

PUBLIC CONSULTATION
Improving offshore safety, health and environment in Europe

Questions for the public

Response by SURFRIDER FOUNDATION EUROPE

Please use this response form for your replies. Thank you for respecting the maximum length for the replies as indicated after each question. This will ensure that your responses are taken into account in their entirety.

Please send the filled response form to the [ENER-CONSULT-OFFSHORE mailbox](#)

Authorisations

As described in the consultation document, the competent authorities of the EU Member States define the concrete regulatory requirements and conditions for starting, pursuing and terminating offshore activities within the broader boundaries of EU legislation. These authorities govern also the authorisations for offshore activities in a given area (both in terms of access to exploit a certain geographical area, and in terms of approval to perform concrete activities), regulatory requirements on ongoing activities and closing of operations.

1. Which changes, if any, would you recommend to the authorisation conditions for offshore prospecting or exploration or production activities? Please specify which authorisations your recommendations concern (all authorisations, those in a specific country, those authorising only a certain stage(s) such as prospecting, exploration or production etc) (Please limit your response to maximum 1000 words)

Surfrider Foundation Europe (SFE) considers that all oil & gas authorisations for prospecting, exploration and production activities must be required to demonstrate they have sufficient insurance or other financial guarantees to ensure complete restoration and compensation in relation to environmental damages.

Any prospecting, exploration or production activities within an EU Member State's Exclusive Economic Zone (EEZ) and waters not considered deep or otherwise hazardous should abide by common EU standards. National Authorities would be responsible for authorising such activities but ensuring that common EU standards are met should be the principal responsibility of the European Commission.

SFE believes that for authorisation conditions, oil & gas industrials have to prove that they have a fast and efficient emergency case response plan, with the best techniques available (no best practices). Considering recent studies after the use of dispersants in the Gulf of Mexico, the use of dispersant must not be an option in their emergency plan.

In every country in the EU, of course especially the ones involved in oil drilling, Europe needs improvements in licensing and authorisation conditions and procedures. It has to have efficient and preventive standards to ensure that EU coasts and waters are safe from a potential accidents or pollution from offshore platforms. All stages, from prospecting, exploration and production have to be reviewed and reinforced.

An EU emergency plan has also to take into account the Arctic. The sensitivity, special harsh weather conditions, such as in the North Sea, and challenging operational circumstances as well as the fragile ecosystem of the Arctic region that mean half of existing petroleum industry standards are inapplicable or unsuitable for Arctic waters¹. Clean-up capabilities are virtually nonexistent for the challenging conditions in Arctic waters; as long as such standards and such capabilities are not developed, no drilling activities should be carried out in this region.

2. European law ²foresees that the competent national authorities shall ensure that authorisations are granted on the basis of selection criteria which consider, among other things, the financial and technical capability of the companies wishing to carry out offshore oil or gas operations.

SFE calls on the Commission to conduct a comprehensive review of licensing requirements related to offshore hydrocarbon exploration and extraction and if appropriate present proposals for harmonised minimum requirements at EU level.

Even if Member State (MS) have the right to determine the conditions for exploiting its energy resources, they absolutely have to take into account prevention and environmental protection, to ensure the importance of a high level of environmental protection in Union policy.

Financial guarantees are an essential part of the licensing process to ensure that licensees prove their ability to pay for the consequences of an incident; we call for communal funds to be assessed and to be set in each EU sea area on an independently administered and legally binding basis. SFE calls for membership to be mandatory for operators as a safety-net mechanism to assure Member States and taxpayers;

- a) What key elements³ should this technical capacity requirement include in your view?
Please limit your response to maximum 500 words

Technical capacity is a subject difficult to handle for environmental organization who doesn't have the expertise and the knowledge of how these machines work. However, SFE can generally say that the technical capacity of the oil and drilling industry varies in location and capacity, but not in nature.

The nature of oil drilling is to produce oil and making profits. However, SFE thinks that the industry faces the time for change. We are not asking to stop drilling activities in Europe, but we ask the oil and gas industry to take into account the environment they get benefit from.

Oil drilling activities have to show how much the whole industry is responsible for drilling operation and be able to avoid any accident as much as possible. All industries, from the big ones to the small operators, have to be able to resolve any conflict, accidents and issues that might occur on time to time.

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>

² Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

³ Focus is only on the main elements of this capability as opposed to detailed requirements which vary according to the different geological, geophysical, technical and other circumstances of each individual case.

- b) Similarly, what key elements should the financial capability requirement include in your view? (Please limit your response to maximum 500 words)

Financial capacity requirements have to take into account obligatory financial security provisions under the Environmental Liability Directive or a special fund, such as The International Oil Pollution Compensation Funds (FIPOL).

3. How (such as through legislation or voluntary measures at international, EU or national levels or by industry) should the adoption of state-of-the-art authorisation practices be best achieved throughout the EU? Should neighbouring EU Member States be consulted on the award of authorisations? (Please limit your response to maximum 1000 words)

Non EU member States from Europe and North Africa has to be consulted.

Prevention of accidents

4. Please describe here any recommendations or changes (to the current regulatory framework or practices) - if any - that you consider important to improve the prevention of accidents affecting the health or safety of workers on offshore oil and gas installations in the EU: (Please limit your response to maximum 1000 words)

Even if Surfrider Foundation Europe is not working on workers safety issue, we recommend that they have to be ensure of a safe and clean place to work, with enough days off and regular schedules. If the workers are tired because of the long hours they are working, they might be less attentive about what is going on the platform. As the EC is probably aware, risks of accident are higher if workers are stressed or exhausted.

Oil industry has to make sure that all employees are in a good healthy condition and capable to be efficient all shifts long.

5. Please describe here any recommendations or changes (to the current regulatory framework or practices) – if any – that you consider important in order to better prevent damage to the natural environment from accidents on offshore oil and gas installations: (Please limit your response to maximum 1000 words)

The ecological disaster in the US Gulf Coast is a wakeup call to Europe. European waters are also at risk.

Surfrider is concerned about the current investment priorities of petroleum companies. If development investments are concentrated around drilling techniques to be used in deeper and deeper waters, it seems that researches on methods that are adapted to foresee, prevent and manage marine pollution and accidents on such platforms is not a major concern.

A moratorium on all new offshore oil drilling should be enforced, until such time as the existing weaknesses attributable to offshore oil drilling have been properly dealt with by new regulations and procedures;

*Surfrider Foundation Europe urges for a revision of the ELD to extend its **coverage to all EU marine waters** in line with the MSFD – this way, in case of accident, all EU waters would be covered.*

There is a need to raise minimum standards within the EU; environmental concerns should be imbedded in all legislation and the highest safety and environmental standards are applied to industrial activities.

Much more investment from the industry should be set aside for research and development as regards preventing oil spills; and further investment by industry and support from Member States should be put towards achieving a larger and more experienced inspection workforce to better prevent damage to the natural environment from accidents on offshore oil and gas platforms.

Prevention in the Arctic:

The most effective way to prevent oil pollution from the Arctic is banned any prospection, exploitation and activities.

Unfortunately, if an accident happens in this part of the world, an EU emergency plan has also to be planned. The sensitivity, special harsh weather conditions, such as in the North Sea, and challenging operational circumstances as well as the fragile ecosystem of the Arctic region that mean half of existing petroleum industry standards are inapplicable or unsuitable for Arctic waters. Clean-up capabilities are virtually nonexistent for the challenging conditions in Arctic waters; as long as such standards and such capabilities are not developed, no drilling activities should be carried out in this region.

Verification of compliance and liability for damages

The enforcement of offshore health and safety regulations is the general responsibility of national public authorities. The enforcement measures include various activities such as on-site inspections, safety audits and reporting requirements for companies. The organisation, scope and frequency of these measures vary in the different Member States depending on national practices, laws and the local conditions.

While focus on compliance should prevent accidents, a robust liability regime needs also to be in place as accidents resulting in major oil spills may cause extensive environmental, economic and social damage. The financial consequences on the entities found liable for the accident may be significant. EU legislation defines the common principles (e.g. 'polluter pays - principle') and goals for ensuring liability for environmental damages while national laws and courts put them in practice. Concerning environmental liability, the applicable EU law (Directive 2004/35/EC) addresses pure ecological damage in terms of protected species and natural habitats (biodiversity damage), water pollution damage and land damage. As regards affected waters, the ELD covers the territorial waters (up to 12 nautical miles off the shoreline), but not all marine waters under the jurisdiction of EU Member States (up to 200 or 370 nautical miles).

Responsibilities for traditional damage (such as loss of life; personal injury, health defects; damage to property and economic loss affecting for example fishermen) are usually determined by civil

courts or tribunals in accordance with national laws and/or case law following goals and principles defined at national level.

Closely linked with the liability is the competence of the liable parties to actually stand up to their obligations. Insurance coverage in the offshore oil and gas sector is partial, with some companies insuring risks to a certain degree and others not. The insurance market does not currently provide products sufficient to cover damages of the magnitude seen in the Deepwater Horizon accident. Moreover, there are no international or EU-wide funds similar to those in maritime transport that would cover environmental or traditional liability.

6. Please describe here any recommendations you would like to make on how to improve compliance of the offshore oil and gas industry with applicable offshore safety legislation and other regulatory measures in the EU. (Please limit your response to maximum 1000 words)

If EU wants to improve compliance of the industry, is to put in place substantial fines.

The Treaty on the Functioning of the European Union stipulates that the EU shall apply the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. The principle of polluters/payers has to be respected in all EU waters.

Member States have to oblige financial guarantee mechanisms including the necessity of third-party insurance, such as EMSA, to factor in the relative resources of small and medium sized operators, designing such systems to account properly for this whilst still maintaining full coverage.

It can be a good option to think about asking Member States to consider adopting and strengthening disincentives for negligence such as fines, removals of licenses, and individual criminal liability; points out however, that for certainty concerning payment for remediation of environmental damage, strict liability is necessary;

7. In your view, which are the key measures to supervise and verify compliance of the industry with offshore health, safety and environmental rules and who should do the supervision and verification? (Please limit your response to maximum 1000 words)

To better supervise and verify compliance, is to put in place a third-party body, such as EMSA. One of the biggest and essential work of this third-party is to be sure that compliance is respected, especially for the marine environment.

The key measure, whatever it would be, should be independent from oil & gas industries priorities (making profits and exploring further and deeper options). An agency depending from the European institutions.

8. In your view, should the existing environmental liability legislation (Directive 2004/35/EC) be extended to cover environmental damage to all marine waters under the jurisdiction of the EU Member States? (Please limit your response to maximum 1000 words)

Yes, the EC should revise the existing the environmental liability to cover all environmental damage to all marine waters under the EU Member States. It is essential to review this Directive and be sure

that it will be implemented a system of fines harmonized in all MS.

The current environmental liability legislation contains several important gaps and reminds the European Parliament's resolution of 7 October 2010 on "EU action on oil exploration and extraction in Europe" where the Parliament called on the Commission to consider revising the content and extending the scope of current EU legislation (including the Environmental Liability Directive, the SEVESO II Directive and the measures comprising the Erika and Third Maritime Safety Packages).

SFE highly supports extending the Seveso II Directive to offshore oil drilling operations.

In addition to the revision of the Environment Liability Directive, the IPPC Directive has also to be updated for oil & gas activities. There is a relative success of European IPPC Bureau for establishing best available techniques in other industries and the current exclusion of offshore oil and gas activities from the key provisions of the Industrial Emissions Directive; SFE suggests that the European IPPC Bureau can be put to use for defining BAT for offshore hydrocarbon activities.

If making changes in existing legislation is too complex to be done shortly, the Commission should introduce any necessary new legislation to take into account all risks of off-shore exploitation and strengthen the rules governing liability in the event of oil accidents.

9. In your view, is the current legislative framework sufficient for treating compensation or remedial claims for traditional damage caused by accidents on offshore installations? If not, how would you recommend improving it? (Please limit your response to maximum 1000 words)

Once again, even if it's still regarding the environment issue, offshore oil development has negative impacts on environment. Surfrider considers that offshore industry participates significantly in the degradation of the marine environment and the climatic system. Offshore oil drilling contributes massive amounts of non-regulated greenhouse gases; platforms frequently release, during operational procedures or accidents, hydrocarbons into the marine environment. Once aging installations are abandoned or not dismantled, platforms constitute a 'big piece of waste' and a real marine pollution.

There is a clear lack of legal basis in the European Union. The current legislation does not provide for a response that corresponds with the gravity of environmental and health issues that are at stake in offshore exploitation zones. There is a real lack in terms of risk prevention and industrial security. This absence of both anticipation and constraints leads to disasters that could have been avoided, for a lack of controls and equipment adapted to ever-increasing depths (blow-out preventers...).

10. In your view what would be the best way(s) to make sure that the costs for remedying and compensating for the environmental damages of an oil spill are paid even if those costs exceed the financial capacity of the responsible party? (Please limit your response to maximum 1000 words)

First, the polluter has to pay. They are responsible for their act; they have to deal with the consequences.

However, Europe needs other guards to ensure that the marine environment will be protected even if the oil & gas industries are not able to face the damages.

SFE suggests finding a way to get over the implicit exclusion from the field of application of Directive 2004/35/CE relating to environmental responsibility. There is a regime of quasi-exemption that applies to petroleum platforms in the case of oil spills. At the same time, the absence of a compensation fund in the case of disaster, such as the FIPOL fund, is another problem. The main consequence of this legal ambiguity is that victims of such a catastrophe are not compensated and environmental damage is not taken into consideration.

SFE is calling for any liability and compensation system which will provide clarity on the identity and hierarchy of liable parties. As mentioned before, we recommend the possibilities for compulsory third party insurance as a component of financial guarantee arrangements be fully explored.

Even if the OPOL arrangement in the North Seas is significant of in recent decades, SFE considers the current OPOL ceiling of \$ 250 million insufficient. Many environmental organizations are concerned that the OPOL provisions will not secure compensation for the full range of environmental damage and remediation costs which may be triggered by an offshore spill.

SFE highlights also that fact that claims made under the OPOL arrangement are administered and decided upon by the oil industry with no independent oversight; for that reason many NGOs call for a mandatory system of liability and compensation subject to legal control and covering all potential environmental damage.

Transparency, sharing of information and state-of-the-art practices

Transparency of an offshore regulatory regime means the policy and practices on how the regulatory authorities and offshore industry share information with each other, between peers or with the civil society. The degree of transparency affects the awareness of the public authorities, the industry and the civil society, i.e. on offshore oil and gas activities and the way they are managed and controlled. It may also affect the nature of communication, commercial interests of companies, spreading of technologies, lessons learned and cross-border cooperation. An example of transparency in the offshore sector is the practice of some EU national regulatory authorities to publish information such as accident statistics and license award decisions concerning offshore operations.

11. What information on offshore oil and gas activities do you consider most important to make available to citizens and how? (Please limit your response to maximum 1000 words)

Generally, rules on oil & gas company transparency need to be more rigorous, with clear requirements regarding the nature and extent of environmental disclosures which companies are required to make.

SFE thinks that it would be relevant and absolutely necessary to made available information regarding oil & gas industry, from the prospection projects and exploitation sites.

Under a convention for example, the Member States must ensure that adequate information is given

*to the public in the areas capable of being affected by an accident arising out of all drilling activities. The contracting states must also, in appropriate cases, **give the public and civil society an opportunity to participate in the decision-making process concerning prevention and preparedness measures.***

Natural, moral or legal persons who are, or may be, affected by the transboundary effects of an accident in the territory of a Member States must be given the same access to the relevant administrative and judicial proceedings as a national of the state concerned.

Each EU member States plus Norway must introduce a system of notification.

In the event or imminent threat of an accident causing or capable of causing transboundary effects, the state of origin must:

- *Notify the affected states without delay;*
- *Ensure that the contingency plans are activated;*
- *Ensure that the response measures are taken as swiftly as possible so as to contain and minimise the effects of the accident. The Member States must endeavour to co-ordinate their response measures.*

Moreover, regarding general information, it can be useful to put online this kind of information available to the civil society:

- *A map of all offshore platforms, including general details such as the name of the platform, the owner, operator, the depth of the rig and its activities.*
- *With the utilization of the services of an independent third-party such as EMSA, a monitoring system the implementation of EU legislation concerning all offshore activities, reports of investigations - and other routine national authority inspections - should always be made widely available to the public.*
- *Companies should also make available all information as regards the number of leaks (including dispersed and crude oil) that occur at offshore installations.*
- *Companies and national authorities should make available the statistics regarding all kind of accidents which happened on offshore platforms.*

12. What is the most relevant information on offshore oil and gas activities that the offshore companies should in your view share with each other and/or with the regulators in order to improve offshore safety across the EU? How should it best be shared? (Please limit your response to maximum 1000 words)

Supervised by an independent agency, companies should make available all information they have as regards the measures they have in place to prevent against oil spills and allow for fully independent organizations to report on the suitability of such measures.

13. What information should the national regulators share with each other and how to improve offshore safety across the EU? (Please limit your response to maximum 1000 words)

National regulators should share information as regards to best available techniques concerning regulatory initiatives used in order to reduce or avoid risks associated with all offshore drilling activities.

14. Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect occupational health and safety during offshore oil and gas operations? (Please limit your response to maximum 1000 words)
15. Which means, if any, would you recommend using to promote, across the EU, the use of state of the art practices to protect the environment against accidents caused by offshore oil and gas operations? (Please limit your response to maximum 1000 words)

A convention like the 1992 Convention on the Transboundary Effects of Industrial Accidents, designed to protect people and the environment against industrial accidents, can be a good option. The Convention aims to prevent accidents from occurring, or reducing their frequency and severity and mitigating their effects if required.

The Convention could promote active international cooperation between countries, before, during and after an accident.

Across the EU, with the objective to protect environment against oil & gas accidents capable of causing transboundary effects and at promoting proactive international cooperation between countries, during and after such accidents, the EC has to find an instrument, such as an online platform, to promote EU 'the state of the art' practices, if state of the art is.

All EU Member State's Exclusive Economic Zone (EEZ) must identify hazardous activities within their jurisdiction and must inform the affected countries of any such proposed or existing activity. At the initiative of any one of them, the other parties must enter into discussions on the identification of activities capable of causing transboundary effects.

In the idea of the Convention on the Transboundary Effects of Industrial Accidents⁴, the Member States must take appropriate measures to prevent accidents. In particular they must:

- induce action by operators to reduce the risk of accidents;*
- establish policies on the siting of new hazardous activities and on significant modifications to existing hazardous activities, with the objective of minimising the risk to the population, public health and the environment;*
- prepare for emergencies caused by offshore accidents, introducing the necessary measures including contingency plans to prevent and minimise transboundary effects.*

Emergency response and International activities

The emergency response capacity at present consists of resources and contingency plans on the level of the industry, national administrations and of the EU. In general, contingency plans are required for all offshore installations and are complemented by national and EU contingency plans to respond to large scale accidents. Adequacy of resources and their coordination, both affect the effectiveness of response to offshore accident. In response to recent accidents, particularly the one of the Deepwater Horizon drilling rig in the Gulf of Mexico, the emergency capacities are being strengthened. For instance, new response devices are being developed for use in deepwater conditions.

⁴ *Convention on the Transboundary Effects of Industrial Accidents,*
<http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=541>

In the Mediterranean and the Black Sea offshore, oil and gas activities are underway both on EU and adjacent non-EU waters. This causes a risk for cross-border environmental damages from a possible offshore accident, not only across internal EU borders, but also across EU's external border. Apart from an interest in promoting high offshore safety practices also in adjacent regions, the EU participates in international activities to increase safety of offshore activities.

In response to the differing regulatory requirements both within the EU and internationally, some oil and gas companies have adopted company practices or standards that they apply to their activities in the EU and outside. Others adjust their practices more substantially to suit local conditions in the given country.

16. In your view what should be the role of the EU in emergency response to offshore oil and gas accidents within the EU? (Please limit your response to maximum 1000 words)

The oil & gas producers are the first responsible of an accident; they should be the first to react too. However, the role of the EU is to make sure that their emergency plan is efficient and not harmful for the marine environment. Surfrider asks the EC to require to oil companies and offshore platforms operators to provide rapidly an efficient emergency plan. Without pressure from the EC, the industry will not take sufficient action by themselves. Oil companies invest a lot of money in new possibilities of drilling, they go deeper and deeper, but they don't spend 1% of their profits in matters of prevention and environment protection.

Consequently, the EC should encourage oil & gas industries to invest more in research to find real ways to fight against pollution, in the respect of marine environment.

EU has a crucial role to play for industries. It would be essential to provide for a concrete European action plan for immediate response in the case of accidents, coordinated by a third-party or the European Maritime Security Agency.

In addition to an emergency plan, Surfrider highlights the fact that the ways in which EU and member states can fight against accidental pollution are limited. All that is envisaged is the presence of intervening boats and the use of oil spill dispersants. It is proven that the effectiveness of tracking and retention buoys is too weak in the face of the quantities concerned. Surfrider believes that the use of dispersants is not a solution but rather constitutes an additional health risk in itself. Before allowing any use of dispersants, more study on their environment and health impacts should be done.

SFE calls for strict prior assessments on activities carried-out within emergency response plans, such as the use of chemical dispersants, to avoid environmental damages and public health implications.

17. Please describe any recommendations you may have concerning cooperation with non-EU countries to increase occupational safety and/or environmental protection in offshore oil and gas operations internationally? (Please limit your response to maximum 1000 words)

Surfrider believes that European countries can be the leader in the issue of safety of oil and gas activities. For this reason, the EC has to promote a common EU oil drilling standards (best practices are not enough, but best available techniques are) and it should apply to all EU oil drilling companies whether they are operating inside or outside of Europe's waters.

18. Please describe here any recommendations you may have on how to incentivise oil and gas companies with headquarters in the EU to apply European offshore safety standards and practices in all their operations worldwide: (Please limit your response to maximum 1000 words)

Surfrider Foundation Europe knows that risks inherent to offshore hydrocarbon activities extend beyond Community waters, and for that reason recommends EU oil and gas drilling standards should apply to all EU oil drilling companies operating in Community waters and to Community oil drilling companies operating outside those maritime waters falling within the sovereignty of the Member States.
