

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA

ANIMAL WELFARE INSTITUTE, <u>et al.</u> ,	)	
	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 10-1866 (CJB)
	)	
	)	
BP America, <u>et al.</u> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS' AMENDED MOTION FOR A TEMPORARY RESTRAINING ORDER**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiffs move for a temporary restraining order to stop defendants BP America, et al. ("BP") and the U.S. Coast Guard from continuing to engage in activities in the Gulf of Mexico that result in endangered and threatened sea turtles being burned to death, seriously injured, and otherwise impaired, as part of BP's effort to contain the Deepwater Horizon oil spill that has been going on since April 20, 2010. The burning of the endangered and threatened sea turtles, without a permit from the federal government, as required under the Endangered Species Act, constitutes an unlawful "take" of those sea turtles, including the rare Kemp's Ridley sea turtle, as well as the endangered Leatherback sea turtles, endangered Green sea turtles, threatened Loggerhead sea turtles, and endangered Hawksbill sea turtles. Those violations of the ESA in turn constitute violations of BP's lease with the United States government that governs the Deepwater Horizon facility, which requires BP to comply with all federal environmental laws.

Accordingly, plaintiffs have brought this case under the the citizen suit provision of the Outer Continental Shelf Lands Act (“OCSLA”), 43 U.S.C. § 1349(a)(2)(A), which allows them to bring a case to compel compliance with those lease provisions. In addition, BP may apparently contend that it cannot alter its current practices to protect the sea turtles because its containment activities are being directed by the Coast Guard. Although plaintiffs do not believe that such an argument relieves BP of its obligations under the law, plaintiffs have amended their Complaint to assert an alternative claim against the Coast Guard under the Administrative Procedure Act, 5 U.S.C. § 706(2), for violating its mandatory duty under the Clean Water Act, 33 U.S.C. § 1321(d), and the National Contingency Plan to conduct clean-up activities in the Gulf of Mexico in a way that “ minim[es]” the “ risk to wildlife.”

Because defendants have already killed and otherwise harmed many endangered and threatened sea turtles with its burning activities – which has only added to the hundreds of other endangered sea turtles that have already been killed as a direct result of BP’s oil spill in the Gulf – **plaintiffs request an immediate hearing on this motion.** In support of their motion, plaintiffs have already submitted the Declarations of Mike Ellis, Kevin Aderhold, and Todd Steiner, and Exhibits A – J, and hereby additionally submit the accompanying amended memorandum and Exhibit K. Plaintiffs have electronically served BP’s General Counsel, as well as outside counsel handling BP’s environmental matters related to the Deepwater Horizon oil spill, with documents related to this filing. Moreover, plaintiffs have electronically served General Counsel for the Coast Guard and the Department of Justice on behalf of the Coast Guard with documents related to this filing.

Respectfully submitted,

/s/ William S. Eubanks II

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