

## Response to the Borthwick Inquiry

### Montara Wellhead

---

Western Australian (WA) Submission to the Commission of Inquiry – Montara Well Head Platform Uncontrolled Hydrocarbon Release.

The following submission is the collective view of the following government agencies:

- The Department of Transport (Transport WA)
- Dampier Port Authority (DPA)
- Fremantle Port Authority (FPA)
- Department of Fisheries (Fisheries WA)
- Department of Mines and Petroleum (DMP)
- Department of Environment and Conservation (DEC)
- Office of the Environment Protection Authority (OEPA)
- Fire and Emergency Services Authority (FESA)

All departments have restricted comments to issues affecting their agencies.

#### **Executive summary**

Western Australia's submission does not address Terms of reference 1, 3, 4 or 5 as agencies do not have either the statutory authority, information or the experience to address these matters.

In addressing TOR 2, the adequacy and effectiveness of the applicable regulatory regime, WA is of the opinion that the current legislative regime, when implemented in conjunction with appropriate regulatory procedures and practices, regular engagement with operators, and, adequate resourcing and expertise, is adequate to minimise the risk of such an incident as Montara occurring. In contrast, the existing regulatory environment with respect to spill response is flawed and has significant shortcomings, particularly in the co-regulatory aspects of the current arrangements.

Both AMSA and the State responded to a spill that should have been within the capacity of the Designated Authority and the industry to deal with. Communication between proponents was poor as there was insufficient consultation with WA in regards to the potential impacts of the spilled oil in WA State waters.

In addressing TOR 6, the adequacy of regulatory obligations on the licensees *et al*, the issues of concern are centred on the fragmentation of environmental responses, the use of NATPLAN resources to combat the spill (NATPLAN is funded by a levy on shipping to deal with ship-sourced pollution) and the lack of consultation with State based agencies, particularly with regard to environmental and economic impacts such as those on the commercial fishing industry.

In addressing TOR 7, the environmental impacts, Western Australia has concerns over the lack of a funding mechanism similar to that in place for ship sourced pollution to cover the monitoring, clean up and compensation costs associated with the incident.

Although there is a requirement for insurance, the Commonwealth and the State may be exposed to potential costs running into hundreds of millions of dollars. It is also considered that the requirement for confidentiality over monitoring and other issues significantly impacted the ability to respond in an informed manner to the environmental issues.

In addressing TOR 9, the provision and accessibility of relevant information, WA submits that a major issue was the lack of a collegiate approach to the collection and dissemination of information; there was no clear mechanism for WA agencies to input their knowledge and expertise into the public information processes.

In addressing TOR 10 WA considers that the regulatory regime for incident response should be reviewed with a view to strengthen interagency arrangements and responsibilities.

In addressing TOR 11, recommendations on other matters pertinent to the incident, WA has concerns over the mechanisms for the transfer of responsibility of incident management which are both informal and not legally binding.

There are also concerns around the confidentiality provisions of the SITREPS; the lack of collaboration on impact studies and issues over the adequacy of the protection of fish species under the EPBC Act.

## **A. CIRCUMSTANCES AND LIKELY CAUSES**

### **1. Terms of Reference: Investigate and identify the circumstances and likely cause(s) of the Uncontrolled Release.**

The WA government agencies that are a party to this submission do not have the statutory authority or the relevant information to determine likely causes of incidents and/or accidents outside their jurisdiction.

The primary role of the agencies that were involved was one of support and emergency response to situations likely to cause harm to the marine environment.

### **2. Terms of Reference: Review the adequacy and effectiveness of the regulatory regime applicable to operations at or in connection with the Montara oil field, including under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, and including the adequacy and effectiveness of all safety, environment, operations and resource management plans, and other arrangements approved by a regulator and in force at relevant times.**

## **WA Regulation of the Offshore Petroleum Industry**

In WA, the Department of Mines and Petroleum (DMP) is responsible for the upstream petroleum regulatory regime, including joint arrangements with the Commonwealth government in Commonwealth waters. As WA agencies had no role in regulation of the Montara Wellhead operations, WA has restricted its comments to general observations about adequate and effective regulatory arrangements for offshore petroleum operations in place to prevent such incidents.

WA, through DMP, undertakes the largest number of drilling approvals of any jurisdiction within Australia. In 2009 DMP:

- Reviewed and approved 81 wells which were spudded.
- Reviewed and approved 47 plug and abandonments.
- Reviewed and approved 22 wells completed and suspended.

In administering these approvals WA relies on a comprehensive legislative regime, appropriate regulatory procedures and practices, regular engagement with operators, and, adequate resourcing and expertise.

DMP has in place well regulatory procedures and practices as noted below, supported by regulatory engagement with the operators at all stages in the lifecycle of wells. It is DMP's view that engagement with the operator at all phases in the well lifecycle and adequate skilled personnel to undertake the required regulatory work are key strategies. DMP currently has five drilling operations personnel undertaking review or observation with a total of 100 years of industry experience and 50 years of regulatory experience.

Regulatory procedures and measures include:

- Review of the Well Operations Management Plan (WOMP) and meeting with the Operators' drilling and completions personnel to understand their methods and business models.
- Regular and *ad hoc* review meetings and discussions between DMP and the Operator's drilling and completions personnel.
- Attendance at HAZIDS/HAZOPS/Drill Well on Paper/Test Well on Paper exercises held by the Operators.
- Provision of clear guidelines - the prescriptive content of the 1995 Schedule still has some application specifically as a guideline in relation to well suspension and abandonment and is still used as an unofficial guideline by DMP for offshore operations. Operations should at least meet the intent of the Schedule but DMP will consider and approve alternatives where technology changes.
- Daily scrutiny of activities - receipt and review of the daily drilling and geological reports.
- Provision of 24 hour on call approvals for Drilling Management of Change and for incident reporting to the Designated Authority/Delegated Authority.

The principal DMP activities relating to approval and monitoring of drilling and workover operations fall under the following headings:

- QMS process - ISO 9001 accredited management system for the approvals processes. This includes file tracking of individual signoffs for each step of the specific approvals process.
- Well Operations Management Plan (WOMP) approvals - all Operators submit a WOMP for approval on either a well-by-well basis or a drilling campaign basis or a field basis.
- Drilling Approvals - separate to the WOMP is a drilling approval process that includes review of the geology, offset well history, casing and completions/suspension/abandonment activities. Any change to the approved well application must be submitted as a Management of Change to DMP for further consideration and approval.
- Workover Approvals - as noted above under Drilling.
- Abandonment/suspension Approvals for wells - a separate review and approval process is conducted. Suspensions are subject to approval conditions which include the requirement for at least two physical barriers (e.g. tested/intact casing shoe, drillable or retrievable plugs) not including the hydrostatic head between the reservoir section and the surface.
- Daily watch on drilling operations - DMP receives and reviews the daily geological and drilling reports to ensure compliance with the approved activities and to monitor for unusual conditions.
- Regular contact with other jurisdictions/industry representatives to discuss issues of mutual interest - *ad hoc* and formal and informal meetings/discussions to consider developments and proposed works/drilling programs.
- Attendance at Industry functions - APPEA conference, Good Oil Conference, Drillsafe meetings.

- Attendance at SPE and FESA presentations.

In the last 30 years in W.A. jurisdiction there have been three significant well control incidents:

- The F24J well on Barrow Island suffered an equipment failure leading to underground blowout, this incident was prior to the introduction of the 1991 onshore schedule.
- The Linda 1 offshore well control incident did not result in an uncontrolled flow but did take some time to rectify.
- The Tarantula 1 well control incident onshore arose from human communication error on several levels at the well site.

For each of the above incidents, an investigation was undertaken by DMP, resulting in appropriate actions being undertaken to remedy any weaknesses in legislation, thereby minimising the risk of such incidents occurring.

The DMP also regulates environmental and occupational health and safety (OHS) aspects of petroleum activities in WA.

In relation to the regulation of environmental aspects of petroleum activities in Commonwealth adjacent waters, DMP operates via a delegation from the Commonwealth Minister. Petroleum activities may not commence until an acceptable Environment Plan and an acceptable Oil Spill Contingency Plan have been reviewed and accepted by the DMP. The Environment Plan must consider all aspects of the activity that may impact on the environment and incorporate an environmental risk assessment together with appropriate management measures to minimise the environmental risks and impacts to as low as reasonably practicable. The Oil Spill Contingency Plans (which are also reviewed by WA Transport's Oil Spill Response Unit) must describe the incident notification and reporting procedures and include detailed response arrangements. These documents are required pursuant to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*. Petroleum operators are also required to report incidents to the relevant Authority under these regulations, which allows for continual monitoring of environmental performance of an activity.

In addition to DMP's role of approving offshore petroleum activities, DMP Petroleum and Environment Branch Officers are trained State Response Team members. Two Officers are National Response Team (NRT) members. One officer participated in the Montara Well Head Incident Response activities undertaking the role of Logistics Officer.

In relation to the regulation of OHS aspects of petroleum activities, DMP has responsibility in WA State waters, onshore areas and on islands. The National Offshore Petroleum Safety Authority (NOPSA) is currently responsible for regulating safety aspects for the Commonwealth offshore petroleum industry. WA's recent experience in relation to the Varanus incident in 2009 is pertinent to an understanding of what is required for an adequate and effective safety regulatory regime. Though this incident remains subject to consideration of a final investigation report within Government, areas that require general attention include the dilution of staffing and technical competence in jurisdictions in part caused by the creation of

NOPSA and the narrow interpretation of the service responsibilities and role of this agency. For example, NOPSA has claimed limitations in addressing integrity issues despite these being an integral part of safety assurance, though agreement has now been reached with the Commonwealth to remedy this long standing concern.

In addition, Commonwealth statutory bodies such as NOPSA take a narrow interpretation of their role and responsibilities in delivering services to jurisdictions which rely on them. For example, shortly after the Varanus Island incident, NOPSA withdrew from a contract with WA for providing regulatory services in WA offshore areas effectively without notice. WA is currently in the process of rebuilding its safety regulatory services in part to address this situation. Western Australia is seeking to learn from incidents such as Varanus and Montara to ensure it achieves best practice in safety regulation of the offshore petroleum industry. A Resources Safety Division has been brought back into its primary mining and petroleum agency DMP and the Government has approved the introduction of a regulatory cost recovery levy in the sector to fund improvements. This division is responsible for regulation of the Varanus Island project, the introduction of comprehensive OHS provisions into existing petroleum legislation and the move towards stand alone safety legislation across the entire mineral and petroleum industry. It is not the Government's experience that a move towards more national regulatory bodies, as currently being proposed by the Commonwealth, is the best route for achieving best practice safety regulation.

### **Oil Spill Response**

The Montara Wellhead incident differs from maritime spill events that are typically dealt with under Australian and Western Australian oil spill response arrangements in that it was sourced from production and not shipping.

Key characteristics of the Montara incident that differentiate it from a typical spill, associated with a ship-board leak or ship grounding, are the protracted length of time during which hydrocarbons continually spilt into the sea, the uncertainty related to the volumes and discharge rates of the hydrocarbons, and uncertainty about how long the incident would continue. Hydrocarbons flowed uncontrolled from the Montara Wellhead into the sea from 21 August 2009 through to 3 November 2009 for a period of 75 days. After the spill was capped, aerial surveys and response vessels continued to encounter oil over a wide area for a further two weeks.

Oil spill response capability is legislated at national, state and local levels. The National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances (NATPLAN) is a plan that sets out a clear definition of the roles and responsibilities of the Commonwealth, States, Northern Territory and the private sector in an emergency response to oil spills that relate to ship sourced pollution beyond State jurisdiction (3 nautical miles) and is provided for in a set of Inter-governmental agreements (IGA). The NATPLAN is the statutory responsibility of the Australian Maritime Safety Authority (AMSA), who is the combat agency for spills within Commonwealth waters.

The Western Australian Plan - Marine Oil Pollution (WestPlan - MOP) applies to all spills of oil in Western Australian state waters, within ports and on shorelines.

WestPlan was prepared in accordance with the Pollution by Waters by Oil and Noxious Substances Act 1987. This Act implements MARPOL 73/78 (International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978) and details the liabilities and penalties for discharges from ships and enables WA to take measures to respond to spills. WestPlan – MOP operates within the National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances' (short titled the National Plan), which is administered by AMSA. The WestPlan-MOP is administered by Transport WA.

Floating production, storage and offtake tankers (FPSOs) and Floating storage off take (FSOs) facilities within WA waters fall within the definition of ship or large passenger vessel for the purpose of WestPlan – (MOP) and WestPlan – (MTE), if they are underway and not attached.

Under the WA arrangements for oil spill response, the Environmental Science Coordinator (WA ESC), an office which currently resides in the Office of the Environment Protection Authority, is responsible for consulting with key State natural resource management agencies (Department of Environment and Conservation (DEC) and Fisheries WA) and providing consolidated environmental science advice to the incident controller established under WestPlan.

The State arrangements are clearly described in Westplan MOP and the role of Transport WA is well recognised. However, the role undertaken in this incident was mostly that of support to AMSA as the Combat Agency and as a result, the expectations of information exchange, communication and briefing amongst all Westplan stakeholders may not have been realised. A perception of any threat to the State may require a more comprehensive response within agencies and in communication with the community as described in the current State arrangements.

To some extent, the conduct of State arrangements differs in practice to that adopted by AMSA during this emergency and this is likely to create some confusion should a similar event occur with state impacts. AMSA currently uses a system of incident management called OSRICS; WA agencies have adopted the Australian Standard AIIMS system. The use of the two systems can present problems with interfacing between agencies and introduces unnecessary levels of complication into the management of an incident.

Additionally, confusion can further occur when the source of the emergency is in Commonwealth waters, or an adjacent state or territory but the impact is likely in another state or territory. Forward basing of emergency management teams maybe required across the border for ease of site access; and clarification is required of these arrangements, both from an operational and cost recovery perspective.

With ship-sourced pollution, the international conventions operate under the principle of "strict liability", simplifying and clarifying arrangements for cost recovery; it is unclear to WA whether a similar regime applies to off-shore oil and gas operations.

This incident, along with previous incidents off the coast of WA, has again identified the need to ensure that there are carefully considered and fully integrated aero/medical and support base arrangements in place in remote areas of WA. While the majority of high risk/ high consequence activities may occur outside of State

waters, State arrangements, possibly with the support of the Commonwealth, need to be advanced to ensure forward basing capability to deal with these emergencies.

In this instance the WestPlan was not activated as the spill did not enter WA State waters. If the spill had occurred in state waters, the WestPlan would have applied.

The WA ESC adopted an environmental coordination role during the incident focusing on protecting State environmental assets and facilitating State collaboration with the Federal Department of Environment, Water, Heritage and the Arts (DEWHA) with respect to wildlife response. The environmental coordination role involved daily assessment of situation reports supplied by Transport WA, as well other available information (e.g. satellite imagery, oil spill trajectory modelling outputs), to continually evaluate risk to environmental values in State waters. The ESC position and the coordination roles it played resided within DEC until the creation of the Office of the Environmental Protection Authority (OEPA) on 27 November 2009, when the position was transferred to the OEPA. The OEPA has also provided advice to DEWHA on environmental matters of direct relevance and concern to WA since the formal termination of the Montara incident.

Transport WA's Oil Spill Response Coordination Unit (OSRCU), through the National Plan Inter-Government Agreement (IGA) is WA's lead agency for marine oil spill response and its primary responsibility is to assist AMSA under the NATPLAN, when required. In incidents close to shore when oil is likely to impact the shoreline, WA through the OSRCU is the combat agency for protecting the coastline (including State coastal waters inside 3 nautical miles of the territorial baseline), while AMSA is the statutory authority and combat agency for containing the spill.

Under the NATPLAN the OSRCU coordinates the resources on a State level and enlists other State agencies to assist. The response team for the Montara incident comprised of personnel from the following agencies:

- The Department of Transport (Transport WA) OSRCU
- Dampier Port Authority (DPA)
- Fremantle Port Authority (FPA)
- Department of Fisheries (Fisheries WA)
- Department of Mines and Petroleum (DMP)
- Department of Environment and Conservation (DEC)
- Office of the Environmental Protection Authority (OEPA)

Events involving State response arrangements that occurred during the Montara Wellhead incident are as follows:

- On the 21 August 2009 at 8:50am (WST) notification of an oil spill was received from AMSA by the OSRCU and the NATPLAN was activated. The Manager of the Environmental Protection Unit, AMSA was appointed Incident Controller by the National Marine Pollution Controller.
- The National Offshore Petroleum Safety Authority (NOPSA) was notified and proceeded to remove all personnel from the Wellhead on the same day and dispersant was deployed to the location.



- Spraying of dispersant commenced on the 23 August 2009 under the direction of the Incident Controller.
- On the 26 August 2009 PTTEP provided a written undertaking to AMSA that they would meet all costs of the clean-up.
- OSRCU actively participated in discussions to explore environmental risks and response options and a WA Oil Spill Response Coordination Unit team member was deployed to the Canberra Incident Control Centre for liaison and support on the 27 August 2009.
- On the 29 August 2009 the Australian Marine Oil Spill Centre (AMOSC) deployed oil spill recovery equipment from Darwin to undertake surface oil recovery.
- Dispersant spraying by vessel in the Timor Sea was initiated on 30 August 2009 and containment and recovery began on 3 September 2009.
- The Wellhead operator supplied additional vessels to assist in boom recovery operations and engaged additional charter vessels although there is no legislative requirement for the operator to do so.
- As it became apparent the oil spill was significant, the platform operator (PTTP) handed control of the response to AMSA through the Department of Planning and Infrastructure, Northern Territory.
- AMSA through the Incident Management Team organised the relocation of equipment from the Fremantle and Dampier stockpiles to the site.
- Air operations were suspended on the 28 November 2009 once it became apparent that no recoverable oil remained.
- In excess of 800,000 litres of oil was recovered and recycled through the boom recovery operations.
- The trajectory of the spill did not enter WA State waters; however subsequent testing of samples taken at Browse Island indicated their origin as from the Montara field.
- The National Plan response implemented the "Termination & Demobilisation" Plan on the 5 December 2009 when the Well was permanently capped.

A total of 14 personnel from Western Australian agencies participated in the National Response Plan. The roles each of the individuals undertook were:

- Participating in the Incident Management Team.
- Aerial observations and tracking of spill trajectory on a daily basis (weather permitting).
- Assisting in oil recovery operations onboard vessels Pacific Protector, Lady Valissia, Pacific Battler, Calypso Star, Lady Gerda and the Lady Christina.

The NATPLAN was established in 1973 primarily to respond to ship sourced pollution and is funded by a levy imposed on the shipping sector. The establishment of this plan is part of Australia's "Protection of the Sea" package of legislation which consists of the following:

- *Protection of the Sea (Civil Liability) Act 1981*
- *Protection of the Sea (Civil Liability for Bunker oil Pollution Damage) Act 2008*
- *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*
- *Protection of the Sea (Powers of Intervention) Act 1981*

- *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*
- *Protection of the Sea (Shipping Levy) and (Shipping Levy Collection) Act 1981*
- *Protection of the Sea (Oil Pollution Compensation Fund) Act 1993*
- *Protection of the Sea (Oil Pollution Compensation Fund – Customs) Act 1993*
- *Protection of the Sea (Oil Pollution Compensation Fund – Excise) Act 1993*
- *Protection of the Sea (Oil Pollution Compensation Fund – General) Act 1993*
- *Australian Maritime Safety Authority Act 1990*

This package meets Australia's international obligations for ship sourced marine oil pollution preparation and response.

A Monitoring Plan for the Montara WellHead Release Timor Sea was prepared by PTTEP Australasia Pty. Ltd and agreed with The Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA). The WA Office of the Environment Protection Authority (OEPA) (within DEC at the time of the incident) provided technical advice and comments on the draft Plan to DEWHA.

The content of the Monitoring Plan was not agreed until 9 October 2009. Consequently, there was no overall agreed framework for monitoring activities for seven weeks after the incident commenced on 21 August 2009.

Whilst, DEWHA carries responsibility for Commonwealth waters and *Environment Protection and Biodiversity Conservation (EPBC) Act* issues in both State and Commonwealth waters, the State is ultimately responsible for protecting and conserving the environment within its area of jurisdiction.

Under the above arrangements, while it would be expected that WA would be consulted and provide advice, the State appears to have had little influence and no decision-making role in relation to proposed monitoring in State waters.

Furthermore, it is understood that there is no formal mechanism for the State to recover the cost of conducting scientific monitoring activities that sit outside of the Plan.

The agreed Monitoring Plan contains limited detail in respect of individual proposed monitoring studies. This presents some difficulty for providing informed advice on the adequacy of the Plan and activities it proposes. Furthermore, it is OEPA's experience that despite numerous requests to DEWHA via Transport WA key operational monitoring data (e.g. oil characteristics, weathering properties, and environmental toxicity) proposed under the Plan to be collected offshore was not made readily available to the State.

During protracted incidents such as this, spilt hydrocarbons can be widespread and potentially persistent in the environment, translating to elevated risk of spilt hydrocarbons impacting areas a long distance from the spill source. The level of State involvement and roles in decision-making in respect of the proposed monitoring activities within areas under WA jurisdiction could be strengthened.

It is the OEPA's view that communication between DEWHA, the Wellhead owners and the State, with respect to proposed monitoring activities associated with the response within the State could be improved.

The effectiveness, timeliness and certainty of environmental monitoring and management associated with spill incidents from offshore facilities would be achieved by requiring a more extensive explanation of spill monitoring within the Oil Spill Contingency Plan, which is approved under the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*.

Any arrangements for environmental monitoring and management associated with catastrophic failure of offshore facilities should:

- In no way constrain the State's ability to undertake, or to have undertaken, additional environmental monitoring and management activities it considers necessary for the protection and management of State assets under its jurisdiction:
  - To evaluate the extent and severity of any impact that may occur.
  - To monitor environmental impacts and assess recovery over time.

Provide for the costs of the State's environmental monitoring and management activities to be fully recoverable.

Any approved environmental monitoring plan should be sufficiently flexible to take into account variations in weather and sea conditions that may be encountered during the incident.

**3. Terms of Reference: Assess the performance of relevant persons in carrying out their obligations under the regulatory regime.**

The role of Transport WA's OSRCU and associated agencies under the NATPLAN in the case of the Montara incident has been one of assistance. The WA Government agencies that are a party to this submission do not have the necessary expertise, or the statutory authority to determine the effectiveness of each person who has participated in the response to give response to this question. They can only assess their own performance and that of the role of the OSRCU as a response unit.

The OSRCU in this instance has responded efficiently and effectively and in accordance with the IGA in the NATPLAN; however this Unit has limited resources in the form of appropriately trained personnel which restricts its capability to manage a sustained operation.

**4. Terms of Reference: Review the adequacy and effectiveness of monitoring and enforcement by regulators of relevant persons, under the regulatory regime.**

The role of Transport WA's OSRCU and associated agencies under the National Plan in the case of the Montara incident has been one of assistance.

The shared view of the WA Government agencies that are a party to this submission is that they do not have either the necessary information or the statutory authority to determine the effectiveness of the monitoring and enforcement of the regulators under the regulatory regime.

## **B. ADEQUACY OF THE RESPONSE**

- 5. Terms of Reference: Assess the adequacy of the response to the Uncontrolled Release by the current title-holder of AC/L7, the owner and/or operator of the Montara Wellhead Platform and the owners and/or operator of the West Atlas drilling rig.**

The shared view of the WA Government agencies that are a party to this submission is that they do not have either the necessary information or the statutory authority to assess the adequacy of the response to the uncontrolled release by the current title-holder of AC/L7, the owner and/or operator of the Montara Wellhead platform and the owners and/or operator of the West Atlas drilling rig.

- 6. Terms of Reference: Assess the adequacy of regulatory obligations applicable to the titleholder of AC/L7, the owner and/or operator of the Montara Wellhead Platform, and the owner and/or operator of the West Atlas drilling rig in relation to the response to the incident and make any recommendations necessary to improve the regulatory obligations that may be applicable to any future incidents.**

The WA government agencies party to this submission do not have Statutory Authority for the approvals surrounding the activities on the Montara Platform and therefore do not have specific knowledge of the operator's commitments in relation to the activity.

It is recognised that the *Offshore Petroleum and Greenhouse Gas Storage Environment Regulations 2009* requires the reporting of incidents to the relevant Authority, however specific requirements to expedite the response to an oil spill are unclear. A timeframe for responding to oil spills from petroleum operations should be given further consideration, together with associated penalties for a breach.

There are a number of concerns with the current regulatory regimes in place regarding the oil and gas industry in relation to non ship sourced pollution.

In the Inter-Governmental Agreement (IGA) for the NATPLAN, the oil company concerned is the initial responder to an incident in accordance with their Emergency response plans. Should the incident escalate, the IGA makes provision for transfer of the combat agency role to either the State/NT National Plan agency (if in State waters) or the AMSA. The transfer protocol does not appear to make provision for AMOSC, the industry funded response agency, to become the combat agency. WA is of the opinion that the criteria for transfer of responsibility are very broad and that they should be reviewed to make explicit mention of a role for AMOSC as a combat agency.

In the case of the Montara Wellhead the environmental responses have been fragmented with all agencies effectively leaving AMSA to respond to the incident. AMSA responded by activating the NATPLAN, Australia's national plan to combat ship sourced pollution. This Plan is funded by the shipping industry and it is questionable as to whether this is the appropriate source for funding a response that did not originate from the shipping sector.

Where there is a marine pollution incident from a ship, there are a number of international conventions through the International Maritime Organisation (IMO) which put into place a series of funds that approximate to \$1.4 Billion dollars (US) which are available for response, clean up and compensation for ship sourced pollution. As previously mentioned, these conventions operate on the basis of strict liability. The oil and gas industry regulators have a requirement for insurance to cover costs associated with a spill as part of the approval/permit process, the extent of that coverage is unclear.

PTTEP has acted with goodwill and has accepted liability for all costs outlaid by the Commonwealth for response, recovery and initial and ongoing cleanup and has issued a written confirmation of their intention to pay. WA has concerns that a less responsible organisation in a similar incident may not be as cooperative, creating a potential for the State and the nation to be exposed to substantial costs.

As Fisheries WA manages the Northern Demersal Scale Fishery and the mackerel fishery (which were likely to be directly affected by the oil spill), it would have been useful to have direct access to the company to explain the fisheries issues and to clarify what studies needed to be done and why. The opportunity to do so was not provided until the 14 October 2009, nearly two months after the spill commenced. At this meeting it was apparent that the Company did not realise that a significant amount of fishing was undertaken in the area surrounding the rig and that the area affected by the spill was a key area of the fishery. Fisheries WA presented the risks at this time and attempted to work with the DEWHA and PTTEP.

Hierarchical delegation from Commonwealth agencies slowed down the response. For example DEWHA provided information to the relevant Commonwealth agencies to pass onto the relevant state agency. In Fisheries WA case, this meant working through the Australian Fisheries Management Authority (AFMA).

Improvements to the response arrangements could include:

- The expansion of the National Marine Oil Spill Contingency Plan to include both short and long term environmental issues, as well as the clean up requirements.
- State regulators should have direct access to the company from the early stages of the spill. In Fisheries WA case, this will ensure that the necessary operational fisheries studies are commenced quickly.
- The establishment of a panel of experts from the State and Commonwealth agencies as soon as such an event occurs. This will ensure the issue is handled in a coordinated manner with appropriate experts to maximise

effectiveness and efficiency. Such a panel could monitor and consider a generic set of issues similar to DEWHA'S monitoring plan.

Although the regulators had a shared understanding of the issues, the varying objective of the different agencies led to a divergence of opinion regarding the approach to be taken. For example the use of dispersants (by AMSA) in this situation was opposed by agencies that were charged with protecting natural resources due to the risks of dispersants on aquatic life (e.g. plankton, larval fish). Scientists from these agencies believed that although the use of dispersants may be justified in protecting coastal resources, it was not warranted in the offshore environment. It was thought that the risks to the environment outweighed the advantages of using dispersants.

During the incident, WA DEC and DEWHA collaborated on the establishment of an Oiled Wildlife Centre in Broome and DEC provided officers trained in oiled wildlife response to assist DEWHA in surveillance operations at Ashmore Reef National Nature Reserve/Cartier Island Marine Reserve and for a survey of Browse Island. These arrangements were made on a full cost recovery basis. The WA ESC played a central role in the coordination of these arrangements. From the perspective of the coordination/facilitation role played by the WA ESC, co-operation and professionalism of all parties involved in these arrangements under the circumstances and tight timeframes is commendable.

While there is room for some improvements to be made, the daily situation reports were a key piece of information used to inform the WA ESC's evaluation of risk to State environmental assets that was undertaken on a daily basis throughout the incident.

### **C. ENVIRONMENTAL IMPACTS**

- 7. Terms of Reference: Assess and report on the environmental impacts following the Uncontrolled Release using available data and evidence including the outcomes of the monitoring activities already underway, review any proposed environmental monitoring plans, and make recommendations on whether any further measures are warranted to protect the environment from the consequences of the uncontrolled release.**

As the NATPLAN was activated, its format for monitoring was utilised.

WA considers that environmental risks in relation to commercial fisheries were not adequately considered nor documented in the Monitoring Plan. Participation by appropriate fisheries experts during the development stage of the monitoring plan would have been beneficial rather than commenting on a plan that had already been developed. Fisheries WA have been actively involved in research and monitoring in this area of the Timor Sea for over 15 years.

In addition, since to date most studies have focussed on the impacts of oil and dispersants on coastal environments (such as mangroves) and on clean-ups in confined areas, it would be useful to extend these studies to research the impacts of

oil and dispersants in oceanic areas such as in the north west of WA. Currently there is no strategic plan for enhancing knowledge of impacts, risks and appropriate management actions of these spills. This is a big gap given the amount of exploration and activities in NW WA.

WA considers that the requirement for confidentiality considerably slowed the monitoring and assessment processes. To produce useful data, many of the required assessment and monitoring studies needed to be developed, approved and implemented in a short time frame. This process needs to be streamlined for future events of this nature.

WA also recommends that a thorough risk assessment of the oil and gas industry be undertaken immediately to better capture and understand all environmental risks associated with oil and gas development, including cumulative risk associated with multiple activities. This should involve State and federal agencies, scientific experts, and other stakeholders.

WA's view is that these programs should be reported on publicly to maximise transparency.

In response to an assessment of risk posed to WA environmental assets based on examination of available information (including daily situation reports detailing the findings of aerial surveillance, dedicated oil spill trajectory modelling and satellite imagery) a quantitative baseline hydrocarbon survey of Kimberley islands and mainland shores was prepared. The survey proposal was submitted to the Company via DEWHA for consideration under the agreed Plan. The Company made a decision not to fund the proposal as presented.

Despite this decision, it was determined that the level of risk warranted a survey being implemented. A quantitative baseline survey of hydrocarbons in water, shoreline sediments and intertidal filter feeders (oysters) was conducted in the last week of October 2009 using State (DEC) funds and with the assistance of Paspaley Pearling Company. Sampling was conducted from Camden Sound in the south, north and east along the Kimberley coast and islands through to Cape Londonderry in the north. A total of sixteen sites on twelve offshore islands and two mainland shores were surveyed.

Results indicate that at the time samples were taken there were no detectable petroleum hydrocarbons present in any samples of water or shoreline sediments. Data from samples of intertidal filter feeders are still being interpreted and, although this is still being confirmed, the results suggest that no petroleum hydrocarbons were present.

Analysis of samples of seawater from a visible surface sheen taken near Browse Island on 14 November 2009 (a WA Nature Reserve) returned traces of Montara crude oil, albeit not in recoverable quantities and of doubtful time of origin. OEPA has been advised that a follow-up shore line assessment survey planned for mid December 2009 has been postponed until mid January 2010. OEPA has provided detailed technical advice in relation to sampling design and preferred methodology to

maximize compatibility of data with the State-funded survey conducted in October 2009.

The WA ESC made repeated requests via Transport WA for a sample of oil/weathered oil and other information about the environmental toxicity (including toxicity at various stages of weathering) and fate of spilt oil to help inform preparedness and response planning. As the oil sample and other relevant information has not been received to date no informed comment can be made in relation to environmental aspects of the spill relating to toxicity or physical characteristics of weathered oil.

With respect to issues of dealing with oil affected wildlife, DEC makes the following comments:

- Currently, there are two Oiled Wildlife Response Kits within WA for responding to incidents such as this, one of which is based in Perth and the other at Karratha. DEC upgraded the two response kits at a cost of \$20,000 so that the staff responding to the incident would be resourced with all the equipment necessary to meet their requirements.
- The DEC Wildlife Unit was put in place soon after the Montara incident began and was on standby throughout the duration of the incident to coordinate the receipt and treatment of oiled wildlife. DEC, in collaboration with DEWHA, established an Oiled Wildlife Centre in Broome shortly after the start of the incident and subsequently transferred the Karratha based Oiled Wildlife Response Kit to Broome to meet the needs of the Oiled Wildlife Centre that had been set up there, while the second kit was held in reserve at Perth.
- In response to a request from DEWHA, DEC also provided officers trained in oiled wildlife response to conduct surveillance patrols at Ashmore Reef. These arrangements were made on a full cost recovery basis. The WA ESC played a central role in the coordination of these arrangements. From the perspective of the coordination/facilitation role played by the WA ESC, co-operation and professionalism of all parties involved in these arrangements under the circumstances and tight timeframes were commendable.
- It appears that despite the lengthy duration of the Montara incident, there was a minimal impact on vertebrate fauna with approximately 27 oiled seabirds comprising a number of different species being picked up and treated by DEC staff while on station at Ashmore Reef National Nature Reserve/Cartier Island Marine Reserve or transported to Darwin and placed in veterinary care.
- While the oil spill incident occurred in waters under Commonwealth jurisdiction, DEC's involvement came about as a response to a Commonwealth request for assistance. As the oil spill continued, it also became apparent that the slick had the capacity to impact on State waters and assets. This in fact occurred during the latter stages of the incident when evidence of petroleum pollution was found in State waters adjacent to the Browse Island Nature Reserve by a DEC observer.



#### **D. THE OFFSHORE PETROLEUM INDUSTRY'S RESPONSE**

**8. Terms of Reference: Consider and comment on the offshore petroleum industry's response to the Uncontrolled Release.**

There appears to be no statutory provision for the industry to respond to non ship sourced pollution other than that previously mentioned.

Industry's response was conducted through AMOSC who worked closely with AMSA in providing personnel and resources to support the clean up; an arrangement that proved efficient and effective. However, it is appropriate to review the location, amount and accessibility of response equipment to reduce costs and response times. This submission has made comments earlier on the potential for delays in deployment due to distance and infrastructure problems. This is of particular importance given the substantial increase in activity in NW WA.

#### **E. PROVISION AND ACCESSIBILITY OF INFORMATION**

**9. Terms of Reference: Consider and comment on the provision and accessibility of relevant information regarding the Uncontrolled Release to affected Stakeholders and the public.**

WA agencies have acted in an assisting capacity in this incident and as such were not the lead for media relations. However, it is the collective view that a more collegiate approach to relaying information in relation to this incident to the general public would have been more effective than the response mechanisms that were used. This approach would have minimised the opportunity for the media to sensationalise the incident and ensure the timeliness of information released. For example, the oil recovery operations recovered and recycled in excess of 800,000 litres of oil from the surface of the sea; this activity was not well publicised.

Although Situation Reports were supplied daily and outlined the key operational aspects of the response, these did not always contain sufficient or appropriate information for stakeholders to understand the current level of threat to State environmental assets posed by the spill. Furthermore, there was no clear mechanism for the State to input the extensive experience and contemporary knowledge relating to the Kimberley environment that resides with the State Government to inform response planning. As such, it could be argued that there was a body of relevant environmental information that could have been better utilised by industry and the Commonwealth Government during this incident.

An improvement to stakeholder communications arrangements for future incidents would be to provide a mechanism for the relevant State agencies and stakeholders to have more direct involvement/input into the environmental aspects of incident response, via the ESC, where this relates to protection of State environmental assets.

- 10. Terms of Reference: Make recommendations to the Minister for Resources and Energy, and through the Minister for Resources and Energy, other relevant Commonwealth Ministers, regulators and industry, as appropriate, on any measures that might help to prevent similar incidents occurring in the future and any measures that might mitigate the safety, environmental, and resource impacts arising from such an incident. Measures may include improvements to industry practices or applicable regulatory regimes and their administration.**

As previously discussed in Terms of Reference 2, WA relies on a comprehensive legislative framework, appropriate regulatory procedures and practices, regular engagement with operators, and, adequate resourcing and expertise in order to efficiently and effectively regulate the upstream petroleum industry. It is WA's view that the current legislative and regulatory regime is adequate to minimise the risk of such an incident as Montara occurring. However, it is recognised that there is a need for continual improvement and DMP is currently working to strengthen the existing Joint Authority/Designated Authority arrangements rather than move towards Commonwealth government administration. In addition, there is a need to clarify the division of responsibilities and develop protocols for interactions with other government agencies particularly with respect to incident response arrangements.

#### **F. OTHER MATTERS**

- 11. Terms of Reference: Consider, assess and make recommendations in relation to any other matters the Commission of Inquiry considers relevant to or arising from the Uncontrolled Release and the prevention of similar events occurring in the future.**

WA State government agencies are unable to comment on causation since they have not been advised of the causative, regulatory or operational circumstances surrounding the matter. Specific aspects of WA petroleum operations and regulatory practice would be best provided by direct contact with the Inquiry Team. However, in relation to the pollution response the following comments are provided:

- In cases where pollution is caused by vessels, the shipping industry has a worldwide regime to combat these spills. In Australia, under the Protection of the Sea Levy, a charge is levied against ships based on the principle that the polluter pays. This is applied to vessels which are more than 24 metres in length and carry more than 10 tonnes of oil in bulk as fuel cargo. The levy is used to fund the NATPLAN to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances and also supports National Maritime Emergency Response Division (NMERA).
- A similar levy to that used for the shipping industry may be appropriate to cover cleanup costs from spills sourced from the offshore petroleum industry.
- As previously stated, compensation for pollution damage caused by spills from oil tankers is governed by an international regime through a series of conventions under the auspices of the International Maritime Organization (IMO). A feature of this regime is that it operates under the principle of "strict liability"; the shipowner is also able to limit liability, currently at a maximum \$A170m.

Under the National oil spill contingency plan there is an informal protocol arrangement endorsed by the Environmental Assessors Forum and the National Plan Operations Group to set out the process for transferring combat agency responsibility following a pollution event from an offshore petroleum operation.

However this protocol does not:

- Apply to the normal provision of assistance or advice where combat agency responsibility does not change.
- Have any funding implications.
- Affect the formal National Plan arrangements in respect of such matters.
- Have any legal enforcement.

In the *Offshore Petroleum and Greenhouse Gas Storage Act* there is a requirement for petroleum permit holders to have insurance. Section 571 of the Act outlines insurance requirements and stipulates that as directed by the Designated Authority, a company must maintain insurance against the expenses of clean-up or other remediation of the effects of a spill. It is understood that under the current legislative regime, including the OPGGSA, requirements under the activity specific Environment Plan and Oil Spill Contingency Plan and civil liability the titleholder is responsible for all expenses associated with the clean-up and recovery of an oil spill from their activity.

WA has highlighted the need for clarification of the various roles of the regulatory authorities in these circumstances. Some examples are:

In regards to confidentiality:

- It is unclear of why the details of the proposed studies were kept confidential. This prevented a wide range of expertise being used in the planning stage.
- Fisheries WA would have liked to engage with Western Australian Fishing Industry Council and the fishermen who fish within this area to effectively use their knowledge and experience to inform decisions.

The confidentiality provisions should be reviewed.

In regards to monitoring studies:

- The Wellhead owner and DEWHA designed the format of the monitoring studies and agencies were restricted to commenting on these proposed studies.
- Fisheries WA considers that rather than numerous individual studies been it may have been more effective if several large-scale collaborative studies been undertaken. Environmental issues are more effectively studied on a broad scale, holistic basis. For example the long-term effects on fish will depend on whether the habitat has been impacted or whether prey (or predator) species have been affected. Expertise to determine this lies within other agencies (e.g. Australian Institute of Marine Science). However, affect on habitat is considered in the "Offshore Banks Assessment Survey".

Fisheries WA suggests that this study be extended into the NDSF and the resulting data made available to scientists undertaking fisheries studies to underpin future management frameworks.

- The Wellhead owner currently determines which studies are undertaken, and may (and have) vetoed the advice of experts in the relevant field. This arrangement may require review in order to ensure relevant studies are implemented.
- The triggers for the studies were based on the EPBC Act Policy Statement, 'Significant Impact Guidelines' (2006) and relate to actions that are likely to have a significant impact on a vulnerable species. These guidelines are not suited to commercial fisheries so studies.

In regards to knowledge within the States:

Western Australian State agencies such as Fisheries WA, DEC and the Australian Institute for Marine Science have undertaken research in this area for over a decade. It may have been more appropriate for these agencies to take the lead in designing the scientific studies.

The DPA has raised the concern that the opportunity could have been taken during the course of the incident response to draw from a wider pool of resources to provide experience for more personnel in responding to these incidents. DPA has put a lot of effort into oil spill preparedness in terms of training and exercises and engagement in incidents of this type enhances the states ability to respond.

It is the Fisheries WA view that the Wellhead owners/operators may not have adequately considered all risks associated with their activities. It would be more beneficial for the Government regulators with the appropriate expertise to undertake the risk assessment of any future developments. Other improvements could include the uploading of the complete environmental plans (rather than just the summaries) on websites to allow better and broader scrutiny of proposed developments.

With respect to the roles and responsibilities of the States and the Commonwealth, WA considers that it would be beneficial to review and clarify the roles of each of the agencies to maximise the effectiveness and efficiency of the response. Furthermore, the experience of the uncontrolled hydrocarbon release from the Montara Wellhead would indicate that the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) does not appear to provide sufficient protection for fish species that are not endangered or vulnerable, i.e. those that are commercially fished. The fishery resources in the area around the spill are under management by the Fisheries WA and considered fully-exploited. Any additional impact (e.g. oil spill) could increase the risks to sustainability beyond management levels. This needs to be taken into account in future events.

FESA received situation reports daily. However, regular more formal briefings to WESTPLAN stakeholders to assist agency preplanning would improve preparedness and, if necessary, any response. Lack of clarity between Commonwealth (AMSA) and Transport WA) jurisdiction/responsibility may be the cause of the lack of formal briefings.



The HMA (clarity issue as detailed above) needs to take a more prominent/leadership/management role, with a greater public profile, to engage the community/media and provide timely and quality information. It appeared there was no considered approach by the HMA to engage the community, leaving the void to be filled by the company and environmental groups.