



THE AAPL MODEL FORM OF OFFSHORE DEEPWATER OPERATING AGREEMENT AAPL-810 (2015)

What has changed?

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Background

- In the aftermath of the 2010 Deepwater Horizon incident, OCS Advisory Board decided in 2012 to review the 2007 model form deepwater operating agreement.
 - The Macondo Operating Agreement was derived from the 2007 model form, as modified by BP and Macondo co-owners.
 - How did it hold up?
- The “OCS Agreements Sub-Committee” established a diverse group of deepwater players to review the 2007 model form and consider potential post-DWH changes.
 - Participants ranged from small and large independents to super majors.
 - Group met bi-weekly for two years to review the 2007 model form article by article

Mission of the Sub-Committee

- Should the 2007 model form be changed following DWH?
- How do we decide what to change?
 - All provisions of 2007 model agreement were “fair game”
 - Sub-committee members shared their personal experience and their company’s.
- Any participant could propose changes.
- Proposed changes were approved by majority vote of sub-committee members in attendance.
- Some non-DWH changes were approved, but most are DWH-related.
- Recently endorsed by AAPL

What has changed?

- Primarily DWH-related changes
 - Article 2 - Definitions
 - Article 5 - Rights and Duties of Operator
 - Article 6 - Expenditures and Annual Operating Plan
 - Articles 10, 11 and 13 - Exploration, Appraisal and Development Operations
 - Article 22 - Liability, Claims and Lawsuits
- Various non DWH-related changes

Definition changes relating to DWH

- Article 2.8 - Claim: newly inserted into the Definitions section and updated. Previously in Article 22.2.
- Article 2.9 – Competitive Contract: newly inserted into the Definitions section and updated. Previously in Article 5.3.
- Article 2.13 – Costs: previously in the Definitions section. It has been updated.
- Article 2.25 – DOI: newly inserted into the Definitions section. Previously “MMS”.
- Article 2.38 – Gross Negligence: newly inserted into the Definitions section. Contains 3 options for defining GN.
- Article 2.64 – Regardless of Fault: newly inserted into the Definitions section.
- Article 2.67 - Senior Supervisory Personnel: newly inserted into the Definitions section.
- Article 2.74 - Well Plan: newly inserted into the Definitions section.
- Article 2.75 - Willful Misconduct: newly inserted into the Definitions section.

Definition changes *not* related to DWH

- Article 2.25 DOI: newly inserted into the Definitions section. Previously “MMS”.
- Article 2.54 Package Sale: newly inserted into the Definitions section. Previously addressed in Article 24.2.3.
- Article 2.70 Transfer Notice: newly inserted into the Definitions section. Previously addressed in Article 24.2.1.

Article 3 – Exhibits changes related to DWH

- Article 3.1 – Exhibits: the agreement controls, except with respect to Exhibits C, D and G, but the provisions of Articles 6.2.5 (*Long Lead Well Operation AFEs*), 21 (*Insurance and Bonds*) and 22 (*Liability, Claims and Lawsuits*) govern over Exhibits C, D and G. Also, Exhibit C governs over Exhibits D and G.

Article 5 – Rights and Duties of Operator related to DWH

- Art 5.3 - Drilling Operations: Operator must demonstrate well-containment capability.
- Art. 5.7 Information to Participating Parties: Operator must provide APDs, well schematics, basis of well design and WCD info to Participating Parties.
- Art 5.11 Emergency Response: addresses the obligation of Operator to provide non-ops info during emergency

Article 6 - Expenditures and Annual Operating Plan related to DWH

- Article 6.1.2 - Costs of Oil Spill Containment Capability: authorizes Operator to charge for Costs incurred to secure services, equipment and vessels required by law or regulation for oil spill containment capability for an approved well activity or operation.
- Article 6.1.3 - Costs of Other Required Expenditures: authorizes Operator to charge for costs incurred in complying with laws, regulations, orders, mandates.
- Article 6.2 - AFEs: authorizes Operator to make expenditures for Joint Account during emergency.
- Article 6.2.3 - Further Operations During a Force Majeure or Emergency: no Party can Elect to not participate in emergency/oil spill-related activities.

Article 6 - Expenditures and Annual Operating Plan *not* related to DWH

- Article 6.1.1 - Costs of Surveys, Permits, Certifications and Inspection of Equipment: authorizes Operator to charge for Costs incurred to prepare, submit, and obtain permits, equipment inspections and certifications required for the proposed or approved activity or operation.
- Article 6.2.4 - Contract Area Assessment and/or Permitting AFEs: two options provided. One authorizes Operator to direct charge for Costs of site clearance/assessment activities and/or operations, including shallow hazard surveys, archeological surveys and shallow water flow assessments without prior approval and the other option requires approval and addresses non-consent effect.
- Article 6.2.5 - Long Lead Well Operation AFEs: significant addition

Articles 7, 8 and 9 changes *not* related to DWH

- Art 7.1.2.1 Operator's Permitted Disclosures: removal of Confidential Data from custody and premises of Operator
- Art 8.7 Giving and Receiving Notices and Responses: allows for email delivery of Notice
- Art 9.1 Proposal of News Releases: only Operator may issue news releases with specific exceptions for non-ops.

Articles 10, 11 and 13 – Exploratory, Appraisal and Development Operations

- Articles - 10.1.1 and 11.1.1: a pre-Well AFE meeting is required.
- Article 10.1.3 - Automatic Revision of the Well Plan: allows Operator to make “prudent” revisions or as directed by DOI without approval of Participating Parties. Art. 6.2.2 (Supplemental AFEs) still applies and it’s not a major revision under 10.1.2.
- Article 11.1.2 - Revision of Well Plan: same as 10.1.3
- Article 13.1.2 - Automatic Revision of the Well Plan: same as 10.1.3.

Article 14 – *not* related to DWH

- Article 14.7 - Additions, Expansion, or Modification of Production System or Facilities for Health, Safety or Environmental Reasons or Governmental Mandate
 - Operator has discretion to install, modify or expand if necessary for health, safety or environmental reasons. Participating Parties in the Execution AFE can withdraw.
 - If mandated by gov't or judicial process, Participating Parties in the Execution AFE can withdraw.
- Article 14.8 - Repairs of Production System or Facilities
 - Operator shall make repairs necessary to keep in good working order up to a specific dollar limit, after which unanimity is required.

Article 22 - Liability, Claims and Lawsuits

- Article 22.4 - Defense of Claims: clarification of Operator's authority to settle Claims based on dollar amounts chosen. Also makes chargeable as Costs all expenses incurred in defense of Claims, TOGETHER WITH THE AMOUNT PAID TO DISCHARGE A FINAL JUDGMENT OR OTHER FINAL ADJUDICATION OF THE CLAIM.
- Article 22.5 - Liability for Damages: clarification that liability for Costs and Claims is based on Participating Interest Share in the activity, REGARDLESS OF FAULT. Provides an Option to choose a cap up to which all Parties are liable *even if caused by* GN/WM. Also clarifies that a mere assertion of GN/WM does not constitute a defense to Parties' obligations to timely reimburse Operator for losses, damages, Claims, expenses and Costs UNTIL a final, non-appealable judgment or final arbitration determination. Then, if the cap Option was selected, another Option is offered to address that only the amount in excess of the cap is recoverable after a judgment or arbitration decision.
- Article 22.6 - Indemnification for Non-Consent Operations: carve out of liability of Non-Participating Party for Non-Consent Operations is changed so that Non-Participating Party is only liable to the extent of its GN/WM rather than simple negligence.

continued

Article 22 - Liability, Claims and Lawsuits

- Article 22.7 Damage to Reservoir and Loss of Reserves: includes an explicit waiver and release of all Parties for reservoir damage or loss of hydrocarbons, REGARDLESS OF FAULT.
- Article 22.9 - Liability for Consequential and Indirect Damages: no liability for consequential or indirect damages or punitive damages PROVIDED that this doesn't apply to third party claims for which a Party (probably the Operator) has expressly agreed to indemnify by contract; e.g. drilling contract or service contract.
- Article 22.10 - Liability for Third Party Damages: Parties waive claims for direct or consequential damages against third parties that arise from goods or services provided by such third party in connection with operations under the OA, BUT ONLY to the extent the Operator is required to (a) indemnify the third party for such direct or consequential damages or (b) waive claims for such damages by other Parties. The Parties agree to indemnify the Operator and each other to the extent any claims are made by a third party as a result of a Party's breach of this provision.

Article 24 – Transfer of Interest and Preferential Right To Purchase

- Article 24.1 - Transfer of Interest: options addressing handling of post-assignment liabilities are provided.
- Article 24.2.1 - Preferential Right to Purchase: option to require Transferor to separately value the Working Interest being transferred.
- Article 24.2.2 – Exercise of Preferential Right to Purchase: clarifies the steps taken after transfer notice is given and what happens if less than all of the non-transferring Parties exercises PRP.

Article 26 – Administrative Provisions

- Article 26.4.4 – Compliance with Anti-Corruption Laws:
addition of significant anti-corruption compliance provision.