



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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January 23, 2012

MEMORANDUM

TO: Members, Subcommittee on Coast Guard and Maritime Transportation

FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation

RE: Hearing on “Offshore Drilling in Cuba and the Bahamas: The U.S. Coast Guard’s Oil Spill Readiness & Response Planning”

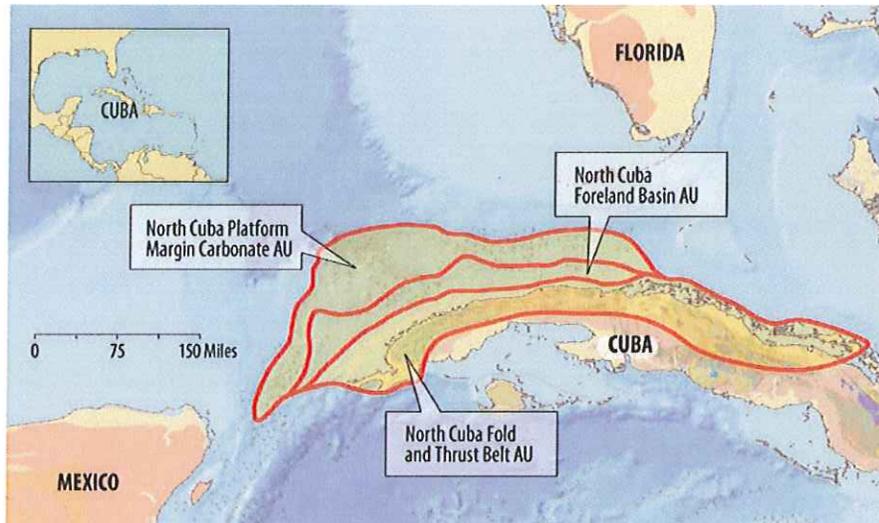
PURPOSE

On Monday, January 30, 2012, at 10:00 a.m. in the Atlantic Room of the Double Tree Hotel in Sunny Isles Beach, FL, the Subcommittee on Coast Guard and Maritime Transportation will hold a hearing to examine Cuban and Bahamian plans to drill in proximity to the U.S. Exclusive Economic Zone (EEZ) and review the Coast Guard’s preparedness to handle oil spills occurring at these sites.

BACKGROUND

Cuban Drilling

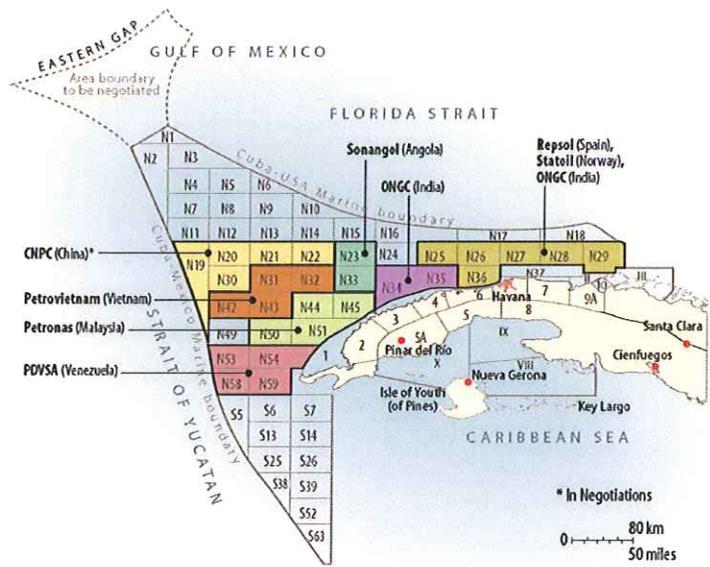
Historically, the Republic of Cuba has been a relatively small producer of oil. However, reassessments of the country’s undiscovered natural resources and developments in technology have led Cuba to open up waters in its EEZ for exploration and production. According to the U.S. Geological Survey, the North Cuba Basin, a body of water located off the coast of northwest Cuba and within the Cuban EEZ, could contain as much as 4.6 billion barrels of undiscovered crude oil. This estimate has enticed a number of foreign oil companies to enter into agreements with Cuba to explore and develop this area.



Cuba has signed lease agreements with six companies for offshore blocks in the North Cuba Basin. Five of the six companies are owned by foreign nations. The lone private company with a signed lease agreement, Spain-based Repsol YPF, is expected to begin drilling an offshore exploratory well as early as January 2012. Repsol was the primary party involved in drilling Cuba's only other deepwater well, the Yamagua-1, which was completed in 2004 approximately 65 miles southwest of Florida. The nation-owned companies (NOCs) with lease agreements include India's Oil and Natural Gas Corporation (ONGC), Venezuela's Petroleos de Venezuela S.A. (PDVSA), Malaysia's Petronas, Vietnam's Petrovietnam and Angola's Sonangol. Additionally, China's NOC, China National Petroleum Company (CNPC), is currently in negotiations with Cuba for an offshore block. Several of these NOCs have begun conducting seismic analysis and may soon move to exploratory drilling.

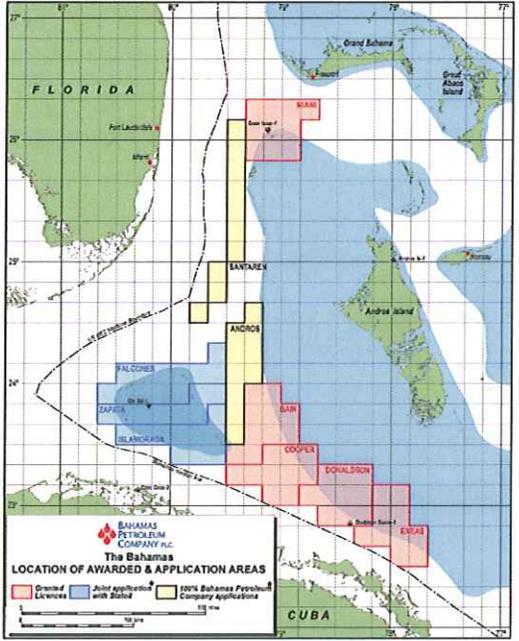
Cuba's Planned Exploratory Well

Repsol has contracted with the Cuban government to drill one exploratory well in the North Cuba Basin. Called the Jagüey Prospect (pronounced HA-gway), the well is planned to be about 55 to 60 miles south of Key West, FL and will be drilled in 5,300 feet of water to a depth of approximately 20,000 feet below the sea floor. Repsol has a 40 percent share in the newest exploratory well, while India's ONGC and Norway's Statoil each hold a 30 percent stake. If successful, the Jagüey Prospect could lead to the drilling of additional wells by Repsol. The company has completed its seismic data analysis and contracted the Italian-owned Scarabeo-9, a mobile offshore drilling unit (MODU), to drill the Jagüey well. Drilling will likely begin in January 2012. The Scarabeo-9 reportedly may also drill additional wells for other companies with leasing agreements in the North Cuba Basin. Cuban authorities have said they currently plan to drill a total of five wells.



Bahamian Drilling

Though the Bahamas has yet to begin serious offshore oil exploration, it hopes to begin drilling in its southern waters by December 2012. The Bahamas Petroleum Company (BPC), a private company with holdings in the U.S., plans to drill an exploratory well in 6,000 feet of water south of Andros Island. This location is approximately 150 miles southeast of Florida. To facilitate this effort, BPC is looking to partner with a larger international oil firm, but has yet to enter into any definite agreements. BPC currently owns the leases to four well sites in the Bahamas and hopes to purchase more. However, after the DEEPWATER HORIZON incident, the Government of the Bahamas imposed a moratorium on all new leases, so BPC maintains a monopoly on potential drilling in Bahamian waters.



Oil Spill Response Framework and Liability under U.S. Law

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the “Clean Water Act” or “CWA”) is the principal federal statute for protecting navigable waters and adjoining shorelines from pollution. Since its enactment, the CWA has formed the foundation for regulations detailing specific requirements for pollution prevention and response measures. It also provides criminal, administrative, and civil penalties for violations of such regulations.

Section 311 of the CWA is specifically aimed at preventing and responding to spills of oil and hazardous substances. In conjunction with OPA, Section 311 provides for spill prevention requirements, spill reporting obligations, and spill response planning and authorities. It regulates the prevention and response to accidental releases of oil and hazardous substances into navigable waters, on adjoining shorelines, or affecting natural resources belonging to or managed by the United States. Finally, it imposes strict, joint and severable liability on any party that is responsible for the discharge (or substantial threat of discharge) of oil or a hazardous substance.

Under Section 311(j) of the CWA, a number of pre-drilling safety measures must be taken by the party responsible for the drilling vessel or facility. The Act requires responsible parties to develop tank vessel or facility-specific prevention and response plans for a worst case scenario spill. The Act also lays out requirements for discharge removal equipment, calls for periodic inspections of vessels and facilities, and establishes spill contingency plans for all areas of the U.S.

Section 311(b) authorizes EPA to assess Class I or Class II administrative penalties for violations of Section 311. A Class I penalty may be assessed in an amount of up to \$16,000 per violation, not to exceed \$37,500. A Class II penalty may be assessed in an amount of up to \$16,000 per day of violation, not to exceed \$177,500. Each violation may be tabulated on a daily basis.

Section 311(b) also makes the owner or operator of a vessel, onshore, or offshore facility who discharges oil or hazardous substances in violation of Section 311 subject to a civil penalty of up to \$37,500 per day of violation, or up to \$1,100 per barrel of oil discharged. In instances of gross negligence or willful misconduct, these penalties increase to a \$140,000 per day of violation, or up to \$4,300 per barrel discharged.

The Oil Pollution Act of 1990

The Oil Pollution Act of 1990 (OPA) was enacted following the EXXON VALDEZ oil spill in 1989. OPA consolidated existing laws and enacted new provisions to create a comprehensive federal legal framework to govern liability and bolster the national response to oil spills occurring in U.S. waters or in areas where there is a

substantial threat of discharge into U.S. waters or the EEZ. OPA allows instant response to oil spills by ensuring that either the Coast Guard for marine spills, or EPA for land-based spills, has the authority to perform cleanup immediately using federal resources, monitor the response efforts of the spiller (responsible party), or direct the responsible party's cleanup activities.

In the event of an offshore spill, the Coast Guard will assume command of the federal response, while designated state agencies and authorities will be responsible for carrying out the regional and local contingency plans. Additionally, the owner or lessee of the vessel or facility conducting the drilling operation will be expected to execute their pre-approved response plan, which may include the use of private contractors to help contain the spill.

Liability Issues Associated with Extraterritorial Drilling

The “responsible party” under section 1001 of OPA is defined as “the lessee of the area in which the facility is located...” Under section 1002 of OPA, responsible parties are liable for all removal costs and specified damages that result from the release (or substantial threat of release) of oil, including injuries to natural resources; loss of personal property; lost revenues, profits and earning capacity resulting from destruction of property or natural resource injury; damages for loss of subsistence use of the resource; and costs of providing extra public services during or after spill response.

The entity responsible for a release of oil from a vessel or MODU (when acting in its capacity as a vessel) outside U.S. waters which pose a substantial threat of discharge into U.S. waters or the U.S. EEZ would still be a responsible party and would be liable under OPA 90 and the CWA. However, if the release came from an offshore facility or MODU (when acting in its capacity as an offshore facility) located outside the U.S. EEZ, liability under OPA is questionable.

Additionally, the U.S. does not have jurisdiction to enforce this liability on entities operating outside its territory. The Coast Guard has claimed that it is committed to making polluters pay, but has conceded that holding lessees of foreign platforms liable would be difficult. In the case of the Jagüey Prospect, the federal government would attempt to hold Repsol, along with ONGC and Statoil, responsible if the spill posed a substantial threat to U.S. waters or the U.S. EEZ, but there is no guarantee that they would assume full liability as a responsible party.

The entity (Repsol in this case) often has business interests in the U.S., which provides the federal government some leverage to hold that entity responsible for a release. However, there are several companies world-wide, including many NOCs, which do not operate at all within the U.S. If those companies were to be responsible for a release, the federal government would have to rely on diplomatic relations to pressure the offending entity to assume responsibility. If those efforts failed, the U.S. would be left alone to finance and manage the response.

The 1979 Ixtoc Incident

In 1979, Pemex (a Mexican NOC) suffered a massive blowout at its Ixtoc well, which released between 10,000 and 30,000 barrels of oil a day for 10 months. Ixtoc was located in 150 feet of water in the Bay of Campeche, several hundred miles from the U.S. coast. The distance and unique current flow kept the oil at bay long enough for the U.S. to stage a massive amount of oil response resources along the Texas coast. However, 71,500 barrels of oil still managed to impact 162 miles of U.S. beaches.

U.S. businesses and individuals sued Pemex for over \$300 million. Though Pemex was liable for damages under U.S. law, it claimed sovereign immunity as a NOC. The U.S. disputed this claim, but Pemex (and Mexico) and largely avoided payment. A similar situation could occur with the proposed Cuban and Bahamian wells, leaving the U.S. to cover response costs and damages for a spill occurring outside its EEZ.

Under OPA, such a response would be paid for out of the Oil Spill Liability Trust Fund (OSLTF). The OSLTF currently has a balance of only \$2.3 billion. The cost of the DEEPWATER HORIZON oil spill may exceed \$40 billion, but those costs are being paid by the Responsible Party. Current law limits the per incident exposure to the fund to \$1 billion, which includes no more than \$500 million for natural resource damages. There is no clear source of funding for the remaining costs associated with a response that exceeds \$1 billion and for which no party could be held liable.

Diplomatic Relations with Cuba

U.S. policy toward Cuba has centered largely on isolating Cuba from the rest of the western world. However, the U.S. does have a diplomatic presence in the nation. Located in Havana, the United States Interests Section of the Embassy of Switzerland was established by the Carter Administration in 1977. The office is staffed by State Department officials whose goal is to promote democracy and human rights in Cuba. In addition to the U.S. Interests Section, the U.S. Coast Guard has a liaison officer in Havana.

The Foreign Assistance Act of 1961 was the first piece of legislation prohibiting assistance to Cuba. It allowed for the President to establish an embargo in order to meet the prohibition. Under the authority of the Foreign Assistance Act, President Kennedy issued Proclamation 3447 in 1962, which established a total economic embargo on Cuba. The proclamation prohibited the importation of goods from Cuba and also ordered the Commerce Department to continue a prohibition on exports first established by the Export Control Act of 1949.

The Cuban Assets Controls Regulations (CACR) prohibits a number of trade and financial transactions between a person subject to U.S. jurisdiction and Cuba or a Cuban

national. The Secretary of the Treasury may modify the restrictions and has established certain exceptions for those traveling to Cuba for the purpose of professional research, family visits or journalistic activity. Additionally, the CACR allows for the licensing of limited trade with Cuba and authorized remittances to Cuban nationals through the Department of Commerce.

The Cuban Democracy Act of 1992 (CDA) and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 both tightened restrictions on trading with Cuba. The CDA bans U.S. subsidiaries from trading with Cuba and prohibits vessels from unloading or loading freight in the U.S. if they have engaged in trade with Cuba within the previous 180 days. LIBERTAD codified the embargo for the first time, including the sanctions laid out in the CACR. The law prohibits U.S. individuals or agencies from indirectly financing any transaction involving property of U.S. nationals confiscated by the Cuban government. LIBERTAD also granted the president the power to lift the embargo if he determined a transition to a democratically elected government to be underway. Furthermore, LIBERTAD requires the termination of the embargo if a democratically elected government is in place.

In 2000, Congress passed the Trade Sanctions Reform and Export Enhancement Act of 2000 (TRSA). TRSA directed the President to end unilateral medical and agricultural sanctions. The law required the Commerce Department to authorize the export of agricultural commodities to Cuba. However, TRSA does not allow for U.S. government or private assistance to finance these exports. In 2009, President Obama issued a presidential policy directive removing or significantly easing several restrictions on cash remittances, gift parcels, and family travel. The directive also expanded telecommunication services between the U.S. and Cuba.

Prevention and Response Planning Efforts

Despite limitations on enforcement and oversight capability, the Coast Guard has taken a number of steps to prepare for a potential spill in the North Cuba Basin. In order to prevent a spill from occurring, the Coast Guard has engaged with Repsol officials from the company to review their spill prevention and response plans. Repsol agreed to allow Coast Guard and BSEE inspectors to visit the MODU and review its safety systems. These inspectors completed a review of the Scarabeo 9 on January 9, 2012, off the coast of Trinidad and Tobago. U.S. personnel found the vessel to generally comply with existing international and U.S. standards by which Repsol has pledged to abide.

In addition to engaging with the company, the Coast Guard has conducted exhaustive planning exercises to prepare for a response that involves a release in Cuban waters. At the local-level, Florida Coast Guard Sectors Jacksonville, Miami, Key West and St. Petersburg are updating their Area Contingency Plans, which will provide guidance for near and on-shore response efforts along the coast. In addition, the Coast Guard's Seventh District, headquartered in Miami, is overseeing work on an Offshore

Drill Response Plan and Regional Contingency Plan that focuses on response strategies and tactics to combat a spill at sea.

The Coast Guard has worked with a number of other agencies involved in this endeavor, including the National Oceanic and Atmospheric Administration (NOAA), the Department of Interior's Bureau of Ocean Energy Management (BOEM), the Treasury Department's Office of Foreign Assets Control (OFAC) and the Department of Commerce's Bureau of Industry and Security (BIS). Preliminary actions taken include the following:

- Working with state and local agencies to bolster area contingency plans covering Florida. (Interagency).
- Hosted a table top exercise on November 18, 2011 with more than 80 federal, State of Florida, Florida coastal county and maritime industry representatives (Interagency).
- Running trajectory models to identify potential landfall areas along U.S. Coasts to assist with the development of area contingency plans. (NOAA and Coast Guard).
- Developing an International Offshore Drilling Response Plan. (Interagency).
- Granting licenses to U.S. oil spill mitigation service companies to assist operators in Cuba with contingency plans, as well as authorizing the International Association of Drilling Contractors (IADC) to brief Cuban authorities on safety measures and environmental hazards. (BIS, OFAC).
- Reviewing applications for U.S. companies to provide post-incident containment and cleanup services. (OFAC, BIS, Coast Guard, State).

The Coast Guard has also engaged both Cuba and the Bahamas through international and diplomatic channels. Since the U.S. does not have normal diplomatic relations with Cuba, the Coast Guard has used the International Maritime Organization (IMO) as the primary platform for this engagement. The IMO, through the Regional Maritime Pollution, Emergency, Information, and Training Center (REMPEITC) for the Wider Caribbean Region, has facilitated two meetings between nations concerned about drilling in the Caribbean Basin. The U.S., the Bahamas, Cuba, Jamaica, and Mexico have all attended.

Through these meetings, the Coast Guard has shared best management practices and lessons learned from previous spill responses with all attendees. Additionally, the IMO has facilitated discussions on coordination and cooperation during a response scenario.

Additionally, the U.S. is party to two international conventions that are helping shape cooperation on oil drilling throughout the Caribbean. The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena) came into being in 1983. It mandates cooperation among participating nations within the region. With specific regard to potential pollution from operations Sea-Bed Activities, Cartagena dictates that “The Contracting Parties shall take all appropriate measures to prevent, reduce and control pollution of the Convention area resulting directly or indirectly from exploration and exploitation of the sea-bed and its subsoil.”

In 1990, the U.S. participated in and became party to the International Convention on Oil Pollution Preparedness, Response and Co-Operation (OPRC). Among other things, OPRC mandates oil pollution response plans, reporting procedures, national-level planning, and government actions. Additionally, it provides for extensive international cooperation among signatory nations.

The IMO drafted the Caribbean Island Oil Pollution Response and Cooperation Plan (Caribbean Plan) in 2009 to help implement the two conventions. The overall objective of the Caribbean Plan is to provide a cooperative scheme for mutual assistance from member states, territories, and organizations in the event of a major oil spill incident which exceeds the response capability of a national government or oil industry. Specifically, it covers issues related to National Response Plans, requesting response assistance, reporting pollution to other states, equipment available Caribbean sub-region, a regional plan for mobilization of personnel and equipment, response financing when multiple nations are involved, cost recovery, use of specific response techniques (dispersants, in-situ burning, and bioremediation), and sensitive areas in the Caribbean sub-region.

WITNESSES

The Honorable Jennifer Carroll
Lieutenant Governor
State of Florida

Rear Admiral William D. Baumgartner
Commander, District 7
United States Coast Guard

Rear Admiral Cari B. Thomas
Director of Response Policy
United States Coast Guard

Dr. Debbie Payton
Chief of the Emergency Response Division
NOAA Office of Response and Restoration

Mr. Lars Herbst
Regional Director, Gulf of Mexico Region
Bureau of Safety and Environment Enforcement
U.S. Department of Interior

Dr. John Proni
Executive Director
Florida International University Applied Research Center (ARC)