

A THREE-PRONGED APPROACH TO OFFSHORE SAFETY

*James A. Watson**

Professor Weaver is to be commended for her thorough and insightful analysis of offshore safety following the tragic loss of the MODU Deepwater Horizon and consequent oil spill in the Gulf of Mexico in 2010.¹ As one of the initial Federal On-Scene Coordinators for the oil spill response, I certainly value every study and recommendation that focuses on improving offshore safety.

The month long Macondo Gulf of Mexico spill response itself was full of high-risk offshore activities involving thousands of people from its beginning to end. I experienced personal accountability for offshore safety in the same way major oil company executives experience it. Every day you want to do something more, if possible, to prevent an accident.

Professor Weaver's two-part article focuses on offshore activities that are permitted by the U.S. Interior Department and regulated by the Bureau of Safety and Environmental Enforcement ("BSEE") and the U.S. Coast Guard ("USCG") according to the Outer Continental Shelf Lands Act ("OCSLA")

* James Watson is currently serving as President and COO for the Americas Division of ABS. Prior to joining ABS, Watson served as Director of the Bureau of Safety and Environmental Enforcement at the U.S. Department of Interior. In this role he provided regulatory oversight for energy exploration and production on the U.S. Outer Continental Shelf. Before becoming BSEE Director, Watson served as the U.S. Coast Guard's Director of Prevention Policy for Marine Safety, Security, and Stewardship. He was also designated as the Federal On-Scene Coordinator for the government-wide response to the Macondo incident in the Gulf of Mexico.

1. See generally Jacqueline L. Weaver, *Offshore Safety in the Wake of the Macondo Disaster: Business as Usual or Sea Change?*, 36 HOUS. J. INT'L L. 147 (2014); Jacqueline L. Weaver, *Offshore Safety in the Wake of the Macondo Disaster: The Role of the Regulator*, 36 HOUS. J. INT'L L. 379 (2014) [hereinafter Weaver, *The Role of the Regulator*].

as amended.² My opinion is that offshore safety recommendations ought to consider all oil and gas related offshore activities, including state-permitted well operations, Transportation Department regulated pipelines, and the many non-OCSLA regulated offshore activities such as helicopter and crew boat transportation, offshore construction, and spill response.

How should safety be improved offshore?

I considered improving safety as my primary goal as a career Coast Guard officer and as the Department of Interior appointed director of the newly created BSEE from 2011 to 2013. Professor Weaver's articles provide a very fair, detailed description of key portions of offshore regulatory history and the agenda during the period I was the BSEE director. I certainly agree with her general statement that offshore safety in the United States is a "work in progress."³ I'm proud of that and hope it is always a work in progress. I believe highly effective organizations, both private and public, must be learning organizations willing to listen, change, and show measurable results.

There are indicators that BSEE's efforts, along with partner agencies and the industry itself, are achieving results. For example, the death toll from offshore industrial accidents in 2014 was significantly lower than in previous years, with only one casualty.⁴ That's not a trend, just a data point. However, 2014 was a very busy year in the Gulf of Mexico, particularly in deep water where the number of drilling rigs increased significantly and several new production units were deployed.

I continue to believe in a three-pronged approach to improving offshore safety.

First, you must have fit for purpose equipment and engineering design and construction standards. OCSLA refers to the best and safest technology. Interior Department's capping and containment equipment requirement, expanded drilling and

2. See generally Weaver, *The Role of the Regulator*, *supra* note 1, for a discussion of the roles of such governmental agencies in the context of the post-Macondo regulatory regime for offshore safety.

3. *Id.* at 469.

4. *Fatalities—Statistics and Summaries 2007–2014*, BUREAU SAFETY & ENVTL. ENFORCEMENT, <http://www.bsee.gov/Inspection-and-Enforcement/Accidents-and-Incidents/Fatalities> (last updated Feb. 5, 2015).

production safety rules, and pending rules for BOPs, Arctic operations, and dynamic positioning (USCG proposed rule) exemplify proactivity by the regulators. BSEE engineers' active role using the Deep Water Operations Plan ("DWOP") process and USCG engineers' active role using the design basis process for floating installations also exemplify up-front technical leadership. Modern offshore production facilities are typically unique, so the regulators focus on the engineering and risk-based methodologies. Third party certification agents currently verify compliance with the approved design when it is installed.⁵ BSEE and USCG inspectors then take over equipment testing and maintenance oversight for the lifecycle of the operation.⁶

Second, you must have a management system to support each offshore activity and particularly the professional people working offshore. The Safety and Environmental Management System ("SEMS") regulations published in 2010 and 2013 establish a threshold of elements that must be in any permitted operator's safety management plan. Every company and every offshore operation is different, so SEMS must not be prescriptive. Management must be responsive to its employees and to leading indicators of potential problems. Oversight of SEMS implementation in the offshore industry does not require approval of the plan or even employment of government auditors. Rather, the focus must be to confirm that each company is auditing itself and constantly changing to meet the needs of its field operators. Correcting non-conformities is normal. Management system safety indicators are being established through the combined efforts of the Center for Offshore Safety, BSEE and USCG.

Third, and most importantly, you must have a workforce dedicated to safety. This is a cultural issue. It takes a combination of good leadership and peer pressure. In 2013, BSEE published an Offshore Safety Culture Policy modeled after the Nuclear Regulatory Commission's policy.⁷ Every offshore worker should be evaluated using the nine characteristics of this offshore safety

5. Letter from James A. Watson, Director, U.S. Dep't of Interior, to Walter D. Cruikshank, Chairman, Bureau of Ocean Energy Mgmt. 7 (Aug. 14, 2013).

6. *Id.* at Enclosure 6.

7. See Weaver, *The Role of the Regulator*, *supra* note 1, at 448-50 (discussing the Safety Culture Policy issued by BSEE).

culture. This is not a regulatory initiative. A professional licensing scheme for so many skills and positions would be impossible. Employees and contractors should be evaluated using these characteristics. High-performing people should be rewarded. Low-performing people should not continue working offshore.

I prefer the current U.S. regulatory regime over a safety case regulatory approach. It's fair to say that a safety case will incorporate technology, management, and workforce obligations in a single plan, however, it is an oversimplification to think that achieving a regulator's acceptance of a safety case is the best path to offshore safety in the United States. This only works where national oil companies have major stake holds offshore or where the number of operators is very small.

In the United States, the industry is diverse and the threshold for entry is relatively low. OCSLA requires government ownership of offshore safety and active approval of operator's activities.⁸ Active development of new, higher standards, authoritative safety equipment inspections, thorough cross-industry analysis of management audits, and national leadership for thousands of offshore workers is needed to achieve higher levels of offshore safety. Individual companies and non-governmental standards-making organizations must be accountable, but their power over the entire industry and workforce is limited.

More work like Professor Weaver's is needed. Although a lot of good ideas continue to appear in reports and studies, it is difficult to find written work that pulls it all together to ask the right questions in a way that fairly challenges the industry's leadership. High consequence and infrequent incidents like Macondo require more analysis of risk prioritization focused on the effectiveness of prevention and mitigation barriers. I particularly appreciate Professor Weaver's constructive view on the regulator's role and look forward to more of her work.⁹

8. Outer Continental Shelf Lands Act §§ 2–4, 43 U.S.C. §§ 1331–33 (2012) (discussing U.S. policy and administration with respect to the outer Continental Shelf).

9. See Weaver, *The Role of the Regulator*, *supra* note 1, 380–450 (discussing the role of the regulator in advancing safety improvements in high-risk environments).