



Save the Nature of the Kimberley

environs
KIMBERLEY
INC

22 December, 2009

Montara Commission of Inquiry
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Dear Mr Borthwick

**Re: Submission to the Commission of Inquiry - Montara Well Head Platform
Uncontrolled Hydrocarbon Release, December 2009**

This submission is written in response to the Commissioner's call for submissions to the Commission of Inquiry - Montara Well Head Platform Uncontrolled Hydrocarbon Release, with respect to the uncontrolled release of hydrocarbons at the Montara Wellhead Platform that commenced on 21 August 2009, and subsequent events including the fire that commenced on 1 November 2009.

Collectively, The Wilderness Society and Environs Kimberley have a membership of tens of thousands of Australians who are concerned about the effects of the fossil fuel industry generally and, in particular, this oil spill on the environment.

General Recommendations

The Wilderness Society (TWS) recommends no further expansion of the petroleum industry in Australia's Kimberley/North West marine waters until such time as:

1. A network of marine parks with large 'no take' sanctuaries is established in the Kimberley/North West marine region to provide protection from the impacts of the petroleum industry and be buffered from events like the West Atlas oil spill;
2. It can be shown that proposals for expansion of the Kimberley/North-West petroleum industry are fully compliant with binding national climate change and pollution mitigation policies and targets;
3. Faster response time mechanisms and improved oil spill procedures are developed and adopted – with strong independent compliance enforcement.

Concerns on specific items in the terms of reference are addressed below.

Terms of Reference

Term of Reference 2: 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.

International Maritime Organisation (IMO) Conventions which require ships to carry compulsory insurance against oil spills do not apply to stationary oil rigs. However stationary oil rig operators would still be liable under the common law to pay for the cost of any damage which they cause due to oil spills. The fact that they are not covered by IMO conventions would mean that recovery of damages is more complex, and public authorities are at risk of having to foot the bill if the companies become insolvent.

TWS Recommendation 2.1: The Federal government commits to recommending legislation or regulations to ensure that stationary oil rigs operating in Australian waters have compulsory insurance against oil spills.

The *National Plan to Combat Pollution of the Sea* was created by an inter-governmental agreement between Australian governments covering cleanup of oil spills. It provides that the primary responsibility for cleanup falls on the operator, however the Australian Maritime Safety Authority (AMSA) is also able to undertake emergency works and recover costs from the operator. We are concerned that the operator PTTEP failed to stop the oil spill as soon as possible because it refused an offer of a closer rig in the first few days after the oil spill. PTTEP's repair rig took 3 weeks to tow to the site which increased the length of time between the start of the oil spill and the first attempt to plug it by several weeks.

TWS Recommendation 2.2: An independent authority, made up of petroleum spill and environmental experts, should be established and in the case of oil spills be ready to oversee the operator responsible for stopping the oil spill and cleanup. This would ensure that all decisions made by the operator are based on reducing the impacts of the oil spill on the environment, rather than intra-industry politics or cost assessments.

Levies for pollution control under the *National Plan to Combat Pollution of the Sea* are collected by AMSA from shipping using Australian ports rather than oil platforms, therefore PTTEP would not have paid any levies in connection with operation of the Montara oil rig. It may have paid some levies for the ships used to supply the rig or transport the rig to the site. Levies pay the cost of administration of the *National Plan to Combat Pollution of the Sea* and for spills from unidentified sources. However, there is a provision under s 571 of the *Offshore Petroleum & Greenhouse Gas Storage Act 2006 (Cth)* that imposes a requirement for holders of petroleum exploration licences and infrastructure licences to obtain insurance in connection with works done under the licence, which may partly cover liability for oil spills.

TWS Recommendation 2.3: The Commission of Inquiry should investigate why oil rigs and pipelines are not required to pay the levy, given that an unidentified spill could emanate from a broken pipeline, FPSO, or platform at any time.

TWS Recommendation 2.4: Industry should be required to create a fund (similar to environmental bonds for mining) that AMSA can draw on as required to clean-up the spill so they have no constraints around the use of public revenue to use the best available method of controlling the spill. The fund can be recouped from the operator once the spill has been contained.

Tax concessions under the Research and Development Tax Concession Scheme are available in relation to the development of new or improved exploration techniques or methodologies, and not to prospecting or exploring for oil and gas *per se*. We do not know if PTTEP was able to claim these concessions. The cost of plugging the oil well will be part of PTTEP's costs of business, will reduce its overall profits and therefore the amount of tax that it has to pay (but we do not know how much of this tax would have been payable in Australia anyway). Fines and penalties, on the other hand, are generally not tax deductible.

TWS Recommendation 2.5: The Commission should investigate and recommend changes to the tax concessions legislation to prevent the costs of cleaning up pollution to be claimed as a tax deduction by the company that caused the pollution, or any other company associated with that company where the claim could lead to financial benefit to the company that caused the pollution. It is important to maintain the "polluter pays" principle, which is written into most environmental protection legislation.

TWS Recommendation 2.6: Compliance needs to be fully funded by secure Government funding, not relying on pollution to fund environmental programs. Fines and penalties for polluting the environment that are paid by the operator should fund environmental improvement and not go into consolidated revenue.

Spills such as this are supposed to be avoided through the use of a fail safe system of valves. It is not clear why the emergency valve system was unable to prevent this oil spill

TWS Recommendation 2.7: The review should investigate whether all fail safe mechanisms required by regulation were in place, and if so, then what further measures are required in the legislation to prevent a similar occurrence.

Term of Reference 5: 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 owner and/or operator of the West Atlas drilling rig.

At no time throughout the spill, did the operator PTTEP use a boom around the rig to contain the oil and condensate near the rig.

TWS Recommendation 5.1: The operator should be asked to explain why it had no contingency plans for a spill and why it did not to contain the spill as soon as it was possible.

The operator was unable to measure the flow rate of petroleum from the damaged rig. This lack of information hindered assessments of the impact of the spill and therefore decisions about the response.

TWS Recommendation 5.2: The operator should be asked to explain why it had no contingency plans for a spill and why it did not to contain the spill as soon as it was possible.

There was significant concern from scientists about the impacts of dispersants used during the spill. The regulations around the use of dispersants against natural dispersal or the more expensive use of physical barriers needs to be investigated further in the context of reducing environmental impact.

TWS Recommendation 5.3: Review regulations controlling the use of chemical dispersants

Term of Reference 6: 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.

In making two important decisions badly – delaying the repair rig (see recommendation 2.2) and not placing booms around the rig to contain the oil - the operator failed to do it's utmost to protect the environment from polluting oil.

TWS Recommendation 6.1: An independent authority, consisting of petroleum spill and environmental experts, should be established to oversee the operator responsible for stopping the oil spill and cleanup to ensure that all decisions made by the operator are based on reducing the impacts of the oil spill on the environment, e.g., booms should have been installed to contain the oil spill.

TWS Recommendation 6.2: Industry should be required to create a fund (similar to environmental bonds for mining) that AMSA can draw on as required to clean-up the spill so they have no constraints around the use of public revenue to use the best available method of controlling the spill. The fund can be recouped from the operator once the spill has been contained. (same as TWS Recommendation 2.4)

TWS Recommendation 6.3: Regulations should clearly state that in the incident of a spill, the responsibility of the operator is to do everything possible to control the spill as quickly as possible, there should be significant financial penalties for not doing so.

Term of Reference 7: Assess and report on the environmental impacts following the uncontrolled release using available data and evidence including the outcomes from 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.

There is a lack of adequate understanding of or knowledge about this marine region that hinders all studies on the impacts of oil spill in the region.

TWS Recommendation 7.1: In pristine, highly diverse, but under-studied marine areas, such as off the Kimberley Coast, the petroleum industry should fund baseline monitoring of the marine environment at both small-(rig location) and large-spatial scales. Such studies should include oceanography and currents, benthos, biodiversity, fisheries and migration routes and timing.

The monitoring plan includes the collection of pre-impact data, but it is unclear whether this was done in all of the studies and how long has this plan actually been in operation.

TWS Recommendation 7.2: The DEWHA website provides more information about the monitoring plan (see TWS Recommendation 7.5).

It is not clear what is to be done with the data collected and this information should be made available to all scientists that would like to use it.

TWS Recommendation 7.3: The data collected by all monitoring projects be stored in a regional database that can be accessed by the public.

The science is unclear on the use of dispersants on oil spills, particularly in shallow tropical seas when corals are spawning.

TWS Recommendation 7.4: The petroleum industry should fund comprehensive studies on the best methods to “clean up” oil and condensate in tropical shallow seas. The impact of oil and dispersants in tropical seas should be examined.

There have been problems with the Scientific Monitoring Programme due to lack of information on when and if the studies were triggered. It is difficult to assess if and when each of the seven monitoring studies were triggered. When asked in the same week, PTTEP and DEWHA responded differently saying respectively that of the 7 studies, 2 and 5 studies had been triggered.

This does not instill confidence in the government’s handling of the spill or its aftermath.

The DEWHA website was unclear on what role the scientific reports held in relationship to the specific aspects of the monitoring programme and what else would be done to follow up the work: e.g. the function of the ecotoxicology report was unclear.

This lack of clarity could be construed as misleading the public as it suggested that studies on wildlife had already been conducted.

Also, how are the recommendations from the completed studies being fed back into the Scientific Monitoring Programme.

TWS Recommendation 7.5: DEWHA puts more information on their website that describes the current state of monitoring studies,(eg what study has been triggered, approved by DEWHA, is in progress and finished as well as future work generating from new reports). This information needs to be updated regularly (at least weekly).

The studies within the Scientific Monitoring Programme mainly focus on recording the observable status of what is present and don't focus enough on long term population studies and examining long term trends. e.g the long-term breeding success of birds should be monitored.

TWS Recommendation 7.6: To add in longer-term objectives where appropriate in each of the studies in the Scientific Monitoring Programme.

There seems to be an emphasis on aerial monitoring that may not be adequate.

TWS Recommendation 7.7: Megafauna surveys include boat surveys to include smaller species such as seabirds and sea snakes.

The two fish studies focus only on health and edibility of fish populations. No study examines the impacts of the oil spill on the marine ecosystem using various fishes or shellfish as indicators of pollution. The sampling design should include indicator species collected from different depths, habitats and exposure to the oil. Other organs known to accumulate hydrocarbons should be tested for contamination.

See p.4 of Report on Biopsy Collections from Specimens Collected from the Surrounds of the West Atlas Oil Leak -Fish Specimens

"Bile samples collected upon capture of fish can accumulate petroleum hydrocarbons up to 1000-times higher levels than in fish white muscle and consequently, collection and analysis of fish bile would be a more sensitive parameter in informing on possible exposure of fish to petroleum hydrocarbons."

and (p.5)

"PAHs are readily accumulated in clams and mussels, but not in fish, birds and mammals because vertebrate species are capable of metabolising PAHs at rates that prevent significant bioaccumulation (Hartung 1995). However, ill-effects associated to chronic (long-term) exposure to crude oil have been commonly observed in wildlife, including in fish (Budzinski et al. 2004; Marty et al 2003; Barsiene et al 2006). It is imperative to commence a monitoring program of fish health during the oil spill, as well as after the oil leak has been solved. A fish health monitoring program should continue until there is no sign of exposure or ill-effects in fish. "

TWS Recommendation 7.8: Devise a new study examining the ecosystem impacts of the oil spill on the marine fauna using various fishes or shellfish as indicators of pollution of the marine environment. Indicator species should be sampled from different depths and habitats relating to proximity to the plume (exposure to oil) and various organs should be sampled, rather than edible flesh, and tested to examine contamination.

There has also been a lack of information upon which to assess the monitoring plans. Many of the plans omitted detailed methodology that is important in determining the quality and the extent of the scientific research.

Yet, in 'C. ENVIRONMENTAL IMPACTS', The Commissioner has asked, "Is the Scientific Monitoring Programme adequate; and are there worthwhile enhancements that could be made to it?"

While we can state that from the reports on the DEWHA website that

- the sampling of four fish of different species is not adequate for sampling the effects of this oil spill on the fisheries in the area, and
- the science team monitoring the effects of the oil spill spent too little time (less than a week) and studied a relatively restricted area of the oil spill,

we cannot comment further on the sampling regime due to the lack of information made available.

TWS Recommendation 7.9: The Commissioner provides further details about the Scientific Monitoring Programme to those who are interested in responding and recommends greater transparency in all future such incidents.

The Scientific Monitoring Programme is managed by the owner/operator but approved by DEWHA. While DEWHA needs to oversee the operator, we have been notified that this approvals process delayed the start of at least one scientific research project. When these studies are assessing the impact of the spill, it is important that they are conducted as soon as possible after the spill to gain a better understanding.

In her report to DEWHA on September 29th, Associate Professor Gagnon concluded, "It is imperative to commence a monitoring program of fish health during the oil spill, and continue monitoring after the oil leak has been solved." suggesting that approvals by DEWHA were delaying the onset of S4A. As Associate Professor Gagnon says "petroleum body burden in wildlife is expected to reduce rapidly following the cessation of exposure", delays in this study would have huge ramifications on its results.

TWS Recommendation 7.10: That the DEWHA approvals process have an "emergency" turn around period of 1-2 days during oil spills.

Term of Reference 9: Consider and comment on the provision and accessibility of relevant information regarding the uncontrolled release to affected stakeholders and the public.

There was a critical lack of information provided to the public about the oil spill, which gave the impression of a cover up by both the government and industry. We believe that the way the oil spill was handled by the agencies has tarnished the reputation of Government and the petroleum industry almost as much as the oil spill has.

The fact that the first fly over of the oil spill was by an independent observer (Senator Rachel Siewert) which was followed by a government fly over and the first boat trip out to the oil spill (WWF) was followed by a DEWHA authorised boat trip shows that the Government was

forced into action by others. The impacts of this oil spill were initially downplayed as much as possible - showing a complete lack of judgement about the severity of the spill and its environmental impacts.

Most of the information to the public came from the media through third parties, and often they did not have a good understanding of all of the issues.

PTTEP's media releases were difficult to understand and vague, e.g., Media Release of 29th October indicating that the scientific studies had been triggered when this was not the case.

AMSA had the best information on its website, which was updated regularly. Oil spill information on DEWHA's website was not easy to find.

TWS Recommendation 9.1: A website that has all the information on the oil spill is developed for the specific emergency so that people can find out what is happening. The government must be proactive in providing as much information to the public as is possible in such emergencies.

Term of Reference 10: 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.

TWS Recommendation 10.1: There should be no further expansion of the petroleum industry in Australia's Kimberley/North West marine waters until such time as a network of marine parks with large 'no take' sanctuaries is established in the Kimberley region to serve as protection from events like the West Atlas oil spill.

TWS Recommendation 10.2: Faster response time mechanisms and improved oil spill procedures must be developed and adopted – with strong independent compliance enforcement.

TWS Recommendation 10.3: Proposals for expansion of the Kimberley/North-West marine petroleum industry must be fully compliant with binding national climate change and pollution mitigation policies and targets before they are allowed to proceed.

Should you require any further information associated with this submission, please contact the Dr Jill StJohn, Marine Co-ordinator, The Wilderness Society WA.

Yours sincerely

A handwritten signature in black ink on a light yellow rectangular background. The signature reads "Jill StJohn" in a cursive, slightly slanted script.

Dr Jill StJohn
Marine Co-ordinator,
The Wilderness Society, WA

A handwritten signature in black ink. The signature is highly stylized and cursive, appearing to read "Martin Pritchard". It features a long, sweeping horizontal line extending to the right.

Martin Pritchard
Executive Director
Environs Kimberley