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

15 CENTER FOR BIOLOGICAL DIVERSITY,
16 WISHTOYO FOUNDATION,

17 Plaintiffs,

18 v.

19 BUREAU OF OCEAN ENERGY
20 MANAGEMENT; BUREAU OF
21 SAFETY AND ENVIRONMENTAL
22 ENFORCEMENT; U.S. DEPARTMENT OF
23 THE INTERIOR; SALLY JEWELL, Secretary
24 of the Interior; JOAN BARMINSKI, Pacific
25 Region Director, Bureau of Ocean Energy
26 Management; MARK FESMIRE, Pacific
27 Region Director, Bureau of Safety and
28 Environmental Enforcement,

Defendants.

Case No. 2:16-cv-8473

**COMPLAINT FOR
DECLARATORY
AND OTHER RELIEF**

**(National Environmental Policy Act,
42 U.S.C. §§ 4321, et seq.; Endangered
Species Act, 16 U.S.C. §§ 1531, et seq.;
Administrative Procedure Act,
5 U.S.C. §§ 551, et seq.)**

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1 **JURISDICTION AND VENUE**

2 1. The Court has jurisdiction over this matter under 28 U.S.C. § 1331
3 because this action arises pursuant to the laws of the United States. An actual,
4 justiciable controversy now exists between Plaintiffs and Defendants, and the
5 requested relief is proper under 28 U.S.C. §§ 2201-2202, 5 U.S.C. §§ 701-706, and
6 16 U.S.C. § 1540(g).

7 2. Venue is proper in this Court under 28 U.S.C. § 1391(e) because some
8 of the Defendants reside in this District, and a substantial part of the events or
9 omissions giving rise to Plaintiffs’ claims occurred in this District.

10 **INTRODUCTION**

11 3. In this case, Plaintiffs Center for Biological Diversity and Wishtoyo
12 Foundation (collectively, “Plaintiffs”) challenge the actions and omissions of
13 Defendants the Secretary of the U.S. Department of the Interior, the U.S.
14 Department of the Interior, the Bureau of Ocean Energy Management, the Bureau
15 of Safety and Environmental Enforcement, and the Directors of the Pacific
16 Regional Offices (collectively, the “Bureaus”) in authorizing offshore hydraulic
17 fracturing (“fracking”) and other forms of well stimulation in federal waters off the
18 California coast. Specifically, Plaintiffs challenge the Bureaus’ decision to
19 authorize the use of offshore fracking and other forms of well stimulation on the
20 Pacific Outer Continental Shelf (“OCS”) without first analyzing the impacts of
21 these activities through a comprehensive Environmental Impact Statement (“EIS”),
22 in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§
23 4321, *et seq.* Plaintiffs also challenge the Bureaus’ decision to authorize offshore
24 fracking and other well stimulation practices on the Pacific OCS without first
25 consulting with the expert wildlife agencies about the impacts of that decision on
26 threatened and endangered species or their critical habitats, in violation of the
27 Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531, *et seq.*

1 4. Fracking—an unconventional well stimulation technique that involves
2 blasting huge volumes of water, sand, and toxic chemicals into the earth at
3 enormous pressure to crack rock formations and release oil and natural gas—is
4 inherently dangerous and has no place in fragile ocean ecosystems. While there are
5 many unknowns regarding the impact of offshore fracking on the marine
6 environment, what *is* known is cause for alarm. Offshore fracking results in
7 significantly worse impacts to the environment and public health than conventional
8 offshore oil and gas development.

9 5. The harmful impacts associated with offshore fracking include the
10 discharge of toxic wastewater; the emission of hazardous air pollutants; increased
11 risk of earthquakes and oil spills; threats to cultural resources important to
12 Chumash Native Americans, such as submerged village and sacred sites filled with
13 ancestral burials and other remains; and threats to a variety of marine species,
14 including imperiled blue whales, sea turtles, sea otters, dolphins, and black
15 abalone, many of which are cultural resources vital to the maintenance of Chumash
16 ways of life. Offshore fracking and other forms of well stimulation also prolong oil
17 and gas activities in the Pacific Ocean and extend the life of aging offshore
18 platforms, pipelines, and other infrastructure which otherwise face retirement.

19 6. Nevertheless, the Bureaus issued a decision authorizing the use of
20 offshore fracking and other forms of well stimulation on the Pacific OCS. The
21 Bureaus stated that the decision was needed for oil companies to recover oil that
22 would be unrecoverable using conventional methods.

23 7. Despite the substantial questions regarding the impacts of offshore
24 fracking and other well stimulation on the marine environment; the known harmful
25 impacts; the controversial nature of the practices; and their potentially devastating
26 impacts on threatened and endangered species and Chumash Native American
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1 cultural resources, the Bureaus did not prepare an EIS analyzing and disclosing the
2 impacts of its decision as required by NEPA.

3 8. Instead, the Bureaus issued a grossly inadequate, illogical, and
4 uniformed programmatic environmental assessment (“PEA”) and finding of no
5 significant impact (“FONSI”). The PEA and FONSI fail to take the legally
6 required “hard look” at the direct, indirect, and cumulative impacts of the Bureaus’
7 decision to authorize offshore fracking and other well stimulation on the Pacific
8 OCS, and fail to analyze a reasonable range of alternatives to that decision.

9 9. A valid environmental assessment would have shown that the
10 Bureaus’ decision to authorize offshore fracking and other forms of well
11 stimulation could have a significant effect on the environment, requiring the
12 preparation of an EIS.

13 10. In addition, despite acknowledging that their decision to authorize
14 offshore fracking and other well stimulation practices could impact several
15 threatened and endangered species, the Bureaus issued their decision without
16 engaging in consultation under Section 7 of the ESA. Such failure violates both the
17 Bureaus’ procedural duties and their substantive duty to ensure their actions do not
18 jeopardize the continued existence of any threatened or endangered species or
19 harm their critical habitat.

20 11. Accordingly, Plaintiffs request an order from the Court declaring that
21 the Bureaus are in violation of NEPA and the ESA and prohibiting them from
22 authorizing offshore fracking and other well stimulation practices on the Pacific
23 OCS unless and until the Bureaus comply with NEPA and the ESA.

24 **PARTIES**

25 **Plaintiffs**

26 12. Plaintiff the Center for Biological Diversity (the “Center”) is a
27 nonprofit corporation that advocates for the protection of threatened and
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1 endangered species and their habitats through science, policy, and environmental
2 law. The Center's mission also includes protecting air quality, water quality, and
3 public health. The Center's Oceans Program focuses specifically on conserving
4 marine ecosystems, and seeks to ensure that imperiled species such as marine
5 mammals, sea turtles, and fish are properly protected from destructive practices in
6 our oceans. The Oceans Program also works to protect coastal communities from
7 the air pollution, water pollution, and other impacts that result from such practices.
8 In pursuit of this mission, the Center has been actively involved in protecting the
9 California coastal environment from offshore fracking. The Center brings this
10 action on behalf of itself and its members. The Center has more than 48,500
11 members, more than 7,000 of which live in California.

12 13. Plaintiff Wishtoyo Foundation ("Wishtoyo") is a California nonprofit
13 public interest organization with over 700 members primarily composed of
14 Chumash Native Americans, and Santa Barbara, Ventura, and Los Angeles County
15 residents. Wishtoyo's mission is to preserve, protect, and restore Chumash culture,
16 the culture of indigenous peoples, and the environment all peoples depend upon
17 through education, outreach, cultural programs, scientific study, restoration
18 projects, advocacy, and legal action. Chumash tribes, bands, and clans have a long
19 history of interaction with the marine waters of the Pacific Ocean and the Santa
20 Barbara Channel from Point Conception to Malibu and out to and around the
21 Channel Islands, and rely upon these waters and their natural cultural resources to
22 support and maintain Chumash traditional practices, ways of life, and ancestral
23 connections. The Chumash Peoples and members of Wishtoyo have a strong
24 cultural interest in the protection of the Santa Barbara Channel's cultural and
25 natural cultural resources. Members of Wishtoyo use the Santa Barbara Channel
26 for ceremonial purposes, to connect with and celebrate their ancestors and cultural
27 heritage, to gather natural cultural resources, and for educational purposes.
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1 14. The ecological health of the Santa Barbara Channel is essential for
2 maintenance of Chumash heritage and ways of life. As passed down from
3 generation to generation of Chumash through oral history, the Chumash Creation
4 Story describes the origin of the Chumash Peoples on the Channel Islands and their
5 journey to the mainland, and explains an importance of the Santa Barbara Channel
6 to the Chumash Peoples. As told by the Creation Story, when resources became
7 scarce, the creator of the Chumash Peoples promised the Chumash a bounty of
8 land and natural resources and provided a rainbow bridge from the Channel Islands
9 to what is now California's mainland. In order to successfully cross over, the
10 Chumash were told to not look down or else they would fall into the ocean. For
11 those who did look down while walking across the bridge, the creator was able to
12 turn them into dolphins, thus sparing their lives. To this day, dolphins are
13 considered ancestors of the Chumash Peoples, and are honored through songs and
14 ceremonies. Dolphins guide Chumash Peoples to bountiful fishing areas, protect
15 women when giving birth near or in the ocean, and overall, are the protectors of the
16 Chumash Peoples.

17 15. The Chumash are a maritime people, whose identity and maintenance
18 of cultural practices is intrinsically connected to the marine waters of the Santa
19 Barbara Channel. Chumash Peoples since time immemorial have been and
20 continue to: visit the Channel Islands by crossing the Channel in tomols (Chumash
21 canoes); fish in the Santa Barbara Channel; gather abalone, seaweed, and other
22 marine life for food, cultural practices, and for ceremonial use; and use shells,
23 including abalone shells, gathered in the Santa Barbara Channel for trade, fishing
24 hooks, jewelry, as part of ceremonies, and as ornaments for traditional and
25 ceremonial dress. The ancestors of Chumash Peoples resided in villages and
26 utilized sacred sites for ceremonies that are now submerged within the Santa
27 Barbara Channel. Destruction of and harm to submerged Chumash villages and
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1 sacred sites will harm the Chumash Peoples by preventing their use and access to
2 these cultural resources, which maintain and provide a connection to their pre-
3 colonial traditions and ways of life.

4 16. Chumash members of Wishtoyo desire to maintain their cultural and
5 religious practices, and spiritual connection with their ancestors, by being able to
6 experience, enjoy, utilize, and interact with the Santa Barbara Channel, its wildlife,
7 its cultural resources, and its submerged sacred cultural sites.

8 17. In addition, Plaintiffs' members and staff regularly visit California
9 beaches, as well as the Santa Barbara Channel, its islands, and the waters near
10 offshore platforms for swimming, surfing, kayaking, hiking, camping, viewing and
11 studying wildlife, photography, and other vocational and recreational activities.
12 Plaintiffs' members and staff derive recreational, spiritual, professional, scientific,
13 educational, and aesthetic benefit from their activities in these areas. Plaintiffs'
14 members and staff intend to continue to use and enjoy these areas frequently and
15 on an ongoing basis in the future.

16 18. Offshore fracking and other forms of well stimulation degrade these
17 habitats and threaten wildlife and the coastal environment. Offshore fracking and
18 other well stimulation practices also threaten submerged Chumash village sites,
19 burial sites, sacred sites, and sunk tomols, as well as sacred Chumash cultural
20 marine resources such as dolphins and abalone.

21 19. For example, offshore fracking contaminates the ocean with
22 wastewater and pollutants that are toxic to marine species. It also requires the
23 shipment of fracking chemicals and equipment to oil platforms, thereby increasing
24 port traffic, ship traffic, and the attendant ocean noise and risk of ship strikes.

25 20. Offshore fracking and other well stimulation activities allow oil
26 companies to recover oil that would otherwise be unrecoverable. These activities
27 prolong offshore oil and gas drilling and the life of aging offshore infrastructure
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1 which otherwise face retirement. This means that the Bureaus' decision to allow
2 offshore fracking not only adds new environmental risks, but it also extends the
3 harm from conventional oil and gas development, including air and water
4 pollution, ocean noise, and increased risk of ship strikes and oil spills.

5 21. Offshore fracking and other well stimulation activities degrade
6 Plaintiffs staff and members' recreational, spiritual, scientific, cultural, and
7 aesthetic enjoyment of the Santa Barbara Channel and other waters and coastal
8 areas near where offshore drilling occurs by harming water quality and wildlife
9 that they study and observe there, and decreasing their ability to view species that
10 are harmed by the practices or leave the area. Additionally, Plaintiffs' members
11 and staff reasonably fear that the Bureaus' decision fails to adequately protect
12 California's already imperiled wildlife and air and water quality, and exposes them
13 and the coastal environment to increased risk of harm. Such risks include, but are
14 not limited to, increased emissions of hazardous air pollutants such as benzene, a
15 scientifically-proven carcinogen, as well as increased risk of earthquakes and oil
16 spills, both of which could have devastating environmental and economic
17 consequences, and devastating impacts to resources of cultural significance to the
18 Chumash Peoples and their ancestral lands. Such reasonable fears negatively
19 impact Plaintiffs members and staff's use and enjoyment of these areas.

20 22. The above-described aesthetic, recreational, economic, professional,
21 cultural, and other interests have been, are being, and will continue to be adversely
22 affected and irreparably injured by the Bureaus' decision to authorize offshore
23 fracking and other forms of well stimulation on the Pacific OCS without
24 complying with NEPA and the ESA.

25 23. In addition, Plaintiffs and their members regularly comment on
26 agency actions that affect California's coastal environment, including the Santa
27 Barbara Channel, and regularly comment on and participate in the Bureaus'
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1 decisions and their environmental analyses under NEPA and decisions affecting
2 threatened and endangered species. The Bureaus' failure to comply with NEPA
3 and the ESA deprives them of these rights, and causes them procedural and
4 informational injuries.

5 24. Plaintiffs and their members have no adequate remedy at law and the
6 requested relief is proper. Relief in this case would ensure comprehensive
7 environmental review of offshore well stimulation practices that would inform the
8 public and decisionmakers about the environmental impacts of these practices, and
9 would provide a statutorily-mandated opportunity for public participation in the
10 decisionmaking process. Relief in this case would also ensure the Bureaus engage
11 in consultation under Section 7 of the ESA to analyze the impacts of offshore well
12 stimulation practices and ensure any decision to authorize such practices does not
13 jeopardize any threatened or endangered species or adversely modify their critical
14 habitat. The requested relief could result in additional mitigation and oversight of
15 offshore drilling that would better protect the ocean, imperiled wildlife, and
16 important cultural resources, and alleviate the injuries of Plaintiffs and their
17 members. An order prohibiting the Bureaus from authorizing offshore well
18 stimulation unless and until the Bureaus comply with NEPA and the ESA would
19 redress the injuries of Plaintiffs and their members.

20 **Defendants**

21 25. Defendant Bureau of Ocean Energy Management ("BOEM") is a
22 federal agency within the U.S. Department of the Interior. BOEM is charged with
23 managing the development of offshore resources, including oil exploration,
24 development, and production in federal waters.

25 26. Defendant Bureau of Safety and Environmental Enforcement
26 ("BSEE") is a federal agency within the U.S. Department of the Interior. BSEE is
27 charged with permitting offshore drilling operations in federal waters and ensuring
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1 such activities comply with safety and environmental regulations.

2 27. Defendant U.S. Department of the Interior is a United States agency
3 within the executive branch. The Department is responsible for managing and
4 overseeing the development of oil resources on the Outer Continental Shelf in
5 accordance with NEPA and the ESA.

6 28. Defendant Sally Jewell is the Secretary of the U.S. Department of the
7 Interior, and is sued in her official capacity. Ms. Jewell is the official ultimately
8 responsible under federal law for ensuring that the actions and management
9 decisions of the Bureaus comply with all applicable laws and regulations,
10 including NEPA and the ESA.

11 29. Defendant Joan Barminski is the Pacific Region Director of BOEM,
12 and is sued in her official capacity. Ms. Barminski has responsibility for
13 implementing and fulfilling BOEM's duties under NEPA and the ESA.

14 30. Defendant Mark Fesmire is the Pacific Region Director of BSEE, and
15 is sued in his official capacity. Mr. Fesmire has responsibility for implementing
16 and fulfilling BSEE's duties under NEPA and the ESA.

17 **STATUTORY BACKGROUND**

18 **National Environmental Policy Act**

19 31. NEPA, the nation's "basic national charter for protection of the
20 environment," seeks to "insure that environmental information is available to
21 public officials and citizens before decisions are made and before actions are
22 taken," and to "help public officials make decisions that are based on
23 understanding of environmental consequences, and take actions that protect,
24 restore, and enhance the environment." 40 C.F.R. § 1500.1(a)-(c).

25 32. To reach these goals, federal agencies must prepare an Environmental
26 Impact Statement ("EIS") for all "major Federal actions significantly affecting the
27 quality of the human environment." 42 U.S.C. § 4332(2)(C). The Council on
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1 Environmental Quality has promulgated regulations implementing NEPA, which
2 are binding on all federal agencies. 40 C.F.R. § 1507.1.

3 33. The regulations specify the factors an agency must consider in
4 determining whether an action may significantly affect the environment warranting
5 an EIS. *Id.* § 1508.27. Specifically, whether an action may have “significant”
6 impacts on the environment is determined by considering the “context” and
7 “intensity” of the action. *Id.* In considering the “context” of the action, the
8 significance of the project “must be analyzed in several contexts such as society as
9 a whole (human, national), the affected region, the affected interests, and the
10 locality.” *Id.* § 1508.27(a).

11 34. The “intensity” of the action is determined by considering the ten
12 factors enumerated in the regulations, which are: (1) impacts that may be both
13 beneficial and adverse; (2) the degree to which the proposed action affects public
14 health or safety; (3) unique characteristics of the geographic area such as proximity
15 to historic or cultural resources, park lands, or ecologically critical areas; (4) the
16 degree to which the effects on the human environment are likely to be highly
17 controversial; (5) the degree to which the possible effects on the human
18 environment are highly uncertain or involve unique or unknown risks; (6) the
19 degree to which the action may establish a precedent for future actions with
20 significant effects; (7) whether the action is related to other actions with
21 individually insignificant but cumulatively significant impacts; (8) the degree to
22 which the action may cause loss or destruction of significant scientific, cultural, or
23 historical resources; (9) the degree to which the action may adversely affect a
24 species listed under the Endangered Species Act or its designated critical habitat;
25 and (10) whether the action threatens a violation of federal, state, or local
26 environmental laws. *Id.* § 1508.27(b)(1)-(10). The presence of even just one of
27 these factors may be sufficient to require preparation of an EIS.
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1 35. NEPA’s regulations provide that an agency may first prepare an
2 Environmental Assessment (“EA”) aimed at determining whether the
3 environmental impact of a proposed action is “significant,” warranting preparation
4 of an EIS. 40 C.F.R. § 1501.3. If, pursuant to the EA, an agency determines that an
5 EIS is not required, it must issue a “Finding of No Significant Impact” (“FONSI”)
6 that presents the reasons why the proposed agency action will not have a
7 significant impact on the human environment. *Id.* §§ 1501.4(e), 1508.13. The EA
8 must “provide sufficient evidence and analysis for determining whether” a FONSI
9 is sufficient to satisfy NEPA. *Id.* § 1508.9(a)(1).

10 36. An agency may only issue a FONSI for actions with no significant
11 impact on the human environment. *Id.* § 1508.13. If an action may have a
12 significant effect on the environment, or if there are substantial questions as to
13 whether it may, an EIS must be prepared.

14 37. Both EAs and EISs must specify the underlying purpose and need to
15 which the agency is responding in proposing the action. *Id.* §§ 1502.13, 1508.9(b).

16 38. Both EAs and EISs must also “describe the environment of the areas
17 to be affected or created by the alternatives under consideration.” *Id.* § 1502.15.

18 39. Additionally, EAs and EISs must discuss a proposed action’s direct,
19 indirect, and cumulative effects. 40 C.F.R. §§ 1502.16, 1508.9(b). Direct effects
20 are “caused by the action and occur at the same time and place,” whereas indirect
21 effects are “caused by the action and are later in time or farther removed in
22 distance, but are still reasonably foreseeable.” *Id.* § 1508.8. Cumulative effects are
23 “the impact on the environment which results from the incremental impact of the
24 action when added to other past, present, and reasonably foreseeable future
25 actions.” *Id.* § 1508.7.

26 40. Effects, in turn, include “ecological..., aesthetic, historic, cultural,
27 economic, social, or health, whether direct, indirect, or cumulative.” *Id.* § 1508.8.
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1 41. EAs and EISs must also include a reasonable range of alternatives,
2 42 U.S.C. § 4332(2)(C)(iii), (E), 40 C.F.R. § 1508.9(b), and provide “a clear basis
3 for choice among options by the decisionmaker and the public.” 40 C.F.R. §
4 1502.14.

5 42. “Accurate scientific analysis, expert agency comments, and public
6 scrutiny are essential to implementing NEPA.” *Id.* § 1500.1(b).

7 **Endangered Species Act**

8 43. Congress enacted the ESA, in part, “to provide a means whereby the
9 ecosystems upon which endangered species and threatened species depend may be
10 conserved . . . [and] to provide a program for the conservation of such endangered
11 species and threatened species” 16 U.S.C. § 1531(b).

12 44. The ESA vests primary responsibility for administering and enforcing
13 the statute with the Secretaries of Commerce and Interior. The Secretaries of
14 Commerce and Interior have delegated this responsibility to the National Marine
15 Fisheries Service and the U.S. Fish and Wildlife Service, respectively (collectively,
16 the “Services”).

17 45. When a species has been listed as threatened or endangered under the
18 ESA, all federal agencies—including the Bureaus—must ensure that their
19 programs and activities are in compliance with the ESA.

20 46. To this end, Section 7(a)(2) of the ESA requires the Bureaus, in
21 consultation with the Services, to “insure that any action authorized, funded, or
22 carried out by” the Bureaus “is not likely to jeopardize the continued existence of
23 any endangered species or threatened species or result in the destruction or adverse
24 modification” of the critical habitat of such species. 16 U.S.C. § 1536(a)(2).

25 47. Actions subject to Section 7 are broadly defined to include “all
26 activities or programs of any kind authorized, funded, or carried out, in whole or in
27 part” by federal agencies and include granting permits and licenses, as well as
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1 actions that may directly or indirectly cause modifications to the land, water, or air.
2 50 C.F.R. § 402.02. An agency is required to review its actions “at the earliest
3 possible time” to determine whether the action may affect listed species or critical
4 habitat. *Id.* § 402.14(a).

5 48. For each agency action, the Bureaus must request from the Services a
6 list of any threatened or endangered species that may be present in the area of the
7 agency action. 16 U.S.C. § 1536(c)(1), 50 C.F.R. § 402.12. If listed species may be
8 present, the Bureaus must prepare a “biological assessment” or engage in
9 “informal consultation” with the Services to determine whether the listed species is
10 likely to be adversely affected by the proposed action. 16 U.S.C. § 1536(c)(1); 50
11 C.F.R. § 402.13.

12 49. If the Bureaus determine that a proposed action may affect any listed
13 species or critical habitat, the agency must engage in formal consultation with the
14 Services, unless the biological assessment or informal consultation concludes that
15 the action is not likely to adversely affect any listed species or critical habitat and
16 the Services concur with that finding. 50 C.F.R. § 402.14(a), (b). The “may affect”
17 standard broadly includes “[a]ny possible effect, whether beneficial, benign,
18 adverse, or of an undetermined character.” 51 Fed. Reg. 19,926 (June 3, 1986).

19 50. To complete formal consultation, the Services must provide the
20 Bureaus with a “biological opinion,” explaining how the proposed action will
21 affect the listed species or habitat. 16 U.S.C. § 1536(b), 50 C.F.R. § 402.14. If the
22 Services conclude that the proposed action “will jeopardize the continued
23 existence” of a listed species or result in the destruction or adverse modification of
24 critical habitat, the biological opinion must outline “reasonable and prudent
25 alternatives” to avoid jeopardy. 16 U.S.C. § 1536(b)(3)(A), 50 C.F.R. §
26 402.14(h)(3).

1 **FACTUAL BACKGROUND**

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

3 56. The Pacific OCS region is home to 43 active oil and gas leases. Oil
4 and gas companies conduct drilling and extraction activities under these leases
5 from 23 oil and gas platforms off the coast of Southern California. Oil companies
6 installed the platforms between 1967 and 1989, and the first production began in
7 1969. When leasing and drilling began on the Pacific OCS, oil companies and
8 regulators anticipated that drilling would last for roughly 50 years. Oil companies
9 have been drilling the Pacific OCS for close to 50 years.

10 57. The platforms range from approximately four to ten miles from shore.

11 Fifteen of these platforms are located in the Santa Barbara Channel, four are
12 located off Long Beach, and four are located in the Santa Maria Basin.

13 58. The platforms are located in one of the most significant and diverse
14 seascapes in the world that supports a vast array of habitats and coastal and marine
15 species. For example, endangered blue whales have important foraging grounds in
16 the Santa Barbara Channel—where most of the Pacific OCS platforms are
17 located—such that the area now hosts the world’s densest summer seasonal
18 congregation of blue whales. Another endangered whale, the humpback whale,
19 congregates in the area from March to September to feed. The Channel is also
20 home to hundreds of fish and invertebrate species; giant kelp forests; and several
21 other species listed under the Endangered Species Act, including sea turtles,
22 southern sea otters, and black abalone, as well as critical habitat for western snowy
23 plovers and black abalone.

24 59. The Santa Barbara Channel includes the Channel Islands Marine
25 Sanctuary and Channel Islands National Park. The Park was established, in part, to
26 protect nationally significant cultural resources, including “archaeological
27 evidence of substantial populations of Native Americans.” 16 U.S.C. § 410ff.
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1 60. Since time immemorial, the Chumash Peoples have depended upon
2 the cultural resources within marine waters of the Santa Barbara Channel, from
3 Point Conception to Malibu and out to an around the Channel Islands, to maintain
4 their ways of life, cultural practices, and ancestral connections.

5 61. The Bureaus' decision authorizes offshore fracking and other forms of
6 well stimulation at all 23 platforms off Southern California, including in the Santa
7 Barbara Channel.

8 62. Offshore fracking and other forms of well stimulation have unique
9 environmental impacts. The practices increase environmental damages beyond
10 those of conventional oil and gas development, and prolong the life of offshore oil
11 and gas drilling.

12 63. The use of fracking and other well stimulation techniques, both
13 onshore and offshore, have substantially increased in recent years due to advances
14 in technology such as horizontal drilling.

15 **Offshore Fracking and Other Forms of Well Simulation**

16 64. Offshore fracking is a form of unconventional well stimulation. It
17 involves injecting a mixture of water, a proppant (typically sand or man-made
18 ceramic materials), and chemicals into a well at extremely high pressure to
19 artificially fracture a rock layer below the seafloor and create passages through
20 which oil and gas can flow. The practice allows oil companies to recover oil and
21 gas that would otherwise be unrecoverable. According to the industry, offshore
22 fracking can significantly improve the life and productivity of a well, as well as the
23 amount of oil and gas recovered.

24 65. Acidizing is another form of unconventional well stimulation. Acid
25 fracturing is similar to hydraulic fracturing except that instead of using a proppant
26 to keep fractures open, an acid solution is used to etch channels in the rock walls,
27 thereby creating pathways for oil and gas to flow. Matrix acidizing is a process in
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1 which a combination of hydrochloric acid and other acids are mixed with brine and
2 other chemicals and injected underground to dissolve oil bearing rock to enhance
3 production of oil and gas. The practice allows oil companies to recover oil and gas
4 that would otherwise be unrecoverable.

5 66. There are crucial information gaps concerning the impacts of offshore
6 fracking and acidizing on the marine environment. But what is known raises
7 several significant environmental and public health concerns.

8 67. On land, fracking and acidizing have been linked to chemical and oil
9 spills, air and water pollution, earthquakes, and property damage. The damages to
10 public health and the environment have often been severe. Offshore fracking and
11 acidizing raise similar concerns and add further risks due to the unpredictable
12 nature of the ocean environment.

13 68. Water contamination is a particular hazard of offshore fracking
14 because toxic chemicals are used in fracking fluids. The water pollution permit for
15 the oil platforms in federal waters off California allows more than nine billion
16 gallons of produced water, including fracking chemicals, to be dumped into the
17 Pacific Ocean each year. The permit has no limits on the amount of fracking
18 chemicals that can be discharged when combined with produced water. Roughly
19 half the platforms in the Santa Barbara Channel use this wastewater disposal
20 method. This disposal method can result in wastewater plumes. These plumes can
21 rise to the surface of the sea or become trapped below the surface.

22 69. When wastewater is not dumped into the ocean, it is reinjected into
23 the seafloor or transported to shore for underground injection. This disposal
24 method can result in leaks during transport or after injection that contaminate
25 ground and surface waters. Loss of well casing integrity is another pathway for
26 contamination. A recent study found that older wells can lead to fluid migration,
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1 and that the high injection pressures used in fracking can increase this risk
2 significantly. For this same reason, fracking can also increase the risk of oil spills.

3 70. Offshore fracking can contribute to earthquakes. Wastewater injection
4 used in fracking has been scientifically linked to earthquakes of magnitude three
5 and greater in seven states, including California. At least thirty of California's
6 offshore injection wells are located within three miles of a fault. The practice of
7 fracking itself has been found to contribute to seismic events.

8 71. The chemicals used in fracking fluids can cause adverse public health
9 effects. For example, more than 75 percent of the chemicals used can affect the
10 skin, eyes, and other sensory organs, as well as respiratory and gastrointestinal
11 systems; approximately 40 to 50 percent can affect the brain/nervous system,
12 immune system, cardiovascular system, and the kidneys; 37 percent can affect the
13 endocrine system; and 25 percent can cause cancer and mutations.

14 72. Oil companies also use dozens of extremely hazardous chemicals to
15 acidize wells in California. These chemicals include hazardous chemicals known to
16 be carcinogens, mutagens, reproductive toxins, developmental toxins, endocrine
17 disruptors, or have highly acute toxicity. Acidizing chemicals can make up as
18 much as 18 percent of the fluid used in these procedures. And each acidization can
19 use as much as hundreds of thousands of pounds of some chemicals.

20 73. Air pollution from well stimulation is also well documented.
21 Pollutants released during offshore fracking and acidizing pose serious health risks,
22 including carcinogenicity and endocrine disruption. Volatile organic compounds
23 ("VOCs") emitted during offshore fracking include the "BTEX compounds"—
24 benzene, toluene, ethyl benzene, and xylene—which are designated as hazardous
25 air pollutants. *See* 42 U.S.C. § 7412(b). Many of these VOCs are associated with
26 serious short-term and long-term effects to the respiratory, nervous, and circulatory
27 systems. Additionally, VOCs create ground-level ozone, or smog, which can
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1 contribute to asthma, premature death, stroke, heart attack, and low birth weight.
2 Benzene is also a known carcinogen, and has been documented in people living
3 within a 10-mile radius of fracked wells.

4 74. In addition, offshore fracking can harm a variety of marine life.
5 Scientific research has indicated that 40 percent of the chemicals used in fracking
6 fluids can harm aquatic animals and other wildlife. In fact, California scientists
7 have found that chemicals frequently used in fracking in California are among the
8 most toxic in the entire world with respect to aquatic life.

9 75. Transportation of well stimulation chemicals to offshore platforms can
10 result in vessel collisions with imperiled whales, dolphins, and sea turtles that can
11 kill or injure them.

12 76. Offshore fracking and acidizing also threaten Chumash Native
13 Americans' cultural resources and ancestral lands. The drilling of fracking wells
14 that disturb the ocean floor threatens to destroy submerged Chumash village sites,
15 burial sites, sacred sites, and sunk tomols on or just below the ocean floor. Harm to
16 dolphins from offshore well stimulation activities could impact Chumash natural
17 cultural resources because the sightings and interactions with dolphins are essential
18 to Chumash ceremony, ancestral connections, traditional practices, and ways of
19 life. Harm to abalone could impact Chumash natural cultural resources because
20 abalone shells are used as fishhooks, jewelry, and ornaments for traditional and
21 ceremonial dress. Offshore fracking and other well simulation could impact other
22 marine life used by the Chumash to maintain their heritage, cultural practices, and
23 connection to their ancestors, including Chumash subsistence fishing and the
24 Chumash Peoples' connection to their pre-colonial ways of life.

25 77. Offshore fracking and acidizing also prolong offshore oil drilling and
26 extraction. Thus, in addition to the unique impacts from the unconventional drilling
27 practices themselves, they can also cause environmental and cultural harms
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1 associated with conventional oil and gas development. These impacts are
2 widespread and well-documented.

3 78. The harms associated with conventional oil and gas activities include
4 noise pollution that can interfere with important biological functions of marine
5 mammals like feeding, mating, and rearing young; increased vessel traffic, which
6 increases the risk of ship strikes that can kill or injure endangered whales and sea
7 turtles; exhaustion and mortality of seabirds that are attracted to artificial light on
8 offshore vessels and platforms; increased risk of oil spills which can kill or harm a
9 wide variety of marine life, including threatened and endangered blue and
10 humpback whales, sea otters, sea turtles, black abalone, and birds, as well as
11 dolphins and fish; increased air pollution that can harm public health and welfare;
12 and increased risk of oil spills and oil clean up practices which can destroy
13 submerged and onshore Chumash cultural resources.

14 79. Furthermore, the oil and gas extraction enabled by offshore fracking
15 and other well stimulations can contribute to land subsidence at and in the area of
16 the drilling site, which can sink and collapse the ocean floor. This is because the
17 removal of oil and gas from underground reserves can cause the overlying terrain
18 to collapse into the emptied underground reserves.

19 80. Offshore oil and gas extraction enabled by offshore fracking and other
20 well stimulations can thus cause land subsidence that destroys Chumash cultural
21 resources, including village sites, burial sites, sacred sites, and sunk tomols present
22 on the surface of, or just beneath the surface of, the ocean floor of the Santa
23 Barbara Channel.

24 81. For these reasons, and others, offshore fracking and other forms of
25 unconventional well stimulation are controversial practices.

26 **The Challenged Decision**

27 82. On February 22, 2016, the Bureaus issued a proposed decision to
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1 authorize four forms of well stimulations from all 23 offshore platforms on the
2 Pacific OCS; and announced the availability of a draft programmatic
3 environmental assessment that purported to analyze the environmental impacts of
4 the proposal. *See* 81 Fed. Reg. 8,743 (Feb. 22, 2016). The four types of well
5 stimulation included hydraulic fracturing, acid fracturing, matrix acidizing, and
6 diagnostic fracture injection testing. Diagnostic fracture injection testing is used to
7 estimate certain reservoir properties needed to optimize a main fracture job.

8 83. During the thirty-day public comment period on the proposal and draft
9 assessment, the Bureaus received thousands of comments urging the agency to
10 conduct an EIS on the impacts of offshore fracking and other well stimulation. For
11 example, a letter signed by more than thirty scientists urged the Bureaus to conduct
12 a comprehensive EIS given scientific studies documenting that fracking and
13 acidizing pose a wide range of risks to public health and ecosystems. The
14 comments also noted critical data gaps regarding the impacts of offshore fracking
15 and acidizing on the marine environment. The scientists urged the Bureaus not to
16 authorize any offshore fracking or acidizing unless and until a comprehensive
17 environmental analysis finds it safe.

18 84. Elected officials, including local, state, and federal representatives,
19 also commented on the draft assessment. The officials urged the Bureaus to
20 prohibit offshore fracking and acidizing given the significant risks or to complete a
21 full EIS to better understand the potential impacts. Comments from California state
22 legislators explained how the Bureaus' proposal would compromise the state's
23 ability to protect its coastal resources and public health.

24 85. The Division of Oil, Gas and Geothermal Resources—an agency that
25 regulates oil and gas activities on state and private lands in California—also
26 submitted comments. The comments stated that the Bureaus should adopt an
27 alternative that would prohibit the dumping of well stimulation wastewaters into
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1 the ocean. The comments also suggested several mitigation measures the Bureaus
2 could adopt, including a requirement to publically disclose the chemicals used in
3 well stimulation and to notify the public before well stimulation will be used.

4 86. The Center also submitted comments urging the Bureaus to prohibit
5 offshore well stimulation and conduct a full EIS. The Center's comments also
6 highlighted several deficiencies in the Bureaus' draft assessment.

7 87. Wishtoyo also submitted comments urging the Bureaus to prohibit
8 offshore well stimulation. Wishtoyo's comments explained how the Bureaus'
9 decision to authorize offshore fracking and other well stimulation practices
10 threatens cultural resources important to Chumash Native Americans, including
11 sacred dolphins, abalone, and submerged Chumash remains.

12 88. But on May 27, 2016, the Bureaus issued a final decision to authorize
13 the use of offshore fracking and acidizing at all 23 platforms on the Pacific OCS.

14 89. The Bureaus did not issue an EIS on their decision. Instead, the
15 Bureaus issued a Final Programmatic Environmental Assessment ("PEA") and
16 Finding of No Significant Impact ("FONSI"). The PEA and FONSI do not adopt
17 any mitigation measures for the use of well stimulation.

18 90. The Bureaus state in the PEA and FONSI that the purpose of their
19 decision is to enhance the recovery of oil and gas from new and existing wells on
20 the Pacific OCS beyond that which can be recovered with conventional methods.
21 The Bureaus' stated need for their decision is the efficient recovery of oil and gas
22 resources on the Pacific OCS.

23 91. The Bureaus acknowledge that their decision to authorize the use of
24 well stimulation may allow oil companies to recover oil that would otherwise not
25 be recovered. The Bureaus also acknowledge that drilling activities off the coast of
26 California could end sooner without the use of well stimulation.

1 92. The Bureaus evaluated four alternatives: (1) authorizing well
2 stimulation (the proposed alternative); (2) authorizing well stimulation at depths of
3 more than 2,000 feet below the seafloor only; (3) authorizing well stimulation but
4 prohibiting the dumping of wastewater from well stimulation into the ocean; and
5 (4) prohibiting the use of well stimulation (the no-action alternative).

6 93. The Bureaus acknowledge that there are data gaps—critical in
7 nature—regarding the impacts of offshore fracking and acidizing on the marine
8 environment. For example, in discussing the impacts of the discharge of chemicals
9 used in fracking and acidizing into the ocean, the PEA notes the lack of toxicity
10 data for 31 of the 48 chemicals previously used in California, and the lack of
11 available data on chronic impacts of these chemicals in the marine environment.
12 The Bureaus acknowledge that California scientists identified these issues as
13 critical data gaps in the analysis of potential impacts of discharges of well
14 stimulation waste fluids to sensitive marine species.

15 94. The Bureaus also admit that offshore fracking and acidizing will cause
16 water and air pollution. But the PEA and FONSI dismiss the impacts to water
17 quality, marine life, and public health that could result from such pollution.

18 95. The Bureaus also acknowledge that offshore fracking and other well
19 stimulation could impact marine life, including threatened and endangered whales,
20 sea turtles, birds, sea otters, and fish. For example, the PEA acknowledges that
21 wastewater discharges from well stimulations may impact benthic organisms,
22 which include ESA-listed white and black abalone; marine and coastal fish, which
23 include ESA-listed southern California steelheads, scalloped hammerhead sharks,
24 tidewater goby, and green sturgeon; and marine mammals which include ESA-
25 listed blue whales, humpback whales, sei whales, fin whales, Guadalupe fur seals,
26 and southern sea otters. The PEA also acknowledges that well stimulation could
27 impact ESA-listed marine mammals through noise from platform service vessels
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1 delivering well stimulation equipment and materials and the potential for marine
2 mammals to be struck by such vessels. According to the PEA, marine and coastal
3 birds, which include ESA-listed western snowy plovers, marbled murrelets, and
4 California least terns, might be impacted by these vessels, as well as the accidental
5 release of well stimulation chemicals. The PEA also acknowledges that ESA-listed
6 sea turtles could be impacted by wastewater discharges from well stimulations, by
7 the accidental release of well stimulation chemicals, be disturbed by the noise from
8 service vessels, or be struck by such vessels.¹ But the PEA and FONSI dismiss the
9 significance of these impacts.

10 _____
11 ¹ The endangered and threatened species at issue in this case, their listing status,
12 and the dates when they were listed under the ESA are as follows: blue whale --
13 endangered, 35 Fed. Reg. 18,319 (Dec. 2, 1970); fin whale -- endangered, *id.*; sei
14 whale -- endangered, *id.*; North Pacific right whale -- endangered, *id.*, 73 Fed. Reg.
15 12,024 (Mar. 6, 2008); humpback whale -- originally listed as endangered in 1970,
16 35 Fed. Reg. 18,319 (Dec. 2, 1970), global population recently reclassified and
17 Central America DPS listed as endangered and Mexico DPS listed as threatened,
18 81 Fed. Reg. 62,260 (Sept. 8, 2016); sperm whale -- endangered, 35 Fed. Reg.
19 18,319 (Dec. 2, 1970); Western North Pacific gray whale -- endangered, *id.*;
20 Guadalupe fur seal -- threatened, 50 Fed. Reg. 51,252 (Dec. 16, 1985); Southern
21 sea otter -- threatened, 42 Fed. Reg. 2,965 (Jan. 14, 1977); loggerhead turtle, North
22 Pacific DPS -- endangered, 76 Fed. Reg. 58,868 (Sept. 22, 2011); leatherback
23 turtle -- endangered, 35 Fed. Reg. 8,491 (June 2, 1970); green turtle, East Pacific
24 DPS -- threatened, 81 Fed. Reg. 20,058 (Apr. 6, 2016); olive ridley turtle --
25 threatened, 43 Fed. Reg. 32,800 (July 28, 1978); black abalone -- endangered, 74
26 Fed. Reg. 1,937 (Jan. 14, 2009); white abalone -- endangered in Pacific Coast
27 range, 66 Fed. Reg. 29,046 (May 29, 2001); Southern California steelhead --
28 endangered, 71 Fed. Reg. 834 (Jan. 5, 2006); scalloped hammerhead shark, Eastern
Pacific DPS -- endangered, 79 Fed. Reg. 38,214 (July 3, 2014); green sturgeon,
Southern DPS -- threatened, 71 Fed. Reg. 17,757 (Apr. 7, 2005); tidewater goby --
endangered, 59 Fed. Reg. 5,494 (Feb. 4, 1994); Hawaiian petrel -- endangered, 32
Fed. Reg. 4,001 (Mar. 11, 1967); California Ridgway's rail -- endangered, 35 Fed.
Reg. 16,047 (Oct. 13, 1970); Short-tailed albatross -- endangered, 65 Fed. Reg.
46,643 (July 31, 2000); California least tern -- endangered, 35 Fed. Reg. 8,491
(June 2, 1970); Light-footed Ridgway's rail -- endangered, 35 Fed. Reg. 16,047
(Oct. 13, 1970); western snowy plover, Pacific DPS -- threatened, 58 Fed. Reg.

1 96. The PEA's purported cumulative impacts analysis contains general
2 statements and a list of activities in and around offshore platforms that affect the
3 environment.

4 97. The PEA and FONSI do not analyze the direct, indirect, or cumulative
5 impacts from prolonged offshore oil and gas drilling on the Pacific OCS.

6 98. The PEA and FONSI do not analyze the direct, indirect, or cumulative
7 impacts of offshore fracking, other well stimulation, or prolonged offshore oil and
8 gas drilling on the Pacific OCS on Chumash cultural resources or the heritage,
9 ways of life, and cultural and religious practices of the Chumash Peoples.

10 99. The Bureaus did not engage in consultation under Section 7 of the
11 ESA prior to issuing their decision authorizing offshore fracking and other well
12 stimulation practices on the Pacific OCS. The Bureaus have never engaged in
13 consultation under Section 7 of the ESA on the impacts of offshore fracking and
14 other well stimulation practices on the Pacific OCS on all the threatened and
15 endangered species or their designated critical habitat that may be affected by the
16 practices.

17 100. For example, the biological opinions for offshore oil and gas drilling
18 activities from Platforms Gilda, Hidalgo, and Gail were issued by the Services in
19 1979, 1984, and 1986, respectively, and do not mention offshore fracking.
20 Moreover, these consultations were completed before many species were even
21 listed under the ESA, including white and black abalone, hammerhead sharks,

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23 12,864 (Mar. 5, 1993); marbled murrelet -- threatened, 57 Fed. Reg. 45,328 (Oct.
24 1, 1992). The critical habitats at issue in this case, and the dates they were
25 designated by the federal government are as follows: black abalone critical habitat,
26 76 Fed. Reg. 66,805 (Oct. 27, 2011); leatherback sea turtle critical habitat, 77 Fed.
27 Reg. 4,170 (Jan. 26, 2012); western snowy plover, Pacific DPS critical habitat, 77
28 Fed. Reg. 36,728 (June 19, 2012); tidewater goby critical habitat, 78 Fed. Reg.
8,746 (Feb. 6, 2013); Southern California steelhead critical habitat, 70 Fed. Reg.
52,488 (Sept. 2, 2005).

1 green sturgeon, and tidewater goby, among others. The consultations therefore do
2 not consider the impacts of any offshore oil and gas activities on these species. The
3 impacts of offshore oil and gas activities on these species include increased
4 toxicity of their habitat, oil spills, increased vessel traffic, and increased ocean
5 noise, among others. Moreover, the biological opinions do not consider impacts to
6 critical habitat for black abalone, green sturgeon, leatherback sea turtles, western
7 snowy plovers, or Southern California steelhead. These biological opinions are
8 outdated and are not based on the best available science.

9 101. Pursuant to 16 U.S.C. § 1540(g), the Center provided the Bureaus
10 with notice of their ESA violations more than 60 days prior to the commencement
11 of the Third Claim for Relief.

12 102. The Bureaus have approved at least two drilling permits involving the
13 use of acidizing since issuance of the PEA and FONSI.

14 **CLAIMS FOR RELIEF**

15 **First Claim for Relief**

16 **Failure to Prepare an Environmental Impact Statement** 17 **in Violation of NEPA**

18 103. Plaintiffs re-allege and incorporate, as if fully set forth herein, each
19 and every allegation in the preceding paragraphs of this Complaint.

20 104. NEPA requires a federal agency to prepare an EIS for all “major
21 Federal actions significantly affecting the quality of the human environment.” 42
22 U.S.C. § 4332(2)(C). NEPA’s implementing regulations specify factors that must
23 be considered in determining whether an action may significantly affect the
24 environment warranting an EIS. 40 C.F.R. § 1508.27(b)(1)-(10).

25 105. The Bureaus’ programmatic decision to authorize offshore fracking
26 and other well stimulation on the Pacific OCS is a major federal action within the
27 meaning of NEPA.
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1 whether” a finding of no significant impact is sufficient. *Id.* § 1508.9(a)(1).

2 110. The Bureaus’ PEA and FONSI fail to comply with NEPA and its
3 implementing regulations in multiple respects, including but not limited to:

4 a) failure to properly define the purpose and need of the action;

5 b) failure to properly define the environmental baseline by failing to
6 consider ocean acidification and harmful algae blooms;

7 c) failure to properly identify cultural resources essential to the
8 maintenance of the heritage, ways of life, cultural practices, and religious practices
9 of the Chumash Native American Peoples;

10 d) failure to consider a reasonable range of alternatives, including, but
11 not limited to: prohibiting offshore well stimulation during certain times of year,
12 such as when endangered whales are feeding or migrating off the coast of
13 California; or requiring public disclosure of where and when well stimulation will
14 be employed and what chemicals will be used;

15 e) failure to properly consider the impacts of the alternatives actually
16 considered, such as the illogical and unfounded assumption that the no-action
17 alternative would increase negative environmental and societal impacts; and

18 f) failure to adequately consider the direct, indirect, and cumulative
19 impacts of the decision to authorize offshore fracking and other well stimulation
20 on: air quality; water quality; public health and welfare; threatened and endangered
21 species and their critical habitats; unique and culturally and ecologically important
22 areas, such as the Santa Barbara Channel and Chumash ancestral lands; cultural
23 resources, including natural cultural resources essential to the maintenance of the
24 heritage, ways of life, cultural practices, and religious practices of the Chumash
25 Native American Peoples; increased risk of oil spills; increased risk of
26 earthquakes; increased risk of land subsidence; and the impacts of continued and
27 prolonged offshore oil and gas drilling, and reliance on aging infrastructure.

1 111. Further, the Bureaus' PEA and FONSI fail to comply with NEPA and
2 its implementing regulations because they are internally inconsistent, based on
3 inadequate and absent information, and otherwise fail to produce a convincing
4 statement of reasons establishing why the impacts of the decision to authorize
5 offshore fracking and other well stimulation are insignificant, on their own or
6 cumulatively.

7 112. The Bureaus' PEA and FONSI are therefore arbitrary, capricious, an
8 abuse of discretion, and not in accordance with NEPA or its implementing
9 regulations, in violation of the APA. 5 U.S.C. § 706(2).

10 **Third Claim for Relief**

11 **Failure to Consult or Reinitiate Consultation in violation of the ESA**

12 113. Plaintiffs re-allege and incorporate, as if fully set forth herein, each
13 and every allegation in the preceding paragraphs of this Complaint.

14 114. The Bureaus retain ongoing discretionary control and involvement
15 over offshore drilling on the Pacific OCS. The Bureaus' decision to authorize
16 offshore fracking and other well stimulation practices on the Pacific OCS
17 constitutes an "agency action" subject to consultation under Section 7 of the ESA.
18 16 U.S.C. § 1536, 50 C.F.R. §§ 402.02, 402.03.

19 115. Ongoing offshore drilling and offshore fracking and other well
20 stimulation practices "may affect" ESA-listed species and designated critical
21 habitat, and the standards for reinitiating consultation exist. Therefore, the Bureaus
22 are required to initiate and/or reinitiate consultation with the Services. 50 C.F.R. §§
23 402.14(a), 402.16.

24 116. The Bureaus have not initiated or reinitiated consultation with the
25 Services on all endangered and threatened species and critical habitats that may be
26 affected by offshore fracking and other well stimulation practices on the Pacific
27 OCS.
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- 1 1. Declare that the Bureaus' decision to authorize offshore fracking and other
2 forms of well stimulation on the Pacific OCS without first preparing an EIS
3 violates NEPA and the APA, and order the Bureaus to comply with NEPA
4 by preparing an EIS on its decision to authorize offshore fracking and other
5 forms of well stimulation on the Pacific OCS;
- 6 2. Declare that the Bureaus' PEA and FONSI are inadequate and fail to take a
7 hard look at the impacts of offshore fracking and other forms of well
8 stimulation on the Pacific OCS in violation of NEPA and the APA, and set
9 aside the Bureaus' PEA and FONSI;
- 10 3. Declare that the Bureaus' actions and inactions regarding their decision to
11 authorize offshore fracking and other well stimulation practices on the
12 Pacific OCS violate the procedural and substantive provisions of Section 7
13 of the ESA, and order the Bureaus to initiate or reinstate consultation
14 pursuant to Section 7 of the ESA on the effects of continued offshore oil and
15 gas drilling, including offshore fracking and other well stimulation practices,
16 on the Pacific OCS on endangered and threatened species and their
17 designated critical habitats;
- 18 4. Prohibit the Bureaus from authorizing offshore fracking and other well
19 stimulation practices unless and until the Bureaus comply with NEPA and
20 the ESA;
- 21 5. Award Plaintiffs their costs of litigation, including reasonable attorneys'
22 fees; and
- 23 6. Grant such other relief as the Court deems just and proper.

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25 Dated: November 15, 2016
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Respectfully submitted,

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