

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

<p><b>NATURAL RESOURCES DEFENSE COUNCIL INC., <i>et. al.</i></b></p>	)	
	)	
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 2:10-cv-01882</b>
	)	
<b>S.M.R. JEWELL, Secretary of the Department of the Interior, <i>et. al.</i></b>	)	<b>SECTION “A”</b>
	)	
<b>Defendants,</b>	)	<b>JUDGE JAY C. ZAINEY</b>
	)	
<b>and</b>	)	<b>MAGISTRATE JOSEPH C. WILKINSON</b>
	)	
<b>AMERICAN PETROLEUM INSTITUTE, <i>et al.</i></b>	)	
	)	
<b>Intervenor-Defendants.</b>	)	
	)	

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**SETTLEMENT AGREEMENT**

Plaintiffs (Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club), Federal Defendants ((S.M.R. Jewell, Secretary of the Department of the Interior; the Bureau of Ocean Energy Management (“BOEM”); and Tommy Beaudreau, Director, BOEM), and their successors), and Intervenor-Defendants (American Petroleum Institute, International Association of Geophysical Contractors, Independent Petroleum Association of America, U.S. Oil and Gas Association, and Chevron U.S.A., Inc.), collectively the “Parties,” by and through undersigned counsel, enter into the following Settlement Agreement (“Agreement”) for the purpose of resolving the above-captioned litigation.

**I. DEFINITIONS**

For purposes of this Agreement only, the terms listed below are defined as follows:

**A. “Deep Penetration Seismic Surveys”**

“Deep Penetration Seismic Surveys” means seismic exploration and development surveys in the Gulf of Mexico, as defined in BOEM’s 2004 Programmatic Environmental Assessment (“PEA”) challenged in Plaintiffs’ Complaint in the above action, excluding the following types of surveys: deep-tow or autonomous underwater vehicle side-scan sonar surveys, electromagnetic surveys, geological and geochemical sampling, remote sampling, vertical seismic profiling (*i.e.*, borehole surveys), high-resolution site surveys that are intended for pipeline emplacement, and any on-lease seismic activities that do not require a permit from BOEM under 30 C.F.R. Part 551, such as high-resolution site surveys that are intended for drilling rig and platform emplacement.

**B. BOEM’s Marine Mammal Protection Act (“MMPA”) Application**

“BOEM’s MMPA Application” means either (1) BOEM’s pending MMPA application described in 76 Fed. Reg. 34656 (June 14, 2011) (“Pending Application”) or (2) any revised application submitted by BOEM to the National Marine Fisheries Service (“NMFS”) that is substantively the same in scope as the Pending Application.

**C. “Final Action” With Respect to BOEM’s MMPA Application**

“Final Action” with respect to BOEM’s MMPA Application means either: (1) a final decision by NMFS denying BOEM’s MMPA Application; (2) BOEM’s withdrawal of the Pending Application or any revision thereof, unless a revised application that is substantively the same in scope as the Pending Application is submitted to NMFS within 14 days after the Pending Application or any revision thereof is withdrawn; or (3) NMFS’s issuance of an MMPA take authorization in response to BOEM’s MMPA Application, preceded or accompanied by (a) a biological opinion or “not likely to adversely affect” concurrence letter from NMFS concluding

consultation pursuant to Section 7(a)(2) of the Endangered Species Act (“ESA”) and (b) an Environmental Impact Statement (“EIS”)/Record of Decision (“ROD”) or Environmental Assessment (“EA”)/Finding of No Significant Impact (“FONSI”) prepared pursuant to the National Environmental Policy Act (“NEPA”).

**D. “Plaintiffs’ Areas of Concern”**

“Plaintiffs’ Areas of Concern” refers to the following four areas: the De Soto Canyon, defined as limited to the area bounded by the 200 meter isobath to the north, the 28 degree latitude line to the south, the 2000 meter isobath to the west, and the 85 degree longitude line to the east; the Mississippi Canyon, defined as limited to the area bounded by the 200 meter isobath to the north, the 2000 meter isobath to the south, the 90 degree longitude line to the west, and the 88 degree longitude line to the east; coastal waters shoreward of the 20 meter isobath; and an area west of the Florida Keys and Tortugas, defined as limited to the area bounded by the 200 meter isobath to the north, the 24 degree latitude line to the south, the 83 degree 30 minute longitude line to the west, and the 81 degree 30 minute longitude line to the east. A map indicating these four areas is attached as Exhibit 1; however, in the event of any conflict between the map and the boundaries defined in this paragraph, the defined boundaries control.

**E. “Effective Date”**

The “Effective Date” refers to the date upon which this Agreement becomes effective. This Agreement shall become effective only when both of the following conditions have been met: (1) the Agreement is executed by an authorized representative of each party; and (2) the Court enters an Order, substantively identical to the proposed order attached as Exhibit 2, approving the Agreement and Staying the litigation in accordance with the terms of the Agreement.

**F. “Stay”**

The “Stay” refers to the stay of proceedings described in Section II below resulting from the entry of the Order described in the above definition of Effective Date.

**G. “Encourage or Assist”**

“Encourage or Assist” refers to the instigation or material support of specific lawsuits or formal administrative actions, and does not include any other activities, such as making public statements about the impacts or regulation of seismic surveys in the Gulf of Mexico, or the filing of administrative comments on BOEM’s MMPA Application or on individual permits pursuant to notice and comment provisions in the Administrative Procedure Act and other statutes.

**II. STAY OF PROCEEDINGS**

**A.** All proceedings in this action shall be stayed for 30 months from the Effective Date or until Final Action occurs, whichever occurs first, except as provided in paragraphs II.D, II.E, and II.H below. Federal Defendants shall make their best effort to facilitate completion of Final Action on BOEM’s MMPA Application within 30 months of the Effective Date.

**B.** During the Stay, and except as provided in paragraphs II.D and II.E below, no Plaintiff shall file or fund any lawsuit or formal administrative action asserting any of the following claims: (1) a claim against NMFS alleging unreasonable delay in processing, or failure to act upon, BOEM’s MMPA Application; (2) a claim concerning seismic surveys challenging the 2004 PEA referenced in the Complaint, the June 29, 2007 Biological Opinion on the Five-Year (2007-2012) Outer Continental Shelf Oil and Gas Leasing Plan for the Western and Central Planning Areas of the Gulf of Mexico (Ref. F/SER/2006/02611), or any other existing programmatic document to the extent that they are related to approval of Deep Penetration Seismic Surveys; (3) a claim challenging a decision by Federal Defendants to issue a

permit for conducting a seismic survey in the Gulf of Mexico, including but not limited to Deep Penetration Seismic Surveys; or (4) a claim challenging an action by any permittee implementing a permit to conduct a seismic survey, including but not limited to Deep Penetration Seismic Surveys, in the Gulf of Mexico (collectively, "Prohibited Claims by Plaintiffs"). Nothing in this paragraph precludes Plaintiffs (a) from continuing litigation challenging Lease Sales 218 and 216/222 in *Oceana v. BOEM*, Case No. 1:12-cv-00981 (D.D.C. filed June 18, 2012), provided, however, that Plaintiffs may not amend their complaint in that case to bring any claims described in the first sentence of this paragraph; (b) from filing or funding litigation or formal administrative actions challenging lease sales or other agency actions on bases other than the approval or conduct of seismic surveys; or (c) from challenging seismic surveys that are conducted by a federal agency and that do not require a permit from BOEM.

**C.** During the Stay, and except as provided in paragraphs II.D and II.E below, no Plaintiff shall Encourage or Assist any other person or entity to file any lawsuit or formal administrative action asserting the Prohibited Claims by Plaintiffs set forth in paragraph II.B, above. In the event of an alleged breach of this paragraph II.C, the party alleging breach shall provide the allegedly breaching party with written notice and a 30-day opportunity to cure the alleged breach. The allegedly breaching party shall then cure the breach by providing the individual or individuals who are alleged to have caused the breach with a letter in substantially the same form as the letter attached to this Agreement as Exhibit 3.A. The provision of such a letter to the individuals alleged to have caused a breach shall constitute a full and complete cure of the alleged breach.

**D.** If (1) Federal Defendants issue a permit for Deep Penetration Seismic Surveys during the Stay that does not require each of the mitigation measures described in Section V

below, and (2) the permittee does not implement each of those mitigation measures pursuant to the commitment of the Intervenor-Defendants contained in Section VI below, Plaintiffs may either: (i) partially terminate the Stay for the purpose of amending their Complaint in this action to challenge the specific permit as set forth in paragraph II.J, subject to any and all defenses Federal Defendants and Intervenor-Defendants may have; or (ii) fully terminate the Stay, recommence the instant litigation, and file an amended complaint as set forth in paragraph II.K below, subject to any and all defenses Federal Defendants and Intervenor-Defendants may have. If the Parties are all in agreement that the two conditions in the preceding sentence have been met, the Parties shall, upon Plaintiffs' request, submit a stipulation for the Court's approval terminating the Stay in whole or in part, as authorized by paragraph XI.B below. If all Parties do not agree that the two conditions in the first sentence of this paragraph have been met, then Plaintiffs may request that the Court terminate the Stay in whole or in part pursuant to the dispute resolution procedures set forth in paragraph XI.A below.

**E.** If Plaintiffs believe that Federal Defendants have violated any provision of this Agreement, Plaintiffs may seek to terminate the Stay as set forth in this paragraph, recommence the litigation, and file an amended complaint as set forth in paragraph II.K below, subject to any and all defenses Federal Defendants and Intervenor-Defendants may have. If all Parties are in agreement that Federal Defendants have violated a provision of this Agreement, the Parties shall, upon Plaintiffs' request, submit a stipulation for the Court's approval terminating the Stay, as authorized by paragraph XI.B below. If all Parties do not agree that Federal Defendants have violated a provision of this Agreement, then Plaintiffs may request that the Court terminate the Stay pursuant to the dispute resolution procedures set forth in paragraph XI.A below.

**F.** Except as provided in paragraph II.H below, during the Stay, no Intervenor-Defendant shall file or fund any lawsuit or formal administrative action asserting any of the following claims: (1) any claim against NMFS alleging unreasonable delay in processing, or failure to act upon, BOEM's MMPA Application; or (2) any claim challenging a decision by Federal Defendants to issue a permit for conducting a Deep Penetration Seismic Survey based upon the inclusion of the mitigation measures identified in Section V of this Agreement (collectively, "Prohibited Claims by Intervenor-Defendants").

**G.** During the Stay, and except as provided in paragraph II.H below, no Intervenor-Defendant shall Encourage or Assist any other person or entity to file any lawsuit or formal administrative action asserting the Prohibited Claims by Intervenor-Defendants set forth in paragraph II.F, above. In the event of an alleged breach of this paragraph II.G, the party alleging breach shall provide the allegedly breaching party with written notice and a 30-day opportunity to cure the alleged breach. The allegedly breaching party shall then cure the breach by providing the individual or individuals who are alleged to have caused the breach with a letter in substantially the same form as the letter attached to this Agreement as Exhibit 3.B. The provision of such a letter to the individuals alleged to have caused a breach shall constitute a full and complete cure of the alleged breach.

**H.** If, during the Stay, Federal Defendants issue a permit for Deep Penetration Seismic Surveys that contains additional mitigation measures beyond those described in Section V below, or NMFS mandates additional mitigation measures beyond those described in Section V below, Intervenor-Defendants may terminate the Stay, and/or file a separate action challenging the permit, subject to any and all defenses Federal Defendants may have. If all Parties are in agreement that the condition set forth in the preceding sentence has been met, the Parties shall,

upon Intervenor-Defendants' request, submit a stipulation for the Court's approval terminating the Stay, as authorized by paragraph XI.B below. If all Parties do not agree that the condition in the first sentence of this paragraph has been met, then Intervenor-Defendants may request that the Court terminate the Stay pursuant to the dispute resolution procedures set forth in paragraph XI.A below.

**I.** Unless extended by Order of the Court, the Stay shall automatically terminate 30 months after the Effective Date or immediately after Final Action is taken on BOEM's MMPA Application, whichever occurs first.

**J.** If the Stay is partially terminated under paragraph II.D(i), Plaintiffs may file an amended complaint against Federal Defendants challenging the specific permit(s) at issue that does not contain all of the mitigation measures identified in Section V. Federal Defendants and Intervenor-Defendants hereby reserve all defenses they may have to any claims or allegations contained in any such amended complaints. Federal Defendants agree to file or lodge the certified administrative record or records, if any, for up to five challenged permits, within 30 days after the amended complaint is filed, provided that Plaintiffs identify such permits to Federal Defendants on or before the filing date of the amended complaint. The administrative records for any remaining challenged permits will be filed or lodged within 60 days after the amended complaint is filed. The Parties also agree to jointly request an expedited litigation schedule with respect to any such challenges.

**K.** If the Stay is fully terminated under paragraph II.D(ii), II.E or II.H above, or as a result of either (1) a final decision by NMFS denying BOEM's MMPA Application; (2) BOEM's withdrawal of the Application without timely submission of a revised application pursuant to paragraph I.C; or (3) the expiration of 30 months from the Effective Date (as may be extended by



Order of the Court), Plaintiffs may file an amended complaint containing all claims in their existing Complaint and challenging any permit for Deep Penetration Seismic Surveys issued during the Stay that does not require all of the mitigation measures described in Section V; but may not challenge any permit for Deep Penetration Seismic Surveys issued during the Stay that does require all of the mitigation measures described in Section V. Federal Defendants and Intervenor-Defendants hereby reserve all defenses they may have to any claims or allegations contained in any such amended complaint. Federal Defendants agree to file or lodge the certified administrative record or records, if any, for the 2004 PEA (to the extent challenged in the amended complaint) and the 2007 Biological Opinion (to the extent the amended complaint challenges the 2007 Biological Opinion and names NMFS as a defendant) within 30 days after the amended complaint is filed. Additionally, Federal Defendants agree to file or lodge the certified administrative record or records, if any, for up to five challenged permits, within 30 days after the amended complaint is filed, provided that Plaintiffs identify such permits to Federal Defendants on or before the filing date of the amended complaint. The administrative records for any remaining challenged permits will be filed or lodged within 60 days after the amended complaint is filed. The Parties also agree to jointly request an expedited litigation schedule with respect to any such challenges.

### **III. DISMISSAL OF THE LAWSUIT**

**A.** Should the Stay automatically terminate as a result of Final Action in the form of NMFS's issuance of an MMPA take authorization in response to BOEM's Application (preceded or accompanied by (a) a biological opinion or "not likely to adversely affect" concurrence letter from NMFS concluding consultation pursuant to ESA Section 7(a)(2) and (b) the completion of an EIS/ROD or EA/FONSI pursuant to NEPA), Plaintiffs shall, within seven days after receiving

notice of the issuance of the MMPA take authorization from Federal Defendants, file a notice of dismissal of the above-captioned action pursuant to Federal Rule of Civil Procedure 41. The dismissal shall be with prejudice, except that nothing shall prohibit Plaintiffs from filing a new lawsuit challenging the MMPA take authorization or any related analysis or decision document prepared pursuant to NEPA, the ESA, or the MMPA, and/or any new permit for Deep Penetration Seismic Surveys issued by BOEM after the date of dismissal. Any such challenge must be brought in a separate action, and Federal Defendants and Intervenor-Defendants reserve their right to assert any and all available defenses to any such challenge.

**B.** Upon the filing of the dismissal required under paragraph III.A, and without limiting the scope, effect, or legal consequences of the dismissal, Plaintiffs shall be prohibited from filing or funding any lawsuit or formal administrative action challenging (a) any permit for conducting a seismic survey in the Gulf of Mexico, including but not limited to Deep Penetration Seismic Surveys, issued by BOEM prior to the filing of the dismissal, or (b) any action by any permittee, taken prior or subsequent to the filing of the dismissal, implementing a permit, issued prior to the filing of the dismissal, to conduct a seismic survey, including but not limited to Deep Penetration Seismic Surveys, in the Gulf of Mexico.

**C.** Upon the filing of the dismissal required under paragraph III.A, and without limiting the scope, effect, or legal consequences of the dismissal, no Plaintiff shall Encourage or Assist any other person or entity to file any lawsuit or formal administrative action asserting the Prohibited Claims by Plaintiffs set forth in paragraph III.B, above. In the event of an alleged breach of this paragraph III.C, the party alleging breach shall provide the allegedly breaching party with written notice and a 30-day opportunity to cure the alleged breach. The allegedly breaching party shall then cure the breach by providing the individual or individuals who are

alleged to have caused the breach with a letter in substantially the same form as the letter attached to this Agreement as Exhibit 3.C. The provision of such a letter to the individuals alleged to have caused a breach shall constitute a full and complete cure of the alleged breach.

#### **IV. NEW SEISMIC PERMIT APPLICATION REQUIREMENTS**

So long as the Stay is in effect, and without limiting (1) BOEM's discretion or authority to request whatever additional information not described in this section that BOEM may deem necessary or appropriate, or (2) Intervenor-Defendants' ability to challenge such request for additional information, BOEM shall require any applicant for a permit authorizing Deep Penetration Seismic Surveys to provide the following information:

##### **A. Non-Duplicative Surveys**

The applicant must provide a written justification explaining why the proposed Deep Penetration Seismic Survey is not unnecessarily duplicative of previously conducted Deep Penetration Seismic Surveys, taking into account differences in imaging technology, acquisition design and technology, targeted subsurface formations, the geographic area of the proposed survey or parts thereof, or other relevant considerations. An applicant's written justification shall not be subject to legal challenge, provided that this limitation shall cease to apply if BOEM and/or NMFS adopt and implement a legally enforceable standard during the Stay for evaluating unnecessary Deep Penetration Seismic Survey duplication.

##### **B. Lowest Practicable Source Levels**

The applicant must provide an estimate of the total energy output per impulse in decibels (Root Mean Square (RMS) as described in BOEM's Permit Application, Section D) with respect to each energy source to be used. The applicant will verify in writing prior to conducting Deep Penetration Seismic Surveys that the proposed airgun arrays to be used are, to the extent

practicable, of the lowest sound intensity level that still achieves the survey's goals. The written verification must include confirmation that the airgun array has been calibrated/tuned to maximize subsurface illumination and minimize, to the extent practicable, horizontal propagation of noise. An applicant's verification shall not be subject to legal challenge, provided that this limitation shall cease to apply if BOEM and/or NMFS were to adopt and implement a legally enforceable standard during the Stay for evaluating or minimizing sound source levels.

## **V. CONSIDERATION OF INTERIM MITIGATION MEASURES**

So long as the Stay is in effect, and without limiting (1) BOEM's discretion or authority to consider whatever additional measures not described in this section that BOEM may deem necessary or appropriate, or (2) Intervenor-Defendants' ability to challenge such additional measures, BOEM shall analyze in EAs specific to permitting decisions for individual Deep Penetration Seismic Surveys the following mitigation measures as conditions of approval of any permits for Deep Penetration Seismic Surveys. Federal Defendants' commitment to analyze the following mitigation measures in no way obligates Federal Defendants to require the measures in any resulting permit:

### **A. Seasonal Restriction for Coastal Waters**

With respect to Deep Penetration Seismic Surveys as defined herein, the permittee shall not, between March 1 and April 30, operate any airguns or any airgun arrays within federal coastal waters in the Gulf of Mexico shoreward of the 20 meter isobath. This seasonal limitation shall not apply to Deep Penetration Seismic Survey preparations, including but not limited to the laying of receiver cables, that do not involve the use of airguns or airgun arrays, or sub-bottom profilers (such as in archeological resources surveys that may be required precedent to some Deep Penetration Seismic Surveys).

**B. Expansion of JOINT NTL No. 2012-G02**

The permittee shall comply with JOINT NTL 2012-G02, with the following modifications: (1) The shut down provision set forth on page 3, paragraph 4 of JOINT NTL 2012-G02 shall apply to manatees as well as whales; and (2) The mitigation measures set forth in JOINT NTL 2012-G02, along with the modification described in this paragraph, shall apply to all Deep Penetration Seismic Surveys conducted in Federal waters in the Gulf of Mexico regardless of water depth.

**C. Minimum Separation Distances**

1. Except as set forth in paragraph V.C.3, when operating in one of Plaintiffs' Areas of Concern, pursuant to a Deep Penetration Seismic Survey permit, and engaged in active seismic source operations the permittee shall maintain a minimum separation distance of 40 kilometers between any of its active seismic energy sources (airguns or airgun arrays) and any active seismic energy source that is operating pursuant to a separate Deep Penetration Seismic Survey permit issued by BOEM (or its predecessor agency).

2. Except as set forth in paragraph V.C.3 below, when operating in areas outside of Plaintiffs' Areas of Concern, and engaged in active seismic source operations pursuant to a Deep Penetration Seismic Survey permit the permittee shall maintain a minimum separation distance of 30 kilometers between any of its active seismic energy sources (airguns or airgun arrays) and any active seismic energy source that is operating pursuant to a separate Deep Penetration Seismic Survey permit issued by BOEM (or its predecessor agency).

3. The separation requirements set forth in paragraphs V.C.1 and V.C.2 above shall not apply with respect to separation between multiple vessels engaged in a coordinated operation under the same permit (e.g., wide azimuth surveys). In addition, the

separation requirements set forth in paragraphs V.C.1 and V.C.2 above need not be maintained when doing so would be unsafe or when temporary narrowing of the separation distance is caused by a meteorological or weather event.

**D. Seismic Restriction in Eastern Planning Area**

1. Except as set forth in paragraph V.D.2 below, the permittee shall not conduct Deep Penetration Seismic Surveys while operating within those portions of Plaintiffs' Areas of Concern that fall within the Eastern Planning Area, as defined in Exhibit 4.

2. The restriction set forth in paragraph V.D.1 shall not apply to Deep Penetration Seismic Surveys of: (a) any currently leased blocks; (b) any portion of the geographic area encompassed by the originally proposed Lease Sale 224 demarcated on Exhibit 5; or (c) with respect to the surveying of Neighboring Blocks being surveyed in order to achieve full subsurface imaging of areas in either the Central Planning Area, the portions of the Eastern Planning Area that are outside Plaintiffs' Areas of Concern, any currently leased blocks, or the geographic area within the originally proposed Lease Sale 224. Neighboring Blocks shall consist of the two lease blocks adjacent in any direction to the area being imaged.

3. When surveying Neighboring Blocks as described in paragraph V.D.2.(c), the permittee shall, in both planning and conducting a survey, limit the active use of airguns in neighboring blocks to that which is reasonably necessary to conduct such full subsurface imaging. BOEM will notify Plaintiffs of any permits authorizing Deep Penetration Seismic Surveys of Neighboring Blocks as described in paragraph V.D.2.(c).

**E. Passive Acoustic Monitoring**

While engaging in active seismic source operations in water depths of 100 meters or greater during times of reduced visibility (darkness, fog, rain, etc.), the permittee shall include

passive acoustic monitoring (“PAM”) as part of its protected species observer program.

Applicants will be required to provide BOEM with a description of the passive acoustic system, the software used, and the monitoring plan prior to its use. After completion of the project, the permittee will provide an assessment of the usefulness and effectiveness of the use of PAM for marine mammal detection, including any problems encountered.

**F. Reporting Requirements**

The permittee shall be required to provide, on a bi-weekly basis (every two weeks), a written report describing:

1. The dates, locations in tracklines, leasing blocks, or geographic coordinates, and duration of any Deep Penetration Seismic Surveys conducted during the reporting period.
2. Any circumstances that caused the total energy output of the airgun arrays to exceed that set forth in the application.
3. Confirmation that the operator maintained the minimum separation distances described in paragraph V.C above while conducting Deep Penetration Seismic Surveys. If the operator did not maintain the minimum separation distances, the operator shall provide a written explanation. Nothing in this paragraph shall be construed to limit or waive the operator’s duties under paragraph V.C above.
4. Confirmation that the operator complied with the other terms of Section V of this Agreement.

**VI. INTERVENOR-DEFENDANTS’ COMMITMENT REGARDING INTERIM MITIGATION MEASURES**

So long as the Stay is in effect, Intervenor-Defendants shall abide by all of the mitigation measures described in Section V above when conducting any Deep Penetration Seismic Surveys

pursuant to a permit issued by BOEM during the Stay, even if the mitigation measures described in Section V are not included as conditions of the permit itself.

**VII. AVAILABILITY OF PERMIT INFORMATION AND BIWEEKLY REPORTS, AND PROVISION OF THE AGREEMENT AND ORDER**

**A.** During the Stay, BOEM shall make non-proprietary information regarding Deep Penetration Seismic Survey permits issued during the Stay available to the public on its website ([https://www.data.boem.gov/homepg/data\\_center/other/WebStore/pimaster.asp?appid=5](https://www.data.boem.gov/homepg/data_center/other/WebStore/pimaster.asp?appid=5)) including all applications, permits, associated NEPA documents, and any biweekly reports referenced in paragraph V.F above. BOEM will promptly notify all other parties of any changes in the website address provided in the preceding sentence. BOEM will redact or otherwise maintain the confidentiality of proprietary information as defined by BOEM's permit application form (BOEM Form 0327).

**B.** During the Stay, should BOEM require as a condition for a permit for a Deep Penetration Seismic survey the minimum separation distance mitigation measure described in paragraph V.C and the biweekly reports described in paragraph V.F, BOEM will also compare the biweekly reports to confirm that the minimum separation distances were maintained, and will post notice on its website during the Stay of any exceptions or violations of the requirement.

**C.** At the time of issuing each Deep Penetration Seismic Survey permit during the Stay period, Federal Defendants will provide to each permittee a copy of this Agreement and the Order approving the Agreement and Staying the litigation in accordance with the terms of the Agreement. Such copy will be accompanied by a written notice to the permittee of the obligations undertaken by Intervenor-Defendants in Section VI above.



## **VIII. EVALUATION OF POTENTIAL STANDARDS**

**A.** During the Stay, and except as provided in paragraph VIII.B below, BOEM will convene an internal panel or panels with sufficient geophysical and environmental expertise to determine whether it would be feasible to develop standards for determining (A) whether a Deep Penetration Seismic Survey is unnecessarily duplicative and (B) the lowest practicable source level for a Deep Penetration Seismic Survey. If the panel or panels determine that it would be feasible to develop one or both of these standards, and a Draft EIS or EA for BOEM's MMPA Application has not already been released, BOEM will include and evaluate such standards in any draft EIS or EA for BOEM's MMPA Application. If the panel or panels determine that it is not feasible to develop one or both standards, and the Draft EIS or EA for BOEM's MMPA Application has not already been released, BOEM will include its rationale for this determination for review and comment in any Draft EIS or EA. The Parties acknowledge that in making these determinations, the panel or panels may need to solicit outside expertise. BOEM will provide the parties with updates, during the meetings referenced in paragraph XII.A, on progress made under this paragraph.

**B.** BOEM's obligations under paragraph VIII.A shall cease if the Stay is terminated under paragraph II.D, II.E or II.H, or as a result of either (1) a final decision by NMFS denying BOEM's MMPA Application; or (2) BOEM's withdrawal of the Application without timely submission of a revised application pursuant to paragraph I.C.

**C.** Plaintiffs reserve the right to challenge any determination by BOEM that it is not feasible to develop one or both standards, or to challenge any such standards should one or more of the Federal Defendants develop and implement them. Any such challenge must be brought in

a separate action, and Federal Defendants and Intervenor-Defendants reserve any and all defenses they may have to such a challenge.

**D.** Intervenor-Defendants do not agree that developing the standards described in paragraph VIII.A is feasible or appropriate. Intervenor-Defendants shall be free to challenge any such standards should one or more of the Federal Defendants develop and implement them. Any such challenge must be brought in a separate action, and Federal Defendants reserve any and all defenses they may have to such a challenge.

**IX. ITEMS TO BE EVALUATED IN ANY PROGRAMMATIC NEPA ANALYSIS FOR BOEM'S MMPA APPLICATION**

**A.** Federal Defendants agree to analyze alternatives and/or mitigation measures in any EIS or EA for BOEM's MMPA Application that are substantially similar to the following:

- 1.** The mitigation measures described in Part V.
- 2.** Mechanisms to reduce cumulative or chronic exposure of marine mammal populations to noise (*e.g.*, limiting concurrent surveying, limiting the total amount of survey activity in portions of the Gulf of Mexico).
- 3.** Requirements or incentives to develop and use emergent alternative technologies for Deep Penetration Seismic surveying.

**B.** Federal Defendants agree to analyze in any EIS or EA for BOEM's MMPA Application the development of a long-term adaptive monitoring plan that addresses potential cumulative and chronic impacts from seismic surveys on marine mammal populations in the Gulf of Mexico.

**C.** BOEM's obligations under paragraphs IX.A and IX.B shall cease if the Stay is terminated under paragraph II.D, II.E or II.H, or as a result of either (1) a final decision by

NMFS denying BOEM's MMPA Application; or (2) BOEM's withdrawal of the Application without timely submission of a revised application pursuant to paragraph I.C.

**D.** Intervenor-Defendants do not agree that all of the measures described in paragraph IX.A and IX.B are feasible or appropriate. Intervenor-Defendants shall be free to challenge any such measures should one or more of the Federal Defendants develop and implement them. Any such challenge shall be brought in a separate action, and Federal Defendants reserve any and all defenses they may have to such a challenge.

## **X. VIBROSEIS STUDY**

**A.** A subset of American Petroleum Institute ("API") members will decide within 60 days of the final execution of this Agreement whether to conduct a study of Vibroseis technology that will include the construction of Vibroseis prototypes for use in the marine environment, and testing to determine whether they are technologically and operationally capable of producing in an efficient and reliable manner geophysical data comparable to that produced by existing seismic surveying technology (hereinafter referred to as the "marine Vibroseis study").

**B.** The commitments with respect to the marine Vibroseis study shall consist of the following terms, and no others:

1. The marine Vibroseis study shall involve the construction of at least three prototypes, which will be built within 2.5 years of the final execution of this Agreement. At least one prototype shall thereafter be field tested.
2. During the first 2.5 years following the final execution of this Agreement, Intervenor-Defendants will update the Parties to this Agreement orally, through counsel, during the meetings referenced in paragraph XII.A, on the general progress made on each prototype(s) involved in the marine Vibroseis study.

3. Intervenor-Defendants will provide a basic written summary to the Parties to this Agreement regarding the development and testing (if any) of the marine Vibroseis prototype(s), by the close of 2.5 years after the final execution of this Agreement.
4. Intervenor-Defendants will provide a basic written summary to the Parties to this Agreement regarding the further development and field-testing (if any) of the marine Vibroseis prototype(s) by the close of 3.5 years after the final execution of this Agreement. All field testing (if any) will be concluded by the close of 3.5 years after the final execution of this Agreement.
5. A final written report regarding the marine Vibroseis study (the “4-year study report” or “Report”) will be submitted for publication in a peer-reviewed scientific journal by the close of 4 years after the final execution of this Agreement. The study participants will act in good faith to secure the timely publication of the study, but that obligation will be subject and subordinate to the scientific journal maintaining control over the publication decision and timing.
6. Dissemination of the 4-year study report.
  - a. At the time the 4-year study report is submitted for publication in a peer-reviewed scientific journal, a copy of the unpublished 4-year study report, any acoustical, non-engineering data recorded during testing of the Vibroseis prototypes regarding vertical and horizontal sound propagation from the Vibroseis source(s) (the “Data”), and the results of any environmental research or monitoring imposed by a governmental body as a condition of permitting field testing conducted as part of the marine Vibroseis study (the “Results”), will be made available for review by Plaintiffs and Federal Defendants upon the Court’s entry of a protective

order limiting dissemination of the unpublished 4-year study report, Data, and Results as follows:

- i. Prior to making the unpublished 4-year study report available for review by Plaintiffs and Federal Defendants, Intervenor-Defendants will stamp the unpublished 4-year study report, Data, and the Results “Proprietary Business—Confidential” and “Exempt from Disclosure.” The Parties agree that the unpublished Report, Data, and Results are information not customarily disclosed to the public and, notwithstanding any requirements of this Agreement, will be voluntarily made available by the research proponents for review by Plaintiffs and Federal Defendants in accordance with the restrictions below.
- ii. Representatives of the Plaintiffs may review the Report, Data, and Results in Washington, D.C., and one other location to be designated by the Plaintiffs. Plaintiffs and their representatives may not copy or otherwise duplicate the unpublished 4-year study report.
- iii. One copy of the 4-year study report, Data, and Results will be made available to BOEM. BOEM may provide a copy of the 4-year study report (stamped as described in the paragraph X.B.6.a.i) to NMFS. However, BOEM shall have the “primary interest” in the document within the meaning of 15 C.F.R. § 4.5(b) and shall be responsible for responding to any Freedom of Information Act (“FOIA”) request submitted to either BOEM or NMFS to the extent the FOIA request seeks a copy the Report, Data, or Results. Until the Report has been published or otherwise

publicly released, BOEM will be required to keep the copy of the Report, Data and Results confidential, including by withholding the confidential, unpublished Report, Data and Results from FOIA requests. Additionally, should BOEM become aware of any court action in which disclosure of the unpublished 4-year study report, Data and Results may be required, either in response to a discovery request or as part of an administrative record, BOEM shall promptly notify Intervenor-Defendants of the pendency of the action and seek a protective order to prevent the public dissemination of the report, Data and Results. Nothing in this paragraph, however, shall preclude BOEM from producing the 4-year study report, Data or Results to the extent required by any court order.

7. If the Report is rejected for publication in a peer-reviewed scientific journal, Intervenor-Defendants will publicly release the Report and provide a copy of the Data and the Results to Plaintiffs, which may publicly disseminate them. If the Report is published in a peer-reviewed scientific journal, Intervenor-Defendants will provide a copy of the Data and the Results to Plaintiffs, which may publicly disseminate them. Intervenor-Defendants will update the Parties monthly, orally or in writing, on the status of their submission.
8. In the event that the marine Vibroseis study is canceled before completion (with the decision whether to cancel to be determined solely by the API participants in that study), Intervenor-Defendants will provide a written, publicly releasable report to the Parties on the research undertaken before the cancelation, the results obtained from that research, and the reasons for cancelation, as well as a copy of the Data and the Results (if they

exist at the time of cancellation). Intervenor-Defendants agree that, in the event of cancellation, they will not exercise any right they may have, except as patent-holders, to bar, limit, or impede further development or testing by other parties of the prototypes involved in the study. Nothing in this subparagraph shall be construed to require the release of the proprietary information, or otherwise infringe upon the property or intellectual property rights, of the developers of any of the Vibroseis prototypes.

9. In the event that: (i) a decision is not made within 60 days of the final execution of this Agreement to proceed with the marine Vibroseis study, or (ii) the marine Vibroseis study is canceled before completion (with the decision whether to cancel to be determined solely by the API participants in that study), or (iii) the marine Vibroseis study does not meet any of the deadlines set forth in subparagraphs X.B.1 through X.B.5, API will make a contribution of \$2 million to a near-coastal bottlenose dolphin-related study, the nature of such study to be mutually agreed upon by API, the International Association of Geophysical Contractors and the Plaintiffs, or if such mutual agreement cannot be reached, to be determined by Dr. Tim Ragen, the present Executive Director of the U.S. Marine Mammal Commission. Payment of this \$2 million shall relieve Intervenor-Defendants of all obligations under this Section X, other than the obligations set forth in subparagraph X.B.8. All obligations of all Parties under all other Sections of this Agreement shall remain in full force and effect.
10. The obligations under this Section X shall survive any dismissal of the case pursuant to paragraph III.A, any termination of the Stay by the Intervenor-Defendants pursuant to paragraph II.H, and any termination of the Stay caused by the expiry of 30 months

following the Effective Date of the Agreement, as set forth in paragraph II.I; but shall not come into effect except as provided in paragraph I.E.

**XI. DISPUTE RESOLUTION, ENFORCEABILITY, AND MODIFICATION**

**A.** In the event of a dispute arising out of or relating to this Agreement, including a dispute over any asserted violation of any term of the Agreement or an asserted need to modify the Agreement or to terminate or extend the Stay, the Party raising the dispute shall provide the other Parties with notice of the dispute. The Parties agree that they will meet and confer (telephonically or in person) within seven calendar days after notice is provided in a good-faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the dispute themselves, the Party raising the dispute may move for appropriate relief from the Court consistent with the terms of this Agreement. Briefing on any such motion shall proceed in accordance with the Local Rules of the United States District Court for the Eastern District of Louisiana.

**B.** This Agreement may be modified, and the Stay may be terminated or extended, by written stipulation of all Parties filed with and approved by the Court.

**C.** The Parties agree that contempt of court is not an available remedy for any violation of this Agreement, and the Parties therefore knowingly waive any right that they might have to seek an order of contempt for any such violation.

**D.** The sole relief available for an asserted violation of this Agreement by Federal Defendants shall be termination of the Agreement, lifting of the Stay, and recommencement of the litigation as set forth in paragraph II.E above.

**E.** Except to the extent provided by paragraphs II.C, II.G, and III.C above, this Agreement shall be enforceable against Intervenor-Defendants and Plaintiffs solely in this Court



through an action for breach of contract under federal contract law, and remedies shall be limited to injunctive relief, including but not limited to specific performance.

## **XII. ADDITIONAL PROVISIONS**

**A.** During the pendency of the Stay, the Parties agree to meet (in person or by telephone) every four months to discuss the status of BOEM's MMPA Application and the associated NEPA and ESA processes.

**B.** The Parties agree that the Agreement does not represent an admission by any Party to any fact, claim, or defense concerning any issue in this case; has no precedential value; shall not be used as evidence in any litigation or administrative proceeding except as necessary to enforce its terms; and does not constitute an admission as to the validity or sufficiency of any of the proposed mitigation measures in a court of law or in any future settlement negotiations.

**C.** No Party concedes by entering into this Agreement that any of the application, permit, or reporting requirements described above are legally required or would yield measurable biological benefits over the long term, or that such requirements are sufficient to achieve legal compliance or reduce biological risk over the long term.

**D.** By entering into this Agreement, Federal Defendants do not concede or imply that any of the application, permit, or reporting requirements described above will or should ultimately be selected as the preferred alternative in any NEPA analysis or that any of the measures should be incorporated by NMFS into any MMPA authorization or ESA biological opinion or concurrence letter.

**E.** The Agreement does not modify or limit the discretion afforded to Federal Defendants under any statute or principles of administrative law, or constitute a commitment or

requirement that the United States is obligated to pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of law.

**F.** No provision of this Agreement shall be interpreted as, or constitute, a commitment or requirement that Federal Defendants take action in contravention of the NEPA, the MMPA, the ESA, the Administrative Procedure Act, or any other law or regulation, either substantive or procedural.

**G.** In the event Plaintiffs file a notice of dismissal pursuant to Section III.A above, Plaintiffs shall be entitled to an award of attorney fees and costs against Federal Defendants in the amount of \$160,000. Plaintiffs will furnish Federal Defendants with the information necessary to effectuate this payment within seven days of the filing of the notice of dismissal. Federal Defendants agree to process the fee payment within 10 days of the receipt of the necessary information from Plaintiffs or the filing of the notice of dismissal, whichever is later. Plaintiffs agree to accept payment of \$160,000 in full satisfaction of any and all claims for attorneys' fees and costs of litigation to which Plaintiffs may be entitled under any statute or on any common law basis with respect to the above-captioned litigation, through and including the date of the filing of the notice of dismissal. By agreeing to pay fees in the circumstances set forth in this paragraph, Federal Defendants do not waive any right to contest fees claimed by Plaintiffs, or its counsel, including the hourly rate, in any future litigation or continuation of the present action as set forth in paragraph H below. Furthermore, the agreement in this paragraph regarding attorneys' fees and costs has no precedential value and shall not be used as evidence in any other attorneys' fees litigation or in any continuation of the present action as set forth in paragraph H below.

**H.** Should the Stay terminate for any reason other than as a result of Final Action in the form of NMFS's issuance of MMPA take authorization in response to BOEM's Application, Plaintiffs reserve the right to seek attorneys' fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U. S. C. § 2412(d). Federal Defendants reserve any and all defenses they may have to any such request or petition for fees pursuant to the EAJA or any other statute or common law.

**I.** It is expressly understood and agreed that this Agreement has been freely and voluntarily entered into by the Parties. Each Party represents and acknowledges that, in executing this Agreement, it is not relying on, nor has it relied on, any representation or statement made by any of the other Parties, their agents, or attorneys with regard to the subject matter, basis, or effect of this Agreement. Each Party represents and acknowledges that no agreements or understandings exist among them relating to the subject matter of this Agreement, other than those set forth in this Agreement.

**J.** It is hereby expressly understood and agreed that this Agreement was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

**K.** The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to consent to enter into this Agreement.

Signed this 18<sup>th</sup> day of JUNE, 2013.

Natural Resources Defense Council, Inc.

by: \_\_\_\_\_

Center for Biological Diversity, Inc.

by: \_\_\_\_\_

Gulf Restoration Network, Inc.

by: \_\_\_\_\_

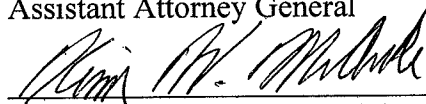
Sierra Club, Inc.

by: \_\_\_\_\_

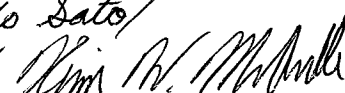
Federal Defendants S.M.R. Jewell, Secretary of the U.S. Department of the Interior; the Bureau of Ocean Energy Management; and Tommy Beaudreau, Director, Bureau of Ocean Energy Management BOEM

By: ~~IGNACIA S. MORENO~~ ROBERT G. DREHER  
Assistant Attorney General

Acting



KEVIN W. McARDLE, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
Benjamin Franklin Station, P.O. Box 7611  
Washington, D.C. 20044-7611  
Tele: (202) 305-0219/Fax: (202) 305-0275  
kevin.mcardle@usdoj.gov  
[Kevin.McArdle@usdoj.gov](mailto:Kevin.McArdle@usdoj.gov)

Ayako Sato/  
by 

AYAKO SATO, Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
Ben Franklin Station, P.O. Box 7611  
Washington, D.C. 20044  
Telephone: (202) 305-0239  
[ayako.sato@usdoj.gov](mailto:ayako.sato@usdoj.gov)

Attorneys for Federal Defendants

American Petroleum Institute

by: \_\_\_\_\_

International Association of Geophysical Contractors

by: \_\_\_\_\_

Natural Resources Defense Council, Inc.

by: Ignacia S. Moreno

Center for Biological Diversity, Inc.

by: \_\_\_\_\_

Gulf Restoration Network, Inc.

by: \_\_\_\_\_

Sierra Club, Inc.

by: \_\_\_\_\_

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By: IGNACIA S. MORENO  
Assistant Attorney General

\_\_\_\_\_  
KEVIN W. McARDLE, Trial Attorney  
United States Department of Justice  
Environment & Natural Resources Division  
Wildlife & Marine Resources Section  
Benjamin Franklin Station, P.O. Box 7611  
Washington, D.C. 20044-7611  
Tele: (202) 305-0219/Fax: (202) 305-0275  
kevin.mcardle@usdoj.gov  
[Kevin.McArdle@usdoj.gov](mailto:Kevin.McArdle@usdoj.gov)

\_\_\_\_\_  
AYAKO SATO, Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
Ben Franklin Station, P.O. Box 7611  
Washington, D.C. 20044  
Telephone: (202) 305-0239  
ayako.sato@usdoj.gov

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\_\_\_\_\_  
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\_\_\_\_\_  
AYAKO SATO, Trial Attorney  
U.S. Department of Justice  
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KEVIN W. McARDLE, Trial Attorney  
United States Department of Justice  
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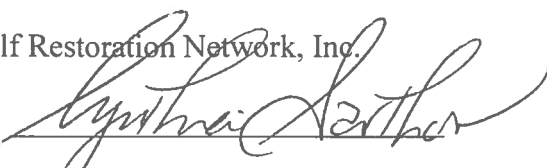
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Wildlife & Marine Resources Section  
Benjamin Franklin Station, P.O. Box 7611  
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Tele: (202) 305-0219/Fax: (202) 305-0275  
kevin.mcardle@usdoj.gov  
Kevin.McArdle@usdoj.gov

\_\_\_\_\_  
AYAKO SATO, Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
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Telephone: (202) 305-0239  
ayako.sato@usdoj.gov

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by: \_\_\_\_\_

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by: \_\_\_\_\_



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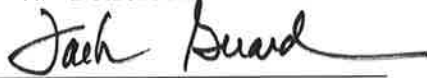
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\_\_\_\_\_  
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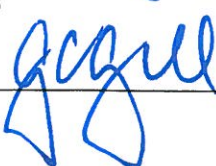
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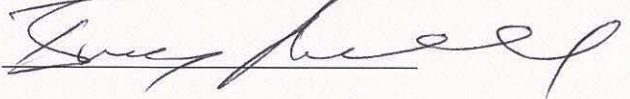
American Petroleum Institute

by: \_\_\_\_\_

International Association of Geophysical Contractors

by:  \_\_\_\_\_

Independent Petroleum Association of America

by: 

U.S. Oil & Gas Association

by: \_\_\_\_\_

Chevron U.S.A., Inc.

by: \_\_\_\_\_

Independent Petroleum Association of America

by: \_\_\_\_\_

U.S. Oil & Gas Association

by: Albert Modica

Chevron U.S.A., Inc.

by: \_\_\_\_\_

Independent Petroleum Association of America

by: \_\_\_\_\_

U.S. Oil & Gas Association

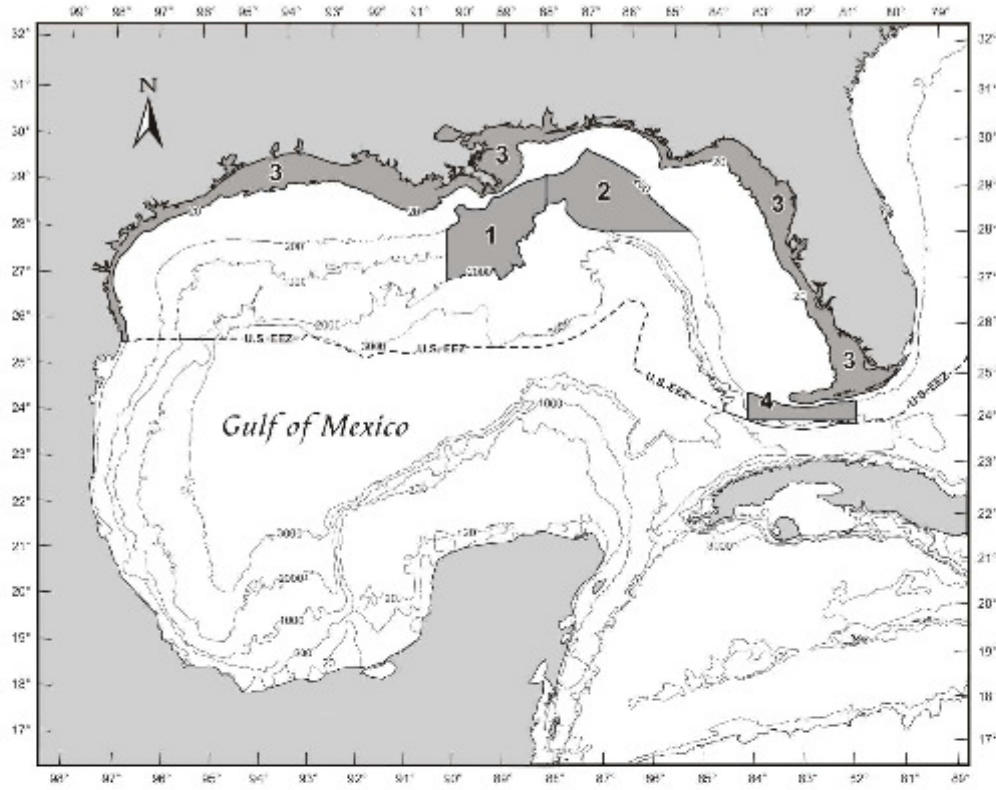
by: \_\_\_\_\_

Chevron U.S.A. Inc.

by: 

Frank G. Soler, Assistant Secretary

**Exhibit 1**



**Exhibit 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

<b>NATURAL RESOURCES DEFENSE COUNCIL</b>	)	
<b>INC., <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 2:10-cv-</b>
<b>S.M.R. JEWELL, Secretary of the Department of</b>	)	<b>01882</b>
<b>the Interior, <i>et al.</i>,</b>	)	
	)	<b>SECTION "A"</b>
<b>Defendants.</b>	)	
	)	<b>JUDGE JAY C. ZAINEY</b>
<b>and</b>	)	
	)	<b>MAGISTRATE JOSEPH C.</b>
<b>AMERICAN PETROLEUM INSTITUTE, <i>et al.</i>,</b>	)	<b>WILKINSON</b>
	)	
<b>Intervenor-Defendants.</b>	)	
	)	
	)	

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**ORDER GRANTING JOINT MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT AND STAY OF PROCEEDINGS**

This matter is before the Court on the Joint Motion for Approval of the Settlement Agreement and Stay of Proceedings (“Joint Motion”).

For good cause shown, it is hereby ORDERED that the Joint Motion is GRANTED. It is further ORDERED that the Settlement Agreement is APPROVED and all proceedings in this matter are STAYED in accordance with the terms of the Settlement Agreement.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Judge of the United States District Court



**Exhibit 3**

**A. Form Letter to Individual Alleged to Have Caused Breach of Paragraph II.C**

To Whom It May Concern:

As you may be aware, [Plaintiff Organization] has entered into a settlement, dated [insert date], with the Department of the Interior, American Petroleum Institute, International Association of Geophysical Contractors, Independent Petroleum Association of America, U.S. Oil and Gas Association, and Chevron U.S.A., Inc., related to the approval of seismic exploration and development surveys used to develop petroleum resources in the Gulf of Mexico.

As a part of the settlement, [Plaintiff Organization] has agreed that, during a period of approximately 30 months during which the Department of the Interior will take certain actions related to these seismic surveys, [Plaintiff Organization] will not “encourage or assist any other person or entity to file any lawsuit or formal administrative action” asserting the following claims: (1) a claim against the National Marine Fisheries Service alleging unreasonable delay in processing, or failure to act upon, the Bureau of Ocean Energy Management’s Pending Marine Mammal Protection Act Application described in 76 Fed. Reg. 34656 (June 14, 2011); (2) a claim challenging the 2004 Programmatic Environmental Assessment referenced in the Complaint filed on June 30, 2010 by Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club; the June 29, 2007 Biological Opinion on the Five-Year (2007-2012) Outer Continental Shelf Oil and Gas Leasing Plan for the Western and Central Planning Areas of the Gulf of Mexico (Ref. F/SER/2006/02611); or any other existing programmatic document related to approval of Deep Penetration Seismic Surveys; (3) a claim challenging a decision by the Interior Department to issue a permit for conducting a seismic survey in the Gulf of Mexico, including but not limited to Deep Penetration Seismic Surveys; or (4) a claim challenging an action by any permittee implementing a permit to conduct a seismic survey, including but not limited to Deep Penetration Seismic Surveys, in the Gulf of Mexico.

We have been advised that you have recently engaged in activities that are alleged to breach this commitment, including [describe offending activities]. We ask that you immediately cease engaging in these activities and that you refrain from engaging in these or similar activities in the future. To the extent you continue to engage in these or similar activities, your actions are not approved or endorsed by [Plaintiff Organization], which fully supports the above-described settlement.

Thank you very much for your attention to this important matter.

Yours sincerely,

[Plaintiff Organization Representative]

**B. Form Letter to Individual Alleged to Have Caused Breach of Paragraph II.G**

To Whom It May Concern:

As you may be aware, [Intervenor Company or Association] has entered into a settlement, dated [insert date], with the Department of the Interior, Natural Resources Defense Council, Center for Biological Diversity, Gulf Restoration Network, and Sierra Club, related to the approval of seismic exploration and development surveys used to develop petroleum resources in the Gulf of Mexico.

As a part of the settlement, [Intervenor Company or Association] has agreed that, during a period of approximately 30 months during which the Department of the Interior will take certain actions related to these seismic surveys, [Intervenor Company or Association] will not “encourage or assist any other person or entity to file any lawsuit or formal administrative action” asserting the following claims: (1) any claim against the National Marine Fisheries Service (“NMFS”) alleging unreasonable delay in processing, or failure to act upon, the Bureau of Ocean Energy Management’s (“BOEM’s”) application for an incidental take permit under the Marine Mammal Protection Act, as described in 76 Fed. Reg. 34656 (June 14, 2011), or any revised application submitted by BOEM to NMFS that is substantively the same in scope as the aforementioned application; or (2) any claim challenging a decision by the Federal Defendants in that litigation to issue a permit for conducting a Deep Penetration Seismic Survey based upon the inclusion of the mitigation measures identified in Section V of the settlement agreement.

We have been advised that you have recently engaged in activities that are alleged to breach this commitment, including [describe offending activities]. We ask that you immediately cease engaging in these activities and that you refrain from engaging in these or similar activities in the future. To the extent you continue to engage in these or similar activities, your actions are not approved or endorsed by [Intervenor Company or Association], which fully supports the above-described settlement.

Thank you very much for your attention to this important matter.

Yours sincerely,

[Intervenor Company or Association Representative]

**C. Form Letter to Individual Alleged to Have Caused Breach of Paragraph III.C**

To Whom It May Concern:

As you may be aware, [Plaintiff Organization] has entered into a settlement, dated [insert date], with the Department of the Interior, American Petroleum Institute, International Association of Geophysical Contractors, Independent Petroleum Association of America, U.S. Oil and Gas Association, and Chevron U.S.A., Inc., related to the approval of seismic exploration and development surveys used to develop petroleum resources in the Gulf of Mexico.

As a part of the settlement, [Plaintiff Organization] has agreed that, following dismissal of the lawsuit, [Plaintiff Organization] will not “encourage or assist any other person or entity to file any lawsuit or formal administrative action” challenging: (1) any permit for conducting a seismic survey in the Gulf of Mexico, including but not limited to Deep Penetration Seismic Surveys, issued by the Bureau of Ocean Energy Management prior to the filing of the dismissal; or (2) any action by any permittee, taken prior or subsequent to the filing of the dismissal, implementing a permit, issued prior to the filing of the dismissal, to conduct a seismic survey, including but not limited to Deep Penetration Seismic Surveys, in the Gulf of Mexico.

We have been advised that you have recently engaged in activities that are alleged to breach this commitment, including [describe offending activities]. We ask that you immediately cease engaging in these activities and that you refrain from engaging in these or similar activities in the future. To the extent you continue to engage in these or similar activities, your actions are not approved or endorsed by [Plaintiff Organization], which fully supports the above-described settlement.

Thank you very much for your attention to this important matter.

Yours sincerely,

[Plaintiff Organization Representative]

**Exhibit 4**

Eastern Gulf of Mexico (EGM) NAD 27

From the intersection of the SLA boundary with X=1,488,960.000 (UTM zone 16), OPD NH16-05 (Pensacola) south along the west boundary of blocks 843 and 887 to the southwest corner of block 931;

thence east along the south boundary of block 931 to the southwest corner of block 932;

thence south along the west boundary of block 976, continuing south along the west boundary of block 8 of OPD NH16-08 (Destin Dome) to the southwest corner of block 52;

thence east along the south boundary of block 52 to the southwest corner of block 53;

thence south along the west boundary of blocks 97, 141, and 185 to southwest corner of block 229;

thence east along the south boundary of block 229 to the southwest corner of block 230;

thence south along the west boundary of blocks 274, 318, and 362 to the southwest corner of block 406;

thence east along the south boundary of block 406 to the southwest corner of block 407;

thence south along the west boundary of blocks 451, 495, and 539 to the southwest corner of block 583;

thence east along the south boundary of block 583 to the southwest corner of block 584;

thence south along the west boundary of blocks 628, 672, and 716 to the southwest corner of block 760;

thence east along the south boundary of block 760 to the southwest corner of block 761;

thence south along the west boundary of blocks 805, 849, and 893 to the southwest corner of block 937;

thence east along the south boundary of block 937 to the southwest corner of block 938;

thence south along the west boundary of block 982 to the southwest corner of block 982 and the northeast corner of block 16 of OPD NH16-11 (De Soto Canyon);

thence west along the north boundary of block 16 to a point (X=1,594,862.443  
Y=10,517,760.000 UTM Zone 16;

thence southeasterly along the planning area limit to a point (X=1,625,229.663 and Y=10,348,337.882 UTM zone 16) within block 458;

thence southeasterly along the planning area limit to a point (X=1,643,612.717 and Y=10,324,041.599 UTM zone 16) within block 547;

thence southeasterly along the planning area limit through OPDs NH16-11 and NG16-02 (Lloyd Ridge), to a point (X=1,792,297.045 Y=9,504,000.000 UTM zone 16) within NG16-05 (Henderson) on the south boundary of block 777 and the north boundary of block 821;

thence southwesterly along the planning area limit through OPD NG16-05 to a point (X=1,731,335.654 Y=9,424,800.000 UTM zone 16) on the south boundary of block 993 and the north boundary of block 25 of OPD NG16-08 (Florida Plain);

thence west along the north boundary of block 25 to the northwest corner of block 25;

thence south along the west boundary of block 25 to the southwest corner of block 25;

thence west along the north boundary of block 68 to the northwest corner of block 68;

thence south to the southwest corner of block 68; thence west along the north boundary of block 111 to the northwest corner of block 111;

thence south along the west boundary of block 111 to the southwest corner of block 155;

thence west along the north boundary of block 198 to the northwest corner of block 198;

thence south along the west boundary of block 198 to the southwest corner of block 198;

thence west along the north boundary of block 241 to the northwest corner of block 241;

thence south along the west boundary of block 241 to the southwest corner of block 241;

thence west along the north boundary of block 284;

thence south along the west boundary of block 284 to the southwest corner of block 328;

thence west along the north boundary of block 371 to the northwest corner of block 371;

thence south along the west boundary of block 371 to the southwest corner of block 371;

thence west along the north boundary of block 414 to the intersection with the Limit of Protraction line;

thence southeasterly along the Limit of Protraction line to 25°12'25" N latitude, 86°33'12" W longitude (point 27 of the U.S.-Cuba Provisional Maritime Boundary);

thence southeasterly along the U.S.-Cuba Provisional Maritime Boundary through OPDs NG16-11 (Campeche Escarpment), NG16-12 (Rankin), NG17-10 (Dry Tortugas), and NF17-01 (Tortugas Valley) to 23°49'22" N. latitude, 83° 00' 00" W longitude (point 12 of the U.S.-Cuba Provisional Maritime Boundary);

thence north through OPDs NF17-01 and NG17-10 to the SLA boundary south of the Dry Tortugas;

thence northwesterly, easterly, and southerly along the SLA boundary as shown on Official Protraction Diagram ("OPD") NG17-10 (Dry Tortugas) dated 9/20/1989 to 24°35' N latitude (all OPDs referenced herein are available at <http://www.boem.gov/Oil-and-Gas-Energy-Program/Mapping-and-Data/Atlantic.aspx>);

thence east to the SLA boundary west of the Marquesas Keys at 24°35' N latitude;

thence easterly along the SLA boundary as shown on OPD NG17-10 (Dry Tortugas) dated 9/20/1989;

thence easterly along the SLA boundary as shown on OPD NG17-11 (Key West) dated 12/16/1985;

thence easterly and northwesterly along the SLA boundary as shown on OPD NH17-08 (Miami) dated 10/24/1978;

thence northwesterly along the SLA boundary as shown on OPD NG17-07 (Pulley Ridge) dated 10/24/1978;

thence northwesterly along the SLA boundary as shown on OPD NG17-04 (Charlotte Harbor) dated 6/2/1983;

thence northwesterly along the SLA boundary as shown on OPD NG17-01 (Saint Petersburg) dated 6/2/1983;

thence northerly along the SLA boundary as shown on OPD NH17-10 (Tarpon Springs) dated 6/2/1983;

thence northwesterly along the SLA boundary as shown on OPD NH17-07 (Gainesville) dated 6/2/1983;

thence southwesterly and northwesterly along the SLA boundary as shown on OPD NH16-09 (Apalachicola) dated 6/2/1983;

thence northwesterly and southwesterly along the SLA boundary as shown on OPD NH16-05 (Pensacola) dated 1/1/2009 to the point of origin.

Exhibit 5

