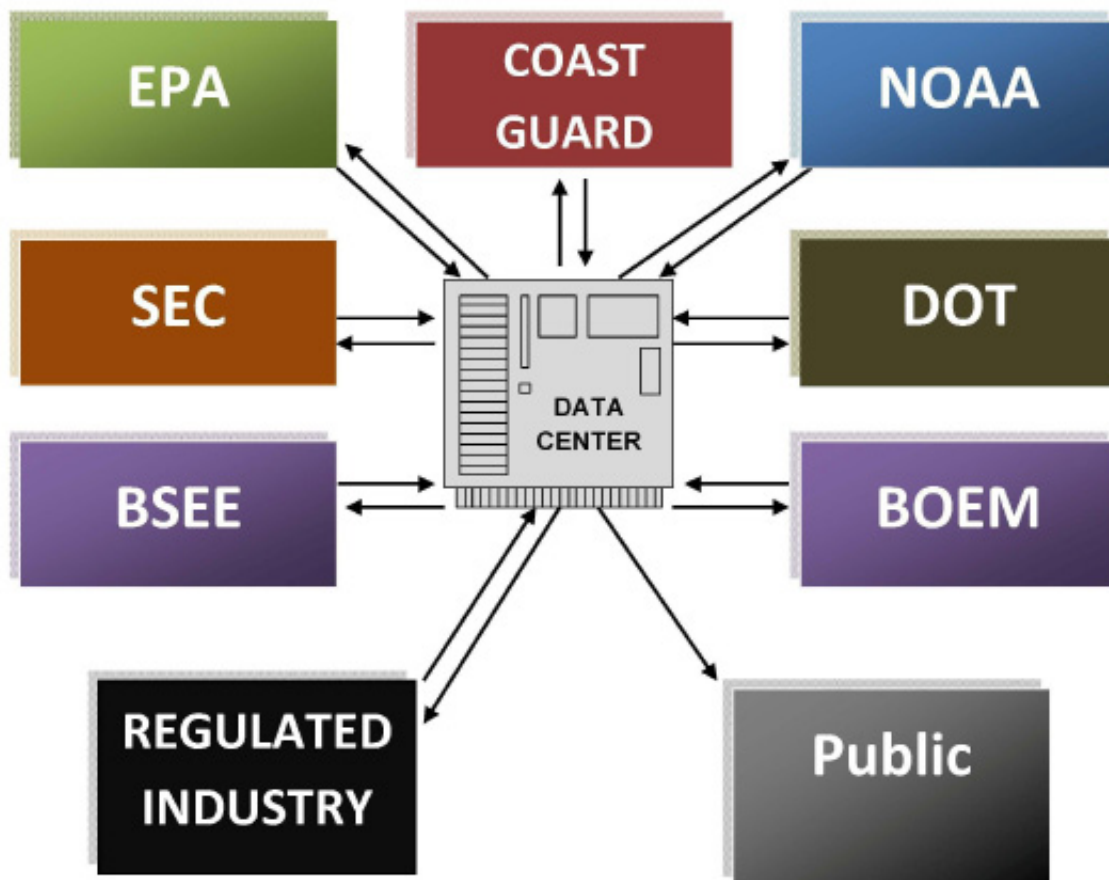


OFFSHORE DRILLING: COORDINATING AND IMPROVING ACCESS TO INFORMATION



HARVARD LAW SCHOOL
Emmett Environmental
Law & Policy Clinic

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Emmett Environmental Law & Policy Clinic**Harvard Law School**

6 Everett Street, Suite 4119

Cambridge, MA 02138

Phone +1-617-496-2058

Fax +1-617-384-7633

Website: <http://environment.law.harvard.edu/emmett-clinic/>

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Comments are welcome and may be directed to Wendy B. Jacobs at wjacobs@law.harvard.edu or Aladdine D. Joroff at ajoroff@law.harvard.edu.

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The Emmett Environmental Law and Policy Clinic at Harvard Law School is directed by Wendy B. Jacobs and is dedicated to addressing major environmental issues in the United States and abroad and to providing its students an opportunity to do meaningful, hands-on environmental legal and policy work. Students and clinic staff work on issues such as climate change, pollution reduction, water protection, and smart growth.

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EXECUTIVE SUMMARY

This paper recommends mechanisms for facilitating public access to, and intra- and inter-agency sharing of, information from companies engaged in offshore drilling. Multiple federal agencies require companies participating in offshore drilling to submit what is cumulatively a significant amount of information about their operations. Although much of this material is relevant to evaluating and minimizing safety and environmental risks, the information is not readily accessible by the public or routinely shared among the various interested agencies. Limited access to information impairs the ability of stakeholders (such as host communities, investors, regulators, advocacy groups, academics, and members of the general public) to efficiently and effectively evaluate and influence the significant safety and environmental impacts of offshore drilling.

For this project, the Clinic focused specifically on the accessibility of information collected by the Department of the Interior's ("DOI") Bureau of Safety and Environmental Enforcement ("BSEE") due to BSEE's central role in overseeing offshore safety and environmental protection. Despite the creation of BSEE and adoption of the Safety and Environmental Management System ("SEMS") regulations in the wake of the Deepwater Horizon spill, stakeholders still lack sufficient access to information. Although BSEE makes some information available through its website, much important information that the agency collects regarding safety and environmental issues remains unavailable to the public and is not shared effectively with other agencies. This paper identifies obstacles to public and agency access to the information reported to BSEE under its regulations (30 C.F.R. Part 250, or the "Regulations") and offers concrete recommendations to address these problems.¹ These suggestions include steps that can be taken in the near-term, *e.g.*, issuing guidance and actions that require inter-agency coordination over a longer time frame, *e.g.*, developing a centralized reporting system that aggregates information about off-shore drilling-related activities in a searchable and accessible format.

The obstacles to information access include the following:

- **Unnecessarily Restricted Public Access to Information Essential to Evaluating Safety and Environmental Risks**

The Regulations allow public access to much of the information submitted on BSEE forms

¹ DOI's Bureau of Ocean Energy Management ("BOEM") collects information from offshore drillers under regulations that similarly hamper access to information (30 C.F.R. Part 550). Thus, although this paper focuses on BSEE, many of its recommendations are equally applicable to BOEM.

(§ 250.197(a)), but the forms cover only a portion of the information submitted to, and relied upon by, BSEE in considering a company's safety and environmental impacts. Information that is not reported on a BSEE form and not specifically exempt from public disclosure should be accessible to the public, but the time and effort it takes to access such information frustrates meaningful public oversight of safety and environmental impacts. Moreover, such access may be subject to BSEE determinations of "necessity," further shielding from public review information relevant to assessing safety and environmental risks.

Although BSEE has developed an online Data Center, many documents relevant to evaluating the safety and environmental performance of offshore operators are not available through this system. The Clinic therefore requested samples of such material through informal communications with BSEE and through formal Freedom of Information Act ("FOIA") requests. An initial call to BSEE requesting copies of contingency plans for hydrogen sulfide ("H₂S") releases, which can be fatal to humans and marine species, resulted in referrals to nine different points of contact within BSEE and DOI's Bureau of Ocean Energy Management ("BOEM") over a six week period. At the end of this time, BSEE informed the Clinic that the plans were not "releasable" under FOIA. In response to a subsequent FOIA request, the Clinic received copies of several H₂S contingency plans from BSEE, but the regional officers differed in their responses to the request and the total response time was more than four months. The Clinic's FOIA request for SEMS audit reports and Corrective Action Plans ("CAPs") triggered a requirement for BSEE to consult with the companies that submitted the reports and, after more than three months, resulted in a production of documents that were so heavily redacted as to be meaningless. These experiences demonstrate interpretive and logistical roadblocks to the public's access to information that can be reduced.

- **BSEE's Regulations Require Collaboration Among Agencies But Do Not Mandate Information-Sharing**

Despite BSEE's mandate, under the Outer Continental Shelf Lands Act (43 U.S.C. § 1334(a)) and the Regulations (§ 250.106(d)), to "cooperate" and "cooperate and consult" with relevant Federal agencies in enforcing safety and environmental laws and regulating lease operations, the Regulations contain only two specific examples of intergovernmental collaboration, both involving cooperation between BSEE and BOEM, another division within DOI. No provision within the Regulations explicitly provides for the transfer of information from BSEE to the Environmental Protection Agency ("EPA"), United States Coast Guard ("USCG"), National Oceanic and Atmospheric Administration ("NOAA"), or any other federal agency with jurisdiction over aspects of offshore drilling. BSEE relies on memoranda of understanding and agreement ("MOUs/MOAs") to meet its obligation to facilitate intergovernmental collaboration.

However, existing interagency agreements fail to provide seamless access to information reported by offshore drillers. The agreements often involve: (i) participants from only a subset of agencies involved in the oversight of offshore drilling; (ii) narrow topical coverage; (iii) lack of clear benchmarks to assess the success of collaborations; and, (iv) vague language.

To address these deficiencies in information access, the Clinic recommends several mechanisms to (i) facilitate meaningful public access to safety and environmental information BSEE collects from offshore drillers, and (ii) enhance intra- and inter-agency sharing of information about offshore drilling. These recommendations, summarized below, are consistent with the executive directive to federal agencies to “adopt a presumption in favor of disclosure” and “take affirmative steps to make information public.”² In particular, BSEE should:

- Issue guidance confirming that BSEE will apply a presumption of public access to, and need for, non-confidential information relevant to safety and environmental impacts of offshore drilling. More particularly, such guidance should clarify that: (i) the presumption of public access applies to all lease and permit data and information that BSEE receives outside of a BSEE form, except as specifically provided otherwise in paragraph (b) of Section 250.197; and (ii) the intent of paragraph (c) of Section 250.197 is to expand public access to otherwise proprietary geophysical and geological data.
- Require reporting entities to provide a copy of submitted reports in a format immediately ready for public distribution (i.e., with any information claimed to be protected redacted).
- Increase the scope of, and accessibility to, material posted on its public website.
- Revise its reporting forms to provide a clear right of immediate access to a greater portion of the information submitted to BSEE.
- Create a centralized reporting system for offshore drilling-related activities to facilitate aggregation of information collected by all of the agencies with jurisdiction in a single and searchable system available to the public and all interested regulators. Shared access to streamlined information within and among agencies would benefit not only agencies with specific authority over offshore drilling, but also agencies such as the Securities Exchange Commission

2 Memorandum from President Obama to Heads of Exec. Dept’s & Agencies, Re: Freedom of Information Act (Jan. 23, 2009), *available at* <http://perma.cc/7CQ8-ZUPL> (last visited December 17, 2014).

(“SEC”), whose responsibilities encompass consideration of the safety and environmental impacts of offshore drilling. The SEC should be included in efforts to improve oversight of offshore drilling, particularly as relates to information disclosure and access.

These recommendations build on BSEE’s existing data collection processes and would not increase the amount or type of information collected by BSEE. Rather, the recommendations would streamline reporting and public access to information without creating additional substantive requirements for the regulated community. These proposals, and the obstacles to information access that they address, are discussed in greater detail below, followed by sample documents that BSEE could utilize in implementing the recommendations.

BACKGROUND

The importance of access to information about offshore drilling operations was highlighted by the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (“National Commission”) in the wake of the 2010 explosion on the Deepwater Horizon drilling rig and subsequent blowout of the Macondo well on the floor of the Gulf of Mexico. The Commission found that the disaster was preventable because it was the result, in large part, of a systemic breakdown of the environmental review process and a corporate culture that did not place a premium on safety or environmental performance.³ Improved oversight, including better collection of and public access to information, is particularly important with respect to any future offshore drilling in sensitive, complex, and controversial locations such as the Arctic.⁴

Successful oversight includes not only the collection and processing of relevant information, but also meaningful and timely access to and review of such material by the public and relevant government

3 NATIONAL COMMISSION ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING, DEEP WATER: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING; REPORT TO THE PRESIDENT, 126-27, 224-25 (2011) [hereinafter NATIONAL COMMISSION REPORT TO THE PRESIDENT].

4 While changes have occurred since the Deepwater Horizon disaster, such as the creation of BSEE and the SEMS program, a recent report from the United States Chemical Safety and Hazard Investigation Board argues that more can, and should, be done to improve the safety of offshore drilling, including via changes to the SEMS program. UNITED STATES CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD: INVESTIGATION REPORT, VOLUME 2, EXPLOSION AND FIRE AT THE MACONDO WELL, Report No. 2010-10-I-OS (June 5, 2014), *available at* <http://perma.cc/AYW2-7BEZ> (last visited December 17, 2014) (“While US offshore regulations have undergone important changes since Macondo, more can be done to ensure a focus on preventing major accident events and to drive continuous safety improvement.”)

agencies. Stakeholders with an interest in the safety and environmental impacts of offshore drilling include: host communities; investors; local, state, and federal agencies; advocacy groups; academics; and members of the general public. Our research found that these stakeholders do not have sufficient or meaningful access to safety and environment-related information submitted by industry to the DOI (via BSEE and BOEM). Facilitating access to information is a critical step toward effective oversight of offshore drilling.

A large number of federal agencies participate in the regulation of offshore drilling. Although each agency collects information from industry, there is at present little inter-agency sharing of this information. This fragmentation of access to information hampers the agencies' abilities to perform effective and comprehensive reviews and analyses that could contribute to improved oversight of safety and environmental impacts from offshore drilling. (Relevant agencies include DOI's BSEE and BOEM, EPA, the USCG, the Department of Transportation ("DOT") and NOAA.) Enhanced information sharing among the agencies that oversee or have an interest in offshore drilling would support better informed evaluations and decision making. In addition, there could be cost-savings and efficiencies generated for regulators and the regulated community alike.

ANALYSIS

The Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and the Regulations establish a regime under which industry transfers to BSEE significant amounts of information, including material relevant to evaluating safety and environmental impacts of offshore drilling activities. These information submission requirements apply across the life of a project. For instance, operators must submit certain reports for approval by BSEE before altering drilling procedures, thereby providing BSEE with information to assess environmental risks while the underlying operations are still in the planning stages.⁵ Operators are also required to provide or make available to BSEE periodic updates as well as event-triggered reports, thus giving BSEE information for continually monitoring compliance through the life of a project.⁶ In addition, BSEE may inspect drill sites, with or without

5 *See, e.g.*, 30 C.F.R. §§ 250.286-295 (regarding Deepwater Operations Plans and Conceptual Plans), 250.410-18 (regarding permits to drill wells). BOEM also collects information from operators prior to the commencement of exploration and/or development and production activities. *See, e.g.*, 30 C.F.R. § 550.201 (regarding timing for submitting Exploration Plans, Development and Production Plans, Development Operations Coordination Documents and Conservation Information Documents).

6 *See, e.g.*, 30 C.F.R. §§ 250.187-190 (regarding incident reporting), 250.192 (regarding reporting relating to hurricanes and other natural occurrences), 250.516 (regarding blowout prevention system testing).

prior notice to the operator.⁷

The breadth of information available to and collected by BSEE ranges from general plans to the technical minutia of individual site operations, including, but not limited to: H₂S contingency plans; Blowout Protection procedures; Deepwater Operations Plans; SEMS plans, audited reports and records; equipment design and performance specifications; maintenance test results; maps and schematic drawings of proposed drill sites; geological and geophysical data; and incident reports related to events such as workplace injuries and evacuations. Despite the breadth of this information available to BSEE, public access to the information is limited.

1. Unnecessarily Restricted Public Access to Information Essential to Evaluating Safety and Environmental Risks

A 2009 Presidential Memorandum directs federal agencies to “take affirmative steps to make information public” and adopt “a presumption of disclosure” in processing requests for information under FOIA.⁸ In this vein, BSEE’s objectives, articulated in an agency manual, include “mak[ing] information available to the public even before a request is made” and “[a]dminister[ing] the FOIA with a clear presumption in favor of disclosure.”⁹ However, these goals are not reflected in BSEE’s Regulations or in its actions, particularly as they relate to information relevant to safety and environmental concerns. In particular, the Regulations themselves lack a clear statement adopting a presumption in favor of disclosure and contain confusing language regarding the public availability of information used by BSEE to “promote operational safety” or “protect the environment.” In addition, as discussed below, the agency makes subjective decisions as to when and to whom certain information should be available.

A. Restrictions Arising from Unclear Regulations

The catchall provision governing public access to information reported to BSEE, 30 C.F.R. § 250.197,¹⁰ neither definitively gives the public access to information BSEE uses to assess threats to safety and the

7 See, e.g., 30 C.F.R. §§ 250.130-132, 301 (regarding inspections).

8 Memorandum from President Obama, *supra* note 2.

9 DOI, *BSEE Manual*, Version No. 001, Administrative Series, Part 383, Chapter 15 (Nov. 1, 2011), available at <http://perma.cc/P5B2-FZDH> (last visited December 17, 2014).

10 BSEE’s authority to ask reporting entities for additional copies of reports “for public information” is subject to the exemptions from public disclosure articulated in Section 250.197. See 30 C.F.R. § 250.186(b).

environment nor does it provide for a presumption of public access. Section 250.197 is divided into three parts:

“Paragraphs (a) and (b)...describe what data and information will be made available to the public without the consent of the lessee, under what circumstances, and in what time period. Paragraph (c)... describes what data and information will be made available for limited inspection without the consent of the lessee, and under what circumstances.”

Paragraph (a) of Section 250.197 provides that information submitted on BSEE forms will be available to the public upon submission, with the exception of enumerated entries on seven forms that may be withheld for a specified period of time. While paragraph (a) creates a mechanism by which most of the information submitted on BSEE forms is to be immediately made available to the public, it covers only a portion of the information that BSEE receives from offshore operators and relies upon in its analysis and decision-making. For instance, SEMS audit results and resulting Corrective Action Plans (“CAPs”) are not reported on BSEE forms. Thus, access to BSEE forms does not provide sufficient information to evaluate safety and environmental risks posed by offshore drilling.

Paragraph (b) of Section 250.197 addresses public access to lease and permit data and information that is submitted to BSEE in a format other than on a BSEE form. Such information is accessible according to a table identifying nine scenarios, each of which stipulates specific categories of information BSEE may release and the amount of time BSEE may delay access to the information. With respect to the scope of information at issue, in all but two of the scenarios the enumerated information that BSEE will release is limited to geophysical and geological data or information.¹¹ Non-geophysical and geological data outside of a BSEE form, such as the information in SEMS audit reports and CAPs, is not declared by the Regulations to be within the scope of material available to the public. However, a blanket withholding of documents that is not tied to a specific FOIA exemption would be a violation of the statute.¹² Any limitation on public access to information should

11 The other categories of information addressed in paragraph (b) are: (i) “[d]escriptions of downhole locations, operations, and equipment” related to well operations; and (ii) any data or information obtained from beneath unleased land as a result of a well deviation that has not been approved by BSEE. 30 C.F.R. § 250.197(b)(7), (8).

12 See, e.g., *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 7-8 (2001) (“Upon request, FOIA mandates disclosure of records held by a federal agency . . . unless the documents fall within enumerated exemptions ‘[T]hese limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act,’ . . . ‘[c]onsistent with the Act’s goal of broad disclosure, these exemptions have been consistently given a narrow compass.’” (internal citations omitted); *United States Dep’t of Justice v. Julian*, 486 U.S. 1, 8 (1988) (“‘[T]he mandate of the FOIA calls for broad disclosure of Government records,’ and for this reason we have consistently stated that FOIA exemptions are to be narrowly construed.”) (internal

apply only to material that BSEE determines is subject to a FOIA exemption from disclosure, such as: (i) the rarely used exemption for geological and geophysical information and data, including maps, concerning wells; or (ii) the protection for trademarks and confidential business information.

Even when information should be released under paragraph (b), in some scenarios the Regulations allow BSEE to curtail public access to information for two, ten, or even fifty years after submission or issuance of a permit.¹³ In other instances, the timing of access is even less clear as the availability of some information related to safety and environmental protection is contingent on determinations by BSEE as to whether public access is “necessary.”¹⁴ The Regulations, however, do not contain criteria for determining whether public access to information is “necessary.”

Finally, paragraph (c) of Section 250.197 provides limited public access to “G&G data and information” that BSEE uses to “[p]romote operational safety” or “[p]rotect the environment.” Such information is only available for “limited inspection... by persons with a direct interest in related BSEE decisions and issues in specific geographic areas, and who agree in writing” to keep the information reviewed confidential. The Regulations neither define “G&G data and information” nor provide guidance as to what constitutes a “direct interest” in a BSEE decision or issue. The regulatory history of paragraph (c) suggests that the provision is intended to relate to otherwise proprietary geological and geophysical data that is relevant to parties who are “directly affected by [BSEE] decisions regarding units, reservoirs, operations, environmental protection, field determinations, and royalty relief.”¹⁵ However, in the absence of a clear mandate establishing a public disclosure default, this provision could be misinterpreted to restrict public access to non-protected information used by BSEE to protect safety and the environment.

These types of delays and absence of standards governing decisions by BSEE personnel as to whether there is a “need” for or “direct interest” in information that warrants disclosure diminish the value of access provided by Section 250.197 and frustrate meaningful public oversight of safety and

citations omitted).

13 See, e.g., 30 C.F.R. § 250.197(b)(6) (making geological data and analyzed geological information for leases in effect beyond the primary term specified in the lease available two years after the required submittal date); *id.* at § 250.197(b)(4) (making geophysical data, processed geophysical information and interpreted G&G information for leases still in effect available ten years after submission); *id.* at § 250.197(9) (making certain geophysical data available fifty years after BOEM issues a permit).

14 See, e.g., 30 C.F.R. § 250.197(b)(2) (providing that certain information “collected with high-resolution systems . . . to comply with safety or environmental protection requirements” may be released 60 days after BSEE receives the information if a regional supervisor from the division deems it “necessary”).

15 67 Fed. Reg. 46942, 46943 (Jul. 17, 2002).

environmental impacts.

B. Restrictions Arising from Logistical Issues

Even when information is required to be accessible by 30 C.F.R. Part 250, there are roadblocks to retrieving it from BSEE. Despite BSEE's creation of an on-line Data Center,¹⁶ information is missing from BSEE's website or difficult to find. For example:

- SEMS audit reports and CAPs, examples of documents relevant to evaluating the safety and environmental performance of offshore operators, do not appear to be included in the Data Center, and some categories of information in the Data Center are available only from a particular BSEE office (e.g., the Gulf of Mexico OCS Region);
- In some instances, documents that must now be filed with BSEE, such as H₂S contingency plans, are part of BOEM's electronic dataset rather than BSEE's.¹⁷ A division of material between BSEE's and BOEM's websites is not, in and of itself, problematic, nor perhaps unexpected given the fact that the two agencies used to be a single entity, but the lack of notice to this effect hinders public access; and
- Even if one knows which agency website to search, reports like H₂S contingency plans are often not available as stand-alone documents, but are included as appendices to other lengthy documents. Without a more refined search tool or index, retrieving information from BSEE's Data Center can be hit-or-miss and time-consuming.

The type of searchable database that aggregates operating information submitted to multiple agencies discussed later in this paper would address these issues. However, such a system would take time to develop, so in the interim we recommend that BSEE expand and improve its online Data Center, e.g., enhancing the aggregation of information and search capabilities, as making material available online avoids the lag in response associated with FOIA requests and the administrative burden such requests place on BSEE. Until the system is upgraded, however, it is essential for the public to be able

16 The BSEE on-line Data Center can be accessed via <http://perma.cc/E5T7-N7NL> (last visited December 17, 2014).

17 30 C.F.R. § 250.490(f) (requiring H₂S Contingency Plans to be submitted to and approved by BSEE District Managers prior to beginning operations). Prior to October 2011, BSEE and BOEM were a single federal agency under the regulatory umbrella of the Bureau of Ocean Energy Management, Regulation and Enforcement ("BOEMRE"), and H₂S Contingency Plans were submitted to BOEMRE.

to receive material directly from BSEE. To evaluate the ease of access to environment- and safety-related information, the Clinic requested copies of H₂S contingency plans submitted by offshore operators to BSEE, first through a series of informal oral and written communications with BSEE and then through a formal FOIA request. (H₂S contingency plans, which are relevant from a safety and environmental perspective because releases of H₂S can be fatal to humans and marine species, are neither submitted on a BSEE form nor explicitly excluded from public access by the Regulations.)

The Clinic initiated outreach to BSEE on October 24, 2013 by calling BSEE's Gulf Coast OCS Regional Office to request copies of H₂S contingency plans filed pursuant to the Regulations within the last two years. BSEE representatives referred the Clinic to different specialists within their offices and BOEM, at times transferring the caller to defunct telephone extensions and channeling most written communication to generic email accounts such as GulfPublicInfo@bsee.gov and Foiaofficegulfofmexicoocsregion@boem.gov. In all, the Clinic requested the H₂S contingency plans in communications with nine individuals as well as through the aforementioned email accounts to no avail.

On November 6, a representative from BSEE's Gulf Coast OCS Regional Office informed the Clinic that the requested H₂S contingency “[p]lans are not releasable even under FOIA.”¹⁸ When asked to specify the FOIA exemption(s) being invoked, the BSEE representative referred the Clinic to BOEM's FOIA request email account without answering the question.¹⁹ BOEM responded to the Clinic inquiry by suggesting that it submit a FOIA request.²⁰

Because BSEE referred the Clinic to BOEM, the Clinic filed FOIA requests for H₂S contingency plans with both agencies, asking for copies of plans filed with either agency, or its predecessor.²¹ BOEM responded that the documents requested “are not located in BOEM.”²² The regional offices of BSEE each responded somewhat differently to the identical FOIA request: (i) the Alaska region referred

18 Email from Roberta S. McMahon, Government Information Specialist (FOIA), Gulf of Mexico OCS Region, BSEE, to Daniel Becker, student, Emmett Environmental Law and Policy Clinic (EELPC), Harvard Law School (Nov. 6, 2013) (on file with author).

19 Email from Roberta S. McMahon, Government Information Specialist (FOIA), Gulf of Mexico OCS Region, BSEE, to Daniel Becker, student, EELPC, Harvard Law School (Nov. 8, 2013) (on file with author).

20 Email from Jeremy Williams, BOEM, to Daniel Becker, student, EELPC, Harvard Law School (Dec. 2, 2013) (on file with author).

21 This time, the request focused on plans filed more than two years ago to avoid any risk of the request being denied based on opportunities for delayed disclosure in 30 C.F.R. § 250.197(b).

22 Letter from Steven K. Waddell, Chief, FOIA/Records Office, Gulf of Mexico OCS Region, BOEM, to Jean Tanis, student, EELPC, Harvard Law School (Feb. 26, 2014) (on file with author).

the Clinic to an H₂S contingency plan available on BOEM's website; (ii) the Pacific Region forwarded copies of several H₂S contingency plans; and (iii) the Gulf of Mexico Region claimed that the request for H₂S contingency plans sought commercial or financial information that triggered a requirement for BSEE to consult with the submitter prior to responding to the FOIA request. In total, the response from BSEE took over four months.²³

The Clinic filed a separate FOIA request with BSEE asking for specific SEMS audit reports, CAPs, and completed BSEE Forms 0131 (on which operators submit Performance Measures Data). BSEE acknowledged receipt of the FOIA request and, in response to an inquiry two months later, informed the Clinic that the request was still in the FOIA office queue for processing and, because BSEE determined that the requested documents included commercial confidential information, the agency had notified the submitters of the reports of the request and was awaiting their response.²⁴ The documents that BSEE sent the Clinic approximately six weeks later were so heavily redacted that they are largely meaningless. In redacting information, BSEE broadly invoked exemptions from FOIA relating to "trade secrets and commercial or financial information, obtained from a person, which is privileged or confidential" and "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."²⁵

These experiences demonstrate unnecessary roadblocks to the public's timely access to information submitted to BSEE. The delays the Clinic has experienced in receiving information exceed the typical 30 to 90-day comment periods on draft regulations, illustrating the practical impact on stakeholders using FOIA requests to enhance their ability to contribute to discussions relevant to ensuring safe and environmentally sound off-shore drilling. Responses from BSEE are further slowed by the need to go back-and-forth with industry regarding material claimed to be business confidential. If BSEE required industry to submit redacted versions of reports, such as SEMS audit reports, along with original submissions, those redacted materials could be promptly forwarded as a placeholder in

23 Letter from Brendan Henry, Government Information Specialist, FOIA, Alaska OCS Region, BSEE, to Jean Tanis, student, EELPC, Harvard Law School (Mar. 3, 2014) (on file with author); Letter from Janice R. Hall, FOIA Officer, Pacific OCS Region, BSEE, to Jean Tanis, student, EELPC Harvard Law School (Mar. 25, 2014) (on file with author); Letter from Karen M. Miller, FOIA Officer, Gulf of Mexico OCS Region, BSEE, to Jean Tanis, student, EELPC, Harvard Law School (June 17, 2014) (on file with author).

24 Email from Dorothy Tinker, BSEE FOIA Office, to Aladdine Joroff, Staff Attorney, EELPC, Harvard Law School (May 1, 2014) (on file with author).

25 Letter from Dorothy Tinker, BSEE FOIA Office, to Aladdine Joroff, Staff Attorney, EELPC, Harvard Law School (June 12, 2014) (on file with author).

response to public inquiries while BSEE prepares a formal response to FOIA requests. The quality of responses is further impaired by inappropriately broad applications of FOIA exemptions.

2. BSEE's Regulations Require Collaboration Among Agencies But Do Not Mandate Information-Sharing

Numerous federal agencies play a role in offshore drilling oversight. Entities with a significant role include BSEE, BOEM, EPA, and the USCG. Other agencies also play a role, albeit a more limited one, including DOT and NOAA. While the stated goals of many of these agencies include transparency and improved information management to ensure environmental protection,²⁶ the accessibility of the vast amounts of information reported to these and other agencies remains limited, not only to the public but also within and between agencies. For instance, BSEE's regulations include only two examples of intergovernmental collaboration, both of which relate to cooperation between BSEE and BOEM, its sister division within DOI.²⁷ No provision within the Regulations explicitly provides for sharing information with EPA, USCG, NOAA or other agencies despite the directive to BSEE, both in the Outer Continental Shelf Lands Act and the Regulations, to cooperate and consult with "relevant federal agencies."

BSEE relies on interagency agreements, e.g., MOUs and MOAs, to facilitate intergovernmental collaboration and information sharing. Examples include: (i) a 2012 MOU with the USCG regarding the Outer Continental Shelf and a subsequent MOA regarding SEMS and Safety Management, both of which include information sharing provisions;²⁸ and (ii) an interagency agreement with the Bureau of

26 See, e.g., BSEE, *BSEE FY 2012-2015 Strategic Goals at a Glance*, <http://perma.cc/BFG4-XG8J> (last visited December 17, 2014) (including in BSEE's strategic goals "[t]echnology and information management investment: revamp data systems, knowledge management, and innovation."); EPA, *EPA's Themes – Meeting the Challenge Ahead*, <http://perma.cc/EMX9-VT5J> (last visited December 17, 2014) ("Integrating efforts with a new commitment to innovation, the high-level use of data and information, partnerships, incentives, new and expanded constituencies, and environmental education will build momentum.").

27 30 C.F.R. §§ 250.135, 250.136.

28 See, e.g., Memorandum of Understanding between BSEE and USCG re: Building a Partnership to Improve Safety and Environmental Protection, at § F (Nov. 27, 2012) (requiring the participating agencies to "promote electronic information sharing," "endeavor to synchronize information" and "exchange or otherwise make available . . . graphical representations depicting the geographical boundaries of each agency's regional offices and commands"); Memorandum of Agreement between BSEE and USCG re: Safety and Environmental Management Systems and Safety Management Systems (BSEE/USCG MOA: OCS-07), at § C.5 (April 30, 2013) (providing for sharing of information related to the agencies respective "safety management efforts," including "[a]ny significant finding relevant to OCS safety and environmental management"). Both of these documents, as well as other examples of collaboration between BSEE and USCG, are *available at* BSEE, *Cooperative and Interagency Agreements*, <http://perma.cc/X8JY-28E9> (last visited December 17, 2014).

Transportation Statistics to develop a voluntary confidential near-miss reporting system for use on the Outer Continental Shelf.²⁹

Such interagency agreements for sharing information are hampered by limited participation, narrow coverage, lack of benchmarks, and vague language. Existing interagency agreements are often between only two agencies at a time and/or address discrete issues. Achieving seamless information sharing, however, requires a comprehensive solution that accounts for all of the information reported to all agencies involved in offshore drilling oversight, as well as making all of that information accessible to other interested parties.³⁰ By their very nature, bilateral agreements cannot achieve these goals. Progress is further hampered by agreements that do not clearly state the obligations they impose or provide mechanisms for determining whether goals are being met. For instance, although BSEE's MOA with the USCG regarding SEMS programs directs the agencies to share information about their "safety management efforts," and gives two examples of specific information to be shared, including "[a]ny significant finding relevant to OCS safety and environmental management," the information sharing obligations are still subject to subjective agency decision-making as to which information is "significant" enough to share. Agreements with provisions that outline specific requirements and mandate evaluations of the collaborations' effectiveness are likely to produce more effective results. (The proposed MOA included with this paper includes examples of provisions that address these points.)

Existing inefficiencies in information sharing can be illustrated by the reports that are required in the event of an "incident" related to offshore drilling activities. The USCG, EPA, and BSEE each require a report that asks for similar, if not duplicative, and potentially complementary information in the event of an incident related to offshore drilling activities.³¹ However, these agencies do not have formal agreements or mechanisms with each other to coordinate or streamline the information collected upon the occurrence of an incident. Formally coordinating sharing of the information in these reports would benefit the public, industry, and the agencies themselves by ensuring that the reported information is consolidated. This in turn would enable the publication of integrated information through a single source that would be easy to find and access by interested agencies and other parties.

29 U.S. Dept. of Transportation, *BTS and BSEE to Develop Confidential Near-Miss Reporting System*, <http://perma.cc/883F-W6MC> (last visited December 17, 2014).

30 *See generally*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO), GAO-14-220, *MANAGING FOR RESULTS: IMPLEMENTATION APPROACHES USED TO ENHANCE COLLABORATION IN INTERAGENCY GROUPS* (2014) (identifying as key practices in collaborative interagency mechanisms, among other factors, tools to monitor, evaluate and report on results and inclusion of all relevant participants).

31 *See, e.g.*, USCG Form CG-2692 (Report of Marine Casualty), 40 C.F.R. § 112.4(7), 30 C.F.R. § 250.189(h).

One such interested agency that is often missing from the discussion of oversight of offshore drilling is the Securities and Exchange Commission (“SEC”). Although the SEC does not have specific authority to regulate offshore drilling activities, it should be included in efforts to improve offshore drilling oversight, particularly as relates to information disclosure. The SEC regulates all publicly-traded companies,³² including those engaged in offshore drilling activities. A basic principle of the SEC’s reporting requirements is that companies must report any information that is “material” to a reasonable investor in deciding whether to buy, sell or hold a company’s securities. While the definition of what is “material” for SEC purposes is itself a complex and debated issue, one can reasonably assume that much of the information reported under the offshore drilling regulatory scheme concerning safety, environmental protection and incidents, especially when considered in the aggregate, amounts to what many investors would consider material information.

The concept of providing the SEC better access to information relating to environmental impacts is not new. In a 2004 study, the U.S. Government Accountability Office (“GAO”) recommended that the SEC improve the tracking and transparency of company filings, particularly in the realm of environmental disclosures.³³ The SEC concurred with the GAO’s findings.³⁴ Providing the SEC with access to information reported by offshore drillers to other federal agencies would be consistent with the GAO’s recommendations and with the SEC’s previous efforts to improve its consideration of environmental issues. For instance, in 1990 the SEC and EPA had an agreement under which EPA provided the SEC with quarterly enforcement-related data.³⁵ According to the SEC, the value of this attempt at information sharing was limited due, at least in part, to the SEC’s inability to analyze the great volume of complex data it received from EPA.³⁶ This type of problem could be addressed by integrating the SEC’s data needs into information collection processes so that material is submitted and shared in a format that matches the SEC’s role as the securities market regulator (e.g., ensuring that information on a spill or chemical storage is linked to the level of corporate identification that the SEC tracks).

32 Securities Act of 1933, 15 U.S.C. § 77a *et seq.*; Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*

33 GAO, GAO-04-808, ENVIRONMENTAL DISCLOSURE: SEC SHOULD EXPLORE WAYS TO IMPROVE TRACKING AND TRANSPARENCY OF INFORMATION, at 1 (Jul. 2004), available at <http://perma.cc/JD7A-N763> (last visited December 17, 2014) (“Environmental risks and liabilities are among the conditions that, if undisclosed, could impair the public’s ability to make sound investment decisions”).

34 *Id.*

35 *Id.* at 28.

36 *Id.* For example, EPA provided facility-specific information without identifying the facility owner, but the SEC required the ownership information in order to make use of the data.

RECOMMENDATIONS

1. Issue Guidance Clarifying that BSEE Adopts a Presumption in Favor of Disclosure

Although the Regulations are arguably consistent with a public disclosure default, they do not clearly incorporate such a presumption and at times contain confusing language that leads to inappropriate limitations on public access to non-confidential information submitted to BSEE. To address these shortcomings, BSEE should issue guidance for internal and external purposes that confirms and clarifies how it intends to meet its, and the administration's, goals of making information available to the public and responding to FOIA requests with a presumption in favor of disclosure.

Examples of clarifications and directions that should be provided in such guidance include:

- Clarify that BSEE (i) interprets its Regulations as providing a presumption of public access to information related to safety and the environment, and (ii) presumes that disclosure of such information is “necessary” unless demonstrated otherwise (i.e., BSEE employees should assume a rebuttable presumption of public need for information submitted to BSEE);
- Confirm that, pursuant to paragraph (b) of Section 250.197, BSEE will release all lease and permit data and information not on BSEE forms except as specifically enumerated in that paragraph;
- Confirm that the purpose of paragraph (c) of Section 250.197 is to expand public access to otherwise proprietary geophysical and geological data;
- Direct BSEE employees to consistently exercise the agency's authority to request that reporting entities provide an additional “public-ready” copy of submitted reports for public information, with information for which a protection is asserted redacted (30 C.F.R. § 250.186(b)); and
- Direct BSEE employees to increase the scope and magnitude of discretionary releases of non-confidential material on BSEE.gov and other appropriate electronic sources.

These suggestions are consistent with federal guidance that directs agencies to “exercise their discretion to make a broad range of records available beyond the minimum required by [FOIA],” and highlights their ability to make discretionary disclosures of information, even if it falls under a FOIA

exemption, if not otherwise prohibited.³⁷

2. Facilitate Public Access to Information through 30 C.F.R. Part 250 by Amending BSEE Forms

BSEE's Regulations are supposed to be interpreted so as to make information the agency collects available to the public unless specifically exempted from disclosure. As written, however, the Regulations provide for expedited access to only a portion of the information submitted to BSEE, namely, data and information submitted on BSEE forms is supposed to be publicly available upon submission, subject to enumerated exceptions. Notably, the forms represent only a subset of the information collected and used by BSEE in assessing safety and environmental impacts. BSEE should expand the scope of material subject to the immediate public disclosure requirement in paragraph (a) of Section 250.197 by instructing operators to attach additional safety and environment-related information to existing BSEE forms. Given the growing use of electronic submissions, attaching additional documents to a form would not be burdensome.

Where electronic submissions are not available or the norm, referenced documents could be deemed incorporated by the submitter's signature if not physically or electronically attached to the relevant BSEE form. Although amending BSEE forms in this manner is not required for public access to information currently submitted in other formats, it would be a means of implementing the directive, recommended above, to expand the scope of material that should be promptly made available to the public, including via BSEE's public website.

Examples of BSEE forms that should be modified include Well Activity Reports (BSEE-0133), Applications for Permits to Modify (BSEE-0124), and End of Operations Reports (BSEE-0125). For instance, Well Activity Reports, which operators must submit weekly or daily depending on where they are drilling,³⁸ should be amended by adding a line item asking operators to list information related to safety and environmental protection otherwise submitted to BSEE prior to or in the relevant reporting period. With respect to daily or weekly reports, operators would only need to attach new information in the first applicable reporting period; information would not need to be re-submitted on a weekly or daily basis. This direction would be accompanied by a non-inclusive list of responsive

37 U.S. DEP'T OF JUSTICE, FREEDOM OF INFORMATION ACT GUIDE (2004), Proactive Disclosure at 11-12, *available at* <http://perma.cc/BJ8B-9ZUF>, Discretionary Disclosure and Waiver at 686, *available at* <http://perma.cc/7TA6-5GK6> (last visited December 17, 2014).

38 30 C.F.R. § 25.468 (requiring operators drilling in the (i) Gulf of Mexico OCS Region or (ii) Pacific or Alaska OCS Regions to submit Well Activity Reports on a weekly and daily basis respectively).

information, which would then be attached to or incorporated as part of form BSEE-0133 itself. An annotated copy of form BSEE-0133 that reflects the proposed new line item is included here as Attachment A.

Amending BSEE forms in this manner would not increase the amount or type of information collected by BSEE, but would merely change the submission process and, potentially, the categories of information readily available for public access. Because there would be no “substantive or material modification” to BSEE’s previously-approved collection of information, the agency could proceed by issuing a Notice to Lessees (“NTL”) without triggering obligations under the Paperwork Reduction Act.³⁹ BSEE issues NTLs as guidance documents to “clarify, supplement, or provide more detail” about requirements in the Regulations and to “outline what [reporters] must provide as required information in [their] various submissions.”⁴⁰ Historically, BSEE has determined that many of its NTLs, including ones that designate the format and timing of submissions of information, do not impose additional information collection requirements subject to the Paperwork Reduction Act.⁴¹

3. Develop a Searchable Online Database that Aggregates Operator-Submitted Information

The information collected by the numerous federal agencies that play a role in the oversight of offshore drilling is fragmented, hindering efficient information management and effective analysis of the impacts of offshore drilling. A searchable, shared database would reduce reporting burdens on industry and improve oversight. Access to shared data can lead to more informed and innovative analysis and ideas; as noted in the context of scientific data, “[t]he power of digital information to catalyze progress is limited only by the power of the human mind.”⁴² Even agencies without specific authority over offshore drilling, such as the SEC, would benefit from greater access to streamlined data relevant to the safety and environmental impacts of offshore drilling. Pursuant to its mandate to “cooperate and consult with . . . relevant Federal agencies” in the regulation of offshore oil and gas

39 44 U.S.C. §§ 3501, 3507(h)(3) (providing that, once the Office of Management and Budget (“OMB”) has approved a collection of information, an agency may not make a “substantive or material” modification to the collection without OMB approval.).

40 30 C.F.R. § 250.103.

41 See <http://perma.cc/56NR-ARR4> (listing active BSEE NTLs issued from 1998-2014) (last visited December 17, 2014).

42 REPORT OF THE INTERAGENCY WORKING GROUP ON DIGITAL DATA TO THE COMMITTEE ON SCIENCE OF THE NATIONAL SCIENCE AND TECHNOLOGY COUNCIL, HARNESSING THE POWER OF DIGITAL DATA FOR SCIENCE AND SOCIETY, at 4 (Jan. 2009).

operations, BSEE should take action to facilitate information sharing within and among agencies with a role or interest in the oversight of offshore drilling.

To address the current deficiencies in agency information sharing, BSEE should reach out to and collaborate with other relevant agencies to establish a centralized electronic reporting system capable of aggregating operator-submitted information in a searchable online database. (This outreach should include the SEC, which should participate with other federal agencies in devising the mechanisms for sharing information so that it can specify its information needs.) The database should aggregate all information submitted by offshore operators that is relevant to safety and environmental performance and be made accessible to all federal regulators and, except for information that is confidential, the general public.⁴³ BSEE could use a multi-agency MOA to develop such a centralized, electronic system for collecting and processing information from regulated offshore drilling entities. (A sample MOA is included in Attachment B.)

A multi-agency MOA would build on current, often bilateral, information sharing efforts between agencies by expanding the scope of existing agreements and establishing deadlines for facilitating improved information sharing and access. In particular, the signatories to the MOA would:

- (i) Compile a list of information reportable by offshore drilling entities, organize such data by searchable parameters,⁴⁴ and identify and address any gaps, overlaps or discrepancies in reporting requirements. In compiling this list of information, the agencies should identify which material is confidential and specify that the rest is automatically accessible to the public. Such an exercise would help address ambiguities in BSEE's regulations as to which information it intends to withhold from public access and for how long;
- (ii) Develop a computer application that provides a streamlined method by which offshore facilities can submit all required information electronically. This system could include a graphical user interface that would allow users to enter information for multiple reports

43 The Mine Safety and Health Administration ("MSHA") and the Pipeline and Hazardous Material Safety Administration ("PHMSA") maintain searchable online databases that could serve as models. See Mine Safety and Health Administration, *Mine Data Retrieval System*, available at <http://perma.cc/KA6J-BDEC> (last visited December 17, 2014) (containing information gathered from various MSHA systems); Pipeline and Hazardous Material Safety Administration, *Pipeline Operator Information*, available at <http://perma.cc/KKE4-3YKV> (last visited December 17, 2014) (collecting operator information from multiple sources including operator reported and internal PHMSA data).

44 Possible search parameters might include collection agency, date of submission, type of disclosure (voluntary or mandatory), and circumstance of disclosure (periodic or incident based).

simultaneously. The system should also allow facilities to submit confidential information separately. (Figure 1 below presents a conceptualized model for a graphical user interface screen that, while not intended to be a final product, provides an illustration of the idea); and

USCG
Form: CG-2692
[Authorities](#)

The same or similar information may be required by the following legal authorities. Please select reports to which you would like to add this information:

New	Conf'd	
<input type="checkbox"/>	<input type="checkbox"/>	BSEE, 30 CFR 250.189(h)
<input type="checkbox"/>	<input type="checkbox"/>	EPA, 40 CFR part 112.4(7)

Related reports:

☐ SEC, 10K, Item 103

Item 44: Describe how accident occurred, damage, information on alcohol/drug involvement, and recommendations for corrective safety measures. (See [instructions](#) if necessary.)

Information entered into this field will be available to the PUBLIC. Do not enter confidential information into this field. Please enter confidential information in field below marked "Confidential".

Confidential. Please enter confidential information in this field only.

N/A

Figure 1: Conceptualized GUI Model

- (iii) Create a searchable database that includes all reported information for use by all interested regulators and, with respect to non-confidential information, all other stakeholders and members of the public.

While conceptual and design input from all relevant agencies should be obtained early in the process, the computer application and database could be developed in stages, beginning with a pilot project to test the system and incorporate stakeholder feedback. A possible funding mechanism for the development and maintenance of such a system would be license and permit fees.

Providing regulators immediate access to information collected by other agencies, and alleviating the need for the public to proceed under the often lengthy FOIA process, would improve the ability of regulators and stakeholders alike to monitor and assess the safety and environmental performance

of offshore operators.⁴⁵ Such increased and timely access to information is needed to help displace the “culture of complacency” that the National Commission identified in the wake of the Deepwater Horizon tragedy.⁴⁶

Facilitating access to information is a critical step toward effective oversight of offshore drilling and protection of human health and the environment. Much can be done to achieve this goal without creating additional substantive requirements for or burdens on the regulated community, and would represent a significant step by BSEE towards meeting its mandates to proactively make information public and to cooperate and coordinate with other federal agencies in the regulation and oversight of offshore oil and gas operations.

* * *

45 For a discussion of the possible uses of currently-reportable data in monitoring the safety and environmental performance of offshore operators, see Wendy B. Jacobs, *Suggested Indicators of Environmentally Responsible Performance of Offshore Oil and Gas Companies Proposing to Drill in the U.S. Arctic*, EELPC, Harvard Law School, Cambridge, MA (Dec. 2013).

46 NATIONAL COMMISSION REPORT TO THE PRESIDENT, *supra* note 3, at ix, 293.

APPENDIX A

Proposed Revised Form BSEE-0133

EXHIBIT A:**BSEE-0133: *Proposed Revisions Denoted in Italics and Red Font***

U.S. Department of the Interior
 Bureau of Safety and Environmental
 Enforcement (BSEE)

Submit **ORIGINAL**

OMB control Number 1014-0018

OMB Approval Expires 10/31/2014

WELL ACTIVITY REPORT**BEGINNING DATE:** _____**ENDING DATE:** _____

REPORT IS NOT TO EXCEED 7 DAYS (1 WEEK) IN DURATION

Any information previously submitted to BSEE that is referenced in this form must be attached (in hard copy or electronic form), and will be deemed incorporated by reference and available to the public upon submission in accordance with 30 C.F.R. § 250.197(a).

<input type="checkbox"/> CORRECTION <input type="checkbox"/> CHECK IF THIS IS THE LAST WELL ACTIVITY REPORT											
GENERAL INFORMATION											
1. API WELL NO. (10 digits)						2. OPERATOR NAME					
3. WELL NAME		4. SIDETRACK NO.		5. BYPASS NO.		6. CONTACT NAME / CONTACT TELEPHONE NUMBER / CONTACT E-MAIL ADDRESS					
7. RIG NAME OR PRIMARY UNIT (e.g., wireline unit, coil tubing unit, etc.)						8. WATER DEPTH (surveyed) (ft)		9. ELEVATION AT KB (Surveyed) (ft)			
10. CURRENT WELLBORE INFORMATION											
SURFACE						BOTTOM					
LEASE NO.		AREA NAME		BLOCK NO.		LEASE NO.				BLOCK NO.	
WELLBORE	START DATE	TD DATE	STATUS	END DATE	KOP (MD)	MD	TVD	MW PPG	LAST BOP TEST DATE	LAST BOP TEST PRESSURE	
											LOW
11. WELLBORE HISTORICAL INFORMATION											
WELLBORE	BOTTOM LEASE	START DATE	TD DATE	PA DATE	FINAL MD	FINAL TVD					

WELL ACTIVITY REPORT

12. CASING / LINER / TUBING RECORD									
TUBULAR TYPE	HOLE SIZE (IN)	SIZE (IN)	WEIGHT (#/ft)	GRADE	TEST PRESSURE (psi)	SHOE TEST (EMW)	SETTING DEPTH (MD)		CEMENT QUANTITY (cubic ft.)
							TOP	BOTTOM	

13. WELL ACTIVITY SUMMARY

Provide a daily summary of well activities.

14. Open Hole Log Data

BSEE's Technical Data Management Section requires an Open Hole Well Report (Form BSEE-0133S) to accompany this Well Activity Report if any of the below conditions have occurred for this wellbore during this period:

☐ None of the following have occurred:

Wireline logs (Report when acquired)

Wireline Directionals (Report when acquired)

Velocity Surveys, VSP's, Conventional Cores, Rotary and Percussion Sidewall Cores (Report when acquired)

Completed MWD/LWD logs and Mudlogs - (Report when they are completed.)

IPVT, Paleontological and Geochemical Samples acquired for analysis (Report at completion of Borehole)

☐ Any of the above have occurred; if checked then submit Form BSEE-133S.

15. Significant Well Events

Please check as many events from the list below:

☐ Kick Occurrence
☐ Well Control Equipment Failure

☐ Shallow Water Flow
☐ H₂S Encounter

☐ Weather and Oceanographic Conditions
☐ New Technology Failure

☐ General Rig Equipment Failure
☐ Stuck Pipe

☐ Lost Returns
☐ Wellbore Integrity Failure

☐ Station Keeping Failure
☐ Other

WELL ACTIVITY REPORT

16. INFORMATION TRANSMISSION LOG

List all information relevant to environmental protection and occupational safety submitted to BSEE since completion of the last Well Activity Report for the well identified in Section 1. If this is the first Well Activity Report for this well, list all information relevant to environmental protection and occupational safety submitted to BSEE prior to completion of this form along with the date of submission:*

* This includes, but is not limited to: (i) incident reports submitted pursuant to 30 C.F.R. § 250.187-191; (ii) information related to natural occurrences submitted pursuant to 30 C.F.R. § 250.192; (iii) information related to recompletion of wells submitted pursuant to 30 C.F.R. § 250.195; (iv) Deepwater Operation Plans and conceptual plans submitted pursuant to 30 C.F.R. §§ 250.201 and 286-292; (v) information related to Blowout Protection (BOP) procedures submitted pursuant to 30 C.F.R. §§ 250.446 and 450; (vi) information related to well-control drill plans submitted pursuant to 30 C.F.R. § 250.462; (vii) information related to H₂S and H₂S contingency plans submitted pursuant to 30 C.F.R. § 250.490; (viii) information related to tubing and well-head equipment submitted pursuant to 30 C.F.R. § 250.517; (ix) information related to casing pressure and diagnostic tests along with collective action plans submitted pursuant to 30 C.F.R. §§ 250.523-527; and (x) all Safety and Environmental Management System (SEMS) related information submitted pursuant to 30 C.F.R. §§ 250.1901-1929.

WELL ACTIVITY REPORT

Please provide narrative information with regards to any significant events. Provide attachments, if necessary.

PAPERWORK REDUCTION ACT OF 1995 (PRA) STATEMENT: The PRA (44 U.S.C. 3501 et seq.) requires us to inform you that we collect this information to obtain knowledge of equipment and procedures to be used in drilling operations. BSEE uses the information to evaluate and approve or disapprove the adequacy of the equipment and/or procedures to safely perform the proposed drilling operations. Responses are mandatory (43 U.S.C. 1334). Proprietary data are covered under 30 CFR 250.197. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. Public reporting burden for Forms BSEE-0133 and BSEE-0133S is approximately 1 hour per form per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to the Information Collection Clearance Officer, Bureau of Safety and Environmental Enforcement, 381 Elden Street, Herndon, VA 20170.

APPENDIX B

Proposed Memorandum of Agreement

Note: The following Proposed Memorandum of Agreement (MOA) is a model that includes relevant legal authorities, a structure for intra- and inter-agency collaboration, suggested timelines, and relevant definitions. This draft does not address issues such as participation of additional agencies, implementation of a pilot project, or funding.

PROPOSED MEMORANDUM OF AGREEMENT
BETWEEN THE
BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT – U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF OCEAN ENERGY MANAGEMENT – U.S. DEPARTMENT OF THE INTERIOR,
U.S. ENVIRONMENTAL PROTECTION AGENCY,
U.S. COAST GUARD – U.S. DEPARTMENT OF HOMELAND SECURITY, AND
SECURITIES AND EXCHANGE COMMISSION

Subject: Centralized Reporting System for Offshore Drilling

A. PURPOSE

The Bureau of Safety and Environmental Enforcement (BSEE), Bureau of Ocean Energy Management (BOEM), United States Environmental Protection Agency (EPA), United States Coast Guard (USCG) and Securities and Exchange Commission (SEC) share either the jurisdiction to require, or an interest in, information from entities engaged in offshore drilling activities that may be relevant to the oversight and regulation of public safety and the environment. The purpose of this Memorandum of Agreement (MOA) is to promote the coordinated oversight of offshore drilling through the creation of a centralized reporting system for offshore drilling activities that aggregates reported information in a single, searchable system that is available to the public and interested regulators.

The participating agencies will review their internal procedures and, where appropriate, revise them to be consistent with the provisions of this MOA.

B. AUTHORITIES

In order to focus on the substance of the proposed MOA, relevant authorities are noted at the end of this document.ⁱ

C. DEFINITIONS

1. “Application” shall mean the centralized electronic reporting system that (i) aggregates Information reported by Regulated Persons and archives it in a single accessible and searchable system, and (ii) allows for entry of Information by the Parties or by Regulated Persons.
2. “Confidential Information” shall mean information that is protected from public disclosure by Legal Authority.
3. “Effective Date” shall mean the date agreed upon by the Parties upon which this MOA will take effect.

4. “Information” shall mean any and all information, data, and documentation related to the health, safety, or environmental impact of offshore drilling and related activities, including but not limited to plans and procedures, interpreted and un-interpreted data, test results, and incident reports that Regulated Persons report, submit or otherwise provide to the Parties.
5. “Legal Authority” shall mean all statutes, executive orders, rules (as defined at 5 U.S.C. § 551(4)), orders (as defined at 5 U.S.C. § 551(6)), leases and licenses (as defined at 5 U.S.C. § 551(8)), that require Regulated Persons to disclose Information to a Party and/or protect such Information from public disclosure.
6. “Regulated Person” shall mean any person, as that term is defined in 43 U.S.C. § 1331(d), engaged in any exploration, development, or production (as defined at 43 U.S.C. § 1331(k), (l), (m)) in or related to activity in the Outer Continental Shelf (as defined at 43 U.S.C. § 1331(a)), including but not limited to, conducting any form of commercial activity on an offshore drilling facility, or transporting material to or from an offshore facility.
7. “Parties” shall mean the signatories to this MOA.

D. REQUIREMENTS

1. The Parties will establish a Joint Committee for Offshore Drilling (“Committee”). Each of the Parties will assign at least two individuals to serve as Committee members.
2. The Committee will hold an initial meeting within 90 days of the Effective Date of this MOA to establish a process and timeframe for compiling a list of Information collected by each of the Parties. At this meeting the Committee will:
 - a. Establish a timeframe for selecting technical advisors, such as a software engineer or programmer and database administrator to provide advice in the development of the Application. These technical advisors will be engaged by no later than [X] months after the Effective Date.
 - b. Establish a process and timeframe for creating a set of parameters that will be used by the Parties to categorize the Information and as search criteria in the Application. The parameters will be developed within [X+3] months of the Effective Date.
 - c. Establish a timeframe for the Parties to compile a list of the Information, provided that such list shall be completed within [X+9] months of the Effective Date.
 - d. Establish a timeframe for the Parties to: (i) review the compiled list of Information and identify gaps, areas of overlap or discrepancies; and (ii) identify measures for eliminating or mitigating any such gaps, overlaps or discrepancies. The identification and resolution of gaps, overlaps or discrepancies in the Information shall be completed, to the extent practical, prior to the implementation of the Application.

- e. Establish a process and timeframe for the creation of a review mechanism, whereby the Parties will determine whether information that Regulated Persons designate as confidential is protected from disclosure by Legal Authority.

The timeframes established pursuant to 2(b)–(d) shall include opportunities for consultations between the Parties, including at subsequent Committee meetings, and with technical advisors.

3. The Committee will designate a technical team to build and maintain the Application. The technical team may include third-party contractors, but will report to and take direction from the Committee. The Application will include the following features:
 - a. Entry fields for all of the Information, including an opportunity for users entering Information to designate entries as Confidential Information.
 - b. Ability for Regulated Persons to populate fields electronically and submit reports to the Parties through the Application.
 - c. Searching capability for all Information in the Application based on the parameters established under section D.2(b) of this MOA.
 - d. Protection of Confidential Information so that it is accessible only to personnel authorized to access it.
 - e. Public access to all Information that is not designated as Confidential Information in the Application.
4. The Application will be updated to reflect any changes, including but not limited to changes in Legal Authority, which impact the Information submitted by Regulated Persons to the Parties.
 - a. To the extent practicable, the Parties will ensure that any changes to their Legal Authority regarding Information collected from Regulated Persons are consistent with the requirements of the Application and this MOA.
 - b. Upon making any change to the Information that Regulated Persons must submit to the Parties, the Party responsible for such change will ensure that any effected entry fields in the Application are labeled as “undergoing revisions,” “revised,” or “new,” as appropriate.
5. The Committee will meet at least once every three months for the first two years following the Effective Date of this MOA and then at least once per year thereafter. Such meetings will include a review and discussion of the following:
 - a. The effectiveness of the Parties’ collaboration under this MOA;

- b. The status of implementation of this MOA's requirements;
- c. Proposals for changes or improvements to the Application, including the parameters and list of Information developed pursuant to Section D.2 of this MOA; or
- d. Any problems encountered in the implementation or use of, or access to, the Application.

E. AMENDMENTS TO THIS MOA

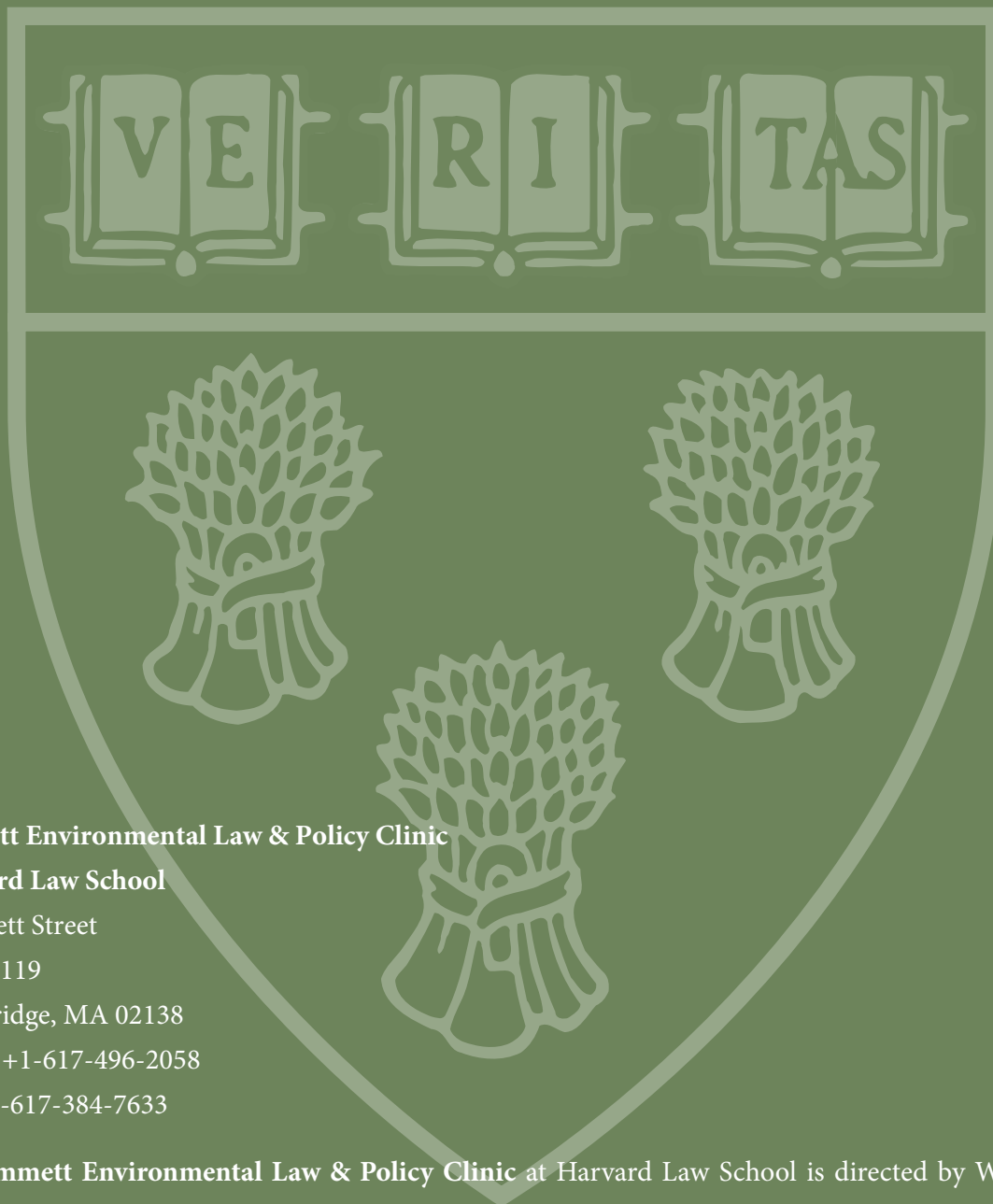
This MOA may be amended by mutual agreement of a majority of the Parties.

F. TERMINATION OF THIS MOA

This MOA may be terminated by a majority of the Parties after providing 30-days advance written notice to the other Parties.

ⁱ AUTHORITIES:

1. BSEE enters this agreement in accordance with delegated legal authorities including the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. §§ 1331 *et seq.*, the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2701 *et seq.*, Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and Executive Order 12,777.
2. BOEM enters this agreement in accordance with delegated legal authorities including OCSLA, as amended, 43 U.S.C. §§ 1331 *et seq.*, OPA, 33 U.S.C. §§ 2701 *et seq.*, the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. §§ 1701 *et seq.*, Section 311 of the Clean Water Act, 33 U.S.C. § 1321, and Executive Order 12,777.
3. EPA enters this agreement under the authority of the Comprehensive Environmental Response, Compensation, & Liability Act (CERCLA), 42 U.S.C. §§ 103 *et seq.*, OPA, 33 U.S.C. §§ 2701 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1321 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7627 *et seq.*, and Executive Order 12,777.
4. USCG enters this agreement under the authority of 14 U.S.C. §§ 93(a)(20) and 141, OCSLA, as amended, 43 U.S.C. §§ 1331 *et seq.*, OPA, 33 U.S.C. §§ 2701 *et seq.*, the Clean Water Act, 33 U.S.C. §§ 1321 *et seq.*, and Executive Order 12777.
5. SEC enters this agreement under the authority of the Securities Act of 1933, 17 U.S.C. Chapter 2A, the Securities Exchange Act of 1934, 17 U.S.C. Chapter 2B and the Sarbanes-Oxley Act of 2002, 18 U.S.C. §§ 1350 *et seq.*



**Emmett Environmental Law & Policy Clinic
Harvard Law School**

6 Everett Street

Suite 4119

Cambridge, MA 02138

Phone +1-617-496-2058

Fax +1-617-384-7633

The Emmett Environmental Law & Policy Clinic at Harvard Law School is directed by Wendy B. Jacobs and is dedicated to addressing major environmental issues in the United States and abroad and to providing its students an opportunity to do meaningful, hands-on environmental legal and policy work. Students and clinic staff work on issues such as climate change, pollution reduction, water protection and smart growth.