UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	**CRIM. NO.: 12-292-SSV-DEK**
v.	*	**SECTION: R**
BP EXPLORATION & PRODUCTION INC.	*	

* * *

JOINT MEMORANDUM IN SUPPORT OF PROPOSED GUILTY PLEA BY BP EXPLORATION & PRODUCTION INC.

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NOW INTO COURT, through the undersigned attorneys, comes the United States of America and the defendant, which respectfully request that this Court accept the defendant's guilty plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure on the terms set forth in the plea agreement submitted to the Court on November 15, 2012 (the "Plea Agreement") (Doc. No. 2-1).[1]

As demonstrated below, the Plea Agreement imposes severe corporate punishment; appropriately reflects the criminal history of other companies within the BP group of companies,

[1] Defendant BP Exploration & Production Inc. (BPXP) is an indirect wholly-owned subsidiary of BP p.l.c., a multinational corporation that is the ultimate parent company for a global family of businesses comprised of various subsidiaries. For ease of reference, this memorandum uses the term "BP" to refer variously to BPXP, BP p.l.c., and/or other companies in BP p.l.c.'s global family of businesses. While the parties join together in the request for acceptance of the plea, certain sections of this memorandum constitute statements by a particular party and are not adopted by the other party. Specifically, Sections I through IV contain statements solely by the United States, and Section V contains statements solely by BP.

the serious nature of the instant offenses, and the impact of the Macondo blowout and spill on the Gulf Coast and our nation as a whole; and deters BP and other deepwater drillers from permitting such a catastrophe to occur in the future.

Pursuant to the Plea Agreement, BP accepts criminal responsibility for serious crimes: eleven counts of felony manslaughter, one count of felony obstruction of Congress, and environmental crimes. Beyond the charges themselves, the fines and other penalties levied against BP pursuant to the Plea Agreement – totaling $4 billion – are by far the highest imposed in United States history. Indeed, they are more than three times higher than the previous record criminal recovery. This severe financial sanction is on top of the $24.2 billion BP has already spent on clean-up efforts, various litigation and other claim settlements, and numerous other spill-related costs and efforts through the third quarter of 2012. The $4 billion in monetary sanctions required by the Plea Agreement is also in addition to BP's financial exposure in the separate pending civil multi-district litigation, MDL-2179.

A combination of stringent probation requirements further proactively deters BP and other deepwater drillers from causing similar catastrophic loss in the future. The Plea Agreement imposes a five-year term of probation – the statutory maximum. Under the terms of probation, BP will be overseen for the next four years by a process safety monitor charged with further enhancing BP's process safety and risk management procedures to prevent future harm to persons, property, and the environment. BP must also utilize a separate ethics monitor charged with improving BP's code of conduct to help prevent future criminal or ethical violations in BP's dealings with regulatory and enforcement authorities. The Plea Agreement further requires

appointment of an independent auditor to review and report on BP's compliance with the Plea Agreement's numerous safety requirements.

In arriving at these agreed-upon charges and admissions of guilt; fines; penalties; special conditions of probation; and monitor, auditor, and other requirements, the United States considered and weighed a vast amount of complex factual and legal information that was developed over more than two years. From the United States' perspective, the fine and associated payments under the Plea Agreement represent a negotiated, aggressive resolution built on the work of numerous prosecutors, investigators, support staff members, and other personnel from the Deepwater Horizon Task Force who worked tirelessly to advance a complex and wide-ranging investigation that began even before the oil well was capped. The government's and BP's independent work over the past two years developed their respective understandings of the complex factual and legal issues presented by this case, which served as a foundation for the negotiation of the Plea Agreement presently before the Court.

In sum, the proposed Plea Agreement is a fair, just, reasonable, and appropriately punitive resolution of BP's criminal liability arising from the Macondo oil spill and its aftermath. The United States and BP therefore respectfully request that the Court accept the Plea Agreement as a reasonable product of extensive and vigorous negotiations and careful analyses of the relevant issues. *See United States v. C.R. Bard, Inc.*, 848 F. Supp. 287, 288 (D. Mass. 1994) ("When, as here, the joint sentencing recommendation is the result of arms' length negotiations between capable counsel, this court believes the agreement should be accepted if it is reasonable.").

SUMMARY OF CHARGES AND PLEA AGREEMENT TERMS

The Information filed with the Plea Agreement on November 15, 2012 (Doc. No. 1) charges BP with fourteen criminal counts: eleven felony counts of seaman's manslaughter under 18 U.S.C. § 1115; one misdemeanor count of negligent discharge of oil in violation of the Clean Water Act, 33 U.S.C. §§ 1319(c)(1)(A) & 1321(b)(3); one misdemeanor count of unlawfully taking migratory birds in violation of the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 & 707(a); and one felony count of obstruction of Congress under 18 U.S.C. § 1505.

The manslaughter and environmental counts contained in the Information all arise from the blowout of BP's Macondo well on April 20, 2010, as it was being "temporarily abandoned" by the crew of the *Deepwater Horizon* drilling rig. The Information charges that BP, through its most senior managers on the rig, Well Site Leaders Robert Kaluza and Donald Vidrine (charged separately), negligently oversaw the execution of a critical safety test known as a negative pressure test. That negligence was a proximate cause of the deaths of the men identified in Counts One through Eleven of the Information, as well as the massive oil spill which is the subject of Count Twelve and the migratory bird deaths stemming from the spill charged in Count Thirteen.

The final count of the Information, Count Fourteen, charges that BP, through its second highest representative at the Unified Command overseeing the spill response, David Rainey (also charged separately), intentionally misled the United States Congress regarding the amount of oil flowing from the Macondo well. The Information further charges that BP, through Rainey, falsely informed the U.S. House of Representatives Subcommittee on Energy and Environment

that BP's best estimate of daily flow from the well was only 5,000 barrels per day, that this was less than other estimates known to Rainey, and that BP, through Rainey, intentionally withheld this contrary information from Congress.

Pursuant to the Plea Agreement, if accepted, BP would admit its guilt as to each of the fourteen charged counts under the factual allocution attached as Exhibit A to the Plea Agreement, and would be required to pay $4 billion in total criminal penalties, serve five years of supervised probation, and satisfy numerous terms of probation discussed in greater detail below. BP further agrees in the Plea Agreement to cooperate fully and truthfully with the government's on-going investigation of the *Deepwater Horizon* blowout, explosion, spill, and response. (*See* Plea Agreement ¶ 2.) The Plea Agreement also expressly provides that BP may not seek favorable tax treatment for any payments made pursuant to the agreement, nor argue for any offset or reduction based on the payments made pursuant to paragraph 4(c)(viii) of the Plea Agreement against its civil liability arising from the spill, nor reference the Plea Agreement or the payments made pursuant thereto in any public relations, marketing, or advertising except as required by applicable securities laws. (*See id.* ¶ 4(c).)

LEGAL STANDARD

Rule 11(c)(1)(C) authorizes the government to enter into plea agreements with defendants in which, *inter alia*, the parties agree that a particular sentence is the appropriate disposition of the case. Fed. R. Crim. P. 11(c)(1)(C)*; see also United States v. BP Prods. N. Am., Inc.*, 610 F. Supp. 2d 655, 674-78 (S.D. Tex. 2009). In assessing a Rule 11(c)(1)(C) plea, the Court must make an "individualized assessment of the plea agreement," *BP Prods.*, 610 F. Supp.

2d at 674, to ensure that it constitutes a "reasonable disposition," taking into account, among other things, "'the exigencies of plea bargaining from the government's point of view,' including 'limited resources and uncertainty of result.'" *Id.* at 662 (quoting *United States v. Bundy*, 359 F.Supp.2d 535, 538 (W.D. Va. 2005)). In making this assessment, the Court should analyze the proposed Plea Agreement in light of 18 U.S.C. §§ 3553, 3563, and 3572, which govern the imposition of sentences, including fines and probation, in federal criminal cases. *See id.* at 727-28. Those statutory provisions require that all federal criminal sentences take into account a number of factors, including the nature and circumstances of the offense and the history and characteristics of the defendant; the need to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; the need to afford adequate specific and general deterrence to criminal conduct; and the need to protect the public. *See* 18 U.S.C. § 3553(a). Discretionary conditions of probation must be reasonably related to those same factors, and must "involve only such deprivations of liberty or property as are reasonably necessary." 18 U.S.C. § 3563(b). Fines, meanwhile, must be imposed after consideration of the Section 3553 factors mentioned above, as well as additional factors including the defendant's ability to pay, any burden imposed by the fine on third parties, and, in the case of organizational defendants, the size of the organization and any measures taken by it to discipline responsible employees and to prevent a recurrence. *See* 18 U.S.C. § 3572(a).

Ultimately, taking all of these factors into consideration, the Court must determine whether the proposed Plea Agreement is a "reasonable disposition" given the available

alternatives, the risks presented by those alternatives, and the limits inherent in the applicable statutes. *BP Prods*, 610 F. Supp. 2d at 730.

ANALYSIS

As demonstrated below, the Plea Agreement reflects a reasonable, and indeed heavily punitive, disposition of criminal charges against BP through its combination of charges, fines, other monetary payments, and stringent conditions of probation.

I. THE CRIMINAL CHARGES TO WHICH BP IS PREPARED TO PLEAD GUILTY PURSUANT TO THE PLEA AGREEMENT INFLICT PUNISHMENT, PROTECT THE PUBLIC, AND DETER

Pursuant to the proposed Plea Agreement, BP will plead guilty to eleven felony counts of manslaughter, two environmental offenses, and felony obstruction of Congress. The severity of these charges serves the purposes stated in 18 U.S.C. § 3553(a)(2). The charges reflect the seriousness of the offense conduct and the history and characteristics of the collective BP companies,[2] and protect the public by specifically deterring future criminal conduct by the defendant, its affiliated entities, and generally deterring similar criminal conduct by others.

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[2] The criminal history of the collective BP-group of companies includes the following: (1) BP Products North America, Inc.'s 2009 conviction under the Clean Air Act, arising out of a deadly explosion at a BP refinery in Texas City, Texas, in 2005. BP pleaded guilty, paid a $50 million fine, and served three years of probation. (2) BP Exploration (Alaska) Inc.'s 2007 conviction under the Clean Water Act, arising out of a 2006 pipeline spill in the Prudhoe Bay area of Alaska. BP pleaded guilty, paid $20 million in fines and other monetary penalties, and served three years of probation. (3) BP America, Inc.'s 2007 deferred prosecution agreement arising out of commodities price manipulation in 2004. BP paid over $300 million in civil and criminal penalties. (4) BP Exploration (Alaska) Inc.'s 2000 conviction under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for failing to timely report the dumping of hazardous waste into oil wells by one of its contractors on the North Slope of Alaska. BP was fined $500,000, put on five years of probation, and ordered to implement a

Few corporations have been criminally prosecuted for manslaughter, and the United States is aware of no prior case in which an organizational defendant has accepted criminal responsibility for so many deaths. The United States insisted that BP plead guilty to eleven separate counts of manslaughter in order to punish, to deter, and to reflect the unique humanity of each of the eleven men who perished onboard the *Deepwater Horizon*.

The charges under the Clean Water Act and Migratory Bird Treaty Act likewise appropriately reflect the enormous damage that the spill caused to the environment, wildlife, and other natural resources of the Gulf. Pursuant to the Plea Agreement, these charges carry with them the highest criminal fines ever imposed for a violation of those statutes, described in detail in Section II.

Finally, the felony obstruction of Congress charge reflects the fact that the defendant's criminal conduct extended beyond the events surrounding the blowout itself to the defendant's untruthful post-spill conduct in understating the scope of the ensuing oil spill to Congress.

BP's admission of guilt as to each of these counts is significant in itself. BP's admissions also carry with them the possibility of significant collateral consequences, including in other pending or future litigation and with respect to the continued possibility of debarment or long-term suspension by U.S. regulatory authorities. Already, within a few weeks of the filing of charging documents against BP and several individual defendants, U.S. regulatory authorities

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nationwide environmental management program that purportedly cost the company $15 million or more.

temporarily suspended BP and numerous related entities from future U.S. government supply contracts and new leases for exploration for U.S.-based oil and gas resources.

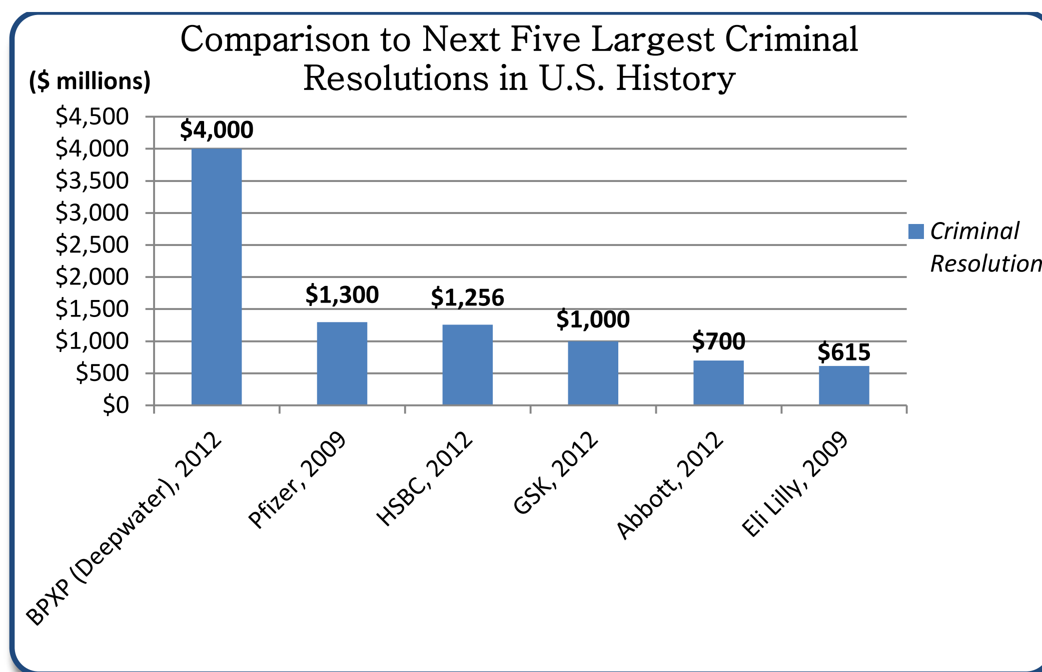
Taken together, the range, scope, and gravity of the criminal counts contained in the Information and Plea Agreement are in themselves a significant deterrent, both specific and general, to future criminal conduct and appropriately reflect the seriousness and magnitude of BP's crimes. *See* 18 U.S.C. § 3553(a)(2).

II. THE MONETARY PENALTIES UNDER THE PLEA AGREEMENT ARE REASONABLE, ADEQUATE AND JUST

The $4 billion total criminal recovery under the Plea Agreement, including $1.256 billion in criminal fines and $2.744 billion in other payments, is reasonable, adequate, and just, and eclipses all prior criminal resolutions. The adequacy of these monetary penalties should be assessed in light of the additional $24.2 billion in accident- and spill-related expenditures BP has made through the third quarter of 2012, and by the billions of dollars of additional liability BP faces in pending civil litigation. Acceptance of the plea is also supported by the parties' recognition of the risk that, should litigation concerning the applicability of the Alternative Fines Act have ensued in this criminal case, BP's overall maximum criminal fine could potentially have been capped at $8.19 million. That amount is 153 times less, or less than one percent (0.65%) of the fine BP has agreed to pay pursuant to the Plea Agreement, and less than half a percent (in fact around 0.2%) of the total negotiated criminal recovery.

A. Overview

No criminal monetary penalty in the history of the United States has come close to the Plea Agreement's in this case. BP's overall criminal monetary sanction – a total of $4 billion – is more than three times larger than the value of the next-largest criminal resolution ever, as demonstrated by the following chart.



As can be seen, the value of BP's criminal resolution is also more than the three next-largest overall criminal resolutions combined.[3] Among the top five largest criminal resolutions of all time, BP's is the only one to arise from an environmental incident.

[3] The next five highest overall criminal resolutions are: (1) Pfizer's 2009 $1.3 billion criminal resolution ($1.195 billion criminal fine; $105 million criminal forfeiture) with respect to off-label pharmaceutical marketing; (2) HSBC's 2012 $1.256 billion criminal forfeiture resolution

Further, as the Court evaluates the sanctions imposed on BP, it is notable that BP was not the only culpable party in the *Deepwater Horizon* disaster. On January 3, 2013, the United States and the owner of the *Deepwater Horizon* rig, Transocean Deepwater Inc., filed a separate plea agreement in this Court. Pursuant to that agreement, Transocean has agreed, subject to approval of that plea agreement by the Court, to admit its own criminal culpability, pay $400 million in criminal fines and penalties and serve five years of probation.

Overall, the financial penalties imposed on BP clearly reflect the seriousness of the offense and the BP companies' collective criminal history, and provide just punishment for the offense conduct, which resulted in a very serious environmental crime with a wide-ranging impact. *See* 18 U.S.C. §§ 3553(a)(1), (a)(2)(A). This monetary sanction also promotes respect for the law by making it clear to the defendant and others that such crimes entail harsh penalties. *Id*. The penalties likewise protect the public and provide general and specific deterrence by demonstrating to the defendant, and other similarly situated corporate defendants, that failure to conduct their business in a lawful manner will result in severe sanctions. *See* 18 U.S.C. §§ 3553(a)(2)(B), (a)(2)(C).

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with respect to violations of the Bank Secrecy Act, International Emergency Economic Powers Act and Trading with the Enemy Act; (3) GlaxoSmithKline's 2012 $1 billion criminal resolution ($955 million criminal fine; $45 million criminal forfeiture) with respect to off-label pharmaceutical marketing; (4) Abbott Laboratories' 2012 $700 million criminal resolution ($500 million criminal fine; $200 million forfeiture) for off-label pharmaceutical marketing; and (5) Eli Lilly's 2009 $615 million criminal resolution ($515 million criminal fine; $100 million forfeiture) for off-label pharmaceutical marketing.

B. Fines

As discussed below, the $1.256 billion total criminal fine agreed to under the terms of the Plea Agreement is larger than any criminal fine in history within – or beyond – the environmental enforcement arena. The Plea Agreement incorporates the maximum statutory fine for all eleven felony manslaughter counts and the felony obstruction of Congress count. With regard to the Clean Water Act and Migratory Bird Treaty Act counts, the Plea Agreement enhances the ordinary statutory maximum fines through application of the Alternative Fines Act (AFA), 18 U.S.C. § 3571(d).

1. Counts One through Eleven

The fines for Counts One through Eleven, charging BP with seaman's manslaughter in violation of 18 U.S.C. § 1115, are the maximum-available statutory fines: $500,000 for each count, resulting in a total fine amount for these eleven counts of $5.5 million ($5,500,000).[4]

2. Count Twelve

The fine for Count Twelve, charging the defendant with negligent discharge of oil in violation of the Clean Water Act, 33 U.S.C. §§ 1319(c)(1)(A) & 1321(b)(3), is $1.15 billion ($1,150,000,000).[5] This fine amount well exceeds the statutory-maximum fine available

[4] The Alternative Fines Act, 18 U.S.C. § 3571(d), is not applied to Counts One through Eleven or Fourteen. Pursuant to statute, the fines for Counts One through Eleven and Fourteen will be dedicated to the federal Crime Victims Fund. Established by the Victims of Crime Act of 1984, the Fund provides grants for victim compensation, assistance, and other services. *See* 42 U.S.C. §§ 10601-10607.

[5] Pursuant to 26 U.S.C. § 9509(b)(8), the $1.15 billion fine for Count Twelve will be paid to the Oil Spill Liability Trust Fund. The Fund is used to pay certain oil spill response and removal costs, as well as for natural resource damage assessments and other statutorily-defined purposes.

pursuant to the Clean Water Act, which provides a maximum statutory fine of $25,000 per day of violation or $200,000 per offense. 33 U.S.C. § 1319(c)(1).[6]

To enhance the fine for Count Twelve, the Plea Agreement imposes a fine using the AFA. That statute provides in relevant part:

> . . . if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

18 U.S.C. § 3571(d). Relevant case law holds that "loss" for purposes of the AFA is limited to pecuniary or monetary harm and does not include non-pecuniary harms such as pain and suffering, mental anguish, emotional distress, or harm to reputation. *See BP Prods*, 610 F. Supp. 2d at 682-84.

As discussed more fully in Section II.D below, absent the Plea Agreement, the government would encounter various litigation risks in seeking to apply the AFA. An argument would be made that the AFA cannot be applied because calculating pecuniary loss would unduly complicate and prolong the criminal sentencing process. In addition, recent Supreme Court authority raises the further argument that, if the AFA can be applied, loss under the AFA would need to be proven to a jury beyond a reasonable doubt. These arguments raise the possibility that the AFA'a fine-enhancing provisions could be displaced with the much-lower fines available under the Clean Water Act's own fine provisions – a very small fraction of the amount

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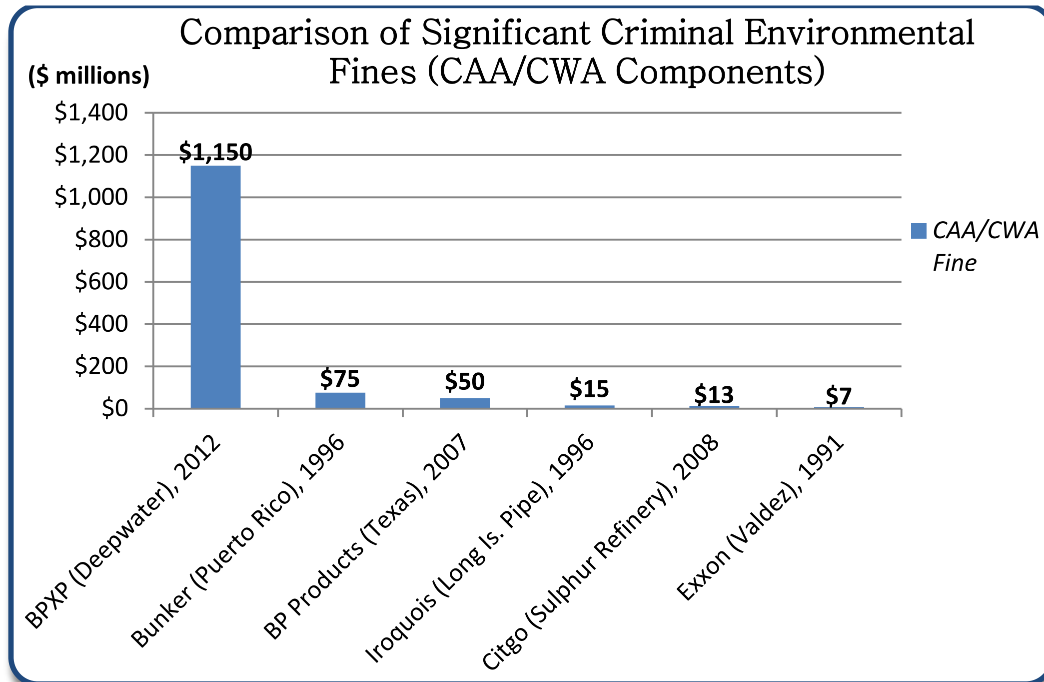
[6] If calculated using the "per day" provision of the Clean Water Act, the maximum criminal fine for Count Twelve would be $2,175,000 ($25,000 x 87 days). The proposed fine of $1.15 billion is more than five hundred times that amount.

negotiated in the Plea Agreement. Pursuant to the Plea Agreement, these litigation risks are avoided. The defendant has stipulated that the fine imposed for Count Twelve (and all other counts) pursuant to the Plea Agreement, as well as the other payment requirements in the Plea Agreement, does not exceed the statutory maximum applicable under the Alternative Fines Act. (*See* Plea Agreement ¶ 5.) The defendant has also waived any jury or bench trial on these issues. These provisions of the Plea Agreement eliminate the above litigation risks, safeguard the legality of the proposed sentence, avoid the need to litigate this complicated issue and delay sentencing, and ensure a heavy criminal monetary sanction of BP.

The adequacy, and indeed the potency, of the Clean Water Act fine in this case is amply demonstrated by a comparison with other cases. As shown in the following chart, BP's Clean Water Act criminal fine alone is much larger than the next-largest criminal Clean Water Act fine.[7]

[7] With respect to the *Bunker* listing in the chart below, because the exact fine allocation was unclear from the materials available, the chart assumes conservatively that the entire $75 million fine was imposed on the Clean Water Act counts. In addition, the fine in the *Exxon Valdez* case reflects the Clean Water Act fine after the overall $150 million fine was remitted to $25 million. The judgment in *Exxon Valdez* did not break down the pre-remittance fines by count and, thus, the chart does not list a pre-remittance amount for the Clean Water Act fine in that case. None of these caveats detracts from the basic point: the Clean Water Act fine in this case is enormous and dwarfs prior Clean Water Act fines.



These and other criminal environmental cases involved serious, tragic circumstances, including significant environmental consequences and sometimes loss of life. Yet never before has a company committed to criminal fine payments approaching the magnitude of BP's in this case.

For example, the $1.15 billion Clean Water Act fine called for by the Plea Agreement is forty-six times greater than the total effective fine ultimately paid in the *Exxon Valdez* case, which included Clean Water Act and other environmental convictions. The *Exxon Valdez* judgment included a $150 million criminal fine, $125 million of which was remitted, or discounted, based on Exxon's cleanup costs, cooperation, and other factors, resulting in a total fine paid of $25 million, $7 million of which was imposed under the Clean Water Act. Moreover, considered together with the $2.744 billion in additional monetary payments to be imposed pursuant to the Plea Agreement, the payments imposed here are 160 times greater than

the $25 million fine actually paid in *Exxon Valdez* and more than twenty-six times greater than the $150 million fine that was initially imposed but was not actually paid in that case.

Analysis of other environmental cases – such as significant oil spill cases like the *Bunker* case in Puerto Rico, or significant Clean Air Act cases like the Texas City oil refinery disaster involving a related BP company where 15 people died and approximately 170 other individuals were injured – provides a stark comparison of how steep the fine is in this case.

In sum, the $1.15 billion fine for Count Twelve is just punishment for the Macondo oil spill. The proposed fine amply reflects the serious nature and circumstances of the offense by exceeding the fines in other environmental cases by orders of magnitude, as discussed above. *See* 18 U.S.C. § 3553(a)(1). This substantial fine also reflects the nature and circumstances of the defendant's criminal conduct here and the prior criminal conduct of its affiliated entities, which have a significant criminal history involving environmental and other wrongdoing. *Id.* Moreover, the size of the proposed Clean Water Act fine represents a substantial financial sanction even for a corporation with assets as extensive as the defendant's, thus serving as a deterrent, both to the defendant and to other similarly situated corporations, and protecting the public from future criminal wrongdoing. *See* 18 U.S.C. § 3553(a)(2)(B), (a)(2)(C).

3. Count Thirteen

The fine for Count Thirteen, which charges BP with a violation of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703 & 707(a), is $100 million, and greatly exceeds the statutory-maximum fine available pursuant to the provisions of the MBTA, which provides a

statutory-maximum fine of $15,000 per count.[8] 16 U.S.C. § 707(a). To enhance the fine for Count Thirteen, the Plea Agreement imposes a fine using the AFA, 18 U.S.C. § 3571(d).

Here again, absent the Plea Agreement, the United States would be required to litigate and face the argument that it must prove beyond a reasonable doubt a fine based on the AFA. In addition, there would be argument that use of the AFA would unduly complicate and unduly prolong the sentencing process. Even litigating this argument might itself entail a prolonged and complicated process. Indeed, loss issues concerning wildlife impact (as to migratory birds and many other species of wildlife and sea life) are one of many subjects of a separate Natural Resource Damage Assessment, an inherently complicated and long-term assessment which aims to calculate the damage caused by the spill to the land, water, and other natural resources of the Gulf Coast and that will not be completed for some time. Pursuant to the Plea Agreement, the defendant has stipulated that the fine imposed on this count and all other counts pursuant to the Plea Agreement, as well as the other payments set forth in the Plea Agreement, do not exceed the statutory maximum that could be imposed pursuant to the AFA. (*See* Plea Agreement ¶ 5.) The Plea Agreement thereby validates the legality of the $100 million fine for Count Thirteen, eliminates the possibility of a complicated and prolonged process of otherwise assessing the appropriate loss amount, and avoids the prospect, absent a plea agreement, of an argument that

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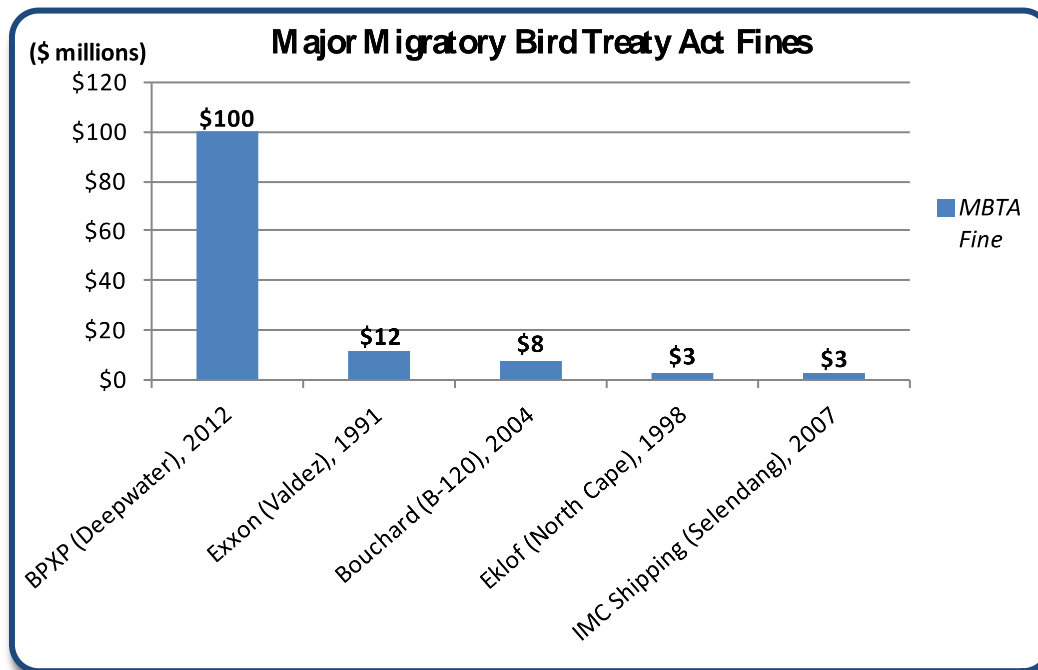
[8] Pursuant to 16 U.S.C. § 4406(b), the $100 million fine for Count Thirteen will be paid to the North American Wetlands Conservation Fund, for the purpose of funding wetlands restoration and conservation projects located in states bordering the Gulf of Mexico or otherwise designed to benefit migratory birds and other wildlife and habitat affected by the spill.

the AFA should not apply at all or, if it can apply, that the United States must prove these loss amounts to a jury beyond a reasonable doubt.

The adequacy of the fine for Count Thirteen is also demonstrated by comparison with prior cases. Even in cases where the AFA has been applied, criminal MBTA fines have seldom been in the millions of dollars, and no prior MBTA criminal fine has come close to $100 million, as shown in the following chart.[9]



4. Count Fourteen

Under Count Fourteen, like counts One through Eleven, the Plea Agreement calls for the statutory maximum fine of $500,000, which will go to the Crime Victims Fund.

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[9] The $12 million fine listed in the chart for the *Exxon Valdez* case reflects the MBTA fine actually imposed after the remission process in that case. The precise pre-remittance amount was not available from the judgment entered in that case.

C. Other Monetary Requirements

The Plea Agreement also calls for non-fine monetary payments in the record amount of $2.744 billion ($2,744,000,000). As set forth below, the amount of the non-fine payments, as well as the specific uses to which those payments will be directed, are intended to directly further the statutory sentencing factors set forth in 18 U.S.C. §§ 3553(a)(1) and (a)(2).

Title 18, United States Code, Section 3563(b) provides a non-exhaustive list of discretionary conditions of probation that may be imposed by sentencing courts "to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2)." Section 3563(b)(22) authorizes "such other conditions as the court may impose." *See, e.g.*, *United States v. Maxwell*, 483 Fed. App'x. 233, 240-41 (6th Cir. 2012) (unpublished) (the conditions of probation listed in Section 3563(b) are illustrative, not exhaustive, and sentencing courts have discretion to craft other conditions of probation to fit the particular needs of defendants). In the Plea Agreement, BP agrees to imposition of the conditions of probation set forth therein and stipulates that the monetary conditions of probation, considered together with the imposed fines, do not exceed the applicable statutory maximums under the Alternative Fines Act. (*See* Plea Agreement ¶ 5.)

The total amount of non-fine monetary payments set forth at paragraphs 34 and 35 of the proposed Order accompanying the Plea Agreement is intended to directly reflect the sentencing factors in 18 U.S.C. §§ 3553(a)(1) and (a)(2). With regard to Section 3553(a)(1), the United States considered not only the nature and circumstances of the offenses in this case, including the

facts that eleven men died and others were seriously injured and that the environmental offenses resulted in the costliest oil spill in United States history, but also that Counts One through Thirteen charge negligence-based or strict liability offenses rather than knowing or willful criminal conduct (with Count Fourteen being the significant exception). The non-fine payments also reflect the history and characteristics of affiliated BP entities, two of which have been convicted of criminal offenses in the last decade, including as to conduct at the Texas City Oil refinery involving even greater loss of life than the tragedy that occurred here.

With regard to Section 3553(a)(2), the non-fine payments are intended to further reflect the seriousness of the offense, to promote respect for and compliance with the law, and to deter future misconduct by BP and others in the deepwater drilling industry and the oil and gas industry more generally. The specific uses of the payments, meanwhile, along with the other non-monetary conditions of probation, are intended to remedy the harm to the public and its natural resources from the spill, protect the public from future crimes, and improve BP's own practices as well as industry practices, knowledge, and safety technology.

1. NAS Payment

The Plea Agreement requires BP, as a special condition of probation, to pay a total of $350 million to the National Academy of Sciences (NAS) for the purposes of oil spill prevention and response in the Gulf of Mexico. (*See* Plea Agreement ¶ 4(c)(viii); Exhibit B ¶ 34; Exhibit B-1.) Under the Plea Agreement, NAS must use the money to fund and carry out studies, projects, and other activities in three areas: research and development, education and training, and environmental monitoring, all with the objective of better protecting human health and the

environment with respect to deepwater drilling, production, and transportation in the Gulf of Mexico and on the U.S. outer continental shelf. The amount of $350 million was calculated to ensure that there are adequate funds to commence projects promptly and in the longer term to make real and lasting improvements in these important areas.

2. NFWF Payment

Paragraph 4(c)(viii) of the Plea Agreement and paragraphs 35 to 37 of the proposed Order require, as a special condition of BP's probation, that BP pay a total of $2.394 billion ($2,394,000,000) to the National Fish and Wildlife Foundation (NFWF), a Congressionally-chartered, non-profit organization established pursuant to 16 U.S.C. §§ 3701-10. Because BP is expressly prohibited from claiming any offset against its civil liability as a result of payments made pursuant to paragraph 4(c)(viii) of the Plea Agreement, (*see* Plea Agreement ¶ 4(c)), all of this money will provide for meaningful restoration and remediation beyond any compensatory or natural resource civil damages BP may pay in the future. In other words, the Plea Agreement provides for nearly $2.5 billion dollars of additional money to repair and restore the damaged ecology of the Gulf coast.

NFWF is subject to ongoing oversight by Congress and by its board of directors, which includes the heads of the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) as well as representatives from states, non-governmental organizations, and industry. NFWF has an established track record administering payments in criminal cases, and a long history of work in the Gulf States. The Plea Agreement, and NFWF's founding legislation, requires regular, fully transparent reporting of NFWF's administration and

implementation of the plea payments, thus ensuring that the money is administered and spent as contemplated in the Plea Agreement.

Paragraph 37 of the proposed Order specifies the purposes for which NFWF must allocate the payments. NFWF must spend approximately half of the total money ($1.197 billion) on projects in Louisiana to create or restore barrier islands off the Louisiana coast and to implement river diversion projects on the Mississippi and Atchafalaya Rivers for the purpose of creating, preserving, and restoring coastal habitats. Those projects, which will be selected after consultation with state and appropriate federal resource managers as well as consideration of the existing Louisiana Coastal Master Plan and the Louisiana Coastal Area Mississippi River Hydrodynamic and Delta Management Study, as appropriate, will help restore the fragile ecology of coastal Louisiana and help build a stronger coast to face future threats from spills, hurricanes, and other man-made and natural disasters.

The remaining half of the money (another $1.197 billion) must be spent by NFWF in the remaining four Gulf States – Alabama, Florida, Mississippi, and Texas – for projects designed to remedy harm to natural resources where there has been injury to, destruction of, loss of, or loss of use of those resources as a result of the spill. Thus, approximately $335,160,000 (28% of the $1,197 billion) will be spent on projects in Alabama, 28% more in Florida, 28% more in Mississippi, and the remaining 16% of the funds, or approximately $191,520,000, will be spent on projects in Texas.

D. The Monetary Payments Should Be Analyzed with the Understanding That the Plea Agreement Eliminates Litigation Risks

In analyzing the adequacy of the fine under the Plea Agreement, the Court may also "take into account . . . 'uncertainty of result.'" *BP Prods.*, 610 F. Supp. 2d at 729-30 (quoting *United States v. Bundy*, 359 F. Supp. 2d 535, 538 (W.D. Va. 2005)). Such uncertainties should be accounted for here.

1. General Litigation Risks

The result of a negotiated compromise inherently incorporates the risk each side bears that it would not prevail in some or all of its contentions and arguments if the case were to be fully litigated through trials and appeals. If this case were to proceed to trial, the government would be required to prove each element of each count in the Information beyond a reasonable doubt.[10] The outcome of any trial inherently involves some level of uncertainty, as all parties appreciate. That uncertainty supports the reasonableness of a Rule 11(c)(1)(C) plea, negotiated at arms' length by active and vigorous litigants.

[10] If the Court were to reject the Plea Agreement, BP would be permitted to withdraw (or not enter) its guilty plea. (*See* Plea Agreement ¶ 4; *see also* Fed. R. Crim. P. 11(c)(5)(B).) In such a scenario, the government and BP would be "returned to their pre-plea posture." *BP Prods.*, 610 F. Supp. 2d at 678 (quoting *United States v. Cervantes-Valencia*, 322 F.3d 1060, 1062 (9th Cir. 2003)). As a consequence, "[t]he fact of, and the contents of, the guilty plea, and 'any statement made in the course of any proceedings' concerning the negotiation or acceptance of th[e] plea, [would be] inadmissible in any future civil or criminal proceedings." *Id.* (quoting Fed. R. Evid. 410); *see also* Fed. R. Crim. P. 11(f) ("The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.").

2. Section 3571's Complexity Provision

As noted above, the AFA may not be applied where its use would "unduly complicate or prolong the sentencing process." 18 U.S.C. § 3571(d). Here, absent the Plea Agreement, the United States undoubtedly would face the argument that attempting to prove pecuniary loss or gain would trigger Section 3571(d)'s complexity provision. Were BP to prevail in that regard, then the default fine maximums in either Section 3571(c) or the statutes addressing the charged conduct would apply, and the criminal fines in this case could be capped at just $8.2 million dollars, as set forth in the following chart.

Counts	Statutory Maximum Fine Without Application of 18 U.S.C. § 3571(d)	Fine Allocation in Plea Agreement
1 to 11 (Manslaughter)	$500,000 per count under 18 U.S.C. § 3571(c)(3) for a maximum fine of $5.5 million	$5.5 million (*See* Plea Agreement ¶ 4(b)(i)(A))
12 (Clean Water Act)	$25,000 per day of violation for a total maximum fine of $2.175 million, assuming the violation occurred for 87 days, under 33 U.S.C. § 1319(c)(1)	$1.15 billion (*See* Plea Agreement ¶ 4(b)(i)(B))
13 (Migratory Bird Treaty Act)	$15,000 under 16 U.S.C. § 707(a)	$100 million (*See* Plea Agreement ¶ 4(b)(i)(C))
14 (Obstruction of Congress)	$500,000 under 18 U.S.C. § 3571(c)(3)	$500,000 (*See* Plea Agreement ¶ 4(b)(i)(D))

3. The Supreme Court's Recent Holding in *Southern Union*

In addition, at a trial, the government would face the argument that, under the Supreme Court's recent holding in *Southern Union Co. v. United States*, it is required to prove beyond a reasonable doubt the factual basis (*i.e.*, the pecuniary loss or gain) for any alternative fine

amount under the AFA. *Cf. Southern Union Co. v. United States*, 132 S. Ct. 2344, 2351 & n.4 (2012) ("In all such cases, requiring juries to find beyond a reasonable doubt facts that determine the fine's maximum amount is necessary to implement *Apprendi*'s 'animating principle' . . . .").[11] The government in this filing takes no position on the validity of that argument, but the uncertainty it could be argued to create counsels in favor of the Court accepting the Plea Agreement.

Application of *Southern Union* in this case could require the government to prove beyond a reasonable doubt that the charged conduct proximately caused the pecuniary loss or gain that purportedly serves as the basis for any AFA fine. *See United States v. Sanford Ltd.*, No. 11-cr-352 (BAH), 2012 WL 2930770, at *12 (D.D.C. July 19, 2012) (holding that the government must "prove that a given monetary amount (either a gain or a loss) was proximately caused by the conduct of the charged offense in order to qualify . . . under § 3571(d)"); *BP Prods.*, 610 F. Supp. 2d at 689 (discussing proximate-cause requirement of Section 3571(d)). In that regard, the case law indicates that proof of the scope of proximate harm cannot rest on the amounts of civil settlements alone. *See BP Prods.*, 610 F. Supp. 2d at 702-03 (rejecting arguments that Section

[11] The *Southern Union* dissent argued that the Supreme Court's application of *Apprendi* to criminal fines could create significant problems of proof for the prosecution in AFA cases, particularly in environmental cases. *Southern Union Co.*, 132 S. Ct. at 2344, 2370 (Breyer, J., dissenting) (discussing the potential impact of the Court's holding on Section 3571(d) and noting that in "an environmental pollution case, the jury may have particular difficulty assessing different estimates of resulting losses"); *see also United States v. Sanford Ltd.*, No. 11-cr-352 (BAH), 2012 WL 2930770, at *12 (D.D.C. July 19, 2012) ("The Court is cognizant that how demanding this standard may be when seeking fines against organizational defendants for environmental crimes depends upon the nature of the charges and underlying criminal conduct. This is a threshold issue requiring attention before application of the alternative fine provision of § 3571(d).").

3571(d) environmental penalty could be calculated based on corporate defendant's pre-existing $1.6 billion civil settlement stemming from same conduct at issue in case because "the amount of civil settlements does not equate to gross loss in a criminal fine"). As a result, jury litigation of damages could be quite protracted and complex, reinforcing the separate risk of litigation over whether Section 3571's complexity provision would be triggered. *See United States v. CITGO Petroleum Corp.*, No. C-06-563, 2012 WL 5421303, at *4-6 (S.D. Tex. Nov. 6, 2012) (holding that Section 3571(d) could not be applied where, among other things, the court would essentially need to preside over a second damage-related trial, which would include empanelling a new jury, hearing testimony from additional witnesses, and deciding motions in limine), *recons. denied*, No. C-06-563, 2012 WL 6681891 (S.D. Tex. Dec. 20, 2012).

4. The Plea Agreement Eliminates Any Issues Regarding Section 3571's Complexity Provision or *Southern Union*

Under the Plea Agreement, 99.52% of the total criminal fine is allocated to environmental criminal charges, as to which the arguments above would be made. (*See* Plea Agreement ¶¶ 4(b)(i)(A)-(D).) The Plea Agreement addresses these litigation risks in three ways: (1) BP has stipulated that there is a factual basis for the imposition of a $1.256 billion criminal fine under Section 3571(d); (2) BP has stipulated that the fine and penalties contemplated by the Plea Agreement do not exceed applicable maximum statutory fines; and (3) BP has agreed to waive a trial (jury or bench) with respect to the full scope of $4 billion in payments pursuant to the Plea Agreement. (*See id.* ¶ 5.)

If, however, the Court were to decline to accept the Plea Agreement, the stipulations and agreement would not be binding on BP, and they would not be admissible in subsequent proceedings. The government could then face the very issues discussed above, which, even assuming the government were successful at trial, could potentially result in BP paying a capped total criminal fine that would be a small fraction of the fines and other payments required by the Plea Agreement.

In short, a trial and possible appeal in this case would necessarily involve litigation risks for both parties. The proposed Plea Agreement accounts for and eliminates those litigation risks.

III. THE PLEA AGREEMENT IMPOSES STRINGENT SPECIAL CONDITIONS OF PROBATION TO PROTECT THE PUBLIC AND SPECIFICALLY AND GENERALLY DETER FUTURE CRIMINAL CONDUCT

In addition to severe fines and other monetary requirements, the proposed Plea Agreement imposes five years of probation – the statutory maximum – and a litany of stringent special conditions of probation. These conditions, set forth in Exhibit B to the Plea Agreement, address the defendant's history and characteristics, provide further safeguards of public safety, and enhance the specific and general deterrence created by the Plea Agreement. The cost to BP in dollars, dedication of personnel, and time will be significant. Particularly when put in the context of the spill's other financial and legal ramifications for BP, these non-monetary provisions combine with the monetary requirements discussed above to make the proposed Plea Agreement the strongest of its kind in history. Some examples of the special conditions follow.

A. Monitors

The Plea Agreement provides for two independent monitors to be retained at BP's expense and selected subject to Department of Justice approval. One monitor will focus on reviewing, evaluating and providing recommendations for enhancing BP's process safety and risk management procedures, including major accident/hazard risk review in the drilling context, with the aim of helping to prevent future harm to persons, property, and the environment from another deepwater drilling disaster in the Gulf. The second monitor will review and provide recommendations for enhancing BP's code of conduct and its implementation and enforcement, with a view towards preventing criminal or ethical violations with respect to BP's future dealings with U.S. regulatory and enforcement agencies. The Plea Agreement ensures that both monitors will have the necessary access and authority to gain an independent view of BP's corporate practices, and the Plea Agreement provides for regular reports regarding BP's compliance. In this way, the Plea Agreement provides both monitors with the necessary tools and direction to review, critique, and recommend enhancements to improve BP's process safety and ethics compliance. Notably, if either monitor identifies a potential violation of law (including violations of conditions of probation), it will be brought to the attention of the Probation Office, the United States' prosecutors and the defendant so that appropriate action can be taken. Overall, the imposition of these monitors – not just one, but two – represents a significant component of the Plea Agreement.

B. SEMS Audits

The Plea Agreement also includes specific requirements for BP to conduct Safety and Environmental Management System (SEMS) audits in accordance with regulations issued by the Bureau of Safety and Environmental Enforcement (BSEE) in 2011 in response to the Macondo disaster. The SEMS regulations require BP to implement a safety and environmental management program addressing such key areas as hazards analysis, management of change, safe work practices, training, emergency response and control, and other topics set forth at 30 C.F.R. § 250.1902. Under the Plea Agreement, BP's SEMS program will be subject to independent audits consistent with the requirements of 30 C.F.R. § 250.1920, and its obligations in this respect will extend even to rigs contracted, but not owned, by the defendant, and to rigs that come under contract in the future.

C. Operational Oversight

The Plea Agreement requires BP to submit to operational oversight in several key areas that contributed or may have contributed to the blowout and spill in this case. The Plea Agreement requires BP to verify the testing and maintenance of its blowout preventers (BOPs) through appropriate third parties, (*see* Plea Agreement, Exhibit B ¶ 9), and requires BP to use minimum numbers of shear rams in its BOPs used in deepwater drilling, (*see* Plea Agreement, Exhibit B ¶ 24). The defendant must develop and implement a plan to assess the competency of personnel responsible for overseeing deepwater drilling operations on its rigs (such as the Well Site Leaders who fatally misinterpreted the negative pressure test aboard the *Deepwater Horizon*). Similarly, primary casing and exposed hydrocarbon cement designs for deepwater

wells will be subject to review and approval by subject-matter experts. Under the Plea Agreement, BP will maintain a real-time drilling operations monitoring center, and allow BSEE regulators reasonable access to the center. Finally, BP will be required to submit annual summaries to BSEE of certain reportable safety incidents, describing the measures taken to correct the item and/or prevent a recurrence.

D. Training, Technology, and Safety Measures

The Plea Agreement imposes several additional requirements related to training, safety technology, and other measures. For example, BP must enhance the training of its oil spill response and crisis management teams and conduct a specified number of drills and other training exercises. The defendant must update its Oil Spill Response Plan within 60 days to address a number of key areas. BP must also work with industry and the academic community to research and develop technologies to enhance the operational safety of deepwater drilling, as well as BOP systems, well design, and real-time well monitoring. BP is also required by the Plea Agreement to maintain a safety organization that has the authority to intervene or stop any operation deemed unsafe.

E. Auditor

The Plea Agreement provides for an independent third-party auditor to review BP's compliance with the conditions of probation and report to the Probation Office, the government, and the defendant. If the auditor finds any deficiencies in BP's compliance, the auditor must report such deficiency promptly to the defendant, which will then provide a plan to address the deficiency to the Department of Justice within 30 days.

In sum, the non-monetary conditions of probation provided for in the proposed Plea Agreement are substantial. Like the charges and proposed fines and other monetary provisions, the non-monetary requirements satisfy the factors enumerated in 18 U.S.C. § 3553(a). These provisions reflect the nature and seriousness of the offenses by imposing an extremely detailed regime of technical safeguards. *See* 18 U.S.C. § 3553(a)(2)(A). Respect for the law will be promoted by the presence of a third-party auditor, whose role will be to review and report on compliance with the proposed order. *See* 18 U.S.C. § 3553(a)(2)(A). The probationary conditions will also protect the public and specifically deter the defendant from future criminal conduct by making sure that requirements for enhancements to the defendant's business practices carry the weight of judicial authority and the threat of serious sanction for non-compliance. *See* 18 U.S.C. § 3553(a)(2)(B), (a)(2)(C). In the same vein, the public will be protected by the presence of monitors to recommend changes to the defendant's business practices; and by the presence of an auditor to oversee compliance with the proposed Order. *Id.* The proposed non-monetary requirements will help ensure, entirely at the defendant's expense, that the defendant remains in compliance with significant additional requirements designed to promote drilling safety. These conditions will also ensure that BP works proactively to improve deepwater drilling safety practices and technology, for the benefit of its own employees and contractors, the industry, and the nation.

IV. OTHER ACTIONS BY THE UNITED STATES PROVIDE FURTHER SPECIFIC AND GENERAL DETERRENCE

Several other actions by the United States further reinforce the specific and general deterrence achieved by the Plea Agreement. In separate actions, a grand jury has indicted two rig supervisors for their role in the Macondo blowout and spill and brought charges against David Rainey, who deceived Congress on behalf of BP. Holding individuals criminally accountable is one potent way to ensure that organizations respect the law. Civil litigation by the United States also continues, with an initial trial phase set to begin in February. BP faces the prospect of billions of dollars in additional liability in the civil actions, with potential civil penalties under the Clean Water Act and liabilities related to the ongoing Natural Resource Damage Assessment. If past cases are any indication, BP's civil liability is likely to be significantly greater than the criminal monetary penalties agreed upon in the Plea Agreement. As noted above, BP was also recently temporarily suspended from receiving U.S. government contracts, and has separately settled civil claims with the Securities and Exchange Commission for $525 million.

These other consequences of the spill, while distinct from the Plea Agreement, further reinforce the core message of the proposed Plea Agreement that criminal misconduct will have enormous ramifications – financial, legal, reputational, and other – for any company and any individual who fails to abide by the standards of care when drilling in U.S. waters or on the U.S. outer continental shelf.[12]

[12] Sections I through IV do not constitute statements by BP.

V. ADDITIONAL CONSIDERATIONS OFFERED BY BP

BP offers the following additional considerations it believes are pertinent to the Court's assessment of the Plea Agreement.[13]

A. The Court Should Consider BP's Civil Payments and Financial Commitments When Evaluating the Adequacy of the Monetary Penalties

In evaluating the reasonableness of the terms of the Plea Agreement and fine, the Court may also properly consider other expenditures and financial commitments that BP has made in connection with the *Deepwater Horizon* incident. *See, e.g., BP Prods.*, 610 F. Supp. 2d at 677-78, 729. To provide further context, prior to the proposed plea, BP spent, in responding to the *Deepwater Horizon* incident, $24.2 billion in accident and spill related expenditures through the third quarter of 2012.[14] Expenditures are ongoing and are estimated to result in a total approximate cost to BP of $42 billion, including this criminal sanctions package. This amount includes the $20 billion Trust, which BP established to give assurance that BP would satisfy certain financial obligations related to the oil spill. The most significant of these expenditures, as well as an additional $525 million that BP will pay as a civil penalty as part of a settlement agreement with the Securities and Exchange Commission, are described below.

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[13] Section V does not constitute a statement by the United States.

[14] The $24.2 billion in expenditures includes costs for spill response activities; payments for individual, business, and government claims; and costs for environmental impact assessment, restoration, and research activities. It does not include legal defense costs or internal BP functional costs related to the *Deepwater Horizon* accident. BP's overall expenses have been reduced by approximately $5.4 billion as a result of recoveries from or related to BP's Macondo partners and contractors, which recoveries BP contributed to the *Deepwater Horizon* Oil Spill Trust.

1. BP Has Spent Over $14 Billion in Support of Containment, Cleanup, Restoration, and Recovery Efforts

After the explosion on April 20, 2010, hydrocarbons flowed from the Macondo reservoir for 87 days before the flow was stopped. BP committed a tremendous amount of resources to what became the largest oil spill response in United States history. At the peak of BP's efforts to stop the spill, BP deployed approximately 48,000 response workers. BP estimates that, all told, BP response workers spent approximately 66.5 million man-hours responding to the spill through December 31, 2011, and thousands more man-hours doing clean-up work in 2012. BP also deployed about 6,500 active response vessels and 125 aircraft during the response.

Through these efforts, BP was able to collect on vessels and then sell or safely flare more than 810,000 barrels of oil. BP was further able to skim from the surface of the Gulf about 828,000 barrels of oily liquid, and to remove according to government estimates between 220,000 to 310,000 barrels of oil through surface burns. In line with a commitment BP made to donate its share of the revenue (net of royalties and transportation costs) from the sale of recovered oil, BP donated $22 million to NFWF.

Since the beginning of the *Deepwater Horizon* response, shoreline clean-up assessment technique (SCAT) teams comprised of scientific experts, as well as federal and Gulf state representatives, have continuously and systematically surveyed the shoreline to assess oiling conditions and develop shoreline treatment recommendations, which are implemented at the direction of the Federal On-Scene Commander (FOSC). In November 2011, the FOSC approved the Shoreline Clean-up Completion plan. This plan describes the process whereby the various

shoreline segments included in the area of response operations can be surveyed, verified as meeting the applicable clean-up standards, and moved out of operational activity. As of December 21, 2012, the FOSC had deemed removal actions complete on 4,029 miles of shoreline out of 4,376 miles in the area of response. By that same time period, a further 108 miles were awaiting approval of removal actions deemed complete or were pending final monitoring. In addition, 232 miles were undergoing patrolling and maintenance, which will continue until the shoreline segments meet the applicable clean-up standards for the FOSC to determine that operational removal activity is complete. In all, BP has spent over $14 billion in support of the containment, cleanup, restoration, and recovery efforts since the Macondo spill.

2. BP Established a $20 Billion Trust, and by the Third Quarter of 2012, Paid Out $8.2 Billion

Following the incident, BP created the Gulf Coast Restoration Organization (GCRO), which managed all aspects of the response to the *Deepwater Horizon* incident and the oil and gas spill in the Gulf of Mexico. Among other things, the GCRO was responsible for implementing the $20 billion *Deepwater Horizon* Oil Spill Trust ("Trust"), which BP established to give assurance that BP would satisfy financial obligations related to the oil spill. Under the Trust Agreement, BP was required to fund the $20 billion to the Trust in quarterly installments continuing through the fourth quarter of 2013. BP voluntarily prepaid $5.39 billion of its contribution obligations with the proceeds of certain third party settlements. As a result, BP fully satisfied its contribution obligations to the Trust in the fourth quarter of 2012 – over one year early.

The Trust has been and continues to be used for the purposes of paying legitimate individual and business claims administered by the Gulf Coast Claims Facility (GCCF), state and local government claims resolved by BP, final judgments and settlements, state and local response costs, and natural resource damages and related costs. The Trust is available to satisfy claims processed through the transitional court-supervised claims facility and the separate BP claims program, and to fund the qualified settlement funds (QSFs) established under the terms of the settlement agreement with the Plaintiffs' Steering Committee (PSC) in MDL-2179, which is described below. The Trust does not cover fines and penalties. As of September 30, 2012, the cumulative amount paid from the Trust and QSFs was $8.2 billion. To be clear, the Trust covers items for which provisions have been taken and some items for which no provision can yet be made.

3. BP Has Entered Into Uncapped Settlement Agreements in MDL-2179, Which Were Estimated to Cost Approximately $7.8 Billion

On March 3, 2012, BP announced that it had reached a settlement with the PSC in *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, Case No. 2:10-md-02179-CJB-SS (E.D. La.). The settlement is comprised of two separate agreements, one to resolve economic loss claims and another to resolve medical claims. The Court recently approved the settlement of economic loss and medical claims. The settlement resolves the substantial majority of legitimate economic loss and medical claims stemming from the *Deepwater Horizon* incident and oil spill. Further, the settlement provides for a transition from

the GCCF to a transitional claims facility that began operation in March 2012 while the Court-supervised settlement program was being established.

The final amount of the settlement is uncapped. BP estimated that the total cost, expected to be paid from the $20 billion Trust Fund, would be approximately $7.8 billion and the actual cost may be higher. This settlement does *not* include civil claims against BP asserted by the Department of Justice on behalf of other federal agencies (including for civil penalties under the Clean Water Act and for Natural Resource Damages under the Oil Pollution Act) or by the states and local governments. The settlement also excludes certain other claims against BP, such as securities and shareholder claims pending in MDL-2185, and claims based solely on the deepwater drilling moratorium and/or the related permitting process.

4. BP Voluntarily Committed to Provide Up to $1 Billion of the Trust for NRD Early Restoration Activities and Spent Over $600 Million on NRD Assessment

In 2011, BP also voluntarily set aside up to $1 billion from the total Trust amount to be used for NRD early restoration projects pursuant to an agreement with the federal and state natural resource trustees. BP continues to work on NRD activities in collaboration with federal and state trustee agencies and to advance both early restoration and assessment activities. In addition, BP has spent or reimbursed the trustee agencies over $600 million investigating the potential natural resource damages resulting from the *Deepwater Horizon* incident and oil spill.

5. BP Has Paid $298 Million for Other Settlements, Contributions, Tourism Promotion, and Seafood Testing

As of the third quarter of 2012, BP had paid a total of $298 million for contributions, settlements, and other payments for tourism, seafood testing and marketing, and behavioral

health. In line with BP's previous commitment to donate its share of the revenue (net of royalties and transportation costs) from the sale of recovered oil to the NFWF, total donations to date have amounted to $22 million. In 2010, BP provided $87 million in grants to Alabama, Florida, Louisiana, and Mississippi for tourism promotion and provided another $52 million for behavioral health funding. BP made additional commitments of $174 million over three years to promote tourism, to help the states monitor seafood safety, and to promote Gulf seafood within the four affected states, of which $132 million has been funded against those commitments through September 30, 2012. Another $5 million has been contributed to other various state and local organizations. Notably, an additional $57 million is being given to non-profit groups and government entities to promote the tourism and seafood industries as part of the PSC settlement.

6. As Part of an SEC Settlement, BP Will Pay a Civil Penalty of $525 Million

Contemporaneous with the Plea Agreement in the instant case, BP p.l.c. reached a Consent Agreement with the SEC in *SEC v. BP p.l.c.*, Case No. 2:12-cv-02774 (E.D. La.), which included a civil penalty in the amount of $525 million. The SEC settlement amount is separate from the amount set forth in the Plea Agreement in this case. According to the Consent Agreement, BP p.l.c.'s civil penalty is to be paid in three separate installments, each in the amount of $175 million. BP p.l.c. submitted its first $175 million payment to the United States Treasury on December 11, 2012. The second $175 million payment is due on August 1, 2013, and the third payment is due on August 1, 2014. The $525 million is in addition to the $24.2 billion described above.

7. <u>BP Has Committed $500 Million to the Gulf of Mexico Research Initiative Over Ten Years</u>

In 2010, BP and the Gulf of Mexico Alliance, which includes the States of Alabama, Florida, Louisiana, Mississippi, and Texas, announced detailed plans for the implementation of BP's $500 million Gulf of Mexico Research Initiative (GoMRI). While the details of the GoMRI were being developed, BP awarded a series of fast-track grants to five research groups, totaling $40 million, to study the impact of the oil spill, and its associated response, on the marine and shoreline environment of the Gulf of Mexico. Through September 30, 2012, a total of $179 million in grants for research efforts has been awarded. Under the Plea Agreement, BP will "continue to fulfill its commitment to fund [GoMRI] . . . at the level established by the Master Research Agreement . . . between BP and the Gulf of Mexico Alliance." (Exhibit B ¶ 33; *see also* Plea Agreement ¶ 4(c)(viii).)

8. <u>BP Paid $399 Million in Claims Prior to August 23, 2010</u>

BP paid $399 million to individual, business, and government claimants before August 23, 2010, when the administration of these claims was transferred to the GCCF. Once the GCCF was established, claims were paid via the *Deepwater Horizon* Oil Spill Trust.

9. <u>BP Established a $100 Million Rig Worker Assistance Fund</u>

In 2010, BP established a $100 million Rig Worker Assistance Fund through the Baton Rouge Area Foundation (the "Foundation") to support unemployed rig workers experiencing economic hardship as a result of the moratorium on deepwater drilling that had been imposed by the federal government at the time. In 2011, the Foundation awarded $5.8 million to an expanded pool of applicants, after awarding $5.6 million to nearly 350 rig workers in 2010.

With less than 2,000 applicants seeking funds, the Foundation granted $18 million of the BP contribution to community-based organizations through its Future for the Gulf Fund. At the end of 2011, the Foundation was assessing additional funding requests from organizations assisting those impacted by the spill, and said it hoped to complete the distribution of the BP contribution by the end of 2012.

B. Other Financial Considerations

In assessing whether the criminal sanction in this case sends an appropriate message of deterrence, the Court may consider the lesson that BP and the energy industry have seen in terms of BP's market cap since the Macondo incident. At the end of the first quarter of 2010, shortly before the Macondo tragedy, BP's market cap was $178.7 billion; since the *Deepwater Horizon* incident, as of end December 2012, BP's market cap stood at $132.6 billion. The financial message, sent through the criminal sanction in this case as well as other sanctions and exposures (many of which continue to be negotiated and litigated), for BP and the world is one of substantial deterrence and punitive effect.

The Court also may consider the fact that BP has undertaken to divest some $38 billion from 2010 through 2013 (planned). Not all of these divestments are the result of the *Deepwater Horizon* incident, but many are, and billions of dollars of revenues from these divestments have been used to fund remedial efforts relating to Macondo. These required divestments further underscore the severity of the sanctions and obligations imposed on BP, including as a result of the criminal disposition in this case.

Moreover, when analyzing the sanction, it is important to recognize that energy producing companies like B.P. p.l.c. spend substantial percentages of their revenues on reinvestments to find and develop future energy sources, whether in traditional fuel sources or in new alternative or renewable energy sources. Thus, for example, in 2011, the BP Group committed $8.8 billion in capital investments to projects in the United States. Through the first three quarters of 2012, the BP Group committed $7.5 billion to capital expenditures in this country, which was an increase of over $2 billion from the same period in 2011. Between 2007 and 2011, BP's capital investments in the United States totaled more than $52 billion, making the BP Group the largest energy investor in the United States. (Importantly, this total amount does not include the billions of dollars that the BP Group has spent on its efforts to respond to the Macondo oil spill.)

C. Remedial Measures and Lessons Learned

BP has learned from the *Deepwater Horizon* blowout and spill, and it has acted upon the lessons learned. In the wake of the incident, BP took significant remedial measures (many of which are described below) to determine what happened, to share its findings, and to institute safety enhancements. These efforts have included new organizational structures, recruitment of many new employees with technical expertise, improved contractor management practices, and new training and competency assurance programs (including a new Global Wells Institute). BP also undertook a non-privileged internal investigation in the wake of the incident, made the results available to the world through the Bly Report, and committed to implementing all 26 of the Report's recommendations. BP also has shared the lessons it has learned from the

Deepwater Horizon disaster with governments, industry and others, and has cooperated with numerous governmental and non-governmental investigations. Consistent with its practice in the past, BP has taken the Macondo tragedy very seriously, and has made every effort to understand the causes of the incident and to prevent future disasters.

1. Organizational Changes and Process Enhancements

The fundamental enhancements that BP has made after the *Deepwater Horizon* accident include:

a) Leadership Changes

Soon after the *Deepwater Horizon* incident, BP appointed new top corporate executives, including a new Group Chief Executive, Robert Dudley. Upon taking office, Mr. Dudley further emphasized safety and risk management as the Company's most urgent priorities and he immediately assembled a new Executive Leadership Team to further advance BP's safety and risk management agenda. Since then, BP's Executive Leadership Team has taken numerous, concrete steps to enhance BP's safety culture, including: communicating refreshed corporate values that emphasize safety; developing a strategic framework for safety and risk management; frequently and consistently communicating the importance of safety and risk management; and aligning BP's policies, procedures and systems to drive systematic and safe operations.

b) Enhanced Safety and Operational Risk Organization

In early 2011, BP established the Safety and Operational Risk ("S&OR") organization to further drive safe, reliable and compliant operations across the Company's operated businesses. S&OR's activities further foster the development of deep capability and a safe operating culture

across all levels of BP's operations. S&OR is led by Mark Bly, the Executive Vice President who led the Company's investigation into the *Deepwater Horizon* incident (discussed below) and who reports directly to the Group Chief Executive. BP has recruited many new technical experts in various disciplines to work in the S&OR organization.

S&OR comprises senior professionals at the corporate level, as well as specialists deployed directly to BP's local business units. These locally-deployed specialists are part of the S&OR organization and report directly to S&OR management. Thus, S&OR is independent of the business lines. This independence allows S&OR to provide critical input on operations worldwide. This input is particularly valuable and reliable because, as Mr. Dudley recently explained:

> They're not part of the business line management – they're independent and their remit is to provide advice but also challenge. They need to approve appointments of safety-critical staff for example. And if they believe than an operation needs to stop – then it stops.[15]

c) Improved Contractor Management Practices

Without diminishing BP's awareness of its own role in this incident, BP reviewed investigative reports concluding that mistakes by several BP contractors played a role in causing the *Deepwater Horizon* incident. In response, BP has carefully scrutinized its contractor management and oversight programs. Based on a study of best practices in the oil and gas and other industries, BP has been implementing a comprehensive contractor management and

[15] http://www.bp.com/genericarticle.do?categoryId=98&contentId=7074117 (last visited Jan. 15, 2013).

oversight program. This includes stronger quality assurance procedures and the creation of contractor selection and review boards. As part of this effort, BP performed over 90 audits of contracts in its upstream businesses by the end of 2011 and BP terminated or declined to renew contracts with 28 contractors between 2010 and 2011. BP's contractor management enhancements are particularly important given that the offshore industry typically relies heavily on contractors.

d) Emphasized and Strengthened Compliance and Assurance Programs

BP's Code of Conduct ("Code"), which existed prior to the *Deepwater Horizon* accident, is the backbone of BP's Ethics and Compliance program. The Code expressly imposes a duty on BP employees to report ethical or compliance-related breaches or concerns and contractors are expected to act in a way that is consistent with the Code and follow its principles. The Code describes both the mechanisms by which employees can report issues, and the zero-tolerance policy towards retaliation against those who do speak up. The Code's policies are reinforced and given effect through BP's reporting channels, including BP's confidential reporting program OpenTalk, and Group-wide communications and training. OpenTalk is also available to contractors and third parties. Each year, all Senior Level personnel must certify that they have complied with the requirements of the Code. Beginning in 2013, this requirement was expanded to cover non-Senior Level employees. In addition, BP's Gulf of Mexico business has strengthened its compliance program by adding additional experienced compliance personnel,

issuing new compliance protocols, conducting internal and third-party audits and requiring multi-layer review and approval of permit applications and other submissions to government agencies.

e) <u>Expanded Capability</u>

BP has recruited new personnel throughout its drilling operations, with an emphasis on specific areas of technical expertise such as cementing, blowout preventers, and drilling fluids. The Company already has implemented new training, development and competency assurance programs, and the new Global Wells Institute will be one of the centerpieces.

f) <u>Sharing Lessons Learned With Industry</u>

Recognizing that several of the factors contributing to the *Deepwater Horizon* incident reflected industry-wide issues, BP has shared the lessons it has learned from the *Deepwater Horizon* incident and the oil spill response with governments, industry, and others worldwide. The Company has conducted over 100 external briefings and workshops with regulators, contractors and competitors in 25 countries. In the United States, BP has worked with industry to establish the Center for Offshore Safety and to upgrade oil spill response equipment and capabilities available to the industry as a whole. BP also contributed significantly to the Marine Well Containment Company ("MWCC"), the not-for-profit, independent company that provides well containment equipment and technology in the Gulf of Mexico, by reconditioning and contributing key subsea components, equipment, and procedures that now serve as MWCC's interim containment system.

g) Voluntary Performance Standards

On July 15, 2011, BP announced that it would voluntarily implement a new set of deepwater oil and gas drilling standards for its operations in the Gulf of Mexico, demonstrating the Company's commitment to safe and reliable operations. The announcement was made in a letter to the federal Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). These voluntary performance standards go beyond existing regulatory obligations and reflect the Company's determination to apply lessons it learned from the *Deepwater Horizon* blowout, explosions, and subsequent oil spill.

2. BP's Non-Privileged Internal Investigation (The Bly Report)

Within 72 hours of the *Deepwater Horizon* rig explosion, BP commissioned an investigation into the incident. BP conducted the investigation on a non-privileged basis and decided from the beginning to share the results of the investigation with the public. On September 8, 2010, BP's Incident Investigation team published its detailed report on the *Deepwater Horizon* incident, commonly known as the Bly Report. The Bly Report was the first extensive analysis of the events that led to the *Deepwater Horizon* incident. The Bly Report found that the *Deepwater Horizon* accident occurred because of the actions and omissions of multiple actors, including BP. BP not only made the report available but also provided face-to-face briefings to multiple government agencies and officials, including several that were conducting their own investigations of the incident.

The Bly Report detailed 26 recommendations in areas needing improvement, which related to: key well drilling procedures and guidance; technical capability and competence

related to key aspects of deepwater drilling; rig process safety; and contractor oversight. When the Bly Report issued, BP immediately committed to implementing all 26 of the Report's recommendations, while ensuring the quality of the implementation process and addressing consequential risk mitigation. Implementation of each of the recommendations is a major effort, and includes the following benchmarks before being deemed to have been completed:

- Review existing guidelines and requirements related to safe well operation and revise as needed;
- Disseminate the revised requirements throughout the Company, as appropriate;
- Implement the new requirements through training programs and employee certifications; and
- Verify conformance with revised requirements by audit.

BP has also appointed an independent third party expert as an additional assurance to its board on the delivery of the Bly Program. BP regularly provides reports to internal and external stakeholders on its efforts, which can be found on BP's public website at http://www.bp.com.

Over the past year, BP continued to work toward completing all 26 of the recommendations. For example, BP has developed or refreshed key operating practices and engineering standards on:

- Cementing or zonal isolation: BP has issued new mandatory requirements and associated guides covering cementing activities. Over 711 technical professionals in BP have now undergone training on the revised practices. BP has also strengthened the technical approval process for some cementing operations. Systematic input into the well design workflow now requires both the regional and global BP specialist to agree on the basis of design for complex zonal isolation activities.
- Integrating process safety concepts into management of wells: BP has produced a technical practice specifying minimum requirements for well barrier management

– managing the movement of fluids and gas within the well – throughout the life cycle of the well. Implementation of this practice has commenced with two-day workshops training 624 technical professionals to date.

- Well casing design: BP has updated its design manual for well casing and inner tubing to include new requirements for pressure tests and revised technical practices. A training workshop on this revised practice has been developed for BP professionals.

- Blow-out preventer (BOP) stacks: BP has issued a revised technical practice on well control, defining and documenting requirements for subsea BOP configurations. BP requires two sets of blind shear rams and a casing shear ram for all subsea BOPs used on dynamically positioned rigs in deep water drilling. BP also requires that third party verification is carried out on the testing and maintenance of subsea BOPs in accordance with industry recommended practice, and that remotely operated vehicles capable of operating these BOPs are available in an emergency.

- Rig intake and start-up operating procedure: BP has continued the rig audit process enhanced in 2011. BP has also conducted detailed hazard and operability reviews for key fluid and gas handling systems on all offshore rigs in the BP fleet. All drilling rigs joining the BP fleet are subject to a full independent S&OR audit and readiness to operate is verified with a detailed go/no-go process assured by S&OR. This includes a checklist that, amongst other things, verifies that the rig conforms to BP practices and industry standards, that it has the right technical specification, and that the actions required for start-up are closed. All rigs are also subject to subsequent periodic rig audits.

- Update practice on pressure, including contingency and testing procedure: BP has reviewed and updated its procedures in connection with negative-pressure testing, including consideration of: (i) the purpose of the test; (ii) the barriers to be tested; (iii) identification and evaluation of the consequences of failure; (iv) contingencies in the event that failures occur; (v) operational steps and decision points, descriptions of the roles and accountabilities for the personnel involved, success/failure criteria for the test; and (vi) assurance that contractor procedures are consistent with the BP procedures related to Working with Pressure.

BP issued applicable interim guidance on these issues in December 2010 and has since been in the process of issuing additional guides and implementing applicable practices across all of its operating regions. Implementing practices is done through training workshops and

accompanying training materials, gap assessments, and requirements for reaching conformance. BP continues to progress in implementing the remaining Bly Report recommendations.

3. External Investigations

Numerous governmental and non-governmental entities investigated the *Deepwater Horizon* incident and BP's response, including the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling established by the President, the United States Coast Guard and Bureau of Ocean Energy Management, Regulation and Enforcement (both as part of the Marine Board of Investigation), and the National Academy of Engineers. Each investigation has resulted in the release of one or more voluminous reports. BP has carefully reviewed the findings and the recommendations in each report, including the following common points:

- Because the Macondo incident was the result of multiple factors and the judgments and acts of multiple parties, it points to the need for both BP and the oil and gas industry as a whole to continue strengthening procedures to identify, evaluate and manage risk on a systems basis, and continue fostering a strong industry safety culture with process and goal-oriented safety systems.

- Continued efforts to strengthen procedures and standards are warranted in key drilling activities such as cementing operations, the performance of pressure tests, well design, temporary abandonment and BOP maintenance and operation.

- The regulatory framework should place increased focus on performance-based standards to strengthen risk analysis and management, as well as strengthened prescriptive regulations for key drilling activities like cementing and pressure testing. The Bureau of Safety and Environmental Enforcement's new safety and environmental management systems ("SEMS") rule is recognized as an important achievement in performance-based standards.

- The design and capabilities of BOPs should be improved as a matter of priority.

- Although the spill response was unprecedented in its scope and achievements, both government and industry should continue to improve future oil spill responses

> through: (1) improved oil spill response planning; (2) increased research and development of oil spill response technologies and equipment; (3) new regulations governing the use of dispersants and other key aspects of spill response; and (4) greater coordination in spill response between the federal government and impacted state and local governments.

BP's careful study of internal and external findings and recommendations demonstrates its commitment to preventing a similar tragedy in the future, and to safety and risk management.

4. Past Experiences

The named defendant in this case, BPXP, does not have a criminal history. Neither do either of the guarantors, BP Corporation North America Inc. (primary guarantor) and BP p.l.c. (secondary guarantor). However, the post-incident efforts described above are consistent with past efforts of BP p.l.c.-affiliated companies to learn from safety incidents and improve in the wake of them.

In the five-year period prior to the *Deepwater Horizon* incident, the BP Group of companies implemented numerous safety programs and processes. These measures resulted, in part, from prior challenges that BP companies had faced, including a 2005 fire and explosion at a refinery in Texas City, Texas, owned and operated by BP Products North America Inc., and a 2006 crude oil leak from pipelines at Prudhoe Bay, Alaska, operated by BP Exploration (Alaska) Inc. For example, after the Texas City incident, BP created the Safety and Operations ("S&O") function, discussed above, which centralized at the corporate level the related disciplines of personal and process safety management, integrity management, operations excellence and Health, Safety, Security and Environment ("HSSE") compliance. Beginning in 2008, BP also introduced the Operating Management System ("OMS"), a company-wide management system

that addresses safety and operational risk in BP's global business operations. Incorporating and built upon safety standards and procedures that BP already had in place, OMS aligns with the new federal regulation that BSEE has promulgated for offshore safety and environmental management systems ("SEMS") and was developed based on industry best practices. All of BP's operating businesses, with the exception of those recently acquired, have transitioned onto OMS. These programs represent significant efforts by BP to learn from its mistakes and further enhance its practices, consistent with what BP has done in the wake of the *Deepwater Horizon* accident.

D. Acceptance of Responsibility

BP accepts responsibility for the criminal conduct that is the subject of the Plea Agreement and Information filed in this case. BP deeply regrets the tragic loss of eleven lives in the *Deepwater Horizon* explosion as well as the impact of the spill on the Gulf Coast region. BP also regrets its failure to provide accurate information responsive to a congressional request about flow rate estimates during the spill response.

As shown above, BP has demonstrated its acceptance of responsibility through actions and deeds, as well as words. BP has taken extensive steps to attempt to remediate the environmental harm caused by the spill; make prompt financial recompense to victims; identify the causes of the explosion and inform the world of lessons learned to promote safer drilling; and cooperate with the many governmental and non-governmental inquiries in this case. BP often has unilaterally funded remediation efforts, even though it believes other parties are also legally responsible for substantial amounts of the costs.

It is certainly relevant to acceptance of responsibility that the Bly Report publicly recognized the misinterpretation of the negative pressure test at a time when numerous investigations were underway or beginning and well before criminal charges were brought in this case. That candid and public assessment of a principal cause of the blowout is illustrative of BP's early commitment to determining the causes of the disaster and accepting responsibility for its role.

BP's acceptance of responsibility is also reflected in its early cooperation with various governmental and nongovernmental investigations of the Macondo blowout and spill, discussed above. For example, the Chief Counsel to the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling commended BP for its cooperation in that body's investigation:

> Many individuals involved in the Macondo incident spoke with us voluntarily. They included rig crew members, cementers, mudloggers, equipment suppliers, and shore-based engineers. Notably, many members of BP's Macondo well team met repeatedly with us to explain the chain of events that led to the blowout. BP also released a report of its own nonprivileged investigation of the blowout, and then provided us access to supporting documents. While BP's report differs from ours in scope, purpose, and conclusions, it aided our efforts, and we commend BP for undertaking it ....

Chief Counsel's Report, National Commission on the BP Deepwater Horizon *Oil Spill and Offshore Drilling*, 2011, at p. i (Acknowledgements). While the Commission and several other investigations were critical of BP's role in the Macondo blowout and spill, BP's cooperation

with those investigations is nevertheless worthy of consideration by the Court in evaluating the Plea Agreement and BP's acceptance of responsibility.

In summary, BP deeply regrets the tragic loss of life caused by the *Deepwater Horizon* blowout and explosion as well as the impact of the spill on the Gulf Coast region. From the outset, BP has stepped up by responding to the spill, paying legitimate claims, and helping to fund restoration efforts in the Gulf. It has sought, on its own and in coordination with other investigations, to understand the causes of the Macondo blowout and spill, including its own role in the tragedy. BP apologizes for its criminal conduct, and, as the above information reflects, has accepted responsibility for its actions.

CONCLUSION

The parties respectfully and jointly request that the Court accept the proposed guilty plea by the defendant pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure on the terms set forth in the Plea Agreement submitted to the Court on November 15, 2012.

New Orleans, Louisiana, this 16th day of January, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2012, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all defense counsel of record.

/s/ Derek A. Cohen
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