June 17, 2022

The Honorable Gary Gensler, Chair
c/o Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments of the National Ocean Industries Association, Proposed Rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," RIN 3235-AM87

Dear Chairman Gensler:

I write on behalf of the National Ocean Industries Association or NOIA. A fifty-year-old organization, we represent all segments of the offshore energy industry. This includes offshore oil and gas production, recognized to have the lowest carbon intensity among the oil producing basins, offshore wind development and deployment, with expected investment of $70 billion off the U.S. coastline by 2030, and offshore carbon capture and storage, which will play a key role in global decarbonization efforts. The companies developing offshore energy include both publicly traded and private corporations. Further, our members include the businesses large and small who do the work of building, supplying, and maintaining these projects. In other words, we represent hundreds of thousands of blue-collar and white-collar employees stretching from New England to the Gulf Coast to the West Coast and Alaska.

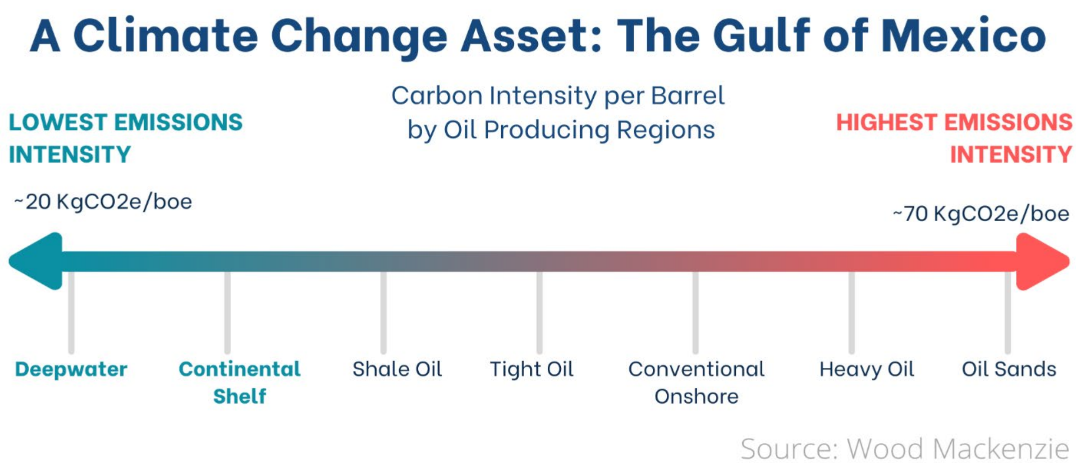
Our industry recognizes the risks of climate change and the need for continued action. As innovators, we are contributing solutions and best practices for addressing the climate challenge. We are committed to navigating the climate challenge, ensuring the availability of affordable energy, and providing energy security for the U.S. and global society. We welcome clear rules and guidelines to enable these objectives.

We appreciate the role of the SEC as it strives to protect investors, facilitate capital formation, and foster fair, orderly, and efficient markets. When it comes to requiring disclosures, the information sought by the SEC must be material to the prospect of financial returns. As with any financially material risk, our industry has already worked to disclose climate-related risks that meet the financial materiality standard. In terms of the proposed rule, "The Enhancement and Standardization of Climate-Related Disclosures for Investors," we recommend that the Commission modify the rule to instill greater clarity, certainty, and predictability for the regulated community, and to further the collective goals of the industry and the government in addressing climate change and providing meaningful transparency to the investment community. After describing the ongoing efforts of the offshore energy industry in advancing climate solutions, we focus on our concerns with the Proposed Rule below.

The Offshore Energy Industry: A Global Leader in Climate Progress

The offshore industry is a demonstrated leader and partner in global efforts to address the climate challenge. The American offshore sector is transforming how hydrocarbons are produced, making new streams of energy and innovative energy solutions a reality today, and this includes the transfer of oil and gas expertise into areas including offshore wind, hydrogen, and carbon capture, use, and storage.

Given the projected continued demand for oil and gas resources for the U.S. and global economies, government policy should promote and encourage energy production from the lowest carbon sources of oil and gas on a per barrel basis. The U.S. offshore region is recognized as providing among the lowest carbon barrels of the various producing regions.[1] The U.S. Gulf of Mexico has a carbon-intensity that is one-half of other producing regions. The deepwater – which represents 92% of oil production in the U.S. Gulf of Mexico - provides the lowest carbon intensity of any oil producing region. The chart below illustrates the distinct advantage of offshore oil production over other producing regions:



U.S. government efforts should serve to prevent substitution of U.S. offshore production with barrels from high emitting foreign sources with weak environmental oversight, such as Russia, China, or Iran. Foreign producers such as these not only lack the high environmental standards and oversight that we have here in the U.S., but they also often fail in human rights, anti-corruption, and various other social and governance metrics.

Innovation and technological progress continue on a daily basis in the U.S. offshore energy industry. The multitude of companies needed to produce energy offshore work collaboratively

[1] *See* Wood Mackenzie. (February 2021).“Carbon emissions performance in US GoM: a low emitter in the crossfire;,” https://www.woodmac.com/reports/upstream-oil-and-gas-carbon-emissions-performance-in-us-gom-a-low-emitter-in-the-crossfire-468085; ChemRxiv, (2020, April 13.) “Statistical Study of Carbon Intensities in the GOM and PB,” https://chemrxiv.org/engage/api-gateway/chemrxiv/assets/orp/resource/item/60c749d20f50db4b6c39696c/original/statistical-study-of-carbon-intensities-in-the-gom-and-pb.pdf; and NOIA, “Fighting Against Climate Change,.” https://www.noia.org/wp-content/uploads/2021/04/Low-Carbon-Barrels.pdf

to shrink an already small footprint. From electrifying operations to deploying innovative solutions that reduce the size, weight, and part-count of offshore infrastructure – thus increasing safety and lowering the carbon footprint – the U.S. Gulf of Mexico is home to an ongoing high-tech revolution. Offshore operators have collaborated to standardize subsea tiebacks and share facilities, decreasing the need for more facilities and lowering the carbon intensity of offshore operations. Drones and subsea ROVs are patrolling and connecting onshore and offshore operations with detailed real-time data. AI and machine learning are enabling greater efficiencies while also spotting potential issues before they have a chance to become real problems.

Carbon capture, use, and storage ("CCUS") is also a fundamental tool in combating climate change. The International Energy Agency calls CCUS "an important opportunity to achieve deep carbon dioxide emissions reductions." The U.S. Gulf of Mexico could very well soon be the leader in CCUS. Early projections show that fifty million tons of CO2 annually could be stored beneath the Gulf of Mexico by 2030, more than all the carbon currently stored globally. The Gulf's storage capacity could double by 2040.[2]

Further, the offshore energy industry has a strong track record of high environmental, social and governance (ESG) performance, including transparently reporting performance to external shareholders, implementing innovative approaches for advancing safety and environmental performance, and supporting local communities through philanthropic initiatives. Our organization established The NOIA ESG Network in January 2020 as a forum for learning, collaboration, and improvement in all areas of ESG.[3] We have witnessed tremendous results, as participating companies have shared approaches for improved performance in ESG, with an emphasis on emissions reductions from operations. Participating companies in all phases of their ESG journey have implemented steps to continue to decrease emissions throughout operations in the industry. This is the standard in the U.S. offshore energy industry.

As reflected in our Climate Change Position & Principles,[4] we support the efforts of our members in understanding their emissions footprint and setting sustainability goals and targets, assist our members by facilitating collaboration and enhancing organizational capability to support emissions reduction efforts, and seek to be a constructive partner in the development of thoughtful and balanced national policy to address climate change.

Industry Suggestions for Improving the Proposed Rule

1. The SEC should consider providing additional time for receiving stakeholder input

Because of the size, scope, complexity, and ramifications of the Proposed Rule on every industry in the United States, the Proposed Rule requires adequate time for careful and effective

[2] https://corporate.exxonmobil.com/News/Newsroom/News-releases/2022/0120_Industry-support-for-large-scale-carbon-capture-and-storage-gains-momentum-in-Houston

[3] https://www.noia.org/esg/

[4] https://www.noia.org/climatechange/

comments and will require extended time for full implementation and adoption. The relatively small number of days allotted for comment since the Proposed Rule was published in the Federal Register are inadequate for responding to a proposal of this magnitude, with the notice running 506 pages, containing over 1,000 footnotes, and referencing over 190 dense academic and governmental reports. This Proposed Rule, unlike any others propounded by the SEC, has systemic, comprehensive, and fundamental implications to the accounting functions, the HSSE (health, safety, security, and environment) functions, and the internal risk functions of every industry. While the comment period was expanded, the additional thirty days is still not sufficient for the thoroughness in analysis necessary to provide a meaningful opportunity to comment. The requirements as set forth in the Proposed Rule will require reorientation of corporate financial systems, and a lengthy implementation period should be allowed.

2. ***The SEC should ensure that new requirements are clearly defined and grounded in the materiality standard***

The statutorily prescribed role of the SEC is to protect investors, facilitate capital formation, and foster fair, orderly, and efficient markets. That is, the disclosure of the information, in this case climate-related information, must be material to the prospect of financial returns.

Commissioner Hester Peirce's March 21, 2022 statement on the rule describes the well-established materiality standard as delineated by Justice Thurgood Marshall: "an item is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision. The 'reasonable investor' Justice Marshall referred to…is someone whose interest is in a financial return on an investment in the company making the disclosure. Thus, there is a clear link between the materiality of information and its relevance to the financial return of an investment."

According to Commissioner Peirce, the Commission is making a dramatic turn from requiring disclosure of information related to financial interests to the disclosure of information related to general interests. The requirements of the final rule should be clearly defined and meet the financial materiality test.

3. ***The SEC should align the rule with current disclosure practices and reporting requirements of other regulations***

EPA, various state agencies, and even some local agencies regulate emissions and require disclosures of greenhouse gases. In the offshore environment, the Bureau of Ocean Energy Management reviews all projected lifecycle emissions each time any operator submits exploration or development plans. The regulations encompassing these disclosures are more comprehensive than, and differ from, the Proposed Rule. The SEC should work to identify the various reporting schemes across agencies, seek to eliminate conflicts, and attempt to align reporting to the greatest extent possible. The SEC should also consider conflicts the rule may have – and the potential opportunity for alignment – with current international standards for disclosure of emissions or climate-related information. Otherwise, the final rule could result in costly, yet avoidable, overburdens on the reporting community.

Consistent with the above discussion on materiality, existing SEC rules already require companies to disclose material risks regardless of the cause, type, or source of the risk. The principles-based approach of the current SEC regulations is appropriate for disclosing material risks, including potential climate-related risks, because every company is situated differently and should have the flexibility to file financial statements and accompanying disclosure documents based upon the specific profile of the company and the needs of investors interested in the company.

The current rules work. With regard to climate-related risks, filers across all industries routinely consider the full range of risks that are reasonably likely to have material impact on the financial returns of the company. This includes climate-related risks. Under current rules, companies already disclose climate-related information to the extent that information is rooted in the materiality standard.

Beyond reporting to the SEC, NOIA member companies and the offshore energy industry at large have embraced voluntary disclosure of climate-related information through the publication of sustainability and ESG reports. Company sustainability and ESG reports are tailored to the issues of environmental stewardship, social responsibility, and corporate governance. These reports have an emphasis on company efforts to reduce emissions and broadly address the climate challenge. The climate issue obviously goes well beyond financial considerations and voluntary disclosure has been demonstrated to be an effective means for conveying the holistic approach a company is taking towards climate mitigation.

Companies throughout the offshore energy industry currently issue voluntary reports that are developed through robust engagement with stakeholders, including investors. These voluntary reports consider and align with international reporting guidelines and programs. Companies often include: emission reduction ambitions, information about Scope 1 and 2 emissions, steps and investments to achieve future reductions in emissions, progress reports, and a recognition of the inherent uncertainty based upon government policies, market forces, and changes in technologies.

Given the ongoing successful efforts of the industry to both disclose material climate-related information to the SEC *and* publish sustainability and ESG reports, the Proposed Rule may to some degree disrupt the ongoing maturation and enhancement in the quantification, analysis, and disclosure of greenhouse gas emissions. Companies across all sectors work individually and through the broader business community to improve voluntary, climate-related disclosure efforts. This field has rapidly evolved, and the market has proven to be an effective mechanism to developing and improving climate-related metrics and information.

4. ***The SEC should consider changes to reduce avoidable burdens related to cost and uncertainty***

The proposed rule, as written and designed, creates an avoidable level of uncertainty for the reporting community. The result could lead to significant additional costs for reporting companies. Companies will need to expand their accounting and regulatory departments in order to comply, and our members who are not strictly under the jurisdiction of the SEC (non-filers) are concerned they will be required to one day comply with these complex and burdensome regulations. These non-filers tend to be smaller companies – many that qualify as small business – that could be severely impacted by any increases in cost. This could result in these companies shifting resources away from actual carbon emissions abatement to paperwork and reporting obligations.

The rule as written will require some level of assumption or speculation when reporting climate-related risks. For example, the proposal requires the filer to disclose actual or *potential* climate-related risks. "Potential" climate-related risks are not clearly defined. Moving beyond actual risks to potential risks will require filers to engage in assumptions and speculation. The SEC should ensure that the final rule eliminates the need for such assumptions and speculation.

5. ***The Proposed Rule creates a need for a new attestation industry, without study or rules for such an attestation industry***

Companies already have metrics and systems in place for assessing and voluntarily reporting Scope 1 and 2 emissions. There are large variabilities in systems for measuring, benchmarking, modeling, and reporting emissions; those variables exist because every international entity that has carefully studied emissions has concluded that no single standard method can be applied to all industries. Flexibility is imperative here because of the variations in ownership, control, operatorship, and how emissions are created in the value chain of each company. Adding attestation requirements raises major questions, given that the attestation industry is in its infancy and has no recognized standards.

There are legitimate questions about the availability, expertise, and capacity of the potential pool of attestation providers to carry out this requirement. The proposal will force companies to allocate substantial costs and resources to third party attestations. It is unclear whether an attestation will add value and increase comfort for the investor. The apparent lack of capacity, standardization, and consistency in the attestation industry could drive continued confusion and gaps in financially material information for investors.

Further, the SEC should consider the additional attestation requirements and how they could impact an entity's ability to comply with the SEC filing deadlines. A large contingent of filers will need to obtain third party assurance at virtually the same time period each year, which will lead to widespread resource constraints of those assurance providers and potentially hamper an entity's ability to timely file.

Finally, the lack of safe harbor protection in the attestation process should be addressed; if a company reports in good faith and provides the required attestation, it should receive safe harbor protections, and the attestation provider, if it completes its task as required by the SEC in good faith, should likewise be granted safe harbor protections.

6. Specific Areas to Address Before Finalization of Rule

The SEC should consider changes to the proposal in the following areas prior to finalization:

1. Definition of "climate-related". The definition of "climate-related" in the proposal is vague and the final rule should provide greater certainty around the definition. The rule must provide a definition with sufficient scope for clear and consistent disclosures, and the definition should be clearly tied to the financial materiality standard.
2. Quantification of climate-related impacts. In addition to adhering to the materiality standard, the final rule should provide clarity on the expectations for quantification of climate-related impacts. In other words, there should be little uncertainty within the regulated community about the scope, methods, and formats for quantifying and reporting of climate-related impacts that are financially material.
3. Attestation requirement. For the reasons describe above. the SEC should consider eliminating the attestation requirement for Scope 1 and 2 emissions. The SEC could take this up in a separate, longer-term rulemaking to determine if a feasible approach to third party assurance is possible.
4. Scope 3 reporting. With regard to Scope 3 emissions, there is concern throughout the industry - and other industries - about the accuracy and reliability of producing and providing such information in SEC disclosures, not only because there is a level of unreliability of emissions reporting up and down the value chain, but also because every Scope 3 emission is another company's Scope 1 emission – leading to a gross overcounting of emissions. Moreover, because Scope 3 emissions by their very nature are the emissions of upstream or downstream companies in a filer's value chain, the filer is reliant upon the upstream or downstream provider to accurately calculate and report emissions. The SEC should rethink having a regulatory requirement to provide information that is not within a company's control. The thousands of small businesses that support the offshore energy industry's public filers may not have the ability to furnish emissions data with the requisite accuracy and reliability for regulated Scope 3 emissions determinations, and those systems will need more time to mature. On a voluntary basis, many filers and others are developing approaches for Scope 3 reporting, and this area will continue to mature outside the scope of SEC efforts.
5. Materiality threshold. The one percent threshold per line item for including climate-related financial impacts is significantly lower than a typical materiality threshold not specifically tied to a line item. The final rule should align with the traditional standard.
6. Safe harbors. The SEC should enhance and strengthen safe harbor protections in the Proposed Rule and should ensure that safe harbor protections apply to third party data sources, including data from contractors, project partners, and other companies relied upon to provide emissions data. The SEC should also consider the issuance of guidance related to the use of third-party data and the associated applicability of a safe harbor.
7. Transition plans. There is questionable value in the requirement to disclose "transition plans." This type of information is generally recognized as internal and deliberative. Such information often includes sensitive and competitive data. As such, the

requirement to disclose this information could result in a chilling effect on companies attempting to make progress in mitigating climate impacts. This in turn could stifle innovation and the deployment of technologies and best practices. The SEC should reconsider this requirement and the scope of required information related to this proposed provision to avoid these implications.

8. Location of properties, processes, or operations subject to physical climate risks. The specific description of properties, processes, or operations raises critical security and competitive concerns. The energy industry has vast amounts of critical infrastructure and great care is given to the protection of information related to location, processes, and operations in an effort to promote the highest levels of security for the protection of the entity as well as the public. Also, the location of assets is often an inherently competitive data point that deserves confidentiality. The SEC should reconsider these proposed requirements and ensure that the final rule does not sacrifice security or competitive information in any way.
9. Demonstration of director expertise in climate-related risks. The SEC should provide greater detail and guidance in order to help registrants determine whether directors meet the criteria for qualifying as a climate expert.

Conclusion

In closing, NOIA and the full diversity of its membership are committed to the advancement of principles of innovation, conservation, efficiency, resiliency, mitigation, adaptation, and best practices that must be part of a systematic approach to addressing the climate challenge, and we share a commitment to a high standard of corporate citizenship and continuous improvement in climate and ESG performance. We recommend that the Commission modify the rule to instill greater clarity, certainty, and predictability for the regulated community, and to further the collective goals of the industry and the government in addressing climate change and providing meaningful transparency to the investment community. In its current format, without improvements, many companies will be hamstrung by the requirements due to uncertainty and impracticability in the Proposed Rule. We look forward to continued engagement with the Commission on this issue and appreciate your consideration of the comments herein. NOIA and its members remain available to discuss our comments and this Proposed Rule.

Very respectfully,

Erik Milito
President
National Ocean Industries Association