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Submitted via www.regulations.gov

Re: Comments on the Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions (30 CFR § 250) [BSEE-2018-0002]

Mr. Angelle:

The Southern Environmental Law Center (“SELC”) submits these comments on behalf of Assateague Coastal Trust, Chesapeake Bay Foundation, Lynnhaven River NOW, Rappahannock League for Environmental Protection, Sierra Club’s Virginia Chapter, Waterkeepers Chesapeake, Audubon North Carolina, Brunswick Environmental Action Team, Coastal Carolina Riverwatch, Crystal Coast Waterkeeper, Environment North Carolina, North Carolina Coastal Federation, North Carolina Conservation Network, North Carolina League of Conservation Voters, Save Our Sea NC, Surfrider Foundation’s Cape Fear Chapter, White Oak-New Riverkeeper Alliance, Charleston Waterkeeper, Savannah Riverkeeper, South Carolina Coastal Conservation League, South Carolina Small Business Chamber of Commerce, South Carolina Wildlife Federation, Winyah Rivers Foundation, Altamaha Riverkeeper, Atlanta Audubon Society, Coosa River Basin Initiative, Environment Georgia, Initiative to Protect Jekyll Island, Oconee Rivers Audubon Society, Ogeechee Audubon Society, St. Marys EarthKeepers, Dogwood Alliance Inc., Stop Offshore Drilling in the Atlantic, Clean Ocean Action, American Littoral Society, Animal Welfare Institute, Coalition to Protect America’s National Parks, Defenders of Wildlife, Earthjustice, Great Old Broads for Wilderness, Inland Ocean Coalition, National Parks Conservation Association, Earth Island Institute’s International Marine Mammal Project, Friends of the Earth, Hands Across the Sand, Ocean Conservation Research, SkyTruth, Surfrider Foundation, The Dolphin Project, The Ocean Foundation, Waterkeeper Alliance, Whale and Dolphin Conservation, Matanzas Riverkeeper, NY4WHALES, Alaska Inter-Tribal Council, Alaska’s Big Village Network, Cook Inletkeeper, and the thousands of members we represent in Virginia, North Carolina, South Carolina, and Georgia, regarding the U.S. Bureau of Safety and Environmental Enforcement’s (“BSEE”) proposed revisions to the Blowout Preventer Systems and Well Control Rule under the Outer Continental Shelf Lands Act (“OCSLA”).¹

The undersigned organizations are strongly opposed to BSEE’s proposal to weaken the Well Control Rule as the agency, at the same time, attempts to open the Mid- and South Atlantic

¹ 83 Fed. Reg. 22128 (May 11, 2018) [hereinafter “Proposed Rule”].

to offshore drilling, putting our prized natural resources and thriving coastal economies at risk. BSEE was created to *promote safety* and *protect the environment* during outer continental shelf (“OCS”) operations, and it is obliged under OCSLA to *prevent the risk of blowouts* through *strict regulation and enforcement*. BSEE must not sacrifice its public trust obligations in favor of enhancing industry profits.

The proposed changes are arbitrary and capricious, and will significantly undermine offshore drilling safety. We are strongly opposed to this rulemaking for the following reasons: 1) changing the Well Control Rule is in direct conflict with the lessons learned from the *Deepwater Horizon* spill; 2) it is risky and misguided to reduce safety regulations while simultaneously attempting to expand offshore drilling; and 3) there does not appear to be any valid reason for changing the Well Control Rule.

The Well Control Rule was one of the most comprehensive safety and environmental regulations ever developed to oversee offshore drilling. It draws extensively on lessons learned from the *Deepwater Horizon* incident, and involved an unprecedented level of stakeholder input. Any plan to weaken the Rule should include a similar level of thoughtfulness, yet the Proposed Rule fails to do so. In particular, we oppose the following modifications:

- Further incorporating industry standards by reference.
- Eliminating the requirement that third-party inspectors be pre-approved by the agency.
- Weakening real-time monitoring requirements.
- Weakening safety standards for blowout preventer equipment.
- Abandoning previous BSEE standards, at the direct request of the industry.

I. Background

Following a series of oil spills and catastrophes on the OCS, including the Santa Barbara oil spill of 1969, OCSLA was amended in 1978 to, *inter alia*, strengthen the environmental and safety standards governing the offshore leasing and development process.² OCSLA requires BSEE to enact safety regulations for offshore energy development. Notably, one of the express purposes of OCSLA, as amended, was to establish a regulatory regime to “prevent or minimize the likelihood of blowouts, [and] loss of well control” on the OCS.³

The Well Control Rule, which created various safety regulations for offshore drilling operations, was promulgated by BSEE on April 29, 2016, and went into effect in July of 2016, in response to the largest oil spill in U.S. history following the explosion of the *Deepwater Horizon*.⁴ BSEE itself was created in the wake of the spill, partially in response to clear conflicts of interests in the responsibilities of the now-defunct Minerals Management Service (“MMS”).⁵ At the time of the *Deepwater Horizon* disaster in April 2010, MMS possessed three conflicting responsibilities: oil and gas leasing and development, environmental and safety regulation, and

² Adam Vann, *Offshore Oil and Gas Development: Legal Framework*, CONGRESSIONAL RESEARCH SERVICE (2018).

³ 43 U.S.C. § 1332(6).

⁴ 81 Fed. Reg. 25888 (Apr. 29, 2016) [hereinafter “2016 Well Control Rule”].

⁵ Press Release, *Salazar Launches Safety and Environmental Protection Reforms to Toughen Oversight of Offshore Oil and Gas Operations*, U.S. DEP’T OF THE INTERIOR (May 11, 2010),

<https://www.doi.gov/news/pressreleases/Salazar-Launches-Safety-and-Environmental-Protection-Reforms-to-Toughen-Oversight-of-Offshore-Oil-and-Gas-Operations>.

royalty collection.⁶ Consequently, then Secretary of the Interior Ken Salazar broke MMS into three independent agencies to manage oil and gas resources on the OCS: (1) BSEE, tasked with safety and environmental enforcement; (2) the Bureau of Ocean Energy Management (“BOEM”), directed to manage oil and gas leasing and development; and (3) the Office of Natural Resources Revenue, created to collect royalties and revenue from oil and gas operations, all housed under the U.S. Department of the Interior (“Interior Department”).⁷

Presently, these agencies are actively considering revising a number of regulations pertaining to the safety of offshore oil and gas drilling as part of a broad deregulatory effort initiated by Executive Orders 13783 and 13795.⁸ In addition to modifying the Well Control Rule, BSEE has also proposed to weaken the Production Safety Systems Rule.⁹ BSEE and BOEM have also repeatedly delayed the implementation of other safety rules¹⁰ and stymied scientific research relating to offshore drilling safety.¹¹ At the same time these agencies are preventing critical safety progress, BOEM has also proposed opening the entire U.S. Atlantic coast to offshore leasing for oil and gas exploration, an expansion that the agency itself deemed “unprecedented.”¹² The Trump Administration’s offshore energy agenda contradicts that of the Obama Administration, which issued several safety rules¹³ and rejected plans to expand offshore drilling to the Atlantic.¹⁴ We are opposed to BSEE’s proposal to weaken the Well Control Rule for the detailed reasons that follow.

II. Changing the Well Control Rule is in direct conflict with the lessons learned from the *Deepwater Horizon* spill.

BSEE announced its plan to roll back the Well Control Rule exactly one week following the eight-year anniversary of the *Deepwater Horizon* spill,¹⁵ a tragedy that took the lives of 11 people, released over 200 million gallons of oil into the Gulf of Mexico, and wreaked havoc on

⁶ BOEM, *The Reorganization of the Former MMS*, <https://www.boem.gov/reorganization/>.

⁷ Sec. Order No. 3299 (May 19, 2010).

⁸ 82 Fed. Reg. 16093 (Mar. 28, 2017); 82 Fed. Reg. 20815 (Apr. 28, 2017).

⁹ 82 Fed. Reg. 61703 (Dec. 29, 2017). SELC strongly opposes the rollback of this critical safety regulation. See Letter from SELC *et al.* to BSEE (Jan. 29, 2018) (attached as Exhibit 1).

¹⁰ BSEE and BOEM have delayed finalizing safety standards on crane safety (80 Fed. Reg. 34113, Jun. 15, 2015) and decommissioning safety (81 Fed. Reg. 46599, Jul. 18, 2016), respectively, See Eric Lipton, *Trump Rollbacks Target Offshore Rules ‘Written With Human Blood’*, N.Y. TIMES (Mar. 10, 2018), <https://nyti.ms/2Gcoh0x>; and Eric Lipton, *Offshore Oil and Gas Operators Want Less Regulation, but Surprise Inspections Find Serious Safety Problems*, N.Y. TIMES (Mar. 18, 2018), <https://nyti.ms/2GEgU2h>.

¹¹ In December 2017, BSEE canceled a National Academy of Sciences offshore safety study. See Press Release, *Statement on Stop-Work Order for National Academies Study on the Department of the Interior’s Offshore Oil and Gas Operations Inspection Program*, THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE (Dec. 21, 2017), <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=12212017>.

¹² 83 Fed. Reg. 829 (Jan. 8, 2018). SELC strongly opposes the proposed expansion of offshore drilling into the Mid- and South Atlantic. See Letter from SELC *et al.* to BOEM (Mar. 9, 2018) (attached as Exhibit 2).

¹³ For example, the Drilling Safety Rule (77 Fed. Reg. 50901, Aug. 2012) and the Safety and Environmental Management Systems (“SEMS”) II Rule (78 Fed. Reg. 20423, Apr. 2013).

¹⁴ Press Release, *Secretary Jewell Announces Offshore Oil and Gas Leasing Plan for 2017-2022*, U.S. DEP’T OF THE INTERIOR (Nov. 18, 2016), <https://www.doi.gov/pressreleases/secretary-jewell-announces-offshore-oil-and-gas-leasing-plan-2017-2022>.

¹⁵ Press Release, *BSEE Sustains Safety and Environmental Protection while Reducing Regulatory Burden*, BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (Apr. 27, 2018), <https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/BSEE-sustains-safety-and-environmental>.

the marine environment.¹⁶ Yet the Well Control Rule was put in place specifically to prevent this type of disaster from happening again.

After the spill, President Barack Obama established the independent “National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling” (hereinafter “BP Oil Spill Commission”), to investigate the causes of the disaster, and make specific recommendations for offshore drilling safety. They concluded that one of the immediate causes of the Macondo explosion was the failure of the blowout preventer (“BOP”).¹⁷ In response to this finding, BSEE adopted the Well Control Rule in part to govern the use of BOPs. The BP Oil Spill Commission applauded this move, calling it “the most broadly important measure” to come out of its findings.¹⁸

Rolling back the very regulations that were put in place to prevent a disaster like the *Deepwater Horizon* oil spill from recurring is reckless and dangerous. In the Proposed Rule, BSEE misleads the public by stating that “none of the proposed changes ignores or contradicts any of the recommendations [made in response to the *Deepwater Horizon* spill], nor would it alter...the Rule in a way that would make the result inconsistent with those recommendations.”¹⁹ On the contrary, the proposed changes seek to weaken requirements for real-time monitoring, BOP testing, and third-party inspections, and attempt to further incorporate American Petroleum Institute (“API”) standards by reference, all of which fly in the face of the BP Oil Spill Commission’s specific recommendations. In fact, members of the BP Oil Spill Commission itself have unanimously spoken out against weakening the Well Control Rule, stating that doing so would, “aggravate the inherent risks of offshore operations, put workers in harm’s way, and imperil marine waters in which drilling occurs.”²⁰ This failure to learn from the past is alarming, particularly given the significant threat to human safety and the environment posed by oil spills.

The *Deepwater Horizon* catastrophe showcased that there is no way to fully reverse the consequences of a significant spill. The oil spill lasted for 87 days, covered over 42,000 square miles of ocean surface, and reached more than 1,240 miles of coastline spanning five states.²¹ Thousands of mammals and sea turtles and more than one million birds were killed.²² The oil spill was also toxic to corals, fish, and shellfish, causing a wide array of effects, including death, disease, reduced growth, impaired reproduction, and other threats to survival.²³ The spill

¹⁶ See, e.g., *On Scene Coordinator Report: Deepwater Horizon Oil Spill*, U.S. COAST GUARD (Sept. 2011), <https://repository.library.noaa.gov/view/noaa/283>, at 1, 33, 163.

¹⁷ National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling (hereinafter “BP Oil Spill Commission”), *Deepwater: The Gulf Oil Disaster and the Future of Offshore Drilling* (Jan. 11, 2011), <https://www.gpo.gov/fdsys/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf>, at 115.

¹⁸ See Letter from BP Oil Spill Commission Co-chairs Bob Graham and William K. Reilly to Sec. Ryan Zinke (May 8, 2017), found at <http://oscaction.org/wp-content/uploads/Secretary-Zinke-letter.pdf>, at 2.

¹⁹ Proposed Rule, 83 Fed. Reg. at 22129.

²⁰ Letter from Graham and Reilly to Zinke, *supra* note 18.

²¹ Bryan P. Wallace, *et al.*, *Effects of the Deepwater Horizon oil spill on protected marine species*, ENDANGERED SPECIES RESEARCH (Jan. 31, 2017), at 1.

²² Alexander C. Kaufman, *New Studies Show How The 2010 Gulf Oil Spill Still Starves Fish At Sea And Plants On Shore*, HUFFINGTON POST (Jul. 18, 2017), http://www.huffingtonpost.com/entry/new-studies-show-how-the-2010-gulf-oil-spill-still-starves-fish-at-sea-and-plants-on-shore_us_596e210ce4b010d77673edce.

²³ David G. Westerholm & Samuel D. Rauch III, *Deepwater Horizon Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement*, NAT’L OCEANIC AND

destroyed myriad habitats, including marsh, wetland, sandy beach, water column, *Sargassum*, and benthic habitats, including rare deepwater coral.²⁴ Overall, the “ecological scope of impacts from the *Deepwater Horizon* incident was unprecedented.”²⁵

Eight years after the *Deepwater Horizon* disaster, severe ecological impacts persist,²⁶ and devastating human health impacts are also ongoing. Oil cleanup workers, fishermen, and residents along the Gulf coast are still suffering from respiratory, neurological, hearing, and vision problems, and oil-related cancer and death cases are rampant.²⁷ Thousands of medical claimants are still awaiting their day in court.²⁸ Public health experts have estimated that 170,000 Gulf residents will have died of spill-related illnesses by 2020.²⁹ Many Gulf residents also continue to suffer from long-term mental health problems as a result of the spill, such as chronic anxiety, depression, and post-traumatic stress disorder.³⁰

We strongly oppose BSEE’s attempt to roll back one of the key safeguards put in place to prevent this from ever happening again. Indeed, this proposal comes only two years after these groundbreaking measures have gone into effect. Reversing course in this way would turn back the clock and knowingly risk another catastrophic oil spill devastating our nation’s marine ecosystems and coastal population.

III. BSEE’s effort to reduce safety regulations while simultaneously attempting to greatly expand offshore oil and gas drilling is risky and misguided.

Earlier this year, BOEM announced its unprecedented plan to make 90 percent of the nation’s OCS available for offshore oil and gas leasing, including frontier areas in the Mid- and South Atlantic.³¹ This plan uses, as a supporting argument, the notion that regulatory oversight of drilling safety is stronger than ever.³² Yet, weakening the Well Control Rule diminishes that regulatory oversight. Attempting to roll back the very regulations upon which the latest drilling plan relies is disingenuous and misleading.

ATMOSPHERIC ADMINISTRATION (Feb. 2016), http://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Front-Matter-and-Chapter-1_Introduction-and-Executive-Summary_508.pdf, at 1-14.

²⁴ *Id.* at 1-15.

²⁵ *Id.* at 1-15.

²⁶ See, e.g., Leila J. Hamdan *et al.*, *The impact of the Deepwater Horizon blowout on historic shipwreck-associated sediment microbiomes in the northern Gulf of Mexico*, NATURE: SCIENTIFIC REPORTS (Jun. 28, 2018).

²⁷ Dahr Jamail, *BP’s Toxic Gulf Coast Legacy: When Covering Up a Crime Takes Precedence Over Human Health*, TRUTHOUT (May 14, 2018), <http://www.truth-out.org/news/item/44440-when-covering-up-a-crime-takes-precedence-over-human-health-bp-s-toxic-gulf-coast-legacy>.

²⁸ David Hammer, *Thousands of cleanup workers that claim BP oil spill made them sick haven’t had their day in court*, WWL NEWS (Apr. 21, 2018), <https://www.wwtv.com/article/news/local/investigations/david-hammer/thousands-of-cleanup-workers-that-claim-bp-oil-spill-made-them-sick-havent-had-their-day-in-court/289-543806235>.

²⁹ Jamail, *supra* note 27.

³⁰ See, e.g., Tonya C. Hansel, *et al.*, *Longer-Term Mental and Behavioral Health Effects of the Deepwater Horizon Gulf Oil Spill*, JOURNAL OF MARINE SCIENCE AND ENGINEERING (Oct. 20, 2015).

³¹ BOEM, *supra* note 12.

³² In its 2019-2022 Draft Proposed Leasing Plan, BOEM assures that, “...numerous safeguards for OCS drilling, development, and production operations, which have increased in the post-*Deepwater Horizon* era...have improved protocols to increase safety measures.” See BOEM, *supra* note 12, at 7-37.

According to the Interior Department’s own assessment, reducing regulatory oversight of offshore drilling makes losses of well control and catastrophic oil spills *more likely*.³³ A catastrophic oil spill would be devastating to Mid- and South Atlantic coastal states and sensitive ecosystems such as the Chesapeake Bay and the Charleston Bump. As described above, the destructive impacts of blowouts such as that which led to the *Deepwater Horizon* disaster are long-lasting and severe. The Southeastern U.S. coast is too valuable to risk such an event happening in its waters.

Even in the absence of blowouts, offshore oil and gas development consistently results in smaller, chronic spills that appear to be the cost of doing business. For example, the U.S. Coast Guard receives around 1,500 oil spill notifications from Louisiana each year, with an average annual volume of 330,000 gallons spilled.³⁴ The Center for Biological Diversity recently estimated that approximately 2.4 million gallons of oil may be spilled in the Atlantic Ocean under BOEM’s proposed leasing plan.³⁵ These estimates could be driven even higher as hurricanes, which have been known to trigger oil spills with treacherous consequences,³⁶ become more intense in the Atlantic with climate change.³⁷ Weakening safety regulations that were designed to prevent blowouts will further contribute to the already routine oil spills that will occur in the Atlantic if the Administration’s plan is finalized.

Thus, if offshore drilling is to increase—particularly into frontier areas—so must the corresponding level of safety and prudence. As underscored by the BP Oil Spill Commission, “drilling in the outer continental shelf remains risky business. Safety and oversight in offshore drilling continues to need improvement, not roll backs.”³⁸

IV. BSEE provides no rational basis for substantially changing the Well Control Rule.

In the Proposed Rule, BSEE explains that the reason for this rulemaking is to “fortify the Administration’s position towards facilitating energy dominance leading to increased domestic oil and gas production, and reduce unnecessary burdens on stakeholders.”³⁹ However, it is not BSEE’s duty to increase production of oil or gas. Rather, BSEE’s mission is to “promote safety, protect the environment, and conserve resources offshore *through vigorous regulatory oversight*

³³ BOEM, *supra* note 12, at 7-35, 7-34.

³⁴ Bob Marshall, *Volunteers use airborne patrols, satellite photos to spot oil spills along Louisiana coast*, THE LENS (Jan. 22, 2014), <https://thelensnola.org/2014/01/22/volunteers-use-airborne-patrols-satellite-photos-to-spot-oil-spills-along-louisiana-coast/>.

³⁵ Abel Valdivia, *Analysis: Trump Offshore Plan Could Cause More Than 5,000 Oil Spills*, CENTER FOR BIOLOGICAL DIVERSITY (Jan. 2018), https://www.biologicaldiversity.org/news/press_releases/2018/offshore-drilling-01-31-2018.php.

³⁶ Off the coast of Louisiana, for example, Hurricane Ivan triggered an undersea mudslide that damaged a cluster of oil wells, resulting in a leak that has been ongoing for more than 13 years. The oil company at fault, Taylor Energy Corp., has maintained that “nothing can be done to completely eliminate the persistent slicks on the surface,” which, according to BSEE, “could last a century or more if left unchecked.” See The Associated Press, *Oil and gas plumes again seen at site of Taylor Energy Gulf well destroyed 13 years ago*, THE TIMES-PICAYUNE (Dec. 20, 2017), http://www.nola.com/environment/index.ssf/2017/12/oil_and_gas_plumes_again_at_ta.html.

³⁷ See, e.g., Kevin J.E. Walsh, *et al.*, *Tropical cyclones and climate change*, WIRES CLIMATE CHANGE (Feb. 21, 2010).

³⁸ Bob Graham & William K. Reilly, *Trump’s Risky Offshore Oil Strategy*, N.Y. TIMES (Jul. 5, 2017), <https://nyti.ms/2tKGspS>.

³⁹ Proposed Rule, 83 Fed. Reg. at 22129.

and enforcement.”⁴⁰ It is inappropriate for the Bureau to sacrifice its public trust obligations in favor of enhancing industry profits.

Further, the Proposed Rule states that weakening the Rule would still “ensur[e] safety and environmental protection,”⁴¹ but references no technical analysis to support this conclusion. BSEE must show that the proposed revisions will not compromise safety, or that drilling technology has improved in such a way that warrants these roll backs. It cannot do so.

The only analysis BSEE appears to have conducted to justify changing the Well Control Rule pertains to projected economic benefits the industry would reap if the proposed changes are finalized—\$986 million in savings and a \$100 million indirect contribution to the overall economy over 10 years.⁴² While these numbers may appear positive, this is a drop in the bucket compared to the damage one oil spill could do. The *Deepwater Horizon* spill, for example, cost the tourism industry a projected \$22.7 billion through 2013, due in large part to “brand damage” in the Gulf.⁴³ Recreation damages from the spill amounted to over \$650 million,⁴⁴ and the ongoing financial impact to fisheries could total \$8.7 billion by 2020.⁴⁵ Together these numbers dwarf the \$100 million in economic gains resulting from the proposed Well Control Rule revisions. Furthermore, the \$986 million cost incurred by the industry pales in comparison to the \$65 billion in damages BP has been forced to pay as a result of the *Deepwater Horizon* catastrophe.⁴⁶ BSEE’s economic analysis in the Proposed Rule plainly shows that any benefits resulting from weakening the Well Control Rule are not worth the risk of the increased likelihood of another catastrophic oil spill.

In the Proposed Rule, BSEE also repeatedly makes the case that well control and BOP equipment continues to improve technologically in a way that renders regulation over such equipment unnecessary.⁴⁷ However, despite apparent improvements in technology, oil spills remain common even in the Gulf, where offshore drilling is well-established.⁴⁸ In addition, the industry continues to be plagued by rafts of serious safety violations.⁴⁹ These incidents illustrate that the industry is not reliable enough to regulate itself, nor has technology improved enough to render critical provisions of the Well Control Rule useless.

⁴⁰ BSEE, *About Us*, <https://www.bsee.gov/who-we-are/about-us> (emphasis added).

⁴¹ Proposed Rule, 83 Fed. Reg. at 22129.

⁴² *Id.* at 22143.

⁴³ Alexandra Adams, *Summary of Information concerning the Ecological and Economic Impacts of the BP Deepwater Horizon Oil Spill Disaster*, NATIONAL RESOURCES DEFENSE COUNCIL (Jun. 2015), <https://www.nrdc.org/sites/default/files/gulfspill-impacts-summary-IP.pdf>.

⁴⁴ Roger Tourangeau, *et al.*, *The Gulf Recreation Study: Assessing Lost Recreation Trips from the 2010 Gulf Oil Spill*, JOURNAL OF SURVEY STATISTICS AND METHODOLOGY (Jul. 6, 2017).

⁴⁵ U. Rashid Sumaila, *et al.*, *Impact of the Deepwater Horizon well blowout on the economics of US Gulf fisheries*, CANADIAN JOURNAL OF FISHERIES AND AQUATIC SCIENCES (Feb. 15, 2012).

⁴⁶ Ron Bouso, *BP Deepwater Horizon costs balloon to \$65 billion*, REUTERS (Jan. 16, 2018), <https://www.reuters.com/article/us-bp-deepwaterhorizon/bp-deepwater-horizon-costs-balloon-to-65-billion-idUSKBNIF50NL>.

⁴⁷ *See, e.g.*, Proposed Rule, 83 Fed. Reg. at 22128, 22140.

⁴⁸ In 2017, the Gulf saw the largest oil spill since *Deepwater Horizon*, spewing upwards of 400,000 gallons of oil from the sea floor. Also that year, three workers died, and there was a fire every three days. *See* Scott Eustis & Raleigh Hoke, *Oil and Gas in the Gulf of Mexico*, GULF RESTORATION NETWORK (Apr. 2018), https://healthygulf.org/sites/healthygulf.org/files/oilgasreportweb_final.pdf.

⁴⁹ *See* Lipton, *supra* note 10 (both articles).

In short, the undersigned are opposed to this entire rulemaking, because it would: 1) unlearn the lessons from the *Deepwater Horizon* spill; 2) put the Mid- and South Atlantic coastlines at an even greater risk of increased spills; and 3) result in far greater costs than benefits. Specifically, we are concerned with the changes that follow.

V. The agency should remove the following proposed changes to the Well Control Rule.

a) BSEE should not incorporate industry standards by reference.

Proposed revision to C.F.R. 30 § 250.198 would further incorporate an industry standard—API Standard 53—by reference, by cross referencing it at §§ 250.730, 250.734, 250.735, 250.737, and 250.739. The objective of this revision is to “align specific requirements more closely with relevant technical standards.”⁵⁰ We are concerned about the practice of broadly relying on an industry-generated safety standard, because it implicates a clear conflict of interest, which has been shown to exacerbate the risks of offshore drilling accidents, as discussed above. Indeed, in its report following the *Deepwater Horizon* catastrophe, the BP Oil Spill Commission sounded a strong warning against agencies leaning too heavily upon API standards when crafting regulation, stating that:

[I]t is clear that API’s ability to serve as a reliable standard-setter for drilling safety is compromised by its role as the industry’s principal lobbyist and public policy advocate. Because they would make oil and gas industry operations potentially more costly, API regularly resists agency rulemakings that...make those operations safer, and API favors rulemaking that promotes industry autonomy from government oversight.⁵¹

Furthermore, industry standards are both more fluid and not enforceable by law, which would make it more difficult for BSEE to effectively carry out its oversight role. Similar problems preceded the *Deepwater Horizon* disaster, according to the BP Oil Spill Commission’s findings. During the 1990s, MMS was unable to maintain safety requirements that kept pace with industry technology, which led to an incomplete safety regulation regime.⁵² The BP Oil Spill Commission criticized this culture, stating:

API-proposed safety standards have increasingly failed to reflect ‘best industry practices’ and have instead expressed the ‘lowest common denominator’ —in other words, a standard that almost all operators could readily achieve. Because, moreover, the Interior Department has in turn relied on API in developing its own regulatory safety standards, API’s shortfalls have undermined the entire federal regulatory system.⁵³

⁵⁰ Proposed Rule, 83 Fed. Reg. at 22132.

⁵¹ BP Oil Spill Commission, *supra* note 17, at 225.

⁵² *Id.*

⁵³ *Id.*

BSEE must look beyond the parties that stand to profit from incorporating its standards and remain objective when crafting its regulations. The undersigned are strongly opposed to the practice of deferring to unenforceable industry standards.⁵⁴

b) BSEE should not remove requirements for inspections by BSEE Approved Verification Organizations.

BSEE's proposal to amend 30 C.F.R. § 250.732 by removing the requirement that *all safety equipment* be inspected by parties that have been certified by the agency is concerning. The Proposed Rule suggests that all mentions of BSEE Approved Verification Organizations ("BAVO"), which are mentioned over 200 times in the Well Control Rule, be completely removed and replaced with "independent third party." BSEE's justification for this is that independent third parties "carry out certifications and verifications similar to those which a BAVO would do," and thus "additional BSEE oversight... would be unnecessary."⁵⁵

However, this stands in stark contradiction with the language used in the 2016 Well Control Rule, which states that "in its oversight role, it is necessary that BSEE make the first decisions as to which third-parties are eligible..., rather than leaving that decision entirely to the operators whose equipment and processes must be evaluated..."⁵⁶ BSEE first advocated for the use of BAVOs to ensure that BOPs were monitored by technically qualified, experienced individuals. When many industry representatives pushed back against BAVO provisions in their comments to the 2015 proposed Well Control Rule, BSEE did not budge, maintaining that the industry should not be consulted when identifying BAVO candidates.⁵⁷ Now, the agency is abandoning, without explanation, its considered position that BAVOs are necessary for preserving BOP safety.

The undersigned organizations strongly oppose changing this provision, as independent third-party inspectors are not adequate substitutes for BSEE-certified reviewers. This revision fails to provide the public with the assurance that trained, experienced, and highly-qualified personnel are carrying out safety inspections. In the wake of the *Deepwater Horizon* spill, the BP Oil Spill Commission recommended:

Government agencies that regulate offshore activity should reorient their regulatory approaches to integrate more sophisticated risk assessment and risk management practices into their oversight of energy developers operating offshore.⁵⁸

Using BAVOs provides this type of approach, and for this reason BSEE must seriously reconsider rolling back this critical regulation.

⁵⁴ SELC opposed a similar regulatory rollback found in the proposed revisions to the Production Safety Systems Rule. *See* Letter from SELC *et al.* to BSEE (Jan. 29, 2018) (attached as Exhibit 1).

⁵⁵ Proposed Rule, 83 Fed. Reg. at 22138.

⁵⁶ 2016 Well Control Rule, 81 Fed. Reg. at 25949.

⁵⁷ *Id.* at 25950.

⁵⁸ BP Oil Spill Commission, *supra* note 17, at 251.

c) BSEE should not weaken real-time monitoring requirements.

BSEE is proposing to revise 30 C.F.R. § 250.724, concerning real-time monitoring (“RTM”) requirements, by no longer requiring that drilling operators submit the data obtained from the well to BSEE or onshore operators. We are extremely concerned that this will discourage drilling companies from being proactive about monitoring conditions at the well in real time, allowing imminent well control losses to go unnoticed and unreported. In the case of the *Deepwater Horizon* spill, oil rig personnel were unable to detect and contain the blowout at the Macondo well, in part because the methods for such data collection were inadequate.⁵⁹ Accordingly, the Well Control Rule introduced the use of RTM “as an ‘additional pair of eyes’ to improve safety and environmental protection during ongoing well operations, as recommended by several reports on the *Deepwater Horizon* incident.”⁶⁰

BSEE asserts that the purpose of these proposed changes is to transition from “prescriptive” requirements towards a more “performance-based” approach that allows for “company specific” tactics for collecting, transmitting, and storing RTM data.⁶¹ But the BP Oil Spill Commission’s repeated emphasis on the need for prescriptive safety standards weighs heavily against such a shift.⁶² Indeed, BSEE itself previously determined that “the benefits of the final RTM requirements...are appropriate in relation to the potential costs...”⁶³ By allowing oil companies to decide what to do with their own data, BSEE is eliminating accountability and allowing offshore drilling safety to suffer tremendously.

d) BSEE should not weaken blowout preventer safety standards.

As mentioned above, the BP Oil Spill Commission concluded that the BOP on the Macondo rig failed to contain underground oil pressure, resulting in an inevitable and uncontrollable blowout.⁶⁴ The Commission further determined that had BOP regulations been stronger, operators would have detected that the BOP was faulty, and the explosion may have been prevented.⁶⁵ We are concerned that BSEE is now attempting to weaken several provisions pertaining to BOP safety standards, particularly in light of the risks associated with another BP-style oil spill.

First, the Proposed Rule makes a number of provisions more confusing. For example, proposed revision to 30 C.F.R. § 250.739 replaces the requirement for regular “complete breakdowns and detailed physical inspections” with just the need for “major, detailed inspections.” Further, a proposed change to § 250.731 replaces the requirement that BOPs be able to “achieve an effective seal” with simply requiring that BOPs can “close.” Changing these phrases simply makes the associated requirements less specific and adds ambiguity to otherwise clear language. This leaves some testing requirements open for interpretation, which cannot ensure the safety and environmental protection provided by BOPs.

⁵⁹ See, e.g., *id.* at 224, 274.

⁶⁰ 2016 Well Control Rule, 81 Fed. Reg. at 25896.

⁶¹ Proposed Rule, 83 Fed. Reg. at 22137.

⁶² See, e.g., BP Oil Spill Commission, *supra* note 17, at 252.

⁶³ 2016 Well Control Rule, 81 Fed. Reg. at 25939.

⁶⁴ BP Oil Spill Commission, *supra* note 17, at 115.

⁶⁵ *Id.* at 74.

Secondly, BSEE is attempting to weaken BOP testing requirements in multiple ways. The Proposed Rule seeks to halve the testing frequency of BOP control stations and pods by amending § 250.737. BSEE's proposed revision to § 250.737 also seeks to lift the requirement that drilling operators submit BOP test results to the agency if a BSEE employee was unable to witness that testing. The riskiness of these roll backs is self-evident considering the *Deepwater Horizon* event; hence we implore BSEE to reconsider changing these provisions.

e) BSEE should not revisit changes it previously rejected as contradicting important findings by the Oil Spill Commission.

Two major proposed changes to the Well Control Rule show that BSEE is unapologetically siding with the industry by disregarding standing agency policy. First, 30 C.F.R. § 250.428 seeks to rescind the requirement that operators submit revised drilling permits when they detect an inadequate cement job, to avoid costs associated with rig "down time" during permit resubmission. Instead, operators may now submit a "contingency plan" along with their original drilling permit that outlines remedial cementing actions that will be taken should an inadequate cementing job occur. This revision was suggested verbatim by an industry commenter after the 2015 proposed Well Control Rule was released, yet BSEE rejected it in the final Rule.⁶⁶

Secondly, § 250.723 would no longer force operators to shut their wells whenever lift boats approach. Industry commenters pushed for this change after the 2015 proposed Well Control Rule, observing that lift boats are more maneuverable and thus do not pose a risk. However, in the final rule, BSEE disagreed, maintaining that:

[E]ven though a lift boat may be more maneuverable..., care must still be taken when any large object...undertakes any movement near a well with producing hydrocarbons. The risk of a collision or other incident that could trigger a well-control event cannot be eliminated simply because the moving object may be relatively maneuverable.⁶⁷

BSEE is now arbitrarily abandoning its previous positions on these safety measures, with no reason other than to eliminate industry burdens. In doing so, it is violating its mission of maintaining drilling safety and environmental protection. Accordingly, we urge the agency to reprioritize safety and reject industry attempts to weaken language that, just two years ago, BSEE itself deemed necessary to prevent another tragedy like *Deepwater Horizon*.

VI. Conclusion

For the reasons stated above, BSEE should not implement the proposed revisions to the Well Control Rule, particularly the revisions that: 1) further incorporate industry standards as reference; 2) eliminate the use of BAVOs; 3) weaken RTM requirements; 4) roll back BOP safety standards; and 5) prioritize industry interests over standing agency policy. The Well Control Rule has been in effect for only two years, an insufficient amount of time to conclude that its purported burdens are greater than the safety needs that prompted its development. Doing so would pose serious risks to human safety and environmental health. Now more than

⁶⁶ 2016 Well Control Rule, 81 Fed. Reg. at 25922.

⁶⁷ *Id.* at 25936.

ever, as this Administration moves to expand offshore drilling into new territories, the agency must maintain the utmost prudence with regard to regulating offshore drilling safety. The Well Control Rule, as written, is necessary to prevent disasters like *Deepwater Horizon* from plaguing Mid- and South Atlantic shorelines.

Thank you for your consideration of these comments.

Sincerely,



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Attachments