



Report to the Ranking Member,  
Committee on Natural Resources,  
House of Representatives

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February 2016

# OIL AND GAS MANAGEMENT

Interior's Bureau of  
Safety and  
Environmental  
Enforcement  
Restructuring Has Not  
Addressed Long-  
Standing Oversight  
Deficiencies

# GAO Highlights

Highlights of [GAO-16-245](#), a report to the Ranking Member, Committee on Natural Resources, House of Representatives

## Why GAO Did This Study

On April 20, 2010, the *Deepwater Horizon* drilling rig exploded in the Gulf of Mexico resulting in 11 deaths, serious injuries, and the largest marine oil spill in U.S. history. In response, in May 2010, Interior reorganized offshore oil and gas management activities—energy development, revenue collection, and regulatory oversight—into separate bureaus. In October 2011, Interior created BSEE to manage regulatory oversight. Since then, BSEE has undertaken reform efforts but has not fully addressed deficiencies in its investigative, environmental compliance, and enforcement capabilities identified by investigations after the *Deepwater Horizon* incident. In October 2013, BSEE initiated an organizational restructuring to address continuing oversight deficiencies. GAO was asked to review BSEE's efforts to enhance its oversight capabilities.

This report examines the extent to which BSEE's ongoing restructuring has enhanced its capabilities for (1) investigations, (2) environmental compliance, and (3) enforcement. GAO reviewed laws, regulations, and policies, related to BSEE's restructuring and oversight activities. GAO also interviewed BSEE officials and industry representatives.

## What GAO Recommends

GAO recommends, among other things, that BSEE (1) complete and update its investigative policies and procedures, (2) conduct and document a risk analysis of the regional-based reporting structure, and (3) develop procedures for enforcement actions. Interior neither agreed nor disagreed with GAO's recommendations.

View [GAO-16-245](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov).

February 2016

## OIL AND GAS MANAGEMENT

### Interior's Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Long-Standing Oversight Deficiencies

## What GAO Found

The Department of the Interior's (Interior) Bureau of Safety and Environmental Enforcement's (BSEE) ongoing restructuring has made limited progress in enhancing the bureau's investigative capabilities. BSEE continues to rely on pre-*Deepwater Horizon* incident policies and procedures. Specifically, BSEE has not completed a policy outlining investigative responsibilities or updated procedures for investigating incidents—among the goals of BSEE's restructuring, according to restructuring planning documents, and consistent with federal standards for internal control. The use of outdated investigative policies and procedures is a long-standing deficiency. Post-*Deepwater Horizon* incident investigations found that Interior's policies and procedures did not include requirements for planning investigations, gathering and documenting evidence, and ensuring quality control and determined that their continued use posed a risk to the effectiveness of bureau investigations. Without completing and updating its investigative policies and procedures, BSEE continues to face this risk.

BSEE's ongoing restructuring of its environmental compliance program reverses actions taken to address post-*Deepwater Horizon* incident concerns, and risks weakening the bureau's environmental compliance oversight capabilities. In 2011, in response to two post-*Deepwater Horizon* incident investigations that found that BSEE's predecessor's focus on oil and gas development might have been at the expense of protecting the environment, BSEE created an environmental oversight division with region-based staff reporting directly to the headquarters-based division chief instead of regional management. This reporting structure was to help ensure that environmental issues received appropriate weight and consideration within the bureau. Under the restructuring, since February 2015, field-based environmental compliance staff again report to their regional director. BSEE's rationale for this action is unclear, as it was not included in the bureau's restructuring planning documentation or analysis as part of restructuring planning. Under federal standards for internal control, management is to assess the risks faced from external and internal sources and decide what actions to take to mitigate them. Without assessing the risk of reversing this reporting structure, it is not clear that BSEE will have reasonable assurance that environmental issues are receiving the appropriate weight and consideration as called for by post-*Deepwater Horizon* incident investigations.

BSEE's ongoing restructuring has made limited progress in enhancing its enforcement capabilities. In particular, BSEE has not developed procedures with criteria to guide the use of its enforcement tools—such as warnings and fines—which are among the goals of BSEE's restructuring, according to planning documents, and consistent with federal standards for internal control. BSEE restructuring plans state that the current lack of criteria results in inconsistent actions and creates uncertainty for operators regarding BSEE's oversight approach and expectations. The absence of enforcement criteria is a long-standing deficiency. For example, post-*Deepwater Horizon* incident investigations recommended an assessment of enforcement tools and how to employ them to deter safety and environmental violations. Without developing procedures with defined criteria for taking enforcement actions, BSEE continues to face risks to the effectiveness of its enforcement capabilities.

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# Contents

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Letter		1
	Background	4
	BSEE's Ongoing Restructuring Has Made Limited Progress Enhancing Its Investigative Capabilities	10
	BSEE's Ongoing Restructuring Risks Weakening Its Environmental Compliance Capabilities	16
	BSEE's Ongoing Restructuring Has Made Limited Progress Addressing Long-Standing Deficiencies in Its Enforcement Capabilities	24
	Conclusions	28
	Recommendations for Executive Action	29
	Agency Comments and Our Evaluation	31
Appendix I	Objectives, Scope, and Methodology	33
Appendix II	Comments from the Department of the Interior	35
Appendix III	Comments from the Environmental Protection Agency	38
Appendix IV	GAO Contact and Staff Acknowledgments	40

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## Abbreviations

AIB	Accident Investigation Board
BOEM	Bureau of Ocean Energy Management
BOEMRE	Bureau of Ocean Energy, Management, Regulation and Enforcement
BSEE	Bureau of Safety and Environmental Enforcement
CPI	Consumer Price Index
EPA	Environmental Protection Agency
IG	Office of Inspector General
INC	incident of noncompliance
Interior	Department of the Interior
IRU	Investigations and Review Unit
MMS	Minerals Management Service
OCS	outer continental shelf

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February 10, 2016

The Honorable Raúl Grijalva  
Ranking Member  
Committee on Natural Resources  
House of Representatives

Dear Mr. Grijalva:

On April 20, 2010, the *Deepwater Horizon* drilling rig exploded in the Gulf of Mexico, resulting in 11 deaths, serious injuries, and the largest marine oil spill in the history of the United States. The *Deepwater Horizon* incident raised questions about the Department of the Interior's (Interior) oversight of offshore oil and gas activities in the Gulf of Mexico and led to investigations by Interior's Office of Inspector General (IG) and Interior's Outer Continental Shelf (OCS) Safety Oversight Board. These investigations identified risks to Interior's oversight of offshore oil and gas development, including oversight of its investigations, environmental compliance, and enforcement capabilities. For example, a December 2010 IG report identified organizational, procedural, and regulatory risks that impede the effectiveness of Interior's investigative capability.<sup>1</sup> Additionally, a September 2010 OCS Safety Oversight Board report found that Interior's emphasis on promoting the development of federal offshore oil and gas resources might have preempted its responsibility to protect the environment.<sup>2</sup> The same report also identified weaknesses in Interior's enforcement program, including its use of warnings, fines, and sanctions to compel operator compliance with safety and environmental regulations.

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<sup>1</sup>U.S. Department of the Interior, Office of Inspector General, "A New Horizon: Looking to the Future of the Bureau of Ocean Energy Management, Regulation and Enforcement" (December 2010).

<sup>2</sup>The OCS refers to the submerged lands outside the territorial jurisdiction of all 50 states, but within U.S. jurisdiction and control. The portion of the North American continental edge that is federally designated as the OCS generally extends seaward 3 geographical miles off the coastline to at least 200 nautical miles. The OCS Safety Oversight Board was created by secretarial order to review and oversee Interior OCS operations to support reasoned and fact-based recommendations for potential improvement. See U.S. Department of the Interior Outer Continental Shelf Safety Oversight Board, "Report to Secretary of the Interior Ken Salazar" (Sept. 1, 2010).

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In response to the *Deepwater Horizon* incident, Interior initiated a number of policy reforms intended to strengthen its oversight of offshore oil and gas production on the OCS. On May 19, 2010, Interior reorganized the Minerals Management Service (MMS)—the agency responsible for managing oil and gas activities in federal waters—to improve the management, oversight, and accountability of activities on the OCS.<sup>3</sup> As an interim step, Interior renamed MMS the Bureau of Ocean Energy, Management, Regulation and Enforcement (BOEMRE), and separated major functions of offshore oil and gas management by making BOEMRE responsible for offshore oil and gas management and the Office of Natural Resources Revenue responsible for revenue collections. On October 1, 2011, Interior completed the reorganization of MMS by splitting BOEMRE into the Bureau of Ocean Energy Management (BOEM), which is responsible for leasing and resource management, and the Bureau of Safety and Environmental Enforcement (BSEE), which is responsible for reviewing drilling permits, inspecting offshore drilling rigs and production platforms, and developing regulations and standards for offshore drilling.<sup>4</sup>

Since its inception in 2011, BSEE has undertaken several efforts to reform its oversight capabilities. Specifically, in February 2012, BSEE announced that it planned to issue a regulation to strengthen its investigations and enforcement authority, among other things, but changed this plan in May 2013, citing other regulatory changes as higher priorities. Additionally, BSEE contracted with a consultant in April 2012 to assess its oversight approach and again in April 2013 to develop tools for streamlining enforcement actions. However, BSEE did not take any specific actions in response to the consultant's assessment or implement the tools it developed for BSEE's adoption.

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<sup>3</sup>Secretarial Order No. 3299 (May 19, 2010).

<sup>4</sup>In February 2011, GAO added Interior's oversight of oil and gas resources to its list of programs at high risk of waste, fraud, abuse, and mismanagement or in need of broad reform. GAO previously reported on the reorganization of the MMS in July, 2012. See GAO, *Oil and Gas Management: Interior's Organization Complete, but Challenges Remain in Implementing New Requirements*, [GAO-12-423](#) (Washington, D.C.: July 30, 2012). The report found that, among other things, Interior had not consistently employed a formal process for tracking and responding to the findings and recommendations of external reviews and ensured they are promptly resolved. GAO recommended that the Secretary of the Interior complete and maintain its database for tracking recommendations, among other things. Interior has not completed action in response to this recommendation.

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In October 2013, BSEE initiated an organizational restructuring of its investigations, environmental compliance, and enforcement capabilities.<sup>5</sup> BSEE's restructuring goals are to establish new national programs for each of these capabilities, and develop policies and procedures for each of these programs. BSEE's restructuring effort remains ongoing.<sup>6</sup>

Offshore incidents subsequent to the *Deepwater Horizon* incident highlight the continued importance of BSEE's role in overseeing offshore oil and gas activities. For example, BSEE investigated a November 2012 explosion that occurred onboard a production platform in the Gulf of Mexico that resulted in the deaths of three workers, serious injuries to others, and the discharge of pollutants into the Gulf of Mexico. As a result, BSEE issued 40 violations to four companies involved in the operation of the platform. Additionally, in December 2012, the mobile offshore drilling unit *Kulluk* separated from its tow line in 20-foot seas and grounded ashore in the Gulf of Alaska. The incident resulted in minor injuries and no environmental damage, but demonstrated the challenges of operating in the Arctic environment and the importance of a robust oversight program in the region.<sup>7</sup>

You asked us to review BSEE's efforts to enhance its oversight capabilities. This report examines the extent to which BSEE's ongoing restructuring has enhanced its capabilities for (1) investigations, (2) environmental compliance, and (3) enforcement.

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<sup>5</sup>In January 2015, the IG suspended an evaluation of BSEE's investigations program in order to provide the bureau with time to complete implementation of its restructuring. However, based on the survey work conducted prior to that point, the IG reported in August 2015 that it has identified several issues with BSEE's investigations program and made four recommendations to address them. See U.S. Department of the Interior, Office of the Inspector General, *The Bureau of Safety and Environmental Enforcement, Incident Investigation Program, Report No. CR-EV-BSEE-0014-2014* (Aug. 18, 2015).

<sup>6</sup>On October 30, 2015, the IG issued a Management Advisory citing concerns regarding BSEE's planning for its restructuring effort. Specifically, the IG recommended that BSEE promptly develop an action plan—including timelines and responsible officials for major milestones, including policy and procedure development, and staffing and training plans—for the implementation of its restructuring. See U.S. Department of the Interior, Office of Inspector General, *Management Advisory-Ongoing Concerns with Realignment Planning for the Bureau of Safety and Environmental Enforcement, Assignment No.: 2015-EAU-077* (Oct. 30, 2015).

<sup>7</sup>In August 2015, BSEE approved exploratory drilling in the Arctic.

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To do this work, we reviewed laws, regulations, policies, guidance, and other documentation related to BSEE's authorities, activities, and restructuring effort regarding its investigative, environmental compliance, and enforcement capabilities since its inception in 2011. We interviewed BSEE officials representing the bureau's headquarters leadership as well as officials responsible for conducting oversight activities in each of the bureau's three regions—Gulf of Mexico, Pacific, and Alaska—to determine the purpose for the ongoing restructuring, as well as how it has affected the bureau's oversight activities. We also reviewed interagency agreements between BSEE and other federal agencies with OCS responsibilities—BOEM, the Environmental Protection Agency (EPA), and the U.S. Coast Guard—and interviewed officials representing them to determine how the agencies coordinate oversight activities. We also met with representatives of the industry groups that (1) represent all segments of the domestic oil and gas industry and (2) develop safety and environmental standards for that industry to obtain their perspectives on how BSEE's ongoing restructuring has affected its oversight of offshore oil and gas development. Their views are not generalizable but provide illustrative examples. Appendix I provides a more detailed description of our objectives, scope, and methodology.

We conducted this performance audit from January 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

The Outer Continental Shelf Lands Act of 1953, as amended,<sup>8</sup> requires that the Secretary of the Interior conduct an investigation and issue a report on deaths, serious injuries, fires, and pollution events that occur as a result of offshore oil and gas operations.<sup>9</sup> BSEE carries out these investigations on behalf of the Secretary throughout America's 1.7 billion acres of the OCS. Specifically, BSEE's mission is to promote safety, protect the environment, and conserve resources offshore through

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<sup>8</sup>Codified as amended at 43 U.S.C. §§ 1331-1356a.

<sup>9</sup>43 U.S.C. § 1348(d).



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vigorous regulatory oversight and enforcement. It is responsible for overseeing offshore operations, which includes the authority to investigate incidents that occur on the OCS, monitor operator compliance with environmental stipulations, and take enforcement actions against operators that violate safety or environmental standards. BSEE has agreements with other federal agencies, including EPA, regarding the division of offshore oversight responsibilities in overlapping jurisdictions. BSEE includes headquarters offices in the Washington, D.C., area, as well as three regional offices—the Gulf of Mexico regional office in New Orleans, Louisiana; the Pacific regional office in Camarillo, California; and the Alaska regional office in Anchorage, Alaska—responsible for oversight of oil and gas activities in the field.

BSEE's primary investigations responsibility is to determine the causes of incidents related to oil and gas activities that occur on the OCS and prepare reports that inform the public and industry on how to prevent incidents and improve safety and environmental protection. BSEE regulations require that operators report certain incidents to BSEE and include stipulations regarding when and how these reports are made, depending on the severity of the incident.<sup>10</sup> In turn, BSEE can initiate a district or panel investigation depending on the type of incident reported. BSEE conducts district investigations in response to incidents such as injuries, fires, or loss of well control. BSEE conducts panel investigations when a more in-depth investigation is warranted due to the severity or technical complexity of an incident, such as a fatality or well blowout. Panel investigations are typically conducted by a team of individuals including investigators from BSEE's Investigations and Review Unit (IRU) and regional offices, and may include other BSEE and non-BSEE technical personnel. Interior established the IRU in June 2010 in the aftermath of the *Deepwater Horizon* incident to (1) promptly and credibly respond to allegations or evidence of misconduct, unethical behavior, and unlawful activities by bureau employees, as well as by members of industries they regulate; (2) oversee and coordinate the bureau's internal auditing, regulatory oversight, and enforcement systems and programs; and (3) ensure the bureau responds swiftly to emerging issues and crises

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<sup>10</sup>30 C.F.R. § 250.188-190.

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on a bureau-wide level and assesses significant incidents, including spills, accidents, and other crises.<sup>11</sup>

Regarding environmental compliance, in response to post-Deepwater Horizon incident investigation findings that BOEMRE's emphasis on promoting development of federal offshore oil and gas resources might have preempted its responsibility to protect the environment, BSEE established an Environmental Enforcement Division. The role of the new division was to centralize all environmental compliance duties within a single independent office in headquarters, while maintaining a presence in each of the three OCS regions. The Environmental Enforcement Division's directive is to monitor, verify, enforce, and improve industry's compliance with environmental standards during OCS operations. To do so, it conducts monitoring of ongoing OCS operations, office compliance verification, field verification, and any necessary inspections, compliance data collection, impact-determinations, and support of BSEE investigations.

BSEE's enforcement capability is composed of an array of tools it can use to compel operator compliance with safety and environmental standards including:

- **Incident of noncompliance (INC):** BSEE can issue a notice of an incident of noncompliance in response to operator violations of safety or environmental standards. There are three categories of INCs:
  - **Warning INC:** BSEE can issue a warning INC in response to an area of noncompliance that does not pose an immediate danger to personnel, the environment, or equipment, but requires the violator to correct the noncompliance within a reasonable period of time, usually 14 days.
  - **Component shut-in INC:** BSEE can issue a component shut-in INC in response to a specific violation of a statute, regulation, lease, plan, permit, or order that is determined to be part of an unsafe situation that poses an immediate danger to personnel, the environment, and/or equipment. Component shut-in INCs include

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<sup>11</sup>Secretarial Order 3304 (June 29, 2010). The IRU conducts both internal and external investigations. Internal investigations relate to serious misconduct or significant dereliction of duties involving Interior staff. External investigations relate to misconduct or unethical behavior by members of the offshore oil and gas industry BSEE regulates.

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an operational restriction for a specific piece of equipment or location when it can be shut in without affecting the overall safety of the facility or operations.

- Facility shut-in INC: BSEE can issue a facility shut-in INC in response to a specific violation of a statute, regulation, lease, plan, permit, or order that is determined to be part of an unsafe situation that poses an immediate danger to personnel, the environment, and/or equipment. Facility shut-in INCs include an operational restriction for an entire facility when individual pieces of equipment or locations cannot be shut in without affecting the overall safety of the facility.
- **Civil penalty:** BSEE can assess civil penalties in response to (1) violations uncorrected within the time period granted by BSEE; (2) violations that may constitute a threat of serious, irreparable, or immediate harm or damage to life, property, any mineral deposit, or the marine, coastal, or human environment; (3) violations that cause serious, irreparable, or immediate harm or damage to life, property, any mineral deposit, or the marine, coastal, or human environment; and (4) violations of oil spill financial responsibility requirements. The daily civil penalty amount ranges from \$5,000 to \$40,000 per violation, depending on its severity.
- **Directed Safety and Environmental Management System audit:**<sup>12</sup> BSEE can direct an audit of an operator's Safety and Environmental Management System program in response to any safety or noncompliance concerns identified during an inspection and evaluation, or as a result of an incident. Operators must submit the audit findings, observations, deficiencies identified, any conclusions, and a corrective action plan to BSEE within 60 days of the audit completion date. BSEE can also conduct an audit to determine if the corrective action plan was implemented as reported, as well as if those corrective actions were effective in closing identified management system gaps.

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<sup>12</sup>BSEE requires operators to have a Safety and Environmental Management System program to identify, address, and manage safety, environmental hazards, and impacts during the design, construction, start-up, operation, inspection, and maintenance of all new and existing OCS facilities. The focus of the Safety and Environmental Management System program is on promoting an operator-driven system that continually improves safety culture and safety practices within the industry.

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- **Performance improvement plan:** BSEE can place an operator on a performance improvement plan due to serious incidents, poor performance data, uncorrected deficiencies resulting in a probationary status, criminal referral, or civil penalties assessed. A performance improvement plan may result in more inspections or more frequent inspections, which may result in an increase in INCs issued and civil penalties assessed. Operators may also be required to provide increased information, and have operator employees working during certain activities such as construction and simultaneous operations to facilitate communications. A performance improvement plan may also result in a requirement for the operator to improve its Safety and Environmental Management System program.
  - **Directed suspension:** BSEE can direct a suspension for all or any part of a lease or unit area. This determination may be made in cases of gross negligence or willful violation of a provision of the lease or governing statutes and regulations. Based on the level of severity of the situation, this action may result in suspension of operations, suspension of production, or loss of permit.
  - **Disqualification referral:** BSEE can refer a determination of unacceptable performance to BOEM—a disqualification referral—which may disapprove or revoke the designation as operator on a single facility or multiple facilities.
  - **Referral to another agency:** BSEE can forward information associated with potential violations of the Outer Continental Shelf Lands Act and its regulations, to take enforcement action as appropriate. This tool includes direct referrals to the Department of Justice for civil enforcement and to Interior’s IG for consideration of suspension or debarment or further referral to the Department of Justice for criminal enforcement.

From 2011 through 2013, BSEE took several actions to reform aspects of its investigations, environmental compliance, and enforcement capabilities. In February 2012, BSEE announced that it planned to issue a regulation to strengthen its investigations and enforcement authority.<sup>13</sup> The proposed changes would have substantially altered regulations pertaining to the conduct of incident investigations, as well as provided

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<sup>13</sup> *Clarification of Enforcement and Other Regulatory Authorities* (RIN: 1014-AA07) (2013).

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the bureau with new enforcement tools, among other things. In May 2013, BSEE management determined that other regulatory changes were higher priorities. Prior to this decision, in April 2012, the BSEE contracted with a consultant to assess its oversight capabilities and make recommendations within its existing regulatory framework. The consultant issued a report in October 2012 that recommended BSEE develop a comprehensive enforcement strategy, define its complement of enforcement tools, and establish investigation objectives, among other things.<sup>14</sup> In April 2013, BSEE contracted with the same consultant to produce several templated enforcement tool documents—including a performance improvement plan for low-performing operators, a civil penalty settlement agreement, and an order compelling an operator to take specific actions on the authority of the BSEE Director. In 2013, as part of strategic planning efforts, BSEE developed a number of “next-generation” enforcement tools to enhance its ability to compel compliance with safety and environmental regulations. These tools included proposals regarding streamlining the collection of civil penalties and use of “Director’s Orders” to compel specific operator performance. BSEE did not take any specific actions in response to the consultant’s assessment or implement the tools it developed for BSEE’s adoption.

In recognition of continued risks to the effectiveness of its oversight of offshore oil and gas development, BSEE initiated an organizational restructuring in October 2013 that encompasses its investigations, environmental compliance, and enforcement capabilities. According to restructuring planning documents, the guiding principles of this restructuring are to enhance the consistency, transparency, predictability, and accountability of BSEE’s oversight activities.<sup>15</sup> Specific goals of this restructuring include establishing national programs for each of these capability areas to develop policies and procedures for each of these programs. Implementation of the restructuring is ongoing.

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<sup>14</sup>Environmental Law Institute, *Strategic Planning for BSEE’s Enforcement Program* (October 2012).

<sup>15</sup>In April 2014, BSEE contracted with a consultant to provide support services for its restructuring effort. The total value of this contract, including all options, is approximately \$1.26 million. In a separate effort, in May 2015, BSEE contracted with another consultant to review the structure of its Pacific Region office. The total value of this contract, including all options, is approximately \$1.3 million.

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## BSEE's Ongoing Restructuring Has Made Limited Progress Enhancing Its Investigative Capabilities

BSEE's ongoing restructuring has made limited progress since October 2013 in enhancing the bureau's investigative capabilities. As a result, BSEE continues to rely on pre-*Deepwater Horizon* incident policies and guidance for managing its investigative capabilities and does not have the capability for analyzing data on incidents that occur on the OCS. Additionally, the extent to which the bureau's IRU has enhanced BSEE's investigative capability is unclear due to poor information management, confusion regarding its role, and inconsistent guidance.

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## BSEE's Investigative Policies and Procedures Have Not Changed Since the *Deepwater Horizon* Incident, and the Bureau Does Not Have the Capability to Analyze Incident Data

BSEE has not completed a policy identifying investigative responsibilities under the October 2013 restructuring or updated its existing policies or procedures for investigating incidents that occur on the OCS since the *Deepwater Horizon* incident. Developing policies and procedures are among the goals of BSEE's restructuring, according to restructuring planning documents, and consistent with federal standards for internal control.<sup>16</sup> Under federal standards for internal control, agencies are to clearly document internal controls, and the documentation is to appear in management directives, administrative policies, or operating manuals. BSEE documents indicate that the bureau planned to complete policies and procedures in the summer of 2015, but the time frame for establishing its policy framework has slipped to 2016. As a result, BSEE continues to rely on pre-*Deepwater Horizon* incident investigation guidance—including the 2009 MMS *Policy on Accident Investigations*, the 2010 MMS Gulf of Mexico Region's *Regional Policy on Accident Investigations and Offshore Incident Reports*, the 2003 Department Manual Chapter 3 on *Incident Investigation and Information Management*, and the 2010 MMS *National Accident Investigation Handbook*—to manage district and panel investigations—its primary investigative responsibility. As part of the restructuring that began in 2013, in October 2015, Interior approved BSEE's establishment of the Safety and Incident Investigations Division (SIID)—which according to a memorandum by BSEE's Associate Director for Administration will assume the external review functions of the IRU and be staffed by IRU investigators—to develop new procedures for conducting investigations. However, BSEE has not completed a policy outlining what the SIID's responsibilities will be or updated procedures to guide its activities.

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<sup>16</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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The use of outdated investigative policies and procedures is a long-standing deficiency in the bureau's investigative capabilities. For example, following the *Deepwater Horizon* incident, Interior's IG and OCS Safety Oversight Board reports identified flaws in Interior's investigation guidance documents—specifically, that the guidance documents did not include detailed requirements for planning investigations, gathering and documenting evidence, and ensuring quality control. Additionally, the IG report determined that continued use of the guidance posed a risk to the effectiveness of district and panel investigations. BSEE documentation defining goals for its ongoing restructuring effort again identified continued risks to the bureau's investigative capability, citing inconsistent investigation practices between district offices, as well as the need for developing bureau-wide investigative policy, among other things. Without updating its existing, pre-*Deepwater Horizon* investigative policies and procedures, BSEE continues to face risks to the effectiveness of its investigative capabilities.

Currently, BSEE follows the 2010 MMS Gulf of Mexico Region's *Regional Policy on Accident Investigations and Offshore Incident Reports* to determine whether and how to investigate offshore incidents. According to the 2010 *MMS National Accident Investigation Handbook*, after BSEE receives a report of an incident occurring on the OCS, the bureau is to determine the type of investigation, if any, to conduct. However, BSEE officials told us that the *Regional Policy on Accident Investigations and Offshore Incident Reports* provides district officials with broad discretion to determine the extent to which they investigate many types of incidents, which can result in inconsistent practices and information collected across districts. A senior BSEE official also stated that the bureau plans to refine its policy to include a tiered approach to allocating investigative resources based on incident severity. Specifically, this official told us that BSEE wants to increase the level of investigative scrutiny conducted in response to minor incidents that previously did not trigger BSEE action. In doing so, BSEE hopes to gain a more complete understanding of the type, frequency, and causes of incidents occurring on the OCS. However, this official said that disagreements between headquarters and regional officials over what the severity thresholds should be have delayed completion of this policy. In an October 2015 management advisory on BSEE's restructuring, Interior's IG recommended that the bureau should promptly develop an action plan for the restructuring's implementation that should include timelines and responsible officials for major

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milestones, such as policy and procedure development and staffing and training plans.<sup>17</sup>

Even when BSEE has updated its policies and procedures on investigations, it does not have the capability to aggregate and analyze the results of those investigations to identify trends in safety and environmental hazards. In 2009, prior to the *Deepwater Horizon* incident, Interior established an Accident Investigation Board (AIB) to review investigation policies and collect and analyze incident and investigation information to target safety and environmental compliance efforts. However, according to BSEE officials, the AIB produced no reports and ceased to operate after the *Deepwater Horizon* incident.<sup>18</sup> BSEE officials told us AIB's responsibilities were not reinstated following the *Deepwater Horizon* incident because management at the time determined the AIB's function was unnecessary. However, according to the IG report, the AIB was a tool to address risks to BSEE investigative capabilities. Additionally, the 2009 MMS policy establishing the AIB—the *Policy on Accident Investigations*—has not been updated. As a result, responsibility for reviewing investigation policies and collecting and analyzing incident and investigation information to target safety and environmental compliance efforts continues to be assigned to the defunct AIB. Senior BSEE officials told us that management at the time believed it was sufficient to collect and archive the incident reports without further synthesis or evaluation. They also stated that they intend to incorporate this capability into BSEE's SIID but do not have a plan or time frames for doing so. A 2013 internal BSEE evaluation determined that the absence of a central data base for national trend analysis was a lost opportunity to focus on OCS safety trends.<sup>19</sup> Without a dedicated capability to review investigation policy and collect and analyze incident and investigative data, BSEE does not have reasonable assurance that it can identify trends in safety and environmental hazards that could inform bureau decisions and enhance safety and environmental oversight.

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<sup>17</sup>U.S. Department of the Interior, Office of the Inspector General, Management Advisory, *Ongoing Concerns with Realignment Planning for the Bureau of Safety and Environmental Enforcement*, Assignment No. 2015-EAU-077 (Oct. 30, 2015).

<sup>18</sup>The extent to which MMS implemented the AIB is unclear because BSEE was unable to provide documentation of the AIB's activities.

<sup>19</sup>Brian Salerno, *Building Stronger Connections: An independent look at BSSE's [sic] interagency partnerships and their regulatory effectiveness*, July 5, 2013.



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## The IRU's Value to BSEE's Investigative Capabilities Is Unclear

The extent to which the IRU has enhanced BSEE's investigative capabilities is unclear due to (1) not using an electronic case management system, (2) confusion regarding its role, and (3) inconsistent guidance.

First, the IRU does not store its investigative case files in an electronic case management system as called for in the 2013 *IRU Policies and Procedures*.<sup>20</sup> According to the *IRU Policies and Procedures*, the Chief of the IRU is responsible for establishing and maintaining an effective case management system. In January 2013, BSEE began efforts to identify criteria for a case management system and issued a contract to acquire one in July 2014.<sup>21</sup> However, according to BSEE officials, BSEE has not implemented this system to manage investigations. BSEE officials told us that the bureau has yet to do so because Interior has not approved its use, as well as the need to solicit a new contract for technical support. The Chief of the IRU said that BSEE does not have a time frame or a plan for resolving these issues and implementing its case management system. Because it does not have an operational case management system, the IRU records investigative case numbers in a spreadsheet that does not contain supporting information on investigative activities—such as case files documenting interviews and photographic evidence—or outcomes.<sup>22</sup> Rather, BSEE officials said that individual investigators maintain hard-copy case files, which the Chief of the IRU also told us are not always reviewed for completeness or errors as called for by the *IRU Policies and Procedures*. Hard-copy case files make it difficult for BSEE to systematically monitor, review, or evaluate the results of IRU investigations. Without a plan with milestones for implementing the case management system for investigations, BSEE will continue to have difficulty systematically monitoring, reviewing, or evaluating the results of IRU investigations in a timely manner.

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<sup>20</sup>The Chief of the IRU told us that BSEE is in the process of updating the bureau's national investigative policies and procedures but that it would likely not be finalized until the end of fiscal year 2016.

<sup>21</sup>The contract's base value of approximately \$560,000 included the case management system and 1 year of technical support. The contract also provides BSEE with options to purchase four additional years of technical support for approximately \$50,000 per year.

<sup>22</sup>Cases are listed as either "open" or "closed" with no additional details.

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Moreover, confusion regarding the role of the IRU can hamper the effectiveness of BSEE's investigative efforts and has raised questions about whether BSEE has clearly communicated the IRU's role to the offshore oil and gas industry. Industry representatives we interviewed said that BSEE had not clarified the role of the IRU. Under federal standards for internal control, in addition to internal communications, agency management should ensure that there are adequate means of communicating with, and obtaining information from, external stakeholders that may have a significant impact on the agency achieving its goals.<sup>23</sup> According to BSEE regulations, the purpose of an investigation is to prepare a public report that determines the cause or causes of the incident.<sup>24</sup> However, representatives of industry and an internal BSEE analysis informed us that the law enforcement backgrounds of IRU investigators and their apparent focus on potential criminal wrongdoing rather than the cause or causes of the incident has led to an industry perception that the IRU is a criminal law enforcement program. A March 2013 congressional inquiry letter into the extent to which the IRU functioned as a criminal law enforcement program further highlights the confusion regarding the IRU's role in supporting BSEE's investigative capability.<sup>25</sup> Further, a 2013 internal BSEE evaluation noted that industry confusion regarding the IRU and how it could inhibit free and open communication with BSEE due to a perceived need to consult attorneys prior to answering IRU questions.<sup>26</sup> Some BSEE officials noted that, because the perceived criminal focus represents a shift from safety enhancement and root cause analysis toward an enforcement model, free and open communication to determine the causes of incidents is adversely affected, potentially undermining the effectiveness of the IRU's investigative capacity. By clearly communicating the purpose of the IRU

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<sup>23</sup>[GAO/AIMD-00-21.3.1](#).

<sup>24</sup>30 C.F.R. § 250.191.

<sup>25</sup>In a letter dated March 4, 2013, the Chairman of the House of Representatives Committee on Natural Resources submitted a letter to the Secretary of the Interior requesting information regarding the extent to which the IRU functioned as a criminal law enforcement program, including the position descriptions and law enforcement credentials of its investigators. In its response, BSEE indicated that the IRU was not currently a law enforcement program but that its Acting Chief was a credentialed law enforcement officer on detail from the EPA.

<sup>26</sup>Brian Salerno, *Building Stronger Connections: An independent look at BSSE's [sic] interagency partnerships and their regulatory effectiveness*, July 5, 2013.

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across the bureau, as well as to industry operators, BSEE could help increase the effectiveness of its investigations.

Furthermore, the *IRU Policies and Procedures* contradict BSEE investigative policies regarding the assignment of personnel to panel investigations and coordination with the IG. Specifically, the *IRU Policies and Procedures* conflicts with the 2003 Department Manual Chapter 3 on *Incident Investigation and Information Management* and the 2010 *MMS National Accident Investigation Handbook* regarding which BSEE official is responsible for assigning panel investigation membership.<sup>27</sup> The Department Manual Chapter 3 on *Incident Investigation and Information Management* and the *MMS National Accident Investigation Handbook* indicate that the director of the region in which an incident occurred assigns panel membership, and the *IRU Policies and Procedures* indicates that this is the responsibility of the Chief of the IRU. Under the federal standards of internal control,<sup>28</sup> agencies are to clearly document internal controls. While BSEE has documented its policies, they are not clear, because the *IRU Policies and Procedures* is not consistent with the *Regional Policy on Accident Investigations and Offshore Incident Reports* and the *MMS National Accident Investigation Handbook* regarding which BSEE official is responsible for assigning panel investigation membership. BSEE officials told us that this inconsistency has resulted in management disagreements regarding what skillset—technical or investigative—is more appropriate for managing panel investigations. According to BSEE officials, continued uncertainty over how panel leadership is determined—and by extent, managed—could undermine the effectiveness of ongoing and future panel investigation outcomes. For example, BSEE officials told us that the IRU has participated in five panel investigations since August 2013, though all lasted longer than the 8-month target time frame set by the *Regional Policy on Accident Investigations and Offshore Incident Reports*. Additionally, the *IRU Policies and Procedures* conflicts with the *Regional Policy on Accident Investigations and Offshore Incident Reports* regarding the coordination of referrals of potential criminal wrongdoing. Specifically, the *IRU Policies and Procedures* states that the IRU is responsible for coordinating investigative efforts with the IG, and the *Regional Policy on Accident Investigations and Offshore Incident Reports* states that its Office of

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<sup>27</sup>Both of these investigative guidance documents remain in effect.

<sup>28</sup>[GAO/AIMD-00-21.3.1](#).

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Safety Management is responsible for referring cases of suspected criminal wrongdoing to the IG. Without clear policies and procedures for assigning panel investigation membership and referring cases of suspected criminal wrongdoing to the IG, BSEE's ability to coordinate its investigative activities and monitor their results is hampered.

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## BSEE's Ongoing Restructuring Risks Weakening Its Environmental Compliance Capabilities

BSEE's ongoing restructuring of its environmental compliance program reverses actions taken to address post-Deepwater Horizon concerns, weakening its oversight of operator compliance with environmental standards. In addition, the bureau has made limited progress developing and updating guidance, which are among the goals of the restructuring. Additionally, BSEE's restructuring has not addressed staffing shortfalls that are preventing it from meeting its environmental oversight targets.

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## Restructuring of Environmental Compliance Reverses Actions Taken to Address Post-Deepwater Horizon Concerns

BSEE's ongoing restructuring of its Environmental Compliance Division could undermine one of the primary purposes for which its predecessor—the Environmental Enforcement Division—was established. The predecessor division was established as a national program in 2011 in response to the findings of the post-*Deepwater Horizon* incident investigations. Specifically, in September 2010, the OCS Safety Oversight Board reported that the focus of BOEMRE—BSEE's predecessor bureau—on oil and gas development might have been at the expense of protecting the environment.<sup>29</sup> The board reported that, according to some environmental staff, several BOEMRE managers changed or minimized potential environmental impact findings to expedite offshore oil and gas development, and that managers believed environmental assessments should always result in the authorization for development.

The IG and OCS Safety Oversight Board made recommendations to ensure that environmental concerns were given appropriate weight and consideration. In response, BOEMRE produced an internal report in October 2011 to serve as the basis for developing BSEE's environmental

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<sup>29</sup>U.S. Department of the Interior Outer Continental Shelf Safety Oversight Board, "Report to Secretary of the Interior Ken Salazar," September 1, 2010.

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compliance capabilities.<sup>30</sup> Based on the recommendations of this report and the OCS Safety Oversight Board, BSEE established an Environmental Enforcement Division with region-based environmental staff reporting directly to the headquarters-based division chief instead of regional management, as had been done prior to the establishment of the Environmental Enforcement Division, to ensure that the environmental component of BSEE operated under a separate reporting structure from the regional BSEE offshore operations. According to this report, the purpose of the Environmental Enforcement Division's reporting structure was to (1) elevate the level of environmental compliance decision making to that of other bureau programs; (2) strengthen the bureau's environmental function; (3) allow for constructive and efficient dialogue concerning the balancing of leasing and development goals with those of the bureau's environmental responsibilities; (4) ensure the environmental functions had an adequate and appropriate level of decision-making influence; and (5) improve the bureau's ability to verify industry compliance with all environmental laws, regulations, mitigations, and reporting requirements.

The field-to-headquarters reporting structure of the Environmental Enforcement Division changed in February 2015, when BSEE's Deputy Director issued a memorandum altering it.<sup>31</sup> Under the program's new structure, environmental compliance personnel in the field again report to their regional director, as they did prior to the establishment of the Environmental Enforcement Division, rather than to the program manager in headquarters. The rationale for this change is unclear, as it is not discussed in the bureau's documentation of key restructuring planning efforts and decisions. BSEE leadership told us that the bureau delegated management of field-based environmental compliance personnel to the

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<sup>30</sup>Bureau of Offshore Energy Management, Regulation, and Enforcement. *Developing a Robust Environmental Inspection and Enforcement Function*. October 2011. This report was produced by BOEMRE's Environmental Enforcement Implementation Team, which the bureau convened in October 2010 to: (1) to develop a robust environmental compliance, inspection, and enforcement program within the new BSEE and (2) to respond to the environmental compliance and stewardships recommendations in the September 2010 OCS Safety Oversight Board report.

<sup>31</sup>In October 2015, Interior approved BSEE's proposal to create the Environmental Compliance Division, although BSEE had previously changed the Environmental Enforcement Division to a regional reporting structure on the authority of the Deputy Director in a February 2015 memorandum.

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regions to be consistent with its proposed national programs for investigations and enforcement.

Because consideration of this change was not included in the bureau's documentation of key restructuring planning efforts and decisions, it is unclear whether BSEE analyzed why or how to restructure its environmental compliance capability. For example, BSEE's September 2014 *Implementation Plan*—which describes restructuring courses of action developed during the summer of 2014—does not discuss any potential changes to the Environmental Enforcement Division.<sup>32</sup> Additionally, the November 2014 *Management Council Action Plan*—which documents BSEE leadership agreements regarding how to implement the restructuring—states that environmental compliance will be a new program—although the Environmental Enforcement Division already existed—but also states that the Environmental Enforcement Division is not part of the restructuring effort and that any improvements to it will be made within its existing structure.<sup>33</sup> Rather, both plans focus on the development of three other new national programs—investigations, enforcement, and data stewardship. No analysis or options for restructuring the Environmental Enforcement Division or creating a new environmental compliance program—including how to ensure that BSEE's environmental compliance capability retains the appropriate weight and consideration called for by the IG and OCS Safety Oversight Board—were discussed in either plan. Further, the Chief of the Environmental Compliance Division—who previously managed the Environmental Enforcement Division—told us that he did not know why the program was restructured and that he was unaware of any analysis being conducted regarding why or how to do so.

BSEE's decision to return to a region-based model, similar to the pre-*Deepwater Horizon* incident organization, risks undermining (1) one of the primary purposes for establishing the division as a national program in 2011 and (2) the actions the bureau took to better ensure that its

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<sup>32</sup>The purpose of the *Implementation Plan* was to (1) document BSEE's current state, (2) document BSEE's desired future state, (3) provide an approach to transition from its current to its desired future state, and (4) serve as a staff resource during the transition.

<sup>33</sup>The purpose of the *Management Council Action Plan* was to (1) document the objectives of the restructuring; (2) summarize activities, plans, and decisions made regarding the restructuring; and (3) identify strategic implementation milestones to guide future restructuring activities.

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responsibility to protect the environment was given appropriate weight and consideration within the bureau. Some BSEE environmental compliance officials told us that they believe the new program could adversely affect the ability of regional environmental compliance personnel in the Alaska and Pacific regions to leverage the expertise of subject matter experts—such as ecologists, biologists, and environmental engineers—located in the Gulf of Mexico region. Specifically, some BSEE officials said that regional management control over these functions could inhibit the interregion dialogue that existed when field environmental compliance program personnel reported directly to headquarters, rather than to regional leadership.

One of the federal standards for internal control—risk assessment—states that management should assess the risks faced entity-wide and, at the activity level, from both external and internal sources, and that once risks have been identified, management should decide what actions should be taken to mitigate them.<sup>34</sup> Risk identification methods may include, among other things, consideration of findings from audits and other assessments. Given the findings and recommendations of the 2010 IG, 2010 OCS Safety Oversight Board, and 2011 BOEMRE reports and the extent of the environmental effects of the *Deepwater Horizon* incident, it is inconsistent with these standards that BSEE did not conduct and document an analysis of the risks it faces from returning its environmental compliance capability to a regional-based reporting structure. Without conducting and documenting a risk analysis of this reporting structure, including actions to mitigate any risk, it is not clear that BSEE will have reasonable assurance that environmental issues are receiving the appropriate weight and consideration as called for by the IG and OCS Safety Oversight Board reports.

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## BSEE Has Made Limited Progress Developing and Updating Its Environmental Compliance Policy and Procedures

BSEE has not completed an environmental compliance policy or developed procedures for environmental compliance—which are among the goals of BSEE’s restructuring effort, according to restructuring planning documents, and consistent with federal standards for internal control. BSEE documents indicate that the bureau planned to complete its environmental compliance policy and procedures in the summer of 2015, but that the time frame for completing its policy framework has slipped to

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<sup>34</sup>[GAO/AIMD-00-21.3.1.](#)

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2016. As part of the ongoing restructuring that began in 2013, in October 2015, Interior approved BSEE's establishment of an Environmental Compliance Division to develop national policies and procedures for the enforcement of environmental rules and promote the consistency of the bureau's environmental compliance activities. However, BSEE has not completed a policy outlining what the Environmental Compliance Division's responsibilities will be or updated procedures to guide its activities.

The absence of standard operating procedures is a long-standing deficiency in the bureau's environmental compliance capabilities. In particular, BSEE's 2013 and 2014 annual environmental compliance activity reports note the importance of developing standard operating procedures to help ensure consistency, future performance comparisons, and eventual succession planning. BSEE officials told us that many of their environmental oversight practices are not documented in guidance but rather reside within the institutional knowledge of environmental oversight staff and risk being lost if those staff leave the bureau, which would hamper its ability to effectively conduct environmental oversight. They also noted that, while BSEE has established some environmental compliance standard operating procedures for certain activities—such as agreements with BOEM and draft *Endangered Species Act Consultation Requirements* and *Marine Mammal Protection Act* information sheets—they are not all sufficient, comprehensive, or consistent. In March 2015, BSEE requested price quotes from consultants for a contract to establish environmental compliance standard operating procedures that address lessons learned from the *Deepwater Horizon* incident, incorporate regional best practices, and align with regulatory authorities. BSEE contracted with a consultant in August 2015 to establish these standard operating procedures and stipulated that they be completed within 12 months of contract issuance.<sup>35</sup> In an October 2015 management advisory on BSEE's restructuring, Interior's IG recommended that the bureau should promptly develop an action plan for the restructuring's implementation that should include timelines and responsible officials for major milestones, such as policy and procedure development and staffing and training plans.<sup>36</sup> Until it completes a policy outlining the

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<sup>35</sup>The total value of this contract is approximately \$500,000.

<sup>36</sup>U.S. Department of the Interior, Office of the Inspector General, Management Advisory, *Ongoing Concerns with Realignment Planning for the Bureau of Safety and Environmental Enforcement*, Assignment No. 2015-EAU-077 (Oct. 30, 2015).



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responsibilities of the Environmental Compliance Division and standard operating procedures to guide its activities, BSEE will continue to face a long-standing deficiency in its environmental compliance capabilities.

Furthermore, BSEE's policy on monitoring water quality might be outdated. Specifically, BSEE's interagency agreements with EPA regarding the coordination of National Pollutant Discharge Elimination System permit compliance monitoring date to the 1980s and, according to BSEE's annual environmental compliance activity reports, might not reflect current resources and agency needs.<sup>37</sup> For example, a 1989 agreement between MMS and EPA for the coordination of National Pollutant Discharge Elimination System permit compliance monitoring in the Gulf of Mexico stipulates that MMS inspect no more than 50 facilities per year for EPA and that MMS not conduct water sampling on behalf of EPA. However, it is unclear whether this level of monitoring is appropriate 30 years later due to changes in drilling practices and technologies. According to *Standards for Internal Control in the Federal Government*, as programs change and as agencies strive to improve operational processes and implement new technological developments, management must continually assess and evaluate its internal control to ensure that the control activities being used are effective and updated when necessary.<sup>38</sup> By coordinating with EPA to consider the relevance of existing interagency agreements for monitoring operator compliance with National Pollutant Discharge Elimination System permits on the OCS and updating them if necessary to reflect current oversight needs, BSEE would have better assurance that these agreements reflect current resources and agency needs. Senior BSEE officials told us that the bureau has no plans to update its existing interagency agreements with EPA, and some officials said that a previous headquarters-led effort to update the agreements was not completed because it did not sufficiently describe BOEM's responsibilities for offshore oil and gas development. Additionally, EPA officials told us that they have discussed updating these agreements but do not have a plan or timetable for taking action because

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<sup>37</sup>EPA and the states regulate point source discharges of pollutants by means of National Pollutant Discharge Elimination System permits, which are to incorporate overall pollutant loads—wasteload allocations—established by total maximum daily loads. Under the National Pollutant Discharge Elimination System, all facilities that discharge pollutants from any point source into U.S. waters must generally obtain a permit, typically from their state or EPA region.

<sup>38</sup>[GAO/AIMD-00-21.3.1](#).

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of disagreements with BSEE regarding the credentials needed for BSEE inspectors to conduct water sampling on behalf of EPA.

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### BSEE's Restructuring Has Not Addressed Staffing Shortfalls That Prevent It from Meeting Environmental Oversight Goals

BSEE's restructuring has not addressed documented staffing shortfalls that prevent the bureau from meeting its environmental compliance oversight goals. According to its annual environmental compliance activity reports, BSEE has not met its goals for monitoring operator compliance with environmental standards primarily because BSEE does not have enough staff to accomplish its workload. For example, according to its fiscal year 2014 annual environmental compliance activity report, the Gulf of Mexico Region met less than 33 percent of its 100 percent target for office verification oversight—which includes assessing industry-submitted documentation—and less than 1 percent of its 10 percent target for facility verification oversight—which includes conducting on-site inspections of operator compliance with environmental stipulations.

BSEE's fiscal year 2014 annual environmental compliance activity report states that funding was available for additional environmental compliance positions in the field but that BSEE leadership did not authorize hiring. Specifically, of 22 funded positions, 8 were not filled at the end of fiscal year 2014 in the Gulf of Mexico region because the Deputy Director did not authorize hiring.<sup>39</sup> The need for staff was documented in BSEE's fiscal year 2013 and 2014 annual environmental compliance activity reports as well as in the October 2011 BOEMRE report on which BSEE's environmental compliance program is based. All advocate for a higher staffing level—30, 30, and 27, respectively—than funded. Senior BSEE officials told us that they did not believe the October 2011 BOEMRE report was approved by bureau leadership at the time and is, therefore, not representative of BSEE's environmental compliance needs. However, BSEE's fiscal year 2013 and fiscal year 2014 annual environmental compliance activity reports indicate that the establishment of the Environmental Enforcement Division was based on the findings of the 2011 BOEMRE report.

Bureau-wide, BSEE's Environmental Compliance Division has been funded for 30 positions since fiscal year 2014, but 9 remained unfilled as

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<sup>39</sup>An October 2015 approved reorganization plan for the Gulf of Mexico region indicates that regional staffing for the Environmental Compliance Division includes 21 positions, 7 of which are listed as vacant.

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of November 2015. Specifically, in addition to the 8 vacancies in the Gulf of Mexico region, the Pacific region has been without a permanent Regional Environmental Officer since 2014.<sup>40</sup> According to BSEE leadership, the bureau began fiscal year 2013 with \$2.8 million in unspent environmental compliance funds from 2012 and that cumulative excess funds roll over to each subsequent year. Specifically, they told us that the bureau had unspent environmental compliance appropriations totaling approximately \$3.8 million at the end of fiscal year 2013 (from a \$3.9 million appropriation), \$5.5 million at the end of fiscal year 2014 (from an \$8.3 million appropriation), and \$7.1 million at the end of fiscal year 2015 (from an \$8.3 million appropriation).<sup>41</sup>

According to senior BSEE officials, the bureau has no plans to fill any vacant environmental compliance positions in the field. Additionally, these officials told us that BSEE intends to transfer most of its environmental compliance personnel to headquarters within the next 5 years. In September 2015, BSEE advertised for a new environmental compliance position in headquarters. Without developing a plan to address documented environmental oversight staffing needs, BSEE does not have reasonable assurance that it could meet its goals for monitoring operator compliance with environmental standards.

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<sup>40</sup>Regional Environmental Officers execute nationwide environmental enforcement and compliance policy and provide regional oversight under the direction of the national division chief.

<sup>41</sup>Since its fiscal year 2015 budget proposal, BSEE has advocated merging its environmental compliance funds with its operational funds. BSEE budget documents indicate that this funding transfer would continue to support the bureau's environmental oversight mission with a national staffing level of 30—although BSEE currently had 9 unfilled positions as of November 2015—but does not provide specific information regarding how the merging of its funds would enhance its oversight activities. In July 2015, senior BSEE officials stated that consolidating its environmental compliance funding with its operational funds would lead to easier financial tracking of its environmental compliance oversight functions but did not explain how this would enhance its capabilities. However, in December 2015, senior BSEE officials told us that the bureau's fiscal year 2017 budget proposal would not pursue the merging of environmental compliance funds with operational funds.

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## BSEE's Ongoing Restructuring Has Made Limited Progress Addressing Long-Standing Deficiencies in Its Enforcement Capabilities

BSEE's restructuring of its enforcement capabilities has made limited progress addressing long-standing deficiencies in its effectiveness. Specifically, BSEE has not completed policies or developed procedures—including defined criteria for the use of its existing enforcement tools—to guide its enforcement actions. Additionally, BSEE did not comply with a statutory requirement to review its maximum daily civil penalty.

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## BSEE Has Not Developed Procedures, Including Criteria for Using Its Enforcement Tools

BSEE has not completed an enforcement policy or developed procedures consistent with federal standards for internal control—including criteria for enforcement actions against operators that violate safety and environmental regulations—which are among the goals of BSEE's restructuring effort, for all its enforcement tools, according to restructuring planning documents. BSEE documents indicate that the bureau planned to complete its policies and procedures in the summer of 2015, but that the time frame for establishing its policy framework has slipped to 2016. As part of the ongoing restructuring that began in 2013, in October 2015, Interior approved the establishment of a Safety Enforcement Division to develop national enforcement policies and procedures and monitor the execution and effectiveness of the bureau's enforcement activities. However, BSEE has not completed a policy outlining the Safety Enforcement Division's responsibilities or developed procedures that contain criteria for using enforcement tools to guide its enforcement activities.<sup>42</sup>

The absence of enforcement criteria is a long-standing deficiency in the bureau's enforcement capabilities. For example, in 2010, IG and OCS Safety Oversight Board investigations following the *Deepwater Horizon* incident recommended that BSEE—then BOEMRE—assess its enforcement tools and how to employ them to deter safety and environmental violations. In October 2012, a consultant BSEE hired to assess its enforcement strategy found that some BSEE enforcement tools

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<sup>42</sup>In May 2015, BSEE advertised for a permanent national program manager position for its proposed enforcement program even though the establishment of the program had not been approved by Interior.

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lacked clear procedures and criteria and, in turn, recommended that BSEE define its full complement of enforcement tools.<sup>43</sup> BSEE restructuring planning documents describe the need for consistently applied enforcement tools so that offshore operators understand the performance expected, as well as the consequences for violating safety and environmental standards. These documents also state that the current lack of criteria results in inconsistent enforcement actions and creates uncertainty for operators regarding BSEE's oversight approach and expectations. Likewise, BSEE officials told us that the absence of criteria can result in inconsistent enforcement actions taken for similar infractions across or within regional offices.

Among the enforcement tools BSEE can use to compel operator compliance with safety and environmental standards are performance improvement plans. BSEE enforcement officials told us that the use of performance improvement plans—an enforcement tool to establish performance targets for low-performing operators—could be a powerful tool to compel operators to comply with safety and environmental regulations. BSEE developed a draft standard operating procedure for implementing performance improvement plans, but the extent to which it has been implemented is unclear. BSEE leadership told us that the bureau had implemented the procedure, but did not provide documentation of its use for developing or executing a performance improvement plan. Further, the draft standard operating procedure does not contain specific criteria for the level of performance that would result in an operator being placed on a performance improvement plan. BSEE enforcement officials told us that the bureau's Office of Safety Management had drafted a policy for using performance improvement plans but said they were not aware of any final guidance or criteria for implementing them. They also stated that, without criteria in procedures for how to use performance improvement plans, they can face challenges obtaining management approval to implement them.<sup>44</sup>

According to BSEE enforcement officials, recommending that BOEM disqualify operators from participating in offshore oil and gas development

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<sup>43</sup>Environmental Law Institute, *Strategic Planning for BSEE's Enforcement Program* (October 2012).

<sup>44</sup>BSEE has required two operators to submit performance improvement plans since 2012.

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is the most powerful tool available to remove consistently low-performing operators from the OCS.<sup>45</sup> However, BSEE has not developed procedures, including criteria for recommending the disqualification of operators beyond what is broadly defined in its regulations. For BSEE to make disqualification recommendations to BOEM, the regulations cite the following: (1) accidents and their nature; (2) pollution events, environmental damages, and their nature; (3) incidents of noncompliance; (4) civil penalties; (5) failure to adhere to OCS lease obligations; or (6) any other relevant factors as criteria.<sup>46</sup> By providing more detailed guidance outlining comprehensive criteria for responding to regulatory violations on the OCS, BSEE could address uncertainty regarding its approach to enforcing compliance with safety and environmental standards. The regulations, however, do not specify the conditions that would trigger disqualification recommendations, and BSEE officials told us that the bureau has not developed procedures with criteria identifying the types of accidents or pollution events, for example, that would merit disqualification. As a result, operators do not know the circumstances under which BSEE could recommend their disqualification from participating in offshore oil and gas development. Without procedures and criteria for all of its enforcement tools, BSEE does not have reasonable assurance that it can take consistent enforcement actions for operators who commit similar violations. In an October 2015 management advisory on BSEE's restructuring, Interior's IG recommended that the bureau should promptly develop an action plan for the restructuring's implementation that should include timelines and responsible officials for major milestones, such as policy and procedure development and staffing and training plans.<sup>47</sup>

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<sup>45</sup>BSEE disqualification recommendations, if accepted by BOEM, prevent operators from developing oil and gas resources in federal waters.

<sup>46</sup>30 C.F.R. § 250.136.

<sup>47</sup>U.S. Department of the Interior, Office of the Inspector General, Management Advisory, *Ongoing Concerns with Realignment Planning for the Bureau of Safety and Environmental Enforcement*, Assignment No. 2015-EAU-077 (Oct. 30, 2015).

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## BSEE Does Not Have a Mechanism to Ensure It Reviews Its Maximum Daily Civil Penalty within the Statutory Time Frame

BSEE does not have a mechanism to ensure that it reviews its maximum daily civil penalty every 3 years, as required by the Outer Continental Shelf Lands Act.<sup>48</sup> If a violation causes injury, death, or environmental damage, or poses a threat to human life or the environment, BSEE is to consider the violation for civil penalty assessment review. BSEE is to review the maximum daily civil penalty amount every 3 years and adjust it to reflect increases in the Consumer Price Index (CPI).<sup>49</sup> As stated by the Deputy Secretary, Department of the Interior in his May 2010 testimony before the Senate Committee on Energy and Natural Resources, the original penalty authority came from the 1978 Lands Act amendments, and the original maximum fine was \$10,000 per day, per violation.<sup>50</sup> In the 1990 Oil Pollution Act, there was an amendment to the Outer Continental Shelf Lands Act that increased that maximum fine for civil penalties to \$20,000 per day, per violation, and it established the ability to adjust that penalty upward under the CPI. In 1997, MMS increased the maximum penalty amount up, under the CPI, to \$25,000 a day. In 2003, it was again increased, because of the CPI, to \$30,000 a day. In 2007, it was again increased to \$35,000 per day. In August 2009, MMS did a CPI analysis, and the CPI had not gone over the threshold—rounding to the nearest \$5,000 increment—to raise the penalty further. BOEMRE again reviewed the maximum daily civil penalty in October 2010 and increased the maximum fine from \$35,000 to \$40,000 in August 2011.

BSEE then did not review the maximum daily civil penalty for nearly 5 years. In February 2015, BSEE's Deputy Director told us that the bureau

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<sup>48</sup>43 U.S.C. § 1350(b).

<sup>49</sup>On November 2, 2015, Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. No. 114-74, title VII, § 701(b), Nov. 2, 2015, 129 Stat. 599). The Act directs Federal agencies to adjust most civil monetary penalties through an interim final rule-making no later than July 1, 2016, and yearly thereafter. It also modifies the manner in which such adjustments are made, including adjustment thresholds and rounding. BSEE states that it is working to revise its civil penalty adjustment procedures to comply with the Act and the requirements under the Outer Continental Shelf Lands Act to ensure timely adjustment of BSEE's civil penalties. BSEE expects these revisions to be completed in the spring of 2016.

<sup>50</sup>*Statement of David J. Hayes, Deputy Secretary, Department of the Interior* Hearing before the Committee on Energy and Natural Resources, United States Senate, One Hundred Eleventh Congress, Second Session, to Receive Testimony on the Liability and Financial Responsibility Issues Related to the Offshore Oil Production, Including the Deepwater Horizon Accident in the Gulf of Mexico, Including S. 3346, a Bill to Increase the Limits on Liability Under the Outer Continental Shelf Lands Act. May 25, 2010. S. Hrg. 111-653, Pt. 3.

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had not reviewed the maximum daily civil penalty since 2010 because BSEE's ongoing restructuring effort is a higher priority, but that the bureau would consider doing so once the restructuring is complete. In June 2015, we requested documentation of the last time that BSEE reviewed its maximum daily civil penalty. Subsequently, in June 2015, the Deputy Director requested that BSEE staff conduct such a review in response to GAO, according to a December 2015 BSEE memorandum. Interior's Office of the Solicitor conducted an analysis in September 2015, nearly 5 years after the previous analysis was conducted in October 2010. Interior's Office of the Solicitor compared the 2011 CPI—the time of the last adjustment—to the 2014 CPI—the time at which BSEE was to conduct the review based on statutory time frames—and recommended that BSEE not raise its maximum daily civil penalty because the new penalty would not exceed the threshold to round up to \$45,000. By not having a mechanism, however, to ensure that it reviews its maximum daily civil penalty and adjusting it to reflect increases in the CPI within the statutory time frame, BSEE risks collecting smaller fines from operators that violated safety and environmental standards than it otherwise could have, potentially diminishing the effectiveness of issuing civil penalties as an enforcement tool.

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## Conclusions

Since its inception in 2011, BSEE has undertaken several efforts to reform its oversight capabilities. More than 2 years into its restructuring effort—and more than 5 years after the *Deepwater Horizon* incident—the bureau has not completed the underlying policies and procedures to facilitate the implementation of its new Safety and Incident Investigation, Environmental Compliance, and Safety Enforcement Divisions. Without completing policies and procedures for these capabilities, BSEE continues to face risks to their effectiveness. Moreover, BSEE continues to face deficiencies in each of these capabilities that undermine its ability to effectively oversee offshore oil and gas development.

With regard to investigations, because it does not have a capability to review investigation policy and collect and analyze incident and investigative data, BSEE does not have reasonable assurance that it can identify trends in safety and environmental hazards that could inform bureau decisions and enhance safety and environmental oversight. Additionally, without a plan with milestones for implementing the case management system for investigations, BSEE will continue to have difficulty systematically monitoring, reviewing, or evaluating the results of IRU investigations in a timely manner. Further, without clearly communicating the purpose of the IRU to industry operators, BSEE might



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continue to hamper the effectiveness of its investigations. Moreover, without clear policies and procedures for assigning panel investigation membership and referring cases of suspected criminal wrongdoing to the IG, BSEE's ability to coordinate its investigative activities and monitor results is hampered.

With regard to environmental compliance, a key post-*Deepwater Horizon* incident reform was the establishment of a headquarters-based program specifically responsible for managing environmental compliance issues. However, BSEE reverted to a region-based reporting structure without conducting and documenting a risk analysis, including actions to mitigate any risk and, thus, it is not clear that BSEE will have reasonable assurance that environmental issues are receiving the appropriate weight and consideration as called for by the OCS Safety Oversight Board report. Additionally, BSEE would have better assurance that its existing interagency agreements with EPA for monitoring operator compliance with National Pollutant Discharge Elimination System permits reflect current resources if it coordinated with the EPA to consider their relevance and updating them, if necessary, to reflect current oversight needs. The success of BSEE's Environmental Compliance Division is predicated on its ability to conduct oversight of operator activities. However, without developing a plan to address documented environmental oversight staffing needs, BSEE does not have reasonable assurance that it could meet its goals for monitoring operator compliance with environmental standards.

With regard to enforcement, BSEE's ability to assess civil penalties is a key tool for compelling operator compliance with safety and environmental standards. Without a mechanism to ensure the review of its maximum daily civil penalty, and adjusting it to reflect increases in the CPI within the statutory time frame, BSEE risks collecting smaller fines from operators that violate safety and environmental standards, potentially diminishing the effectiveness of civil penalties as an enforcement tool.

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## Recommendations for Executive Action

To enhance its ability to effectively oversee offshore oil and gas development, we recommend that the Secretary of the Interior direct the Director of the Bureau of Safety and Environmental Enforcement to take the following nine actions as it continues to implement its restructuring effort.

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- To address risks to the effectiveness of its investigations, environmental compliance, and enforcement capabilities, we recommend that BSEE complete policies outlining the responsibilities of its SIID, Environmental Compliance Division, and Safety Enforcement Division and update and develop procedures to guide them.
  - To enhance its investigative capabilities, we recommend that BSEE
    - establish a capability to review investigation policy and collect and analyze incidents to identify trends in safety and environmental hazards;
    - develop a plan with milestones for implementing the case management system for investigations;
    - clearly communicate the purpose of the IRU, as it will be assumed by the SIID, to industry operators; and
    - clarify policies and procedures for assigning panel investigation membership and referring cases of suspected criminal wrongdoing to the IG.
  - To enhance its environmental compliance capabilities, we recommend that BSEE
    - conduct and document a risk analysis of the regional-based reporting structure of the Environmental Compliance Division, including actions to mitigate any identified risk;
    - coordinate with the Administrator of the Environmental Protection Agency to consider the relevance of existing interagency agreements for monitoring operator compliance with National Pollutant Discharge Elimination System permits on the OCS and, if necessary, update them to reflect current oversight needs; and
    - develop a plan to address documented environmental oversight staffing needs.
  - To enhance its enforcement capabilities, we recommend that BSEE
    - develop a mechanism to ensure that it reviews the maximum daily civil penalty and adjust it to reflect increases in the CPI within the time frame as directed by statute.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of the Interior and the Environmental Protection Agency for review and comment, and both agencies provided written comments. In its written comments, reproduced in appendix II, Interior agreed that additional reforms—such as documented policies and procedures—are needed to address offshore oil and gas oversight deficiencies, but Interior neither agreed nor disagreed with our recommendations. Interior states that BSEE’s current realignment employs a national program model and that the designated lead for a national program establishes program strategy, identifies priorities for resource allocation, and develops and tracks accountability measures. However, more than 2 years into the restructuring effort, BSEE did not provide us with evidence that the bureau has made significant progress toward these functions for its new divisions. We agree that it is a significant cultural shift to move from a largely decentralized field organization to one with national-level direction, monitoring, and accountability. However, Interior’s characterization of BSEE’s environmental compliance restructuring—which Interior highlights as the most evident aspect of the cultural shift occurring within BSEE—is of particular concern. Specifically, Interior states that its initial efforts to move away from a decentralized field organization responsible for environmental compliance issues to a reporting chain with regionally-based staff reporting to headquarters-based managers—a step we viewed as a key post-Deepwater Horizon incident reform—presented BSEE with challenges that slowed resolution of some oversight deficiencies. However, BSEE did not provide us with evidence of any such challenges during our review. Moreover, BSEE has reverted to a region-based environmental oversight reporting structure, which runs counter to the recommendations of the 2010 Inspector General and OCS Safety Oversight Board reports. Further, because of this action—particularly because the bureau did not provide us with documentation of its analysis justifying the reason for doing so—it is not clear that BSEE will have reasonable assurance that environmental issues are receiving the appropriate weight and consideration as called for in those reports. As a result, we continue to believe that BSEE should conduct and document a risk analysis of the regional-based reporting structure of the Environmental Compliance Division, including actions to mitigate any identified risk.

In its written comments, reproduced in appendix III, EPA agreed to coordinate with BSEE and update existing interagency agreements for compliance monitoring as appropriate. Interior also provided technical comments that we incorporated into the report, as appropriate.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Frank Rusco". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Frank Rusco  
Director, Natural Resources and Environment

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# Appendix I: Objectives, Scope, and Methodology

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To examine the extent to which the Department of the Interior's Bureau of Safety and Environmental Enforcement's (BSEE) ongoing restructuring has enhanced its capabilities for (1) investigations, (2) environmental compliance, and (3) enforcement, we reviewed laws, regulations, policies, and guidance related to BSEE's authority regarding these capabilities, as well as its activities in implementing them since the bureau's inception in 2011. For these capabilities, we reviewed documentation related to BSEE's ongoing restructuring, including plans, analyses of restructuring options, development and implementation schedules, department manual updates, consultant contracts, and draft policies to determine the intent and history of restructuring actions leading to BSEE's current organizational state. We interviewed BSEE officials representing the bureau's headquarters leadership to determine the purpose of the ongoing restructuring and how they have managed it. We also interviewed officials responsible for conducting oversight activities in each of the bureau's three regions—the Gulf of Mexico, Pacific, and Alaska—to understand their roles in executing BSEE's investigative, environmental compliance, and enforcement missions, as well as their perspectives on how the restructuring has affected the bureau's oversight activities to date.

We reviewed interagency agreements between BSEE and other federal agencies with responsibilities on the outer continental shelf (OCS) to determine the frameworks for how they coordinate activities with regards to their jurisdictional boundaries. Specifically, we reviewed BSEE agreements with (1) the U.S. Coast Guard regarding incident investigations, (2) Interior's Bureau of Ocean Energy Management regarding environmental oversight, and (3) the Environmental Protection Agency regarding water quality monitoring. We also interviewed officials representing these agencies to determine how the agencies coordinate their oversight activities and the effect, in any, that the restructuring has had on that coordination. Additionally, we met with representatives from the American Petroleum Institute—which represents all segments of the domestic oil and gas industry—and the Center for Offshore Safety—which develops safety and environmental standards for the offshore oil and gas industry—to obtain their perspectives on how BSEE's ongoing

restructuring affected its oversight of offshore oil and gas development.<sup>1</sup> Their views are not generalizable but provide illustrative examples.

We also compared BSEE's current state, based on information gathered from bureau documents and interviews with bureau officials, to BSEE's regulations and policies, post-*Deepwater Horizon* incident investigation reports, and *Standards for Internal Control in the Federal Government*.<sup>2</sup>

We conducted this performance audit from January 2015 to February 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>1</sup>The American Petroleum Institute is a national trade association that represents the U.S. oil and natural gas industry. Its more than 600 corporate members—producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies—represent all segments of the industry. The Center for Offshore Safety is an industry sponsored organization focused exclusively on offshore safety on the OCS. The Center serves the U.S. offshore oil and gas industry with the purpose of adopting standards of excellence to ensure continuous improvement in safety and offshore operational integrity.

<sup>2</sup> [GAO/AIMD-00-21.3.1](#).

# Appendix II: Comments from the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

JAN 27 2016

Mr. Frank Rusco  
Director  
Natural Resources and Environment  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Rusco:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled *Oil and Gas Management – Interior’s Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Long-standing Oversight Deficiencies* (GAO-16-245). The Department of the Interior (DOI) and the Bureau of Safety and Environmental Enforcement (BSEE) agree on the importance of accountability at the national level, the need for documented policies and procedures to ensure consistency across regions, and the necessity of elevating key functions to improve their effectiveness in pursuing BSEE’s mission.

The *Deepwater Horizon* tragedy revealed deficiencies in the oversight responsibilities of BSEE’s predecessor agency, the Minerals Management Service (MMS). Many of the reviews and recommendations following the tragedy focused on separating conflicting responsibilities and elevating key oversight functions. In spring 2014, BSEE senior management initiated discussions on the possible realignment of key functions, including investigations and enforcement. Implementation of the realignment began in late 2015, after the bureau received Departmental approval to proceed and consulted with the House and Senate Interior and Environment Appropriations Subcommittees.

BSEE’s current realignment builds on the recommendations resulting from reviews conducted in the aftermath of the *Deepwater Horizon* by employing a national program model whereby BSEE Headquarters establishes the program direction and the field offices carry it out. Under the National Program Management model, the designated lead for a national program establishes program strategy, identifies priorities for resource allocation, and develops and tracks accountability measures. Additionally, the national program lead coordinates policy development in collaboration with regional staff, including the regional directors who execute these policies at the operational level. Implementation of this model will be supported by clear, bureau-wide policy; the establishment of related performance measures; and internal accountability.

BSEE is committed to continuing work to resolve deficiencies in oversight. It is a significant cultural shift to move from a largely decentralized field organization to one with national-level

direction, monitoring, and accountability. The National Program Management structure is an important step in this direction, and BSEE will work to make this transition successful and evaluate its effectiveness.

The cultural shift occurring within BSEE is most clearly evident in efforts related to environmental compliance. The initial efforts to move away from a decentralized field organization on environmental compliance issues focused on a reporting chain that had regionally-based staff reporting to headquarters-based managers. In practice, this approach presented BSEE with challenges that slowed resolution of some deficiencies that GAO notes. BSEE identified opportunities to better coordinate field-based environmental compliance activities, such as water quality monitoring and marine pollution and debris inspections, with operational priorities. The bureau's restructuring of the Environmental Compliance Division (ECD) seeks to provide national guidance and significantly enhanced accountability in a more integrated way that recognizes program execution and logistical coordination among various mission responsibilities best occurs at the field level.

Environmental stewardship is a key aspect of the agency's core mission and a primary focus of BSEE's oversight. This stewardship is achieved through various methods. Examples include: checks that well and platform designs, safety systems, and operations are optimized to reduce the risk of incidents; and, verification that redundant safety devices are in place and response resources and personnel are prepared should an incident occur. Ultimately, BSEE's prevention activities, preparedness verifications, incident investigations, and enforcement actions harness all activities in support of its environmental stewardship responsibilities.

The two post-*Deepwater Horizon* reports cited by GAO in its discussion on BSEE's environmental compliance program, specifically the Department of the Interior's Office of Inspector General's December 2010 report and the Outer Continental Shelf Safety Oversight Board's September 2010 report, emphasize the need to elevate and separate environmental considerations from functions such as leasing and development in order to minimize conflicts of interest. BSEE's restructuring of the ECD is consistent with, and builds on, the recommendations from these oversight reports, which did not address reporting structures. The ECD, like the Environmental Enforcement Division before it, remains a national program on par with other national programs, such as enforcement and inspections. Field personnel, including regional managers, are accountable to follow bureau-wide, transparent procedures and policies set by the national division, and the national division also monitors overall execution and effectiveness of environmental compliance activities. This organizational structure represents a significant improvement from the one that existed in the MMS, which was criticized in both oversight reports. The restructuring also recognizes that tactical direction (specifically, the day-to-day execution of environmental compliance activities consistent with national policy) and logistical integration and coordination among various mission responsibilities at the field level can be best managed onsite, from BSEE's field offices.

Implementation of the National Program Management model also will help BSEE better resolve the deficiencies identified by GAO and others related to the bureau's investigative capabilities. The restructuring within the investigations program seeks to build consistency in the execution



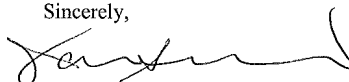
of incident investigations across districts and regions through the development of a national incident investigations policy that will supersede the conflicting policies and procedures cited by GAO. Additionally, the restructuring harmonizes legacy field investigations with the more systematic investigative methodology of the Investigations and Review Unit. The newly established Safety and Incident Investigations Division is leading the development of this policy, and is working with the regions to clarify roles and responsibilities. This policy will include the requirement for regional and district offices to review—and investigate, as appropriate—every reportable incident that occurs offshore. Additional efforts include the ongoing development of an Offshore Incident Investigations Training Program, which raises the level of investigations training for field personnel. A new national investigation program handbook is also under development and will be finalized during this fiscal year. The handbook will provide guidance for ensuring consistency in conducting incident investigations across the bureau.

BSEE also has achieved significant results in the area of enforcement. In 2015, the bureau worked with the U.S. Department of Justice (DOJ) and the Environmental Protection Agency on three separate cases to hold companies accountable for violations of the Outer Continental Shelf Lands Act (OCSLA) and the Clean Water Act; in total, over \$40 million in civil and administrative penalties were levied in these three cases. Additionally, BSEE conducted the initial investigation for three other cases, which were ultimately referred to DOJ's Office of Inspector General recommending criminal investigations in all three cases. DOJ has since initiated criminal prosecutions for these cases, which are pending in Federal court. Additionally, BSEE has finalized its Alternative Enforcement Procedures and is working to finalize additional national policies and procedures related to enforcement. A number of these policies and procedures are expected to be finalized in FY 2016. Creation of the Safety Enforcement Division will further help the bureau address deficiencies identified by GAO with clear national criteria to provide consistent guidance in the appropriate use of available enforcement tools.

Comments on particular sections of the draft report are provided in Enclosure 1. We believe consideration of these comments will help to specifically describe BSEE's progress in implementing the necessary processes for policy development and associated performance measures that will enhance the bureau's overall effectiveness.

If you have any questions regarding this response, please contact Linh Luu, BSEE Audit Liaison Officer, at (202) 208-4120.

Sincerely,



Janice M. Schneider  
Assistant Secretary  
Land and Minerals Management

Enclosure

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# Appendix III: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 19 2016

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Mr. Alfredo Gomez  
Acting Director  
Natural Resources and Environment  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Gomez:

Thank you for the opportunity to review and comment on GAO's draft report, "Oil and Gas Management Interior's Bureau of Safety and Environmental Enforcement Restructuring Has Not Addressed Longstanding Oversight Deficiencies." The report recommends that the Bureau of Safety and Environmental Enforcement (BSEE) coordinate with the Administrator of EPA "to consider the relevance of existing interagency agreements for monitoring operator compliance with National Pollutant Discharge Elimination System (NPDES) permits on the outer continental shelf and, if necessary, update them to reflect current oversight needs." EPA agrees with this recommendation and is committed to coordinating with BSEE and updating interagency agreements on compliance monitoring, as appropriate.

As GAO acknowledged, there are several interagency agreements between EPA and BSEE regarding coordination of NPDES permit compliance that date to the 1980s. The "Memorandum of Understanding Between the Environmental Protection Agency and the Department of Interior Concerning the Coordination of NPDES Permit Issuance With the Outer Continental Shelf Oil and Gas Lease Program," dated October 28, 1983 and signed in 1984 (the EPA-DOI MOU) established a strong foundation for the longstanding cooperation between EPA and the Department of Interior to ensure that owners and operators of offshore facilities comply with water pollution laws. The EPA-DOI MOU provides for regional memoranda of agreement to implement the inspection provisions of the MOU for specific permits or geographic areas, such as the 1989 agreement mentioned in the GAO report. We believe that the EPA-DOI MOU has been successful in its objective to promote interagency cooperation and coordination. We welcome the opportunity to continue our collaboration with BSEE, review the effectiveness of the EPA-DOI MOU, and work together to evaluate ways in which we might improve and expand our joint enforcement efforts.

The draft GAO report also suggested that there might be a disagreement between EPA and BSEE regarding the credentials needed for BSEE inspectors to conduct water sampling on behalf of EPA. EPA will follow up with BSEE to discuss whether any modifications to existing policies or procedures are necessary.

EPA intends to continue to collaborate with BSEE to deter and punish violations of environmental laws, as appropriate. We appreciate BSEE's assistance in implementing the NPDES enforcement program and

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**Appendix III: Comments from the  
Environmental Protection Agency**

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welcome the opportunity to further explore ways in which EPA and BSEE can carry out this work. Continued sharing of government resources, information, and expertise will better ensure compliance with NPDES and other requirements that protect the offshore environment.

Thank you again for the opportunity to review this draft report. Please feel free to contact Mark Pollins, of my staff, at 202-564-4001 or [pollins.mark@epa.gov](mailto:pollins.mark@epa.gov) if you have any additional questions.

Sincerely,

  
Cynthia Giles

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

Frank Rusco, (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Christine Kehr (Assistant Director), Cindy Gilbert, Alison O'Neill, Matthew D. Tabbert, Kiki Theodoropoulos, Barbara Timmerman, and Daniel R. Will made significant contributions to this report.

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