

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

GRADY THIGPEN, CHRIS M. McCRANEY AND
JOHN MICHAEL DOUKAS
Individually, as private attorneys general
and on behalf of all others similarly situated

Plaintiff

versus

BP, plc, BP EXPLORATION AND PRODUCTION, INC.,
BP AMERICA, INC., ANADARKO PETROLEUM
CORPORATION, MITSUI OIL EXPLORATION
CO., LTD, TRANSOCEAN, LTD., TRANSOCEAN
OFFSHORE DEEPWATER DRILLING, INC.,
TRANSOCEAN DEEPWATER, INC.,
HALLIBURTON ENERGY SERVICES, INC. AND
CAMERON INTERNATIONAL CORPORATION
f/k/a COOPER CAMERON CORPORATION,

Defendants

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* CIVIL ACTION NO.
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* SECTION “ ”
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* JURY DEMAND
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CLASS ACTION COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs, Grady Thigpen, Chris M. McCraney and John Michael Doukas (APlaintiffs@), individually, as private attorneys general, and as representatives of the class defined herein (the AClass@), bring this action against the defendants identified below (ADefendants@), and aver as follows:

I. INTRODUCTION

1. This is a class action brought pursuant to Rule 23 of the Federal Rules of Civil Procedure (1) to enjoin Defendants’ violations of, and compel compliance with the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. §§ 1331 *et. seq.*, the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251 *et. seq.*, and implementing regulations enacted thereunder, which are applicable to the operations conducted on the

Outer Continental Shelf (“OCS”) by all Defendants; (2) to enjoin Defendants’ violations of, and compel compliance with the lease for the exploration of the Macondo prospect site in Mississippi Canyon Block 252 (the “Lease”); the Final Rule issued by the Environmental Protection Agency (“EPA”) establishing effluent limitations and standards of performance for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (the “Offshore Final Rule”); the effluent limitations and other conditions of General Permit GMG290000 issued by the EPA (the “Final NPDES General Permit”), which is applicable to all oil and gas exploration and production activities conducted in the western part of the Gulf of Mexico; and the Initial Exploration Plan for Mississippi Canyon Block 252-OCS-G 32306 (the “BP Exploration Plan”) submitted by BP Exploration and Production, Inc. (“BP Exploration”) on March 10, 2009 for the Macondo oil well, which was approved by the Mineral Management Service (“MMS”) of the Department of Interior (“Interior”) in the Permit identified with Control No. N-9349; all of which have been and are currently being violated by Defendants; (3) for a judgment canceling the Lease; (4) for an order temporarily and permanently enjoining the ongoing unlawful activities and discharges of Prohibited Contaminants (as that term is defined below) being carried out by some of the Defendants in violation of the Lease and the laws, regulations, effluent limitations, standards and permits described above, and enjoining any similar and other unlawful activities and discharges that Defendants may cause to occur in the future; (5) for imposition of civil penalties against Defendants for each past, ongoing and future violations; and (6) to recover damages (including reasonable attorney and expert witness fees) suffered by Plaintiffs and the Class Members because of those violations and as a result of the blow-out of the Macondo oil well; because the explosion and fire aboard, and subsequent sinking of, the oil rig Deepwater Horizon (hereinafter ADeepwater Horizon@or AOil Rig@) on April 20, 2010, at

about 10:00 p.m. central time on the OCS, off the Louisiana coast; and because of the ongoing unlawful discharge of Prohibited Contaminants into the Gulf of Mexico by some of the Defendants.

2. It has been estimated that during and after the sinking of the Oil Rig, up to 60,000 barrels per day of oil began to leak from the Macondo well. In addition, massive amounts of produced water (which contains barium, benzene, zinc, chlorides, sulfate, bicarbonate, ammonia, naphthalene, phenolic, radium, oil and grease),^{1/} radioactive pollutants, drilling fluids (made of barite, which contains mercury and cadmium), drill cuttings, produced sand containing oil and radionuclides or naturally occurring radioactive materials (“NORM”), cement, methane gas (which in high volumes deplete the oxygen in the water) have also been leaking from the well. In addition, other contaminants, such as the oil dispersant Corexit and antifreeze have been used in the attempts to disperse and/or collect the oil. All of the substances listed in this paragraph (collectively the “Prohibited Contaminants”) have been and are being illegally dumped into the navigable waters of the United States by the Defendants. It is now estimated that the total of Prohibited Contaminants spilling from the Macondo well add up to at least 125,000 barrels per day, with oil being up to 60,000 barrels per day and the produced water and other contaminants the balance.

3. Some of the Prohibited Contaminants had been stored in the Oil Rig and, after the explosion, they began to escape, first from the Oil Rig; then from the Macondo oil well (upon which the Deepwater Horizon was performing drilling, completion and cementing operations); later from the riser pipe or casing that originally connected the Deepwater Horizon to the well and ultimately came to rest on the

^{1/} The EPA has defined produced water as “water and particulate matter associated with oil and gas producing formation. Produced water includes small volumes of source water and treatment chemicals that return to the surface with the produced formation fluids and pass through the produced water treating systems currently used by many oil and gas operators.” 57 Fed. Reg. 60,926, 60,951 (1992). See, *Sierra Club Lone Star Chapter v. Cedar Point Oil Company, Inc.*; 73 F.3d 543 (5th Cir. 1996); *BP Exploration & Oil, Inc. v. U.S.E.P.A.*, 66 F.3d 784, 792 (6th Cir. 1995); *Natural Resources Defense Council v. U.S.E.P.A.*, 863 F.2d 1420, 1425 (9th Cir. 1988); *American Petroleum Inst. v. E.P.A.*, 661 F.2d 340, 343 (5th Cir. 1981).

ocean floor; and now also from the equipment and vessels that have begun to recover some of the Prohibited Contaminants as they are being spilled from the well, which are then separated and produced into crude oil. Since the explosion of the Deepwater Horizon, the Prohibited Contaminants have been and are being unlawfully disposed into the navigable waters of the United States in the Gulf of Mexico.

4. The produced water and the other Prohibited Contaminants are escaping unrestrained from the producing formation through the well drilled at the Macondo site. Several attempts to stop the massive blow-out or to contain the flow of Prohibited Contaminants have failed. One of the latest attempts, which involved cutting off the riser pipe at the well-head above the blow out preventer (“BOP”), increased the flow of the Prohibited Contaminants by twenty percent.

5. The BP Defendants recently started an oil-producing operation, which involves separating the oil from the natural gas, produced water and other Prohibited Contaminants. The oil-producing operation is being conducted from and/or aboard two vessels, the Discoverer Enterprise and the Q4000, which are positioned near the Macondo well. Other production vessels are headed to the site and BP expects to increase oil production to 80,000 barrels per day. These oil-production activities, which are being conducted without proper permits in violation of law and without having met all legal requirements, are causing further discharges of Prohibited Contaminants into the navigable waters of the United States and thus are resulting in further and separate damages than the original damages caused by the initial discharges of Prohibited Contaminants from the Oil Rig and the well into the Gulf of Mexico.

6. The ever-growing and ongoing unlawful discharges of the Prohibited Contaminants into the navigable waters of the United States by the Defendants, in violation of the Lease, laws, regulations and effluent limitations, standards and permits described above, have already caused serious and permanent environmental damage to the Louisiana coast, with detrimental effects being inflicted upon the Plaintiffs

and the Class Members and on the Gulf of Mexico=s and Louisiana=s marine environments, coastal environments and estuarine areas, all of which are used by Plaintiffs and the Class Members for different activities, including recreational fishing, boating and bird watching; commercial fishing; oyster harvesting; to earn a livelihood; and for other recreational and non-recreational purposes. Louisiana=s wetlands are home to over 400 different species of animals, some endangered, and they are also the first line of defense from storms and hurricanes. The spill of Prohibited Contaminants have damaged the wetlands, thereby injuring those species that inhabit them, and exposing Louisiana residents to increased dangers from hurricanes.

II. PARTIES

7. Plaintiffs, Grady Thigpen and Chris M. McCraney are citizens of Mississippi who reside within this district in Picayune, Mississippi. Plaintiff, John Michael Doukas, is a citizen of Mississippi who resides and owns property within this district in Long Beach, Mississippi. Plaintiffs are sport fishermen who regularly carry out fishing, boating and recreational activities in the Gulf of Mexico and in the Acoastal zone@ (as that term is defined in 43 U.S.C. ' 1331(e)) (the ACoastal Zone@). The violations committed by the Defendants, which are set out below, constitute an imminent threat to the public health and safety and have immediately affected Plaintiffs' rights (and the Class Members' rights) to use the Gulf of Mexico and the Coastal Zone for recreational. Plaintiffs have notified the Defendants and other interested parties as required by law of the alleged violations and they are entitled to bring this action immediately after such notification (1) as allowed by 43 U.S.C. § 1349(a)(3) for violations of the OCSLA because the Defendants' violations constitute immediate threats to the public health and safety and have immediately affected the legal interests of the Plaintiffs and the Class Members; and (2) as allowed by 33 U.S.C. § 1365(b)(2) for violations of the CWA because Defendants have violated 33

U.S.C. §§ 1316 and/or 1317(a). Plaintiffs and the Class Members have suffered actual or threatened injuries as a result of the actions by the Defendants described above and below; the injuries that are being suffered by the Plaintiffs and the Class Members are fairly traceable to the Defendants' actions; and the injuries that are being suffered by Plaintiffs and the Class Members will likely be redressed if they prevail in this lawsuit.

8. Defendants herein are:

(a) BP, plc ("BP, plc"), a public limited company organized and existing under the laws of the United Kingdom, with its principal place of business in London, England. BP, plc is one of the three largest integrated energy services companies in the world, with more than 100,000 employees and operations in more than 100 countries on six continents. BP, plc is doing business in the State of Louisiana.

(b) BP Exploration and Production, Inc. ("BP Exploration"), a foreign corporation doing business in the State of Louisiana. BP Exploration is a subsidiary of BP, plc.

(c) BP America, Inc. ("BP America"), a foreign corporation doing business in the State of Louisiana. BP America is a subsidiary of BP, plc.

(d) BP Products North America, Inc. ("BP Products"), a foreign corporation doing business in the State of Louisiana. BP Products is a subsidiary of BP, plc.

(e) BP, plc, BP Exploration, BP America and BP Products are hereinafter collectively referred to as "BP" or the "BP Defendants."

(f) Anadarko Petroleum Corporation ("Anadarko"), a foreign corporation doing business in the State of Louisiana.

(g) Mitsui Oil Exploration Co., Ltd. (“Moeco”), a foreign corporation doing business in the State of Louisiana. Moeco is also an owner of the Lease.

(h) The BP Defendants, Anadarko and Moeco (collectively “Lessees”) are the owners/holders of the Lease, which was granted by MMS and is valid through September 2013. The Lease allows the BP Defendants to drill for oil and perform oil production-related operations at the site of the oil spill. The BP Defendants leased the Deepwater Horizon to drill an exploratory well at the Macondo prospect site in Mississippi Canyon Block 252, located on the OCS off the coast of Louisiana. On April 20, 2010, the BP Defendants operated the oil well that is the source of the oil spill. The Lease requires that the Lessees follow and obey all applicable laws, regulations and effluent standards and limitations, including, without limitation, OCSLA, CWA, regulations enacted thereunder, the Offshore Final Rule, the Final NPDES General Permit and the BP Exploration Plan.

(i) Transocean Ltd. (“Transocean Ltd.”), a Swiss corporation that purports to be based in Vernier, Switzerland. Transocean Ltd. is doing business in the State of Louisiana. Transocean Ltd. is financially responsible for the conduct of the other Transocean entities named herein, which are its subsidiaries.

(j) Transocean Offshore Deepwater Drilling, Inc. (“Transocean Offshore”), a Delaware corporation doing business in the State of Louisiana, with its principal place of business in Houston, Texas.

(k) Transocean Deepwater, Inc. (“Transocean Deepwater”), a Delaware corporation doing business in the State of Louisiana, with its principal place of business in Houston, Texas.

(l) Transocean Ltd., Transocean Offshore and/or Transocean Deepwater (hereinafter collectively referred to as “Transocean” or the “Transocean Defendants”) operated the Deepwater Horizon, which was leased to the BP Defendants on April 20, 2010.

(m) Halliburton Energy Services, Inc. (“Halliburton”), a Delaware corporation doing business in the State of Louisiana, with its principal place of business in Houston, Texas. Halliburton is a leading provider of oilfield technology, including fluid management and technologies to assist in the drilling and construction of oil and gas wells. Halliburton was a subcontractor to the Deepwater Horizon, providing cementing operations of the well and the well cap and, upon information and belief, improperly and negligently performed those duties, allowing gas to escape from the well and contributing to the fire and explosion of the Oil Rig and to the ongoing oil spill.

(n) Cameron International Corporation f/k/a Cooper-Cameron Corporation (“Cameron”), a foreign corporation doing business in the State of Louisiana. Cameron is a leading provider of flow equipment products, systems and services to worldwide oil, gas and process industries. Cameron manufactured the blowout preventers (“BOPs”) of the Deepwater Horizon that failed to function properly on April 20, 2010.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this class action pursuant to (1) 43 U.S.C § 1349(b)(1), because this case arises out of , or in connection with operations conducted by Defendants on the OCS for the exploration, development or production of the minerals (crude oil) of the subsoil and seabed of the OCS; (2) 33 U.S.C. § 1365(a)(2), because this action seeks enforcement of certain effluent standards or limitations imposed by the CWA and civil penalties for violation thereof; (3) 28 U.S.C. ' 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000,

exclusive of interest and costs, and it is a class action brought by citizens of a State that is different from the State where at least one of the Defendants is incorporated or does business; (4) 28 U.S.C. ' 1331, because the claims asserted herein arise under the laws of the United States of America, including OCSLA, CWA and the laws of the State of Louisiana and/or Mississippi (which have been declared, pursuant to 43 U.S.C. ' ' 1331 (f)(1) and 1333(a)(2), to be the laws of the United States for that portion of the OCS from which the oil spill originated); and (5) 43 U.S.C. ' 1333(a)(1), which extends exclusive Federal jurisdiction to the OCS. The claims arising under OCSLA and CWA may be brought immediately after notification of the alleged violations to the Defendants and other interested parties, pursuant to 43 U.S.C. § 1349(a)(3) and 33 U.S.C. § 1365(b)(2).

10. Prosecution of this action in this district is proper under 28 U.S.C. ' 1391 because all the events or omissions giving rise to the claims asserted herein occurred in this district. All Defendants can be found in this district because they transact business in the Southern District of Mississippi.

IV. LEGAL BACKGROUND

A. Outer Continental Shelf Lands Act (“OCSLA”).

11. Congress enacted the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. §§ 1331 *et seq.*, to define a body of law applicable to the seabed, the subsoil and the fixed structures on the OCS and to provide for the expeditious and orderly exploration, development and production of the OCS, subject to environmental safeguards. 43 U.S.C. §§ 1332, 1333.

12. The OCS includes all submerged lands lying seaward and three miles outside state waters, “and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.” 43 U.S.C. § 1331(a).

13. The OCSLA allows the Secretary of Interior (“Secretary”) to sell leases to develop oil and gas deposits in the OCS. 43 U.S.C. § 1344. All leases are conditioned on compliance with the regulations issued under OCSLA. 43 U.S.C. § 1334(b); 30 C.F.R. Part 250.

14. Oil and gas operations in the OCS are governed by a five-step process: (1) the Secretary’s promulgation of a five-year leasing program, 43 U.S.C. § 1344; (2) lease sales, 43 U.S.C. § 1337; (3) exploration, 43 U.S.C. § 1340; (4) development and production, 43 U.S.C. § 1351; and (5) sale of recovered oil and gas, 43 U.S.C. § 1353.

15. Exploration of the OCS must be conducted so as to avoid unduly harming aquatic life. 43 U.S.C. § 1340(a)(1). Exploration of the OCS may only be conducted in accordance with the OCSLA and its implementing regulations. 43 U.S.C. § 1340(b); 30 C.F.R. Part 250.

16. Before a lease holder may commence any exploration activities on a lease, that lease holder must submit an exploration plan (“EP”) to MMS for approval. 43 U.S.C. § 1340(c)(1).

17. The Secretary may allow exploration to proceed only if he finds that the lessee’s EP “will not be unduly harmful to aquatic life in the area, result in pollution, create hazardous or unsafe conditions, unreasonably interfere with other uses of the area, or disturb any site, structure, or object of historical or architectural significance.” 43 U.S.C. § 1340(g)(3).

18. The Secretary can approve the EP if it is consistent with the provisions of the OCSLA, regulations prescribed thereunder and the provisions of the lease. 43 U.S.C. § 1340(c)(1).

19. If a significant revision of an approved EP is submitted, the process of approval of the revised EP shall be the same as for the approval of the original EP. 43 U.S.C. § 1340(e)(1); 30 C.F.R. § 250.285. All exploration activities pursuant to any lease must be conducted in accordance with an approved EP or an approved revision of such plan. 43 U.S.C. § 1340(e)(3).

20. All stages of the OCSLA five-step process are subject to review under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et. seq.*^{2/}

1. Minerals Management Service (“MMS”).

21. The Minerals Management Service (“MMS”) was established on January 19, 1982 by Department of the Interior Secretarial Order No. 3071. *See*, 47 Fed.Reg. 6138 (1982). The Director of MMS operates under the supervision of the Minerals Management Board, also established by Order No. 3071, which is chaired by the Under-Secretary of Interior. DOI Secretarial Order No. 3071, Amend. No. 1 (May 10, 1982). The stated purpose of establishing the Minerals Management Board and MMS was to (1) improve the management of and provide greater management oversight and accountability for the minerals-related activities previously carried out by the Conservation Division of the U.S. Geological Survey; and (2) to eliminate the fragmentation of OCS activities by consolidating the responsibilities for OCS programs. *Id.*

2. OCSLA Implementing Regulations and Cancellation of Leases.

22. The Secretary authorizes the MMS to regulate oil, gas and sulphur exploration, development and production operations on the OCS. 30 C.F.R. § 250.101.

23. 30 C.F.R. Part 250 contains the regulations of the MMS Offshore Program that govern oil, gas and sulphur exploration, development and production on the OCS. 30 C.F.R. §§ 250.101-.1754.

24. These regulations apply to lessees (the BP Defendants); operating rig owners (the BP Defendants, Anadarko and MOECO); operators (the BP Defendants); and their contractors and subcontractors (Transocean, Halliburton and Cameron). 30 C.F.R. § 250.400.

^{2/} *Village of False Pass v. Clark*, 733 F.2d 605, 614 (9th Cir. 1984).

25. Under the Secretary's authority, the Director of the MMS requires that all operations be conducted according to the provisions of OCSLA, the MMS regulations, MMS orders, the Lease and other applicable laws and regulations. 30 C.F.R. § 250.101; 43 U.S.C. §1334(b).

26. Whenever the owner of a producing lease fails to comply with the provision of OCSLA, the regulations enacted thereunder, or the lease, the lease may be forfeited and cancelled by an appropriate court proceeding. 43 U.S.C. § 1334(d).

27. The Secretary may suspend or temporarily prohibit any operation under any lease, or may cancel any lease or permit. 43 U.S.C. § 1334(a).

B. National Environmental Policy Act ("NEPA").

28. Congress enacted the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.* to "promote efforts which will prevent or eliminate damages to the environment" 42 U.S.C. § 4321. To achieve this goal, NEPA and its implementing regulations require federal agencies to fully consider and disclose the environmental consequences of an agency action before proceeding with that action. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5. Agencies' evaluation of environmental consequences must be based on scientific information that is both "[a]ccurate" and of "high quality." 40 C.F.R. § 1500.1(b). In addition, federal agencies must notify the public of proposed projects and allow the public the chance to comment on the environmental impacts of their actions. 42 U.S.C. § 1506.6.

29. The cornerstone of NEPA is the environmental impact statement ("EIS"). An EIS is required for all "major Federal actions significantly affecting the quality of the human environment." 40 C.F.R. § 4332(2)(C); 40 C.F.R. § 1501.4. The EIS must provide a "full and fair discussion of significant environmental impacts and . . . inform decisionmakers and the public of the reasonable

alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

30. An agency must prepare a supplemental EIS when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii). Whether new circumstances are significant depends on a number of factors, including “[t]he degree to which the proposed action affects public health or safety,” “[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks,” and “[t]he degree to which the action . . . may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. § 1508.27(b).

1. Categorical Exclusions Under NEPA.

31. An agency may comply with NEPA for any action by (1) preparing an EIS for actions which significantly affect the quality of the human environment; (2) preparing a less extensive environmental assessment (“EA”) and making a finding of no significant impact on the environment (“FONSI”); or (3) documenting that the action falls within an established categorical exclusion. 40 C.F.R. § 1501.4.

32. A “categorical exclusion” is defined as a category of actions which “do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations. . . .” 40 C.F.R. § 1508.4. Thus, a categorical exclusion is only allowed where an agency concludes that there will be no “significant effect on the human environment” from a given course of action. *Id.*

33. This definition of “categorical exclusion” mandates that an agency make allowances for “extraordinary circumstances in which a normally excluded action may have a significant

environmental effect.” *Id.* In such cases, the agency must perform an EA or EIS to ensure that impacts are accounted for.

34. Interior regulations provide that “extraordinary circumstances” may preclude application of a categorical exclusion to actions which:

- (a) Have significant impacts on public health or safety;
- (b) Have significant impacts on such natural resources and unique geographic characteristics as . . . parks, recreation or refuge lands; wilderness areas; wild or scenic rivers; . . . wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas;
- (c) Have highly controversial environmental effects;
- (d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks;
- (e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects;
- (f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects;
- (h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species; and
- (i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

43 C.F.R. § 46.215.

35. On May 27, 2004, MMS issued rules in Interior’s Department Manual (“the Manual”) to govern its internal NEPA process.

36. In the Manual, MMS designated certain permitting and regulatory actions for categorical exclusion from NEPA review, including the “[a]pproval of an offshore lease or unit exploration[,] development/production plan ... in the central or western Gulf of Mexico.” Manual at 15.4(C)(10).

37. However, the Manual explained that MMS would **not** apply this categorical exclusion:

(1) [i]n areas of high seismic risk or seismicity, ***relatively untested deepwater***, or remote areas; or (2) within the boundary of a proposed or established marine sanctuary, and/or within or near the boundary of a proposed or established wildlife refuge or **areas of high biological sensitivity**; or (3) in areas of hazardous natural bottom conditions; or (4) **utilizing new or unusual technology**.

Id. (emphasis added).

38. In its Notice to Lessees and Operators of Federal Oil, Gas, and Sulphur Leases in the Outer Continental Shelf, Gulf of Mexico OCS Region No. 2008-G04, MMS defined “deepwater” as “those water depths 400 meters (1,312 feet) or greater.” MMS NTL 2008-G04, *available at* <http://www.ocsbbs.com/ntls.asp>.

C. Clean Water Act (“CWA”).

39. The Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987), 33 U.S.C. §§ 1251 *et seq.* (“the Act” or “CWA”) establishes a comprehensive program “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251. Congress’ original goal was for the discharge of all pollutants into navigable waters to be eliminated by the year 1985. 33 U.S.C. § 1251(a)(1). Consequently, **the discharge of any pollutant is illegal** unless made in compliance with the provisions of the CWA. Similarly, **any** discharge of **oil** is prohibited. 33 U.S.C. § 1321.

40. The CWA directs EPA to formulate national effluent limitation guidelines for those industries that discharge pollutants into the navigable waters of the United States. In formulating these guidelines, the CWA instructs EPA to institute progressively more stringent effluent discharge guidelines in stages.

41. At the first stage of pollutant reduction, EPA was required to determine the level of effluent reduction achievable within an industry with the implementation of the “best practicable control technology currently available” (“BPT”). 33 U.S.C. § 1413(b)(1)(A). In general, BPT is the average of the best existing performances by industrial plants of various sizes, ages and unit processes within the point source category or subcategory. In arriving at BPT for an industry, EPA had to consider several factors, including the total cost of the application of the technology in relation to the effluent reduction benefit to be achieved from such application.^{3/} For the offshore oil and gas subcategory, BPT was to be achieved by July 1, 1977. 33 U.S.C. § 1311(b)(1)(A).

42. At the second stage, EPA had to set generally more stringent standards for toxic and non-conventional pollutants. For toxic pollutants, which are defined at 40 C.F.R. § 401.15, EPA had to set the standard for the “best available technology economically achievable” (“BAT”). BAT represents, at a minimum, the best economically achievable performance in the industrial category or subcategory.^{4/} Compared to BPT, BAT calls for more stringent control technology that is both technically available and economically achievable. Among the factors that EPA must consider and

^{3/} Other factors EPA had to consider are the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impacts, and such other factors as the Administrator deems appropriate. 33 U.S.C. § 1314(b)(1)(B); *see also Environment Protection Agency v. National Crushed Stone Ass’n.*, 449 U.S. 64, 71 n. 10, 101 S.Ct. 295, 300 n. 10, 66 L.Ed. 2d 268 (1980).

^{4/} *NRDC, Inc. v. EPA*, 863 F.2d 1420, 1426 (9th Cir. 1988) (citing *EPA v. National Crushed Stone Assn’n.*, 449 U.S. 64, 74, 101 S.Ct. 295, 302, 66 L.Ed. 268 (1980)).

take into account when setting BAT are the cost of achieving such effluent reduction and the non-water quality environmental impact including the energy requirements of the technology.^{5/} 33 U.S.C. § 1314(b)(2)(B). For the offshore oil and gas subcategory, BAT was to be achieved by July 1, 1987.^{6/} 33 U.S.C. § 1311(b)(2)(A).

43. Conventional pollutants are treated differently from toxics under the CWA. Conventional pollutants include biochemical oxygen demand (“BOD”), total suspended solids (“TSS”) (nonfilterable), pH, fecal coliform, **oil** and grease. 40 C.F.R. § 401.16. Pursuant to the 1977 amendments to the Act, a new standard was conceived for conventional pollutants entitled “best conventional pollutants control technology” (“BCT”). This standard is designed to control conventional pollutants about which much is known but for which stringent BAT standards might require unnecessary treatment. BCT is not an additional level of control, but replaces BAT for conventional pollutants.

44. Finally, the CWA directs EPA to establish a separate standard for new sources of pollutants. These “new source performance standards” (“NSPS”) require application of the technology chosen as BAT to remove **all types** of pollutants from new sources within each category.

1. Regulations for Oil and Gas Extraction.

45. To comply with the CWA, on March 4, 1993 the EPA issued a final regulation (the “Offshore Final Rule”) establishing effluent limitations guidelines and standards of performance for the **Offshore** Subcategory of the Oil and Gas Extraction Point Source Category under sections 301, 304,

^{5/} The other factors include: the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, and such other factors as the Administrator deems appropriate. 33 U.S.C. § 1314(b)(2)(B).

^{6/} The original goal of the CWA of 1972, 86 Stat. 816, requiring compliance for BAT by 1983 was extended by the CWA of 1977, 91 Stat. 1567. *See also National Crushed Stone*, 449 U.S. at 70 n. 9, 101 S. Ct. at 300 n. 9.

306, 307, 308 and 501 of the Act, 33 U.S.C. §§ 1311, 1314(b), (c) and (e), 1316, 1317, 1318 and 1361; 86 Stat. 816, Public Law 92-500; 91 Stat. 1567, Public Law 95-217; 101 Stat 7, Public Law 100-4. The Offshore Final Rule is set out at 40 CFR § 435, Subpart A and became effective April 5, 1993.^{7/}

46. The Offshore Final Rule applies to discharges from offshore oil and gas extraction facilities, including exploration, development and production operations, that are seaward of the inner boundary of the territorial seas. The inner boundary of the territorial seas is defined in section 502(8) of the CWA as “the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seawater limit of inland waters” (or, the shore).

47. Before the Offshore Final Rule was issued, BPT for the offshore subcategory prohibited the discharge of free oil; limited the discharge of oil and grease in produced water to a daily maximum of 72 mg/l and a thirty-day average of 48 mg/l; prohibited the discharge of free oil in deck drainage, drilling fluids, drill cuttings, and well treatment fluids; and, for sanitary wastes, required a minimum residual chlorine content of 1 mg/l and prohibited the discharge of floating solids. BPT limitations were not changed by the Final Rule.

48. The Offshore Final Rule established BCT, BAT and NSPS limitations prohibiting the discharge of drilling fluids and drill cuttings from wells located within three miles from shore. For wells located **more than three miles from shore**, drilling muds and drill cuttings may be discharged after meeting the BCT limitation of **no discharge of free oil** measured by the static sheen test. BAT and NSPS for discharges beyond the three-mile limit are more stringent than BCT, and impose four basic requirements: (1) a limit on toxicity set at 30,000 ppm in the suspended particulate phase; (2)

^{7/} The Offshore Final Rule was upheld in *BP Exploration & Oil, Inv. v. United States Environmental Protection Agency*, 66 F.3d 784 (6th Cir. 1995).

limitation on cadmium and mercury in barite set at 3 mg/kg and 1 mg/kg, respectively (on a dry weight basis); (3) a prohibition on the discharge of **diesel oil**; and (4) **no discharge of free oil**, with compliance determined by the static sheen test.^{8/} BCT applies to the control of conventional pollutants (such as **oil**), and in the Offshore Final Rule, BCT **prohibits the discharge of free oil beyond three miles from shore.**

49. Barite (naturally occurring barium sulfate ore) is a heavy, soft, and chemically inert mineral, which is widely used to control the density of drilling fluids. Barite contains heavy metal contaminants, including mercury and cadmium, and is the primary source of toxic metals in drilling fluid discharges. In the Offshore Final Rule, therefore, EPA limited mercury and cadmium to 1 mg/l and 3 mg/l in barite used in drilling fluid applications.

50. The bulk of produced water is water trapped in underground reservoirs along with oil and gas that eventually rises to the surface with the produced oil and gas. Most of the oil and gas in the produced water is separated as part of the oil and gas extraction process. The remaining produced water, still containing some oil and grease, is then discharged overboard or otherwise disposed of. Produced water also includes the injection water used for secondary oil recovery and various well treatment chemicals added during production and oil and gas extraction. Produced water is the highest volume waste source in the offshore oil and gas industry.

51. Under the BAT and NSPS limitations of the Offshore Final Rule, the discharge of oil and grease in produced water is set to a maximum for any one-day (referred to as daily maximum) of 42 mg/l and an average of daily values for 30 consecutive days (referred to as monthly average) of 29

^{8/} Fluids fail the static sheen test if a “sheen, iridescence, gloss, or increased reflectance” appears on the surface of test seawater after drilling fluid samples are introduced into ambient seawater in a container having an air-to-liquid interface area of 1,000 cm. 50 Fed.Reg. 34,592, 34,627.

mg/l based on improved operating performance of gas flotation technology. BCT for produced water was established equal to the BPT limitations on oil and grease.

52. Discharges of produced sand are prohibited under BCT, BAT and NSPS.

53. BCT, BAT and NSPS limitations for deck drainage are set equal to the BPT limitations prohibiting discharges of free oil. Compliance with the no discharge of free oil limit for deck drainage is to be determined by the visual sheen test.

54. For treatment, completion and workover fluids, the Offshore Final Rule establishes BAT and NSPS limiting the discharge of oil and grease at a daily maximum of 42 mg/l and a monthly average of 29 mg/l. BCT for well treatment completion and workover fluids is set equal to the BPT prohibition on discharges of free oil, with compliance measured by the static sheen test.

55. EPA also promulgated limitations on domestic wastes which prohibit the discharge of foam (under BAT and NSPS) and floating solids (under BCT and NSPS), and incorporate U.S. Coast Guard regulations (under BCT and NSPS) prohibiting discharges of garbage as required at 33 C.F.R. § 151. For sanitary wastes, EPA promulgated BCT and NSPS limitations equal to BPT limitations on floating solids and residual chlorine. EPA did not establish BAT for sanitary wastes because no toxic or nonconventional pollutants of concern were identified in these wastes.

2. NPDES General Permits.

56. The discharge of pollutants, otherwise illegal under section 301(a) of the CWA, can be authorized by compliance with a NPDES permit issued under section 402.

57. Sources operating beyond the territorial seas are not subject to state water quality standards, and environmental quality-based conditions in permits are based on the ocean discharge criteria established under section 403 of the Act. Ocean discharge criteria applicable to the oil and gas

extraction industry subcategory were promulgated on October 3, 1980 (45 FR 65942) under section 403(c) of the Act. These guidelines are to be used in making **site-specific** assessments of the impacts of discharges. Section 403 limitations are imposed through NPDES permits. Section 403 is intended to prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal.

58. In most cases, the owner or operator of a facility applies to either the EPA or a state permitting authority for its own NPDES permit, and the permit writer evaluates facility-specific information to determine the appropriate permit terms and conditions. But there is another mechanism by which sources of pollution may obtain coverage under an NPDES permit. Since 1979, EPA and states have had a process of issuing “general permits” to satisfy the requirements of the Act.^{9f} EPA defines a “general permit” as “an NPDES ‘permit’ issued under [40 C.F.R.] § 122.28 authorizing a category of discharges under the CWA within a geographical area.” 40 C.F.R. § 122.2. EPA’s general permit regulations expressly require the use of general permits for offshore oil and gas facilities except in certain cases. 40 C.F.R. § 122.28(c)(1). These general permits may contain enforceable effluent limitations and other requirements, but, unlike individual permits, they may apply to large numbers of sources discharging into many different bodies of water.

59. Some of the earliest general permits were issued to the large number of offshore oil and gas exploration and production facilities operating in the Gulf of Mexico. EPA issued several permits applicable to various portions of the Gulf of Mexico in 1981. *See, e.g.*, Issuance of Final General NPDES Permits for Oil and Gas Operations in Portions of Gulf of Mexico, 46 Fed. Reg. 20,284 (Apr. 3, 1981). Most oil and gas facilities in the Gulf continue to operate under EPA-issued general

^{9f} *See, Sierra Club, Long Star Chapter v. Cedar Point Oil Company, Inc.*, 73 F.3d 543, 553, f.n. 10 (5th Cir. 1996).

permits. *See, e.g.*, Final NPDES General Permit for the Offshore Subcategory of the Oil and Gas Extractions Located in Eastern Portion of OCS and Gulf of Mexico, 69 Fed. Reg. 76,740 (Dec. 12, 2004); Notice of Final NPDES General Permit for New and Existing Sources and New Discharges in the Offshore Subcategory of the Oil and Gas Extraction for Western OCS and Gulf of Mexico, 69 Fed. Reg. 60,150.

60. The conditions of a general permit are developed through a “notice and comment” process similar to development of a regulation, but the application of the general permit to an individual source differs dramatically from the process of issuing an individual NPDES permit. Sources seeking coverage under a general permit generally need only submit a “Notice of Intent” to the permit authority, and they are then authorized to discharge under the terms of the general permit without additional government review or public participation.

61. On May 31, 2007 EPA reissued the NPDES general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from new sources, existing sources and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. This general permit replaced the previous permit issued October 7, 2004 (69 FR 60150). The general permit authorizes discharges from exploration, development and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas. The reissued general permit became effective October 1, 2007 and will expire September 30, 2012. *See, Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)* (hereinafter the “Final NPDES General Permit.”).

V. FACTUAL ALLEGATIONS

A. Overview of the Oil and Gas Industry.

1. Exploration, Development and Production.

62. Exploration and development activities for the extraction of oil and gas include work necessary to locate and drill wells. **Exploration** activities are those operations involving the drilling of wells to determine the potential hydrocarbon reserves. Exploration activities are usually of short duration at a given site, involve a small number of wells, and are generally conducted from mobile drilling units (“MODUs”). **Development** activities involve the drilling of production wells once a hydrocarbon reserve has been discovered and delineated. These operations, in contrast to exploration activities, usually involve a large number of wells which may be drilled from either fixed or floating platforms or MODUs. **Production** operations include all work necessary to bring hydrocarbon reserves from the production formation and begin with the completion of each well at the end of the development phase.

2. Waste Streams.

63. The primary wastewater sources from the **exploration** and development phases of the offshore oil and gas extraction industry include drilling fluids, drill cuttings, sanitary wastes, deck drainage and domestic wastes.

64. The primary wastewater sources from the **production** phase of the industry include produced water, produced sand, sanitary wastes, deck drainage, domestic wastes and well treatment, completion and workover fluids.

65. Drilling fluids (or “drilling muds”) and drill cuttings are the most significant waste streams from exploration and development operations in terms both of volume and toxic pollutants.

Produced water is the largest waste stream from production activities based on its volume of discharge and quantity of pollutants. Deck drainage, sanitary wastes, domestic wastes, produced sand, and well treatment, completion, and workover fluids are often classified under the term miscellaneous wastes.

66. Drilling fluids are any fluid sent down the drillhole to aid the drilling process. This includes those materials used to maintain hydrostatic pressure control in the well, lubricate the drill bit, remove drill cuttings from the well, and stabilize the walls of the well during drilling or workover operations. A water-based drilling fluid is the conventional drilling system in which water is the continuous phase. Drill cuttings are the solids generated by drilling into subsurface geologic formations and are carried to the surface by the drilling fluid system.

67. Produced water is brought up from the hydrocarbon-bearing strata along with produced oil and gas. This waste stream can include formation water, injection water and any chemicals (including well treatment, completion or workover fluids) added downhole or during the oil/water separation process.

68. Deck drainage includes all wastewater resulting from platform washings, deck washings, rainwater, and runoff from curbs, gutters and drains, including drip pans and work areas.

69. Well treatment fluids are fluids that resurface from acidizing and/or hydraulic fracturing operations to improve hydrocarbon recovery. Workover fluids and completion fluids are low solids fluids used to prepare a well for production, provide hydrostatic control and/or prevent formation damage.

70. Produced sand consists of the slurried particles which surface from hydraulic fracturing and the accumulated formation sands and other particles (including scale) generated during production.

This waste stream also includes sludges generated in the produced water treatment system, such as tank bottoms from oil/water separators and solids removed in filtration.

71. Sanitary wastes originate from toilets. Domestic wastes originate from sinks, showers, laundries, and galleys.

B. Multisale EIS for Gulf of Mexico Lease Sales.

72. In April of 2007, MMS issued its final EIS (“Multisale EIS”) for eleven lease sales in the Gulf of Mexico, including Lease Sale 206 which covers Mississippi Canyon Block 252, where the Macondo well site is located.

73. In the Multisale EIS, MMS explained that an oil spill would only be “likely to result in sublethal impacts (e.g., decreased health, reproductive fitness, and longevity; and increased vulnerability to disease) to marine mammals.” Multisale EIS at 2-37-38.

74. Likewise, MMS explained that “[i]n most foreseeable cases, exposure to hydrocarbons persisting in the sea following the dispersal of an oil slick will result in sublethal impacts (e.g., decreased health, reproductive fitness, and longevity; and increased vulnerability to disease) to sea turtles.” *Id.* at 2-38.

75. Similarly for birds, the MMS concluded that “[t]he majority of effects resulting from a proposed action ... on endangered/threatened and nonendangered/nonthreatened coastal and marine birds are expected to be sublethal: behavioral effects, sublethal exposure to or intake of OCS-related contaminants or discarded debris, temporary disturbances, and displacement of localized groups from impacted habitats.” *Id.* at 2-39. MMS also noted that “[d]ispersants used in spill cleanup activity can have toxic effects similar to oil on the reproductive success of coastal and marine birds.”

Id.

76. When discussing potential impacts to endangered Gulf sturgeon from an oil spill, MMS noted that “[t]he likelihood of spill occurrence and subsequent contact with, or impact to, Gulf sturgeon and/or designated critical habitat is extremely low.” *Id.* at 2-40.

77. MMS also concluded that the effects of an oil spill on fish populations and the commercial fishing industry would be “negligible and indistinguishable from variations due to natural causes.”

Id. MMS further explained that:

[a] subsurface blowout would have a negligible effect on GOM [Gulf of Mexico] fish resources or commercial fishing. If spills due to a proposed action were to occur in open waters of the OCS proximate to mobile adult finfish or shellfish, the effects would likely be nonfatal and the extent of damage would be reduced due to the capability of adult fish and shellfish to avoid a spill, to metabolize hydrocarbons, and to excrete both metabolites and parent compounds. The effect of proposed-action-related oil spills on fish resources and commercial fishing is expected to cause less than a 1 percent decrease in standing stocks of any population, commercial fishing efforts, landings, or value of those landings. Historically, there have been no oil spills of any size that have had a long-term impact on fishery populations. Any affected commercial fishing activity would recover within 6 months. There is no evidence at this time that commercial fisheries in the GOM have been adversely affected on a regional population level by spills or chronic contamination.

Id.

78. MMS estimated that over the 40-year life span of the eleven proposed lease sales, the total amount of oil that could spill in the offshore waters of the Central Planning area, which includes the Macondo well site, would be 5,500 to 26,500 barrels of oil. *Id.* at 4-241. The maximum **total** amount estimated by the MMS – 26,500 barrels – is slightly over 1 million gallons, an amount that is much less than the current estimate of oil being spilled at the Deepwater Horizon site **each day**.

C. MMS' Environmental Assessment on Lease Sale 206.

79. In October of 2007, MMS issued an Environmental Assessment (“EA”) and a Finding of No Significant Impact (“FONSI”) for a specific lease sale – Lease Sale 206 in the Central Planning Area of the Western Gulf of Mexico. Lease Sale 206 encompasses the Macondo well site.

80. MMS stated that it had fully analyzed the impacts of all Gulf of Mexico lease sales, including Lease Sale 206, in the Multisale EIS and that no further site-specific review was necessary. EA at 1. According to MMS, “[b]ecause the Multisale EIS examined the environmental impacts of a sale similar in size, nature, and potential level of development as proposed lease sale 206, the EA tiers off of the Multisale EIS and incorporates much of the material by reference.” *Id.*, FONSI. MMS concluded that “no new significant impacts were identified for proposed Lease Sale 206 that were not already assessed in the Multisale EIS, nor is it necessary to change the conclusions of the kinds, levels, or locations of impacts described in that document.” *Id.*

D. Approval of BP's Exploration Plan.

81. On March 19, 2008, MMS held Lease Sale 206, which included leasing the rights to Mississippi Canyon 252, the site of the Macondo well, to BP, Anadarko and Moeco.

82. Prior to February 23, 2009, BP submitted the Initial Exploration Plan – Mississippi Canyon Block 252-OCS-CO 32306 for the Deepwater Horizon site (the “BP Exploration Plan”) to MMS for review. The BP Exploration Plan was deemed submitted to the MMS on March 10, 2009. In the BP Exploration Plan, BP disclosed that it planned to drill two exploratory wells at a depth of 4,992 feet approximately fifty miles offshore in the Central Gulf of Mexico. MMS approved the BP Exploration Plan on April 6, 2009.

83. Although exploration of the OCS is subject to NEPA review, MMS approved the BP Exploration Plan without preparing an EIS or EA for the activities covered by the Plan. Instead, MMS granted BP a categorical exclusion from NEPA review based on representations made by BP in its BP Exploration Plan. MMS simply warned BP to “[e]xercise caution while drilling due to indications of shallow gas and possible water flow.” *See* MMS Letter of April 6, 2009 Approving Exploration Plan.

84. MMS did not explain why the BP Exploration Plan qualified for a categorical exclusion from NEPA review, even though, as described above, the Manual makes clear that the categorical exclusion for exploratory drilling in the Gulf of Mexico will not be applied in “relatively untested deepwater,” “areas of high biological sensitivity,” or for drilling operations “utilizing new or unusual technology.” Manual at 15.4(C)(10). The BP Exploration Plan disclosed that the two wells would be drilled in 4,992 feet of water, waters that qualify as “deepwater” under MMS’s Notice to Lessees and Operators. *See* NTL2008-G04, Manual at 15.4(C)(10)(1).

85. In the original BP Exploration Plan and in subsequent revised plans (which pursuant to § 250.285 are subject to all the procedures under § 250.231 through § 250.235) submitted by BP to MMS, BP also failed to disclose the **actual** design of the well; changes in the design of the well; and BP’s intention and decision not to follow regulations or accepted industry practices. Furthermore, the BP Exploration Plan made misrepresentations about the lack of need for an EIS and misrepresented the worst case scenario that could be expected from a blowout. Based on information and belief, these misrepresentations were made to avoid triggering site-specific NEPA review, which would have delayed the project or may have prevented the project from going forward.

E. Operations of Deepwater Horizon Prior to the Explosion.

1. Background.

86. BP started drilling the Macondo well on October 7, 2009, using the Marianas rig. This rig was damaged in Hurricane Ida on November 9, 2009. As a result, BP and the rig operator, Transocean, replaced the Marianas rig with the Deepwater Horizon. Drilling with the Deepwater Horizon started on February 6, 2010.

87. Prior to its destruction, the Deepwater Horizon was an ultra-deepwater dynamic-positioned, semi-submersible oil rig. The rig was positioned about 50 miles southeast of Venice, Louisiana, in water nearly 5,000 feet deep. At the time of the explosion, drilling was being conducted at over 22,000 feet – 2,000 feet deeper than described in the BP Exploration Plan or allowed by any permits issued by the MMS to BP.

88. The Deepwater Horizon rig was expensive. Transocean charged BP approximately \$500,000 per day to lease the rig, plus contractors' fees. BP targeted drilling the well to take 51 days and cost approximately \$96 million.

89. The Deepwater Horizon was supposed to be drilling at a new location as early as March 8, 2010. In fact, the Macondo well took considerably longer than planned to complete. By April 20, 2010, the day of the blowout, the rig was 43 days late for its next drilling location, which may have cost BP as much as \$21 million in leasing fees alone. It also set the context for the series of decisions that BP made in the days and hours before the blowout.

2. Well Design.

90. Deepwater wells are drilled in sections. The basic process involves drilling through rock, installing and cementing casing to secure the wellbore, and then drilling deeper and repeating the

process. On April 9, 2010, BP finished drilling the last section of the well. The final section of the wellbore extended to a depth of 18,360 feet below seal level, which was 1,192 feet below the casing that had previously been inserted into the well.

91. At this point, BP had to make an important well design decision: how to secure the final 1,192 feet of the well. There were two primary options available to BP. The first option involved hanging a steel tube called a “liner” from a liner hanger on the bottom of the casing already in the well and then inserting another steel liner tube called a “tieback” on top of the liner hanger. The second option involved running a single string of steel casing from the seafloor all the way to the bottom of the well. The “Liner/Tieback Casing” provides advantage over full string casing with redundant barriers to annular flow. With a single string of casing, there are just two barriers to the flow of gas up the annular space that surrounds the casing: the cement at the bottom of the well and the seal at the wellhead. In contrast, the “Liner/Tieback” option provides four barriers to annular flow: (1) the cement at the bottom of the well, (2) the hanger seal that attaches the liner to the existing casing in the well (3) the cement that secures the tieback on top of the liner, and (4) the seal at the wellhead. The Liner/Tieback option also takes more time to install, requiring several additional days to complete.

92. BP was aware of the risks of the single casing approach. An undated “Forward Plan Review” that appears to be from mid-April recommended against the single string of casing because of the risks. According to this document, “Long string of casing... *was* the primary option” but a “Liner... is now the recommended option.”

93. The document gives four reasons **against** using a single string of casing:

- “Cement simulations indicate it is unlikely to be a successful cement job due to formation breakdown.”

- “Unable to fulfill MMS regulations of 500’ of cement above top HC zone.”
- “Open annulus to the well head, with... seal assembly as only barrier.”
- “Potential need to verify with bond log, and perform remedial cement job(s).”

94. In contrast, according to the document, there were four advantages to the liner option:

- “Less issue with landing it shallow (we can also ream it down).”
- “Liner hanger acts as second barrier for HC in annulus.”
- “Primary cement job has slightly higher chance for successful cement lift.”
- “Remedial cement job, if required, easier to justify to be left for later.”

95. Communications between employees of BP confirm they were evaluating these approaches.

On April 14, Brian Morel, a BP Drilling Engineer, e-mailed a colleague, Richard Miller, about the options. His e-mail notes: “this has been [a] nightmare well which has everyone all over the place.”

96. Despite the risks, PB chose to install the single string of casing instead of a liner and tieback, applying for an amended permit on April 15. The company’s application stated that the full casing string would start at $9\frac{7}{8}$ inches diameter at the top of the well and narrow to 7 inches diameter at the bottom. This application was approved on the same day.

97. The decision to run a single string of casing was made, on information and belief, to save time and reduce costs. On March 25, Mr. Morel e-mailed Allison Crane, the Materials Management Coordinator for BP’s Gulf of Mexico Deepwater Exploration Unit, that the long casing string “saves a lot of time... at least 3 days.” On March 30, he e-mailed Sarah Dobbs, the BP Completions Engineer, and Mark Hafle, another BP Drilling Engineer, that “[n]ot running the tieback... saves a good deal of time/money.” On April 15, BP estimated that using a liner instead of the single string

of casing “will add additional \$7 – 10 MM to the completion cost.” The same document calls the single string of casing the “[b]est economic case and well integrity case for future completion operations.”

98. Around this time, BP prepared another undated version of its “Forward Plan Review.” Notably, this version of the document reaches a different conclusion than the other version, calling the long string of casing “the primary option” and the liner “the contingency option.” Like the other version of the plan review, this version acknowledges the risks of a single string of casing, but it now describes the option as the “best economic case and well integrity case for future completion operations.”

3. Centralizers.

99. Centralizers are attachments that go around the casing as it begins lowered into the well to keep the casing in the center of the borehole. If the well is not properly centered prior to the cementing process, there is increased risk that channels will form in the cement that allow gas to flow up the annular space around the casing. API Recommended Practice 65 explains: “If casing is not centralized, it may lay near or against the borehole wall. ...It is difficult, if not impossible, to displace mud effectively from the narrow side of the annulus if casing is poorly centralized. This results in bypassed mud channels and inability to achieve zonal isolation.”^{10/}

100. On April 15, BP informed Halliburton’s Account Representative, Jesse Gagliano, that BP was planning to use six centralizers on the final casing string at the Macondo well. Mr. Gagliano spent that day running a computer analysis of a number of cement design scenarios to determine how many centralizers would be necessary to prevent channeling. With ten centralizers, the modeling

^{10/}API, Recommended Practice 65-Part 2, *Isolating Potential Flow Zones During Well Construction*, 4.6.5.8., at 28.

resulted in a “MODERATE” gas flow problem. Mr. Gagliano’s modeling showed that it would require 21 centralizers to achieve only a “MINOR” gas flow problem.

101. Mr. Gagliano informed BP of these results and recommended the use of 21 centralizers. After running a model with ten centralizers, Mr. Galgiano e-mailed Brian Morel, BP’s drilling engineer, and other BP officials, stating that the model “now shows the cement channeling” and that “I’m gong to run a few scenarios to see if adding more centralizers will help us or not.” Twenty-five minutes later, Mr. Morel e-mailed back:

We have 6 centralizers, we can run them in a row, spread out, or any combination of the two. It’s a vertical hole, so hopefully the pipe stays centralized due to gravity. As far as changes, it’s too late to get any more product on the rig, our only option[] is to rearrange placement of these centralizers.

102. The following day, April 16, the issue was elevated to John Guide, BP’s Well Team Leader, by Gregory Walz, BP’s Drilling Engineering Team Leader. Mr. Walz informed Mr. Guide: “We have located 15 Weatherford centralizers with stop collars... in Houston and worked things out with the rig to be able to fly them out in the morning.” The decision was made because “we need to honor the modeling to be consistent with our previous decisions to go with the long string.” Mr. Walz explained: “I wanted to make sure that we did not have a repeat of the last Atlantis job with questionable centralizers going into the hole.” MR. Walz added: “I do not like or want to disrupt your operations. ...I do not like this and ... I[am] very concerned about using them.”

103. An e-mail from Brett Cocales, BP’s Operations Drilling Engineer, indicates that Mr. Guide’s perspective prevailed. On April 16, he e-mailed Mr. Morel:

Even if the hole is perfectly straight, a straight piece of pipe even in tension will not seek the perfect center of the hole unless it has something to centralize it.

But, who cares, it's done, end of story, will probably be fine and we'll get a good cement job. I would rather have to squeeze than get stuck. ...So Guide is right on the risk/reward equation.

104. On April 17, Mr. Gagliano, the Halliburton account representative, was informed that BP had decided to use only six centralizers. He then ran a model using seven centralizers and found this would likely produce channeling and a failure of the cement job. His April 18 cementing design report states: "well is considered to have a SEVERE gas flow problem." Mr. Gagliano said that BP was aware of the risks and proceeded with knowledge that his report indicated the well would have a severe gas flow problem.

105. Mr. Gagliano's findings should not have been a surprise to BP. As noted above, BP's mid-April plan review found that if BP used a single string of casing, as BP had decided to do, "Cement simulations indicate it is unlikely to be a successful cement job." Nonetheless, BP ran the last casing with only six centralizers.

4. Cement Bond Log.

106. A cement bond log is an acoustic test that is conducted by running a tool inside the casing after the cementing is completed. The cement bond log determines whether the cement has bonded to the casing and surrounding formations. If a channel that would allow gas flow is found, the casing can be perforated and additional cement injected into the annular space to repair the cement job.

107. Tommy Roth, a Halliburton Vice President of Cementing, has stated that BP should have conducted a cement bond log. According to Mr. Roth, "If the cement is to be relied upon as an effective barrier, the well owner must perform a cement evaluation as part of a comprehensive system integrity test."

108. MMS regulations also appear to direct a cement bond log or equivalent test at the Macondo well. According to the regulations, if there is an indication of an inadequate cement job, the oil company must “(1) Pressure test the casing shoe; (2) Run a temperature survey; (3) Run a cement bond log; or (4) Use a combination of these techniques.” 30 CFR § 250.428. In the case of the Macondo well, the Halliburton and internal BP warnings served as an indication of a potentially inadequate cement job.

109. On April 18, BP flew a crew from Schlumberger to the rig. As described in a Schlumberger timeline, “BP contracted with Schlumberger to be available to perform a cement bond log ... should BP request those services.” But at about 7:00 a.m. on the morning of April 20, BP told the Schlumberger crew that their services would not be required for a cement bond log test. As a result, the Schlumberger crew departed the Deepwater Horizon at approximately 11:15 a.m. on a regularly scheduled BP helicopter flight. The Schlumberger crew was scheduled for departure before pressure testing on the well had been completed, indicating that the results of those tests were not a factor in BP’s decision to send the crew away without conducting a cement bond log.

110. BP’s decision not to conduct the cement bond log test was, on information and belief, driven by concerns about expense and time. The cement log would have cost the company \$128,000 to complete. In comparison, the cost of canceling the service was just \$10,000. Moreover, Mr. Roth of Halliburton estimated that conducting the test would have taken an additional 9 to 12 hours. Remediating any problems found with the cementing job would have taken still more time.

111. Gordon Aaker, Jr., P.E., a failure analysis consultant with the firm Engineering Services, LLP, retained by the U.S. House of Representatives Subcommittee on Oversight and Investigations, has opined that it was “unheard of” not to perform a cement bond log on a well using a single casing

approach, and he described BP's decision not to conduct a cement bond log as "horrible negligence."

Another independent expert consulted by the House of Representatives, John Martinez, P.E., has opined that "cement bond or cement evaluation logs should always be used on the production string."

5. Mud Circulation.

112. Another questionable decision by BP was the failure to circulate fully the drilling mud in the well before cementing. This procedure, known as "bottoms up," involves circulating drilling mud from the bottom of the well all the way to the surface. Bottoms up has several purposes: it allows workers on the rig to test the mud for influxes of gas; it permits a controlled release of gas pockets that may have entered the mud; and it ensures the removal of well cuttings and other debris from the bottom of the well, preventing contamination of the cement.

113. API's guidelines recommend a full bottoms up circulation between running the casing and beginning a cementing job. The recommended practice states that "when the casing is on bottom and before cementing, circulating the drilling fluid will break its gel strength, decrease its viscosity and increase its mobility. The drilling fluid should be conditioned until equilibrium is achieved. ...At a minimum, the hole should be conditioned for cementing by circulating 1.5 annular volumes or one casing volume, whichever is greater."

114. BP's April 15 operations plan called for a full bottoms up procedure to "circulate at least one (1) casing and drill pipe capacity, if hole conditions allow." Halliburton Account Representative Jesse Gagliano has said it was also "Halliburton's recommendation and best practice to at least circulate one bottoms up on the well before doing a cement job." According to Mr. Gagliano, a Halliburton engineer on the rig raised the bottoms up issue with BP.

115. Despite the BP operations plan and the Halliburton recommendation, BP did not fully circulate the mud. Instead, it chose a procedure “written on the rig” which Mr. Gagliano “did not get input in.” BP’s final procedure called for circulating just 261 barrels of mud, just a small fraction of the mud in the Macondo well. Mr. Roth of Halliburton has stated that one reason for the decision not to circulate the mud could have been a desire for speed, as fully circulating the mud could have added as much as 12 hours to the operation. Mr. Gagliano expressed a similar view, saying, “the well probably would not have handled too high of a rate. So it would take a little bit ...longer than usual to circulate bottoms up in this case.”

6. Lockdown Sleeve.

116. When the casing is placed in the wellhead and cemented in place, it is held in place by gravity. Under certain pressure conditions, however, the casing can become buoyant, rising up in the wellhead and potentially creating an opportunity for hydrocarbons to break through the wellhead seal and enter the riser to the surface. To prevent this, a casing hanger lockdown sleeve is installed.

117. In BP’s planned procedure for the well, BP describes two options involving the lockdown sleeve. BP was seeking permission from MMS to install the final cement plug on the well at a lower depth than previously approved. If permission was granted, BP’s plan was to displace the drilling mud in the riser with seawater and install the cement plug prior to installation of the casing hanger lockdown sleeve. BP’s alternative plan, if MMS did not approve the proposed depth of the final cement plug, was to run the lockdown sleeve first, before installing the cement plug at a shallower depth. On April 16, Brian More, BP’s drilling engineer, e-mailed BP staff that: “We are still waiting for approval of the departure to set our surface plug. ...If we do not get this approved, the

displacement/plug will be completed shallower after running the LDS.” The LDS stands for the lockdown sleeve.

F. The Explosion at the Deepwater Horizon and Subsequent Spill.

118. On April 20, 2010, at approximately 9:45 p.m. CST, a mass of oil, natural gas, drilling mud, salt water and other Prohibited Contaminants erupted from the wellhead at the Macondo prospect site in the Gulf of Mexico off the shores of Louisiana, engulfing the Deepwater Horizon in fire and sinking the rig 36 hours later.

119. During and after the explosion, oil and other Prohibited Contaminants began to escape, first from the oil rig and then from the Macondo oil well. The leak is spilling, by conservative estimates, 60,000 barrels of oil each day into the Gulf of Mexico. Recent reports, based on the amount of spilled oil being recovered, indicate that the magnitude of the spill is even greater. In order to facilitate the recovery, the BP Defendants have been adding massive amounts of antifreeze at the well head. Antifreeze has toxic qualities and contaminants. The amount of other Prohibited Contaminants emanating from the well has been estimated to be 65,000 barrels per day.

120. At the time of the explosion on April 20, 2010, the Deepwater Horizon was not producing any oil. The rig had drilled a well in the sea floor and was in one of the last phases of the exploratory operations prior to turning the well into a production well. In this final phase, Halliburton workers on the rig were attempting to create a cement seal to plug off the wellhead.

121. Cementing a wellhead, particularly in deep water, is delicate work that carries the risk of a blowout, or an uncontrolled release of oil and/or natural gas from the well. Defendants knew that the work being performed at the Deepwater Horizon rig was especially risky.

122. The April 20, 2010 explosion and fire led to an uncontrolled oil leak in the Gulf of Mexico, covering thousands of square miles of fragile ocean and wetlands marine life. The disaster is the worst oil spill in U.S. history – far worse than the 1989 Exxon Valdez disaster – and has endangered the coasts of Louisiana, Mississippi, Alabama, and Florida for generations to come, wiping out the habitat of hundreds of species of marine and oceanic life. More than 400 species, including whales and dolphins, face a dire threat from the spill, along with the coastlines, islands, and marshlands.

123. At the time of the filing of this Complaint (day 63), the oil slick created by this spill covers a very large part of the Gulf of Mexico and has reached the shores of the Gulf Coast all the way from Louisiana to Florida. Experts now state that sea currents have picked up parts of the spill and transported them into the Loop Current, which will carry the spill around the Florida panhandle, through the Florida Keys, and up the Atlantic seaboard.

124. Scientists also report large plumes of oil and methane gas below the sea's surface. Researchers from National Institute for Undersea Science and Technology have discovered oil plumes as big as ten miles long, three miles wide, and 300 feet thick. Plumes of this sort drastically reduce oxygen levels in the Gulf, which will result in the loss of marine wildlife.

125. As of the date of this filing (day 63), over 1,021,000 gallons of the dispersant Corexit, a chemical that breaks surface oil slicks into microscopic droplets that can sink into the sea, have been used at the spill. Dispersants have known toxic effects for marine life, and Corexit ranks above dispersants made by competitors in toxicity and below them in effectiveness in handling the oil in the Gulf of Mexico.

126. At present, efforts to contain the spread of the spill and to stop the leak have been largely unsuccessful. Drilling a relief well to seal the leaking may be the only viable solution, an option that

will take at least three more months to complete. However, based on information and belief, BP's goal is not to seal the leaking well but to indefinitely continue the production of oil it has already began from various vessel positioned above the Macondo well.

127. Several hundred species in the Gulf of Mexico are being harmed by the oil and other Prohibited Contaminants that are being dumped in the waters, including several protected species of endangered and threatened sea turtles, whales, seabirds, and fish. Oil and other Prohibited Contaminants have reached the coastal wetlands used by seabirds and other species, and much of the marine life in and around the Gulf Coast has been exposed to oil and other Prohibited Contaminants and thus likely they will experience their toxic effects on their bodies and ecosystems.

128. Despite its eagerness and capacity for drilling, Defendants did not take sufficient precautions to prevent the current oil spill and thereby violated the OCSLA, CWA, their implementing regulations, the Lease, the Offshore Final Rule, the Final NPDES General Permit and the BP Exploration Plan, all of which must be followed when conducting operations on the OCS.

129. Much of the harm that the spill is causing on a daily basis is irreparable.

130. Defendants knew of the dangers associated with deep water drilling and specially in the Macondo well, but failed to take appropriate measures to prevent damage to Plaintiffs (and the Class Members) and to the Gulf of Mexico's marine and coastal environments, where people work and earn a living.

131. The spilled oil has caused, and will continue to cause dangerous environmental contamination of the Gulf of Mexico and its shorelines, substantially damaging the natural resources of the Gulf of Mexico.

132. The oil spill and the contamination have caused and will continue to cause loss of revenue to persons and businesses who are being prevented from using the Gulf of Mexico and its coastline.

133. There are many other potential effects from the oil spill that have not yet become known, such as reduction in property values, and Plaintiffs reserve the right to amend this Complaint once additional information becomes available.

134. The fire and explosion on the Deepwater Horizon, its sinking and the resulting spill of Prohibited Contaminants were caused by the combined and concurring negligence of Defendants, which renders them liable, jointly, severally and *in-solido*, to Plaintiffs and the Class Members for damages.

VI. CLASS DEFINITION

135. Plaintiffs bring this action on behalf of themselves and all others similarly situated, who are members of the following Class:

All Louisiana residents who live or work in, or derive income from, the Louisiana "Coastal Zone," as that term is defined in 43 U.S.C. ' 1331(e), and who have sustained any legally cognizable loss and/or damages as a result of the April 20, 2010 fire and explosion which occurred aboard the Deepwater Horizon drilling rig and the oil spill resulting therefrom.

136. Excluded from the Class are:

- a. the officers and directors of any of the Defendants;
- b. any judge or judicial officer assigned to this matter and his or her immediate family;
and
- c. any legal representative, successor, or assign of any excluded persons or entities.

VII. CLASS ACTION ALLEGATIONS

a. Numerosity of the class

137. The proposed Class is so numerous that joinder is impractical. The disposition of the claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

b. Predominance of Common Questions of Fact and Law

138. There is a well-defined community of interest in that the questions of law and fact common to the Class predominate over questions affecting only individual Class Members and include, but are not limited to, the following:

- a. Whether Defendants caused and/or contributed to the fire, explosion and oil spill;
- b. Whether Defendants' actions were negligent;
- c. Whether the fire, explosion and oil spill have caused environmental or other damage;
and
- d. The amount of damages Plaintiffs and the Class Members should receive in compensation.

c. Typicality

139. Plaintiffs and the Class Members have suffered similar harm as a result of Defendants' actions.

d. Adequacy of Representation

140. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class because their interests do not conflict with the interests of the Class Members they seek to

represent. Plaintiffs have no claims antagonistic to those of the Class. Plaintiffs have retained counsel competent and experienced in complex class actions and maritime and environmental litigation.

e. **Superiority**

141. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to this Court in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, and the prospect of a race for the courthouse and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expenses and delay to all parties and the court system in resolving the legal and factual issues common to all claims related to the Defendants= conduct alleged herein. By contrast, a class action presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

142. The various claims asserted in the action are also certifiable under the provisions of Rules 23(b)(1) and/or 23(b)(3) of the Federal Rules of Civil Procedure because:

- a. The prosecution of separate actions by thousands of individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members, thus establishing incompatible standards of conduct for Defendants;
- b. The prosecution of separate actions by individual Class Members would also create the risk of adjudications with respect to them that would, as a practical matter, be

dispositive of the interests of the other Class Members who are not parties to such adjudications and would substantially impair or impede their ability to protect their interests; and

- c. The questions of law or fact common to the Members of the Class predominate over any questions affecting only individual Members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VIII. COUNT ONE – VIOLATIONS OF OCSLA

143. Plaintiffs incorporate by reference each and every allegation set forth above.

144. Defendants violated the OCSLA and its implementing regulations in many respects. For example:

145. 30 C.F.R. § 250.212 requires that an EP include, among other things (1) general information (which pursuant to § 250.213 includes a blowout scenario); (2) the oil and hazardous substances spill information required by § 250.219; and (3) mitigation measures information required by § 250.227. BP did not comply with those requirements.

146. 30 C.F.R. § 250.213 required that BP include in the BP Exploration Plan a

(g) *Blowout scenario*. A scenario for the potential blowout of the proposed well in your EP that you expect will have the highest volume of liquid hydrocarbons. Include the estimated flow rate, total volume, and maximum duration of the potential blowout. Also, discuss the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints. Estimate the time it would take to drill a relief well.

147. However, BP did not include the blowout scenario. Instead, BP stated at ¶ 2.7 of the BP Exploration Plan that “[a] scenario for a potential blowout of the well from which BP would expect

to have the highest volume of liquid hydrocarbons is not required for the operations proposed in their EP.”

148. Also, BP did not include in the BP Exploration Plan the site-specific Oil Spill Response Plan (“OSRP) required by § 250.219. Instead, BP relied on a regional OSRP that had been previously prepared by BP. Based on the regional OSRP, BP certified “that BP Exploration & Production Inc. has the capability to respond, to the maximum extent practicable, to a worst-case discharge, or a substantial threat of such a discharge, resulting from the activities proposed in our Exploration Plan.”

149. That statement was not accurate when it was made and is not accurate now. The CEO of BP has even acknowledged that BP was not prepared to respond to a worst-case spill and recent events prove that.

150. Under § 250.227, the EP must include an environmental impact analysis (“EIA”) that is detailed and project specific, and assesses the potential environmental impacts of the proposed exploration activities. The EIA must include “all accurate, applicable and current information available at the time the related exploration plan is submitted.”^{11/}

151. However, the EIA submitted by BP (which is part of the BP Exploration Plan), contains statements that are not accurate. For example, BP stated that it was “**unlikely** that an accidental oil spill release would occur from the proposed activities” and that “in the event of such an accidental release, the water quality would be **temporarily** affected by the dissolved components and small droplets.” “Currents and microbial degradation would remove the oil from the water column or

^{11/} *Village of False Pass v. Watt*, 565 F. Supp 1123 (D. Alaska) 1983.

dilute the constituents to background levels.” BP Exploration Plan at 14.2.1.5. Recent events have shown that is not true.

152. With respect to the risk posed to **fisheries** by activities to be conducted pursuant to the BP Exploration Plan, BP stated:

An accidental oil spill that might occur as a result of the proposed operation in Mississippi Canyon Block 252 has the potential to cause some detrimental effects to fisheries. However, it is unlikely that an accidental surface or subsurface oil spill would occur from the proposed activities. If such a spill were to occur in open waters of the OCS proximate to mobile adult finfish or shellfish, the effects would likely be sublethal and the extent of damage would be reduced to the capability of adult fish and shellfish to avoid a spill, to metabolize hydrocarbons, and to excrete both metabolites and parent compounds. No adverse activities to fisheries are anticipated as a result of the proposed activities.

Id. at 14.2.1.6.

153. With respect to the risk posed to **essential fish habitat** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

[I]t is unlikely that an accidental surface or subsurface oil spill would occur from the proposed activities. If such a spill were to occur in open waters of the OCS proximate to mobile adult finfish or shellfish, the effects would likely be sub-lethal and the extent of damage would be reduced to the capability of adult fish and shellfish to avoid a spill, to metabolize hydrocarbons, and to excrete both metabolites and parent compounds. No adverse impacts to essential fish habitat are anticipated as a result of the proposed activities in Mississippi Canyon Block 252.

....

In the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using **proven equipment** and technology for such responses . . . [and] techniques for containment and recovery and removal of the oil spill.

Id. at 14.2.2.1.

154. With respect to the risk posed to **beaches** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

An accidental oil spill from the proposed activities could cause impacts to beaches. However, due to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected. Both the historical spill data and the combined trajectory/risk calculations referenced in the publication OCS EIS/EA MMS 2002-052 indicate there is little risk of contact or impact to the coastline and associated environmental resources. The activities proposed in the plan will be covered by our regional OSRP (refer to information submitted in Section 7.0 of this plan).

Id. at 14.2.3.1.

155. With respect to the risk posed to **wetlands** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

An accidental oil spill from the proposed activities could cause impacts to wetlands. However, due to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected. Both the historical spill data and the combined trajectory/risk calculations referenced in the publication OCS EIS/EA MMS 2002-052 indicate there is little risk of contact or impact to the coastline and associated environmental resources. The activities proposed in the plan will be covered by our regional OSRP (refer to information submitted in Section 7.0 of this plan).

Id. at 14.2.3.2.

156. With respect to the risk posed to **sea turtles** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

Oil spills and oil spill response activities are potential threats that could have lethal effects on turtles. Contact with oil, consumption of oil particles, and oil-contaminated prey could seriously affect individual sea turtles. Oil-spill-response planning and the habitat protection requirements of the Oil Pollution Act of 1990 should mitigate the threats.

Id. at 14.2.1.8.

157. With respect to the risk posed to **marine mammals** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

Few lethal effects are expected from oil spills.... Oil spills of any size are estimated to be aperiodic events that may contact cetaceans.... No adverse impacts to

endangered or threatened marine mammals are anticipated as a result of the proposed activities in Mississippi Canyon Block 252.

Id. at 14.2.1.7.

158. With respect to the risk posed to **marine and pelagic birds** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

An accidental oil spill that might occur as a result of the proposed action has the potential to impact marine and pelagic birds – birds could become oiled. However, it is unlikely that an accidental oil spill would occur from the proposed activities. No adverse impacts to marine and pelagic birds are anticipated as a result of the proposed activities in Mississippi Canyon Block 252.

Id. at 14.2.2.1.

159. With respect to the risk posed to **shore and coastal nesting birds** by activities to be conducted pursuant to its Exploration Plan, BP stated that no adverse impacts were expected:

An accidental oil spill from the proposed activities could cause impacts to shore birds and coastal nesting birds. However, due to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected. Both the historical spill data and the combined trajectory/risk calculations . . . indicate there is little risk of contact or impact to the coastline and associated environmental resources.

Id. at 14.2.3.3.

160. With respect to the risk posed to **coastal wildlife refuges** by activities to be conducted pursuant to the BP Exploration Plan, BP stated that no adverse impacts were expected:

An accidental oil spill from the proposed activities could cause impacts to coastal wildlife refuges. However, due to the distance to shore (48 miles) and the response capabilities that would be implemented, no significant adverse impacts are expected. Both the historical spill data and the combined trajectory/risk calculations . . . indicate there is little risk of contact or impact to the coastline and associated environmental resources.

Id. at 14.2.3.4.

161. BP also stated that no federally-protected species would be harmed or killed during operations conducted pursuant to the BP Exploration Plan. *Id.* at 8-1.

162. All of the foregoing statements were not accurate and BP failed to comply with its duty to provide accurate information.

163. At ¶ 2.3 of the BP Exploration Plan, BP represented that BP “does not propose to utilize new techniques or unusual technologies for these operations, however, the best available and safest technology (BAST) as referenced in Title 30 CFR 250 will be incorporated as standard operational procedures.”

164. “BAST” means the best available and safest technology that the Director determines to be economically feasible whenever failure of equipment would have a significant effect on safety, health, or the environment. 30 C.F.R. § 250.115. BAST must be used in all exploration, development and production operations whenever practical. 30 C.F.R. § 250.107.

165. Defendants failed to use BAST (1) in the design of the well; (2) by failing to use centralizers; (3) by not conducting a cement bond log; (4) by not properly circulating the drilling mud; (5) by not installing a lockdown sleeve; (6) by not installing operational BOPs; and (7) by other failures which will be discovered prior to trial; all in violation of 30 C.F.R. § 250.107. Furthermore, contrary to BP’s representations, the techniques and/or technologies and/or cement used by BP in the well were new or unusual.

166. At ¶ 1.3 of the BP Exploration Plan, BP represented that “[s]afety features on the MODU will include well control, pollution prevention.... and blowout prevention equipment as described in Title 30 C.F.R. Part 250, Subparts C, D, E, G and O...”

167. However, Defendants did not have such equipment; or had malfunctioning equipment that did not meet the standards set in those regulations.

168. To prevent oil pollution from reaching navigable waters and adjoining shorelines, and to contain discharges of oil, 30 C.F.R. Part 254 requires offshore facilities to develop and implement spill prevention, control and detection measures. *See also*, 40 C.F.R. Part 112.

169. However, BP did not have such measures in place and did not outline them in the BP Exploration Plan. Instead, at ¶ 1.6 of the BP Exploration Plan, BP stated that “[a] discussion of measures to prevent the discharge of oils and greases from drilling rigs during rainfall and routine operations is not required for the operations proposed in this plan.”

170. BP is currently engaged in deepwater production operations without having prepared and obtained approval for a Deep Water Operation Plan (“DWOP”), as required by § 250.286.

171. According to the BP Exploration Plan, all discharges from the Macondo well site would be made in accordance with the Final NPDES General Permit. However, the discharges of Prohibited Contaminants are being carried out in violation of the Final NPDES General Permit.

172. Those are only some of the violations of OCSLA and its implementing regulations committed by Defendants.

173. Section 1349 of the OCSLA, 43 U.S.C. § 1349, provides, in pertinent part:

(a) Persons who may bring actions; persons against whom action may be brought; time of action; intervention by Attorney General; costs and fees; security

* * * *

(1) Except as provided in this section, any person having a valid legal interest which is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subchapter against any person, including the United States, and any other government instrumentality or agency (to the extent permitted by the eleventh amendment to the

Constitution) for any alleged violation of any provision of this subchapter or any regulation promulgated under this subchapter, or of the terms of any permit or lease issued by the Secretary under this subchapter.

* * * *

(b) Jurisdiction and venue of actions

* * * *

(2) Any resident of the United States who is injured in any manner through the failure of any operator to comply with any rule, regulation, order, or permit issued pursuant to this subchapter may bring an action for damages (including reasonable attorney and expert witness fees) only in the judicial district having jurisdiction under paragraph (1) of this subsection.

174. Defendants have violated and are continuing to violate the provisions of OCSLA and regulations enacted thereunder, as well as the Lease, the Offshore Final Rule, the Final NPDES General Permit and the BP Exploration Plan.

175. Pursuant to 43 U.S.C. § 1349(a)(1), Plaintiffs request that the Court issue an order compelling the BP Defendants and the Transocean Defendants to comply with, and to enjoin the BP Defendants and the Transocean Defendants from violating the requirements of the OCSLA, the implementing regulations enacted thereunder, the Lease, the Offshore Final Rule, Final General Permit and the BP Exploration Plan.

176. The BP Defendants are currently producing oil from the Macondo well. Pursuant to the provisions of 43 U.S.C. § 1334(d), Plaintiffs request that the Court issue an order declaring the Lease forfeited and cancelled because of the ongoing violations.

177. Furthermore, pursuant to 43 U.S.C. § 1349(b)(2) Plaintiffs and the Class Members are entitled to recover from all Defendants all damages they have suffered, including reasonable attorney and expert fees, and hereby make demand therefor in an amount to be determined by the trier of fact.

IX. COUNT TWO - VIOLATIONS OF CWA

178. Plaintiffs incorporate by reference each and every allegation set forth above.

179. Section 1311 of the CWA states that “[e]xcept as in compliance with this Section and Sections 1312, 1316, 1917, 1328, 1342 and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311.

180. Section 1321 of the CWA prohibits the “discharge of **oil** or hazardous substances (i) into or upon the navigable waters of the United States.... in such quantities as may be harmful...” 33 U.S.C. § 1321(b)(3). “Oil” means “oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with water...” 33 U.S.C. § 1321(a)(1).

181. In the CWA Congress prescribed various remedies and penalties for violations of the CWA, including the civil penalties outlined in 33 U.S.C. §§ 1321 (b)(7) and 1319(d).

182. The “Citizen Suits” provisions of the CWA provides that “any citizen may commence a civil action on his own behalf – – (1) against any person who is alleged to be in violation of (A) an effluent standard or limitation...” 33 U.S.C. § 1365. This provision is intended to allow private attorneys general to fill gaps in public enforcement and are proper if governmental agencies fail to exercise their enforcement responsibility.

183. The MMS, an agency with control over the Defendants’ operations on the OCS, has failed to exercise its responsibilities to enforce the CWA and its implementing regulations. MMS has abdicated its enforcement role and has allowed the Defendants to violate the CWA, the regulations enacted thereunder, the Lease, the Offshore Final Rule, the Final NPDES General Permit and the approval of the BP Explosion Plan, which may be enforced in this citizen suit by Plaintiffs in their capacity as private attorneys general.

184. The BP Exploration Plan states at ¶ 1.3 that “[s]upervisory and certain designated personnel on board the facility will be familiar with the effluent limitations and guidelines for overboard discharges into the receiving waters, **as outlined in the NPDES [General] Permit GMG290000.**”

185. The BP Exploration Plan also states at ¶ 5.2 that “BP has requested coverage under EPA Region VI NPDES General Permit GMG290[00]0 for discharges associated with exploration activities in Mississippi Canyon Block 252, and will take applicable steps to ensure all offshore discharges associated with the proposed operations will be conducted in accordance with the permit.”

186. The BP Exploration Plan describes at ¶ 1.4 the following amounts and types of oils and fuels that were to be kept onboard the Deepwater Horizon:

Type of Storage Tank	Type of Facility	Tank Capacity (bbls)	Number of Tanks	Total Capacity (bbls)	Fluid Gravity (API)
Fuel Oil	Semi-Submersible	4794	4	19176	27,489
Waste Oil	Semi-Submersible	31	1	31	34,971
Fuel Oil	Semi-Submersible	123	2	246	27,489
Fuel Oil	Semi-Submersible	137	1	137	27,489
Fuel Oil	Semi-Submersible	115	1	115	27,489
Fuel Oil	Semi-Submersible	32	1	32	27,489
Hydraulic	Semi-Submersible	29	3	87	31,144
Lube Oil	Semi-Submersible	134	1	134	34,971
Heli-Fuel	Semi-Submersible	50	1	50	37,961

187. All the oils and fuels kept on the Deepwater Horizon were unlawfully discharged into the navigable waters of the United States during the blow-out of the Macondo well and during the explosion and fire aboard, and subsequent sinking of the Deepwater Horizon. These discharges, which exceed the discharge limits of the Offshore Final Rule and the Final NPDES General Permit, were caused by Defendants’ actions and inactions in violation of the CWA, its implementing regulations, the Lease, the Offshore Final Rule and the Final NPDES General Permit. Therefore, the

maximum penalties authorized by applicable statutes and regulations should be assessed against all Defendants for each day and for each day and for each separate violation.

188. The BP Exploration Plan also describes at ¶ 2.2, the types (including chemical constituents) and amounts of drilling fluids that were to be used in the drilling operations of the Deepwater Horizon:

Type of Drilling Fluid	Estimated Volume of Drilling Fluid to be Used per Well
Water-based (seawater, freshwater, barite)	20,000 bbls
Synthetic-based (internal olefin, ester)	10,000 bbls

189. All the drilling fluids kept on the Deepwater Horizon and/or placed inside the casing or the well were unlawfully discharged into the navigable waters of the United States during the blow-out of the Macondo well and during the explosion and fire aboard, and subsequent sinking of the Deepwater Horizon. These discharges, which exceed the discharge limits of the Offshore Final Rule and the Final NPDES General Permit, were caused by Defendants' actions and inactions in violation of the CWA, its implementing regulations, the Lease, the Offshore Final Rule and the Final NPDES General Permit. Therefore, the maximum penalties authorized by applicable statutes and regulations should be assessed against all Defendants for each day and for each day and for each separate violation.

190. After the explosion and sinking of the Deepwater Horizon, in excess of 60,000 barrels per day of oil mixed with other Prohibited Contaminants have been and are being dumped into the Gulf of Mexico. These discharges, which exceed the discharge limits of the Offshore Final Rule and the Final NPDES General Permit, were caused by Defendants' actions and inactions in violation of the CWA, its implementing regulations, the Lease, the Offshore Final Rule and the Final NPDES

General Permit. Therefore, the maximum penalties authorized by applicable statutes and regulations should be assessed against all Defendants for each day and for each day and for each separate violation.

191. Defendants have failed to use and in their current production operations are not using the proper technologies, BPT, BCT, BAT and/or NSPS, required by the CWA, the Offshore Final Rule and/or the Final NPDES General Permit, for the discharge of oil, produced water, drilling muds, drilling cuttings and other pollutants into the waters of the Gulf of Mexico. Therefore, because of these violations, the maximum penalties authorized by the applicable statutes and regulations should be assessed against the BP Defendants for each day and for each separate violation.

192. The ongoing violations of the Offshore Final Rule and the Final NPDES General Permit by the Defendants require that the Court (1) enjoin all the Defendants from carrying out further violations, and (2) order all Defendants to pay for ongoing monitoring of the affected environment and the people and the species that live in it, until it can be determined that their violations have stopped, and until the effects of the contamination caused by them has been remediated at their cost.

X. COUNT THREE – NEGLIGENCE

193. Plaintiffs incorporate by reference each and every allegation set forth above.

194. The negligence and products liability laws of the States of Mississippi and/or Louisiana are not inconsistent with the provisions of the OCSLA, and as such they have been declared, under 43 U.S.C. §§ 1331(f)(1) and 1333(a)(2), to be law of the United States for that portion of the OCS where the Macondo oil well is located and from where the Prohibited Contaminants are flowing. Therefore, Plaintiffs and the Class Members are entitled to recover damages they have suffered due to the Defendants' negligence pursuant to the applicable laws of Mississippi and/or Louisiana, and

particularly La. C.C. arts. 2315, 2316, 2317, 2317.1 and 2322, because such activities are causing injury in Mississippi.

195. The fire, explosion and resulting oil spill are the result of a defective structure (consisting of the well's components, such as the riser, casing and BOPs) and other defective equipment permanently incorporated into, located upon, and made a part of the submerged lands where the Macondo well is located. Defendants have *garde* and control over all this equipment and the land on which the equipment is permanently incorporated.

196. The fire, explosion and resulting oil spill were caused by the *in solido*, joint and several negligence and fault of Defendants in the following non-exclusive particulars:

- a. Failing to properly design the well;
- b. Failing to build the well according to its approved design;
- c. Failing to use a liner in the casing;
- d. Failing to use centralizers in the well;
- e. Using a single string of casing;
- f. Failing to conduct a cement bond log;
- g. Failing to properly circulate the drilling mud;
- h. Failing to install a lock-down sleeve;
- i. Conducting cementing operations inside the well in such a manner that a fire and explosion occurred resulting in an oil spill;
- j. Using a type of cement prepared in a way that was not appropriate for this well;
- k. Using a casing that was not appropriate for this well;

- l. Failing to properly inspect the well's components, including the casing, to assure that they were fit for their intended purposes;
- m. Acting in a careless and negligent manner without due regard for the safety of others;
- n. Failing to follow rules and regulations pertaining to the safe operations of the well which, if they had been followed, would have averted the fire, explosion and spill of oil and other Prohibited Contaminants;
- o. Conducting operations on the seabed at great depths with untrained and/or unlicensed personnel;
- p. Failing to take appropriate action to avoid or mitigate the fire, explosion and/or spill of oil and other Prohibited Contaminants;
- q. Negligently implementing policies and procedures to safely conduct operations on the seabed;
- r. Failing to follow industry standards in the design and construction of the well;
- s. Failing to ascertain that the well and its components, including the casing seals and BOPs, were free from defects and/or in proper working order;
- t. Failing to timely bring the release of oil and other Prohibited Contaminants under control;
- u. Failing to provide appropriate accident prevention equipment;
- v. Failing to react to danger signs;
- w. Providing BOPs that did not work properly;
- x. Conducting well and well cap cementing operations improperly;

- y. Failing to install and/or deploy an acoustic switch to stop the flow of oil in the event of a failure; and
- z. Such other acts of negligence and omissions as will be discovered and shown at the trial of this matter.

197. As a direct and proximate result of Defendants' negligence, Plaintiffs and the Class Members have suffered damages including, but not limited to, damage to the natural resources and loss of income, in an amount to be determined by the trier of fact.

XI. COUNT FOUR –PUNITIVE DAMAGES

198. Plaintiffs incorporate by reference each and every allegation as set forth above.

199. The fire, explosion and resulting spill of Prohibited Contaminants were caused by the wantonness of Defendants.

200. Defendants were aware of the problems with the well that led to the explosion, fire and the spill of oil and other Prohibited Contaminants. Defendants knew that the BOPs had never been tested at such depths and did not know if they would operate in case of an emergency. Supervisory personnel of the Defendants were warned that a blow-out was likely. Nevertheless, Defendants continued their operations without taking any precautions to avoid the foreseeable outcome. In fact, supervisory personnel of BP approved the use of equipment and practices that could not safely accomplish construction of the well. Such actions by Defendants were reckless and outrageous and amount to wantonness.

201. The release of Prohibited Contaminants into the water was the result of willful misconduct and/or willful negligence within the privity and/or knowledge of Defendants, and was primarily

caused by violations of the applicable environmental, safety or operating standards, regulations and laws outlined above.

202. As a direct and proximate result of Defendants' wantonness, Plaintiffs and the Class Members have suffered damages including, but not limited to, damage to the natural resources and loss of income, in an amount to be determined by the trier of fact, and they are entitled to recover punitive damages in an amount to be determined by the trier of fact.

XII. COUNT FIVE – NUISANCE

203. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

204. The actions of Defendants, as described above, interfered and continue to interfere with Plaintiffs' rights (and the Class Members' rights) and have caused harm, inconvenience and/or damage to Plaintiffs and the Class Members.

205. Plaintiffs and the Class Members are entitled to a judgment finding Defendants liable to Plaintiffs for damages suffered as a direct and proximate result of Defendants' nuisance and awarding Plaintiffs and the Class Members adequate compensation therefor in an amount to be determined by the trier of fact.

XIII. COUNT SIX – TRESPASS

206. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

207. Defendants negligently and intentionally caused the release of Prohibited Contaminants into the waters of the United States, which Plaintiffs and the Class Members use for the purposes described above.

208. As a direct and proximate result of Defendants' continuing trespass and engaging in the above mentioned activities, Plaintiffs and the Class Members have suffered damages and they are entitled to compensation in an amount to be determined by the trier of fact.

XIV. COUNT SEVEN – STRICT LIABILITY

209. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

210. The actions and activities of Defendants, as described above, including, but not limited to, drilling and exploring for oil in the deep waters of the Gulf of Mexico at great depths, constitute abnormally dangerous and/or ultrahazardous activities that carry a high degree of risk of harm to others.

211. The injuries and damages suffered by Plaintiffs and the Class Members are the kind of harm caused by abnormally dangerous and/or ultrahazardous activities.

212. The injuries and damages suffered by the Plaintiffs and the Class Members were proximately caused by said abnormally dangerous and/or ultrahazardous activity.

213. Plaintiffs and the Class Members are entitled to a judgment finding Defendants strictly liable to them for damages suffered as a result of Defendants' abnormally dangerous and/or ultrahazardous activities and awarding Plaintiffs and the Class Members adequate compensation in an amount to be determined by the trier of fact.

XV. COUNT EIGHT – NEGLIGENCE *PER SE*

214. Plaintiffs hereby incorporate by reference each and every allegation set forth above.

215. At all times material hereto, Defendants were negligent *per se* by failing to comply with all the applicable laws, regulations, permits and standards described above.

216. As a direct and proximate result of their negligence *per se*, Defendants are liable for the injuries and damages suffered by Plaintiffs and the Class Members, who are entitled to compensation in an amount to be determined by the trier of fact.

XVI. COUNT NINE – PRODUCTS LIABILITY

217. Plaintiffs incorporate by reference each and every allegation set forth above.

218. Defendants designed and built the Macondo well and all its components. The Macondo well and its components, including the BOPs, were defectively designed and/or manufactured, thereby causing injury to the Plaintiffs and Class Members.

219. Plaintiffs and the Class Members are entitled to a judgment finding Defendants liable to them pursuant to the Louisiana products liability law and awarding them compensation in an amount set by the trier of fact.

XVII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class Members demand judgment against Defendants, jointly, severally and *in-solido*, providing the following relief:

1. Civil penalties in the maximum amount allowed by law for each day and each violation;
2. Economic and compensatory damages in amounts to be determined at trial;
3. Punitive damages;
4. Pre-judgment and post-judgment interest at the maximum rate allowed by law;
5. Attorney's fees and expenses;

6. Injunctive relief enjoining Defendants' violations of, and compelling their compliance with OCSLA, CWA, their implementing regulations, the Lease, the Offshore Final Rule, the Final NPDES General Permit, and the BP Exploration Plan;
7. Cancellation of the Lease;
8. Injunctive relief enjoining the Defendants' unlawful activities and ongoing discharges of oil and other Prohibited Contaminants;
9. Injunctive relief enjoining BP's oil-producing activities from vessels located near the Macondo well;
10. A trial by jury;
11. Court-supervised medical and environmental monitoring; and
12. Such other and further relief available and any relief the Court deems just and appropriate.

RESPECTFULLY SUBMITTED BY:

/s/ Kenneth M. Altman

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