

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

SIERRA CLUB
2101 Webster Street, Suite 1300
Oakland, CA 94612,

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

FRIENDS OF THE EARTH
1101 15th Street, NW
11th Floor
Washington, DC 20005,

and

TURTLE ISLAND RESTORATION
NETWORK
9255 Sir Francis Drake Boulevard,
Olema, CA 94950,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Montgomery County, MD 20910,

and

CHRIS OLIVER, in his official capacity as
ASSISTANT ADMINISTRATOR for
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
1315 East-West Highway
Silver Spring, Montgomery County, MD 20910,

Defendants.

No. _____

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case challenges the National Marine Fisheries Service's (NMFS) issuance of an arbitrary and capricious programmatic biological opinion governing federally authorized oil and gas activities in the Gulf of Mexico, projected over 50 years, in violation of the Endangered

Species Act (ESA) and Administrative Procedure Act (APA).

2. More than two dozen species listed as either threatened or endangered under the ESA inhabit the Gulf of Mexico. They include the critically imperiled Gulf of Mexico Bryde's whale, with less than 50 individuals remaining, and the Kemp's ridley sea turtle, the most endangered sea turtle in the world.

3. The Gulf is also the epicenter of the nation's offshore oil and gas industry, with tens of thousands of active wells, thousands of production platforms, tens of thousands of miles of underwater pipelines, and hundreds of thousands of vessel trips taking place annually.

4. The oil and gas operations harm threatened and endangered species, as well as the broader Gulf of Mexico ecosystem, in a variety of ways, on a daily basis. The harms sometimes become catastrophic, as when the Deepwater Horizon oil drilling rig exploded in 2010. The disaster killed 11 crew members and caused 4.9 million barrels (more than 200 million gallons) of oil to spew underwater for 87 days, spreading throughout the Gulf of Mexico and coating wildlife and ecosystems. The spill killed countless marine mammals, sea turtles, fish, birds, and other wildlife. Scientists continue to discover new, long-term harms from the spill to this day.

5. The ESA requires each federal agency, in consultation with the relevant federal wildlife service, to ensure that its actions are not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify the critical habitat of any such species. This consultation process is a central feature of the ESA's framework for protecting endangered and threatened species.

6. The Department of the Interior (Interior) implements an oil and gas leasing and development program in federal waters of the Gulf of Mexico pursuant to the Outer Continental Shelf Lands Act (OCSLA). Because the program has numerous effects on threatened and

endangered species, Interior has engaged in ESA consultation with NMFS at various points in recent decades—completing the most recent previous biological opinion in 2007.

7. In the immediate wake of the Deepwater Horizon disaster, Interior and NMFS recognized that the spill called into question the previous analyses of oil spill risks in the 2007 biological opinion and significantly altered the statuses of ESA-listed species and critical habitats in the Gulf of Mexico. The agencies reinitiated ESA consultation later in 2010.

8. Nearly ten years later, NMFS finally completed consultation and issued a new programmatic biological opinion (the BiOp)—the subject of this suit. The BiOp, however, completely fails to address the two primary reasons the agencies reinitiated consultation. NMFS did not account for post-Deepwater Horizon population or habitat changes when assessing the effects of the program on ESA-listed species and habitats. And the agency once again arbitrarily assumed—as it did in 2007—that an extremely large oil spill will not result from Interior’s oil and gas program. The BiOp is riddled with other inadequate analyses and flaws that violate the ESA. For example, NMFS ignored sublethal harms from the program and the increasing effects of climate change when assessing jeopardy, and failed to consider how the program will impede the recovery of species (as opposed to threatening their survival). And the BiOp’s incidental take statement and reasonable and prudent alternatives fail to meet what the ESA legally requires.

9. Plaintiffs therefore ask this Court to declare that the BiOp is arbitrary and capricious and contrary to law, in violation of the APA and ESA, and to vacate and remand the BiOp to NMFS with an order to prepare a sufficiently protective biological opinion within six months.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 704 (APA).

11. Venue properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because NMFS's headquarters are located in this District and a substantial part of the events and omissions which gave rise to this action occurred in this District.

12. This Court has authority to grant Plaintiffs' requested relief pursuant to the APA, 5 U.S.C. § 706(2), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

PARTIES

13. Plaintiff SIERRA CLUB is a not-for-profit organization dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club is one of the oldest and largest conservation groups in the country, with about 800,000 members nationally in 67 chapters in all 50 states, the District of Columbia, and Puerto Rico; including over 17,000 members in Sierra Club's Maryland Chapter. Sierra Club members use the public lands and waters throughout the Gulf of Mexico, including those that would be affected by oil and gas activities, for quiet recreation, aesthetic pursuits, and spiritual renewal. Sierra Club members further observe and enjoy wildlife found in the Gulf that may be harmed by oil and gas activities, including threatened and endangered species such as sperm whales and green sea turtles. Sierra Club brings this action for itself and as representative of its members.

14. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the Center) is a nonprofit

corporation that maintains offices across the United States and in Baja California Sur, Mexico. The Center advocates for the protection of threatened and endangered species and their habitats through science, policy, and environmental law. The Center's mission also includes protecting air quality, water quality, and public health. The Center's Oceans Program focuses specifically on conserving marine ecosystems, and seeks to ensure that imperiled species such as marine mammals, corals, and sea turtles are properly protected from destructive practices in our oceans. The Oceans Program also works to protect coastal communities from the air pollution, water pollution, and other impacts that result from such practices. In pursuit of this mission, the Center has been actively involved in protecting the Atlantic, Gulf of Mexico, California, and Alaska coasts from the harmful impacts of offshore oil and gas drilling. The Center has more than 81,800 members, including members who live and recreate throughout the Gulf of Mexico and Atlantic coast. The Center brings this action on behalf of itself and as representative of its members.

15. Plaintiff FRIENDS OF THE EARTH is a nonprofit organization with offices in Berkeley, California, and Washington, D.C. For more than 50 years, it has championed the causes of a clean and sustainable environment, protection of the nation's public lands and waterways, and the exposure of political malfeasance and corporate greed. Friends of the Earth's Oceans and Vessels Program works to fight industrialization of the ocean in all its forms, and has won regional, national, and international limits on air, water, and oil pollution from cruise ships, cargo ships, oil tankers, ferries, and recreational watercraft. Friends of the Earth has more than 127,000 members, including members who live and recreate along the coastlines of the Gulf of Mexico and the Atlantic seaboard. Friends of the Earth brings this action for itself and as representative of its members.

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