

Tuesday, 22 December 2009



WDCS Submission to the Australian Government Commission of Inquiry into the Uncontrolled Release of Oil and Gas from the Montara Wellhead Platform in the Timor Sea

WDCS, Whale and Dolphin Conservation Society, understands that this Commission of Inquiry was established by the Minister for Resources and Energy on 5th November 2009 to report on the uncontrolled release of hydrocarbons at the Montara Well Head Platform and subsequent events, and is being undertaken pursuant to Part 9.10A of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. The Inquiry's powers incorporate the provisions of the *Royal Commissions Act 1902*.

WDCS is both an environmental expert and a Non-Government Organisation with a material interest in the Inquiry. WDCS is an international non-governmental organization with cetacean protection activities spanning more than 25 countries around the world. WDCS expertise crosses the spectrum from conservation science and field research, to the development of habitat protection models and policy implementation. WDCS has been active in Australia and the surrounding region for ten years.

WDCS submits comments to the Terms of Reference points 2, 4, 6, 7 & 10.

Terms 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.

WDCS understand that approval for the Montara Oil Field Development was given in September 2003, under the *Environment Protection and Biodiversity Act 1999*.

The evidence suggests that there was inadequate information about the species most likely present and about the impacts of a spill on these species available to the Government at the time of the spill. It is our contention that the absence of this information indicates the conditions of approval in 2003 were not sufficiently robust, with specific regard to possible consequences of an uncontrolled release.

The response to the spill and public statements made in October made by those involved in spill containment, Minister Ferguson's and Minister Garrett's offices, indicate an assumption that there was no significant wildlife in the vicinity of the spill and that the spill itself or the sheen created posed no threats to wildlife other than seabirds. Such statements are not well founded and are made on quick assumptions, not current scientific information.

These statements also reveal that the Environmental Impact Assessment conducted before approval was given, was either not referred to during this period of the spill, or did not provide

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appropriate detail about the species likely to be present at the time of the spill or the impacts such a spill might have on these species.

Had they been asked, marine mammal experts would have quickly advised the Government that marine animals can ingest oil-derived toxic compounds either directly from the water or with their food. Poisonous vapors can also be inhaled by cetaceans and pinnipeds and especially when the volatile components evaporate into the air from freshly spilled oil. There will also be chronic longer-term effects of oil entering food-chain potentially affecting both them and their prey. Much of this will happen far from sight and if cetaceans are otherwise affected – days, months and years into the future - we are unlikely to be witness to this.

Recent observational research of wild animals has shown that the cetaceans (whales, dolphins and porpoises) being observed in the vicinity of a spill could detect slick and mousse oils but did not react to lighter sheen oil. Groups hesitated and milled upon encountering slick oil, eventually diving under or in small patches but continuing through extensive areas. Observations suggest that cetaceans may respond to thick oil types by swimming closer together, decreasing respiration rates, and increasing dive times and rates of reorientation. The greatest concern is that cetaceans may detect but not consistently avoid entering slick oil, and may not detect sheen oil, thereby increasing their vulnerability to potentially harmful exposure to oil chemicals.

It was not until an independent survey conducted weeks after the start of the spill revealed wildlife in the vicinity of the spill that there was Government acknowledgement of the wide range of species likely present. Presumably this information became available to Government through the report commissioned by the Department of the Environment, Water, Heritage and the Arts, *A rapid assessment of the impacts of the Montara oil leak on birds, cetaceans and marine reptiles (Rapid assessment)*, that provided significant information collected during a very short survey of the region between 25th September and 4th October. Contrary to previous assertions by the Government, the report (completed 25th October), revealed a high level of diversity and abundance of birds (number of individuals = 2801, number of species =23), cetaceans (number of individuals = 462, number of species = 4), turtles (number of individuals = 25, number of species = 2) and sea snakes (number of individuals = 62, number of species = 4), in the region of the Montara oil spill. The report acknowledged that there were likely more species than were sighted during the survey and that others would have recently migrated out, or would be migrating into the region.

The Government and Industry *Monitoring Plan for the Montara Well Release Timor Sea* publicly released (15th October 2009) further reveals the need to gather basic biological data about the species and ecosystems surrounding the rig. WDCS asks why such basic information was not already available, and questions why this was not gather during the Environmental Impacts Assessment process.

Terms of Reference #4: Review the adequacy and effectiveness of monitoring and enforcement by regulators of relevant persons¹, under the regulatory regime.

and

Terms 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.

and

Terms 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.

WDCS believes that the monitoring and requirement for spill contingency was insufficient for the species and risks present in the region, and that this stems from inadequate conditions of approval given in September 2003, under the *Environment Protection and Biodiversity Act 1999*.

WDCS strongly concurs with the *Rapid assessment* recommendations for long term monitoring of the impact to cetacean behaviour and populations numbers as a result of the spill. The time scale of impact for marine mammals is easiest broken down into stages:

1. Between the first few minutes and days

- Bioaccumulation to effect threshold period includes toxicity, smothering, ingestion, inhalation and absorption into the circulatory system all causing death
- 2. Between the first few days and months
 - Altered performance period is when the sub lethal disruption of physiological and or behavioural activities take place that do not cause immediate mortality, although death may follow because of damage to tissues such as the sensitive membranes of eyes, mouth and the respiratory tract, neurological disorders, interference with feeding and reproduction activities, loss of thermal capabilities, abnormal growth or behaviour, greater susceptibility to predation or disease, loss of reproductive success and recruitment and bioaccumulation of hydrocarbon residues
- 3. Between the first few months and years
 - Population impact period might include reduced abundance, altered distribution, changes in age structure and an altered gene pool
- 4. Between the first years and decades
 - Ecosystem function impact period can include changes in species compositions dominance switches, changes in diversity, reduced abundance and biomass, population extinctions, alterations of special structures, stability fluctuations and successional influences

WDCS therefore believes that a minimum timeframe for monitoring should be at least a decade, and that all results should be transparently available to the public.

WDCS asserts that the existing *Monitoring Plan for the Montara Well Release Timor Sea* is poor and inadequate in that it provides no:

1. confirmation that reports will be released publicly;
2. indication that Indonesian biodiversity will be considered; and
3. comment about what will be done once the programme belatedly establishes that there is an impact;

The *Monitoring Plan* is silent on the duration of commitment the Government has secured from industry and it leaves all monitoring initiative to civil society to take forward on an adhoc basis.

Terms 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.

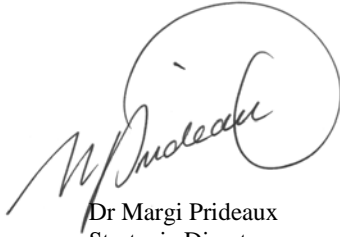
The evidence suggests that there was inadequate information about the species most likely present and about the impacts of a spill on these species available to the Government at the time of the spill. It is our contention that the absence of this information indicates the conditions of approval in 2003 were not sufficiently robust, with specific regard to possible consequences of an uncontrolled release.

WDCS recommends that the Government should:

1. immediately freeze all new oil and gas exploration applications until this inquiry has finalised its results;
2. develop much stronger conditions and controls over all oil and gas rig and shipping activities including full environmental impact assessments being completed and independently reviewed and accepted as rigorous and appropriate before any approvals for activity are granted;
3. develop much more thorough contingency plans for future spills, that take into account the species likely present in the region before any future approvals are given for operations in Australian waters;
4. impose much more thorough contingency plans for future spills, that take into account the species likely present in the region before on all existing operations in Australian waters; and
5. Renegotiate the *Monitoring Plan for the Montara Well Release Timor Sea* is to provide for:
 - a. transparent release of research findings;
 - b. expansion of the region to be monitored to cover associated ecosystems, including those in Indonesian waters;
 - c. transparent release of action plans at the point that the programme establishes that there is an impact; and

- d. Government commitment to fund, through industry contribution or Government funds, the full term of the *Monitoring Plan* for a period of no less than 10 years
6. identify and fully protect all critical habitats of species listed under the *Environment Protection and Biodiversity Act 1999* before any further oil and gas acreage is released again.

WDCS recommends that the adequacy of knowledge before the spill should be investigated through the public hearings process. WDCS wishes to participate in these hearings and to have the opportunity to provide scientific experts that can speak to the known impacts of petroleum and gas spills on marine mammals , for the purpose of demonstrating the level of information that should have been in place prior to approvals being given, and for developing better risk assessment processes and procedures should such an accident happen again.

A handwritten signature in black ink, appearing to read 'M. Prideaux', is written over a circular stamp or seal.

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Whale and Dolphin Conservation Society (International)
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