

Possible Revisions to
AAPL's form 810 Model Form
Deepwater Operating Agreement:

Questions Today – Answers Later?

AAPL OCS Advisory Board
OCS Workshop

The Woodlands
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2011 – Feedback to the Industry on OCS “Best Practices”

“People have short memories. We have done everything we possibly can to institutionalize these reforms (and) to create new substantive rules. But there are a lot of people who have amnesia, who make believe that Deepwater Horizon never happened” or think it was “a total anomaly.”

Michael Bromwich
Houston Chronicle
12-5-2011

The industry acknowledges that last year’s accident changes everything, yet still seems surprised when it does. Recognizing that regulations must change, oil companies still argue, essentially, “we’ve never done it that way before.”

Loren Steffy
Houston Chronicle
8-24-2011



- **How does our industry respond to this feedback?**
- **Can our operating agreements be updated to assist in this response?**
- **We may pose a list of questions today – but answers require more discussion...**

The History of Model Form JOAs – periodic revisions...



Industry has periodically revised various model form JOAs:

- AAPL 610 (onshore) revised:
 - 1956, 1977, 1982 and 1989
- AAPL 710 (OCS shelf) revised:
 - 1984, 1996 and 2002
- AAPL 810 (OCS Deepwater) revised:
 - 1996, 2000 and 2007
- AIPN JOA (non-USA) revised:
 - 1995 and 2002

JOAs have an evolutionary history...

What are the business objectives for a model form JOA?

Why have a model form JOA?:

- Establish **consistent business processes** & legal relationships among project owners
- Allow predictable **control of investment** decisions for operations
- Promote **best practices** in the safe & efficient execution of operations



What concepts may be likely to remain unchanged?

Some basic JOA concepts may not change in an updated model form:

- Retain the business and legal relationship of “co-owners” (rather than establishing another type of business entity or relationship in a model form)
- The operator’s standard of care and the exculpatory negligence provisions
- The indemnities among the owners – (mutual “knock for knock”)
- The “phase gate” approach for the approval of major capital projects (production systems etc.)



AAPL 810 JOA Enhancement Opportunities

Regulatory Changes Affecting OCS Operations

New Regulatory Scheme: An operator is required to comply with existing and newly developed regulations and standards, including:

- Interim Final Rule (**Drilling Safety Rule**) (09/30/10):
 - CEO Certification of Compliance with Regulations
 - Independent 3rd Party Verification of Blowout Preventer (BOP)
 - Professional Engineer Verification of Casing Design and Cement Procedures
- NTL 2010-N06 (**Environmental NTL**) (06/18/10) – Worst Case Discharge Calculation
- NTL 2010-N10 (**Spill Response NTL**) (11/08/10) – Well Containment Plan
 - Helix Well Containment Group (HWCG)
 - Marine Well Containment Company (MWCC)
- Workplace Safety Rules (**SEMS Rule**) (11/15/10) – parts 1 and 2

Enhancement Opportunities Due to Regulatory Changes – Short List....



1. Emergency Response Procedures
2. Safety and Environmental Management System (SEMS)
3. BOEM's new permitting processes
 - Permitting – time, scope & costs
4. Standby Charges & Rig Mobilization
5. Well Containment Services
6. Available Insurance Coverage
7. Transfers to “Financially Responsible” Parties and Affiliates
8. Anti-Corruption Legislation
9. Well Plan & Automatic Revision to a Well Plan

1 - Emergency Response Procedures

The AAPL 810 JOA has several references to “emergencies” - but no comprehensive treatment of emergency response?

- Consider adding an article/exhibit to the JOA dealing specifically with emergency response issues?
- When does an “emergency” event begin and end?
- What events are classified as “emergencies”?
(The JOA and COPAS use different definitions)
- What if the operator is unable to satisfactorily address the emergency event?
- The Macondo events likely provide some “lessons learned” about emergency response?



SEMS regulations are a significant change in the regulatory structure for deepwater OCS operations and impact both the AAPL-810 and exhibits:

- The SEMS regulations are in two parts:
 - SEMS I - effective on November 15, 2011
 - SEMS II - effective in 2012
- 13 required elements in SEMS program – they affect 4 areas of the JOA & exhibits:
 1. HSE related Information & audits
 2. Well Planning & AFE processes
 3. Execution of operations
 4. Emergencies & Force Majeure events



3 – BOEM's New Permitting Processes & Cost Allocation

New BSEE permitting policies may change how the JOA treats the costs and timing of permit approval:

- The JOA contains **no specific duty on the Operator** to obtain permits and no guidance on when permits should be sought.
 - New processes are longer and more rigorous & costly
 - Operator should arrive on location ready to drill...?
 - “Just in time” permits vrs. a stockpile of permits
- Costs of permitting activities **may exceed AFE levels:**
 - NTLs – Drilling Safety & environmental protections;
 - Safety and Environmental Management System (SEMS)
 - Archeological Surveys & AUV surveys; and
 - Shallow Hazards Surveys.



4 - Standby Charges and Rig Mobilization



Should “Standby Charges” be defined and expanded to properly allocate costs associated with non-productive rig time?

- When does the **operation start & stop?** (timely operations)
- **Permitting delays** and well operations
- Should we **limit the number of days** for “Standby Charges”?

Should charges associated with rig mobilization be clarified?

- Any **limitations** on Operator’s charges for mobilizing a rig?
- **Liability:** conform JOA text to drilling contract text

Should owners use an agreed rig strategy for drilling programs?

- Multiple development wells – use a “**dedicated rig**”?
- AIPN example of an agreed **rig strategy**?

5- Well Containment Services - Allocation of Increased Costs

New regulations require well containment services for all drilling operations – should the JOA specifically address these services?

- Are these services adequately covered as “**equipment**” hired by the operator?
- **Selection criteria:** equipment capability - cost structure - multiple vendors
- Are services **direct charges** or a part of the Operator’s overhead?
- Should a member of a well containment group be billed in the same fashion as a non-member?
- Use of equipment & activities **off the contract area** – COPAS selections

6 - Available Insurance Coverage (Post Macondo activities)

How will insurance availability & cost affect the insurance provisions of the 810 JOA?

- Is the scope of insurance coverage adequate for the project's risk profile?
- Insurance coverage "face amount" scaled back to an owner's project equity
- Insurability as a criteria in partner selection?
- Financial criteria for allowing a co-owner to "self-insure"

7- Transfers to “Financially Responsible” Parties and Affiliates

AAPL 810 JOA restricts transfers to assignees who are “financially responsible” – how do you determine this “responsibility”?

- JOA offers no guidance on when this restriction is satisfied?
- Measure by: net assets in USA – credit rating – bonding?
- Tie qualification to insurance or self-insurance requirements?
- Impact of financial responsibility limitation on independent operators

AAPL 810 JOA authorizes transfers to Affiliates

- Should transfers to Affiliates be conditioned upon financial responsibility and/or a parent company guaranty?

8- Anti-Corruption Legislation (USA & UK Statutes)

Recent UK anti-corruption legislation may claim jurisdiction over OCS operations?

- Jurisdiction claimed by having a UK based affiliate (or UK staff as expats)
- UK requirements may be broader than FCPA
- Maintaining attorney client privilege in reports between owners



9 - Well Plan & Automatic Revisions of a Well Plan

Is the “Well Plan” text adequate to meet new regulations and how do we ensure safe practices in well planning?

- Should Article 2.7.2 (*Well Plan*) be expanded to conform to the new regulatory requirements for permitting?
 - What’s the proper **scope of the Non-Operator’s** input/approval of the Well Plan?
 - Should Article 10.1.2 (*Automatic Revision of the Well Plan*) be modified to clarify the extent to which the Operator may, at its discretion, **revise a Well Plan** in order to conduct safe operations?
 - Operator’s changes to a well plan that are required by any governmental authority?
 - Consider an **IPT model** for complex well planning activities?
- How does the Safety and Environmental Management Systems (SEMS) “**management of change**” and “**stop work authority**” regulations impact the Well Plan & operations?

Concluding Remarks – and a possible path forward...

Today we've a list of questions about possible revisions to the AAPL-810 (2007) form JOA:

- Defer advocating any specific solutions to the questions – solutions require a wider discussion among industry professionals
- AAPL OCS Advisory Board has the next step in continuing the industry discussion & search for solutions
- Test of success for any JOA revisions will be:
 - Properly allocating costs, risks and control in the JOA
 - Consistent business practices that foster safe operations
 - Wide industry acceptance of the proposed solutions



Questions...

