

## Federal Offshore Pipeline Decommissioning in BOEM Significant Sediment Resource Areas

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In recent years, the Bureau of Safety and Environmental Enforcement (BSEE) has increasingly departed from longstanding practices by denying applications to decommission offshore pipelines in place. The denials are accompanied by an order from BSEE to decommission the pipelines by removal, with reference to Notice to Lessees (NTL) 2009-G04 and/or Significant Sediment Resource Areas (SSRA) in the vicinity of the pipeline. BSEE is also issuing orders to companies to remove pipelines located in SSRAs that *were previously* decommissioned in place.

Some of these orders identify by lease block the SSRA that would allegedly be impacted by leaving the pipeline in place, but others do not. Often, the subject of such an order may have no knowledge that the area in which its pipeline was located had been designated as a SSRA. And rarely, if ever, will the order identify a specific project involving the use of the SSRA at issue. Indeed, BSEE has ordered pipelines to be removed from lease blocks in which there is no current *or proposed* project for the SSRA. These orders have the potential to result in exponentially higher decommissioning expenses and, consequently, have led to several pending appeals to the Interior Board of Land Appeals, which reviews decisions from BSEE.

Prior to 2015, BSEE routinely granted applications to decommission pipelines in place pursuant to 30 C.F.R. § 250.1750, which provides that a pipeline may be decommissioned in place if it “does not constitute a hazard (obstruction) to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects.” A pipeline previously decommissioned in place may be ordered removed if BSEE “determines that the pipeline is an obstruction.” 30 C.F.R. § 250.1754. BSEE’s regulations define “obstructions” as “structures, equipment, or objects that were used in oil, gas, or sulphur operations . . . that, if left in place, would hinder other users of the OCS.” 30 C.F.R. § 250.1700(b).

BSEE’s recent orders for removal of pipelines based only on their locations in SSRAs—without regard to whether a project for use of the SSRA’s sediment is anticipated—are in seeming contrast to its own regulations requiring “obstruction” or “interference” with other Outer Continental Shelf (OCS) uses. The origin of NTL 2009-G04 and SSRAs dates to 2008 when, in response to a request from Louisiana Department of Natural Resources (LDNR) and under the authority of 30 C.F.R. § 550.101, the Minerals Management Services (MMS), BSEE’s predecessor, began designating certain OCS lease blocks as SSRAs to be used in future coastal restoration, beach nourishment, and levee reconstruction projects.

In 2009, MMS issued NTL 2009-G04 to “provide[] guidance for the avoidance and protection of significant OCS sediment resources.” The NTL set forth a policy “to help safeguard the most significant OCS sediment resources, reduce multiple use conflicts, and minimize

interference with oil and gas operations under existing leases or pipeline ROWs.” The NTL provides that “[i]f it is determined that significant OCS sediment resources may be impacted by a proposed activity, [BSEE] may require [lessees] to undertake measures deemed economically, environmentally, and technically feasible to protect the resources to the maximum extent practicable.” Regarding pipelines, the NTL provides that “[f]uture requests for in-place decommissioning of pipelines in these designated areas are discouraged” and that “[i]f it is deemed necessary, [BSEE] may require pipelines previously decommissioned in place to be removed to minimize conflict with other uses of the OCS.”

Following the reorganization of MMS into BSEE, the Bureau of Ocean Energy Management (BOEM), and the Office of Natural Resources Revenue in 2011, the use of OCS sediment resources is now implemented and managed through BOEM’s Marine Minerals Program. Through the Marine Minerals Program, and pursuant to the authority granted by 43 U.S.C. § 1337(k)(2), BOEM can convey the rights to OCS sand for use in projects for “shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency” or “a construction project . . . that is funded in whole or in part by or authorized by the Federal Government.”

Since 2015, BOEM has executed fifty-eight Marine Minerals Program leases for use of 164 million cubic yards of sand. Forty-six of those projects have already been completed, four have expired, and eight are still active. Another seven have been proposed. The majority of the restoration projects are located in Florida, though Louisiana has been allocated the most amount of sand (62.9 million cubic yards). In the Gulf of Mexico, approximately twenty-one offshore lease blocks have been the site of completed, active, or expired leases.

SSRAs are identified by their OCS lease block name and number and are listed on the BOEM Marine Minerals Program website, <https://www.boem.gov/marine-minerals/managing-multiple-uses-gulf-mexico>. The number of offshore lease blocks in the Gulf of Mexico designated as SSRAs doubled from 337 in 2014 to nearly 700 today. However, new designations are not affirmatively issued to lessees or otherwise publicized, and can go unnoticed by the regulated industry absent monitoring of BOEM’s website (which does not indicate whether or when it has been updated). Operators in the OCS should be cognizant of these developments, and vigilant about the possibility of new SSRAs which may affect their decommissioning liabilities.

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