

Oceana recommendations – Offshore Drilling safety and environmental

Europe must urgently shift to a “low-carbon” economy and decarbonize its energy mix by promoting renewable energies and energy efficiency measures. A bold move away from fossil fuel energies is necessary to cut our addiction and reduce our GHG emissions. Offshore hydrocarbons activities are risky both for workers on rigs and the potential environmental impacts on the marine life and coastal communities. For that reason, offshore drilling should not be considered as an option by policy makers if they are serious about addressing climate change issues.

Oceana campaigns for an EU wide moratorium on new offshore oil and gas explorations coupled with a comprehensive strengthening of safety and environmental regulations for existing activities. We believe the best way to avoid disaster is to establish a ban on hydrocarbon exploration, as recognized by several US officials after the Gulf of Mexico disaster: the “if you drill, you spill” moto cannot be more of a reality.

AUTHORIZATION AND LICENSING PROCESS

Prevention as a guiding principle:

We believe the authorization process for offshore oil/gas activities lacks independence, harmonization, strict environmental and safety criteria and above all transparency. The licensing exercise is the key step where prevention should be emphasized when operators request to carry out dangerous and risky activities such as offshore hydrocarbon developments. The explosion of the Deepwater Horizon rig in the Gulf of Mexico last year, and the massive spill of oil into the ocean (4.9 million barrels) caused major environmental, economic and social damages which will affect future generations as the long term impacts are hard to assess. As a result, EU countries should review and strengthen their authorization process with the objective of introducing strict safety checks to prevent accidents, minimize environmental threats and more importantly anticipate future developments to better regulate them (e.g. drilling in sensitive areas). In that respect they must respect strictly the precautionary principle in their licensing exercise and insure offshore developments are compatible with an ecosystem based approach.

Environmental Impact Assessments:

Thus prior to any consideration to drill, operators should have an obligation to undertake a comprehensive Environmental Impact Assessment (EIA) in order to request license/permit covering all stages of projects: exploratory, operational, and decommissioning. This assessment must include robust criteria on impacts on seabed integrity, underwater noise effects, contaminants or disturbances of deep-sea communities and marine life. This is particularly valid

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for exploratory activities which have huge impacts (e.g. devastating effects of seismic tests on cetaceans) but do fall through the gap of the EIA Directive. There must also be an obligation to implement mitigation measures to avoid and reduce significantly harmful effects on the marine environment.

If the EIA outcomes is unsatisfactory or reveals risks which cannot be reduced or technology that limits safety of operations; the applicant should not be granted a license to operate. Consequently National Authorities should be able to withdraw permits and prohibit activities when appropriate, fully in line with the precautionary principle.

Technical and financial capacity of the drilling companies:

As mentioned, the move towards more complex environments is requiring operators to race for technology, techniques and know-how that they do not necessarily fully control. Consequently technological risks increase as illustrated in recent years' records of incidents. A clear example lies in the Deepwater Horizon accident which put under light the absence of proper response (capping system; containment, technology, procedures etc) to stop the oil spill.

Europe needs a comprehensive regulatory regime which ensures that companies wishing to carry out offshore activities comply with strict and binding rules allowing only safe and sustainable operations. The assessment of technical and financial expertise of operators must be an essential prerequisite of the licensing process, to make sure high level playing field requirements are met.

Oceana contends that health/safety of workers and environment prevention should be reinforced by extending minimum standards across all EU waters by:

- Requiring the application of **Best Available Techniques (BAT)**, with regular maintenance with requirements for upgrading of installations as technology evolves. Oceana recalls that oil and gas platforms generate immense amounts of waste from their general operations (discharges of produced water, cuttings contaminated with toxic drilling muds/fluids) which contaminate water and affect the vicinity of the installations including biodiversity communities, fish and marine environmental at large. The use of BAT must address this source of contamination and make sure strict discharge limits are in place as the current technology exist to effectively reduce pollution levels.
- Generalizing risk-based **“Safety-case approaches”**, reviewed regularly with any material changes subject to approval to ensure that the safety-case becomes a living and evolving document. Oceana warns that a significant number of platforms in EU waters are ageing and welcomes attempts to improve asset integrity of existing platforms;

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- Assessing **emergency response plans** to prove the capacity and rapidity of the operators to mobilize and deploy safety measures (containment cap, skimming vessels, floating booms and pads etc.). Disaster response plans must be scaled up at EU level for regional coordination and inclusion of neighbouring countries into the decision making processes.
- Applying strict prior assessments on activities carried-out within emergency response plans, such as the use of chemical dispersants, to minimize public health implications and further environmental damages.
- Investigating the operator's experience in the market and records of activities (e.g. past responsibilities in oil leaks or spill, sanctions for negligence or misbehavior etc.)
- Regular, varied, unannounced and rigorous **inspections** carried out by trained specialists acquainted with local conditions. EMSA could play a role in trainings inspectors and insuring an adequate number of them are available to meet the demand (economies of scale at EU level).
- Recommending the obligation for companies to set aside 5% of their total R&D spending for compulsory **research on prevention** and accident remediation technologies (e.g . on safety trainings for workers, high depth intervention mechanisms, early warning procedures and detection of incidents).
- Conducting regular "**stress tests**" for installation, equipment and procedures in order to reduce risks of accidents. The continuous development of offshore drilling technology will require regular updates of minimal technical requirements (in particular containment machinery to help deal with all possible blowouts).
- Promoting the ratification by all EU Member State of the 1994 Offshore Protocol of the Barcelona convention and other international agreements dealing with oil pollution.

Finally Oceana calls on the European Commission to consider compulsory financial guarantee arrangements as a fundamental part of the licensing process, to ensure that licensees prove their ability to pay for the consequences of an incident (clean-up, remediation, justice etc.). This means operators must have enough financial capacity to cover and respond to any unforeseen events (accidents, spills, leakages etc.). It is an EU responsibility to ensure that operators can assume their potential financial obligations, and consequently should not allow operators which do not prove sufficient resources to apply for permits, based on the worst case scenario (considering the estimated costs of the recent Deepwater Horizon incident at around 50 Billion US Dollars). Ultimately financial guarantee must be a safety-net mechanism to protect Member States and taxpayers, who often ended-up paying the bill of oil spills in past (see also financial liability section)

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Arctic Region:

The European offshore oil and gas industry has not been immune to important accidents in the past and we must keep in mind that exploration is moving towards more complex environments, in ever-deeper waters and/or extreme climatic conditions that will create challenging operational circumstances and complicate the control of subsea installations and incident response.

Oceana recalls that in these challenging conditions, where we do not have the capacity to intervene in case of emergency and there is high risk on the marine environment, operators should not be allowed to drill in risky waters, such as deep-sea. This is particularly true for fragile ecosystem, such as in the Arctic region, where half of existing petroleum industry standards is inapplicable or unsuitable¹ and where response, rescue, and clean-up capabilities are virtually nonexistent. Oceana believes the risks are too high for the society and often underestimated by the industry which is driven by short-term interests.

The European Commission must acknowledge that as long as high EU safety standards and emergency capabilities are not developed, no drilling activities should be authorized in the Arctic.

Emergency response planning:

Another crucial element to be approved when granting license, is the emergency plan with the contingency measures which should: identify hazards; assess potential pollution sources and effects; outline a response strategy for the site, outline drilling plans for potential relief wells; present scenarios of responses according to weather conditions, assess the use of chemical dispersants. Operators should submit their contingency plans when requesting license; for complex wells, or challenging drill conditions, the contingency plan should be assessed, consulted and approved contemporaneously with other regulatory approval processes (e.g. environmental, those linked to well-design). In all cases, operations must not commence until a contingency plan has been approved; with due regard for data protection, contingency plans should be published by the national competent authority.

In emergency situation, the EU should have a regional coordinating role particularly when there are transboundaries impacts.

¹ Barents 2020; "Assessment of international standards for safe exploration, production and transportation of oil and gas in the Barents Sea", <http://viewer.zmags.com/publication/810da62a#/810da62a/1>

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GOVERNANCE AND COMPLIANCE

Oceana recognizes the potential lying in the significant experience of EMSA in dealing with prevention of oil accident, monitoring and detection activities, as well as inspections and audit of vessels. Consequently we contend that EMSA should be the EU body dealing with offshore activities in EU waters, monitoring and oversight of national regulatory bodies when it comes to licenses granting, prevention, inspections and emergency response.

Offshore oil and gas operations in European waters are regulated by a complex patchwork of regulations which varies from one Member States to another. Because of the national right to determine the conditions to exploit their energy resources, offshore oil and gas operations in European waters have very little EU commonalities; and lack standards and coherent regulatory framework. This heterogeneity in licensing, operations safety and environmental protection regimes complicates coordination at EU levels and causes imbalances across European regional seas.

Oceana calls for an independent EU regulatory oversight of offshore operations in Member States, most likely EMSA, to bring in consistence, coherence and transparency across all EU Member State's practices, and also to establish high minimum standards: common methodologies for licensing, sectoral guidances, best practices sharing etc. This would also address the potential conflict of interests between National Regulators and the industry, as the former must at the same time promote offshore drilling in its national waters (attract investments), and regulate it!

EMSA is a natural and strong candidate to govern offshore platforms in Europe. Its competences should quickly be extended to cover offshore activities, as oils rigs must be controlled and regulated in a similar way to ships. Building on the experience of the agency with ship pollution, better enforcement through regional monitoring, control, reporting and transparency would significantly help the implantation of EU rules. Oceana believes the benefits of extending the mandate of EMSA to offshore activities would actually overrun its costs. We believe that using all tools the agency has developed to deal with oil spills and safety of vessels (detection, audits, inspections), EMSA could bring good value for an independent EU "controller of controllers" with the aim of harmonizing practices and standards and ultimately improving compliance with legislation in Member States.

In the meantime it is clear that decisions of individual Member States in approving activities off their coasts may have a direct and significant impact on other riparian Member States. Oil spills do not recognize political or geographical borders and can equally affect the shores of others countries, being or not EU Member States. Therefore Oceana stresses the need to consult neighbouring countries when granting licenses to enhance cooperation and better take into

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account transnational aspects. Beside an EU body could further ease the diffusion of EU safety culture and best practices in countries where drilling occurs (e.g. Mediterranean, Black Sea).

LIABILITY RULES FOR DAMAGES

The current legislative framework needs a stronger liability regime on remediation and compensation. Oceana supports the extension and strengthening of the polluter pays principle, enshrined in the Environmental Liability Directive (2004/35/EC), to cover damages to all marine water and not only to existing EU legislation. Liability of offshore operators must be compatible with the geographical provisions of the Marine Strategy Framework Directive (2008/56/EC) too. The industry should bear the primary and entire responsibility for engaging in offshore drilling, and consequently operators must give an unequivocal top priority to safety and sustainability in their activities. Past disasters have shown that financial guarantees must be a necessity if we want to make sure operators have the ability to satisfy their responsibilities; and therefore liability measures must be evaluated at the authorization stage.

Thresholds to trigger liability must be materially lowered so that any negligence or incidents creating damage to the marine environment, even in the course of regular operations such as water cut discharges, be covered by the Environmental Liability Directive. Similarly the financial ceilings within liability regimes must be eliminated in light of the Gulf of Mexico tragedy to ensure a complete financial coverage from operators. Most of current industry funds have insufficient financial ceilings that will not secure compensation for the full range of environmental damages and remediation costs of an offshore spill (e.g. OPOL has a ceiling of \$ 250 million, whereas the BP Oil Spill bill is expected to be \$ 50 billion!). If an operator does not have the financial capability to operate offshore, it should simply not be allowed to drill (no permits). This would avoid a situation where taxpayers' money is eventually used to pay the clean-up of shores instead of the responsible company.

Oceana calls on the European Commission to explore the appropriateness of requiring mandatory communal or industry funds for firms operating in the same water region. Oceana believes that the industry shares a common risk and should be collectively and proportionally responsible if an operator is not able to compensate for environmental damages. That is the reason why industry funds should additionally be legally binding with mandatory membership for operators, and under the administration of the EU.

Another direction to explore according to Oceana, is to make operators accountable for all stages of operations and particularly to consider adopting and strengthening disincentives for

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negligence such as fines, removals of licenses, and criminal liability for employees and employers (at management levels).

TRANSPARENCY AND SHARING OF INFORMATION

Oceana considers that transparency for such risky operations must be reinforced, as the current level of obscurantism in the oil and gas sector is high. The governance arrangements Oceana proposes will also contribute to improve transparency and information sharing.

The industry should have clear transparency rules and an obligation to communicate data on incidents and spills but also inspections reports, so that any citizen can easily find information (rig location, accident type, firms involved, technical elements, scale of damages, ecosystems affected, level of contamination, remediation measures etc.). EMSA would collate the information, administrate and update a centralized webpage.

Accidents and inspections reports and details of Environmental Impacts Assessments should be fully disclosed online too, and include all potential danger to personnel, machinery failure, level of hydrocarbon releases. Oceana believes National Regulators must share data to EMSA to guaranty a smooth EU coordination on EIA criteria, inspections process and methodologies, shared training of inspectors, compliance mechanisms and sanctions.

This relevant information should also be shared between companies and operators on to strengthen accidents prevention, safety and risk management. Cross fertilization is needed in the sector so that best practices and knowledge in regulation, standards, and procedures are disseminated along the supply chain. The involvement of the IPPC bureau and EMSA at regional level, together with national bodies are potential effective ways to mainstream sectoral state-of-art practices, and ultimately reduce activity's risks.

Due to years of non-transparency in offshore installations, it is today difficult to sincerely assess the sector in Europe.

Oceana call on the development of a Risk Scale for oil spill, based on the Richter magnitude scale for earthquake to enable citizen to better understand the level of gravity and risks of incidents. Not only looking at actual oil spill, this Offshore Risk Scale could also assess potential accidents 'damages of rigs according to the state of installations, their location, contingency plans, safety record of companies, environmental conditions etc.

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INTERNATIONAL ACTIVITIES

The EU has the responsibility to reinforce Member States' emergency response capacities and promote international cooperation of offshore safety worldwide, diffusing best practices and safety standards to third countries. The EU must pay close attention to offshore areas adjacent to its territory where offshore drilling is growing fast and where an accident with any oil spill could damage the environment and economies of several coastal Member States. To Oceana, EMSA appears to be a natural body to catalyze actions, both in term of prevention, but also reactions to accidents.

The EU should progressively engage discussions in with third countries to reduce regulatory gaps relating to health, safety and environmental legislations, and spread the "EU safety culture". This includes close collaboration with the industry as it is crucial that operators maintain state of the art safety and environmental practices regardless of jurisdictions under which they operate. Again Oceana stresses the role of Regional Seas Convention to foster cooperation emergency situations, in particular OSPAR who is well advanced in this regards. The Barcelona Convention is particularly relevant too, with its Offshore Protocol which was only ratified by a single EU Member State.

Finally Oceana raises attention to the necessity of introducing provisions to oblige European firms operating outside of European waters, to apply uniformly high standards of offshore safety and environment practices when operating abroad. Risks inherent to offshore hydrocarbon activities extend beyond Community waters, and for that reason recommends that EU oil and gas drilling standards should apply to all EU oil drilling companies operating both in and outside of Community waters. Europe needs a strong 'safety culture' framework, to be recognized as an example when undertaking exploration and exploitation in other parts of the world.

EMSA must have authority and be able to take sanctions in European markets if an EU firm would neglect EU offshore provisions in developing countries for instance. This challenging task though, could be facilitated by providing financial incentives (R&D facilities for partnerships, tax deductions) to companies applying EU standards and performing well in terms of safety and environmental consideration. Oil and gas companies should also be concerned about their branding and image, as western markets are more likely to react to an oil spill (boycott). Therefore promoting companies with good safety and environmental records (e.g. via labels, advertising banners) could also be explored. However such system would involve an immense work of monitoring and verification scheme.

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