August 6, 2018


Scott A. Angelle, Director
Bureau of Safety and Environmental Enforcement
45600 Woodland Road
Sterling, VA 20166


Dear Mr. Angelle:

Oceana, the largest international ocean conservation organization solely focused on protecting the world’s oceans, appreciates the opportunity to submit comments regarding the Bureau of Safety and Environmental Enforcement’s ("BSEE") proposed revisions to the 2016 Blowout Preventer Systems and Well Control Rule ("the Well Control Rule"). Oceana and its more than 850,000 members and supporters in the United States are committed to the well-being of our nation’s marine resources and vibrant coastal communities. We ask BSEE to strengthen the Well Control Rule to provide more safeguards for offshore drilling and reverse its ill-advised attempts to undercut the safety measures put in place under this rule that were designed to prevent disastrous oil spills like Deepwater Horizon. We also urge the United States to instead focus on our transition towards responsibly sited renewable energy – like offshore wind – to supply our nation’s growing energy needs because the risks offshore drilling poses to coastal communities and marine ecosystems in the United States are too great.

I. BACKGROUND

The Deepwater Horizon catastrophe in the Gulf demonstrated the need for reform of our nation’s offshore energy regulatory system. After Deepwater Horizon, BSEE was established as a separate entity detached from the leasing and revenue functions of the Bureau of Ocean Energy
Management ("BOEM") and the Office of Natural Resource Revenue\textsuperscript{1} with a focused regulatory authority to ensure the protection of our oceans as our nation continues to meet its energy needs.\textsuperscript{2} This division in responsibility was intended to provide a structure where robust environmental regulation, analyses, and oversight could be conducted in a manner that provides insulation from the economic pressures of resource management.\textsuperscript{3}

After nearly five years of extensive investigation, into both the causes of the \textit{Deepwater Horizon} spill as well as into points of vulnerability across the drilling industry, BSEE issued the proposed Well Control Rule in April, 2015.\textsuperscript{4} Many commenters, Oceana included, submitted comments on this proposed rulemaking acknowledging the much-needed improvements in drilling safeguards yet highlighting areas where the proposal fell short.\textsuperscript{5} Oceana called for, in addition to more aggressive compliance deadlines, increased BOP requirements to ensure that in an emergency drilling pipes can be successfully severed and capped so that fluid cannot escape.\textsuperscript{6} As is proper in agency rulemaking, BSEE’s issuance of the final Well Control Rule in April 2016 reflected public input. Unfortunately, the final rule failed to institute a requirement for dual blind shear rams on all BOPs,\textsuperscript{7} which would add an additional layer of protection to prevent blowouts.\textsuperscript{8}

In March 2017, President Trump issued EO 13783 directing federal agencies to “suspend, revise, or rescind [regulations] that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest.”\textsuperscript{9} In May 2017 the Secretary of the Department of the Interior directed BSEE to review the Well Control Rule for consistency with the shift in offshore energy policy announced by President Trump.\textsuperscript{10} The following year, BSEE issued its proposal to revise 59 of the 342 provisions in the Well Control Rule with the goal of “encouraging energy exploration and production on the Outer Continental Shelf (“OCS”) and reducing unnecessary regulatory burdens while ensuring that any such activity is safe and environmentally responsible.”\textsuperscript{11} Meanwhile, BOEM proposed to radically expand leasing in the

\begin{footnotesize}
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\item BSEE, \textit{About Us}, \url{https://www.bsee.gov/who-we-are/about-us} (last visited August 2, 2018).
\item BOEM, \textit{The Reorganization of the Former MMS}, \url{https://www.boem.gov/reorganization/} (last visited August 2, 2018).
\item Blowout Preventer Systems and Well Control, 80 Fed. Reg. at 21,507-08.
\item \textit{Id.} at 5-7.
\item Blowout Preventer Systems and Well Control, 81 Fed. Reg. at 25,893.
\item Oceana 2016 WCR Comment Letter pg 5.
\item Exec. Order No. 13,783 at §1.
\item Blowout Preventer Systems and Well Control Revisions, 83 Fed. Reg. at 22,129. Note: In revising the Well Control Rule, BSEE must adhere to the legal requirements of the Outer Continental Shelf Lands Act (“OCSLA”) and the National Environmental Policy Act (“NEPA”) – as well as other relevant statutes. BSEE must conduct studies to assess and manage environmental impacts on human, marine, and coastal environments of the OCS and coastal areas that may be affected by changes to regulation. Outer Continental Shelf Lands Act, 43 U.S.C. §1346(a).
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eastern Gulf of Mexico, Pacific, Atlantic, and Arctic oceans that are currently off-limits, and if allowed would represent the largest ever expansion of offshore oil exploration and drilling in our nation’s publicly owned waters.\(^{12}\)

II. DISCUSSION

BSEE has an important responsibility to prevent catastrophic oil spills, such as the Deepwater Horizon disaster. To fulfill this responsibility, we ask BSEE to strengthen the Well Control Rule to increase offshore drilling safety and reject the proposed changes for the following reasons.

A. BSEE Should Strengthen the Well Control Rule to Increase Offshore Drilling Safety

The original Well Control Rule represented an important step in improving the safety of offshore drilling operations, however, it did not go far enough to protect our oceans. In particular, the final rule failed to reduce compliance periods or improve the reliability of blowout preventers (“BOPs”) by requiring dual blind shear rams—a tool that can cut the drill pipe and stop the flow of oil.\(^{13}\) In Oceana’s previous comment letter, we urged BSEE to require dual blind shear rams on all BOPs because these mechanisms are a crucial last-resort safety measure to seal off a well and would add redundancy to a crucial component of the system. In the final Well Control Rule, BSEE partially incorporated this public input and mandated the use of dual shear rams in deepwater BOPs but did not require dual blind shear rams—blind shear rams provide an extra layer of safety because they are designed to be capable of sealing and shearing the drill pipe during active drilling.\(^{14}\)

Additionally, allowing extended timeframes for implementation of these much-needed requirements rendered the original rule inadequate to truly address the safety of offshore drilling activities.\(^{15}\) There are also concerns that the technology dictated by the original Well Control Rule will not be sufficient to stop a blowout in realistic conditions. The Deepwater Horizon disaster.

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investigation validated this concern when an industry safety specialist, “found that only three of seven blowout preventers successfully sheared pipe in realistic emergency conditions.” This highlights the fact that even with added safety measures and technological developments offshore drilling cannot be made truly safe.

Another flaw in the original Well Control Rule was BSEE’s overly conservative estimation of the environmental benefits of this regulation. BSEE has admitted that it understated the environmental benefits when it assumed that the rule would reduce oil spill risk by only one percent per year. This mistake is further compounded by the fact that BSEE relies on this erroneous one percent reduction of risk assessment in its costs reduction analysis for the proposed Well Control Rule revision currently underway.

BSEE expended an enormous amount of time and resources to craft the original Well Control Rule and should focus this revision on remedying the existing deficiencies in this rule, rather than undermining the safety measures put in place. This proposed revision is a step backward. BSEE should not cater to the demands of the oil industry at the expense of ensuring the safety of the public and the environment.

B. BSEE Should Reject the Proposed Changes to the Well Control Rule

BSEE should reject the proposed changes to the Well Control Rule for the following reasons. First, there are systemic problems in offshore drilling regulation that undermine the effectiveness of safety measures. Second, the proposed revisions are neither needed, nor warranted. Third, the public opposes the expansion and development of offshore drilling and desires greater safety and environmental protection. Fourth, oil spills occur too frequently even with the rules currently in place.

a. There Are Systemic Problems in Offshore Drilling Regulation that Undermine Safety

Systemic problems in offshore drilling regulation severely undermine the effectiveness of safety measures. These problems include out of proportion fines and penalties for safety violations, anemic inspection levels and enforcement capabilities by BSEE, and the potential for operator

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error. As recently as 2016, BSEE’s ability to perform investigations, ensure environmental compliance and conduct enforcement was considered severely inadequate.\footnote{See generally U.S. Government Accountability Office, \textit{Oil and Gas Management, Interior’s Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Long-Standing Oversight Deficiencies} (Feb. 2016), \url{https://www.gao.gov/assets/680/675099.pdf}.}

There is a significant monetary imbalance between current civil penalties and operating costs, meaning that these penalties are far too small to deter risk-tasking. While operating costs for offshore drilling facilities can be approximately $1,000,000 per day,\footnote{Bureau of Ocean Energy Management, Regulation and Enforcement, \textit{Report Regrading the Causes of the April 20, 2010 Macondo Well Blowout – Volume II} at 18 (Sept. 14, 2011), \url{https://www.bsee.gov/sites/bsee.gov/files/reports/blowout-prevention/dwhfinaldoi-volumeii.pdf}.} fines for violations of regulations are capped at $43,576 per violation per day,\footnote{BSEE, \textit{Civil Penalties}, \url{https://www.bsee.gov/what-we-do/safety-enforcement/civil-penalties} (last visited Jul. 16, 2018).} and many violations do not even trigger fines.\footnote{BSEE, \textit{Incidents of Non-Compliance (INCs)}, \url{https://www.bsee.gov/what-we-do/safety-enforcement/enforcement-tools/incidents-of-non-compliance} (last visited Jul. 16, 2018).} There is an extreme financial incentive to disregard regulatory compliance and cut corners for profit. We acknowledge that BSEE cannot remedy this problem through the rulemaking process and encourage Congress to mandate penalties that will discourage risky corner-cutting, but this issue illustrates that the oil industry needs to be closely regulated and held accountable by truly independent monitoring organizations.

Inspection rates for offshore facilities are woefully inadequate to ensure offshore safety.\footnote{See generally U.S. Government Accountability Office, \textit{Oil and Gas Management, Interior’s Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Long-Standing Oversight Deficiencies} (Feb. 2016), \url{https://www.gao.gov/assets/680/675099.pdf}.} These anemic inspection rates undermine regulatory compliance by leaving potential violators unencumbered by regular visits.\footnote{See U.S. Government Accountability Office, \textit{Oil and Gas Management, Interior’s Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Long-Standing Oversight Deficiencies} 24-26 (Feb. 2016), \url{https://www.gao.gov/assets/680/675099.pdf}.} The proposed revisions contemplate granting a substantial degree of self-governance to the oil drillers – an industry that time and time again has demonstrated its inability to obtain oil in a safe, responsible way. A recent series of surprise inspections of drilling rigs revealed a bevy of major safety violations; several of the companies pushing hardest against deregulation were cited for violations far more often than the industry average.\footnote{Eric Lipton, \textit{Offshore Oil and Gas Operators Want Less Regulation, but Surprise Inspections Find Serious Safety Problems}, N.Y. Times (Mar. 18, 2018), \url{https://www.nytimes.com/2018/03/18/us/offshore-drilling-safety-regulation.html}.} The combination of ill-conceived deregulation and rapid expansion of drilling operations without proper safety inspections is an invitation for disaster: our oceans, and those who rely on and enjoy them, deserve better.
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Proper installation of the mandated technology can still be undermined by operator error—a contributing cause of the Deepwater Horizon blowout. With limited funding for this much-needed oversight and large economic incentives to cut corners, it is essentially certain that there will be errors in design, installation, and operation of these complex technologies. Providing improved requirements mandated by BSEE can help to reduce operator error, but truly ensuring that critical errors are avoided ultimately requires detailed and attentive oversight of this industry, which is still woefully lacking.

b. The Proposed Revisions are Neither Needed, Nor Warranted

The proposed revisions to the Well Control Rule are neither needed, nor warranted for the following reasons. First, the proposed revisions irresponsibly allow the oil industry greater opportunity to govern itself without truly independent oversight. Second, the proposed alterations to the prescriptive real-time monitoring requirements, which ensure well operators are carefully monitored, undermine critical safety reporting and monitoring measures. Third, the proposed revisions weaken BOP system safety requirements, which are critical to preventing detrimental blowouts.

i. This Revision Irresponsibly Allows the Oil Industry Greater Opportunity to Govern Itself Without Truly Independent Oversight

This revision irresponsibly allows the oil industry greater opportunity to govern itself without truly independent oversight by replacing the use of BSEE Approved Verification Organizations (“BAVO”) with “independent” third parties for certification and inspection of BOP systems. BAVOs would certify that inspections, maintenance and drilling operations are being conducted in a safe manner. BSEE asserts, however, that the use of independent third parties as certification bodies is a longstanding industry practice and would essentially fulfill the same

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duties as a BAVO.\textsuperscript{31} BSEE also argues that additional agency oversight and submittal to become a BAVO is unnecessary and would increase procedural burdens and costs to industry without meaningful improvements to safety and environmental protection.\textsuperscript{32} Contrary to this contorted agency logic, undeniably dangerous activities, such as oil and gas exploration and development, need more agency oversight not less.

Under the original Well Control Rule, BAVOs would initially be verified by BSEE, without industry consultation to preserve objectivity and promote accountability, and then a list of pre-approved BAVOs would be made available to the public.\textsuperscript{33} The proposed revision would remove agency oversight and allow industry operators to choose the entity evaluating the safety of their own equipment. Of particular concern is the fact that BSEE recognizes American Petroleum Institute ("API")-licensed organizations as “independent” third parties. API, a lobbying organization made up of oil and gas companies, lobbies for increasing drilling and relaxing permit review and safety measures.\textsuperscript{34} Allowing the oil industry to select its own “independent” safety inspectors is disingenuous and dangerous, and should not be permitted in this revision.\textsuperscript{35}

The proposed rule also suggests that these revisions would ease “logistical and economic burdens of having the BAVO onsite at all times during all inspections.”\textsuperscript{36} Under the proposed rule, independent third parties would merely have to review inspection results. The mere review of the review is insufficient to protect safety.

By eliminating BAVO requirements, BSEE is abdicating its responsibility to ensure that oil and gas exploration and development activities are conducted in the safest manner possible and offering the industry unfettered discretion to dictate its own lax safety standards. As a result, the oil industry, notorious for compromising safety to save costs, is even less regulated than before.

\textbf{ii. The Proposed Alterations to Real-Time Monitoring Requirements Undermine Critical Safety Reporting and Monitoring Measures}


\textsuperscript{33} 30 C.F.R. § 250.732 (2016).


BSEE’s proposed alterations to the prescriptive real-time monitoring requirements, which ensure well operators are carefully monitored, undermine critical safety reporting and monitoring measures. Under the proposed revision, drilling operators would no longer be required to submit real-time data obtained from the well to BSEE or onshore operators, but merely collect the data according to company-specific standards instead. In doing so, BSEE is crippling the accountability measures put in place to serve as a necessary “additional pair of eyes” to ensure safety during drilling operations. This lack of real-time review processes was pinpointed in investigations as one of the contributing causes of the Deepwater Horizon spill.

BSEE asserts that this change would merely facilitate a more performance based approach to allow for company-specific techniques for handling this real-time monitoring data. The prescriptive requirement approach, however, is necessary to ensure all companies adhere to the same standards and establishes much-needed accountability within the industry. This need for industry accountability was reinforced by the findings of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling and led to the inclusion of real-time monitoring requirements in the original Well Control Rule. Reversing course now goes against the very logic BSEE relied on in crafting the original Well Control Rule and paves the way for the oil industry to cut corners.

iii. The Proposed Revisions Weaken Much-Needed BOP System Safety Requirements

BSEE proposes to revise requirements for subsea BOP systems, the safety feature that is specifically aimed at ensuring spills like Deepwater Horizon do not happen again. In particular, BSEE attempts to reduce accumulator capacity requirements for subsea BOP stacks—devices meant to ensure that a drill pipe could be sealed even in the event of a power loss between the ocean floor and drilling rig. BSEE also proposes to drastically reduce the frequency of BOP testing and remove the requirements that drilling operators submit BOP test results to BSEE if an agency employee is not available to witness the testing. These safety and oversight measures

are critically important to prevent another devastating blowout and weakening them is extremely unwise and unfounded.

To support these proposed revisions, BSEE estimated the changes will reduce costs across the drilling industry by $824 million over 10 years, but this figure conservatively assumes that the original Well Control Rule only brought about a one percent reduction of risk of oil spills per year – BSEE itself stated it believed the actual risk reduction of the Well Control Rule to be “substantially higher than 1 percent.” Ignoring the obvious value of this rule, BSEE’s Environmental Analysis of the proposed revisions concludes that loosening of safety requirements would actually reduce environmental impacts of drilling by cutting down on unproductive downtime. The diminished frequency of testing is said to “likely reduce wear on critical BOP and wellhead components, likely lessening the risk of … spills.” The contorted rationality required to arrive at this conclusion that less safety results in … more safety is only made possible by entirely disregarding an accurate assessment of the benefits the rule was intended to provide in the first place. This focus on short-term cost savings to industry is shortsighted and reckless.

C. The Public Opposes the Expansion and Development of Offshore Drilling and Desires Greater Safety and Environmental Protection

The Trump Administration’s push for American energy dominance is entirely out of touch with the public’s desire for greater safety and environmental protection for the following reasons. First, there is overwhelming opposition to expanding offshore oil and gas exploration and development. Second, this proposed revision puts industry profit above public safety.

a. There Is Overwhelming Opposition to Expanding Offshore Oil and Gas Exploration and Development

There is strong opposition to offshore oil and gas activities along our coasts. On the East and West Coasts, over 280 municipalities, over 1,800 elected officials, and East and West Coasts alliances representing more than 43,000 businesses are all opposed to offshore oil and gas activities off their shores. Nearly all the Governors along the East and West Coasts – Republicans and Democrats alike—have expressed concern with and/or opposition to expanded offshore drilling.

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46 BSEE, Oil and Gas and Sulphur Operations in The Outer Continental Shelf – Blowout Preventer Systems and Well Control, Final Environmental Assessment at 7 (2016).
47 Id.
The Trump Administration’s move to haphazardly expand oil and gas exploration and development is entirely out of touch with what affected coastal communities need and desire.

b. This Proposed Revision Puts Industry Profit Above Public Safety

The proposed revision of the Well Control Rule is a step in the wrong direction. This action actively weakens drilling protections and puts profit for oil companies ahead of the coastal communities and marine life that are at risk when devastating oil spills occur. Oceana’s attempts to engage in this “open” revision process were thwarted when Oceana, and other non-profit organizations, were purposefully disconnected from a public engagement call hosted by BSEE. Oceana campaign director Diane Hoskins wrote a letter to Secretary of the Interior Ryan Zinke and BSEE director Scott Angelle expressing frustration and requesting an explanation for the exclusion of important stakeholders, but received no response. By purposefully excluding interested members of the public, the Trump Administration is creating serious doubt about the fairness and integrity of their public engagement process.

Moreover, this attempt to dismantle current drilling safety standards is occurring simultaneously with the Trump Administration’s efforts to expedite offshore oil and gas exploration and development on the OCS. Currently, BOEM is moving forward with its plan to expand offshore drilling into new areas. Considered together, these actions by two different Bureaus within U.S. Department of the Interior represent a dangerous combination of expanding drilling at the expense of ensuring public safety. We need more safety, not less.

D. Oil Spills Occur Too Frequently with Current Regulations

Offshore oil and gas exploration and development inevitably leads to oil spills that are incredibly toxic to living organisms, both physically and biochemically. Oil spills include large-scale disasters, such as the Deepwater Horizon spill, but also smaller spills that happen often, or even

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routinely, during exploration, production, and transportation.\textsuperscript{56} There were nearly 2,900 violations of environmental or safety regulations in federal waters on the OCS between 2013 and 2017, causing fatalities, injuries, losses of well control, fires, explosions, collisions, and spills of over fifty barrels.\textsuperscript{57} BOEM also reports that in the Gulf from 1964 to 2015 there were over 2,400 reported oil spills, and in 2016 alone, there were nearly 500 accidents involving offshore oil rigs.\textsuperscript{58}

The \textit{Deepwater Horizon} spill highlights how a single accident can lead to the loss of human life, devastate marine ecosystems, and cause tens of billions of dollars in economic damage. The \textit{Deepwater Horizon} disaster killed eleven rig workers, spilled over 200 million gallons of oil, fouled thousands of miles of coastline, endangered public health, and killed thousands of birds, dolphins, and fish.\textsuperscript{59} Oil spills also significantly harm coastal economies – seaside communities on the Gulf are still recovering, physically and economically, from the estimated $36.9 billion in damages caused by the \textit{Deepwater Horizon} spill.\textsuperscript{60} Moreover, many of the impacts from this disaster are still being studied and the long-term ramifications remain unknown.\textsuperscript{61}

Our coastlines are vital and beautiful ecosystems that also anchor billion dollar economies and support hundreds of thousands of jobs. It is estimated that fishing, tourism, and recreation along U.S. coastlines supports nearly 2.7 million jobs and generates 180 billion in GDP.\textsuperscript{62} The proposed revision places these benefits at risk for savings of less than $100 million annually in reduced administrative burden. The federal push to expand offshore drilling operations is both ill-advised and out of touch with the needs and wishes of those who inhabit the coast.

\textsuperscript{56} Cheryl McMahon Anderson et al., BOEM, \textit{Update of Occurrence Rates for Offshore Oil Spills} (2012), available at \url{https://www.boem.gov/uploadedFiles/BOEM/Environmental_Stewardship/Environmental_Assessment/Oil_Spill_Modeling/AndersonMayesLabelle2012.pdf}.
\textsuperscript{60} Lawrence. C. Smith et al., \textit{Analysis of Environmental and Economic Damages from British Petroleum’s Deepwater Horizon oil spill}, 74 Albany L. Rev. 563, 563–85 (2011).
CONCLUSION

Oceana and its members appreciate the opportunity to express our concerns with the proposed revisions to the Well Control Rule. We ask BSEE to strengthen the Well Control Rule to provide more safeguards for offshore drilling and reverse its ill-conceived attempts to undercut the safety measures put in place under this rule. Furthermore, the only way to truly minimize risks from offshore drilling is to stop the expansion to any new areas and pursue clean and safe renewable energy. The United States must transition towards responsibly sited renewable energy because the risks offshore drilling poses to coastal communities and marine ecosystems in the United States are too great.

Thank you for your time and thoughtful consideration.

Sincerely,

K. Diane Hoskins
Campaign Director, Climate and Energy

cc:

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