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Re: Proposed Rule on Risk Management and Financial Assurance for OCS Lease and Grant Obligations

Dear Deputy Secretary Daniel-Davis and Director Klein,

When oil and gas companies fail to properly decommission offshore wells, platforms, and other infrastructure, and no responsible party can be identified, the U.S. public is left to pay the price. According to a recent Government Accountability Office (GAO) report, the cost of cleaning up the mess that industry leaves behind could be upwards of \$30 billion.<sup>1</sup> Decommissioning offshore oil and gas infrastructure is necessary to protect coastal communities, wildlife, and the environment from oil leaks and spills, and pollution from corroded metal.<sup>2</sup> Last June, the Bureau of Ocean Energy Management (BOEM) issued a proposed rule that would update requirements for supplemental bonding to protect taxpayers by better ensuring that offshore oil and gas leaseholders can meet their decommissioning obligations.<sup>3</sup> **We urge the Bureau of Ocean Energy Management (BOEM) to hold the oil and gas industry accountable by issuing a strong final rule on financial assurance.**

Under the terms of offshore oil and gas leases, lessees agree to permanently plug wells and decommission platforms and other infrastructure within one year after the end of the lease or when those facilities are no longer useful for operations, absent approval to do otherwise.<sup>4</sup> These requirements are also documented in the regulations of the Bureau of Safety and Environmental Enforcement, BOEM's sister agency.<sup>5</sup>

Yet the oil and gas industry has routinely failed to plug wells and decommission infrastructure on time—or at all. GAO found that, for Gulf of Mexico leases that ended in 2010 through 2022, operators missed end-of-lease decommissioning deadlines for over 40% of wells (approximately 4,700 of 10,600) and 50% of platforms (approximately 1,300 of 2,300).<sup>6</sup> BSEE considered over 1,700 of end-of-lease wells and 300

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<sup>1</sup> Government Accountability Office (GAO), “Interior Needs to Improve Decommissioning Enforcement and Mitigate Related Risks,” (hereafter, “GAO”), GAO-24-106229, at 26 (Jan. 2024), <https://www.gao.gov/assets/d24106229.pdf>.

<sup>2</sup> *Id.* at 9.

<sup>3</sup> BOEM, Notice of proposed rulemaking and request for comment, Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 88 Fed. Reg. 42,136 (June 29, 2023).

<sup>4</sup> BOEM, “Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act,” Form BOEM-2005, sec. 22, <https://www.boem.gov/sites/default/files/about-boem/Procurement-Business-Opportunities/BOEM-OCS-Operation-Forms/BOEM-2005.pdf>.

<sup>5</sup> 30 C.F.R. §§ 250.1703, 250.1710, 250.1725.

<sup>6</sup> GAO, at 13.

end-of-lease platforms in the Gulf of Mexico to be delinquent as of June 2023; that is, they had not been decommissioned nor approved for any exception to the deadline.<sup>7</sup> Lessees must also decommission infrastructure that is idle, or no longer useful for operations.<sup>8</sup> As of June 2023, there were over 1,000 delinquent idle wells and 100 delinquent idle platforms in the Gulf of Mexico.<sup>9</sup> Over 800 of these 1,000 wells had been inactive for more than 10 years.<sup>10</sup> Nearly 600 of the delinquent idle wells had not even been temporarily plugged, leaving them more prone to leaking oil.<sup>11</sup>

To ensure that funding is available for cleanup, even if an oil and gas company declares bankruptcy<sup>12</sup> or otherwise fails to fulfill its obligations, BOEM collects bonds from lessees before they begin exploration and drilling.<sup>13</sup> The agency may also require payment of supplemental financial assurance from companies that are less likely to be able to fulfill their financial obligations.<sup>14</sup> However, the financial assurances required to date are insufficient to cover costs. According to GAO, BOEM holds around \$3.5 billion in supplemental bonds, while outstanding decommissioning costs equaled between \$40 billion and \$70 billion as of June 2023.<sup>15</sup> The gap between bonding levels and decommissioning costs places enormous financial risk on the federal government and the public. If companies fail to meet their obligations, decommissioning costs will ultimately be borne by taxpayers. BOEM can close this gap by increasing bonding levels under the pending financial assurance rule.

Decommissioning idle and abandoned infrastructure is imperative to protect coastal communities, the offshore environment, and other ocean users. Unplugged wells can leak oil and drilling fluids into the sea, where oil is toxic to many marine wildlife and has effects ranging from impaired reproduction to disease and reduced physiological health to death.<sup>16</sup> Idle and abandoned infrastructure also creates navigational safety hazards for other vessels transiting the area, especially if navigational aid lights have stopped working.<sup>17</sup> Collisions with oil and gas infrastructure may put the vessel crew at risk of injury or death.<sup>18</sup> Moreover, when oil and gas infrastructure is left in the ocean, it poses a serious risk of oil spills. Over time, tanks, pipelines, and platforms are corroded by the ocean. As it degrades, infrastructure grows increasingly vulnerable to hurricanes, which can topple or destroy platforms, potentially triggering

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<sup>7</sup> *Id.* at 14.

<sup>8</sup> 30 C.F.R. § 250.1703. BSEE guidance defines wells as “no longer useful for operations” when they have not produced in five years and there are no plans for future operations. Platforms are “no longer useful for operations” when they have toppled, destroyed, or have not been used in the past five years for oil and gas operations. BSEE, “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. 2018-G03, at 2 (Dec. 11, 2018), <https://www.bsee.gov/sites/bsee.gov/files/notices-to-lessees-ntl/ntl-2018-g03.pdf>.

<sup>9</sup> GAO, at 19.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Since 2009, 37 offshore oil and gas operators have filed for bankruptcy, according to the Department of Interior. GAO, at 2.

<sup>13</sup> 30 C.F.R. § 556.901.

<sup>14</sup> *Id.* § 556.901(d).

<sup>15</sup> GAO, at 26.

<sup>16</sup> *Id.* at 9-10 (citing National Academies of Sciences, Engineering, and Medicine, *Oil in the Sea IV: Inputs, Fates, and Effects* (Washington, D.C.: 2022)).

<sup>17</sup> GAO, at 8.

<sup>18</sup> *Id.*

disastrous oil spills.<sup>19</sup> In 2004, for example, Hurricane Ivan caused a mudslide that destroyed a Taylor Energy oil platform and more than twenty wells, resulting in an oil spill that continues to this day.<sup>20</sup>

Oil spills can cause serious harm to coastal communities, as we know well from the BP *Deepwater Horizon* catastrophe. The impacts of this disaster have persisted for years. For example, people involved in oil cleanup suffered from diminished blood, liver, lung, and heart function, with prolonged or even worsening symptoms seven years after the disaster.<sup>21</sup> The economic costs to the region have also been significant—cumulatively, the disaster wiped out more than 16 million user days of outdoor recreation such as boating, fishing, and beachgoing.<sup>22</sup> Finally, *Deepwater Horizon* had devastating ecological effects. The spill killed countless wildlife, including nearly twenty percent of the Rice’s whale population, a critically endangered species with fewer than 100 members living today.<sup>23</sup> Wide swaths of ocean and coastal habitats were contaminated with oil, including floating *Sargassum* (seaweed) mats, marshes, and beaches.<sup>24</sup> With hurricanes growing stronger and more intense due to climate change, allowing thousands of abandoned wells and platforms to degrade in the Gulf is a recipe for more harmful oil spills. Decommissioning idle and abandoned wells is imperative for advancing environmental justice as well as protecting wildlife and habitats.

To close the gap between outstanding decommissioning costs and current bonding levels, and to facilitate the decommissioning of offshore infrastructure, we urge BOEM to issue a strong financial assurance rule. As described in our comment submitted on September 6, 2023 regarding BOEM’s proposed rule,<sup>25</sup> attached, the final rule should:

- **Use the P90 estimate of decommissioning costs to establish supplemental financial assurance levels.** The proposed rule presented three probabilistic estimates of decommissioning costs for each facility on any given lease. BOEM proposed using the second-lowest cost estimate, P70, to set the amount of supplemental financial assurance it will require, which would result in only a 70% likelihood that the amount of financial assurance required will cover the full cost of decommissioning. BOEM should instead use the P90 value to set the amount of required supplemental financial assurance, which would increase the likelihood of covering the full decommissioning cost of an offshore facility to 90%.

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<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 10; NOAA, “Private, public effort contains 1 million gallons of oil at longest U.S. spill,” (July 12, 2022) <https://www.noaa.gov/news-release/private-public-effort-contains-1-million-gallons-of-oil-at-longest-us-spill>.

<sup>21</sup> Mark D’Andrea & G. Kesava Reddy, “The Development of Long-Term Adverse Health Effects in Oil Spill Cleanup Workers of the Deepwater Horizon Offshore Drilling Rig Disaster,” *Frontiers in Public Health* 6 (2018): 117, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5932154/#>.

<sup>22</sup> Deepwater Horizon Natural Resource Damage Assessment Trustees, “Chapter 4: Injury to Natural Resources,” in *Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement*, February 2016, 4–667, <https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan>

<sup>23</sup> *Id.* at 4–632.

<sup>24</sup> Boufadel, M.C., et al., “Simulation of the Landfall of the Deepwater Horizon Oil on the Shorelines of the Gulf of Mexico,” *Environmental Science & Technology*, Vol. 48(16), pp. 9496–9505 (2014); Powers, S.P., et al., “Novel Pathways for Injury from Offshore Oil Spills: Direct, Sublethal and Indirect Effects of the Deepwater Horizon Oil Spill on Pelagic Sargassum Communities,” *PLoS ONE*, Vol. 8(9):e78042 (2013); Turner, R., et al., “Distribution and recovery trajectory of Macondo oil in Louisiana coastal wetlands,” *Marine Pollution Bulletin*, Vol. 87(1-2), pp. 57–67 (2014).

<sup>25</sup> Comment from Alaska Environment et al., submitted to BOEM by Ocean Defense Initiative re: Docket No. BOEM-2023-0027 (Sept. 6, 2023), available at <https://www.regulations.gov/comment/BOEM-2023-0027-1977>.

- **Omit consideration of predecessor lessees’ financial strength when determining the amount of financial assurance needed from a lessee.** The proposed rule would no longer allow BOEM to consider the financial strength of predecessor lessees when determining whether to require supplemental financial assurance, or what amount to require, from lessees. We strongly support this change, which would better ensure that bonding levels will cover decommissioning needs.
- **Set a higher required credit rating for waiver of supplemental financial assurance.** The proposed rule would determine whether supplemental financial assurance should be required based on two criteria: (1) a lessee’s credit rating or (2) the ratio of the value of proved reserves on the lease to the lease decommissioning liability. For the credit rating criterion, BOEM proposed to waive supplemental financial assurance if companies have an S&P credit rating of at least BBB or a Moody’s credit rating of Baa3. However, S&P and Moody’s describe these credit ratings, respectively, as indicating “adequate capacity to meet financial commitments”<sup>26</sup> and “subject to moderate credit risk . . . [and that which] may possess speculative characteristics.”<sup>27</sup> Companies with these ratings, by definition, do not demonstrate a strong potential to meet their debt obligations, and BOEM should require a higher credit rating for waiving supplemental financial assurance.
- **Disallow use of proxy credit ratings.** The proposed rule provides that in cases where potential lessees do not have a credit rating from a recognized credit rating agency, BOEM will use a proxy credit rating based on a company's audited financial statements. However, BOEM is not a financial agency nor does it have the capacity to institute such a system, and there is no basis for substituting the agency’s judgment for that of a Nationally Recognized Statistical Rating Organization as identified by the Securities and Exchange Commission. The final rule should remove the option for BOEM to use proxy credit ratings.
- **Remove value of proved reserves as a criterion for waiving supplemental financial assurance.** As noted above, the proposed rule directs BOEM to determine whether supplemental financial assurance should be required based on: (1) credit rating or (2) the ratio of the value of proved reserves on the lease to the lease decommissioning liability. Under the second criterion, when none of the lessees have an investment grade credit rating, BOEM would look to the value of the lease's proved oil and gas reserves relative to the lease’s decommissioning obligations associated with the production of those reserves. However, normal fluctuations in the demand and price of oil and gas coupled with the imminent global shift away from fossil fuels to renewable energy make it likely that the value of proved oil reserves in all leases will decline over time. As a result, lessees may earn less over the life of the lease and in turn, have less capital to cover decommissioning costs. The value of proved oil and gas reserves therefore cannot be considered a reliable substitute for supplemental financial assurances, which are necessary to protect taxpayers and the environment.
- **Include consideration of a company’s record of compliance when setting financial assurance.** Under existing regulations, BOEM may consider a lessee’s “[r]ecord of compliance with laws, regulations, and lease terms” when determining the need for supplemental financial

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<sup>26</sup> S&P Global Ratings, “A Credit Rating is an Informed Opinion,” <https://www.spglobal.com/ratings/en/about/intro-to-credit-ratings> (last visited Feb. 26, 2024).

<sup>27</sup> Moody’s Investors Service, “Global Long-Term Rating Scale,” <https://ratings.moodys.io/ratings#:~:text=Obligations%20rated%20Baa%20are%20subject,such%20may%20possess%20speculative%20characteristics> (last visited Feb. 26, 2024).

assurance,<sup>28</sup> but the proposed rule would eliminate this criterion. We request that the final rule include “record of compliance” as a factor in determining the need for supplemental financial assurance. While violations and acts of non-compliance by oil and gas operators might not, on their own, evidence a company’s financial health, these activities do demonstrate whether a company’s practices and protocols conform to the regulatory and contractual requirements of the agencies. A company’s record of non-compliance could well signal a likelihood of future non-compliance with decommissioning requirements.

Timely and adequate decommissioning of offshore oil and gas infrastructure is vital to protect coastal communities, wildlife, and the ocean environment. Oil and gas companies, however, have repeatedly failed to plug wells, remove infrastructure, and otherwise decommission responsibly. Current financial assurance requirements have been a key reason for this failure, potentially forcing taxpayers to foot the bill to clean up the oil and gas industry’s mess. We urge BOEM to promptly issue a strong final rule that would rightfully place the costs of decommissioning on the companies who have profited from our public resources.

Sincerely,

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<sup>28</sup> 30 C.F.R. § 556.901(d)(v).