

NA Platform

BHN south-west
corner; Leg A1

MNW
Platform

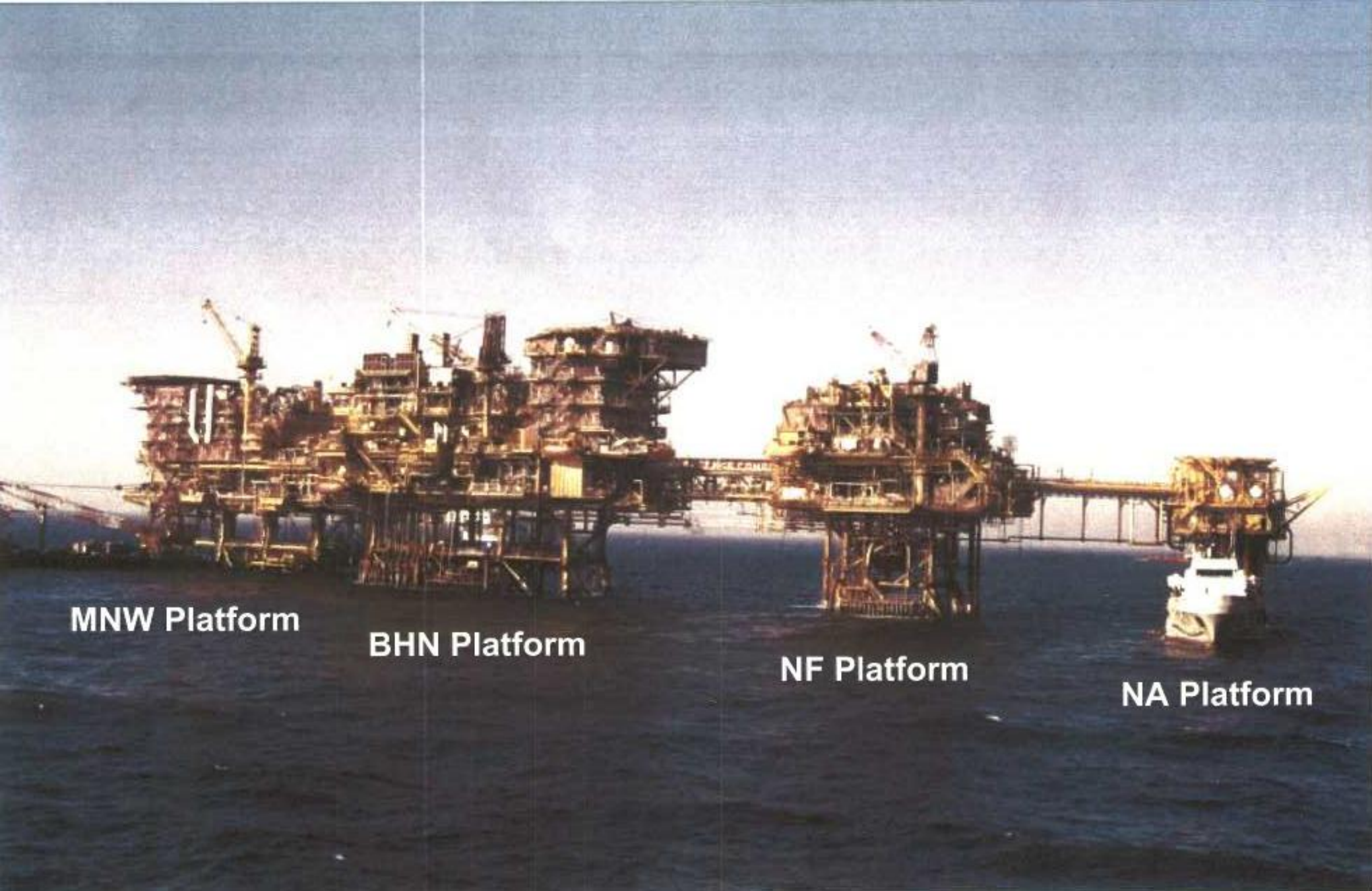
Leg A2

Leg B1

Licensing and Liability Regimes

Developments since Macondo

Nigel Chapman, Partner, Clyde & Co LLP



MNW Platform

BHN Platform

NF Platform

NA Platform



How do we stop accidents?

- Prevention** – **Licensing Regime & Monitoring**
- Cure** – **Providing funds and back up material and equipment**
- Deterrent** – **Punishment, prosecutions and fines**

Licensing Regimes – Two Approaches

Prescription

–

You must meet the following standards and use this minimal level of equipment

Performance Based

–

The objective is maximise safety and the operator must produce a plan to achieve and demonstrate they followed it



Norway

- **Performance based**
- **Petroleum Safety Authority (PSA) is responsible for safety. National Petroleum Directorate (NPD) responsible for revenue and licensing etc**
- **NPD participates on management committee and shares info with PSA**
- **All rigs go through detailed compliance procedure to obtain from PSA an acknowledgement of compliance**
- **Before drilling, operator must have PSA approval for the rig, a spill response plan and drilling programme**
- **PSA participates at all levels, provides training, carries out annual safety audits and verifications**
- **Review following Macondo produced some minor changes to regulations re: management responsibility**

UK – Piper Alpha 1988



UK

- Derives from Cullen Report after Piper Alpha – performance based
- DECC – Licensing: HSE – Safety
- Operator must demonstrate “safety case” to minimise risk of spill to “as low as reasonably practicable” – ALARP
- HSE inspect up to 3-4 times a year. Workforce appoints “Safety Representative”
- Osprag formed in May 2010, a month after Macondo
- Oil & Gas UK, industry representative body produced First Annual Health & Safety Report 2012
- 2013 levels of financing responsibility increased



Australia

- **Intense scrutiny since Montara 2009. Conclusion then that regulator was not doing job properly; rules were not properly applied**
- **Two national regulators established**
 - National Offshore Petroleum Safety and Environmental Management Authorities (NOPSEMA)
 - National Offshore Petroleum Titles Administrator (NOPTA)
- **Current regulations came into effect 01/01/12**
- **Operators must produce well operations management and an environmental plan including oil spill contingency plan**
- **Regular monitoring**

Macondo, 2010



USA – Outer Continental Shelf Lands Act 1953 (OCSLA)

Pre- Macondo

- Licensing and safety functions both overseen by same agency
- Revenue Generation allowed preference over safety
- Budget cuts impact on number and quality of personnel
- Comfortable relationship with operators
- Poor flow of information and data
- Role seen as duplicative of National Coastguard

USA....continued

Changes Post-Macondo

- **Revenue and safety functions split**
 - Bureau of Energy Management (Revenue) – BOEMRE
 - Bureau of Safety and Environmental Enforcement – BSEE
- **Specific requirements for offshore operations clearly delineated**
- **The Application to drill (APD) must submit detailed info about the drilling programme, operations safety and pollution prevention**
- **Regular review to ensure compliance**
- **August 2012: BSEE issued three important documents addressing (a) oil spill response (b) enforcement (c) safety**

Liability Regimes

- **No international regime. Each sets its own**

- **Main jurisdictions:**

 - USA, UK, Norway, Brazil, Australia, China, West Africa, Russia, Indonesia

- **For more detailed information, see article on Clyde & Co website**



POLLUTION: REGULATORY AND LIABILITY REGIMES AROUND THE WORLD

**WHAT ARE THEY MEANT TO ACHIEVE?
WHO PAYS, WHO SHOULD PAY AND HOW MUCH?
WHAT NEEDS TO CHANGE?**

Nigel Chapman, Tim Taylor & Leigh Williams, Clyde & Co LLP



Liability Regimes – Common Denominators

- **Polluter pays**
- **Strict liability**
- **Oil spill financial requirements provide some security**
- **Unlimited liability for clean-up**
- **Generally unlimited liability for property and environmental damage**
- **Some (eg: US, Brazil) allow awards of punitive damages**
- **All impose administrative penalties and criminal sanctions**

Liability Regimes post Macondo

- Largely unchanged
- OPOL limits in UK increased to \$250m (OPOL is voluntary scheme applying within UK, EU and Norway)
- Most changes are regulatory and mainly USA

NB :

Letter of law tends to take second place to commercial and political realities following major incident, if operator to remain active in jurisdiction. Viz: BP waived right to OPA limit of \$75m

Trend towards increasingly large fines

- **June 2011. Bohai Sea, China** - \$500m state ordered 'compensation' against ConocoPhillips and CNOOC for about 700 bbls of oil and drilling mud leakage - \$714,000 per bbl
- **December 2011. Bonga, Nigeria** - \$5bn for 40,000 bbls spilled. Apparently contained - \$125,000 per bbl
- **January 2012. Funiwa, Nigeria** - \$3bn. No oil spilled and no environmental damage
- **November 2011 and March 2012. Frade, Brazil** – US\$17m plus \$20bn 'damages' claim (recently reduced to \$150m) for 3,600 bbls spilled which did not reach land. - \$42 per bbl (but \$5.5m before reduction)

1,400

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If BP ends up paying \$60b for Macondo, how much is that per barrel spilled?

1. \$100,000
2. \$50,000
3. \$30,000
4. \$20,000
5. \$10,000

What was the value of the fine imposed per barrel?

1. \$15,000
2. \$7,500
3. \$5,000
4. \$2,500
5. \$1,000