



TRUE TRANSITION

To: U.S. House of Representatives, Committee on Natural Resources,
Subcommittee on Energy and Mineral Resources
From: Megan Biven, True Transition
Date: October 18, 2023
Subject: Financial Assurance and Idle Iron on the Shelf

The National Outer Continental Shelf Oil and Gas Leasing Program is not simply a straightforward calculus of rents and revenues, but whether the Office of Natural Resource Revenue (ONRR) actually collects on those revenues, communicates to Bureau of Safety and Environmental Enforcement (BSEE) when enforcement is due, and then whether BSEE communicates to the Bureau of Ocean Energy Management (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.

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**. 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. While it does not distinguish between state and Federal waters, a recent study estimates that there are 14,000 unplugged, non-producing wells in the Gulf of Mexico.¹
- 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.² The public does not know the full scale of BSEE's decommissioning activities for orphaned properties, but evidence suggests that it is ongoing activity and likely to increase.³
- The research think tank Carbon Tracker recently revealed a potential loophole in the OCS leasing program in a 2022 report.⁴ 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."
- 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.
- Since the 1960s, the Bureau of Safety and Environmental Enforcement has allowed the offshore oil and

¹ Agerton, M., Narra, S., Snyder, B. *et al.* Financial liabilities and environmental implications of unplugged wells for the Gulf of Mexico and coastal waters. *Nat Energy* 8, 536–547 (2023). <https://doi.org/10.1038/s41560-023-01248-1>

² 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>

³ I d

⁴ 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/>



gas industry to leave 97% of pipelines (18,000 miles) on the seafloor when no longer in use.⁵

Risks

- Idled and orphaned platforms and decommissioned in place pipelines pose both a real time hazard, but with a mandatory buffer of 500 feet per rig, substantially constrain alternative commercial uses such as access to [OCS marine minerals for coastal restoration](#).
- The longer a structure is present in the Gulf, the greater the likelihood it will be damaged by a storm. Storm-damaged or toppled structures present a greater risk to safety and require difficult and time-consuming salvage work.⁶ Decommissioning a storm-damaged structure may cost 15 times or more the cost of decommissioning an undamaged structure.⁷
- Divestment of mature assets to avoid asset retirement obligations is a well-recognized and documented industry practice.⁸ 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.⁹ 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 conveyance"¹⁰, where a company intentionally discharges environmental and tort liabilities.¹¹
- 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 OCS leasing program and the American public to gross uncertainty.
- The thorniest issue of this program is for those sole liability leases with orphaned infrastructure and remaining production but no companies are interested in acquiring those leases. The Savings and Loan Crisis of the 1980-1990's provides some direction on how to best manage these leases' end of life, recover remaining production for the benefit of the American public, and responsibly decommission infrastructure.¹² At some point after a company becomes insolvent, lenders foreclose and appoint a receiver to step in and take control of day-to-day operations, organizing the company for liquidation to repay lenders. Instead, just as the FDIC operated in the 90s, public officials can appoint conservators to run day to day operations in the public's interest and put all revenue towards unfunded cleanup.¹³

⁵ 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>.

⁶ Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities Report to Congressional Requesters December 2015 GAO-16-40 U

⁷ Mark J. Kaiser & Mingming Liu (2015) Quantifying Decommissioning Risk in the Deepwater Gulf of Mexico, *The Engineering Economist: A Journal Devoted to the Problems of Capital Investment*, 60:1, 40-74, DOI: 10.1080/0013791X.2014.932036

⁸ 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>;

⁹ "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.

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

¹¹ 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>

¹² US Federal Deposit Insurance Corporation (FDIC). "Managing the Crisis: The FDIC and RTC Experience." <https://www.fdic.gov/bank/historical/managing/documents/history-consolidated.pdf>

¹³ <https://www.govinfo.gov/content/pkg/STATUTE-101/pdf/STATUTE-101-Pg552.pdf> Note: In early 1989, while the executive branch worked on a legislative proposal to solve the thrift crisis, the FHLBB, the FSLIC, and the FDIC developed preliminary plans for the Resolution Trust Corporation (RTC) resolution policies and practices through an interagency relationship that authorized the FDIC to manage thrift conservatorships and receiverships and to develop operating policies and guidelines. In its role as conservator, the RTC took control of the operations of hundreds of insolvent S&Ls. These institutions remained open, but



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.” 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 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.
- **Cash on Hand:** 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 enough money to safely retire their wells once they’re done producing. Trust funds should be pegged to BSEE’s P90 forecasts. When a lessee has ceased operations, the money will be there. If a lessee becomes insolvent, the money will be there.
 - 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 also 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.
- **Orphaned Liability Trust Fund:** To deal with the millions of already abandoned and inactive wells, Congress should 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. While estimates vary, it could cost anywhere between \$60 to \$435 billion to P&A the nation’s abandoned and orphaned wells.¹⁴ Either the industry that has profited from these resources pay, or it forces the tab upon the general public.
- **Idle Iron Pipeline:** 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 alternative commercial and national security uses. To make this administratively feasible, we

their operation and their employees came under control of the RTC until the best method for resolution could be determined and implemented. The objectives of the conservatorship were to establish control and oversight while promoting consumer confidence; to evaluate the condition of the institution and determine the most cost-effective method of resolution; and to operate the institution in a safe and sound manner pending resolution by minimizing operating losses, limiting growth, eliminating any speculative activities, and terminating any waste, fraud, and insider abuse. Shrinking an institution by curtailing new lending activity and selling assets also was a high priority. Although a conservatorship is a temporary solution to gain control of a failing institution and to reduce resolution costs, many S&Ls were in conservatorship for long periods of time because the number of insolvent thrifts was large, staff resources were limited, and funding was periodically interrupted.

¹⁴ American Carbon Registry, “Methodology for Quantification, Monitoring, Reporting and Verification of Greenhouse Gas Emissions Reductions from Plugging Abandoned and Orphaned Oil and Gas Wells,” April 2022, p.40. Retrieved from https://americancarbonregistry.org/carbon-accounting/standards-methodologies/plugging-abandoned-orphaned-oil-and-gas-wells/1-0-acr_aog_peer_review_04272022.pdf



TRUE TRANSITION

recommend the establishment of an “Idle Iron Pipeline” program that prioritizes removal based on alternative uses or potential for hazards.

- **Parental Liability:** BOEM issues 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. This provision should be added as a Lease Stipulation in the Notice of Lease Sale documents and OCS Lease Agreements.
- **Office of Well Thrift Supervision:** Congress creates this entity to function as a pass-through receivership in which all assets, and certain nondeposit liabilities of original oil and gas institutions are instantly “passed through the receiver” to a newly chartered federal mutual association, the **American Well Corporation**. The American Well Corporation, housed in the Department of the Interior, can take over orphaned leases and operate in the American public’s interest. Appointed DOI representatives will act as Conservators of leases, running them in the public’s interest, winding down insolvent wells, and cleaning up inactive and depleted wells and supporting infrastructure with the proceeds from remaining production. Interior can directly employ production and support staff or contract out to approved operators. Instead of settling for just a percentage of profits, Interior can secure 100% of those profits to address orphaned OCS infrastructure and for the United States Treasury. And/ or Interior can allocate a percentage or all production to the Strategic Petroleum Reserve. This will likely require legislation to enact, but we recommend that just as BSEE has requested additional funds to address orphaned liabilities in its recent Budgetary Justifications, that so too, we recommend that BOEM and BSEE will make the case through its Congressional Affairs Office that an American Well Corporation will be in the interest of the American public. True Transition will gladly assist in any of those efforts.

Economic Benefits

- The costs to clean up no longer in use infrastructure is considerable. It will either be born by companies that profited from public resources or by the American public.
- Requiring firms to honor a contract with the United States government is neither an administrative burden nor a disincentive for doing business on the OCS. When companies enter an [OCS lease](#) contract with BOEM to explore and produce resources on the OCS, Lessees contractually agree to permanently plug wells, remove platforms and other facilities, decommission pipelines, and clear the seafloor of all associated obstructions created by the lease operations within 1 year of the lease termination and according to all applicable laws and regulations. It’s the contract they sign and it is the law established by the United States Congress. It is the law of the land and the sea.
- However, the economic activity spurred by stepping up enforcement of these obligations could be significant. Production on the OCS has doubled in the last decade primarily from hitting deeper plays and the rise of more efficient production technologies. A consequence of these efficiency gains is that the complex web of shipyards and fabrication yards and offshore supply vessels and service companies in the Gulf [sit idle](#) and lay off employees. Many of these service companies see [offshore wind](#) and carbon sequestration in the Gulf as a natural pivot for their services and workforces, but they have to survive the downturn until BOEM completes the administrative steps for future uses.
- Enforcing decommissioning obligations could begin immediately, utilizing workforces and equipment today, while clearing the seafloor of obstructions and readying the OCS for future uses. A [2022 study](#) estimates that decommissioning Gulf of Mexico infrastructure “would create 5,265 jobs per year to complete this work, including direct workers, contractors, and suppliers. After taking into account household spending in the economy, this P&A expenditure would be associated with more than 10,500 jobs per year, economy-wide.