

OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic
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A precautionary OSPAR response to the Deepwater Horizon oil spill

Submitted by Seas At Risk

This document presents a summary of the results of specific initiatives taken to review oil drilling practises since the Deepwater Horizon oil spill of 2010 and calls for an appropriate and precautionary OSPAR response.

Background

1. The 2010 Deepwater Horizon oil spill in the Gulf of Mexico led to the deaths of 11 workers and released an estimated 4.9 million barrels of oil into the marine environment. It is considered amongst the worst environmental disasters ever recorded, certainly the largest marine oil spill. In the aftermath of the incident, the US Government put in place an initial moratorium on deep sea oil drilling that lasted until 12th October 2010. In December last year, the U.S. Government announced that the area in the Eastern Gulf of Mexico (along with the “Mid and South Atlantic planning areas”) would remain under a congressional moratorium, whereby no consideration would be put to potential development through 2017.
2. In the Bergen Statement, OSPAR signalled its deep concern regarding the Deepwater Horizon incident and reaffirmed a commitment to take all possible steps to prevent and eliminate pollution from offshore oil and gas activities.
3. The OSPAR Commission agreed to encourage Contracting Parties by 2011 to report on their reviews of their existing frameworks, investigate whether there are specific environmental issues relating to drilling activities in extreme conditions, taking into account external reviews, and, if required, develop appropriate measures.
4. In Annex 11 of the Bergen Ministerial Meeting Summary Record, it was agreed that, based on an assessment of two reports, one being a report of Contracting Parties’ national reviews following the Deepwater Horizon accident and the other, a report based on external reviews including the North Sea Offshore Authorities Forum (NSOAF), European Commission, the International Regulators Forum (IRF) and the USA Presidential investigation, that further OSPAR action might be taken if needed.

Developments

5. In the report of the United States' National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling¹, the following statements are made:

- "...the accident of April 20 was avoidable. It resulted from clear mistakes made in the first instance by BP, Halliburton, and Transocean, and by government officials who, relying too much on industry's assertions of the safety of their operations, failed to create and apply a program of regulatory oversight that would have properly minimised the risks of deepwater drilling. It is now clear that both industry and government need to reassess and change business practices to minimise the risks of such drilling."
- "Deepwater energy exploration and production, particularly at the frontiers of experience, involve risks for which neither industry nor government has been adequately prepared, but for which they can and must be prepared in the future."
- "To assure human safety and environmental protection, regulatory oversight of leasing, energy exploration, and production require reforms even beyond those significant reforms already initiated since the Deepwater Horizon disaster. Fundamental reform will be needed in both the structure of those in charge of regulatory oversight and their internal decision making process to ensure their political autonomy, technical expertise, and their full consideration of environmental protection concerns."
- "The technology, laws and regulations, and practices for containing, responding to, and cleaning up spills lag behind the real risks associated with deepwater drilling into large, high-pressure reservoirs of oil and gas located far offshore and thousands of feet below the ocean's surface. Government must close the existing gap and industry must support rather than resist that effort."

6. In a report on offshore drilling activities by the United Kingdom's Energy and Climate Change Committee of the House of Commons², the following statements are made:

- "We acknowledge that oil spill response plans often share procedures for dealing with oil spills. There is some concern that in the past this may have led to a culture of copying-and-pasting rather than the production of site-specific plans which recognise the drilling environment and the risk of high-consequence, low-probability events. We recommend the Government re-examine oil spill response plans to ensure that this is not the case."
- "Given the high costs of the incident in the Gulf of Mexico, we believe that the OPOL (Offshore Pollution Liability Association) limit of \$250 million is insufficient. We are concerned that the OPOL provisions only cover direct damage and also that the precise definition of "direct damage" is unclear. While membership of OPOL remains voluntary—despite it being a prerequisite for a licence—its voluntary nature weakens its legality and the control and deployment of its funds. We believe this lack of legal control will allow polluters to claim that damages to biodiversity and ecosystems are indirect, and therefore do not qualify for compensation."
- "We find some conflict in the reports from the HSE [The Health and Safety executive] about bullying and harassment on rigs and the assurances of the industry that sincere whistleblowers will be heard and protected. We recommend that the Government should discuss with the industry and unions what further steps are needed to prevent safety representatives from being or feeling intimidated into not reporting a hazard, potential or otherwise."

¹ National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (2011) Deep Water The Gulf Oil Disaster and the Future of Offshore Drilling, United States.

² Energy and Climate Change Committee (2011) UK Deepwater Drilling - Implications of the Gulf of Mexico Oil Spill. HC 450-I, The Stationery Office Limited: London.

- “Given that the failure of the single blind-shear ram to fire on the Deepwater Horizon's blowout preventer seems to have been one of the main causes of the blowout of the Macondo well, we recommend that the Health and Safety Executive specifically examine the case for prescribing that blowout preventers on the UK Continental Shelf are equipped with two blind shear rams.”
- “We conclude that the UK has high offshore regulatory standards, as exemplified by the Safety Case Regime that was set up in response to the Piper Alpha tragedy in 1998. The UK regulatory framework is based on flexible, goal-setting principles that are superior to those under which the Deepwater Horizon operated. Nevertheless, despite the high regulatory standards in the UK we are concerned that the offshore oil and gas industry is responding to disasters, rather than anticipating worst-case scenarios and planning for high-consequence, low-probability events.”
- “It is imperative that there is someone offshore who has the authority to bring a halt to drilling operations at any time, without recourse to onshore management. We urge the Government to seek assurances from industry that the prime duty of the people with whom this responsibility rests is the safety of personnel and the protection of the environment.”
- “We recognise that the UK's oil spill response system is robust and rightly focuses on prevention, followed by containment and then clean-up. We welcome the development of new capping and containment systems capable of dealing with a sub-sea blowout. However, we feel that the absence of these devices before the Macondo incident is indicative of the industry's and the regulator's flawed approach to high-consequence, low-probability events. Prevention is better than cure, and we recommend once again the Government recognise that in its regulatory regime these systems are not a substitute for fully functioning blowout preventers.”

7. In response to the Deepwater Horizon oil spill the European Commission published an official Communication³ to the European Parliament and the Council, stating the following:

- “Improving the safety of citizens and the protection of the environment cannot rely on industry's discretionary initiative and self-regulation alone. The regulatory regime must ensure that industry complies with clear, robust and ambitious rules allowing only safe and sustainable operations. In addition, the regime must provide for a high level of transparency enabling the industry and public authorities to demonstrate to any interested party that activities that carry risks to life, environment or property are appropriately managed and controlled.”
- “The Commission proposes to work towards an overhauled and more coherent legal framework for offshore exploration and production activities in Europe which ensures EU wide application of state-of-the-art practices. While European citizens and environment will benefit from ever higher level of protection, the industry stands to benefit mainly through simplification and levelling of the playing field. To this end, various options exist such as amending different pieces of existing legislation individually, designing consolidated legislation for offshore activities, or developing soft legal instruments complementing existing legislation. The risks at stake, the need for legal certainty and the principles of "better regulation" speak in the Commission's view in favour of a single new piece of specific legislation for offshore oil and gas activities, possibly supported by soft legal measures (guidelines).”

³ European Commission (2010) Facing the challenge of the safety of offshore oil and gas activities, Communication from the Commission to the European Parliament and the Council.

Conclusion

8. These reports from eminent and expert sources speak for themselves and indicate very clearly that for OSPAR a precautionary approach to the Deepwater Horizon disaster requires a moratorium on new deep water offshore drilling until such time as the issues raised in the reports are fully addressed. Indeed many of the environmental risks and issues identified are not solely of concern in respect of drilling in deep water but affect all offshore drilling activities.

8.1 Seas At Risk are aware that concerns have been raised about the effect of a moratorium on energy security and on the economies of the communities involved but believe that these are overstated and in any case must always be weighed against the environmental, social and economic costs of a Deepwater Horizon style disaster in the OSPAR area.

Action requested

9. In light of the findings of reports relating to the Deepwater Horizon disaster, OIC is invited to agree a moratorium on all new offshore oil drilling, and at least all such new drilling in deep and otherwise hazardous waters, until such time as the existing weaknesses attributable to offshore oil drilling have been properly dealt with by new regulations and procedures, that are in force and fully implemented, across the entire OSPAR region.