



**SEA SHEPHERD COMMENTS
19 SEPTEMBER 2018 – BRUSSELS
STAKEHOLDER CONSULTATION WORKSHOP**

Thank you for this opportunity to provide the following commentary on behalf of Sea Shepherd Legal (an NGO international environmental law firm), as well as on behalf of Sea Shepherd Global and its entities operating within the European Union.

As organizations focused on protecting marine wildlife and habitats, we are tasked with working to address and minimize threats to ocean ecosystems. As I am sure you will all agree, and as we have all witnessed with the Deepwater Horizon and other disasters, oil and gas development poses beyond doubt one of the greatest risks to the oceans, marine life, fisheries, related economies, and entire communities.

The threats of loss by oil and gas development are innumerable and the responsive regulatory tasks are monumental. However, in the interest of time, I briefly cover only a few specific topics of concern for us today. We intend to provide more comprehensive input in writing at further stages in the consultation process.

- In 2011, the European Commission stated that “[t]he likelihood of a major offshore accident in European waters remains unacceptably high.” Despite efforts leading to the adoption of the Safety of Offshore Oil and Gas Operations Directive in 2013, the potential for such catastrophe has not appreciably diminished.

Prior to the Deepwater Horizon disaster, the United States and BP were also believed to have the requisite infrastructure to handle a blowout such as that which occurred in 2010 – a grave misconception.

The BP blowout, which occurred a mile beneath the surface, flooded the Gulf of Mexico with 4.9 million barrels (800 million litres) of oil.

Could industry members, including those represented here today, seriously adequately respond to an event were it even far less catastrophic?

- Compared to the rugged North Sea where containment booms are likely ineffective, the Gulf of Mexico is a balmy, tranquil bathtub in close proximity to extensive infrastructure and abundant shore-based emergency support. Even with such favourable conditions, the Deepwater Horizon leak took 87 days to cap, destroyed whole ecosystems and communities, and carried a \$60 billion + USD price tag.

It is not enough to contend that the industry is now more vigilant. It is not enough to bolster regulation incrementally. With the vast majority of EU operations taking place in the chaotic waters of the North Sea, it appears that the risks are higher – not lower – than those preceding the Gulf disaster.

- The Gulf clean-up effort required 6,850 vessels, 117 aircraft, 46,000 personnel, and 17,500 National Guard troops.

Could the relevant EU Member States actually provide this level of support?

- Within just the first year of the Deepwater Horizon disaster, an estimated 82,000 birds (representing 102 species), 6,165 sea turtles (all endangered), and 25,900 marine mammals (primarily cetaceans) were killed by the contamination.

Could the EU’s marine wildlife populations seriously withstand such losses – taking into consideration the cumulative impacts of all other threats (climate change, loss of prey, ship strikes, ocean acidification, plastic pollution – to name a few)?

- Application of chemical dispersants are the first-response mechanism to address many spills, despite the fact that dispersants and dispersed oil have been shown to have significant negative impacts on marine life.

It is of grave concern that EU operators are currently “pre-approved” to apply dispersants in the event of a spill without first detailing the nature, quantity, effectiveness, or potential deleterious impact of the dispersants on marine life and without having to make such dangers known to the public.

- Hardware fails. It is an inescapable truth. This is particularly so in extreme environmental conditions. Since 2003 around the globe, the enormous bolts that secure offshore oil equipment to the seafloor have been snapping in half or loosening. US regulators describe the problem as a “very critical safety issue” and very likely to cause a “catastrophic incident” on par with the Deepwater Horizon disaster. As a result, US regulators are working with industry to replace more than 10,000 bolts in US waters alone.

Are EU regulators adequately policing the type of bolts and other hardware utilized EU waters? Do Member States have the capacity to oversee these concerns? Are industry members inspecting and reporting the stability of existing hardware? Is the public adequately informed of the risks?

- As poet Alexander Pope sagely advised, “to err is human . . .” It has been just over 30 years since the massive Piper Alpha disaster in the North Sea – a disaster that resulted from human error. In short, following a communication breakdown during a shift change, a gas leakage ignited a platform. It took three weeks to contain the flames, caused the death of 168 workers, and cost the Lloyd’s insurance market more than £1 billion.

Despite decades-long efforts to reduce risk, in 2016 alone, 273 gas releases in the North Sea were reported to the UK’s Health and Safety Executive (the “HSE”), leading HSE management to note that there has been “no discernible reduction” specifically in major offshore hydrocarbon leaks in recent years. HSE management further noted that “the root causes” of major hydrocarbon releases

tend to be “operational failings” – again, human error. HSE has asked operators to “self-audit” to “understand if they are managing these risks appropriately.”

We find it very alarming that UK authorities call for mere self-evaluation exercises, particularly given that UK regulatory practices served as an inspiration in drafting the current EU Directive.

- Finally, turning to liability – Scholars have pondered whether a low cap on liability and limits on punitive damages played a role in making the Deepwater Horizon incident more likely. The consensus is a resounding “yes.”

Recent EU Parliament Resolutions have critiqued the Directive for its shortcomings and recommended responsive actions to specifically address the currently inadequate liability scheme.

I close with naming a handful of the many recommendations with which we agree:

- ✓ ***It is absolutely necessary to assess the cumulative environmental impact of the 10,000+ spills that have occurred since 1990.***
- ✓ ***It is imperative “to analyse to what extent the introduction of criminal liability at EU level will add a layer of deterrence beyond civil penalties”.***
- ✓ ***It is critical for the Commission to add major oil accidents to the scope of the Environmental Crime Directive.***
- ✓ ***It is unacceptable “that incidents are defined as ‘serious’ only if they give rise to deaths or serious injuries, with no reference to the consequences for the environment”.***
- ✓ ***It is essential that “strict civil liability rules should be established for offshore accidents” and that “financial liability caps should be avoided”.***
- ✓ ***Liability for environmental damage caused by spills must be extended to the Member States as regulators.***
- ✓ ***Oil or gas exploration and drilling must be expressly prohibited “in or near Marine Protected Areas (MPAs) or vulnerable areas of high conservation value” especially given the Directive’s lack of recognition of environmental damage.***