



House of Commons
Energy and Climate Change
Committee

**UK Deepwater Drilling—
Implications of the Gulf
of Mexico Oil Spill:
Government Response
to the Committee's
Second Report of
Session 2010–11**

Fifth Special Report of Session 2010–11

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The Energy and Climate Change Committee

The Energy and Climate Change Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Energy and Climate Change and associated public bodies.

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Committee staff

The current staff of the Committee are Nerys Welfoot (Clerk), Richard Benwell (Second Clerk), Dr Michael H. O'Brien (Committee Specialist), Jenny Bird (Committee Specialist), Francene Graham (Senior Committee Assistant), Jonathan Olivier Wright (Committee Assistant), Emily Harrisson (Committee Support Assistant), Estelita Manalo (Office Support Assistant), and Nick Davies (Media Officer).

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Fifth Special Report

On 6 January 2011 the Energy and Climate Change Committee published its Second Report of Session 2010–11, *UK Deepwater Drilling—Implications of the Gulf of Mexico Oil Spill* [HC 450]. On 4 March 2011 the Committee received the Government's response to the Report. We also received responses from the Falkland Islands Government, on 13 January 2011, and from Oil & Gas UK, on 8 March 2011. These are appended below.

Whilst we welcome the review of the UK's oil and gas offshore regulatory regime which will report later this year, we note that whilst this review is ongoing it has not been possible for the Government to respond fully to the Committee's recommendations and conclusions. We look forward to receiving the final report of the review in due course, with an update from the Government on its Response to our Report.

Appendix One: Government Response

Introduction

In the light of the wide ranging nature of the Committee's report, this is a joint response which includes contributions from the Department of Energy & Climate Change, the Health & Safety Executive, the Foreign and Commonwealth Office and the Department for Business Innovation & Skills.

The US incident and subsequent oil spill was a tragic event and it is vital that the industry and Governments all around the world learn lessons from it to try to ensure that such an event will never happen again. The UK Government has already taken an number of actions (such as increasing the number of environmental inspectors and inspections to mobile rigs) to further bolster the already robust UK regulatory regime, and welcomes the Committee's report.

The US National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling also delivered its final report on 11 January 2011. This is a substantial document, both in its scope and in the careful detail of its analysis and recommendations. Alongside the Committee's recommendations, it is being considered carefully by DECC, HSE, and all other relevant bodies within Government, to identify the implications from this incident for the regulation of deepwater drilling in the UK.

That consideration, together with any further information emerging from ongoing investigations in the US, will now inform the full review of the UK's oil & gas offshore regulatory regime, under independent chairmanship, which was announced by the Secretary of State for Energy & Climate Change last year. The review is being carried through by DECC, the Health and Safety Executive and the Maritime and Coastguard Agency, and is based on the full life cycle of an offshore development, thus ensuring that all activities are covered. It will report later this year.

The Government's responses to the Committee's conclusions and recommendations are set out below. In some cases, it has not been possible to give a definitive response at present. Some issues are still under consideration in the ongoing regulatory review - copies

of the final report from this review will of course be sent to the Committee once completed. And the resolution of some issues will depend on the outcome of discussions with our European or other international partners, or will be influenced by the ongoing investigations in the US.

Committee Conclusions/Recommendations and Government Response

1. In the light of recent drilling activity in the waters around the Falkland Islands, we asked witnesses from OSPRAG and Oil and Gas UK whether the UK regulatory regime applied to drilling in that area. There was a lack of clarity over responsibility for drilling and oil response in the Falkland Islands. We recommend that the Government clarify what regulatory regimes apply to drilling and oil spill response in the Falkland Islands and who is responsible for enforcing them. (Paragraph 22)

Policy on hydrocarbons development in Falkland Islands waters is primarily a matter for the Falkland Islands Government (FIG). FIG has its own robust regulatory regime in place, covering offshore hydrocarbons exploration and any potential production. The Foreign Secretary retains some constitutional and other legal safeguards related to hydrocarbons work such as the final consent for production licences. These safeguards ensure that the United Kingdom complies with its international obligations and fulfils its responsibilities to the Islands.

FIG and the oil companies have been working with British Geological Survey (BGS), HSE, DECC and the FCO to ensure all exploratory drilling adheres to international standards of practice. FIG has its own environmental and health & safety regulations in place, modelled closely on UK regulations in many aspects including provision for oil spill contingencies, but taking into account the South Atlantic environment. As FIG mentioned in their 13 January letter to the Committee, they are very keen to learn from the tragedy that occurred in the Gulf of Mexico and will seek to implement any recommendations resulting from any subsequent inquiry.

2. Oil company boards lack members with environmental experience. The industry should take steps to remedy this and the Government should encourage them to do so. (Paragraph 30)

Under Section 172 of the Companies Act 2006, all directors are required to have regard to factors which reflect wider expectations of responsible business behaviour in promoting the success of the company (on the basis that they will not be able to promote long-term sustainable success unless they do so). The list of factors to which they must have regard includes 'the impact of the company's operations on the community and the environment';

The UK Corporate Governance Code (which is owned by the Financial Reporting Council) includes the following Principles:

- Every company should be headed by an effective board which is collectively responsible for the long-term success of the company.

- The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.

The Listing Rules require listed companies to apply the Principles and report to shareholders on how they have done so.

Looking specifically at the oil and gas industry it should be noted in any case that many board members, along with oil industry and business experience, will already have some degree of environmental and safety experience via previous work within the industry. In the UK the industry has a good track record post-Piper Alpha in relation to both environmental and safety issues, but we would expect those in the industry to review their boards taking full consideration of the Companies Act and their obligations to have regard to the impact of company operations on the community and the environment.

In addition all offshore operators have to demonstrate, as part of the DECC oil & gas licensing process, that they have an environmental professional appointed to deal with relevant legislation and issues, and that the appointed person has a direct line of contact to senior management staff.

3. 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. (Paragraph 34)

4. 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.(Paragraph 35)

From a safety perspective, the UK's current offshore legislation already requires industry to identify and assess its major hazard risks and to put appropriate controls in place to ensure the safety of the offshore workforce. HSE already challenges industry to ensure that such assessments have been completed when it assesses a safety case and tests an operator's understanding of these assessments and implementation of its controls while inspecting offshore installations. Indeed, the primary purpose of the safety case regime is to demonstrate that the operator has identified, controlled and mitigated the risk of catastrophic events.

HSE's Key Programme 3 report, published in 2007, highlighted that the offshore industry had too much of a focus on occupational safety, with less emphasis on major hazard risks. The subsequent Key Programme 3 Review, which was published in 2009, highlighted a positive industry response to the earlier findings, with clear evidence of improvements. However, in the light of the Committee's concerns, HSE will work with industry and the unions (via the Offshore Industry Advisory Committee¹) to identify whether any additional steps are necessary to build on these improvements. For example, consideration

¹ The Offshore Industry Advisory Committee (OIAC) is a tripartite committee. OIAC includes members representing employers, employees, unions, trade associations and other government departments

will be given to the need for additional industry guidance or training, or increased supervision by industry, of this aspect of the safety management system.

From an environmental perspective, operators are required to detail their response strategy in the event of a worst-case oil spill, irrespective of the mitigation measures in place to prevent such an occurrence. The Oil Pollution Emergency Plan (OPEP) must detail the actions that will be taken in the event of a spill, to both control the release and respond to any spilled oil.

5. 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. (Paragraph 38)

Government already requires offshore operators to put clear lines of communications in place, including there being someone offshore who has the unilateral authority to bring a halt to drilling operations at any time. HSE checks that such requirements are in place during inspections. UK offshore legislation also clearly places the Offshore Installation Manager, who is always on the platform, as having final control of activities on offshore installations. HSE will seek further assurances from industry, via the Oil Industry Advisory Committee, that safety of personnel remains the prime consideration. HSE will also encourage industry to look for opportunities to test that the communication approaches adopted are effective, perhaps during emergency drills and broader offshore scenario exercises.

This is also one of the areas that DECC looks at during pre-drill inspections, to make sure that the Offshore Installation Manager and/or drilling supervisors have the authority to shut-in. In all cases it has been confirmed that they have the appropriate authority.

6. 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. (Paragraph 45)

HSE currently assesses the suitability of blowout preventers and associated well control equipment through the safety case and well operations notification process. Both of these are statutory requirements under the Safety Case Regulations.

Since the Gulf of Mexico incident, Government and OSPRAG, (the Oil Spill Prevention and Response Advisory Group²) have been strongly focused on the blowout preventer lessons from the Gulf of Mexico. HSE has asked OSPRAG, and in particular the Well Life Cycle Practices Forum (which was established by OSPRAG in their interim report), to help it assess the case for prescribing that blowout preventers on the UKCS are equipped with

² Oil & Gas UK established the Oil Spill Prevention and Response Advisory Group (OSPRAG) to provide a focal point for the sector's review of the industry's practices in the UK, in advance of the conclusion of investigations into the Gulf of Mexico incident. OSPRAG is formed of senior representatives from all sides of the industry, the relevant regulatory authorities (DECC, HSE and the Maritime and Coastguard Agency) and trade unions. Representatives from DECC, HSE and MCA participate in both OSPRAG and its associated specialist review groups.

two blind shear rams. A full consideration of this issue, which will include exploring the implications that such a step might have for the strengths that a goal setting regime brings, will however have to take account of the outcome, currently expected in the summer, of the ongoing investigation conducted by the US Marine Board.

More generally, HSE's work in the offshore regulatory review will consider the scope to enhance the UK regulatory framework to assure further the adequacy and reliability of safety critical equipment.

7. While the flexibility of the UK safety regulation regime appears to have worked well, we recommend that for fail-safe devices such as the blowout preventer the Government should adopt minimum, prescriptive safety standards or demonstrate that these would not be a cost-effective, last-resort against disasters. (Paragraph 52)

As noted above, HSE is reviewing this issue in depth, including any implications for the regulatory review.

8. We believe that the Government must ensure that the UK offshore inspection regime could not allow simple failures—such as a battery with insufficient charge—to go unchecked. (Paragraph 55)

The regulatory regime provides the safety goals to be achieved and HSE monitors this through the process of assessment and sample inspection. It is industry's responsibility to ensure that such simple failures do not occur. They are in control of installations 24 hours a day, and are the only ones in a position to continuously monitor the safe operation of equipment. Existing UK safety legislation also requires regular independent verification (by verification/certification bodies such as Lloyds), that such items of safety critical equipment are capable of meeting defined performance standards. This verification system, which is currently unique to the UK, is also subject to assessment scrutiny during the Safety Case acceptance process and subsequent inspection by HSE. HSE has developed a specific inspection tool for well control equipment contained in the verification schemes and will be conducting these inspections in 2011.

In the light of what happened in the Gulf of Mexico, Government is challenging the industry and its verification bodies (via the Offshore Industry Advisory Committee) to identify, and implement, any additional measures that can be taken to ensure that such simple failures cannot happen. HSE will use the regulatory review as a vehicle to consider whether the current regulatory regime can be refined to improve oversight of industry's performance.

9. Whilst there is a risk of conflicts of interests affecting the judgement of independent competent persons who assess the design of wells we have had no evidence of such conflicts presented to us. (Paragraph 60)

HSE has in place an inspection programme of Well Examination Schemes that are required by Regulation 18 of the Offshore Installations and Wells (Design and Construction etc) Regulations 1996. A key part of this inspection programme is to ensure the examiners independence is assured and that he does not come under undue pressure from the well operator when making his assessment of well design etc.

HSE's inspections have found some evidence that a few well operators did not demonstrate the required level of independence of their examiners (as detailed below in an extract from our published inspection findings - Well examination schemes - commonly observed weaknesses SPC/TECH/OSD/43) but there was no evidence that there was a conflict of interest that would affect the judgment of the well examiner. Furthermore, there was no evidence that the judgement of the well examiners had been compromised.

However, appropriate levels of independence were subsequently put in place by these well operators. The extract also further emphasises how important the independence of the examiner is:

“Interpretative guidance to the regulations, published by HSE, explains the degree of independence that well examiners must have from those responsible for the design construction and operation of the well. The guidance explains that the well examiner must be independent and separate from the immediate line management of the work that he is examining. Although it is permissible for the well examiner to be an employee of the well operator's organisation, it is imperative that he has a high degree of impartiality and independence from pressures from the well-operator, especially of a financial nature. Promotion, pay and reward systems must not be allowed to compromise his judgment. Some duty holders fail to achieve the level of independence required, usually by appointing a well examiner that has some line responsibility for the design and construction of the well. Few duty holders carry out audits of their schemes to ensure that a suitable level of independence exists”

HSE did find, again as detailed in our published findings that:

“There must be clear guidance on the resolution of disputes between the well examiner and the well operator. The person with overall responsibility for the scheme should have the delegated authority to allow him to resolve disputes.”

10. We find some conflict in the reports from the HSE 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. (Paragraph 66)

The improvement of safety culture offshore in this area has been a key activity for Government over the last 12 months. This has included an offshore inspection project, and working with industry and unions in the Workforce Involvement Group of the Offshore Industry Advisory Committee to identify additional measures that can be taken to address the issue, including encouraging safety representatives to report hazards and play an informed role in major hazard identification, prevention and mitigation and considering what, if any, changes are needed to **the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989**. The inspection project is expected to report by spring 2011. In addition, HSE is encouraging the Unions and Industry to continue to monitor the application of the Not Required

Back Guidelines. Government expects that these guidelines will create the necessary workforce confidence to allow them to speak up for safety, in the knowledge that in doing so they will be fairly treated.

Offshore personnel can also contact HSE direct if concerns they have raised with their employers / safety case duty holders etc. have not been addressed to their satisfaction. The contact details can be found on notice boards on all offshore installations. HSE's Offshore Division's policy is to investigate all such complaints brought to its attention.

11. It is important and necessary that the offshore safety culture is cascaded throughout the supply chain, from existing contractors at all levels, through to new-entrants on to the UK Continental Shelf. (Paragraph 68)

Safety culture has always been a key theme of Government's work with the offshore sector. HSE will continue this work through the Offshore Industry Advisory Committee's Worker Involvement Group and the Step Change initiative. This will include promulgating the findings of the inspection project on safety culture to all those working on the UK Continental Shelf. HSE will also continue to develop its Worker Involvement website, to ensure that employers and workers can have easy access to key information. HSE will also continue to inspect such activities, actively discussing issues with safety representatives, and will take enforcement action on such issues when appropriate.

12. There is both risk and the advantage of competition where global oil and gas companies operate to different standards when working in different regulatory regimes. We recommend that the Government monitor any changes in the US regulatory regime to see if—in the light of the response to the Deepwater Horizon incident—the US establishes a new gold-standard of regulation, as the UK and Norway did after the Piper Alpha tragedy. We would urge the Government to work with regulators in other offshore oil and gas provinces to ensure that the highest standards of safety can be achieved globally through an exchange of best practice lessons. (Paragraph 72)

The regulatory system in the Gulf of Mexico at the time of the Macondo incident was of course very different from that which we maintain in the UK and is employed in the North Sea in general. It is worth noting that the report of the US National Commission recommends the adoption in the US of a risk-based performance approach similar to the safety case approach in the North Sea. But we will of course be looking at what the US does.

As it stands, the Government is continuing to liaise with oil industry regulators in other countries, including the US, to ensure that best practice is disseminated across the industry and high regulatory standards can be adopted across the globe. In particular DECC is very active in the G20 Global Environmental and Marine Protection Workgroup whose remit is to share best practices to protect the marine environment, prevent accidents related to offshore exploration and development, as well as transportation, and deal with their consequences.

Government already works very closely with other offshore safety regulators via the International Regulators Forum (IRF – which includes the U.S.) and the North Sea

Offshore Authorities Forum (NSOAF) sharing common lessons and approaches. In particular, HSE is chair of the IRF committee planning an extraordinary “summit” this coming autumn to provide a global opportunity to learn Deepwater Horizon lessons. HSE also has annual bilateral meetings with the main countries engaged in North Sea oil and gas extraction (Norway, Denmark, and Holland) to share experience and best practice.

13. The Bly Report—BP’s internal investigation into the Deepwater Horizon incident—does not contain a root-cause analysis of the events that led to the blowout of the Macondo well, the loss of 11 men on the Deepwater Horizon, and the release of 4.9 million barrels of oil into the Gulf of Mexico. We urge the Government not to rely extensively on the Bly Report, given the controversy surrounding the responsibility for the incident and the design of the Macondo well, but rather to consider its conclusions in parallel with the observations of other companies involved with the incident, and with the recommendations of US agencies investigating the incident (Paragraph 78)

Government fully appreciates that the Bly report is but one report arising out of the US as a result of Deepwater Horizon. We are monitoring all relevant reports, and note that the US Chemical Safety Board report will probably not be published until 2012. HSE and DECC will work with OSPRAG, other regulators and the individual companies involved to consider all the lessons from the Gulf of Mexico incident. We have carefully reviewed all reports relating to the incident, not just the Bly Report, and will continue to do so.

14. We believe that the environmental impacts of a sub-sea well blowout need to be understood and taken into account when a drilling licence is issued in the UK. We urge the Government to ensure that the licensing regime takes full account of high consequence, low probability events. (Paragraph 79)

Before a consent to drill is granted by DECC, operators are required to provide an environmental assessment which includes an assessment of the potential impact of the worst-case scenario of an uncontrolled release resulting in failure of all containment barriers, irrespective of the extremely low risk of such an occurrence. Where the release could be subsea, and the water depth is such that this could affect the behaviour of the spilled oil, this must be taken into consideration in the impact assessment. We have already learned a lot about the behaviour of a deepwater release at the seabed, and this is being fed into the impact assessments and spill modelling being undertaken by applicants. And the on-going monitoring in the Gulf of Mexico will enable us to refine our understanding. The operator’s Environmental Impact Assessment must be accepted by DECC before they will issue the necessary environmental approvals to allow the drilling operations to proceed.

15. We recommend that as part of the drilling-licence process, the Government require companies to consider their responses to high-consequences, low-probability events—such as a blowout. The Government should not automatically accept claims that companies have mitigated away the risk of such worst-case scenarios. We urge the Government to introduce this requirement as drilling ventures into increasingly extreme environments. (Paragraph 81)

Operators are already required to detail their response strategy in the event of a worst-case oil spill, irrespective of the mitigation measures in place to prevent such an occurrence. The

Oil Pollution Emergency Plan (OPEP) must detail the actions that will be taken in the event of a spill, to both control the release and respond to any spilled oil.

DECC consult with specialist advisers (such as the Joint Nature Conservation Committee) and the Maritime and Coastguard Agency, as the UK competent body for counter pollution response at sea, before approving the OPEP. DECC also work in conjunction with the HSE and will not issue drilling consents unless the HSE have confirmed that they are satisfied with the proposed well design and construction.

16. 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 pre-requisite 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. (Paragraph 90)

Alongside the Committee's comments we note that the US National Commission report highlights the importance of ensuring adequate liability arrangements are in place to better protect victims and provide appropriate incentives to industry.

Some of the recommendations in this area address particular circumstances in the US, including a limit on the liability of drilling operators. There is no such limit in the UK – the liability of companies for the consequences of their actions is subject to no statutory restriction. We believe that the existence of the OPOL liability pool provides a globally unique, and very substantial, assurance that victims would be adequately protected.

However, we note the Committee's recommendations, and can confirm that this is a matter being actively pursued by DECC as a member of OSPRAG. OSPRAG's work programme includes re-assessment of the implications for liabilities. This is also, of course, an area in which the European Commission and other international bodies have proposed further work. We will therefore continue to work with industry and with international partners to see how further improvements could be made.

On damage to biodiversity and ecosystems, see response below to Recommendation 23.

17. We conclude there needs to be clarity on the identity and hierarchy of liable parties to ensure that the Government, and hence the taxpayer, do not have to pay for the consequences of offshore incidents. We conclude that any lack of clarity on liability will inhibit the payment of compensation to those affected by an offshore incident. We recommend that it should be a requirement of the licensing process that the licensee prove their ability to pay for the consequences of any incident that could occur. We recognise that these measures could add to the cost of investing in new UK oil and gas production and urge the Treasury to reflect this when considering incentives to such investments. (Paragraph 91)

We consider that the OPOL arrangements already provide a clear route for those who may have suffered loss as a result of any offshore oil spill to secure compensation, and

for public authorities which may have had to undertake remedial measures to be reimbursed. And it is already the case that applicants for licensees are required to demonstrate that arrangements in place to cover any liabilities which may result from operations under the licence. Nevertheless this is an area that is being reviewed by DECC and OSPRAG to see what improvements can be made.

Fiscal change is considered on the individual merits of each case (such as the case for the field allowance, which was made in respect of small, or qualifying technically challenged, new field developments), supported by necessary evidence that the tax regime is impeding the economic production of oil and gas.

18. We recommend that the Government consider whether compulsory third-party insurance should become a necessary requirement for small exploration and production companies. (Paragraph 93)

We will be considering the requirement for insurance as part of our review.

19. 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. (Paragraph 101)

OPEPs submitted to Government are site specific, but there are some elements of commonality in relation to response strategies, given they must all feed into the National Contingency Plan. All OPEPs are carefully reviewed and DECC would reject a document if the text was not site-specific and/or inappropriate to the risk associated with a particular operation.

20. We recommend that the Government draw up clear guidelines on the sub-sea use of dispersants in tackling oil spills, based on the best available evidence of both their effectiveness and their environmental impact. We also recommend the Government monitor the effects of sub-sea dispersants in the Gulf of Mexico to inform these guidelines. (Paragraph 108)

The potential use and effects and regulation of subsea dispersants is currently being investigated by the Marine Management Organisation (who administer the testing and approval of products for the UK), Marine Scotland (who approve the use of products in Scottish waters) and industry, through an OSPRAG work group. The group have instigated a review group to identify the gaps in our current knowledge and to determine how these might be addressed. This will take account of Gulf of Mexico monitoring and the outcome of the review will be taken into consideration in the development of Government policy and guidance.

21. 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. (Paragraph 111)

Government agrees that prevention is better than cure, and this principle has contributed to the development of the UK's regulatory system. The Offshore Installations (Safety Case) Regulations 2005 require operators or owners of an offshore installation to prepare a safety case providing evidence that all major accident risks have been evaluated and measures taken to control risks. Furthermore, the Offshore Installations and Wells (Design and Construction, etc) Regulations 1996 set out the requirements for the integrity of installations and the safety of offshore and onshore wells.

These must be submitted to HSE for acceptance before a rig drills in UK waters. Presently HSE assesses the suitability of blowout preventers and associated well control equipment through the safety case and well operations notification process. In addition UK safety legislation requires regular independent verification (by verification/certification bodies such as Lloyds), that such items of safety critical equipment are capable of meeting defined performance standards. This verification system, which is unique to the UK, is subject to assessment scrutiny during the Safety Case acceptance process and subsequent inspection by HSE. Through these layers of regulations, the UK aims to ensure that safety is designed into the system before it becomes operational.

22. There are serious doubts about the ability of oil spill response equipment to function in the harsh environment of the open Atlantic in the West of Shetland. We recommend that the Government ensures that any capping, containment and cleanup systems are designed to take full account of the harsh and challenging environment West of Shetland. (Paragraph 117)

A capping device was developed by Chevron for the current UK deepwater drilling programme to the west of Shetland, which is located in the Aberdeen area and will be available for all wells drilled using the contracted drilling vessel and subsea equipment. The device is designed to be deployable from any vessel with adequate position-keeping, lifting and ROV (remotely-operated vehicle) capability, irrespective of the location of the well, although it is obviously accepted that weather and sea state can impose limitations on any marine operations.

Operators are therefore required to develop a flexible response strategy that covers treating any oil spill, capping the well and the worst-case scenario of drilling a relief well. With regard to the treatment of any spill, operators also recognise that there are operational limitations for surface oil containment systems, and therefore include the options of dispersant treatment and straightforward surveillance, as there may be situations where natural dispersion is the only option under the prevailing weather conditions, supplemented by other measures in more sheltered waters.

In addition to the measures in place in relation to the current drilling operations west of Shetland, the work of OSPRAG is driving forward improvements to the UK's capacity to prevent or capture oil leaking from an uncontrolled well. This capability has been improved with the arrival last October of two containment devices developed in response to the Gulf of Mexico incident.

OSPRAG is also developing a purpose-built well capping device for more widespread UK offshore use. Agreement has been reached on a design considered to be the most appropriate to accommodate conditions typically found in the UK, and specifically to the west of Shetland. Construction and initial testing of this universal capping device should be completed this summer.

23. We conclude that—as it stands—the EU Environmental Liability Directive is unlikely to bring to account those responsible for environmental damage caused by an offshore incident such as happened in the Gulf of Mexico. We recommend that the Government works with the EU to ensure a new directive is drawn up that follows the polluter-pays principle and unambiguously identifies who is responsible for the remediation of any environmental damage. (Paragraph 122)

The European Commission has indicated in its Communication on the safety of offshore oil and gas activities that it proposes further work on the Environmental Liability Directive, including the issue of coverage of damage to biodiversity and ecosystems. The UK looks forward to exploring these issues with our European partners.

However, it is an important objective for the UK to encourage smaller companies to exploit development prospects which may no longer present attractive investment opportunities from the perspective of large multinationals. It is of course essential that responsibility is identified unambiguously. However we need to ensure that any new requirements for financial security instruments are framed in such a way that offshore development does not become restricted to a handful of the best-resourced international companies. We will wish these discussions to take full account of the appropriate roles of risk-sharing mechanisms including insurance.

24. We utterly reject calls for increased regulatory oversight from the European Commission. We recommend that EU countries without a North Sea coastline should not be involved with discussions on regulation of the offshore industry on the UK Continental Shelf. (Paragraph 127)

Government believes that there is value in the sharing of information and levelling up standards in Member States to ensure best practice. However, the UK has a mature offshore regulatory regime which we would not want to be weakened, and – like the Select Committee – we are concerned about any legislative proposals from the EU that would diminish the effectiveness of our own and others (e.g. Norway, Denmark and Netherlands) robust regimes. In particular, action at EU level should not be targeted on:

- Member States' licensing or specific regulatory decisions;
- Placing requirements, rather than high level principles, on national regulators;

- Any proposals that effectively lower UK regulatory standards;
- Additional regulatory burdens at the time of granting the initial licence; and
- Any obligatory EU regulation, or control, of national regulators.

25. We conclude that a moratorium on offshore drilling in the UK Continental Shelf would cause drilling rigs and expertise to migrate to other parts of the globe. A moratorium on deepwater drilling would decrease the UK's security of supply and increase the UK's reliance upon imports of oil and gas. A moratorium could also harm the economies of communities in Scotland who rely upon the UK offshore oil and gas industry as well as the wider British economy to which the industry makes a major contribution. There is insufficient evidence of danger to support such a moratorium. We conclude that there should not be a moratorium on deepwater drilling in the UK Continental Shelf. (Paragraph 138)

Government welcomes the Committee's conclusion that there should not be a moratorium on offshore drilling in the UKCS. Deepwater oil and gas resources account for around 17% of remaining UK hydrocarbon reserves and stand to make a very valuable contribution to the UK economy and UK energy security over the coming decades as we make the transition to a lower carbon economy. Nevertheless, we will continue to work with all interested parties to ensure that our regime – already the toughest in the world – continues to ensure that all the risks are managed in the most effective way.

Appendix Two: Letter from the Falkland Islands Government

The Falkland Islands Government was surprised to see a reference to the Falkland Islands in the conclusions and recommendations of the above report that was published on 6 January.

The Falkland Islands is an Overseas Territory of the United Kingdom and therefore has its own laws and regulatory authorities that cover offshore hydrocarbon exploration and any potential production. Health and safety and environmental regulations, including provision for oil spill contingencies, are enshrined in Falklands' law and mirror much of the UK's legislation. Falklands' legislation also takes into account the special conditions related to the South Atlantic environment.

The Falkland Islands Government has a Department of Mineral Resources that regulates activities related to hydrocarbon exploration. Technical advice from the British Geological Survey and the Health & Safety Executive is provided under contract and DECC provides advice as and when required.

I trust this clarifies the situation in the Falkland Islands. We are also keen to learn lessons from the tragedy that occurred in the Gulf of Mexico last year and we will seek to apply any recommendations that result to our regulatory regime in order to actively prevent such an accident happening in these waters.

The Honourable Jan Cheek
Member of the Falkland Islands Legislative Assembly

13 January 2011

Appendix Three: Response from Oil & Gas UK

When the Energy and Climate Change Select Committee published its report on the inquiry into deepwater drilling in the UK continental shelf, we welcomed its top-line conclusion that the UK has high offshore regulatory standards, based on flexible, goal-setting principles superior to those operated in the Gulf of Mexico.

Likewise, we also welcomed your recommendation that there should not be a moratorium on deepwater drilling in our waters, and the recognition you gave to the negative impact this would have on UK oil and gas production, the country's security of energy supply, and the economies of Scottish communities who rely upon the activities of our industry as well as the wider UK economy.

Nevertheless, Oil & Gas UK felt that there were some aspects of the report that called for a direct response and further explanation. With this in mind, my colleagues have drafted the attached document, which I hope the Committee will find both useful and informative.

Malcolm Webb
Chief Executive

22 February 2011

Oil & Gas UK Response to House of Commons ECC Committee Report Recommendations

1. In the light of recent drilling activity in the waters around the Falkland Islands, we asked witnesses from OSPRAG and Oil & Gas UK whether the UK regulatory regime applied to drilling in that area. There was a lack of clarity over responsibility for drilling and oil response in the Falkland Islands. We recommend that the Government clarify what regulatory regimes apply to drilling and oil spill response in the Falkland Islands and who is responsible for enforcing them.

As Oil & Gas UK's membership and remit only extends to operations within the UK Continental Shelf (UKCS), we would respectfully suggest that the Committee seek clarification on this issue from the Government.

2. Oil company boards lack members with environmental experience. The industry should take steps to remedy this and the Government should encourage them to do so.

Oil & Gas UK agrees with the Committee that environmental experience is important within senior level management. In our view, most oil companies do have Board members with such experience as well as experienced senior management who oversee environmental and safety issues. For its part, Oil & Gas UK has an experienced

Environmental Issues Director heading up a dedicated Environmental Directorate and this reflects the importance which is attached to such matters in our Industry.

3. 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 1988. The UK regulatory framework is based on flexible, goal-setting principles that are superior to those under which the Deepwater Horizon operated.

Oil & Gas UK agrees with this finding and thanks the Select Committee for acknowledging the strength of the UK's offshore regulatory regime.

4. 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.

The UK's offshore Safety Case regime requires the industry to conduct its operations so that the risk to people and the environment are reduced "as low as reasonably practicable" (the "ALARP principle"). This by its nature requires the industry as a whole to be forward-looking with regard to safety and also to learn from incidents as they occur. We do not see these as alternatives. Both are, essential and we are somewhat concerned that in reaching this conclusion the Committee seems to imply otherwise.

Within the UK offshore oil and gas sector, companies are required to demonstrate they have considered all possible eventualities within each installation's Safety Case and OPEP (Oil Pollution Emergency Plan). The view of what constitutes a 'worst case' for that purpose shifted in the light of Macondo. Furthermore we would also accept that, as an industry, we have perhaps been overly, if understandably, focused on preventing such incidents occurring in the first place, and as such may not have given enough focus to our immediate preparedness to respond to very low probability, high consequence incidents.

The industry is working to remedy this and through the OSPRAG Technical Review Group the UK offshore industry has now developed a capping device, an industry first, which is designed to seal a leaking well within 10-30 days of a blowout occurring. Alongside this, the OSPRAG Oil Spill and Emergency Response Review Group has also conducted a thorough review of the UK's available spill response 'tool kit' which includes dispersants, shoreline responders and oil spill equipment. Plans are also underway for an exercise of the UK's response to such an incident in May 2011. We accept that such planning and preparedness needs to be kept under constant review. Oil & Gas UK has been charged with ensuring that this occurs through the work of its Well Life Cycle practices Forum and its Oil Spill Response Forum.

5. 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 agree entirely with the Committee that it is imperative that someone offshore must have the authority to halt drilling operations without recourse to onshore management, and would advise that there are at least two individuals offshore with this authority, the first of which is Offshore Installation Manager (OIM).

Regulation 6 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995 (MAR) requires that an installation operator shall at all times ensure the installation is under the charge of a competent person; the person in charge is generally known as the OIM. The installation operator has also to ensure that the OIM is provided with appropriate resources to be able to carry out his functions. The OIM plays a key role in the offshore installation's safety management system. The OIM is responsible for day-to-day management of the offshore installation and the health, safety and welfare of all people working on the installation.

A key requirement of the regulations is the need for an installation operator to ensure that the person appointed as OIM is competent. Thus the OIM must be a person who has sufficient training and experience or knowledge and other qualities (such as leadership or sound judgment under pressure) to manage health and safety measures on the installation.

The primary duty and focus of every OIM is the safety of those onboard their installation.

In addition to the OIM, the driller on the rig or platform is also equipped with the authority to halt drilling operations should they believe the safety of the drilling operation is in doubt. The driller has both a legal and professional obligation to check for well flow and close in a well if he or she has indications of potential well flow. No higher authority (including the OIM) is required in this event.

6. 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.

Oil & Gas UK notes the Committee's comments but must urge caution with this recommendation.

We believe that building in the additional redundancy of two blind shear rams across the entire UKCS is unnecessary and may actually impede both operational capabilities and the safe operation of some installations.

The Committee's recommendation here could be taken to imply a desire to move towards prescriptive, equipment-based regulation- something which has demonstrably failed to work in the USA's regulatory regime and which goes against the goal setting principles of the existing UK regime. The UK regime centres upon the mitigation of risks associated with the drilling of a particular well, in a particular location and using the best available solutions to respond to those risks using ALARP principles. This is a flexible and dynamic system which allows for advancements in technology and good practice to be implemented swiftly.

We also fear this could imply an over-reliance on one barrier or piece of equipment. Whilst the BOP is of course an essential safety component, it is but one of several safety barriers which should be in place. A focus on one barrier in the manner suggested by the Committee risks detracting from the importance of the others and again risks the creation of a prescriptive regime with an over-reliance on an individual physical barriers rather than an emphasis on the entire system of risk management.

OSPRAG has established a Well Life Cycle Practices Forum (WLCPF) as part of its technical review work. A sub team of this forum will address issues around the BOP, including this recommendation from the Committee, and will be inviting the HSE to discuss this matter and report. The WLCPF is also developing a mechanism for reporting and sharing information on failures of Safety Critical Equipment during testing, to heighten awareness, enable trend analysis of failures and provide cross-Industry learning.

7. While the flexibility of the UK safety regulation regime appears to have worked well, we recommend that for fail-safe devices such as the blowout preventer the Government should adopt minimum, prescriptive safety standards or demonstrate that these would not be a cost-effective, last-resort against disasters.

Oil & Gas UK support the Committee's emphasis on the importance of ensuring critical safety equipment such as the BOP meets certain standards. However, we fear that a move towards an overly prescriptive approach, could undermine certain of the important principles within the UK's world-leading Safety Case regime

In the UK regime, the BOP is classified as a "safety-critical" system. This means that it must already meet certain criteria following a goal setting approach. In addition to the legal requirement placed on operators to ensure such equipment is maintained, the BOP must be included in the operator's verification scheme. This is a scheme for ensuring that safety-critical systems remain in good repair and condition through independent checks to confirm continuing suitability throughout the installation lifecycle.

As we have previously stated, a prescriptive focus on minimum safety standards can have a significant detrimental effect on safety and we therefore believe that the goal selling approach already in place and outlined above is the correct one to take.

8. We believe that the Government must ensure that the UK offshore inspection regime could not allow simple failures-such as a battery with insufficient charge-to go unchecked.

Oil & Gas UK agrees that competent and robust inspections both within companies and by the regulator are essential. Within the UKCS, safety-critical systems (systems whose function is to prevent or limit the consequences of a major accident) are also subject to additional operation and functionality checks by independent competent organisations.

Operating companies must have inspection regimes that provide assurance of legal compliance and that safety equipment is maintained and remains fit-for-purpose and will operate on demand. A strong, goal-setting regime which guards against complacency or a 'box ticking' mentality is vital to this.

The Macondo incident has demonstrated that high standards of health and safety are best promoted where a strong challenge is provided by competent and, importantly, well-resourced national regulators. Regulators must have the high level of competence to challenge companies, and operate confidently within a robust and demanding goal-setting regime. In that regard, the industry trusts that the Government will maintain resource and competence at the HSE, DECC and the MCA.

9. Whilst there is a risk of conflicts of interests affecting the judgement of independent competent persons who assess the design of wells we have had no evidence of such conflicts presented to us.

Oil & Gas UK also has no such evidence and is committed to the importance of preserving the vital role of these independent verifiers (or Well Examiners as they are more commonly known within the industry).

10. We find some conflict in the reports from the HSE 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.

Oil & Gas UK acknowledges that there appears to be some conflict in reports received by the Committee, but would caution against broad extrapolations of observations regarding bullying and harassment from one report relating to one rig. Whilst we appreciate that this report's findings are understandably concerning we would like to strongly emphasise that we do not believe they typify the UK offshore industry.

As evidence to support the above statement, the HSE Offshore workforce survey (May 2009 - based on a survey of 3,813 offshore workers) showed that:

- 90% of respondents reported that they felt (very or fairly) well involved in health and safety in their workplace.
- The overwhelming majority (96%) agreed that they were fully aware of the major hazards in the workplace, and 97% fully aware of the measures in place to prevent major accidents in the workplace, with 99% understanding their role in the prevention of major accidents.
- The HSE survey went on to show that 60% strongly agreed that they were encouraged to raise health and safety concerns in their workplace; a further 35% tended to agree.
- 91% agreed to some extent that they were confident their health and safety concerns would be dealt with appropriately.
- 58% agreed strongly that their job security would not be threatened if they stopped a job they thought was unsafe, while a further 32% tended to agree.
- 79% would raise concerns over health and safety management with their supervisor, 58% would go to their safety representative, or to the OIM (55%).

However, the UK offshore oil and gas industry fully recognizes the importance of a strong offshore safety culture, free of any perceived intimidation. We are not complacent and acknowledge that whilst even a perception of harassment or intimidation remains there is still room for improvement.

This is why Oil & Gas UK, in partnership with the offshore unions, developed the Guidelines for Removal of Offshore Contractor Personnel in 2008, to address the so-called 'Not Required Back' or NRB issue in a transparent way. Oil & Gas UK has committed to an annual review of the Guidelines with the unions and any alleged incidents of unjustified personnel removal linked to safety claims are brought to the Board's attention.

11. It is important and necessary that the offshore safety culture is cascaded throughout the supply chain, from existing contractors at all levels, through to new-entrants on to the UK Continental Shelf

Oil & Gas UK agrees with this statement. Indeed it was to address this very issue that the industry established Step Change in Safety in 1997.

Step Change in Safety has the vision to make the UK the safest place to work in the worldwide oil and gas industry. Step Change in Safety members include installation operators, the regulator, trades unions and supply chain companies. The members of Step Change in Safety share a common set of beliefs that serve to drive everything that they do to help work together to achieve the vision. This includes:

1. All workers have a fundamental right to work in an environment where risks to their health and safety are properly controlled
2. Everyone has a contribution to make
3. We each have an individual personal responsibility for health and safety
4. We have a moral duty to learn from the past and share our learning

Industry cooperation is key to achieving the vision, as is a workforce that is fully engaged in health and safety. Step Change has a number of dedicated work groups, reviewed annually, who work towards addressing safety issues including asset integrity, occupational health, and hydrocarbon releases. These work groups are populated with a mixture of senior industry leaders, key stakeholders and experts from across the industry and its supply chain.

12. There is both risk and the advantage of competition where global oil and gas companies operate to different standards when working in different regulatory regimes. We recommend that the Government monitor any changes in the US regulatory regime to see if-in the light of the response to the Deepwater Horizon incident-the US establishes a new gold-standard of regulation, as the UK and Norway did after the Piper Alpha tragedy. We would urge the Government to work with regulators in other offshore oil and gas provinces to ensure that the highest standards of safety can be achieved globally through an exchange of best practice lessons.

The industry welcomes the sharing of any lessons or best practice, and already has a wide number of forums to do this (including IRF, NOIAs, NSOAF, OGP).

We would however caution that any such sharing must be done with a view to maintaining the ALARP principle and the protection of a goal setting regime.

13. The Bly Report-BP's internal investigation into the Deepwater Horizon incident does not contain a root-cause analysis of the events that led to the blowout of the Macondo well, the loss of 11 men on the Deepwater Horizon, and the release of 4.9 million barrels of oil into the Gulf of Mexico. We urge the Government not to rely extensively on the Bly Report, given the controversy surrounding the responsibility for the incident and the design of the Macondo well, but rather to consider its conclusions in parallel with the observations of other companies involved with the incident, and with the recommendations of US agencies investigating the incident.

We agree with the Committee that the Sly Report is but one of a number of sources of information regarding the Macondo incident, and that all available reports should be studied closely. Oil & Gas UK and OSPRAG will be studying all related reports to ensure that the findings are appropriately shared across the industry in the UK.

14. We believe that the environmental impacts of a sub-sea well blowout need to be understood and taken into account when a drilling licence is issued in the UK. We urge the Government to ensure that the licensing regime takes full account of high consequence, low probability events.

We believe that this is currently the case, and the DECC's recent communication on OPEPs evidences this view. We attach a copy of this communication for the Committee's reference³.

15. We recommend that as part of the drilling-licence process, the Government require companies to consider their responses to high-consequences, low-probability events - such as a blowout. The Government should not automatically accept claims that companies have mitigated away the risk of such worst-case scenarios. We urge the Government to introduce this requirement as drilling ventures into increasingly extreme environments.

As above, we believe this is already the case and there is no need to introduce any further requirements.

16. 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 pre-requisite for a licence-its voluntary nature weakens its legality and the control and deployment of its funds. We believe this lack of legal

³ This is unprinted.

control will allow polluters to claim that damages to biodiversity and ecosystems are indirect, and therefore do not qualify for compensation.

Within the UKCS there is no legal limit to the liability and all licensees are (jointly and severally) responsible for the consequences for their activities. In addition, we would also highlight that DECC, through the UK licensing regime, has the power to request that operators provide evidence of their ability to meet liabilities which are not covered by OPOL. Companies typically purchase a programme of insurances that embrace:

- Physical 1055 and damages to property
- Control of well expenses (including drilling relief well(s)); and
- Third party liabilities, including ring-fenced cover at least commensurate with OPOL membership requirements

OPOL is an agreement between operating companies that:

- Each individual operator will reimburse the costs of remedial measures incurred by public authorities and pay compensation on direct costs on a strict liability basis to third parties for pollution damage, providing claims are made within a year of the event, up to the OPOL limit. Members are required to submit evidence of financial responsibility (ability to payout) to OPOL to confirm these liabilities can be met. Beyond that limit claimants still have redress, but at law.
- In the event of an individual operator defaulting, they will provide a mutual industry guarantee, up to the OPOL limit.

The purpose of OPOL is to ensure that claimants can recover quickly and efficiently without having to go to court. The reference to "direct" 1055 or damage was made with this in mind so that both claimants and operators have clarity on the nature of the 1055 and damage covered by OPOL and was made with a view to avoiding lengthy legal debate which would delay payment/recovery. The concept of "direct" 1055 and damage is one commonly used in English law agreements and there is plenty of precedent to give clarity to its meaning.

OPOL provides an effective, safety-net mechanism to assure government. However, it does not provide a physical fund or weaken or limit the legal liability of licensees/operators. OPOL is legally binding on its members and, in practice, is not voluntary, as it is a DECC requirement for all Operators to be bound into membership before they can conduct activities on the UKCS.

The OPOL limit of \$250 million per incident is considered, based on previous independent oil spill studies, to be more than sufficient for the vast majority of wells in the North Sea. As the majority of well activities are adequately covered by the current limit, raising the universal limit further to address the few higher-risk (but low probability) wells would unnecessarily burden and could even jeopardise normal UKCS operations.

We can see the case for potentially high impact wells in the West of Shetland to have an additional 'top up' cover in addition to OPOL. DECC already has the power to request such

a top up under existing regulations. DECC could therefore set the requirement for this additional level of coverage for this small number of wells.

Finally, the issue of compensation for damage to eco-systems is a very complex issue that requires careful consideration. An attempt to address damage to biodiversity has been made through the EU Environmental Liability Directive.

17. We conclude there needs to be clarity on the identity and hierarchy of liable parties to ensure that the Government, and hence the taxpayer, do not have to pay for the consequences of offshore incidents. We conclude that any lack of clarity on liability will inhibit the payment of compensation to those affected by an offshore incident. We recommend that it should be a requirement of the licensing process that the licensee prove their ability to pay for the consequences of any incident that could occur. We recognise that these measures could add to the cost of investing in new UK oil and gas production and urge the Treasury to reflect this when considering incentives to such investments.

Oil & Gas UK believes that the identification of liable parties is an issue which is clearly set out in the model clauses which provide the terms and conditions of operations under petroleum production licences within the UKCS. The primary liability rests clearly with the licensee, joint and severally with their co-venturers.

It is also already the case that licensees can be required to prove their ability to pay for any incident as part of the licence granting process. DECC undertakes financial viability assessment and financial capability assessment prior to awarding a licence. Furthermore all operators (that act on behalf of these co-venture licensees) have to become members of OPOL before they get consent to undertake any operations.

18. We recommend that the Government consider whether compulsory third-party insurance should become a necessary requirement for small exploration and production companies.

Oil & Gas UK would urge the Select Committee to reconsider this recommendation. We believe it is a mistake to introduce compulsory layers of third party insurance. DECC already has the powers to do so on a case-by-case basis under the existing regulations, and have procedures in place. Compulsory layers of insurance will be a very blunt instrument and insufficiently focused on the requirements of each case -with an attendant risk of insufficient cover being taken in a few cases whilst at the same time running the risk of resulting in considerable surplus and hence unnecessary cover and cost in many cases.

As part of its work, OSPRAG is considering how the existing arrangements might be complemented to further enhance Government assurance on the adequacy and applicability of financial responsibilities for companies conducting drilling operations on the UKCS.

19. 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.

Oil & Gas UK is not aware of any evidence to suggest that 'copying and pasting' takes place within the UK sector. Certain elements of a Safety Case or OPEP may be similar for different platforms/rigs, given similarities in operations, but all plans given will have to be justified to the regulator in order to meet the requirements of the UK's goal setting regime under the ALARP principle. This means that simply cutting and pasting would not be sufficient to gain approval from the regulator.

Again, this highlights the vital importance of a strong, competent regulator operating within a goal setting regime.

20. We recommend that the Government draw up clear guidelines on the sub-sea use of dispersants in tackling oil spills, based on the best available evidence of both their effectiveness and their environmental impact. We also recommend the Government monitor the effects of sub-sea dispersants in the Gulf of Mexico to inform these guidelines.

Oil & Gas UK agrees with this suggestion as the industry would find clarity on this point most helpful. We also agree that the lessons from the Gulf of Mexico should inform the Government's decision on this matter.

21. 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.

Oil & Gas UK does not believe that the UK has a flawed approach to this issue. As outlined above, the industry works under a goal setting regime which follows the principles of ALARP. The industry works continuously to improve safety and demonstrate that it can mitigate against events of all probability and consequence. Macondo changed the understanding of 'worst case' scenario for both industry and regulator, and as such the systems in place are being adapted as appropriate to address this new understanding.

The BOP is an important part of the safety system alongside many other barriers (including well design, independent inspection, well management, strong regulators). However we caution against a move towards a (l)ore prescriptive approach, or one which focuses too much on single elements of a wider system. A focus on one barrier only risks distracting attention from the system as a whole. We agree with the Committee's emphasis on prevention as the key focus, and therefore wish to make clear that, in order to achieve this, the system as a whole must be robust.

However, we accept that the Industry has previously tended to focus its efforts primarily on prevention, and that Macondo has demonstrated the need for increased effort on response. This is why OSPRAG established a specific Pollution Response Review Group to review the UK's response plans and available and to look for ways to improve upon the current arrangements in place.

22. There are serious doubts about the ability of oil spill response equipment to function in the harsh environment of the open Atlantic in the West of Shetland. We recommend that the Government ensures that any capping, containment and cleanup systems are designed to take full account of the harsh and challenging environment West of Shetland.

The OSPRAG cap has been specifically designed for the West of Shetland environment and a full exercise of the National Contingency Plan is taking place in May 2011. This will be followed by a physical deployment exercise which will demonstrate our ability to deploy oil spill response equipment (including the cap) in the harsh environment found West of Shetland.

23. We conclude that-as it stands-the EU Environmental Liability Directive is unlikely to bring to account those responsible for environmental damage caused by an offshore incident such as happened in the Gulf of Mexico. We recommend that the Government works with the EU to ensure a new directive is drawn up that follows the polluter-pays principle and unambiguously identifies who is responsible for the remediation of any environmental damage.

The EU Environmental Liability Directive is a complex piece of legislation. Before any changes are proposed, it would be useful to establish the shortfalls of the Directive and to consider the pros and cons of possible remedies. Oil & Gas UK is ready to work with Government to achieve this

24. We utterly reject calls for increased regulatory oversight from the European Commission. We recommend that EU countries without a North Sea coastline should not be involved with discussions on regulation of the offshore industry on the UK Continental Shelf.

We welcome the Committee's finding.

25. We conclude that a moratorium on offshore drilling in the UK Continental Shelf would cause drilling rigs and expertise to migrate to other parts of the globe. A moratorium on deepwater drilling would decrease the UK's security of supply and increase the UK's reliance upon imports of oil and gas. A moratorium could also harm the economies of communities in Scotland who rely upon the UK offshore oil and gas industry as well as the wider British economy to which the industry makes a major contribution. There is insufficient evidence of danger to support such a moratorium. We conclude that there should not be a moratorium on deepwater drilling in the UK Continental Shelf.

Again, Oil & Gas UK welcomes and supports the Committee's conclusion on this matter.