



Bureau of Ocean Energy Management (BOEM)
Ms. Kelly Hammerle, Chief,
National OCS Oil and Gas Leasing Program
Development and Coordination Branch
Leasing Division, Office of Strategic Resources
Bureau of Ocean Energy Management (VAM-LD)
45600 Woodland Road
Sterling, VA 20166-9216

Submitted via Regulations.gov

Re: Proposed Program for the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program) for years 2023-2028.

Dear Ms. Hammerle,

Please accept the comments on behalf of True Transition on the proposed Program for the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program) for years 2023-2028. True Transition is a public policy collaborative that supports American energy security, energy workers, and their communities.

The Proposed Program for the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program) for years 2023-2028 is not simply the number of vessel or helicopter trips necessary to support offshore production, but also how effectively BSEE and the U.S. Coast Guard are able to oversee those activities. The Proposed Program is not simply a straightforward calculus of rents and revenues, but whether ONRR actually collects on those revenues, communicates to BSEE when enforcement is due, and then whether BSEE communicates to BOEM to bar operators from future participation for violation of lease terms. The cumulative effect of the program hinges on BSEE's ability to enforce lease terms and remove idle infrastructure and BOEM's establishment of appropriate financial assurance to prevent orphaned liabilities. The success of the entire OCS program hinges on the safety of the men and women working on the OCS and the government's ability to regulate and ensure their safety. The Macondo Incident may have split the Marine Minerals Service into three distinct agencies, but those workflows and obligations remain. The leasing program is not distinct or separate from the regulatory program. Our comments speak to the program as a whole and identify where opportunities exist to improve government capacity and effectiveness. Ultimately, the government's fiduciary duty and obligation are with the general American public and the 5-year-program should be evaluated and decided on those grounds.

In a 2022 Appeal from the United States District Court for the District of Columbia regarding two 2018 lease sales, the Court held that the Interior had "unreasonably refused to consider possible deficiencies in environmental enforcement."¹ Unlike a discrete activity like a road or an airport (which of course has

¹Gulf Restoration Network, Et. Al. Appellants vs. Debra A. Haaland, in her official capacity as Secretary of the Interior, Et. Al., Appelles. (United States District Court for the District of Columbia 2022)

continuous impacts), federal OCS leasing is a program. The magnitude of risks and impacts are bound by BSEE, ONRR, and BOEM's ability to effectively regulate lessees and mitigate those risks. This is the central question of the comments below.

We thank the Department of the Interior and its civil servants for their work and the opportunity to comment on the proposed program. We have organized our comments by topic area for ease.

Proposed Program for the National Outer Continental Shelf Oil and Gas Leasing Program (National OCS Program) for years 2023-2028

Topic Area: Safe to Work. Improving working conditions on the OCS.

Risk and Background:

- There is evidence that the frequency of tropical systems is increasing as is the rapid intensification of these storms.² All OCS operators with manned vessels are required to develop and implement an “Emergency Evacuation Plan.”³ Operators of drillships and mobile operations drilling units (MODUs) are required to submit a Stacking Plan which includes the means to evacuate personnel in case of emergency and emergency response procedures to the US Coast Guard Officer in Charge.⁴ These regulations are largely deferential to operators, allowing companies to establish their own triggers for evacuation: "Describe the recognized circumstances, such as fires or blowouts, and environmental conditions, such as approaching hurricanes or ice floes, in which the facility or its personnel would be placed in jeopardy and a mass evacuation of the facility's personnel would be recommended."⁵
- In a recent investigative news story on foreign flagged vessels in the Gulf, a Houston-based attorney observed a marked increase in storm-related OCS lawsuits and that he was personally representing 60 workers who were left in the Gulf to “ride out storms on offshore vessels.”⁶ It is our concern that lessees are intentionally ignoring estimated T-Times and evacuation plans to save on day rates, intentionally putting their workers in harm’s way.
 - **Transocean Deepwater Asgard.**⁷ On Tuesday, October 27, 2020 the Deepwater Asgard’s crew was busy preparing to move the Asgard away from the storm’s path when, according to legal complaints later filed by several crew members: “calls started coming in from the shoreside offices of the Transocean and Beacon stating that the Deepwater Asgard needed to stay latched and continue operations.”⁸ Preparations to evade the storm were halted and a 4:00 p.m. conference call was scheduled for management onshore to weigh in. At the 4:00 p.m. phone call, Transocean and Beacon ordered the vessel to stay latched despite Hurricane Zeta headed directly toward them.” The complaint continued, “Plaintiff, along with other crew members on board, strongly disagreed with the decision to stay latched but had no other options but to obey orders.” The Deepwater Asgard remained in Hurricane Zeta’s path where the crew was forced to endure terrifying and life-threatening

https://earthjustice.org/sites/default/files/files/grn_v_haaland.pdf

² Tom Knutson, Senior Scientist, NOAA/GFDL. Global Warming and Hurricanes An Overview of Current Research Results. <https://www.gfdl.noaa.gov/global-warming-and-hurricanes/>

³ U.S. Coast Guard 33 CFR § 146.140 - Emergency Evacuation Plan. COMDTINST 16000.76 September 2021

⁴ U.S. Coast Guard Marine Safety: Outer Continental Shelf Activities.

<https://www.dco.uscg.mil/Portals/9/OCSNCOE/References/COMDTINSTs/CIM-16000.76-OCS-Activities.PDF?ver=KXStelJ-e-XS5VzhMBweeA%3d%3d>

⁵ U.S. Coast Guard 33 CFR § 146.140 - Emergency Evacuation Plan. COMDTINST 16000.76 September 2021

⁶ Sneath, Sara. Oil Workers On Foreign-Flagged Ships Are At The Mercy of Corporations. May 2022.

<https://ca.movies.yahoo.com/oil-workers-foreign-flagged-ships-130004587.html>

⁷ BSEE. Accident Investigation Report. <https://www.bsee.gov/sites/bsee.gov/files/gc-895-boe-28-oct-2020.pdf>; Safety Alert 415

<https://www.bsee.gov/sites/bsee.gov/files/safety-alerts/bsee-safety-alert-415-inadequate-preparations-in-advance-of-inclement-weather-results-in-excessive.pdf>

⁸ Kelly, Sharon. “Exclusive: 2020’s Hurricane Zeta Nearly Caused ‘Another Deepwater Horizon Catastrophe’ in Gulf of Mexico” (April 2020).

<https://www.desmog.com/2021/04/05/hurricane-zeta-deepwater-horizon-asgard-transocean/>

conditions. The Emergency Disconnect Sequence (EDS) function was activated, unlatching the Lower Marine Riser Package (LMRP) from the blowout preventer and the Asgard was pushed off location. The LMRP endured damage to its frame, piping, and coflex after contacting the seafloor several times.

- **Noble Globetrotter II.**⁹ On August, 29, 2021 the crew of the Noble Globetrotter II was preparing to move out of the path of Hurricane Ida. Nearby oil platforms and drillships were already fully evacuated, and the window they had to avoid the hurricane was closing. Despite conditions and T-Time & Evacuation Reports showing potentially not enough time to secure and evacuate/evade, Shell and Noble supervisors made a decision to conduct a crew change with the first of 4 helicopters arriving at approximately 7:52 am. Noble Drilling never gave the ship an order to stop work, and neither Noble nor Shell told the crew to evacuate. As the crew endured 150 mile per hour winds and 80-ft swells, crewmembers shared videos and provided interviews with a local news station to garner public attention and secure a prompt rescue.¹⁰ The Coast Guard rescued the over 100 member crew. A BSEE investigation concluded that the “temporary abandonment was delayed as the operator and contractor jointly decided to conduct a crew change during an operation and reduced staffing and time constraints.” BSEE also concluded that the “Operator and Contractor monitored storm forecasts waiting on notification of a direct path rather than following operational T-times already calculated relative to current well operations and potential Extreme Weather Event.” A Coast Guard and BSEE joint Safety Alert recommended that operators should “determine a “decision time” to act in the face of an extreme weather event. The decision to continue operations should not depend on a forecast track to the asset location. Don’t wait for a definitive weather forecast to react.”¹¹
- **Seacor Power.** On April 13, 2021 7:02 a.m., a weather report was emailed to the *Seacor Power* indicating 9-12 knots from the southeast with 3-foot seas. The National Weather Service issued several special marine warnings. At 2:10 p.m. the vessel departed Port Fourchon¹² and eight miles away from the port at 3:30 p.m., the vessel sailed into a rain squall. The crew dropped the legs to hold position when the vessel capsized. Six crew members survived the disaster and 13 crew members were killed. Yvette Ledet, the widow of Capt. David Ledet, has filed a Jones Act lawsuit against Seacor Marine LLC, Seacor Liftboats LLC and Talos Energy LLC alleging that the companies ordered the Seacor Power to sail into the Gulf of Mexico on April 13 despite the dangerous weather conditions.¹³ In her testimony to federal investigators, Yvette Ledet explained that prior to his fatal voyage, her husband had expressed frustration and concern with the increasing pace of the offshore industry at all costs, “Because so much was put on these men to try to hurry up, get things done. I mean, I know I keep saying that, but I don’t know how else to express that. Just a lot put on them. A lot of responsibility is put on them. And to try to get it done quickly - because time is money.”¹⁴
- Between 2012 and 2020, the GOM OCS witnessed 188 reported collisions, 1,525 reported fires, 2,080 injuries and 152 fatalities.¹⁵ The OCSLA requires that the Secretary of Interior shall execute the program in a manner that provides for safety. Safety is the number one obligation listed under that act. The primary goal of the Secretary should be to execute the program in a manner that makes the OCS a safer workplace.
- True Transition recently distributed a survey of 38 questions aimed at oil and gas workers throughout the United States. The results, which include responses from 1,655 American oil and gas workers, will be published in a forthcoming report. In that survey we asked respondents about their attitudes towards safety.

⁹ BSEE. Accident Investigation Report.

<https://www.bsee.gov/sites/bsee.gov/files/mc-809-globetrotterii-shell-offshore-29-aug-2021.pdf>

¹⁰ <https://www.klfy.com/louisiana/coast-guard-evacuates-drill-ship-crew-members-stranded-in-gulf/>

¹¹ BSEE. BSEE & USCG Identify Delayed T-Time Execution, Poor Operational Decisions, and Equipment Breakdowns as Contributors to a Drillship’s Unsuccessful Attempt to Avoid Hurricane Ida May 2022.

<https://www.bsee.gov/sites/bsee.gov/files/safety-alerts/bsee-safety-alert-441-bsee-and-uscg-identify-delayed-t-time-execution-or-operational-decisions-and.pdf>

¹² https://www.news.uscg.mil/Portals/11/Headquarters/Investigations/Seacor-Power/Exhibit%20126%20-%20Port%20Fourchon%20%E2%80%93%20Departures%201000-1800%20on%2013April2021.pdf?ver=_OMsp45fT_sYzE-HZCxJ5w%3d%3d

¹³ <https://www.katc.com/news/gulf-search/latest-seacor-power-lawsuit-alleges-captain-was-told-to-sail-into-storm-contradicting-boater-owner>

¹⁴ USCG. Exhibit 223 - NTSB Interview Transcript - Yvette Ledet - Spouse of Captain Ledet.

https://www.news.uscg.mil/Portals/11/Headquarters/Investigations/Seacor-Power/Exhibit%20223%20-%20NTSB%20Interview%20Transcript%20-%20Yvette%20Ledet%20-%20Spouse%20of%20Captain%20Ledet.pdf?ver=5_j-asxKro6I50vBFhAfO%3d%3d

¹⁵ BSEE Offshore Incidents Statistics. <https://www.bsee.gov/stats-facts/offshore-incident-statistics>

- When asked whether a company’s safety program was designed to keep workers safe, shift liability onto the worker or a mix of both: 22% of respondents said company policies were designed to shift liability onto the worker, and 24% of respondents said company policies were designed to keep workers safe and shift liability onto the worker.
- When asked how secure they would feel raising workplace safety issues with management: 20% of respondents said they would feel somewhat nervous and 9% of respondents said they would feel very nervous raising these issues.
- When asked whether they had ever been ordered to engage in unsafe working practices that were against established safety protocols: 22% of respondents said they had been on one occasion and 14% of respondents said they had been ordered to engage in unsafe working practices on multiple occasions.
- When asked if superiors had threatened to terminate their employment or discipline them if they did not engage in the unsafe working practices: 17% of respondents had responded they had been threatened.
- The Outer Continental Shelf Lands Act (OCSLA) mandates that the regulating agency (BSEE) schedules onsite inspection, at least once a year, of each facility on the outer Continental Shelf which is subject to any environmental or safety regulation promulgated pursuant to this Act, which inspection shall include all safety equipment designed to prevent or ameliorate blowouts, fires, spillages, or other major accidents; and (2) periodic onsite inspection without advance notice to the operator of such facility to assure compliance with such environmental or safety regulations. In a recent budgetary request, BSEE asserted that its inspectors conduct inspections annually at more than 1,750 facilities in the OCS. There are currently 1,885 active oil and gas platforms on the OCS.

Recommendations:

- **Safe to Work.**

- **Uniform Safety Plans & Standardized T-Times.** We recommend that BSEE and USCG create and require a routinely updated uniform safety plan (with adjustments appropriate to the type of vessel and planning area) and standardize T-Time countdowns and evacuation procedures. It is neither appropriate nor safe to defer to operators and lessees. In the case of the Globetrotter II, Shell and Noble were relying upon separate T-Times for the same vessel. The OCS features hundreds of specialized companies. It is common for a single installation to house workers from several companies. Deferring to companies creates uncertainty and encourages delay.
 - We also recommend that BSEE and USCG create and issue a “trigger” to cease activity and commit to evacuation procedures.
 - These recent marine disasters demonstrate a tension between the boardroom and the ship bridge. We recommend that BSEE and USCG create a process for captains to check in with district offices and secure official endorsement for decisions that protect the lives of their crew. We recommend the creation of a documentation template for these approvals to protect vessel captains and/or crew from retaliation or wrongful termination based on those decisions.
 - BSEE should issue a NTL alerting operators and workers of these new protocols and processes.
- **Uniform OCS Safety Training.** We recommend that USCG and BSEE in conjunction with the National Offshore Training Center (NOTC) create a uniform safety training curriculum that is reviewed and updated routinely and required for all OCS workers regardless of vessel flag, citizenship of workers (including temporary visa workers), incarcerated workers engaged in transitional work programs, and regardless of worker job duties. Offshore workers should be required to know how to swim and be able to pass a swim test prior to offshore work certification. We recommend that BSEE and USGS create a certification for training centers so that operators know which training centers provide the approved training. We also recommend that the Interior require that operators shoulder the cost of these training requirements and not individual workers. Seacor Power survivor, Brandon Aucoin, told federal investigators about his harrowing experience waking up to the vessel capsizing.¹⁶ He explained that his safety training prepared him for his ordeal in the Gulf and saved his life. He also revealed that one of the men, one of the vessel cooks, did not have a life jacket as a group of five were making their way out of the sinking vessel. It is imperative that all people working in the OCS are prepared for potentially life threatening conditions. As we enter into a new era of multi uses which

¹⁶ USCG. Exhibit 224 - NTSB Interview Transcript - Aucoin - Survivor - Cardinal
https://www.news.uscg.mil/Portals/11/Headquarters/Investigations/Seacor-Power/Exhibit%20224%20-%20NTSB%20Interview%20Transcript%20-%20Aucoin%20-%20Survivor%20-%20Cardinal.pdf?ver=2Kbp6OiH90msOTdP_Y4JhQ%3d%3d

includes offshore wind, this provides a timely opportunity to review these requirements and standardize these safety requirements.

- **Personal Locator Beacons.** We recommend that BSEE require that all operators provide PLBs-Personal Locator Beacons to all OCS workers, regardless of their industry or work function. Following a marine disaster, the US Coast Guard relies upon computer models to calculate where a person can drift over a period of time to focus research and rescue efforts. As the organization, Jason's Beacon (created in honor of Seacor victim, Jason Willis Krel) describes, "There are so many stories from survivors where in broad daylight boats passed right by them and planes or helicopters flew right over them before they were finally rescued, sometimes days later, and these boats and planes were searching specifically for them."¹⁷ The price of current marine tested PLBs are nominal and would save time and resources locating lost mariners. They would also save priceless lives. It is time to make these pieces of equipment mandatory on the OCS.
- **Anonymous Worker Hotline & E-mail.** We recommend that BSEE establish a 24-hour tipline and email address for workers to anonymously report unsafe practices or working conditions and a new protocol to physically investigate those tips. The results of our survey and testimonials from survivors of recent disasters reveal an asymmetrical and dangerous power dynamic on the OCS that could lead to future disasters. There are no labor unions or third party voices that assure worker protections in a way that might deviate from the "critical path" or "get things done." The OCSLA grants authority to BSEE to initiate spontaneous inspections without advance notice to the operator of such a facility to assure compliance with such environmental or safety regulations. BSEE requires no pretense to investigate and inspect. For safety culture to prevail, BSEE must ensure workers that their concerns will be met with speed and seriousness.

Topic Area: Fit to Bid--Eligibility Thresholds and Enforcement of Lease Terms in the OCS Oil and Gas Leasing Program

Risk and Background:

- The threshold to bid and hold an oil and gas lease on the Federal Outer Continental Shelf is objectively low and invites risk to the entire program. The qualification to bid on an OCS oil and gas lease includes merely being a corporate entity or individual with American citizenship or legal residency (30 CFR § 585.106). The OCSLA market is not a "free market," but rather, one the government exclusively controls. It establishes the contours and "speed rails" by which market participants must conform if they desire to participate. Any risks that exist within the OCSLA program are within the government's discretion and authority to control and mitigate. Therefore any risks that remain are due to the government's refusal to appropriately deal with them and an abdication of fiduciary duty to the American public. The threshold on who can participate in the program is the first step in establishing programmatic quality control and shielding the public from undue risks.
- The barrier to entry for offshore oil and gas versus offshore wind is vastly different. The qualification to bid for renewable energy leases in federal waters (30 CFR 585.107) requires proof of "technical and financial capability to construct, operate, maintain, and terminate/decommission projects." The asymmetry between the two programs functions as an explicit subsidy to the incumbent oil and gas industry.
- The Outer Continental Shelf Lands Act states that, "(d) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases", and 30 CFR § 585.106 reinforces this requirement stating that operators are barred from acquiring new leases of they "remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 days (or such other period BOEM allowed for compliance) after BOEM directed you to comply." In the

¹⁷ <https://www.jasonsbeacon.org/>

last lease sale, bidders with properties on the Idle Iron were allowed to participate in acquiring new leases.¹⁸ If these firms are not meeting their due diligence on existing leasing, how are they allowed to acquire new leases?

- As part of the revenue collection process, the Office of Natural Resource Revenue (ONRR) collects annual rental revenues and reporting information on more than 14,400 non-producing leases and monthly royalty revenue and sales reports on more than 26,600 producing onshore and offshore Federal leases. There are alleged companies past due on their payments that were allowed to participate in Lease Sale 257.
- Each Regional Office adjudicates transfers, and in some Operating Rights Interest cases consults BSEE regarding decommissioning liability. In 1990, then Minerals Management Service Chief of Staff, Hank Barthamlow, penned an internal memorandum recommending that the agency implement several reforms including heightened scrutiny of operator financial capability to control the transfer of leases between operators.
- In 2013, Fieldwood, a Houston-based, private-equity backed E&P company was established. Within months Fieldwood quickly gobbled up \$3.75 billion in wells, platforms, and other producing assets. Each transfer was processed by the GOMR OLP Adjudication Unit. The sheer volume of acquisitions for a newly formed company should have triggered a BSEE review and additional scrutiny. In 2018, Fieldwood entered bankruptcy for the first time. In 2020, Fieldwood filed for bankruptcy again, impacting \$7 billion in decommissioning liability, of which it proposed to orphan more than 1,170 wells, 280 pipelines and 270 drilling platforms.
- Divestment of mature assets to avoid asset retirement obligations is a well-recognized and documented industry practice.¹⁹ This is how a large multinational firm knows when to sell an inventory of less producing wells to smaller companies - with the well's remaining profits going to the new company's executives and shareholders.²⁰ Rystad Energy, an Oslo-based energy consultancy, forecasts that by the end of the decade, the world's largest oil and gas companies will divest from more than \$100 billion of assets as they adjust to the energy transition. This practice can also be understood as "fraudulent conveyance²¹," where a company intentionally discharges environmental and tort liabilities.²² One can anticipate that fraudulent conveyance will also be a strategy companies use to remove carbon off the books as pressure to conform to Environmental, Social, and Governance (ESG) standards increases. Blind approval of lease transfers facilitates fraudulent conveyance and makes the Bureau of Ocean Energy Management an active participant in that fraud.
- The Fieldwood bankruptcy raises many questions: Some companies never participate in lease sales, but rather acquire the declining assets of other companies. Is the Interior scrutinizing these transfers appropriately? Are companies entering into the OCS intent on exploiting joint and several liability?

Recommendations:

- **Fit to bid.** Using existing authority, increase Legal, Technical, and Financial Qualifications to Bid on OCS Oil & Gas Leases. The Outer Continental Shelf Lands Act grants the Secretary discretion to determine "qualification for participation." It remains within the authority and discretion of the government to tighten qualification thresholds and require potential bidders to submit any additional information as the government deems appropriate in executing its regulatory and fiduciary duties. There must be a more stringent minimum threshold to hold an oil and gas lease on the OCS. In a very real way, the American government via the Bureau of Ocean Energy Management functions like a

¹⁸ Based on Idle Iron List: Chevron submitted 34 bids and has Idle Iron; Quarternorth Energy (the company created after Fieldwood's second bankruptcy) submitted 2 bids and has billions in Idle Iron; Arena Energy, LLC submitted 11 bids and had Idle Iron; Talos Energy Offshore LLC submitted 10 bids and has Idle Iron; W & T Offshore, Inc. submitted 2 bids and had Idle Iron; Cantium, LLC submitted 3 bids and has Idle Iron; Cox Oil Offshore, L.L.C. submitted 1 bid and has Idle Iron; and GOM Shelf LLC submitted 1 bid and has Idle Iron.

¹⁹ The Boston Consulting Group. 2015. Asset Abandonment in Upstream Oil: A Growing Threat to the Sector. <https://www.bcg.com/publications/2015/upstream-oil-gas-energy-environment-asset-abandonment-in-upstream-oil-agrowing-threat-to-the-sector>;

²⁰ "Most majors do not operate properties once they reach a certain minimum level and regularly divest or decommission assets low on their decline curves." Excerpt from Mark Kaiser's "Decommissioning Forecasting and Operating Cost Estimation." (2019). Gulf Professional Publishing.

²¹ 58 U.S. Code § 548 - Fraudulent transfers and obligations

²² U.S. Environmental Protection Agency. 2021. Case Summary: Court Decision in Tronox Bankruptcy Fraudulent Conveyance Case Results in Largest Environmental Bankruptcy Award Ever. Accessed on: December 20, 2021. Retrieved from: <https://www.epa.gov/enforcement/case-summary-court-decision-tronox-bankruptcy-fraudulent-conveyance-case-results-largest>

bank. It extends credit on the resources of the United States to private entities. Just as a bank must evaluate a loan applicant's risk before granting a loan, so too must BOEM evaluate a potential lessee's risk before allowing that company to participate in the program.

- We recommend that instead of waiting until a company has acquired a lease or is seeking a permit to drill, Interior should vet companies prior and perform financial strength review and establish "pre-qualification" thresholds and procedures. In order to participate in a lease, firms would necessarily need to be of a certain size and possess sufficient capital. Yes, this would preclude smaller firms from participation. As leases extend into deeper waters with greater physical risks and the financialization of commodity markets bring greater unpredictability to the global oil and gas industry, it behooves Interior to tighten eligibility to only the most responsible and capable operators. We recommend that BOEM's Risk Management Policy Group, BSEE's Orphaned Infrastructure Office (described further in the When the Work is Complete), the Office of the Solicitor and the Assistant Secretary of Land and Minerals Management convene a policy group to develop these "Fit to Bid" thresholds and implement before the first scheduled lease sale of the program.
- We recommend that Interior requires company disclosure of global accounting retirement obligations as part of their pre-qualification bidding procedures - this should include those obligations where the pre-lessee shares joint and several or trailing liability. OCS lessees participate in oil and gas programs globally where they accumulate asset retirement and legal obligations. We recommend that the American government begin incorporating those mounting debts into its own risk assessments, lest it find itself hat in hand behind other more prepared regulators.
- **Establish parity between offshore energy leasing programs.** We recommend that DOI make its offshore wind energy pre-qualification standards (30 CFR 585.107) universal to the oil and gas leasing program which would include the requirement of qualified lessees to demonstrate technical and financial capability to construct, operate, maintain, and terminate/decommission projects.
- **Enforce OCSLA & current regulation (30 CFR§585.106 Subpart (b) 2 & 3)²³** and establish a formal process and workflow to implement this part. (Indeed, these processes should be already established according to the 2014 reorganization MOU. But the agencies should be more forthright with Congress if budgetary or staffing limitations are interfering with these processes.²⁴) Incentivize compliance with leases by enforcing consequences.
 - Use existing authority, prohibit bidders with infrastructure on the Idle Iron list from acquiring new leases. Create a workflow between BSEE alerting BOEM's Office of Leasing and Plans of this list. Issue a Notice of Lessees explaining authority (OCSLA & 30 CFR§585.106 Subpart 2 & 3) and the procedure. Increase IBLA staffing in anticipation of appeals. In its latest Budget Justification²⁵, BSEE stated that in "FY 2019 and FY 2020, BSEE ordered a total of 30 operators to decommission over 400 "idle iron" wells....In FY 2021, BSEE initiated a review of current decommissioning enforcement processes and began developing a framework using existing authorities to better communicate obligations and enforce consequences of not performing decommissioning timely and failing to meet regulatory requirements." Prohibiting future acquisition of new leases is a consistent enforcement mechanism and creates appropriate incentives for the legal requirement to decommission leases within a year of ceasing production.
 - We recommend that BOEM use existing authority and enforce existing lease terms and regulations and prohibit OCS bids from companies and individuals with delinquent rentals, royalties or other rents on any federal leases which should include BLM, BOEM, or Tribal leases. Create a workflow between ONRR,

²³ (b) You may not hold a lease or grant under this part or acquire an interest in a lease or grant under this part if:

(1) You or your principals are excluded or disqualified from participating in transactions covered by the Federal nonprocurement debarment and suspension system (2 CFR part 1400), unless BOEM explicitly has approved an exception for this transaction;(2) BOEM determines or has previously determined after notice and opportunity for a hearing that you or your principals have failed to meet or exercise due diligence under any OCS lease or grant; or (3) BOEM determines or has previously determined after notice and opportunity for a hearing that you: (i) Remained in violation of the terms and conditions of any lease or grant issued under the OCS Lands Act for a period extending longer than 30 days (or such other period BOEM allowed for compliance) after BOEM directed you to comply; and(ii) You took no action to correct the noncompliance within that time period.

²⁴ Memorandum of Understanding between BOEM, BSEE, & ONRR.

<https://www.boem.gov/sites/default/files/documents/MOU%20BOEM-BSEE-ONRR%20Collaboration%202014-04-16.pdf>

²⁵ BSEE (2021). "Bureau of Safety and Environmental Enforcement Budget Justifications and Performance Information: Fiscal Year 2022." Retrieved September 19, 2022, Access 2021, from

<https://www.doi.gov/sites/doi.gov/files/fy2022-bsee-budget-justification.pdf>.

alerting BSEE of the need for enforcement actions and alerting BOEM to add companies to its prohibited bidder list.

- Use existing authority and prohibit bidders with poor lease performance. Create a workflow between BSEE alerting BOEM to add companies to its prohibited bidder list.
- **Control the Transfer.** Everything we recommend above, we recommend is included when companies seek to acquire active leases. There must be a more stringent minimum threshold to hold an oil and gas lease on the OCS. Companies should be pre-vetted and approved prior to acquiring existing leases. Only companies that are on the “Fit to Bid” list should be allowed to acquire active leases on the OCS. We recommend that the final approval of lease transfers go through BOEM’s Risk Management Policy Group and BSEE’s newly created Orphaned Infrastructure Office. Yes, this will add time and resources to the process, but as the saying goes, “An ounce of prevention is worth a pound of cure” or in the government’s case: “a few more FTEs and days of review is worth billions in decommissioning liabilities.”

Topic Area: When the Work is Complete - Idle Iron, Decommissioned in Place Pipelines and Orphaned Infrastructure

Risk and Background:

- When an oil and gas operator signs a lease with BOEM, they agree to remove all equipment and clear the seafloor when the infrastructure is no longer useful for operation.²⁶ The Secretary has the authority to unilaterally determine infrastructure is no longer useful for operation.²⁷ The operator then has one year to remove its equipment.²⁸
- There are approximately 1,885 active oil and gas production platforms on the OCS, and more than 60 percent of these facilities are more than 25 years old. In its 2022 Fiscal Year Budget Justification request,²⁹ the Bureau of Safety and Environmental Enforcement describes orphaned liabilities as a growing area of oversight and obligation: “As conventional and renewable energy operations mature, the decommissioning of offshore orphaned infrastructure that are no longer useful for operations will be a growing portion of BSEE’s oversight activities. Orphaned infrastructure (i.e., wells, structures, or pipelines) is infrastructure left on the Outer Continental Shelf (OCS) following termination of the underlying lease or right of way (ROW), without having been decommissioned to regulatory standards and for which there is no remaining liable party(ies) capable of performing decommissioning. The maintenance, monitoring, and decommissioning costs associated with such orphaned infrastructure, less and except any financial assurance proceeds, is called orphaned liability.”
- Since the 1960s, the Bureau of Safety and Environmental Enforcement has allowed the offshore oil and gas industry to leave 97% of pipelines (18,000 miles) on the seafloor when no longer in use.³⁰ Aging oil and gas infrastructure is inhibiting the development of offshore wind.
- Idle Iron is a policy established in Notice to Lessees (NTL) No. 2010-G05³¹ and updated with NTL No. 2018-G03³² to address timelines associated with the completion of platform removal requirements and well plug and abandonment. BSEE introduced Idle Iron to prevent “inactive facilities and structures from littering the Gulf of

²⁶ BOEM, “OIL AND GAS LEASE OF SUBMERGED LANDS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT,” Sec. 22(a),

<https://www.boem.gov/sites/default/files/about-boem/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.pdf>.

²⁷ *Id.* at Sec. 22(b).

²⁸ *Id.* at Sec. 22(c).

²⁹ BSEE (2021). “Bureau of Safety and Environmental Enforcement Budget Justifications and Performance Information: Fiscal Year 2022.” Retrieved September 19, 2022, Access 2021, from <https://www.doi.gov/sites/doi.gov/files/fy2022-bsee-budget-justification.pdf>.

³⁰ U.S. Government Accountability Office, “Offshore Oil and Gas: Updated Regulations Needed to Improve Pipeline Oversight and Decommissioning,” March 19, 2021, <https://www.gao.gov/products/gao-21-293>.

³¹ US BOEMRE (2010). Notice to lessees and operators of federal oil and gas leases and pipeline right-of-way holders in the Outer Continental Shelf, Gulf of Mexico OCS region. NTL No. 2010- G05.

<https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/notices-to-lessees/10-g05.pdf>

³² US BOEM (2018). Idle Iron Decommissioning Guidance for Wells and Platforms. NTL No. 2018-G03 <https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/ntl-2018-g03.pdf>

Mexico by requiring companies to dismantle and responsibly dispose of infrastructure after they plug non-producing wells.” The last known structural idle iron list contained over 600 platforms as of 2010.³³

- Idled platforms pose both a real time hazard with hazards, but with a mandatory buffer of 500 feet per rig, substantially constrain the future scale of offshore wind. Comments by Gulf of Mexico Regional Director Michael Celata at an August 22, 2022, meeting hosted by BOEM confirmed that oil and gas infrastructure that had been decommissioned in place was inhibiting offshore wind development. He answered that the proposed WEAs were selected because wind companies would be able to run new infrastructure "around" the existing oil infrastructure to the shore, unlike most of the rest of the coast which is too thick with oil gear to make it practicable.
- The Rigs-to-Reef program encourages platforms to be left in place (or toppled or removed and moved to a predetermined reefing location) and placed in a state-driven and funded rigs-to-reefs program, as an alternative option to the requirement of removal. Naturally this option has become attractive to oil and gas operators because it is less expensive to “reef” a structure instead of removing it. Today there are more than 515 “reefed” rigs on the seafloor in federal waters, not counting “reefed structures” in state wates.
- From 1947 through 2014, lessees drilled over 120,000 wellbores, 50,000 wells and installed over 7,000 structures in the Gulf. Over the same time period, lessees plugged almost 30,000 of these wells and removed about 5,000 of these structures. Between that same time period, lessees drilled a total of 6,468 wells (including exploratory and development wells) and plugged a total of 2,489 wells (including temporary and permanently abandoned wells) in deep water.³⁴ Recent scholarship has established that the “possibility of wellbore leakage post-abandonment” is a fact. The extent and cumulative impacts of post-abandonment leaks in the Gulf of Mexico is less understood. Federal regulations are such that a lessee must “permanently” plug and abandon its well. If a well leaks, then a lessee in violation of its lease terms and federal law. Interior retains the right to order lessees to abandon a well in perpetuity. But, unless methane bubbles are observed at the water’s surface, BSEE does not yet have a program of post-abandonment monitoring or standards for when a failed and leaking well requires “re-abandonment.” As such, the authority BSEE retains to order an operator to re-abandon a well is all “bark and no bite.”

Recommendations:

- We recommend that the Department of the Interior require that all pipelines be removed and operators clear the seafloor of all obstructions created by the lease and the pipeline right-of-way operations. The GOMR BSEE office has abused its discretionary authority to allow operators to decommission in place, supplanting Congressional intent. While years of NEPA analysis have relied upon an assumption that there is an equilibrium of activity (as new infrastructure is installed, old infrastructure is removed), the GAO has revealed that there has actually been an accumulation. The Secretary of the Interior must issue an unequivocal directive that full removal is both the law and the department practice to ensure that there is no regional deviation and operators have clear regulatory certainty.
- For infrastructure that has already been decommissioned in place, we recommend that the Secretary of Interior order all lessees to remove the pipelines immediately.³⁵ 30 CFR § 250.1754 establishes clear authority to the BSEE Regional Supervisor to order the removal of a pipeline decommissioned in place if that pipeline constitutes an obstruction. These pipelines provide no physical or material benefit to the American public, but they do impose an artificial limit on how much area can be available for offshore wind development or how much sand is available for coastal restoration. To make this administratively feasible, we recommend the establishment of an “Idle Iron Pipeline” program where the Department identifies which of the 18,000 miles of decommissioned in place pipelines obstruct future offshore wind, and prioritize their expedient removal. If the lessees are not financially solvent, DOI should be funded to remove this infrastructure itself, and Congress should fund this activity with a tax on companies that benefit from offshore oil and gas drilling. If the industry won’t pay for its messes, then the people pay; and the Department should do whatever it is empowered to do to prevent this. Anything less than aggressively removing all no longer in use oil and gas infrastructure delays the buildout of American offshore wind and functions as a de facto subsidy to the oil and gas industry.

³³ Keen, Elena. The Billion Dollar Brewing in the Gulf.

<https://www.ecomagazine.com/in-depth/featured-stories/the-billion-dollar-problem-brewing-in-the-gulf>

³⁴ Testimony Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives. “ OFFSHORE OIL AND GAS RESOURCES Information on Infrastructure Decommissioning and Federal Financial Risk Statement of Frank Rusco, Director, Natural Resources and Environment” May 2017.

<https://www.gao.gov/assets/gao-17-642t.pdf>

³⁵ 30 CFR § 250.1754.

- Shorten Idle Iron timelines from “5 years of no operations” to “1 year of no operations” to trigger Idle Iron requirements. Failing to decommission within one year is a violation of the lease terms and a trigger for an Incident of Noncompliance (INC). It should also be the trigger for Idle Iron. Make the Idle Iron list and status of decommissioning public on the BSEE website. We also recommend modifying NTL No. 2018-G03 to end future use exceptions. If a platform or other facility has not been used in the past 5 years, it is unlikely there is any legitimate future use.
- If lessees do not comply with a BSEE order to remove Idle Iron, this should trigger BSEE to alert BOEM to call in the bond. It could compel the lessee to do the work since calling the bond would negatively impact that company’s credit rating. We recommend that the Office of Solicitor increase staff size by at least 40% to accommodate this process and additional workflow.
- If a lessee is noncompliant with Idle Iron even after calling the bond, BSEE should bar that operator from bidding in the next lease sale and prohibit the transfer of its leases to other firms. We recommend the preparation for potential IBLA appeals and to staff up accordingly. We recommend that a MOU and workflow is established between BSEE and BOEM’s Office of Leasing and Plans to ensure that offices are alerted when a lessee is on the no-bid and no transfer list.
- End the “Rigs-to-Reef” program. Because reefed structures require a mandatory buffer of 500 feet per rig, we strongly recommend the termination of this program. Any additional reefed rigs will necessarily limit the scale of future offshore wind, pose hazards for other issues like marine minerals for coastal restoration, and jeopardize the buildout of domestic and secure energy. No new structure should be allowed to be “reefed” in the Gulf of Mexico.
- We recommend the establishment of an Orphaned Infrastructure Office in the Bureau of Safety and Environmental Enforcement. The Orphaned Infrastructure Office should include office staff who monitor and keep up to date records, maps, monitor and escalate INC proceedings and pursue predecessor lessees tied to orphaned infrastructure. And we recommend that this office include inspection staff with in-house drone cameras and ROV equipment to inspect and document the state of idle or orphaned infrastructure on the OCS. This infrastructure poses real physical risks and monitoring requires real physical staff and tools. We recommend that this office is staffed with a set ratio of workers to infrastructure.
- We recommend the establishment of a Post-Abandonment Well Monitoring Group in the Bureau of Safety and Environmental Enforcement. The Post-Abandonment Well Monitoring Group should create a program of post-abandonment monitoring and establish standards for when a failed and leaking well requires “re-abandonment.” This group should assess global best practices on post-abandonment and incorporate the results of newly contracted Interior Study and Department of Interior study on the fate of methane from abandoned wells.³⁶

Topic Area: Energy Sovereignty & Carbon Security

Risk and Background:

The Outer Continental Shelf Lands Act states, “Timing and location shall consider the location of such regions with respect to other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of the resources and space of the Outer Continental Shelf.”

The Gulf of Mexico Outer Continental Shelf has always been a “working sea” with many uses. Those uses: from tourism to commercial fishing to military uses have been managed and shared between respective federal and state agencies. But we are now entering into an era of potential energy and mineral use conflicts, and the Department of the Interior will have sole oversight authority over those conflicts. Interior will need to manage and decide which uses will prevail within particular areas. This will necessitate new tools and processes and those standards should be judged based on what provides the greatest public benefit to the American people.

³⁶ Solicitation No. 140M0122R0005 “Impact of Abandoned Oil and Gas Wells on Air and Water Quality in the Gulf of Mexico (GOM)”

Recommendations:

We recommend the creation of an Energy Security/ Decarbonization analysis tool that will be used to inform the prioritization of development for each Gulf block so that the Government may compare “apples to apples.” If a lease is considered for carbon sequestration versus wind energy development, then the Interior should forecast how much electricity that area could provide with wind (and carbon emissions avoided) versus how much and how long carbon could be reasonably sequestered. Any sequestration analysis should evaluate whether potential sequestration projects simply prolong fossil fuel utilities versus stalling low carbon substitutes. If a decommissioned in place pipeline is in a potential mineral borrow area, then the carbon reduction benefits of a coastal restoration project should be compared to the “benefits” of leaving that pipeline in place.

In terms of energy security, all energy products - be it OCS crude oil or offshore wind - should be compared and graded on their ability to provide domestic energy security. If American energy from the public Outer Continental Shelf is destined for foreign markets, then it should be of less priority for development over offshore wind that will provide power directly to American communities..

Topic Area: Orphaned Liabilities and Financial Assurance

Risk and Background:

- At the time of writing, BOEM held only \$3.5 billion in decommissioning financial assurance and bonding for between \$42 billion and \$64 billion in total liability.³⁷ BSEE generates a distribution of decommissioning cost estimates based on actual decommissioning expenditure data received from OCS operators since mid-2016. The total estimate for decommissioning all infrastructure and plugging all wells in the Gulf of Mexico and the Pacific are between \$42 billion and \$64 billion. This means that at the low end of expected decommissioning costs, the American government is holding 8% in collateral, and at the high end of decommissioning costs is only holding 5% in collateral.
- In its 2022 Fiscal Year Budget Justification request,³⁸ the Bureau of Safety and Environmental Enforcement describes orphaned liabilities as a growing area of oversight and obligation (see above in Topic Area: Idle Iron, Decommissioned in Place Pipelines and Orphaned Infrastructure). BSEE goes on to explain that while new sources of federal funding towards oil and gas decommissioning are needed, that they are still inadequate, “While this funding, along with funding currently available from proceeds collected through BOEM’s Financial Assurance Program and bankruptcy proceedings, is not sufficient to address the structures associated with these wells and pipelines, it does fund the most immediate and urgent need to help reduce the risk of pollution.” In the Department of the Interior’s own words to Congress, it admits that it is under-resourced and ill prepared to confront this looming obligation.
- In its most recent budget request, BSEE requested the creation of a new budget activity and \$30 million in FY 2022 to properly plug and abandon orphaned wells and properly decommission the associated orphaned pipelines. BSEE plans to begin issuing contracts to perform decommissioning services on oil and gas infrastructure orphaned by bankrupt operators where there were no other jointly or severally liable parties.³⁹ This is \$30 million that Americans would not have to shoulder if BOEM screened companies prior to bidding leases, controlled the transfer between operators, and required the necessary financial collateral.
- The government has been aware of this threat for decades. Implemented reforms are either subjective and difficult to implement (tailed financial plans) or were rescinded.
 - In 1990, then Minerals Management Service Chief of Staff, Hank Barthamlow, penned an internal memorandum on OCS Abandonment Liability recommending that the agency increase bonding amounts,

³⁷ BOEM Gulf of Mexico Region Property and Collateral List Reports.
<https://www.boem.gov/oil-gas-energy/risk-management/property-lists-0>

³⁸ BSEE (2021). "Bureau of Safety and Environmental Enforcement Budget Justifications and Performance Information: Fiscal Year 2022." Retrieved September 19, 2022, Access 2021, from
<https://www.doi.gov/sites/doi.gov/files/fy2022-bsee-budget-justification.pdf>.

³⁹ BSEE Industry Day Presentation: Decommissioning Orphaned Wells on the U.S. Outer Continental Shelf Virtual Industry Day Presentation. (February 2022)
<https://www.bsee.gov/sites/bsee.gov/files/technical-presentations//orphaned-asset-rfp-industry-day-presentation-02feb22.pdf>

establish a separate trust fund for orphaned liabilities, and scrutinize operator financial capability to control the transfer of leases between operators.

- In 2014, BOEM issued an Advance Notice of Proposed Rulemaking on Risk Management, Financial Assurance and Loss Prevention.⁴⁰
- In 2015, the Governmental Accountability Office testified to Congress that “the use of financial strength tests and corporate guarantees in lieu of bonds pose financial risks to the federal government. Specifically, [the GAO] found, in August 2005, that the financial assurance mechanisms that impose the lowest costs on the companies using them—such as financial strength tests and corporate guarantees—also typically pose the highest financial risks to the government entity accepting them. In that report, [the GAO] found that, if a company passes a financial strength test but subsequently files for bankruptcy or becomes insolvent, the company in essence is no longer providing financial assurance because it may no longer have the financial capacity to meet its obligations.”⁴¹
- In 2016, BOEM issued a Notice to Lessees which requires additional financial assurance if companies do not meet financial strength requirements. Shortly thereafter the government rescinded that NTL, the financial assurance rulemaking remains in limbo.
- **High Profile Bankruptcies:**
 - Between 2009 and 2018, there were 22 corporate bankruptcies in the OCS affecting 490 OCS properties with an estimated \$4.3 billion in total uncovered decommissioning liability associated with these companies. One of those companies, ATP Oil & Gas Corporation was previously waived from the requirement to provide supplemental bonding based upon its financial strength and reliability. However, ATP’s net worth declined very rapidly to a negative equity and then it declared bankruptcy.
 - In 2013, Fieldwood, a Houston-based, private-equity backed E&P company was established. The company began acquiring producing assets from existing lessees in the OCS.
 - In 2018, Fieldwood entered bankruptcy for the first time.
 - In 2020, Fieldwood filed for bankruptcy again, impacting \$7 billion in decommissioning liability, of which it proposed to orphan more than 1,170 wells, 280 pipelines and 270 drilling platforms. Some estimate that it could take a lifetime to decommission these structures.
 - The Fieldwood case revealed once again that the barrier to entry to profit from American oil and gas resources is too low. It signaled to speculators that there are few consequences to the dine and dash “bankruptcy for profit” business model on the Outer Continental Shelf.
 - It also had a chilling effect on the financial surety markets and revealed that relying exclusively upon third party surety bonds creates new risks instead of mitigating existing risks.⁴² The recent Fieldwood Bankruptcy and the still existing gap between the cost to decommission all associated infrastructure reveals a quickly boiling crisis if not met with appropriate government actions. The government must require cash on hand to cover asset retirement obligations if companies seek to profit from the collective resources of the United States.

Recommendations:

- The Government requires simple and clear tools. There is a one size fits all tool that will ensure there is enough cash on hand to decommission these liabilities and protect the American public from these physical and financial risks. We recommend that the Interior complete and issue its financial assurance rulemaking which should require:
 - Require individual, sinking trust funds (bankruptcy remote) with BSEE as beneficiary for each permitted well, pipeline and supporting infrastructure. A requirement like this would force companies to actually set aside

⁴⁰ <https://www.govinfo.gov/content/pkg/FR-2014-10-09/html/2014-24165.htm>

⁴¹ Testimony Before the Subcommittee on Energy and Mineral Resources, Committee on Natural Resources, House of Representatives. “Offshore Oil and Gas Resources Information on Infrastructure Decommissioning and Federal Financial Risk Statement of Frank Rusco, Director, Natural Resources and Environment” May 2017. <https://www.gao.gov/assets/gao-17-642t.pdf>

⁴² “It is entirely possible insurance companies such as Travelers, Liberty Mutual, and Hanover will honor their threat of abandoning the oil and gas market due to the precedent set in the Fleetwood Energy LLC bankruptcy case. After all, why would insurance companies voluntarily issue bonds with a high likelihood of claims and slim chances of recovering losses. This could lead to disaster for the oil industry, as surety bonds have historically acted as a prerequisite to starting drilling operations.” Bond Exchange. Oil Industry Woes Lead to Massive Changes in the Insurance Industry (July 2021) <https://www.bondexchange.com/oil-industry-woes-lead-to-massive-changes-in-the-insurance-industry/>

enough money to safely retire their wells once they're done producing. Trust funds should be pegged to BSEE's P90 forecasts.

- Lessees would be able to choose either a lump-sum payment upon establishment of the trust that reflects the estimated full costs of decommissioning, or pay an annual payment into a sinking trust fund until it reaches the estimated full cost. Everyone should set aside a little bit each month for retirement. It's time the oil and gas industry is forced to prepare for the end as well.
- Lessees opting for an annual trust fund payment must also purchase a full cost surety bond for each individual well. The surety bond required amount is gradually reduced as the amount in the trust fund with annual payment increases. The surety bond amount should be pegged to BSEE's P90 forecasts. The two accounts will be inversely proportional to minimize the federal government's exposure to the leases's risks. The less funds in the trust fund, the more surety that is required. As the holdings in the trust fund increase, the required annual bonding amount also decreases.
- A way to think about this arrangement is a home mortgage and mortgage insurance: the trust fund payment is the mortgage payment a homeowner makes each month, and the bonding is the insurance on that mortgage that protects the lender (e.g., the federal government) from borrower (lessee) default. This metaphor has two caveats: first, unlike your personal home, OCS lessees make money every month from which they can draw upon to set aside inevitable retirement costs. Second, residential real estate has the potential to appreciate in value, meaning the risk to the lender can actually decrease over time. But oil and gas wells are always depreciating in value, so the risk to the lender (federal government) also increases over time. These combined requirements will push the risks back to the operator where they belong and protect the American people.
- The creation of sinking trusts will ensure that real money is being put aside for future asset retirement obligations and that those funds will be beyond the reach of bankruptcy processes. Once established, the trust fund cannot be terminated without the consent of both the trustee and the beneficiary, in this case the Bureau of Safety and Environmental Enforcement.
- When a lessee has ceased operations, the money will be there. If a lessee becomes insolvent, the money will be there.
- No operator should be exempt from these requirements. There should be no waivers. Multinational companies operate in provinces all over the globe. When those bills come due, which they will, the United States won't need to "queue up" if it has the cash on hand.
- Establish an Orphaned Liability Trust Fund. To deal with the millions of already abandoned and inactive wells, Congress must pass legislation that establishes and implements an industry-wide levy that is deposited into a dedicated trust fund, similar to the federal Abandoned Mine Land Fund. Either the oil and gas industry pays for the sins of its own industry, or it forces the tab upon the general public. We shouldn't accept the latter. Instead of BSEE seeking \$30 million from the general fund to pay to clean up a bankrupt lessee's mess after it profited from American resources, the oil and gas industry should shoulder its own costs.

Topic Area: Parent Liability

Risk and Background:

- The research think tank Carbon Tracker recently revealed a potential loophole in the OCS leasing program in a 2022 report.⁴³ The authors explained that "whether parent corporations assume the decommissioning obligations of their subsidiaries, if and when called upon to do so, will be a matter of self-interest rather than law." They assert that "large publicly-traded E&P parent companies with subsidiary operations in the OCS are not themselves legally responsible for decommissioning. This means that at some point in the future when these liabilities are due, the parent may have the option to voluntarily assume the obligation or walk away."
- Carbon Tracker sought clarification directly from BOEM. GOMR Director of Public Affairs John Fillostrat responded

⁴³ CarbonTracker. Double or Nothing How regulators are gambling on the future self-interest of large oil and gas companies to decommission the Gulf of Mexico's aging infrastructure. 2022.
<https://carbontracker.org/taxpayers-could-be-forced-to-pay-tens-of-billions-to-close-and-clean-up-oil-and-gas-wells-in-the-gulf-of-mexico/>

that, “BOEM does not require that a parent guarantee be provided. A guarantee is simply an option available to companies who have the means to qualify for approval. **Parent companies are not automatically held liable for the OCS obligations of their subsidiaries, unless the parent company itself is also an OCS lessee on the lease.** A parent company may, in a way, assume the obligations of its subsidiary if the parent company issues a guarantee on behalf of the subsidiary; however, BOEM approval of a parent company guarantee is considered on a case-by-case basis, which requires a financial review and analysis of the parent company. Regardless of whether a parent company provides a guarantee, the subsidiary remains jointly and severally liable for its portion of lease obligations.”

- In the Fieldwood Bankruptcy, 17 Fieldwood related companies filed bankruptcy at once. The parent was just a holding company for all of the individual companies. Over 500 E&P companies have joint and several decommissioning liability for Fieldwood’s OCS total assets. With a few notable exceptions including Apache, ConocoPhillips, and Marathon, all appeared to be subsidiaries of publicly-traded E&P companies or small special purpose limited liability entities.⁴⁴
- Courts have been mixed in their interpretation of whether parent companies are merely stockholders or liable, which effectively subordinates administrative law to bankruptcy and corporate law. Without clearer standards, the Interior subjects the program to gross uncertainty.

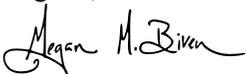
Recommendation:

- We recommend that BOEM issue a Notice to Lessees that requires Lessees to provide a parent company guarantee for subsidiaries. The NTL should make it clear that parent companies are directly, jointly and severally liable for asset retirement obligations. Parent companies derive traceable financial benefit from OCS leases, and their direct liability should be unambiguous. It is against common sense and the spirit of the OCS program to allow a regime where multinationals or any company can only derive benefits and then stick the liability onto the American public.
- We also recommend that this provision be added as a Lease Stipulation in the Notice of Lease Sale documents.
- We also recommend that this provision be added to OCS Lease Agreements.

We once again thank the Department of the Interior and its civil servants for their work and the opportunity to comment on the proposed program. If you have any questions regarding the comments above or require additional supporting materials, please do not hesitate to contact us.

Thank you for your time, dedication, and consideration.

Signed,



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⁴⁴ CarbonTracker. Double or Nothing How regulators are gambling on the future self-interest of large oil and gas companies to decommission the Gulf of Mexico’s aging infrastructure. 2022.
<https://carbontracker.org/taxpayers-could-be-forced-to-pay-tens-of-billions-to-close-and-clean-up-oil-and-gas-wells-in-the-gulf-of-mexico/>