## UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

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| ) CASE NO. 1:18-cv-01504-JDW |
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## STIPULATED SETTLEMENT AGREEMENT

The Parties, Gulf Restoration Network, Sierra Club, and Center for Biological Diversity ("Plaintiffs"), the National Marine Fisheries Service ("Federal Defendant," or "NMFS"), and American Petroleum Institute ("Defendant-Intervenor") have agreed to settle the above captioned case in its entirety on the terms memorialized in this Stipulated Settlement Agreement ("Stipulation").

WHEREAS, in 2007, NMFS issued a biological opinion under the Endangered Species Act ("ESA") for the Department of Interior's 2007-2012 Five Year Oil and Gas Leasing Program in the Gulf of Mexico.

WHEREAS, on July 30, 2010, following the Deepwater Horizon oil spill, the Department of Interior requested the Federal Defendant reinitiate ESA consultation, in order to update the biological opinion in light of the spill.

WHEREAS, the Department of Interior, through the Bureau of Ocean Energy Management ("BOEM"), submitted a biological assessment for the reinitiated consultation on February 7, 2013.

WHEREAS, on May 31, 2013, the Federal Defendant formally reinitiated consultation, and commenced preparation of a Programmatic Biological Opinion, which covers all effects to ESA-listed species or species proposed for ESA-listing and designated critical habitat resulting from ongoing and future actions associated with permit issuance and plan approval under the Outer Continental Shelf Lands Act in the Gulf of Mexico, Oil and Gas Program permitting under Clean Water Act, Clean Air Act, and the Marine Mammal Protection Act, and from actions associated with all lease sales held in the 10-year period following issuance of this opinion (to approximately 2028) in the Gulf of Mexico.

WHEREAS, the Federal Defendant's work on the Programmatic Biological Opinion and the reinitiated consultation is ongoing.

WHEREAS, on, June 21, 2018, Plaintiffs filed a Complaint alleging the Federal Defendant and the U.S. Fish and Wildlife Service have unreasonably delayed completing consultation and issuing a biological opinion on federally authorized oil and gas operations in the Gulf of Mexico. The Complaint was first amended on June 26, 2018 and was amended again on October 10, 2018 to remove claims against the U.S. Fish and Wildlife Service.

WHEREAS, the Plaintiffs, Federal Defendant, and Defendant-Intervenor, through their authorized representatives, without any admission of legal fault or error, and without final adjudication of the issues of fact or law with respect to Plaintiffs' claims, have reached a settlement resolving this action.

WHEREAS, the Parties agree that settlement of this action in this manner is in the public interest and is an appropriate way to resolve this dispute.

## THE PARTIES THEREFORE STIPULATE AS FOLLOWS:

1. On or before November 5, 2019, the Federal Defendant shall complete consultation and issue the Programmatic Biological Opinion.

2. ATTORNEYS' FEES - Federal Defendant agrees to pay \$25,908.59 in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), the ESA, 16 U.S.C. § 1540(g), and/or any other statute and/or common law theory, through and including the date of this Stipulation, incurred in connection with this litigation.

3. Federal Defendant's payment, as identified in Paragraph 2 above, shall be accomplished by electronic funds transfer to Earthjustice. Within thirty days of final execution of the Stipulation, Plaintiffs shall provide the following information necessary for Federal Defendant to process the electronic funds transfer: the payee's bank account number, account

type, bank routing, transit number and tax identification number.

4. Within thirty business days of receiving the information identified in paragraph two above, or the signed court order approving this Stipulation, whichever is later, Federal Defendant agrees to submit all necessary paperwork to the appropriate offices and to make every reasonable effort to provide for payment to be transmitted within sixty days from receipt of the payment information or the signed court order approving this Stipulation, whichever is later. Plaintiffs and Plaintiffs' counsel agree to hold Federal Defendant and the United States harmless in any litigation, further suit, or claim arising from the authorized transfer of the agreed-upon amount.

5. By this Stipulation, Federal Defendants do not waive any right to contest fees claimed by Plaintiffs, including the hourly rate, application for attorney's fees, costs, or expenses, filed in the present action or any other action. Further, this Stipulation as to attorney's fees and costs has no precedential value and shall not be used as evidence of such in any other attorney's fees litigation.

6. MODIFICATION OF AGREEMENT - Any party may seek to modify the deadline for the actions specified in Paragraph 1 for good cause shown, consistent with the Federal Rules of Civil Procedure. In that event, or in the event that either party believes the other party has failed to comply with any term or condition of this Stipulation, the Parties shall use the dispute resolution procedures specified in Paragraph 7 below.

7. DISPUTE RESOLUTION - This Stipulation may be modified by the Court upon

good cause shown, consistent with the Federal Rules of Civil Procedure, by (i) written stipulation between the parties filed with and approved by the Court, or (ii) upon written motion filed by one of the Parties and granted by the Court. In the event that either party seeks to modify the terms of this Stipulation, including the deadline specified in Paragraph 1, or in the event of a dispute arising out of or relating to this Stipulation, or in the event that either party believes that the other party has failed to comply with any term or condition of this Stipulation, the party seeking the modification, raising the dispute, or seeking enforcement shall provide the other party with notice of the claim. The Parties agree that they will meet and confer (either telephonically or in person) at the earliest possible time in a good faith effort to resolve the claim before seeking relief from the Court. If the Parties are unable to resolve the claim themselves, either party may seek relief from the Court.

8. ENFORCEMENT OF AGREEMENT - In the event that Federal Defendant fails to meet the deadlines identified in paragraph 1, Plaintiffs' first remedy shall be a motion to enforce the terms of this Stipulation, subject to following the dispute resolution procedures described in Paragraph 7 above. This Stipulation shall not, in the first instance, be enforceable through a proceeding for contempt of court.

9. No provision of this Stipulation shall be interpreted as, or constitute, a commitment or requirement that Federal Defendant take action in contravention of the ESA, the Administrative Procedure Act ("APA"), or any other law or regulation, either substantive or procedural. Nothing in this Agreement shall be construed to limit or modify the discretion

accorded to the Federal Defendant by the ESA, the APA, or general principles of administrative law with respect to the procedures to be followed in making any determination required herein, or as to the substance of any final determination.

10. This Stipulation is being entered into so as to avoid further litigation of the Plaintiffs' pending lawsuit. Nothing in this Stipulation shall be construed to constitute an admission of any issue of fact, law or liability by any of the Parties. Except as expressly provided in this Stipulation, none of the Parties waives or relinquishes any legal rights, claims or defenses it may have.

11. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that Federal Defendant is obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

12. This Stipulation only requires that Federal Defendant take actions by the deadline specified in Paragraph 1 and does not limit Federal Defendant's authority with regard to the substantive outcome of any determinations. To challenge any final determination issued in accordance with this Stipulation, Plaintiffs will be required to file a separate action. Plaintiffs do not waive their ability to challenge substantive decisions made by Federal Defendant pursuant to Paragraph 1, and Federal Defendant does not waive any applicable defenses.

13. Defendant-Intervenor reserves any and all claims or defenses with respect to the substantive decisions made by Federal Defendant pursuant to Paragraph 1.

14. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the Court's entry of the terms and conditions of this Stipulation and do hereby agree to the terms herein.

15. The terms of this Stipulation constitute the entire agreement of the Parties, and no statement, agreement, or understanding, oral or written, which is not contained herein, shall be recognized or enforced. Except as expressly stated herein, this Stipulation supersedes all prior agreements, negotiations, and discussions between the Parties with respect to the subject matters discussed herein.

16. The terms of this Stipulation shall become effective upon entry of an Order by the Court ratifying the Stipulation.

17. Upon approval of this Stipulation by the Court, Plaintiffs' Complaint shall be dismissed with prejudice. Notwithstanding the dismissal of this action, however, the Parties hereby stipulate and respectfully request that the Court retain jurisdiction to oversee compliance with the terms of this Stipulation and to resolve any motions to modify such terms. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).

JEAN E. WILLIAMS Deputy Assistant Attorney General Environment & Natural Resources Division

DATED: July 18, 2019

/s/ Jonelle M. Dilley

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Attorneys for Intervenor-Defendant

## UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

| GULF RESTORATION NETWORK, SIEERA CLUB, and CENTER FOR | ) CASE NO. 1:18-cv-01504-JDW<br>) |
|---|-----------------------------------|
| <b>BIOLOGICAL DIVERSITY</b> ,                         | ) CERTIFICATE OF SERVICE          |
|   | )                                 |
| Plaintiff,  | )                                 |
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| V.  | )                                 |
|   | )                                 |
| NATIONAL MARINE FISHERIES                             | )                                 |
| SERVICE,  | )                                 |
|   | )                                 |
| Defendant.  | )                                 |

I hereby certify that on July 18, 2019, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Counsel of record currently identified on the Mailing Information list to receive e-mail notices for this case are served via Notices of Electronic Filing generated by CM/ECF.

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