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January 29, 2018

Re: Public Comment in response to RIN 1014-AA37

Public Citizen is a national consumer advocacy organization with more than 400,000 members and supporters. We advocate in an array of issue areas to advance the public interest, including for the health and safety of workers and for whistleblower protections. We oppose the proposal to remove critical safety protections put in place after the BP Deepwater Horizon (DWH) disaster. In particular, we have concern with the proposal to replace independent third party inspections of safety devices with oil and gas industry (industry) standards and inspections. This proposal places workers, the environment and the public at risk in exchange for nominal industry savings (\$228 million over 10 years). It also comes in the midst of ill-conceived efforts by the administration to expand offshore oil and gas drilling off U.S. coastlines.<sup>1</sup>

#### I. Industry Standards Resulted in Deepwater Horizon Explosion

Extensive government documentation confirms that the DWH rig should not have been in operation prior to the April 2010 explosion that claimed the lives of 11 workers and caused unprecedented environmental and public health impacts throughout the Gulf. Specifically -

- The Department of Interior<sup>2</sup>, Chemical Safety and Hazard Investigation Board (CSB)<sup>3</sup>, and Energy and Commerce Committee<sup>4</sup> concluded that there was a mechanical error with the DWH blowout preventer (BOP), which prevented it from shutting the well to stop the release of a reported 4.9 million barrels of oil throughout the Gulf
- An investigation by the CSB also reported failures of the primary well control equipment, and BP and Transocean safety management deficiencies<sup>5</sup>
- Public records show that in the years prior to the DWH explosion, BP was aware that one of its drilling contractors would routinely falsify BOP test results and safety drill reports. Whistleblowers within the company disclosed that such practices were common, and the standard test to determine if a BOP could withstand high pressure levels was only applied in the presence of state and federal regulators - which was approximately half of the time<sup>6</sup>

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<sup>1</sup> Press Release, Department of Interior, *Secretary Zinke Announces Plan for Unleashing America's Offshore Oil and Gas Potential* (Jan. 4, 2018), <https://on.doi.gov/2IW1In1>.

<sup>2</sup> Det Norske Veritas, *Final Report for United States Department of the Interior: Forensic Examination of Deepwater Horizon Blowout Preventer* (2011), <https://on.doi.gov/2GrPkEF>.

<sup>3</sup> *The U.S. Chemical Safety Board's Investigation into the Macondo Disaster Finds Offshore Risk Management and Regulatory Oversight still Inadequate in Gulf of Mexico*, U.S. Chemical Safety Board (viewed on Jan. 16, 2018), <http://bit.ly/1p0veaA>.

<sup>4</sup> *Inquiry Into the Deepwater Horizon Gulf Coast Oil Spill* before H. Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, 111th Cong. (2010), <http://bit.ly/2DI4sfC>.

<sup>5</sup> *The U.S. Chemical Safety Board's Investigation into the Macondo Disaster Finds Offshore Risk Management and Regulatory Oversight still Inadequate in Gulf of Mexico*, U.S. Chemical Safety Board (viewed on Jan. 16, 2018), <http://bit.ly/1p0veaA>.

<sup>6</sup> Richard Mauer, *BP Played Big Role in Alaska Blowout Preventer Probe*, McClatchy Newspapers (June 26, 2010), <http://bit.ly/2FnPoUP>.

Notwithstanding these findings, Cameron (the BOP manufacturer) asserted that the BOP “was designed and tested to industry standards and customer specifications,” and Transocean said the findings “confirm that the BOP was in proper operating condition and functioned as designed.”<sup>7</sup> Despite their assurances, the industry’s standard failed to prevent the largest oil disaster in U.S. history.

In addition to identifying extensive safety problems with the DWH, the CSB investigation warned of present risks associated with offshore drilling: “[A] culture of minimal regulatory compliance continues to exist in the Gulf of Mexico and risk reduction continues to be elusive”<sup>8</sup>. Rather than pursuing deregulation and offshore drilling expansion, BSEE needs to fortify and expand best practice safety requirements. This should include collaboration with workers to identify and correct hazards before they escalate, supporting measures to protect whistleblowers from retaliation, and other transparency measures.

## II. Whistleblower Protections

The violations leading up to the DWH blowout persisted in an environment that discouraged workers from reporting safety abuses. In July 2010 the New York Times reported “A confidential survey of workers on the Deepwater Horizon in the weeks before the oil rig exploded showed that many of them were concerned about safety practices and feared reprisals if they reported mistakes or other problems.”<sup>9</sup> Relatedly, Mike Mason, the primary whistleblower to disclose the BP drilling contractor’s fraudulent BOP tests, was fired after he reported the violations.<sup>10</sup> Nearly eight years after the tragedy in the Gulf, offshore oil and gas workers do not have whistleblower protections.

The Offshore Oil & Gas Worker Whistleblower Protection Act (H.R. 4304) would provide gold-standard whistleblower rights for workers who disclose unsafe working conditions. It is also consistent CSB’s investigation report recommendation to enforce offshore drilling safety through robust whistleblower protections. Specifically, it recommended:

Protections for workers participating in safety activities with a specific and effective process that workers can use to seek redress from retaliatory action with the goal to provide a workplace free from fear that encourages discussion and resolution of safety issues and concerns. Protected activities include, but are not limited to reporting unsafe working conditions, near misses, and situations where stop work authority is used.<sup>11</sup>

As the eyes and ears to occupational safety breakdowns, workers are integral to reducing offshoring drilling hazards. They must be treated as part of the solution, not the problem, in order

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<sup>7</sup> Joel Achenback & Steven Mufson, *Initial Loss of Well Control Doomed Deepwater Horizon*, Washington Post (March 23, 2011), <http://wapo.st/2np7vIF>.

<sup>8</sup> *The U.S. Chemical Safety Board’s Investigation into the Macondo Disaster Finds Offshore Risk Management and Regulatory Oversight still Inadequate in Gulf of Mexico*, U.S. Chemical Safety Board (viewed on Jan. 16, 2018), <http://bit.ly/1p0veaA>.

<sup>9</sup> Ian Urbina, *Workers on Doomed Rig Voiced Concern About Safety*, New York Times (July 21, 2010), <http://nyti.ms/2Fqo5JD>.

<sup>10</sup> Marcus Baram, *Whistleblower Claims that BP Was Aware of Cheating on Blowout Preventer Tests*, Huffington Post (May 12, 2010), <http://bit.ly/2nn3yOI>.

<sup>11</sup> U.S. Chemical Safety and Hazard Investigation Board, *Investigation Report Volume 4: Drilling Rig Explosion and Fire at the Macondo Well* (2011), <http://bit.ly/2DItD5A>

to play an active role in preventing disasters. Further, the burden cannot be on workers alone; they must be equipped with dependable safety devices and measures subject to independent inspection and enforcement.

### III. Conclusion

Recent history has shown us that if this proposal advances it will harm the public, government and industry. The DWH disaster ultimately cost BP nearly \$62 billion, and caused devastating health and environmental impacts.<sup>12</sup> The federal government and the industry are not prepared to respond to the next offshore oil disaster, and the industry is not capable of self-policing.<sup>13</sup> BSEE should rescind this proposed rulemaking immediately.

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<sup>12</sup>Nathan Bomey, *BP's Deepwater Horizon Costs Total \$62B*, USA Today (July 14, 2016), <https://usat.ly/2nnZ0aA>.

<sup>13</sup> *Corexit: Deadly Dispersant in Oil Spill Cleanup*, Government Accountability Project (viewed on Jan. 16, 2018), <http://bit.ly/2nlwyyqD>.