

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**HORNBECK OFFSHORE SERVICES,  
LLC,**

**Plaintiff,**

**VS**

**KENNETH LEE “KEN” SALAZAR, in,  
his official capacity as Secretary, United States  
Department of the Interior;**

**UNITED STATES DEPARTMENT OF THE  
INTERIOR; ROBERT “BOB” ABBEY, in his  
Official capacity as Acting Director, Mineral  
Management Service; and**

**MINERALS MANAGEMENT SERVICE,  
Defendants**

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**CIVIL ACTION NO.: 10-1663**

**SECTION: “F”**

**MAGISTRATE: “2”**

**COMPLAINT FOR DECLARATORY JUDGMENT AND REQUEST FOR INJUNCTIVE  
RELIEF**

Plaintiffs, the State of Louisiana, through the Louisiana Attorney General, James D. “Buddy” Caldwell, and Bobby Jindal, in his capacity as Governor of the State of Louisiana (hereinafter collectively referred to as “the State of Louisiana”), file the following Complaint

pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, and the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1331, *et seq.*, alleging that the Defendants violated the APA and/or the OCSLA by: (1) failing to comply with the OCSLA’s requirement that affected States, including the State of Louisiana, have an opportunity to participate in, and consult with Defendants with respect to the policy and planning decisions prior to the issuance of the Deepwater Moratoria; and (2) acting arbitrary and capriciously by failing to consider the “human environment” of the State of Louisiana and its citizens, including the economic impact on the State of Louisiana, prior to issuing the Deepwater Moratoria.

As a result of Defendants’ violations, the State of Louisiana seeks declaratory relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and injunctive relief, as specified herein.

### **Parties**

1. Plaintiff, the State of Louisiana, appears herein through the Louisiana Attorney General, James D. “Buddy” Caldwell. Pursuant to Article IV, § 8 of the Louisiana Constitution, Attorney General Caldwell is the chief legal officer of the state and in that capacity, is charged with the responsibility of protecting the rights and interests of the State.

2. Plaintiff, Bobby Jindal, appears herein in his official capacity as Governor of the State of Louisiana. Pursuant to Article IV, § 5 of the Louisiana Constitution, Governor Jindal is the chief executive officer of the State.

3. Defendant, Kenneth Lee “Ken” Salazar (hereinafter referred to as “Secretary Salazar”) is sued in his official capacity as the Secretary of the United States Department of the Interior. Pursuant to the OCSLA, Secretary Salazar is the federal official ultimately responsible for the management and oversight of leasing, exploration, development, and production of oil and gas on the outer Continental Shelf and for all actions or inactions of the Department of the Interior and the

Bureau of Ocean Energy Management, Regulation, and Enforcement.

4. Defendant, United States Department of the Interior (hereinafter referred to as “the DOI”) is a department of the United States Government with supervisory and management responsibility over the Bureau of Ocean Energy Management, Regulation, and Enforcement, which, pursuant to the OCSLA, is responsible for implementing and applying the federal laws, regulations, and policies at issue in this Complaint.

5. Defendant, Michael Bromwich (hereinafter referred to as “Mr. Bromwich”) is sued in his official capacity as the Director of the Bureau of Ocean Energy Management, Regulation, and Enforcement. Pursuant to the OCSLA and authority delegated by the Secretary of the DOI, Mr. Bromwich is the federal official responsible for the proper administration, leasing, exploration, and production of oil and gas on the outer Continental Shelf.

6. Defendant, Bureau of Ocean Energy Management, Regulation, and Enforcement (hereinafter referred to as the “BOEMRE”) is a bureau of the DOI, and was formerly known as the Minerals Management Service (hereinafter referred to as “MMS”).<sup>1</sup> Pursuant to the OCSLA and authority delegated to it by the Secretary of the DOI, the BOEMRE is responsible for managing the administration of leasing, exploration, development, and production of oil and gas on the outer Continental Shelf. (Secretary Salazar, the DOI, Mr. Bromwich, and the BOEMRE are collectively referred to herein as “Defendants”).

### **Jurisdiction and Venue**

7. The Court has jurisdiction of this action under the APA (5 U.S.C. § 702 and § 703) and the OCSLA (43 U.S.C. § 1349(b)(1)) as well as under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (jurisdiction with respect to declaratory judgments), and 28 U.S.C. § 2202 (jurisdiction with respect to injunctive relief).

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<sup>1</sup> On June 18, 2010, by Order No. 3302, Secretary Salazar changed the name of the MMS to the BOEMRE.

8. The APA authorizes this Court to review Defendants' actions and to "hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The May 28, 2010 and July 12, 2010, Deepwater Drilling Moratoria issued by Defendants are reviewable by this Court for compliance with the APA and with the OCSLA and its implementing regulations.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) and 43 U.S.C. § 1349(b)(1-2).

10. Although Plaintiffs believe it unnecessary in this case, they have complied with 43 U.S.C. § 1349(a)(3) by notifying the Defendants of the violations alleged herein prior to filing suit. In particular, on June 29, 2010, Governor Bobby Jindal issued a letter to Secretary Salazar, citing the Secretary's non-compliance with the OCSLA. (*See* Exhibit "A," Letter from Governor Bobby Jindal to Ken Salazar, dated June 29, 2010). The Defendants received further notice of the State of Louisiana's interest through the State's amicus curiae briefs submitted in the instant case, both at the district court level<sup>2</sup>, and on appeal to the Fifth Circuit.<sup>3</sup> As detailed below, the May 28<sup>th</sup> and July 12<sup>th</sup> Deepwater Drilling Moratoria issued by Defendants, are actions constituting an "imminent threat to the public health or safety" and immediately affects the State's legal interests. *See* 43 U.S.C. § 1349(a)(3). Therefore, notice to Defendants, although already given, is not a prerequisite to the filing of this lawsuit.

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<sup>2</sup> *See* the Amicus Brief on Behalf of Bobby Jindal, Governor of the State of Louisiana, and the State of Louisiana in Support of Plaintiffs' Motion for Preliminary Injunction (Rec. Doc. 66, filed on 6/21/10) in the case entitled: *Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee "Ken" Salazar, et al.*, No. 10-01663 (E.D. La., filed June 7, 2010); and the Amicus Brief on Behalf of Bobby Jindal, Governor of the State of Louisiana, and the State of Louisiana in Opposition to Defendant's Motion to Dismiss (Rec. Doc. 163, filed on 8/25/10) in *Hornbeck, supra*.

<sup>3</sup> *See* the Amicus Curiae Brief Filed on Behalf of the State of Louisiana, Through the Louisiana Attorney General, James D. "Buddy" Caldwell in Opposition to the U.S. Department of Justice's Motion for Stay, (Doc. No. 00511156044, filed on 6/28/10) in the appeal entitled *Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee "Ken" Salazar, et al.*, No. 10-30585, (5th Cir. 2010).

## Statutory and Regulatory Background

11. In 1953, Congress passed the OCSLA in order to regulate and develop the subsoil and seabed of the outer Continental Shelf. The OCSLA defines “outer Continental Shelf” as, “all submerged lands lying seaward and outside of the area of lands beneath navigable 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). The OCSLA further describes the outer Continental Shelf as “a vital national resource reserve held by the Federal Government for the public....” 43 U.S.C. § 1332(3).

12. The OCSLA delegates to the Secretary of the DOI, the responsibility to administer the provisions of the OCSLA “relating to the leasing of the outer Continental Shelf” and for prescribing “such rules and regulations as may be necessary to carry out such provisions.” 43 U.S.C. § 1334(a). Although the OCSLA states that the development of the outer Continental Shelf should be “subject to environmental safeguards,” the statute instructs that the protection of the outer Continental Shelf is to be balanced against its “expeditious and orderly development,” and that it should be “developed in a manner which is consistent with the maintenance of competition and other national needs.” 43 U.S.C. § 1332(3).

13. The OCSLA provides that “[m]anagement of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.” 43 U.S.C. § 1344(a)(1) (Emphasis added).

14. The OCSLA further grants the DOI the authority to order a lessee to suspend drilling activities in certain circumstances. To that end, the OCSLA instructs the DOI to prescribe regulations “for the suspension or temporary prohibition of any operation or activity, including

production, pursuant to any lease or permit... if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment...” 43 U.S.C. § 1334(a)(1) (Emphasis added).

15. The OCSLA defines the term “human environment” as “the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf.” 43 U.S.C. § 1331(i).

16. The DOI has implemented this directive by authorizing the relevant BOEMRE “Regional Supervisor” to order lessees to suspend drilling operations in any of five situations, two of which are relevant here. *See* 30 C.F.R. §§ 250.168, 250.172. A Regional Supervisor may issue such a suspension order—known as a “Suspension of Operations” (“SOO”) -- “[w]hen activities pose a threat of serious, irreparable, or immediate harm or damage,” which includes threats to “the marine, coastal, or human environment.” 30 C.F.R. § 250.172(b). An SOO may also be issued “[w]hen necessary for the installation of safety or environmental protection equipment.” 30 C.F.R. § 250.172(c).

17. No matter the reason for its issuance, however, an SOO must be tailored to a specific “lease or unit area.” 30 C.F.R. § 250.168(a); *See* also 30 C.F.R. § 250.170(a) (“The Regional Supervisor will set the length of the suspension based on the conditions of the *individual case involved.*”) (Emphasis added).

### **State Participation**

18. The OCSLA instructs that states affected by decisions relating to the exploration, development, and production of minerals in the outer Continental Shelf are entitled to an

opportunity to review and comment on those decisions prior to issuance and to participate in the policy and planning decisions made by the DOI relating to the suspension of drilling activity in the OCS.

19. Following the Santa Barbara, California oil spill on January 29, 1969, several amendments to the OCSLA were proposed and ultimately passed in 1978. Importantly, Congress explained that the purpose of the amendments was to:

(5) assure that States, and through States, local governments, have timely access to information regarding activities on the Outer Continental Shelf, and opportunity to review and comment on decisions relating to such activities, in order to anticipate, ameliorate, and plan for the impacts of such activities; [and]

(6) assure that States, and through States, local governments, which are directly affected by exploration, development, and production of oil and natural gas are provided an opportunity to participate in policy and planning decisions relating to management of the resources of the Outer Continental Shelf.

43 U.S.C. § 1802(5), and (6).

20. Included in the 1978 Amendments to the OCSLA are numerous Congressional findings regarding the importance of developing domestic sources of oil and gas while reducing reliance upon foreign imports. *See* 43 U.S.C. § 1801. Congress specifically noted that:

(11) policies, plans, and programs developed by States and local governments in response to activities on the Outer Continental Shelf cannot anticipate and ameliorate such adverse impacts unless such States, working in close cooperation with affected local governments, are provided with timely access to information regarding activities on the Outer Continental Shelf and an opportunity to review and comment on decisions relating to such activities....

43 U.S.C. § 1801(11). (Emphasis added).

21. 43 U.S.C. § 1332 states that it is “declared to be the policy of the United States” that:

(4) since exploration, development, and production of the minerals of the outer Continental Shelf will have significant impacts on coastal and non-coastal areas of the coastal States, and on other affected States, and, in recognition of the national interest in the effective management of the marine, coastal, and human environments-

...

(C) such States, and through such States, affected local governments, are entitled to an opportunity to participate, to the extent consistent with the national interest, in the policy and planning decisions made by the Federal Government relating to exploration for, and development and production of, minerals of the outer Continental Shelf. (Emphasis added).

22. In view of that stated policy, 43 U.S.C. § 1334(a) reads, in pertinent part, as follows:

“In the enforcement of safety, environmental, and conservation laws and regulations, the Secretary shall cooperate with the relevant departments and agencies of the Federal Government and of the affected States.” (Emphasis added).

23. The OCSLA defines the term “affected State,” in pertinent part, as any State: “(3) which is receiving, or in [accordance] with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels; (4) which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the outer Continental Shelf; or (5) in which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities.” 43 U.S.C. § 1331(f). (Emphasis added).

24. For the reasons that follow, the State of Louisiana is an “affected State” in reference to the Deepwater Horizon tragedy, the resulting oil spill, and the May 28<sup>th</sup> and July 12<sup>th</sup>



Moratoria discussed below.

### **Factual Background**

25. On April 20, 2010, an explosion occurred on the offshore drilling rig, *Deepwater Horizon*, while engaging in operations on the BP Macondo well in the Gulf of Mexico (the “Incident”). The explosion resulted in the tragic loss of eleven crewmen, and the worst oil disaster in U.S. history.

26. In response to the Incident, on April 26, 2010, Secretary Salazar directed all MMS (now “BOEMRE”) inspectors in the Gulf of Mexico to perform a “thorough, complete inspection” of the 29 deepwater drilling rigs with blowout preventer stacks that were then operating in the Gulf of Mexico. See “MMS Deepwater Drilling Rig Inspection Report” (the “Inspection Report”). The MMS found no violations of governing regulations or existing permit terms on 27 of the 29 inspected rigs, and only minor violations on the remaining two. *Id.* at 1.

27. On April 30, 2010, President Obama directed Secretary Salazar to conduct a review of the Incident and to issue a report within 30 days on “what, if any, additional precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the outer continental shelf.” See “Increased Safety Measures for Energy Development on the Outer Continental Shelf,” Executive Summary at 1.

28. On May 6, 2010, and without notice to, or prior consultation with the State of Louisiana, Secretary Salazar directed the MMS to stop issuing permits to drill new wells pending the DOI’s completion of the 30-day safety review. Secretary Salazar also directed the MMS to suspend permits issued after the Incident with respect to wells on which drilling had not yet begun as of May 6, 2010.

29. Secretary Salazar’s May 6, 2010, directive, ordering that the MMS shall not issue new

permits to drill in shallow water, ended on May 27, 2010, upon the release of the Safety Report, discussed below.

30. On May 27, 2010, in accordance with President Obama's April 30<sup>th</sup> directive, Secretary Salazar issued a report entitled "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (the "Safety Report"). The Safety Report "identif[ied] an initial set of safety measures that can and will be implemented as soon as practicable to improve the safety of offshore oil and gas development." *See* Safety Report at 1. The Safety Report includes a three-page executive summary (the "Executive Summary") written by Secretary Salazar that was added after the body of the Safety Report was completed.

31. The Safety Report noted that the "30-day review has been conducted without the benefit of the findings from the ongoing investigations into the root causes of the explosions and fire on the Deepwater Horizon and the resulting oil spill... including if there were any violations of existing safety or construction laws, gross negligence, or willful misconduct." *See* Safety Report, Executive Summary at 3. The DOI stated that "this report does not speculate as to the possible causes of the BP Oil Spill." *See* Safety Report at 1.

32. The purpose of the Safety Report was to identify and recommend potential safety enhancements for offshore rigs. The Safety Report did not assess how to implement those safety measures, how long they would take to implement, or whether any type of moratorium or some other alternative was necessary. Indeed, there is no mention of any sort of moratorium in the body of the Safety Report. Nor did the Safety Report purport to evaluate the safety conditions with respect to any individual deepwater rig operating in the Gulf of Mexico.

34. Nevertheless, Secretary Salazar, in the Executive Summary, recommended an "immediate halt to drilling operations on all 33 permitted wells, not including relief wells currently

being drilled by BP, that are currently being drilled using floating rigs in the Gulf of Mexico” so as to “allow for implementation of the measures proposed in [the Safety Report.]” *See* Safety Report, Executive Summary at 2. The Secretary instructed that “[d]rilling operations should cease as soon as practicable for a six-month period.” *Id.* at 2-3.

35. The Executive Summary to the Safety Report also stated that “[t]he recommendations contained in this report have been peer-reviewed by seven experts identified by the National Academy of Engineering.” *Id.* at 3. On information and belief, these experts, however, had not seen the Executive Summary, had not recommended a moratorium, and had not reviewed Secretary Salazar’s recommendation for a six-month moratorium.<sup>4</sup>

36. On May 28, 2010, and without notice to, or prior consultation with the State of Louisiana, Secretary Salazar issued a one-page memorandum to the Director of the MMS (hereinafter referred to as the “Salazar Memo” or the “May 28<sup>th</sup> Moratorium”), directing a six-month suspension of all pending, current, or approved offshore drilling operations of new deepwater wells in the gulf of Mexico and the Pacific regions,” with the exception of drilling operations necessary to conduct emergency activities. The Secretary stated that his decision to impose the Deepwater Moratorium was based on his “30-day review of the BP Explosion and Oil Spill” and “the recommendations contained in the [Safety R]eport to the President.” *See* Salazar Memo. The Salazar Memo did not set forth any additional facts in support of the decision to impose the Deepwater Moratorium and instead relied exclusively on the Safety Report.

37. In his memorandum, the Secretary asserted that the Deepwater Moratorium was justified under two different legal bases. First, the Secretary invoked 30 C.F.R. § 250.172(b), finding that “offshore drilling of new deepwater wells poses an unacceptable threat of serious and

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<sup>4</sup> *See* Order and Reasons (6/22/10) (Rec. Doc. 67, at 3) in the case entitled *Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee “Ken” Salazar, et al.*, No. 10-01663 (E.D. La., filed June 7, 2010).

irreparable harm to wildlife and the marine, coastal, and human environment.” *See* Salazar Memo. Second, the Secretary asserted that, based on 30 C.F.R. § 250.172(c), “additional safety or environmental protection equipment is necessary to prevent injury or loss of life and damage to property and the environment.” *Id.* The Secretary ordered the MMS Director to “ensure that appropriate Letters of Suspension...are sent to all affected lessees, owners, and operators immediately.” *Id.*

38. On May 30, 2010, and without notice to, or prior consultation with the State of Louisiana, the MMS issued a document entitled “Notice to Lessees and Operators of Federal Oil and Gas Leases in the Outer Continental Shelf Regions of the Gulf of Mexico and the Pacific to Implement the Directive to Impose a Moratorium on All Drilling of Deepwater Wells,” NTL No. 2010-N04 (hereinafter referred to as “NTL-4”).

39. NTL-4 was the first in a series of notices implementing Defendants’ policy and planning decisions. Following the Incident, subsequent notices, NTL-5<sup>5</sup> and NTL-6, were issued without prior notice to, or consultation with the State of Louisiana.

40. NTL-4 directed lessees and operators “to cease drilling all new deepwater wells” and to refrain from “spudding any new deepwater wells” during the six-month Deepwater Moratorium. *See* NTL-04 at 1. It also notified lessees and operators that the MMS would not issue any permits for deepwater drilling for six months. However, NTL-4 did not apply to activities related to existing, producing deepwater wells, nor to certain deepwater drilling and associated operations in support of such production activities. *Id.* at 2-3. Nor did NTL-4 apply to deepwater “completion

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<sup>5</sup> On June 8, 2010, the MMS issued a Notice to Lessees entitled “Increased Safety Measures for Energy Development on the OCS,” NTL No. 2010-N04 (“NTL-5”), in which the MMS advised all lessees of ten new safety measures with which they must now comply. *See* NTL-5. These new safety measures, NTL-5 makes clear, are “from the [Safety] Report and provide guidance to lessees and operators on the requirements they must meet. *Id.* at 1. The requirements “apply to all activities on the OCS, including deepwater activity suspended under [NTL-4], and shallow water operations (under 500 feet in depth).” *Id.* According to NTL-5, lessees whose APDs have already been approved but who have not yet commenced drilling operations must submit the therein specified relevant information to the MMS before starting to drill. *Id.* at 6.

operations” which includes “the work conducted to establish the production of a well after the production-casing, string has been set, cemented, and pressure-tested.” *Id.* at 2; 30 C.F.R. § 250.501. In addition, NTL-4 did not apply to other types of drilling activities not relevant here, such as emergency-related drilling or drilling necessary to close or abandon a well. *See* NTL-4 at 2. NTL-4 defines “deepwater” as “depths greater than 500 feet.” *See* NTL-4.

41. Like the Salazar Memo, NTL-4 states that the Deepwater Moratorium is based on “the recommendations in the Report, and the authority of 30 C.F.R. 250.172.” *See* NTL-4 at 2. NTL-4 does not set forth any additional facts in support of the decision to impose the Deepwater Moratorium. NTL-4 advises that the Regional Supervisor for Production and Development “will issue SOOs to all OCS Lessees and Operators currently drilling or proposing to drill new deepwater wells covered by this Moratorium NTL.” *Id.*

42. By letter dated June 2, 2010, addressed to President Barack Obama and Secretary Salazar, Governor Bobby Jindal expressed his concerns regarding the severe economic impact of the May 28<sup>th</sup> Moratorium. *See* Exhibit “B.” Letter from Governor Bobby Jindal to President Barack Obama and Secretary Salazar, dated June 2, 2010.

43. The validity of the May 28<sup>th</sup> Moratorium was challenged in this case, and on June 22, 2010, this Court issued an injunction enjoining enforcement of the May 28<sup>th</sup> Moratorium (Rec. Doc. 67).

44. On the afternoon of June 22, 2010, and again without notice to, or prior consultation with the State of Louisiana, Secretary Salazar announced that he would “issue a new order in the coming days that eliminates any doubt that a moratorium is needed, appropriate, and within our authorities.” *See* Press Release, U.S. Dep’t of the Interior, Secretary Salazar’s Statement Regarding

the Moratorium on Deepwater Drilling (June 22, 2010).<sup>6</sup>

45. On June 23, 2010, Secretary Salazar stated that:

with respect to the moratorium, I believe it was the correct decision. I believe it's the correct decision today, and with all due respect to the honorable court, we disagree with the court, and so we are taking that decision on appeal.

At the same time, it is important that this...moratorium stay in place until we can assure that deepwater drilling can be done in a safe way. Now, we're not there today, and so we will move forward with the executive authority which I have to make sure that the moratorium does, in fact, stay in place.

Testimony of Secretary Salazar before the Senate Interior Appropriations Subcommittee (6/23/10).

46. On or about June 28, 2010, Defendants, apparently recognizing their obligation under the OCSLA to confer and coordinate with the State of Louisiana before issuing a Moratorium, made a half-hearted and informal request for the State of Louisiana to comment as to the “concept” of a second Moratorium. No indication was made by Defendants regarding the contents, purpose, or effect of a second Moratorium. Neither were any documents provided to the State, much less a draft of the proposed second Moratorium. Nevertheless, despite a total lack of documentation or explanation, Defendants requested that the State respond within 24-hours.

47. On June 29, 2010, Governor Bobby Jindal issued a letter to Secretary Salazar in response to the Defendants’ request for comment. *See* Exhibit “A,” Letter from Governor Bobby Jindal to Ken Salazar, dated June 29, 2010.

48. Governor Jindal cited the Secretary’s failure to comply with the OCSLA (43 U.S.C. § 1331, *et seq.*, and 43 U.S.C. § 1334(a), in particular), by failing to provide the State with the opportunity to undertake a “meaningful review” of “Interior’s concept to restructure the deepwater drilling moratorium.” The governor specifically cited the impossible timeframe (24-

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<sup>6</sup> Available online at: <http://www.doi.gov/news/pressreleases/Secretary-Salazars-Statement-Regarding-the-Moratorium-on-Deepwater-Drilling.cfm>. (Last visited September 10, 2010).

hours) given to the State to respond to a “concept” without any documents whatsoever upon which to base an informed response. *See* Exhibit “A.”

49. Governor Jindal noted the May 28<sup>th</sup> Moratorium’s devastating effect on Louisiana’s economy, including the loss of Louisiana jobs and tax revenues. The Governor concluded his letter by assuring the Secretary that the State was “prepared to provide meaningful and timely feedback on any specific proposal, which ideally would propose to safely and promptly resume operations in the Gulf in a manner that protects the workers and the citizens of this State and the Gulf region....” *See* Exhibit “A.”

50. On July 12, 2010, without proper notice to, or prior meaningful consultation with the State of Louisiana, Secretary Salazar issued a “Decision Memorandum” ordering the BOEMRE to suspend certain offshore drilling activities (the “July 12<sup>th</sup> Moratorium”) and withdrawing the May 28<sup>th</sup> Moratorium. The Defendants purportedly withdrew the May 28<sup>th</sup> Moratorium and issued the July 12<sup>th</sup> Moratorium in its place.

51. Secretary Salazar’s July 12, 2010, Decision Memorandum does not evidence a review of the economic impacts of the proposed Moratorium on the State. Secretary Salazar’s July 12<sup>th</sup> Decision Memorandum includes an admission by the Secretary that he did not consider the State’s economic interests in his decision making process: “The OCSLA does not require that I conduct a balancing of harms analysis.... Even if I had to engage in a balancing of the economic effects... I would conclude that a temporary suspension of drilling operations is warranted.” (Emphasis added).

52. The July 12<sup>th</sup> Moratorium is in material respects the same as the May 28<sup>th</sup> Moratorium.

For example:

- The July 12<sup>th</sup> Moratorium has essentially the same end date (November 30, 2010) as the May 28<sup>th</sup> Moratorium.
- Both Moratoria have the same exceptions and do not apply, for example, to production

activities, completion work, emergency activities, or abandonment operations.

- Both Moratoria order a cessation of both drilling operations (with certain exceptions) and the approval by the BOEMRE of pending or new applications to drill.
- Defendants relied on the same regulatory authority to issue both Moratoria, namely, 30 C.F.R. § 250.172(b) and (c).
- The difference in the manner in which deepwater drilling was defined in the two Moratoria is a distinction without difference. The May 28<sup>th</sup> Moratorium applied to drilling in water depths greater than 500 feet, while the July 12<sup>th</sup> Moratorium applies to drilling using certain equipment only used in depths of more than 500 feet, namely, (1) rigs using subsea blowout preventers (BOPs) and (2) floating rigs (as opposed to “jack-up” or other types of rigs that rest on the sea floor while engaged in drilling or related activities) using surface BOPs. Because subsea BOPs typically are only used on floating rigs, both categories target floating rigs. Because floating rigs must be used for exploration and development drilling in water depths greater than 500 feet, there is no difference between a moratorium that applies to floating rigs and one that applies to water depths greater than 500 feet. Simply stated, both Moratoria apply to deepwater drilling.<sup>7</sup>

53. By Order dated September 1, 2010, this Court found that the July 12<sup>th</sup> Moratorium “arguably fashions no substantial changes from the first [May 28<sup>th</sup>] moratorium.”<sup>8</sup> Therefore, as used herein, the term “Moratoria” shall refer to both the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria.

### **The State’s Interests**

54. The oil and gas industry is one of the leading industries in Louisiana in terms of economic impact, taxes paid, and people employed. The Gulf produces one-third of all domestic crude oil; deepwater operations account for 80% of that. *See* Gulf Economic Survival Team Report (“GEST”).<sup>9</sup> With deepwater operations included, Louisiana is the second leading producer of

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<sup>7</sup> *See also* Press Release, “Secretary Salazar Issues New Suspensions to Guide Safe Pause on Deepwater Drilling,” (July 12, 2010). <http://www.doi.gov/news/doinews/Secretary-Salazar-Issues-New-Suspensions-to-Guide-Safe-Pause-on-Deepwater-Drilling.cfm>. Last visited 8/23/2010 (wherein DOI stated “[l]ike the deepwater drilling moratorium lifted by the District Court on June 22, the deepwater drilling suspensions ordered today apply to most deepwater drilling activities and could last through November 30.”)

<sup>8</sup> *See Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee “Ken” Salazar, et al.*, No. 10-01663 (E.D. La., September 1, 2010) (Order denying Defendants’ Motion to Dismiss) (Rec. Doc. 165, pg. 19).

<sup>9</sup> Available at <http://www.crt.state.la.us/GEST/FactsFigures.aspx> (Last visited September 10, 2010); *see also* IHS Global Insight Report, July 21, 2010, available at <http://www.ihsglobalinsight.com/gulfoileconomicimpact> (“IHS Global Insight Report”) (last visited September 10, 2010) at 3 (reporting that “[t]he U.S. offshore, primarily the Gulf of Mexico, produces 30% of the U.S. oil and 10% of U.S. natural gas,” and thus, “is a central element to U.S. energy



domestic natural gas and the third leading producer of domestic crude oil. *See* U.S. Energy Info. Admin., Indep. Statistics and Analysis.<sup>10</sup>

55. The offshore oil and gas industry, operating in the Gulf of Mexico outside of the territorial boundaries of Louisiana, has a tremendous economic impact on the State, estimated to be approximately \$3 billion per year. This comes not only from salaries and wages of workers on the rigs, but also from the myriad of Louisiana companies doing business with the offshore industry, including contract employment companies, boat companies, tool rental companies, equipment servicing companies, and offshore food service companies, among many others. Because of the pervasiveness of the oil and gas industry in Louisiana, the entire economy is affected, from grocery stores and restaurants to banks and schools.

56. Louisiana has the densest concentration of offshore employees of any state. “The oil and gas infrastructure accounts for a large share of [Louisiana’s] GDP- up to 20% in some metro areas near the Gulf Coast.” Marisa di Natale, *Economic Impact of the Gulf Oil Spill*, Moody’s Analytics Report, at 3 & Table 5 (July, 2010) (“Moody’s Analytics”).

57. The Moratoria continue to have an overwhelming impact on deepwater rigs directly off Louisiana’s coast (*See* Moody’s Analytics at 1), extinguishing thousands of jobs on those rigs and in support and service industries.

58. According to the Louisiana Mid-Continent Oil and Gas Association, the Moratoria take 33 floating rigs out of commission for at least six months.<sup>11</sup> A map prepared by the LSU Center for Energy Studies identifies and shows the location of 31 of the affected rigs, all off the

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security”).

<sup>10</sup> *See generally*, the U.S. Energy Information Administration (Independent Statistics and Analysis), available at <http://www.eia.gov/> (Last visited September 10, 2010).

<sup>11</sup> *See* Louisiana Mid-Continent Oil and Gas Assn. fact sheet, at <http://www.crt.state.la.us/GEST/FactsFigures.aspx> (Last visited September 10, 2010).

Louisiana coast.<sup>12</sup> Each of those rigs employs Louisiana workers and is supplied and serviced by Louisiana companies.

59. Each Gulf deepwater rig directly employs from 180 to 280 workers. *See* GEST, *supra*. One economic study shows that the Moratoria immediately destroy nearly 4,000 Louisiana jobs. *See* Jim Richardson, Economic Impact of Offshore Moratorium on Louisiana 8 (Louisiana State University, 2010) (“Richardson”). Other studies report that 10,000 Louisiana jobs will be idle within a few months, and another 20,000 jobs will disappear in 12 to 18 months. *See* GEST, *supra*; Joseph R. Mason, The Economic Impact of a Moratorium on Offshore Oil and Gas Exploration to the Gulf Region 7 (American Energy Alliance, 2010) (“Mason”).

60. The Moratoria also have a “multiplier effect” associated with oil industry positions, meaning that a deepwater rig that directly employs 280 workers actually creates approximately 1,400 jobs. *See*, e.g. Louisiana Workforce Commission, Crisis Caused by the Moratorium.<sup>13</sup>

61. Economists estimate that the Moratoria will inflict losses anywhere from 17,000 to 46,000 jobs. Richardson, *supra*, at 8; Mason, *supra*, at 7.

62. Economists estimate the wage losses to Louisiana citizens caused by a six-month Moratorium at \$400,000,000 to \$487,000,000. Mason, *supra*, at 3; Richardson, *supra*, at 8. Should the suspension of drilling persist for a longer period, say four years, lost Louisiana wages would skyrocket to \$2.6 billion. Richardson, *supra*, at 8.

63. The loss of Louisiana jobs has a systemic effect on Louisiana’s broader fiscal health. Wage losses from a six-month Moratorium will lead to tax revenue decreases from \$59,000,000 to \$70,000,000; a four-year suspension would elevate those losses to \$357,000,000. *See* Mason,

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<sup>12</sup> *See* map, available at [http://www.crt.state.la.us/GEST/Documents/IMPACTED\\_RIG\\_LOCATIONS\\_06-04-2010.pdf](http://www.crt.state.la.us/GEST/Documents/IMPACTED_RIG_LOCATIONS_06-04-2010.pdf). (Last visited September 10, 2010).

<sup>13</sup> Available at <http://www.rallyforeconomicssurvival.com/PDF/Eysink%20Louisiana%20Moratorium%20PPT%2025june%20920.ppt%20%5BRead-Only%5D.pdf> (Last visited September 10, 2010).

*supra*, at 14; Richardson, *supra*, at 8.

64. A dearth of jobs would also diminish sales tax receipts, together with greater unemployment benefits to be paid by the State, depleting a State unemployment fund already sapped by lower unemployment tax receipts.

65. Additionally, numerous funds established by the Louisiana Constitution are dependent on oil and gas revenue and will consequently be depleted by the Moratoria. For instance, Louisiana's Budget Stabilization Fund (La. Const. Art. VII, § 10.3), protects budgets from service cuts during economic downturns and is thus critically important in view of Louisiana's record deficits and falling tax revenues. *See also* La. Const. Art. IX, § 9 (establishing First Use Tax Trust Fund, funded in part by oil and gas revenues). The Coastal Protection and Restoration Fund (La. Const. Art. VII, § 10.2) is also directly funded by mineral revenues. Ironically, the Oil Spill Contingency Fund (La. Const. Art. VII, § 10.7), is partially funded by oil and gas revenues, as is the Investment Fund for Enhancement (La. Const. Art. IX, § 10), which protects Louisiana's ability to service bond debts.

66. The Moratoria also diminish Louisiana's share of revenues pursuant to the Gulf of Mexico Energy Security Act of 2006; funds earmarked for coastal conservation, restoration, and hurricane protection.<sup>14</sup>

67. In the long run, the Moratoria will have an even more devastating effect on Louisiana's economy. The owners of deepwater drilling rigs will not let them sit idle for six months or more. Anadarko Petroleum Company and Cobalt International Energy have already invoked *force majeure* clauses in their contracts with drillers in the deepwater OCS, allowing the

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<sup>14</sup> Additionally, even the newly executed Deepwater Horizon Oil Spill Trust, administered by Kenneth Feinberg, lists as collateral, BP's U.S. oil and natural gas production payments, which are affected by the Moratorium.

drillers to move as many as four rigs out of the Gulf of Mexico.<sup>15</sup>

68. Two rigs, in fact, have already left the Gulf for waters off Egypt and the Republic of Congo. *See e.g.*, Gov. Bobby Jindal, Ban on Deep-water Drilling Adds Insult to Injury, *The Washington Post*, July 17, 2010, at A13<sup>16</sup>; Jonathan Tilove, Stay or Go? Drill ban forces tough choices on oil industry, *Times-Picayune*, July 31, 2010.<sup>17</sup>

69. Once these companies move their rigs there is little chance for their immediate return at the end of the Moratoria, as they will have made long-term commitments at their new locations in Brazil, Africa, or the Middle East. By the end of the Moratoria, there will likely be no deepwater rigs available to resume drilling in the Gulf of Mexico. Having to wait an additional year or more for available rigs will turn the short-term adverse effects of the Moratoria into a long-term economic disaster for Louisiana.

70. The Moratoria are now acting as the foremost constraint on how industry allocates its resources. For instance, the CEO of Halliburton, Dave Lesar, recently ordered the relocation of most of its tools and support services for deepwater drilling operations to foreign countries in anticipation of the exodus of deepwater rigs from the Gulf. He did not foresee the rigs returning anytime soon: “I do not believe that the deep-water offshore rigs that were mobile[z]ed to international locations during the suspension will return to the gulf for some time, if at all.” Sheila McNulty, Ban Forces Oil Rigs to Head for New Waters, *Financial Times*, July 21, 2010.<sup>18</sup>

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<sup>15</sup> *See* news reports at: <http://www.reuters.com/article/idUSN0322173420100603> (Last visited September 10, 2010); and <http://www.ogj.com/index/article-display.articles.oil-gas-journal.drilling-production-2.2010.06.cobalt-international.QP129867.dcmp=rss.page=1.html> (Last visited September 10, 2010).

<sup>16</sup> Available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/16/AR2010071605180.html> (Last visited September 10, 2010).

<sup>17</sup> Available at <http://www.nola.com/news/t-p/frontpage/index.ssf?/base/news-15/128055803758570.xml&coll=1> (Last visited September 10, 2010).

<sup>18</sup> Available at <http://www.ft.com/cms/s/0/f6a439b2-945d-11df-be4d-00144feab49a.s01=1.html> (Last visited September 10, 2010).

## Count I

71. All allegations set forth above are hereby adopted and realleged.

72. Pursuant to the APA, an order may be reversed or invalidated if it is made “without observance of procedure required by law.” 5 U.S.C. § 706(2)(D). If a statute requires an agency to take some action at the administrative level and the agency fails to take the action, the reviewing court may reverse and remand the agency’s order. *Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002).

73. During the decision-making process that preceded the May 28<sup>th</sup> Moratorium and July 12<sup>th</sup> Moratorium, Defendants failed to provide the State of Louisiana, or on information and belief, any other affected State as defined in the OCSLA, with notice and a meaningful opportunity to participate in policy and planning decisions to issue the Moratoria.

74. As stated above, during the decision-making process, Defendants violated the OCSLA by failing (1) to provide the State of Louisiana with an opportunity to review and comment on the proposed Moratoria; (2) to provide the State of Louisiana with an opportunity to participate in the policy and planning decisions relating to the suspension of drilling activity in the OCS; and (3) to cooperate with the State of Louisiana with regard to the enforcement of safety, environmental, and conservation law.

75. Moreover, Defendants violated the OCSLA, and in particular, 43 U.S.C. § 1332(4)(C) and 43 U.S.C. § 1334(a), by failing to confer and coordinate with the State of Louisiana prior to issuing its May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria.

76. As a result, the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria should be declared unlawful and set aside pursuant to 5 U.S.C. § 706(2)(D).

## Count II

77. All allegations set forth above are hereby adopted and realleged.

78. To comply with the APA, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). “Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation for its decision that runs counter to the evidence before the agency...” *Id.*

79. The APA authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be – arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

80. As set forth above, the OCSLA authorizes Secretary Salazar to prescribe regulations “for the suspension or temporary prohibition of any operation or activity, including production, pursuant to any lease or permit... (B) if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish or other aquatic life), to property, to any mineral deposits (in areas leased or not leased), or to the marine, coastal, or human environment...” 43 U.S.C. § 1334(a)(1) (Emphasis added).

81. As set forth above, the “human environment” is defined by the OCSLA as “the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the outer Continental Shelf.” 43 U.S.C.

§ 1331(i).

82. Any actions taken by the Defendants with respect to the management of the outer Continental Shelf must be taken “in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments.” 43 U.S.C. § 1344(a)(1) (Emphasis added); *See also* 43 U.S.C. § 1332(3). Defendants failed to do so.

83. Neither the Salazar Memo (the May 28<sup>th</sup> Moratorium), nor Secretary Salazar’s Decision Memorandum (the July 12<sup>th</sup> Moratorium) evidence that the Defendants properly weighed the devastating economic impact and systemic effect of the Moratoria on the State of Louisiana, prior to their issuance.

84. In establishing the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria, Defendants failed to consider the “human environment” of the State of Louisiana and its citizens. Defendants failed to consider the threat of serious, irreparable, and immediate harm or damage to the physical, social, and economic conditions, employment, and quality of life of those most affected by Moratoria.

85. Defendants actions in imposing and implementing the Deepwater Moratoria were arbitrary, capricious, and an abuse of discretion, and were not in accordance with the OCSLA.

86. In issuing the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria, Defendants have, in direct violation of the APA and the OCSLA, clearly ignored the human environment of the State of Louisiana, including the economic impact on the State, as well as those concerns of other affected States.

87. As a result, the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria should be declared unlawful and set aside pursuant to 5 U.S.C. § 706(2)(A).

### **Relief Requested**

WHEREFORE, the State of Louisiana, through the Louisiana Attorney General, James D. “Buddy” Caldwell, and Bobby Jindal, in his capacity as Governor of the State of Louisiana, respectfully request that after notice and due proceedings, this Honorable Court grant the following relief:

1. An Order declaring that the Defendants’ actions in failing to consult and cooperate directly with the State of Louisiana, prior to issuing the May 28, 2010 and July 12, 2010, Moratoria, constitute violations of the requirements of the OCSLA;
2. An Order declaring that the Defendants’ actions in failing to properly consider the human environment of the State of Louisiana and its citizens and in failing to weigh the grave economic harm that has and will result to the State of Louisiana and other affected States as a result of the Moratoria, constitute violations of the procedural requirements of the OCSLA;
3. An Order directing that the May 28<sup>th</sup> and July 12<sup>th</sup> Moratoria be held unlawful and set aside, in whole or in part;
4. An Order declaring that the OCSLA requires Defendants (1) to provide the State of Louisiana with an opportunity to review and comment on proposed Moratoria affecting the OCS; (2) to provide the State of Louisiana with an opportunity to participate in the policy and planning decisions relating to the suspension of drilling activity in the OCS; and (3) to cooperate with the State of Louisiana with regard to the enforcement of safety, environmental, and conservation law in the OCS.
5. An Order granting permanent and, as appropriate, preliminary relief enjoining



Defendants from enforcing the July 12, 2010, Moratorium, in whole or in part; and

6. An Order granting the State of Louisiana such further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

James D. "Buddy" Caldwell  
Louisiana Attorney General

James Trey Phillips  
First Assistant Attorney General  
Megan K. Terrell  
Assistant Attorney General  
Section Chief – Environmental  
State of Louisiana  
P.O. Box 94005  
Baton Rouge, Louisiana 70804-9005  
Tel: (225) 326- 6708  
Fax: (225) 326-6797

By: /s/ Henry T. Dart  
Henry T. Dart, Esq. (La. Bar # 4557)  
Grady J. Flattmann, Esq.  
Henry Dart, Attorneys at Law P.C.  
510 N. Jefferson St.  
Covington, LA 70433  
Tel: 985-809-8093  
Fax: 985-809-8094

Special Counsel to the Attorney General

and

/s/ Allan Kanner  
Allan Kanner, Esq.  
Elizabeth B. Petersen, Esq.  
Rebecca J. Davis, Esq.  
Kanner & Whiteley, L.L.C.  
701 Camp Street  
New Orleans, Louisiana 70130  
Tel: (504) 524-5777  
Fax: (504) 524-5763

Special Counsel to the Attorney General

and

/s/ Bradley M. Marten  
Bradley M. Marten, Esq.  
Linda R. Larson, Esq.  
Marten Law PLLC  
1191 Second Avenue, Suite 2200  
Seattle, WA 98101  
Tel: (206) 292-2600  
Fax: (206) 292-2601

Of Counsel, Pro Hac Vice Pending

and

/s/ T. Allen Usry  
T. Allen Usry, Esq.  
Usry, Weeks, & Matthews, APLC  
1615 Poydras St., Ste. 12  
New Orleans, LA 70112  
Tel: (504) 592-4600  
Fax: (504) 592-4641

Special Counsel to the Attorney General

and

/s/ E. Wade Shows  
E. Wade Shows, Esq.  
Shows, Cali, Berthelot & Walsh LLP  
628 St. Louis Street  
Baton Rouge, LA 70802  
Tel: (225) 346-1461  
Fax: (225) 346-1467

Special Counsel to the Attorney General