Stauus of nesting loggerhead sea turtles in Everglades National Park. Unpublished South Florida Research Center Rept. Everglades National Park Research library.

In addition, I regularly contributed articles to *Earth Island Journal* (1987-98), co-write and edit Earth Island Institute's *Dolphin Alerts* (1986-1988), ¡Viva La Tortuga! Newsletter (1990-present), A Creek Runs Through Us (1198-present) and have written articles on environmental topics for: *In These Times, Animals' Agenda, Nicaraguan Perspectives, Outdoors West, EPOCA Update, World Rainforest Reporter*, etc.

Videos:

*Lat Journey For the Leatherback?*2004. (executive producer). Scheduled for broadcast on PBS's KCSM (Aug. 2005) and Link Satellite TV and numerous cable stations around the world.

Stranded: Ancient Sea Turtle Stranded in a Modern World. 1998. (co-wrote, executive producer). won Bronze medal National Educational Media Network Competition, and three awards at International Wildlife Film Festival. 1998

Turtle Excluder Devices (TEDs): Safeguarding Endangered Sea Turtles and Shrimp Fishing. 1995. (co-wrote, executive producer). won Best Educational Video. 18th International Wildlife Film Festival. 1995

Ancient Sea Turtles: The Last Voyage. 1993. (co-wrote, executive producer).

Grants and Awards:

Sea Turtle Restoration Project and Salmon Protection And Watershed Network (both of which I founded and direct) have received grants from (partial list): Sandler Supporting Foundation, State of California, Marin Municipal Water District, County of Marin, Packard Fdn., Pew Charitable Trusts, Educational Fdn. of America, Conservation, Food & Health Fdn., Compton Fdn., Sequoia Fdn., Goldman Fund, General Service Fdn., Patagonia, Oracle, Martin Fdn., Threshold Fdn., Ahimsa Fdn., Summerlee Fdn., Delano Fdn., Chrysalis Fdn.

"Steward of the Land Award" Sierra Club Marin Group, October 2000

"Certificate of Special Congressional Recognition" by Representative Lynn Woolsey, September 2000

"Outstanding Community Activism Award" Social Justice Center of Marin, September 2000

Sigma Xi Research Society, 1985, "Reproductive patterns of Everglades snakes."

Reader's Digest McGraff Student Fellowship, 1980, "The ecology of the endangered eastern indigo snake, *Drymarchon corais couperi."*

Professional Presentations (partial list):

The First International Marine Protected Areas Congress, Geelong, Australia 23-28 October 2005. NGO participation essential to guarantee the consolidation of the Cocos-Baulas Marine Biological Corridor, Costa Rica (Poster Presentation accepted). Given by R. Arauz with I. Naranjo.

Marin Environmental Forum October 2004. "The Evolution of an Effective Watershed Group: SPAWN, the Salmon Protection And Watershed Network."

Salmonid Restoration Federation Coho Confab August 2004. "Effective Strategies for Watershed Groups" and "Fish Rescue And Relocation: Why, What, When, and Where."

Public Interest Environmental Law Conference March 2004 (University of Oregon). "Brutal Bycatch: The Consequences of Modern Fishing Practices".

University of San Francisco Law School, International Trade Law Class. September 2002. "Sea Turtles, Shrimp and the WTO."

San Geronimo Jewish Community, Rosh Hashanah services, September 2001."Tikkun Olam" (Healing the World).

Sierra Club Marin Awards Banquet. October 2000.

Social Justice Center of Marin, Awards Banquet, September 2000

Twentieth Annual Symposium on Sea Turtle Biology and Conservation. 29 February- 4 March 2000, Orlando, FL. "Beyond TEDs: Protected Swimways for Sea Turtles (by Teri Shore and Todd Steiner)

Invited Participant, WTO Health and the Environment People's Tribunal. November 29, 1999. First United Methodist Church, Seattle, Washington. "The Cost of World Trade Rules to Endangered Sea Turtles, Local Communities and Democracy"

Invited Participant, International Forum on Globalization, November 25-27, 1998. San Francisco, CA. Panel entitled, "North - South Relations."

Invited Participant, Environmental Grantmakers Association 1998 Retreat, October 28-31, 1998. Houston, TX. Panel entitled, "Fisheries."

Invited Participant, United Nations Shrimp Tribunal, May 1, 1996, and NGO Strategy Meeting. "Shrimp Fishing, Sea Turtles and Local Communities."

XII Encuentro Interuniversitario Y II Internaticional para la Conservacion de las Tortugas Marinas, Mazunte, Oaxaca, MX, 12-16 June, 1995. "Trafico Illegal de Productos de Tortugas en Leon, Guanajuato. MX" (co-authored and presented by Juan Carlos Castro).

Thirteenth Annual Sea Turtle Symposium, Feb. 1993, Jekyl Island, Georgia. "International Implementation of TEDs Law PL 101-162 by the U.S. Government: Fact or Science Fiction?

Twelfth Annual Sea Turtle Symposium, Feb. 25-28, 1992, Jekyl Island, Georgia. "Turtle Excluder Devices: International Implementation: (poster session).

Tenth Annual Workshop on Sea Turtle Biology and Conservation (1990). "Without your help the olive ridley sea turtles of Mexico are on a rendezvous with extinction."

Invited lecturer, EPOCA forums. "Sustainable development and sea turtles." New College, San Francisco, 1989.

Long Marine Laboratory, U.C. at Santa Cruz, 1988, "The tragedy continues: The killing of dolphins by the tuna industry."

Invited participant at MONITOR meetings, 1988, "The tragedy continues: The killing of dolphins by the tuna industry" [and many similar presentations to the general public, high schools, television and radio interviews, etc.].

Invited participant at UNESCO's Wildlife in the Everglades and Latin American Wetlands Symposium, 1985, " The status and ecology of the reptiles and amphibians of the Long Pine Key region of Everglades National Park."

Joint meeting of the Society for the Study of Amphibians and Reptiles and Herpetologists'League, 1985, "A temperate zone fauna in the subtropics: The snakes of Everglades National Park."

Invited participant at Interpretive Training Program, Everglades National Park, 1985, "The ecology of the snakes and turtles of south Florida."

Recent Consultations:

Member, Lagunitas Creek Technical Advisory Committee, Marin Municipal Water District 2000-present

Invited participant: Towards the Conservation of Marine Species & Spaces of Common Concern in North America, March 24-26, 2004. Council on Environmental Cooperation workshop to develop the first North American Conservation Action Plans (NACAP) for the selected species of common concern (including leatherback turtle). .

Expert Witness, Coastside Habitat Coalition, 1997. Potential impacts of development on threatened red-legged frogs, endangered San Francisco Garter Snakes and salmonids at proposed development site at Cascade Ranch, San Mateo County, CA.

Pacifica Land Trust, CALTRANS and landowner, 1996, Habitat Assessment of Mori Point, Pacifica, CA for Endangered San Francisco Garter Snake and California Red-Legged Frog (discussions only).

City of Pacifica. March 1993. Habitat Restoration for San Francisco Garter Snake and Red-Legged Frog at quarry site in Pacifica, CA. (discussions only).

City of San Francisco Parks & Recreation Dept. 1990-1991. Habitat Enhancement of Laguna Salada, Pacifica CA. For the San Francisco Garter Snake and Red-Legged Frog. Sub-contracted by Wetlands Research Assoc. San Rafael, CA. Study and report (see publications list).

Kirby Canyon Landfill, Morgan Hill, CA. 1990-1991. Effectiveness of the Conservation Program for the Red-legged Frog (*Rana aurora draytonii*) at Kirby Canyon Landfill, 1990 and 1991. Studies and reports in 1990 and 1991.

Memberships:

Board of Directors, Tomales Bay Association, 2004-present

Board of Directors, Turtle Island Restoration Network, 1997-present, (President 1997-2001)

Board of Directors, San Geronimo Valley Cultural Center, 1997-1998

Chair, Creek Committee, San Geronimo Valley Planning Group, 1997-98

Steering Committee, Save the Valley Committee, 1997-98

Technical Advisory Committee, Marin Municipal Water District, Lagunitas Creek Sediment and Riparian Management Plan, 1997-present

Society for the Study of Amphibians and Reptiles, Herpetologists' League, Society for Conservation Biology,

Earth Island Institute Board of Directors (1989)

Personal:

Born 10 February 1957 in Jacksonville, Florida. Married with two children. Hobbies include traveling, hiking, photography, tropical fruits and hammocks.

Oct 2005

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit F

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANIMAL WELFARE INSTITUTE, et al.
Plaintiffs,

v.

BP PLC, et al.
Defendant.

DECLARATION OF MICHELLE SINNOTT

I, Michelle Sinnott, declare as follows:

1. I am a paralegal at the law firm of Meyer Glitzenstein and Crystal where I have been employed since June 12, 2006. I provide this statement based on my own personal knowledge.

2. I have performed a detailed search of the Federal Register from April 20, 2010 through the present and have been unable to find any applications for an incidental take permit filed by British Petroleum, or any of its subsidiaries or contractors. Out of caution, I also browsed the table of content section of the Federal Register from April 20, 2010 through the present to see if there were any applications to "take" endangered sea turtles in the Gulf of Mexico and still was unable to find any such applications.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 29th day of June 2010

Michelle Sinnott

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit G

Meyer Glitzenstein & Crystal
1601 Connecticut Avenue, N.W.
Suite 700
Washington, D.C. 20009-1063

Katherine A. Meyer
Eric R. Glitzenstein
Howard M. Crystal
Joshua R. Stebbins
William S. Eubanks II
Jessica Almy*
*admitted in NY

Telephone (202) 588-5206
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June 29, 2010

Sent by Electronic Mail, Fax, and Certified Mail

Honorable Kenneth Salazar
Secretary, Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Michael Bromwich
Director
Bureau of Ocean Energy Management, Regulation,
and Enforcement (formerly "Minerals Management Service")
1849 C Street, N.W.
Washington, D.C. 20240

Gary Locke
Secretary, Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

Eric Schwaab
Assistant Administrator
National Oceanic and Atmospheric Administration
Fisheries Service
1315 East West Highway
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BP America, Inc.
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Doug Suttles, Chief Operating Officer
BP Exploration & Production, Inc.
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1885 N. Third Street
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Attorney General for Mississippi
Walter Sillers Bldg.
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Greg Abbott
Attorney General for Texas
300 West 15th Street
Austin, Texas 78701

Bill McCollum
Attorney General for Florida
The Capitol, PL 01
Tallahassee, Florida 32399

Re: Notice Of Violations Of Law
Regarding Taking Of Endangered Sea Turtles
By Burning Oil In The Gulf Of Mexico

Dear Sirs:

Pursuant to the citizen suit provision of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1349(a)(2)(A), and the citizen suit provision of the Endangered Species Act, 16 U.S.C. § 1540(g), we hereby provide you with notice of multiple violations of the law by British Petroleum America, Inc. and British Petroleum Exploration & Production (hereinafter collectively referred to as "BP"), with respect to BP's unlawful "take" of endangered sea turtles in the Gulf of Mexico, as a result of certain oil containment activities that BP and its contractors

have undertaken in the Gulf which entail burning oil in areas that contain federally endangered sea turtles. This letter is written on behalf of the Animal Welfare Institute, the Center for Biological Diversity, the Animal Legal Defense Fund, and the Turtle Island Restoration Network. As explained below, the burning taking place in the habitat of endangered sea turtles, without an "incidental take permit" under Section 10 of the Endangered Species Act ("ESA"), 16 U.S.C. 1539(a)(1)(B), constitutes an unlawful "take" of these listed species, in violation of both Section 9 of the ESA, and BP's Deepwater Horizon lease with the United States which requires BP to abide by "all . . . applicable statutes and regulations," including the ESA. Moreover, because endangered sea turtles are currently being taken, our clients are invoking the emergency notice provision of OCSLA, 43 U.S.C. § 1349(a)(3).

A. Relevant Law

The United States, through the Department of Interior ("DOI"), leases the right to explore, develop, and produce the oil and gas contained within certain designated areas, subject to the requirements of the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.A. § 1331 et seq. Pursuant to OCSLA, BP has executed a lease with DOI that allows it to extract oil and gas at the Deepwater Horizon facility. That lease provides, inter alia, that the lease is "subject to the Act [OCSLA]; all regulations issued pursuant to the Act and in existence upon the Effective Date of [the] lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein; and all other applicable statutes and regulations." (Emphasis added).

The Secretary of DOI delegated his duties under OCSLA to the Director of the Minerals Management Service ("MMS"). See 30 C.F.R. § 250.101. Regulations issued by the MMS provide that "all operations" subject to that statute must be conducted pursuant to OCSLA, MMS regulations, "the lease or right-of-way, and other applicable laws, regulations, and amendments." Id. (emphasis added).

OCSLA also contains a broad citizen suit provision that provides that "any person having a valid legal interest which is or may be adversely affected may commence a civil action against any person, including the United States . . . for any alleged violation of any provision" of OCSLA "or any regulation" promulgated under the statute, "or the terms of any permit or lease issued by the Secretary" under OCSLA. 43 U.S.C. § 1349(a)(1).

The Endangered Species Act ("ESA") prohibits the "taking of any endangered species. 16 U.S.C. § 1538(a). The ESA defines the term "take" to include "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." 16 U.S.C. § 1532(19). The term "harm" includes an act which "kills or injures" an endangered or threatened animal. 50 C.F.R. § 17.3. The term "harass" includes an "intentional or negligent act or omission which creates the likelihood of injury [to an endangered or threatened animal] by annoying it to such extent as to significantly disrupt normal behavioral patters which include, but

are not limited to, breeding, feeding, or sheltering." 50 C.F.R. § 17.3.

Section 10(a)(1)(B) of the ESA authorizes the Secretary of Commerce, through the National Marine Fisheries Service ("NMFS") (for marine species) to issue a "permit" for any act that is otherwise prohibited by Section 9, when the taking of the species is "incidental" to an otherwise lawful activity – i.e., the take of the species is not the purpose of the activity. The Act provides that NMFS "shall publish notice in the Federal Register of each application for an exemption or permit which is made under [section 10]." 16 U.S.C. § 1539(c). It further provides that "[e]ach notice shall invite the submission from interested persons, within thirty days after the date of the notice, of written data, views or arguments with respect to the application . . .." Id.

B. Relevant Facts

BP's Deepwater Horizon rig and wells conduct offshore oil exploration and production in the Gulf of Mexico, and are subject to OCSLA, MMS regulations, and the lease entered into between BP and DOI.

On April 20, 2010, an explosion and fire erupted on the Deepwater drilling rig, which had just completed an exploratory well 52 miles from shore in 4,992 feet of water. Eleven members of the crew are missing and presumed dead. The fire destroyed the rig, which sank on April 22, 2010. The resulting oil spill – which continues to this day – has wreaked devastation on the Gulf of Mexico environment. Crude oil continues to flow from a broken pipe on the seafloor, has spread across thousands of square miles, and is damaging local communities, sensitive coastlines, and wildlife throughout the Gulf region.

Recently, in an effort to contain the spill, BP began using "controlled burns." This involves using shrimp boats to create a corral of oil by dragging together fire-resistant booms and then lighting the enclosed "burn box" on fire.

However, there are endangered sea turtles who live in the Gulf of Mexico and who are also being caught in the corrals being created by BP, including Kemp's Ridley sea turtles, which are listed as endangered, see 50 C.F.R. § 17.1, and are one of the rarest sea turtles on earth, Leatherback sea turtles, Green sea turtles, Loggerhead sea turtles, and Hawksbill sea turtles, which are also all endangered species. See 50 C.F.R. § 17.11. Because the turtles are being caught in the corrals, they are also being burned alive, or otherwise harmed or harassed, by BP's "controlled burns." Indeed, because many of the endangered sea turtles in this area have already been adversely affected by the oil spill, their ability to escape the area where the burning is occurring is greatly impaired.

We have checked the Federal Register and have found no indication that BP has ever applied for or obtained an "incidental take permit" pursuant to Section 10 of the ESA that would allow it to kill or otherwise harm or harass endangered species. Accordingly, it is apparent that

BP is engaged in the unauthorized "take" of these species.

C. Violations of the Law

Because BP is currently in violation of the "take" prohibition of the ESA, 16 U.S.C. § 1538(a), it is also in violation of its lease with the United States which requires BP to abide by all "applicable statutes and regulations," as well as MMS regulations which require BP to conduct its activities in compliance with "the lease . . . and other applicable laws [and] regulations." 30 C.F.R. § 205.101(a).

Our clients are membership organizations with members who live near and recreate in the Gulf of Mexico and enjoy observing and having the opportunity to observe endangered sea turtles, including Kemp's Ridley sea turtles, Leatherback sea turtles, Green sea turtles, Loggerhead sea turtles, and Hawksbill sea turtles. Therefore, because BP is currently violating its lease and applicable MMS regulations by engaging in activities that "take" these species – i.e. kill, harm, and harass them – please be on notice that our clients intend to take immediate action, as authorized by the citizen suit provision of OCLSA, 43 U.S.C. § 1349(c), to ask a court to enjoin BP from engaging in these flagrantly unlawful activities that pose an imminent harm to these endangered species, as well as the aesthetic interests of plaintiffs' members. In addition, unless BP halts all activities that unlawfully "take" these species, our clients also intend to pursue relief under the Endangered Species Act.

Sincerely,

Katherine A. Meyer

William S. Eubanks II

Pursuant to 28 U.S.C. § 1746, I verify that all of the factual information contained in this notice letter is true and accurate to the best of my knowledge.

Cathy Liss

Cathy Liss, President
Animal Welfare Institute

CC: Rupert Bondy (by email), General Counsel of BP

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit H

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701
(727) 824-5312 FAX 824-5309
http://sero.nmfs.noaa.gov

JUN 29 2007

F/SER32:KPB

Mr. Joseph Christopher
Regional Supervisor
Minerals Management Service
1201 Elmwood Park Boulevard
New Orleans, LA 70123-2394

Dear Mr. Christopher:

This constitutes the National Marine Fisheries Service's (NMFS) biological opinion (opinion) based on our review of the Minerals Management Service's (MMS) request for formal Endangered Species Act (ESA) section 7 consultation on the effects of the Five-Year Outer Continental Shelf Oil and Gas Leasing Program (2007-2012) in the Central and Western Planning Areas of the Gulf of Mexico. The biological opinion concludes that the five-year leasing program and its associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify designated critical habitat. However, NMFS anticipates incidental take of sea turtle species and has issued an Incidental Take Statement (ITS) pursuant to section 7 of the ESA. This ITS contains reasonable and prudent measures with implementing terms and conditions to help minimize this take.

We look forward to cooperation with you on a pile driving study and workshop, and our continued cooperation to ensure the conservation of our threatened and endangered marine species and designated critical habitat. We have enclosed other statutory requirements that may apply to this action, as well as additional information on NMFS' Public Consultation Tracking System to allow you to track the status of ESA consultations. If you have any questions, please contact Kyle Baker, fishery biologist, at (727) 824-5312, or by e-mail at kyle.baker@noaa.gov.

Sincerely,

Roy E. Crabtree, Ph.D.
Regional Administrator

Enclosures

cc: F - Lindow

File: 1514-22.O.1
Ref: F/SER/2006/02611

Cumulative effects may affect sea turtle species, Gulf sturgeon, sperm whales, and their habitats in the action area. The actions and their effects described as occurring within the action area in the *Environmental Baseline* are expected to continue in the future. We are not aware of any proposed or anticipated changes to these actions that would substantially change the impacts that each threat has on listed species considered by this biological opinion. Therefore, we expect the effects of these actions on listed species will continue at similar levels into the foreseeable future.

9 JEOPARDY ANALYSIS

This section considers the likelihood that the proposed five-year lease sale plan will jeopardize the continued existence of listed species in the wild that have been considered in the effects of the action. To *Jeopardize the continued existence of* is defined as "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species" (50 CFR 402.02). The effects of the action considered the effects of vessel strikes on sea turtles, the effects of seismic exploration on sperm whales, and the effects of accidental oil spills on listed species of sea turtles, sperm whales, and Gulf sturgeon resulting from the proposed five-year lease sale plan. The following jeopardy analysis first considers the effects of the action to determine if we would reasonably expect the action to result in reductions in reproduction, numbers, or distribution of these listed species. The analysis next considers the effects of the action in light of the status of the species, the environmental baseline, and cumulative effects, to determine whether the likelihood of survival of each species in the wild, and the likelihood of recovery of each species in the wild, would be appreciably reduced.

9.1 Effects of the Action on the Likelihood of Survival in the Wild

This section analyzes the effects of the action on the likelihood of survival of each species in the wild. In this context, the survival of the species refers to the continued existence of the species in the wild, and whether or not any anticipated take of that species will result in any reduction in reproduction, numbers, or distribution of that species that may appreciably increase a species' risk of extinction in the wild.

Likelihood of Loggerhead Sea Turtle Survival

In the following analysis, we demonstrate that although some short-term reduction in numbers and reproduction is expected, the anticipated take of loggerhead sea turtles will not appreciably increase the risk of extinction of this species in the wild.

The non-lethal take of 238 individuals by vessel strike and 111 individuals by oil spill over the 40-year lifetime of the action could potentially result in short-term affects on individuals. Sea turtles are generally known to not avoid oil slicks, and are often found near oil and gas operations. Changes in distribution, even short-term, are not expected from non-lethal takes from oil spills. However, interactions with vessels may elicit startle or avoidance responses and the effects of the proposed lease sales may result in

temporary changes in behavior of sea turtles (minutes to hours) over small areas, but are not expected to reduce the distribution of any loggerhead sea turtles in the action area. Lethal takes by vessel strike or oil spill may occur anywhere throughout the GOM. The removal of 119 individuals by vessel strike and 42 individuals by oil spill is anticipated over 40 years of the proposed action. Because all the potential takes are expected to occur anywhere in the action area and sea turtles generally have large ranges in which they disperse, no reduction in the distribution of loggerheads is expected from the take of these individuals.

Although changes in distribution will not occur, there is some potential for the reproductive ability of non-lethally taken turtles to be affected due to the presence of nesting beaches within reach of potential oil spills. For example, if a nesting beach was affected by an oil slick, nesting ability or hatchling survival could potentially be affected for that year, but the individual is expected to survive and return to unimpeded reproduction in subsequent years. Some long-term, non-lethal effects to hydrocarbon residues from spills and ingestion of tarballs may affect sea turtle physiology. In spite of these effects, it appears non-lethal, chronic exposure or repeated ingestion of oil is necessary for any long-term affects to be detectable, yet no effects on the reproduction or number of sea turtles from long-term exposure to residuals or tarball ingestions have been observed in the wild. Non-lethal takes by vessel strike aren't expected to have any measurable impact on the reproduction of numbers of loggerheads. The reaction to and injury incurred from vessel impacts would be dependent on the operational speed of the vessel, depth of the turtle, bow type, and other factors. The non-lethal takes may range from startle reactions to minor injury, and are expected to recover within an appropriate amount of time, depending on the magnitude of impact. Although the range of impacts of non-lethal takes are variable, all are expected to be fully recoverable such that no reductions in reproduction or numbers of loggerheads are anticipated.

The removal of 119 individuals by vessel strike and 42 individuals by oil spill (approximately 4 individuals annually), would result in an instantaneous, but temporary reduction in total population numbers. Sea turtles lethally affected by vessels and spilled oil may be juveniles or adults, with about 2 adults and 3 juveniles every 1.5 years, of which half those adults would be mature females (about 33 adult females over the 40-year lifetime of the lease sales). Thus, the action will result in a reduction of loggerhead numbers. Sea turtle mortality resulting from vessel interactions or spilled oil could result in the loss of reproductive value of an adult turtle. An adult loggerhead sea turtle can lay 3 or 4 clutches of eggs every 2 to 4 years, with 100 to 130 eggs per clutch. The annual loss of 1.5 adult females, on average, could preclude the production of thousands of eggs and hatchlings, of which a small percentage are expected to survive to sexual maturity. Thus, the death of a female eliminates an individual's contribution to future generations, and the action will result in a reduction in loggerhead reproduction. Below, we consider the population trends for loggerhead sea turtles and the effect that the anticipated reduction in numbers and reproduction has on the survival of the species.

Five northwestern Atlantic loggerhead subpopulations have been identified (NMFS SEFSC 2001). The most recent reviews show that only two loggerhead nesting beaches

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit I

Consolidated Fish and Wildlife Collection Report

Operational Period 68

DATE: June 27, 2010

To report injured or dead wildlife in the impact area call: 1-866-557-1401

This report covers the consolidated numbers reported through the report date from noon to noon.

These are the consolidated numbers of collected fish and wildlife that have been reported to the Unified Area Command from the U.S. Fish and Wildlife Service (USFWS), National Oceanic and Atmospheric Administration (NOAA), incident area commands, rehabilitation centers and other authorized sources operating within the Deepwater Horizon/BP incident impact area.

At this phase in the response, field-level staff will document all injured or dead fish and wildlife encountered in the impact area. This document reflects only the initial, field-level, evaluation and does not reflect a final determination of the cause of injury, or death. Not all of the injured or dead fish and wildlife reflected in these numbers were necessarily caused by the Deepwater Horizon/BP incident. Official designations of cause of death will be determined at a later date.

Part of the long-term assessment process is to carefully examine and determine the cause of death or injury for impacted fish and wildlife. Some fish and wildlife reported here have likely died or been injured by natural causes, not due to the oil spill. Due to the increased number of trained people evaluating the spill impacted areas, it is also likely that we will recover more naturally injured or dead fish and wildlife than normal.

Once found or captured, collected fish and wildlife are given an identifying number that will follow it throughout the evaluation process. Collected fish and wildlife are given an initial examination to search for broken bones, external oil or other injuries. As needed, this may be followed by a more thorough examination to search for less obvious injuries, such as oil in the mouth, throat or eyes. An additional step may include a partial or full necropsy (an autopsy for animals) to help determine the exact cause of death if possible.

*** These numbers are accurate to the best of our knowledge at the time the report was created. The numbers of injured and dead fish and wildlife, as well as the cause of injury or death, are not official until verified. The categories on this report -- visibly oiled, no visible oil or pending -- are not an official determination of cause of death.*

NOTE: It is normal for reported numbers to fluctuate between "visibly oiled," "no visible oil" and "pending." If staff are unable to make a determination at a field location, the number will be placed in the pending column and evaluated as soon as possible. Once a determination is made, the number will be moved from "pending" to the appropriate column.

	Consolidated #'s Collected Alive				Consolidated #'s Collected Dead				Consolidated #'s Total Collected				Consolidated #'s Released
Birds	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Total
Alabama	42	0	0	42	17	207	1	225	59	207	1	267	7
Florida	87	0	0	87	60	318	0	378	147	318	0	465	2
Louisiana	679	0	0	679	224	220	0	444	903	220	0	1123	168
Mississippi	7	0	0	7	8	65	8	81	15	65	8	88	0
Texas	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	815	0	0	815	309	810	9	1128	1124	810	9	1943	177

	Collected Alive				Collected Dead				Total Collected				Consolidated #'s Released
Sea Turtles	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Total
Alabama	2	2	0	4	2	5	65	72	4	7	65	76	1
Florida	2	9	1	12	0	0	43	43	2	9	44	55	0
Louisiana	2	4	0	6	4	2	86	92	6	6	86	98	0
Mississippi	0	21	1	22	0	75	143	218	0	96	144	240	2
Texas	0	0	0	0	0	0	0	0	0	0	0	0	0
On-Water	86	8	0	94	3	0	1	4	89	8	1	98	0
Total	92	44	2	138	9	82	338	429	101	126	340	567	3

Mammals*	Collected Alive				Collected Dead				Total Collected				Consolidated #'s Released
*** includes dolphins**	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Total
Alabama	1	0	0	1	0	3	2	5	1	3	2	6	0
Florida	1	2	0	3	0	1	0	1	1	3	0	4	1
Louisiana	0	1	0	1	2	29	0	31	2	30	0	32	0
Mississippi	0	0	0	0	1	10	2	13	1	10	2	13	0
Texas	0	0	0	0	0	0	0	0	0	0	0	0	0
On-Water	0	0	0	0	0	0	1	1	0	0	1	1	0
Total	2	3	0	5	3	43	5	51	5	46	5	56	1

Other Reptiles	Collected Alive				Collected Dead				Total Collected				Released
	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Visibly Oiled	No visible oil	Pending	Total	Total
Alabama	0	0	0	0	0	0	0	0	0	0	0	0	0
Florida	0	0	0	0	0	0	0	0	0	0	0	0	0
Louisiana	0	0	1	1	0	0	0	0	0	0	1	1	0
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0
Texas	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	0	0	1	1	0	0	0	0	0	0	1	1	0

END REPORT

Animal Welfare Institute v. BP America

Plaintiffs' Motion for a Temporary Restraining Order

Exhibit J

Oil and Sea Turtles

BIOLOGY, PLANNING, AND RESPONSE

National Oceanic and Atmospheric Administration • NOAA's National Ocean Service • Office of Response and Restoration

Oil and Sea Turtles

BIOLOGY, PLANNING, AND RESPONSE

August 2003

Gary Shigenaka, Technical Editor

Contributing Authors

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Florida Atlantic University

Gary Shigenaka, Rebecca Z. Hoff, Ruth A. Yender, and Alan J. Mearns
NOAA's National Ocean Service/Office of Response and Restoration/
Hazardous Materials Response Division

Cover photograph courtesy of Ursula Keuper-Bennett

National Oceanic and Atmospheric Administration • NOAA's National Ocean Service • Office of Response and Restoration

Chapter 5 Response Considerations for Sea Turtles

Rebecca Z. Hoff and Gary Shigenaka

Key Points

- Spill responders must consider sea turtle-related tradeoffs in several ways, depending on spill location, time of year, and species of turtle.
- Sea turtles are likely to be at greatest risk when they are aggregating, usually peaking around nesting and hatching periods, and when they are foraging in convergence zones.
- Spill response in sea turtle habitat uses standard techniques, but they are modified to accommodate unique features and sensitivities of sea turtle behavior and life history.
- Several aspects of sea turtle biology and behavior place them at particular risk, including lack of avoidance behavior, indiscriminate feeding in convergence zones, and inhalation of large volumes of air before dives.
- While more common as a management technique, intrusive intervention to remove turtles or nests should be considered a response measure of last resort.

The preceding chapters have shown that sea turtles are vulnerable to oil exposure by many different routes—primarily due to the unfortunate overlap of habitat utilization by turtles and the physical behavior of oil. Turtle habitats include fine-grain sand beaches (nesting), seagrass beds and coral reefs (foraging), and open water convergence zones and sargassum mats (developmental). These habitats are often the places where oil strands or aggregates, hence there is an enhanced potential for sea turtles to encounter spilled oil. Since we know that oil harms turtles, reducing exposure should be the focus of response actions. As Lutz (1989) noted, "the potentially harmful effects of an oil spill on sea turtles must clearly be taken seriously, and any strategy to prevent turtles from encountering the oil must be regarded as a preferred frontline defense."

However, while reducing or preventing turtles from encountering oil is the preferred, obvious, and logical strategy, it is not necessarily easy or even possible. No response action is 100 percent effective, but any reduction in oil exposure reduces the potential stress on threatened sea turtle populations. Spill response planners should thus ask the following questions related to sea turtles:

- What are the open water and shoreline response actions we might consider in the event of a spill in an area frequented by sea turtles?

- Given the habitat preferences and unique features of sea turtle life history, do we need to modify standard response practices to accommodate sea turtles and minimize the impact to their populations?
- How would we do this?
- Can we anticipate spill impacts to turtles well enough that contingency plans will operationally reflect what we know?

USFWS - U.S. Fish and Wildlife Service (U.S. Department of the Interior).

NOAA and the U.S. Fish and Wildlife Service (USFWS) share trustee resource responsibility under Section 7 of the Endangered Species Act to address any potential impacts of a spill response on sea turtles and their critical habitat. Area contingency planning must consider possible impacts to listed species from response activities and how to avoid or mitigate them. During an actual response, emergency consultations for Section 7 concerns would be held to consider specific response actions and how they might impact sea turtles. Figure 5.1 shows a schematic of how the consultation process works.

Section 7 consultation - requirement under the Endangered Species Act for federal agencies to address potential impacts of their actions on threatened species.

Responses to oil spills depend on the product spilled and the environment at risk. The general features of spill response equipment and strategies are described in other publications.[2] In this chapter, we provide some basic information on response activities that might be considered in sea turtle habitat.

Open-Water Response Options

The overlap of oil and habitat also implies that sea turtles may be at increased risk from response activities themselves. Some of these activities and their impacts are discussed below.

Mechanical Recovery Offshore

Spilled oil on water is contained and collected using equipment such as booms and skimmers.[3] At many spills, mechanical collection is relied upon as the primary on-water cleanup method, but experience has shown that mechanical recovery alone cannot adequately deal with large spills offshore. Prior to the *Exxon Valdez* oil spill, average mechanical recovery effectiveness was typically estimated at around 10 to 20 percent, although it may be up to an average of about 30 percent now (PMG, Inc. 2001). Weather and ocean conditions, the nature of the oil, and other factors can limit the effectiveness of mechanical recovery. For example, containment booms do not perform well in heavy waves, in shallow waters, or in swift currents—an estimated 58 percent of all spills occur in water moving over 1 knot (PMG, Inc. 2001). Even under ideal circumstances, mechanical recovery may not successfully control large spills or oil that has spread over large areas. In such cases, alternative open-water response techniques, such as dispersant application or *in-situ* burning of oil on water, may significantly reduce the time that oil remains on the surface, the formation of tarballs, and the risk that oil will reach shore.

***In-situ* burning - response technique in which spilled oil is burned in place.**

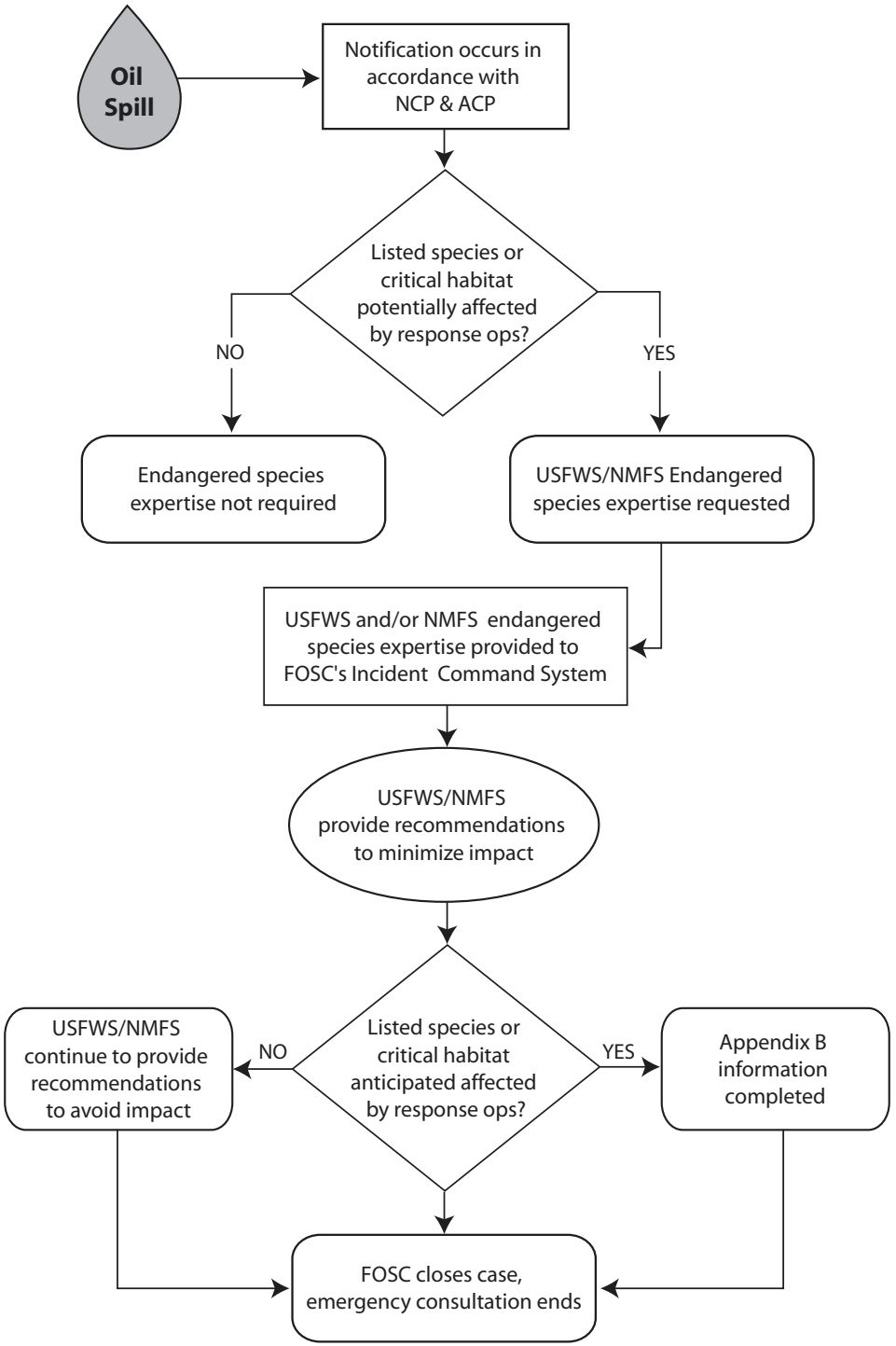

Figure 5.1 Schematic of Section 7 endangered species consultation process (from U.S. Coast Guard 2002).

NCP- National Contingency Plan.

ACP- Area Contingency Plan.

FOSC- Federal On-Scene Coordinator.

The timing of a spill would define the threat to turtles imposed by boom deployment at a particular location. A spill at nesting or hatching time could have severe consequences to a turtle population. At other times, impacts might be minimal. In either case, consultation with resource experts and careful monitoring for turtle activity is advisable throughout a spill response in order to consider impacts of proposed response strategies on nesting and hatching events.

Offshore Dispersant Application

Chemical dispersants contain surfactants that reduce the surface tension of oil, enabling the oil layer to be broken into fine droplets that mix into the water column and are dispersed by currents. Most oils will, to some degree, physically disperse naturally from agitation created by wave action and ocean turbulence; chemical dispersants are designed to enhance this natural process. Rapidly dispersing oil early in a spill reduces the oil on the water surface and thus the amount of oil available to be driven ashore by winds. In contrast, oil droplets dispersed in the water column are unlikely to strand ashore because they are driven by currents, not winds. An added benefit of dispersing oil is that dispersants inhibit the formation of tarballs, a known hazard for turtles.

Dispersants are typically sprayed directly onto floating oil as fine droplets, either from aircraft or boats, generally within the first several hours after a spill. Under appropriate conditions, lighter fuel to medium crude oils can be easily dispersed; heavier bunker oils much less so. Weathering increases oil viscosity and may cause formation of water-in-oil emulsions, which are less amenable to dispersion. Among the advantages of dispersants are that they can treat large areas of spilled oil quickly and effectively before the slick can spread significantly; can be applied in rougher weather and sea conditions than mechanical recovery methods; and can be used in areas too remote to deploy mechanical protection and cleanup methods.

Ideally, chemical dispersants should be applied in well-mixed waters, where the dispersed oil plume can be diluted to low levels before reaching productive nearshore waters. After dispersion into the water column, spreading or diluted oil becomes three-dimensional, and concentrations drop rapidly. The highest concentration of chemically dispersed oil typically occurs in the top meter of water during the first hour after treatment. Concentrations of more than 10 parts per million (ppm) of dispersed oil are unlikely below 10 m; even within 1 m, concentrations rarely exceed 100 ppm. The continuous mixing and dilution of open waters are sufficient to rapidly reduce these concentrations; field studies indicate that they decline to nearly undetectable or background levels within several hours of application. Dispersed oil droplets break down by natural processes such as biodegradation. The chemical dispersants applied, like the oil droplets, are diluted by diffusion and convective mixing, and readily biodegrade. Laboratory

ppm - parts per million.

studies indicate that dispersed oil biodegrades much more rapidly than undispersed oil (within days to weeks).

Untreated surface oil can recoalesce in surface convergence zones even after it has spread to a very thin layer, and surfactants help to prevent this reoccurrence. Since juvenile turtles aggregate along convergence zones, using dispersants should reduce their exposure to oil. Dispersants also reduce adherence of oil droplets to solid particles and surfaces, and may reduce the tendency of oil to stick to turtle skin.

Unfortunately, little is known about the effects of dispersants on sea turtles, and such impacts are difficult to predict in the absence of direct testing. While inhaling petroleum vapors can irritate turtles' lungs, dispersants can interfere with lung function through their surfactant (detergent) effect. Dispersant components absorbed through the lungs or gut may affect multiple organ systems, interfering with digestion, respiration, excretion, and/or salt-gland function—similar to the empirically demonstrated effects of oil alone.

Although early dispersants contained components that were highly toxic to aquatic life, toxicity is significantly reduced in modern formulations. For fish and other species that have been tested, dispersed oil is generally no more toxic than undispersed oil. Lutz created a very general framework for considering toxicity of oil dispersants to sea turtles (Figure 5.2) based on known effects of oil and hypothesized impacts of chemical dispersants, but direct experimental evidence to support the framework has not been generated.

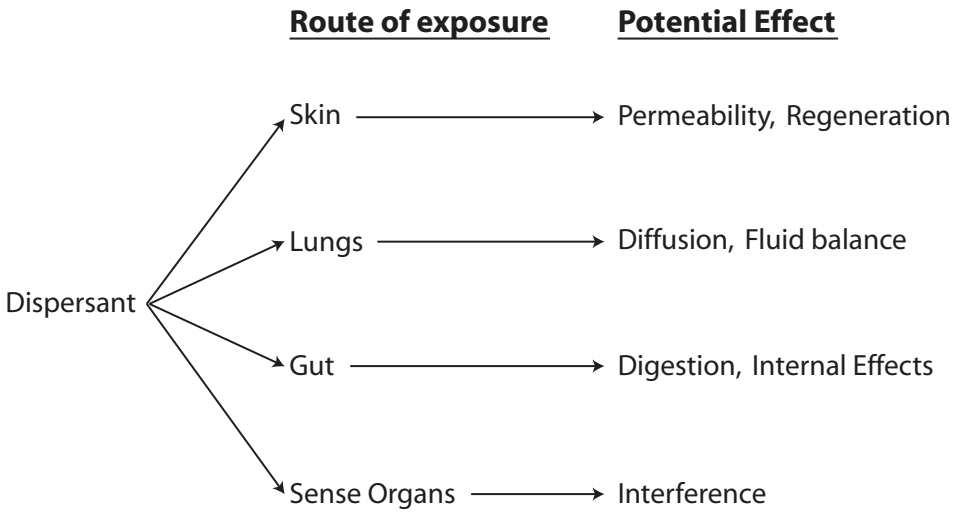

Figure 5.2 Conceptual framework for considering chemical dispersant effects to sea turtles (adapted from Lutz 1989).

As a general practice, surveying to ensure that no marine mammals or sea turtles are present can minimize the likelihood of direct contact with dispersant chemicals. Spraying might also be discouraged where turtles congregate, such as sargassum mats and convergence zones. But even with the disadvantages of dispersants, the consequences of sea turtles coming into contact with and ingesting floating oil (see Chapter 4) may argue for using their use to retard the formation of tarballs.

If applied appropriately offshore, chemical dispersants could be an effective tool for protecting turtles and the nearshore habitats they utilize. Possible effects on organisms in the water column and tradeoffs among resources at risk (such as coral reefs and seagrass beds) should be considered in spill response planning and decision-making.

Most regions that are home to turtle nesting sites and foraging areas have dispersant contingency plans in place. These plans have designated, specific pre-approval zones and guidelines for dispersant use, facilitating the decision-making process should a spill occur.[4]

Offshore *In-situ* Burning

In-situ burning is a response technique in which spilled oil is burned in place. Under appropriate conditions, *in-situ* burning can remove large quantities of oil quickly and efficiently. Although this method has been effectively used for certain shoreline habitats (marshes, for example), consideration here is limited to using it on the open ocean.

In a typical *in-situ* burn in open, marine waters, oil is collected within a fire-resistant, U-shaped boom, towed away from the main slick, and ignited. The boom is towed slowly to maintain the oil toward the back end—at the bottom of the U—and at a sufficient thickness to sustain the burn. Most crude and refined oils will burn on water if the oil layer is at least a few millimeters (more than 2 to 3 mm) thick. The technique is less effective if winds are blowing harder than 20 knots and seas are higher than a half to 1 m, impeding the operator's ability to control the boom and maintain the necessary oil thickness. *In-situ* burning can be used simultaneously with other oil spill response techniques or when other techniques are not feasible. The response window can last several days, although burn efficiency is reduced by significant emulsification, evaporation of lighter and more easily burned volatiles, and spreading of spilled oil. Consequently, burning at sea is most effective early in a spill response.

A major potential advantage of *in-situ* burning is that it can remove large quantities (over 90 percent at maximum efficiencies) of contained oil, potentially exceeding the maximum efficiencies of mechanical and chemical response methods. Burning also requires less equipment and fewer personnel and produces less waste for disposal than other cleanup techniques. In remote areas and near sensitive habitats, where minimizing

disturbance is desirable, *in-situ* burning can offer significant logistical and environmental advantages.

Potential disadvantages of *in-situ* burning include production of highly visible smoke and other combustion by-products. Using this method in highly populated areas may be restricted due to concerns about the effect of fine particulate material in the smoke on human respiratory health. Special Monitoring of Applied Response Techniques (SMART) protocols were developed by the U.S. Environmental Protection Agency, the U.S. Coast Guard, NOAA, and the Agency for Toxic Substances and Disease Registry (ATSDR) to monitor particulate levels and provide real-time feedback to responders when burning is conducted near population centers. Such feedback helps responders determine levels at which smoke does not pose human health risks.

ATSDR - Agency for Toxic Substances and Disease Registry, U.S. Department of Health and Human Services.

A practical limitation of burning is that the specialized boom that is used is expensive and not widely stockpiled around the coasts. Despite its limitations, the general consensus among researchers is that *in-situ* burning has a definite role in certain inshore situations (e.g., oil trapped in marshes), in ice, and where oil is being continuously released from a stationary source such as a well blowout (PMG, Inc. 2001).

Presumably, any *in-situ* burning would involve surveying the immediate area for turtles before proceeding. During a 1993 full-scale test of *in-situ* burning off the coast of Newfoundland, wildlife surveillance and hazing teams reportedly spotted a sea turtle in the test area prior to the burn ignition, but there was no indication of adverse effect to it or any other wildlife. Obviously, *in-situ* burning would be an unlikely response choice where sea turtles aggregate—although in such an area, the impacts of prolonged or heavy exposure to untreated surface oil would be evaluated against the risks. The ability of response crews to sufficiently control and steer burning oil away from turtles in the water would be a major factor. Although a burn operation is fairly localized, whether sea turtles would avoid it is not known.

While the effects of smoke on sea turtles in particular have not been studied, at least one physiologist asserts that "lungs are lungs" and the effects should be similar for all air-breathing vertebrates. Evaluating human health risk from smoke plumes has focused on inhalation of very fine particulate material (termed PM10, or particulate material less than 10 microns in diameter) as the greatest risk factor. Fine particles can become lodged deep within the alveoli of the lungs, compromising respiratory capacity. Because turtles must surface regularly to breathe, they are at risk from inhaling gases and particulates present in a plume near the surface. Another hazard is that after a burn, a small percentage of the original oil volume remains as a taffy-like residue, which must be collected and disposed of properly. Since turtles are known to ingest tarballs and other solid materials they encounter, it is important that these residues be removed. In addition, under certain circumstances burned oil can sink, so operational personnel should evaluate the potential for burn residues to be denser than seawater. If this is likely to

PM10 - particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

happen near sea turtle habitat, *in-situ* burning would not be appropriate because sea turtles might try to eat the submerged oil residues.

Laboratory and field studies of potential toxicity effects indicate situ burning does not have adverse effects on the underlying water column beyond those associated with unburned oil. Almost all heat is directed upward and outward, so heat absorbed by the underlying water is generally negligible, particularly where currents continuously exchange water beneath the burn.

Figure 5.3 portrays a decision flowchart for *in-situ* burning that illustrates how wildlife considerations are factored into the overall framework for evaluating use of the technique.

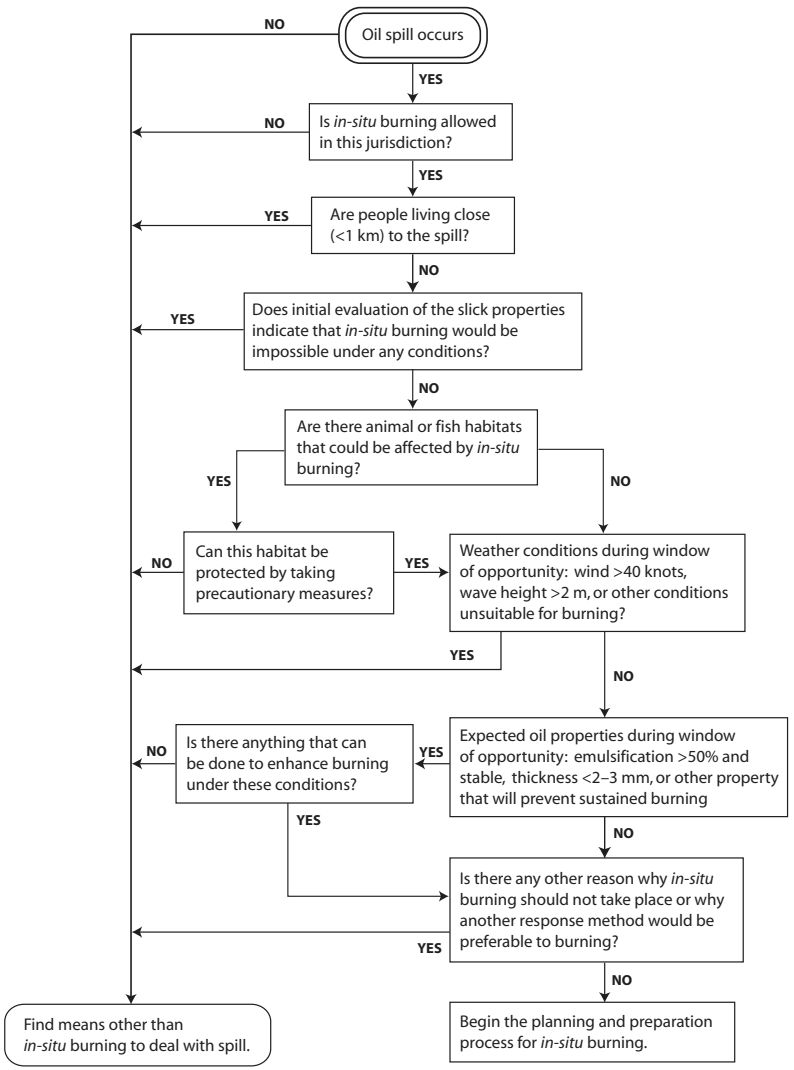

Figure 5.3 Decision flowchart for evaluating in-situ burning as a spill response option (adapted from U.S. Coast Guard and Environment Canada 1998).

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.	)	
	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	Civ. No. 10-1866
	)	
	)	
BP PLC, et al.,	)	
	)	
Defendants.	)	

[PROPOSED] ORDER

Upon consideration of plaintiffs' motion for a temporary restraining order, the supporting memorandum and Declarations and Exhibits, and the replies thereto, it is this Day of , 2010

ORDERED that the motion is granted, and it is further

ORDERED that defendants immediately modify their oil containment activities in the Gulf of Mexico to insure, to the greatest degree possible, that they are not "taking" any endangered sea turtles, as that term is defined in the Endangered Species Act, 16 U.S.C. § 1532(19), and that statute's implementing regulations, 50 C.F.R. § 17.3, unless and until defendants obtain an "incidental take permit" under Section 10 of the ESA, 16 U.S.C. § 1539(a)(1(B). Such measures shall include, but not be limited to the following:

(1) hiring more personnel to look for and remove endangered turtles from the oil corrals or "burn boxes" that are used by BP to collect the spilled oil that is going to be burned (including by requiring a qualified observer on every ignitor boat);

(2) adopting an established protocol for turtle observation and rescue that, inter alia, requires that no burn commence unless and until a qualified observer is fully satisfied that no sea turtles are present within a particular burn box;

(3) immediately cleaning and relocating any turtles that are discovered to an environment deemed safe by qualified scientists and/or turtle rescue professionals; and

(4) implementing alternative oil containment strategies, such as skimming and surface capture, where dense concentrations of sea turtles exist (such as areas of dense sargassum grass where turtles are known to congregate) to reduce the risk of harm to sea turtles; and it is further

ORDERED that this injunction shall remain in place until further order of this Court.

_____
United States District Judge

.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 10-1866
	)	
BP PLC, et al.,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

Pursuant to Local Rule 65, and Rule 65 of the Federal Rules of Civil Procedure, undersigned counsel certifies that he personally has made all efforts possible under the circumstances to provide actual notice of when plaintiffs intend to apply for a temporary restraining order from the Court, and further has furnished the application for a temporary restraining order and all other pertinent papers to defendants' attorneys. Undersigned counsel transmitted the attached email to defendants' counsel (Rupert Bondy, General Counsel for BP; Don Haycraft, Liskow & Lewis; and Thomas Milch, Arnold & Porter), indicating the date that the application will be filed, and attaching all pertinent documents.

/s/ William S. Eubanks II
William S. Eubanks II
(D.C. Bar No. 987036)
(motion for pro hac vice pending)

Meyer Glitzenstein & Crystal
1601 Connecticut Ave., N.W.
Suite 700
Washington, D.C. 20009
(202) 588-5206

Dated: June 30, 2010

This message was sent with high importance.
Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Bill Eubanks

From: Bill Eubanks **Sent:** Wed 6/30/2010 2:37 AM
To: Rupert.Bondy@uk.bp.com; dkhaycraft@liskow.com; Thomas.Milch@aporter.com
Cc:
Subject: Courtesy copy of Complaint, TRO Papers, and Exhibits to be filed Wednesday
Attachments: Final Complaint.pdf(35KB) Final TRO Motion.pdf(25KB) Final TRO Memo.pdf(51KB) TRO Ex. A.pdf (445KB) TRO Ex. B.pdf(136KB) TRO Ex. C.pdf(108KB) TRO Ex. D.pdf(19KB) TRO Ex. E.pdf(60KB) TRO Ex. F.pdf(40KB) TRO Ex. G.pdf(559KB) TRO Ex. H.pdf(201KB) TRO Ex. I.pdf(159KB) TRO Ex. J.pdf(357KB) Final TRO [Proposed] Order.pdf(8KB)

Mr. Bondy, Mr. Milch, and Mr. Haycraft,

As a courtesy, I am following up on the discussion I had earlier today with Mr. Milch and Mr. Haycraft regarding the emergency relief that we will be seeking against BP America, et al. after filing suit in federal district court in New Orleans on Wednesday. We will be seeking a temporary restraining order to compel immediate compliance with the terms of BP's lease and various federal environmental laws -- more detailed information can be found in the attached materials. Attached to this email are the complaint, Motion for TRO, Memorandum Supporting the Motion for TRO, Exhibits to the Memorandum, and a proposed order. In addition to providing defendants and their counsel with this early copy of the complaint and TRO papers as a courtesy, this electronic transmission also constitutes the furnishing of all pertinent papers to BP's counsel in compliance with Local Rule 65 and Rule 65 of the Federal Rules of Civil Procedure.

Please note that Exhibit D, as attached, is in near-final form but the version to be filed tomorrow will be the final signed version currently in my possession (which, due to technical difficulties, could not be provided tonight and was thus provided in near-final form missing only the declarant's signature). Please do not hesitate to contact me tomorrow if you have any questions or wish to discuss this matter further -- the easiest way to reach me tomorrow will be by cell phone at (864) 590-9895.

Sincerely,

William S. Eubanks II, Esq.
Meyer Glitzenstein & Crystal
1601 Connecticut Avenue NW, Suite 700
Washington, DC 20009
(202) 588-5206
(202) 588-5049 (fax)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, et al.,	)	
	)	
	)	
Plaintiffs,	)	
	)	
	)	
v.	)	Civ. No. 10-1866
	)	
	)	
BP America, et al.,	)	
	)	
Defendants.	)	

NOTICE OF HEARING

Please take notice that the undersigned counsel will bring Plaintiffs' Motion for Temporary Restraining Order for hearing before Honorable Carl Barbier on the 30th day of June, 2010, at 9:30 a.m., or as soon thereafter as counsel can be heard.

Respectfully submitted,

/s/ William S. Eubanks II
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(motion for pro hac vice pending)
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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing notice of hearing via CM/ECF with the Clerk of Court of the United States District Courthouse for the Eastern District of Louisiana, 500 Poydras Street, New Orleans, Louisiana, which will deliver copies to all counsel of record.

/s/ Jason W. Burge