GULF ENERGY
ALLIANCE

December 15, 2020

Submitted via Federal rulemaking portal: http://www.regulations.gov

Department of the Interior
Bureau of Safety and Environmental Enforcement
Office of Offshore Regulatory Programs, Regulations and Standards Branch
Attention: Kelly Odom
45600 Woodland Road (Mail Code VAE-ORP)
Sterling, Virginia 20166

RE: Risk Management, Financial Assurance and Loss Prevention, RIN 1082-AA02

Dear Mr. Odom,

The Gulf Energy Alliance ("GEA") is a coalition of leading independent offshore energy producers, and we greatly appreciate the Administration's strong leadership in promoting robust, responsible offshore energy development. We also share the Department of Interior's commitment to ensuring ongoing investment and royalty production in the Gulf of Mexico.

Collectively, independent oil and gas companies, working in all water depths of the U.S. Outer Continental Shelf ("OCS"), contributed approximately 53 percent of the total revenues from OCS operations paid to the U.S. Treasury in 2019, and approximately 47 percent of the total 2019 OCS production.[1] The single greatest regulatory challenge for independents in the Gulf of Mexico has been the cloud of uncertainty created by the absence of clear guidance on financial assurance requirements dating back to the Bureau of Ocean Energy Management's ("***BOEM***") Notice to Lessees 2016-N01, in which BOEM overhauled the financial assurance process for oil and gas infrastructure on the OCS (the "***2016 NTL***").

The GEA applauds the Department of Interior for issuing proposed regulations relating to financial assurance published in Volume 85 Federal Register 65904 *et. seq.* (the "***Proposed Regulations***"), and it is vitally important that the Proposed Regulations promptly become a final rule. The goal of the updated regulations must be to safeguard American taxpayers from ever being responsible for offshore decommissioning, while, at the same time, ensuring that the Department of Interior accomplishes its statutory obligation to make the "vital resource" of the OCS available for "expeditious and orderly development."[2] The Proposed Regulations establish the guidance and rules that the industry sorely needs and has been lacking for years. The uncertainty created by the

[1] See BSEE 2019 Production and Revenue Data, attached as Appendix 1.

[2] 43 U.S.C. § 1332(2).

current financial assurance regulations and guidance has hindered investment in the Gulf of Mexico. At such an uncertain time for the offshore oil and gas industry, finalizing the Proposed Regulations would give the industry the regulatory certainty it needs.

The GEA is committed to the principle that the goal for any financial assurance framework should be the "protection of American taxpayers from exposure to financial loss associated with OCS development, while ensuring that the financial assurance program does not detrimentally affect offshore investment or position American offshore exploration and production companies at a competitive disadvantage."[3] To that end, we believe the Proposed Regulations strike the critical balance between a calibrated and common sense financial assurance framework while, at the same time, creating a framework which protects the U.S. taxpayers without driving business, royalties, jobs, and new investment out of the Gulf of Mexico.

Before commenting on the Proposed Regulations, it is important to understand the history of Gulf of Mexico exploration and development. The major oil and gas companies—which comprise some of the largest corporations in the world—began developing the offshore areas of the Gulf of Mexico in the 1940s. As technology evolved, the majors began exploring in progressively deeper waters, and the independents represented by the GEA also participate in and focus on the development of deep water properties. Over the last 30 years, the majors sold their properties in the shallower regions of the Gulf of Mexico to focus more exclusively on deep water opportunities.[4] The sales of shallow water assets were made almost exclusively to independent companies. In these transactions, the majors—recognizing their continued joint and several liability for decommissioning—faced a commercial decision: whether to maximize the cash consideration for the transaction at the time of the sale, or to accept a reduced cash consideration in addition to some form of financial assurance from the buyer upon which they could draw in order to meet decommissioning obligations which could potentially arise under the joint and several framework. In many cases, the majors made the decision to maximize the sales proceeds rather than requiring security to cover the potential decommissioning liability.

1. Independents are Addressing P&A.

Independents are meeting their plug and abandonment obligations and are methodically removing the structures which were largely installed and utilized many years ago by predecessor owners. Indeed, of the approximately 7,070 installed platforms, over 5,100 – or approximately 72% – have been removed. Independents are removing approximately 100 structures every year.[5] In short, the

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[3] 85 FR at 65907.

[4] While the decommissioning regulations rightfully apply to the entire OCS, the GEA recognizes that the bulk of offshore infrastructure slated for decommissioning is located in the shallower waters given the history of developing progressively deeper properties.

[5] Information/Briefing Report issued by BSEE and BOEM (*Gulf of Mexico Data and Analysis/Leasing, Drilling and Production, Gulf of Mexico Shallow Water Potential Stranded Assets*) (November 19, 2019), https://www.bsee.gov/sites/bseee.gov/files/reports//shallow-water-report-01.pdf. In addition to documenting the consistent decommissioning activities being conducted in shallow waters by the independents, the report also highlights the marginal nature of many oil and gas fields and the important need for smart policy by Interior if the "vital resources" on the OCS are to be developed, ("... the U.S. GOM Shelf is limited in terms of resource availability. With the expected sizes matching the small reserve size under this study, the best hope for such projects on the shelf is reliance on existing facilities and infrastructure. The market conditions do not favor development of the small

independents are addressing their obligations to remove these structures and are not leaving the American taxpayer on the hook. Imposing additional bonding requirements on the independents would only take away capital that could be deployed to continue to develop Gulf of Mexico resources and perform the decommissioning that is required under existing regulations.

2. Owner's Asset Retirement Obligation.

Interior should use the lessee or grant holder's asset retirement obligation ("ARO") as the basis for determining the extent of decommissioning liability.[6] Nearly every lessee or grant holder has audited financials and all companies in the country utilize U.S. Generally Accepted Accounting Principles ("GAAP") to calculate their decommissioning liability.[7] Accordingly, a definition of the decommissioning liability should be added to 30 CFR § 250.150 to adopt the lessee or grant holder's ARO, as set forth in the company's audited financials. The adoption of the lessee or grant holder's ARO is consistent with Interior regulations.[8] In fact, the Proposed Regulations themselves provide:

> "BOEM has concluded that audited financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP)... provide the level of certainty that the financial statements [of a lessee or grant holder] accurately represent the company's economic position and operational performance."

85 FR No. 201 at 65911. The GEA agrees that GAAP principles are the best guide for determining the extent of decommissioning liability and the Proposed Regulations should mandate that the lessee or grant holder's ARO should be the definition of the decommissioning liability for purposes of determining if additional security is warranted and, if so, the amount of such additional security.

Unlike the site-specific, fact-based ARO determination made by lessees and grant holders, for the purposes of requiring additional security, BSEE utilizes an industry-wide, "one-size fits all"

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reserves in the U.S. GOM shelf on a stand-alone basis. With the wave of decommissioning continuing strong in the shelf – more than 100 structures being decommissioned each year – the establishment of efficient policy solutions that encourage such developments could be necessary." (pg. 4)(Internal citations omitted). The Proposed Regulations are an important policy revision that would encourage the continued development of the shelf.

[6] Grant right includes both the owner of a right-of-way and a right-of-use and easement.

[7] Generally Accepted Accounting Principles are developed by the accounting professional association The Financial Accounting Standards Board, an independent professional organization.

[8] Numerous Interior regulations utilize U.S. Generally Accepted Accounting Principles. See e.g., 30 CFR § 1206.20 (defining "audit" as "an examination, conducted under generally accepted Governmental Auditing Standards, of royalty reporting and payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases or Indian leases."); 30 CFR § 1206.161(i)(1) ("You must determine the processing allowance for each gas plant product based on you or your affiliate's reasonable and actual cost of processing the gas. You must base your allocation of costs to each gas plant production upon generally accepted accounting principles."); see also, *Black Butte Coal Co.*, 103 IBLA 145, 149 (1988)(regarding federal coal)(appeal of order disallowing deductions from federal coal royalties)(quoting from Director Decision: "Black Butte may deduct from its sales price direct and indirect costs, as determined by generally acceptable account principles...")(vacated without opinion by *Black Butte Coal Co. v. U.S.* 27 Fed. Cl. 699 (Fed. Cl. 1993).

methodology, which often provides for substantially higher estimates of decommissioning liability than what is included in the lessees and grant holders ARO, which is based on actual, similar decommissioning projects. Accordingly, the most accurate estimate of the actual decommissioning liability is the lessee and grant holder's ARO and this figure should be adopted by the Proposed Regulations to determine decommissioning liability for purposes of determining the need for additional security.

3. Reverse Chronological Order Concept.

The GEA supports the proposed revisions to 30 CFR § 250.1708 which would adopt the concept of requiring that predecessors be responsible for decommissioning in the event of a default of the current owner in reverse chronological order. The most recent predecessor has the closest connection to the exploitation of the economic benefits of the property and is more likely to have accrued the decommissioning liability for the property. However, the GEA also supports the exceptions to the strict adherence to the reverse chronological order application contained in the proposed revisions to 30 CFR § 250.1708(b). While the concept of holding predecessors responsible in reverse chronological order is fair and warranted, the Department of Interior should retain flexibility to hold any predecessor responsible in unusual or emergency circumstances.

Interior should also, however, add provisions to § 250.1708 to clarify that in the event of the default of a current owner or grant holder, its *immediate predecessor(s)* is responsible for the decommissioning obligations of the defaulting party *before* current co-owners and co-lessees become responsible for decommissioning. This modification is the most equitable and efficient way to address a defaulting party's decommissioning liability. The most immediate predecessor to the defaulting owner sold the property to the defaulting owner and, at the time of the transaction, had the opportunity to consider the risk that the purchasing party could, in the future, default on its decommissioning responsibilities. The immediate predecessor had the opportunity to require that the purchasing party post security (bonds, decommissioning accounts and trusts, etc.) in order to ensure that the decommissioning liability is satisfied. Indeed, in many cases, substantial security was provided by the defaulting party to the immediate predecessor. The current co-owners who purchased their share of the property from third parties did not have the opportunity to assess the risk – and require security – of the defaulting owner and received no benefit from the transaction between the predecessor and the defaulting party. Additionally, requiring the immediate predecessor to become responsible for decommissioning before the co-owners would be the most efficient manner to unlock any security posted by the defaulting party.

Again, the GEA applauds the Department of Interior for tackling the important issue of financial assurance in the Gulf of Mexico. The above comments notwithstanding, the GEA agrees that Interior's approach under the Proposed Regulations is well-founded and will lead to the dual accomplishment of ensuring the U.S. taxpayer is never responsible for decommissioning liability while, at the same time, promoting continued investment in the Gulf of Mexico OCS. The GEA urges Interior to promptly issue the Proposed Regulations as a Final Rule.

Sincerely,

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Calendar Year 2019 Top 20 OCS[1] Revenue Contributors to the US Treasury from OCS Operations

Rank	Operator Name[2] Ranked by Total Revenue	Total Revenue[3]	Reported Royalty[4]	Bonus[5]	Rents[6]	Inspection Fees[7]	Other Revenues[8]
1	Shell	$943,455,331	$845,494,100 (2)	$76,657,764 (3)	$14,115,637 (1)	$3,301,000 (4)	$3,886,817 (3)
2	BP America	$894,073,254	$851,963,101 (1)	$27,566,820 (5)	$9,209,642 (5)	$1,193,500 (10)	$4,140,168 (2)
3	Chevron	$398,555,155	$353,485,945 (3)	$30,525,893 (4)	$9,901,796 (4)	$1,992,000 (7)	$2,649,498 (5)
4	ExxonMobil	$348,353,911	$309,540,949 (4)	$25,216,695 (6)	$11,947,574 (2)	$1,601,000 (8)	$47,664 (10)
5	Equinor	$333,292,233	$141,130,639 (10)	$177,384,405 (1)	$8,263,863 (6)	$34,000 (18)	$6,479,290 (1)
6	BHP Billiton	$251,424,859	$225,723,399 (5)	$14,097,509 (9)	$11,237,456 (3)	$48,500 (17)	$317,952 (9)
7	Fieldwood Energy	$227,539,934	$215,087,836 (6)	$5,213,765 (12)	$2,369,063 (13)	$7,387,400 (1)	-$2,518,182 (19)
8	LLOG Exploration	$204,625,904	$196,408,576 (7)	$4,305,219 (14)	$5,783,265 (7)	$786,000 (13)	-$2,657,216 (20)
9	Hess Corporation	$183,371,028	$154,271,288 (9)	$22,894,050 (7)	$3,912,235 (9)	$919,500 (12)	$1,373,910 (8)
10	Exxon Mobil	$172,751,676	$165,260,299 (8)	– –	$3,549,135 (10)	$701,200 (14)	$3,241,005 (4)
11	ERT Talos	$137,594,914	$135,398,860 (11)	$582,450 (17)	$112,440 (19)	$2,400,948 (6)	-$899,853 (15)
12	Avangrid Renewables	$135,997,935	– –	$135,100,000 (2)	$897,768 (16)	– –	$137 (12)
13	Cox Operating	$123,582,582	$118,218,655 (12)	–	$36,000 (20)	$6,267,500 (2)	-$939,623 (16)
14	Arena Offshore	$99,703,184	$94,772,331 (13)	$378,250 (18)	$426,196 (18)	$4,642,000 (3)	-$515,659 (14)
15	Palm Energy Partners	$91,757,075	$82,643,279 (15)	$5,838,941 (11)	$1,921,089 (14)	$1,421,900 (9)	-$68,196 (13)
16	W & T Offshore	$88,011,142	$81,136,785 (16)	$3,810,000 (15)	$1,490,238 (15)	$2,938,800 (5)	-$1,364,751 (18)
17	Walter Oil & Gas	$84,496,491	$83,342,905 (14)	$823,676 (16)	$717,147 (17)	$945,400 (11)	-$1,332,712 (17)
18	Kosmos Energy	$83,400,180	$69,796,795 (17)	$9,225,136 (10)	$2,400,868 (12)	$91,500 (16)	$1,885,821 (6)
19	Murphy	$76,283,545	$65,464,093 (18)	$4,487,958 (13)	$3,983,778 (8)	$509,000 (15)	$1,838,756 (7)
20	Total SA	$63,140,354	$39,658,687 (19)	$19,950,848 (8)	$3,510,540 (11)	– –	$20,230 (11)
	TOTAL TOP 20 OPERATORS	$4,941,410,687	$4,228,798,522	$564,059,279	$95,785,729	$37,181,148	$15,585,057
	TOTAL ALL OCS[1] OPERATORS	$5,793,328,514	$4,905,734,410	$712,646,205	$113,087,451	$46,595,264	$15,265,184,48[9]

Footnotes:
1: OCS is the U.S. Outer Continental Shelf.
2: This list is by corporate name and each company in the list includes revenues from all affiliates.
3: The amounts are based on total offshore collections by accounting year for Calendar Year 2019.
4: Reported Royalties are based on a percentage of the revenue from the commodity sold. The exact percentage is set in the original lease document that went along with the lease sale.
5: Bonuses are defined as sealed bonus bids used for competitive lease sales, with leases awarded to the highest bidder. Successful bidders make an up-front cash payment, called a bonus bid, to secure the lease.
6: Rents are defined as payments due on or before the first day of each lease year before the discovery of oil or gas on the lease.
7: Inspection fees are fees paid by operators for rig, annual production and other inspections.
8: Other Revenues are comprised of several sources such as, but not limited to: settlements, fees, taxes and interest paid by operators.
9: Total Top 20 "Other Revenues" is higher than the total all OCS contributors "Other Revenues" due to operators reporting negative "Other Revenues" as defined in Footnote 8 above.
Note: Number in parenthesis () denotes the ranking of the operator in the specific category heading.

For more information, visit https://revenuedata.doi.gov/

Calendar Year 2019 TOP 20 OIL AND GAS PRODUCERS* IN THE OCS[1]

* Company name and rankings do not reflect mergers, divestitures, bankruptcies or changes in the legal name or status of an operator that occurred after the reporting period ended for Calendar Year 2019.

BOE[2] Production by Operator

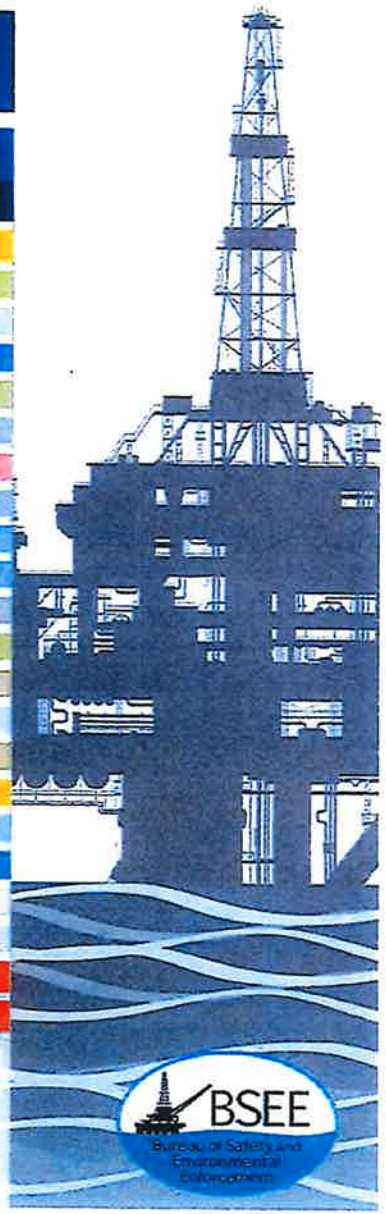
Rank	Operator Name	Total BOE[2]	Producing Wells
1	Shell	208,904,811	128
2	BP America	130,463,726	69
3	Chevron	107,772,094	61
4	Anadarko	87,465,448	92
5	Fieldwood Energy	39,745,767	799
6	Hess Corporation	38,220,908	24
7	LLOG Exploration	36,063,054	32
8	Murphy	24,462,821	41
9	BHP Billiton	20,114,320	26
10	Arena Offshore	19,216,128	282
11	Cox Operating	17,825,090	498
12	Walter Oil & Gas	16,665,039	44
13	ERT Talos	16,410,687	189
14	Kosmos Energy	15,442,780	7
15	Exxon Mobil	14,231,699	32
16	W & T Offshore	11,926,565	147
17	Talos Petroleum	10,477,795	91
18	EnVen Energy Ventures	10,444,277	67
19	Beacon Growthco	9,621,925	10
20	Eni Petroleum	7,637,919	19
Total Top 20 BOE[2]		843,111,832	
Total OCS[1] BOE[2]		881,864,069	

Ranked by Oil Production

Rank	Operator Name	Total Oil 2019 (BBL)[3]
1	Shell	162,010,168
2	BP America	115,054,550
3	Chevron	99,849,281
4	Anadarko	74,850,913
5	Hess Corporation	26,930,318
6	Fieldwood Energy	25,683,157
7	LLOG Exploration	25,503,655
8	Murphy	18,967,595
9	BHP Billiton	18,644,634
10	Kosmos Energy	13,435,989
11	ERT Talos	12,064,542
12	Exxon Mobil	11,643,055
13	Arena Offshore	10,674,652
14	Cox Operating	9,255,572
15	Walter Oil & Gas	8,826,976
16	EnVen Energy Ventures	8,321,663
17	Beacon Growthco	8,048,418
18	Talos Petroleum	7,882,359
19	W & T Offshore	6,228,403
20	Cantium	5,877,637
Top 20 Oil Production Total		669,751,537
Total OCS[1] Oil Production		696,924,338

Ranked by Gas Production

Rank	Operator Name	Total Gas 2019 (MCF)[4]
1	Shell	263,547,891
2	BP America	86,599,571
3	Fieldwood Energy	79,031,868
4	Anadarko	70,893,685
5	Hess Corporation	63,453,114
6	LLOG Exploration	59,343,822
7	Cox Operating	48,160,690
8	Arena Offshore	48,003,095
9	Chevron	44,526,207
10	Walter Oil & Gas	44,049,915
11	W & T Offshore	32,029,179
12	Murphy	30,883,170
13	ERT Talos	24,425,334
14	Talos Petroleum	14,586,352
15	Exxon Mobil	14,548,180
16	Eni Petroleum	13,605,459
17	EnVen Energy Ventures	11,929,092
18	Kosmos Energy	11,278,164
19	Contango Operators	9,937,440
20	Beacon Growthco	8,843,108
Top 20 Gas Production Total		979,675,336
Total OCS[2] Gas Production		1,039,361,287



Footnotes:
1: OCS is the U.S. Outer Continental Shelf.
2: Barrel of oil equivalent (BOE) is the amount of energy in natural gas production that is approximately equivalent to one barrel of oil. Total BOE is the summation of BOE and oil production.
3: BBL=barrel of oil.
4: MCF = thousand cubic feet.

For more information, visit https://www.data.bsee.gov/

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