



Via Email to: Anna.atkinson@boem.gov

BOEM Information Collection Clearance
Officer, Anna Atkinson,
Bureau of Ocean Energy Management
45600 Woodland Road
Sterling, VA 20166

Re: OMB Control Number 1010-0106

Dear Ms. Atkinson:

This comment is submitted by the London insurance associations (the "associations") representing insurers in the London market and who have historically underwritten nearly two-thirds of the world's offshore energy policies. We submitted a letter (copy attached) with respect to our concerns about the uncertainty arising out of the Taylor Energy matter and its consequences to our member's willingness to continue to provide coverage with respect to OSFR.

We are very pleased to see that the position has been considered and that action is now being taken to redraft the form of insurance certificate required in order to clarify that coverage is for claims arising during the annual period of coverage.

We do have some limited comments of the form of the draft which we consider would reduce the likelihood of future disputes and would appreciate it if these could be considered.

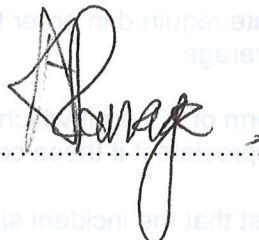
- Paragraph 3- we would suggest that the incident should be as defined in 33 U.S.C. §2701(14) (section 1001(14) of OPA 90). This gives clarity and avoids the risk that any subsequent changes to the Act are said to change coverage which is already in existence;
- In the same paragraph it seems to us that the use of the words "first occurring" are open to some ambiguity. It may be very difficult to establish when the incident did first occur. We would suggest that the wording should be clear that the claim should attach to the certificate that is live at the time that the incident is first discovered or manifests itself and shall be applicable only in relation to each such incident giving rise to claims under 33 U.S.C. §2702 (section 1002 of OPA 90) with respect to all COFs to which that certificate of Insurance applies. Variations of the word "occur" are used in several places in the Act which we submit may result in confusion.
- In the same paragraph, we suggest deleting the word "on" before the reference to termination date as there is the risk that there will be confusion between the expiring policy and the new incepting policy. It is clear only one certificate will apply but not which one.

- In paragraph 4. We believe it would be clearer to simply set out how to cancel rather than stating that it needs to be "in accordance with the Act and its implementing regulations." We think it would be a lot simpler for the applicant and insurers if the requirements are set out in the certificate.
- Also in paragraph 4. "occurs" is used rather than "commences" and "on or" appears before "the effective date of termination of this Insurance Certificate." See the comments above. We think it would be clearer if this was consistent.
- In paragraph 6. "party" in Responsible Party should have a capital "P."
- In paragraph 11. we believe "insured" should be qualified by "named" each time it appears.
- We consider that it would be sensible if the certificate makes clear that credit will be given for any payments made under pollution liability of other policies by the insured.

Finally, we stated in our previous letter that insurers did not expect that more than one OFSR certificate could be claimed upon from the date of the original loss. This has been properly dealt with in the newly drafted certificate. However, in terms of reducing market uncertainty and to encourage underwriters to enter the market we suggest deleting paragraph 8. of the proposed form which does not seem to fit with a new form designed to make clear that it only deals with the period of that particular certificate and making it clear that this interpretation applies retrospectively so that we eliminate the possibility of further disputes arising and impacting insurers' confidence in underwriting this business.

If we can be of any assistance or give further clarification please do not hesitate to contact us. We respectfully ask that these views be taken into account in this proceeding.

Arabella Ramage
LMA – Legal Director



Tom Hughes
IUA - Director of Underwriting



Taylor Energy

To whom it may concern

This paper is submitted by the London insurance associations (the “associations”) representing insurers who manage billions of dollars in insurance policies sold in the London market and who underwrite nearly two-thirds of the world’s offshore energy policies.

The Lloyd’s Market Association (the “LMA”) represents the managing agents underwriting on behalf of the Lloyd’s syndicates which together make up the Lloyd’s of London market. They together manage a gross premium of \$60 billion annually. The purpose of the LMA is to represent the interests of its underwriting and claims community. More than 50 percent of the business underwritten by the members of the LMA is from the United States.

The International Underwriting Association (the “IUA”) is the representative body for companies in London providing international and wholesale insurance and reinsurance coverage. Its mission statement is to secure an optimal trading environment for London (re)insurance companies.

The IUA’s London Company Market Statistics Report shows that overall premium income for the company market in 2022 was \$55.089bn. Gross premium written in London totalled \$47.033bn while a further \$8.055bn was identified as written in other locations but overseen by London operations.

In 2022, LMA and IUA members together underwrote business amounting to 65.3 percent of the premiums of the offshore energy markets.

The associations themselves have no direct financial interest in the outcome of this case but some of the underwriters who are involved in this case belong to the LMA or IUA.

However, the associations have a substantial interest in this matter because our members are involved in drafting, underwriting, and providing the coverage in the types of policies that will be affected by the questions at hand. Our members are concerned about the consequences a decision on these matters (which runs contrary to our members’ understanding of OSFR) will have to the future provision of OSFR coverage.

We have been informed of recent developments in the Taylor Energy matters where a number of OSFRs issued to Taylor Energy are being called upon to pay pollution clean-up expenses incurred years after Hurricane Ivan impacting their Mississippi Canyon 20 platform and related wells. We now write on behalf of our members to give our view of the likely consequence if this is determined to be a valid approach.

These remarks are provided to request that the United States Coast Guard (USCG) reconsider their approach and to assist the US administration with considering the potential impact if they do not. Our remarks are intended to further, rather than impede, the purposes of OPA 90 and the vitality of the United States’ marine and energy industries.

Facts

Certain underwriters (including our members) gave OSFR guarantees in line with the requirements under Section 1016 of the Oil Pollution Act. OSFR certificates are usually provided for each annual period of coverage by underwriters. For large risks such as energy risks, insurance coverage will usually be provided by a subscription market of underwriters sitting behind a lead underwriter. Although one certificate is issued, underwriters are

responsible for their own individual liability under the certificate in accordance with each underwriter's share of the risk.

For the Lloyd's market, insurance is underwritten on the basis of a new annual venture each year so although there might be the identical syndicate(s) providing insurance from year to year, there will be different capital (underwriting members) backing that syndicate. It is therefore essential for Lloyd's syndicates that a new OSFR is issued each year.

The London insurance market has proceeded on the common assumption that the OSFR certificate covers any incident occurring during the annual period covered by the relevant insurance policy and OSFR, and that is the limit of liability for any occurrence. In other words, if there is an accident, all the consequences including pollution and clean up will go back to the initial accident and the OSFR certificate issued for that period.

This approach is illustrated by the Taylor circumstances. The platform was damaged in 2004. Although all parties were aware that there was an on-going issue with pollution and of potential remedial requirements, Taylor was however able to place insurance coverage in subsequent years. This would not have been possible had underwriters on subsequent years considered that they were covering a known loss (ie they could be asked to pay under each OSFR certificate issued in subsequent years for on-going pollution and remedial efforts). We are informed that underwriters' understanding was that the on-going insurance was being provided against the possibility that Taylor Energy would recommence operations. The premiums paid were calculated on that basis.

The USCG have apparently recently taken a decision that in circumstances where there is an on-going pollution incident over a number of years, they are entitled to call on all OSFR certificates from the date of the original loss until all clean up (and potentially natural resource damages) have been fully addressed. This is not in keeping with London underwriters' understanding of the OSFR regime which as we have said is that insurers respond under each OSFR issued only to relevant losses that have first occurred during the specific term of the issued OSFR.

It should be understood that insurance is provided on the basis that underwriters are able to aggregate a known exposure. This is fundamental to the provision of that insurance safety net. Underwriters depend on predictability of outcomes to assess their aggregation. With this proposed change to the goalposts, it is likely that anyone wishing to obtain insurance under which they obtain an OSFR certificate will find that pricing will be radically affected, or more likely that they will not be able to obtain insurance if they are facing any on-going incident which continues for more than one policy year. Any underwriter considering issuing an OSFR certificate under such circumstances is also unlikely themselves to be able to obtain reinsurance for such exposures.

We are advised by US Counsel representing some of our members involved in this matter that in her view it is legally incorrect for the USCG to call on other subsequent years of cover in order to pay the costs of an ongoing clean-up operation with no end envisaged. The loss occurred in 2004 and therefore that is the only OSFR that should respond. If the limit of that guarantee was exhausted, that is an end to underwriter's exposure. We have not taken separate legal advice, but as set out above, this conforms with our and our members' understanding of the position since OSFR certificates were first introduced.

If the USCG does proceed against all OSFR certificates issued following an accident years into the future, and the OSFR certificates are all required to pay, the normal course in such circumstances would be for underwriters to call for reimbursement by the insured. In the situation of a company in administration however, there are no assets for underwriters to call on.

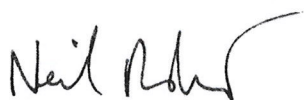
We are informed by our members that to pursue the USCG's position that multiple, subsequently issued OSFRs respond to a prior incident will in our view result in them no longer being prepared to provide OSFRs where there has been an incident and it is not clear whether it is on-going.

This will distort the financial framework that is in place under the Oil Pollution Act, requiring potential responsible parties to demonstrate financial responsibility for clean-up and damages arising from offshore facilities, which, until now, has been accepted by all parties and works to provide financial certainty in the US.

Further, if the insurance guarantee is not available, then the financial responsibility for spills from oil installations would fall entirely on the Responsible Party (to the extent they are financially viable) and the US Government. The insurance guarantee allows the potential Responsible Party to operate in the US on the basis of the payment of a premium to obtain an OSFR. If they are unable to purchase a guarantee from underwriters, to continue operations, they would be required to provide the guarantee themselves. While the major companies may have the capacity to do so, for others, they may be faced with the decision to not continue to operate should they not have the ability to self-guarantee and as they will be exposed to a risk that they are unable to spread through insurance.

We respectfully ask that these views be taken into account.

PREPARED FOR PURPOSES OF PETITIONING GOVERNMENT



Neil Roberts
Head of Marine and Aviation
Lloyd's Market Association
Secretary of the Joint Marine Liability Committee



Christopher Jones
Director of Legal and Market Services
International Underwriting Association
Secretary of the Joint Marine Claims Committee