The Accountability of the Offshore Drilling Platform's Oil Pollution Damages in the COPC Incident: In Comparison with the United States Gulf of Mexico Oil Spill Incident

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Abstract: The Bohai Bay oil spill has brought to the fore certain issues concerning the assignment of liability to parties involved in offshore environmental damages. The incident has highlighted weaknesses in China's current system of accountability in offshore oil drilling, namely ambiguous definition of responsible party, incomplete range of claimants, vague scope of compensation and lax administrative punishment. The U.S. Gulf of Mexico oil spill and its aftermath, by contrast, demonstrated elements of an effective legal response to a similar environmental incident, specifically with respect to liability and compensation, and can therefore serve as an instructive case study in efforts to advance the Chinese offshore drilling legal regime. After comparing the two aforementioned incidents and the respective legal lessons learned therein, the authors conclude that elucidating the process of identifying responsible parties, expanding the scope of compensation, and increasing liability limits are necessary actions for improving the efficacy and efficiency of relevant Chinese laws.

Key Words: Offshore Drilling Platform; Gulf of Mexico Oil Spill; Liability for Oil Pollution Damage; COPC Incident

In June 2011, ConocoPhillips China Inc. (COPC), operating China's largest offshore discovery, Peng Lai 19-3, saw oil spill incidents successively on its

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B drilling platform and C drilling platform. The incidents took a tremendous toll on the ecological environment of the surrounding waters as well as the local economy. On July 5, 2011, the Chinese State Oceanic Administration (SOA) officially released an investigation report identifying COPC as the party liable for the incidents. However, COPC took a tough and uncooperative stance for a time after the incidents by concealing the situation of oil spills and lying about the results of oil pollution clearance. On August 16, the SOA announced that it would hire lawyers to sue COPC, and it indeed established a Bohai oil spill claims panel on August 30. The lawsuit, however, did not materialize even after one year. On August 24, COPC held a press conference declaring that it would bear liability for the oil spills "according to Chinese law". Afterward, COPC set up two Bohai Bay Funds on September 6 and 18, respectively; however, the amounts of the funds or their operation were disclosed—COPC had been permitted to manage the funds in-house instead of deferring to a credible and neutral organization. Clearly, COPC had no plan to disclose these, despite public scrutiny. The public and victims were obliged to wait until December 30, 2011, a full six months after the incidents, at which time the Tianjin Maritime Court at last began to hear the case lodged by farmers claiming compensation for losses caused by the Peng Lai 19-3 oil spill incident.[①] On January 25, 2012, the Ministry of Agriculture announced that following administrative mediation, the Ministry of Agriculture, China National Offshore Oil Corporation (CNOOC) and COPC had agreed that the latter would designate RMB 1 billion to settle losses claims related to fishery resources; COPC and CNOOC would further designate RMB 100 million and RMB 250 million, respectively from their Marine Environment and Ecological Protection Funds, which would be used for natural fishery resources restoration and preservation, fishery resource environmental monitoring and assessment, as well as relevant scientific research work.[②] But the method by which the figures above were calculated and the question of whether this sum of money can adequately compensate damages are being widely questioned.

The U.S. Gulf of Mexico oil spill and its aftermath, by contrast, demonstrated elements of an effective legal response to a similar environmental inci-

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① Xinhua News Agency, Tianjin Maritime Court accepted the ConocoPhillips case, at http://news.sina.com.cn/c/2011－12－30/132923724284.shtml, 31 November 2011.

② Peng Lai 19-3 field oil spill incidents came to an agreement on compensation, at http://www.moa.gov.cn/sydw/hbhyzj/bjdt/201201/t20120131_2471823.htm, 7 February 2012.

dent, specifically with respect to timely accident management and compensation payment. On the evening of April 20, 2010, British Petroleum's (BP) "Deepwater Horizon" drilling rig exploded, killing 11 workers, and subsequently oil gushed from the sea floor at the Macondo oilhead. The relevant U.S. authorities including the judicial system were fully involved in the handling of the accident, and a presidential committee was established forthwith to investigate into the incident. In less than two months, BP voluntarily created a USD 20 billion fund and set up the Gulf Coast Claim Facility (GCCF) to operate the fund, organs specifically designed to allocate compensation to oil spill victims. The U.S. Department of Justice filed a lawsuit of civil compensation against BP Exploration and Production Inc., Anadarko Exploration & Production LP, Anadarko Petroleum Corporation, MOEX Offshore 2007 LLC, and 5 other co-defendants. The civil claims litigations were heard at the New Orleans federal court. In a word, the United States took decisive measures to hold BP accountable, thus reducing further damages.

The Peng Lai 19-3 field oil spills and the Macondo spill both inflicted serious offshore oil pollution, but with drastically different consequences for the responsible parties. This disparity resulted from the contrasting accountability systems of offshore oil pollution damages between the United States and China. Contrary to traditional vessels' oil pollution damages, there are few international conventions and regulations that address oil pollution damages from offshore drilling platforms. The Comité Maritime International (CMI) has proposed three drafts of international conventions, the Rio, Sydney and Canada Drafts, over the past 30 years, yet none has been codified into international law. The International Maritime Organization (IMO), a specialized agency of the United Nations, even removed the issue of offshore drilling platform oil pollution damage from its work plan, as it is difficult for nations to agree on the contents of the various drilling platform convention drafts as a result of their widely differing interests and positions.[①] In a word, accountability for offshore drilling platform oil pollution damages basically depends on domestic laws of each nation.

The chief elements of an accountability system for offshore drilling platform oil pollution damages include the identification of a responsible party or

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① Li Tiansheng, The Outline of the Legislation of Offshore Drilling platform-From Vessels to the Development of Ocean Economy, *Journal of Dalian Maritime University*, Vol. 1, 2011, pp. 1～5.

parties, identification of claimants, the scope of compensation and liability limits, among other aspects. The present paper will analyze the Peng Lai 19-3 oil spill incidents from these perspectives on the basis of Chinese law and discuss ways to improve the relevant Chinese laws with reference to U.S. laws and the handling of the Gulf of Mexico oil spill incident.

Ⅰ. Responsible Party: COPC is while CNOOC is not that Sure

Peng Lai 19-3 oil field is co-developed by CNOOC and COPC, which have signed an Offshore Oil Exploration and Exploitation Contract agreeing CNOOC owns 51% equity and COPC owns 49%, and that COPC is the actual operator of oil exploration and exploitation. The definition of the term "responsible party" has been promulgated within several Chinese laws. Article 90 of the Marine Environment Protection Law of the People's Republic of China provides that "ANY PARTY (emphasis added) that is directly responsible for a pollution damage ... shall relieve the damage and compensate for the losses." Articles 65 and 68 of the Tort Law of the People's Republic of China provide that the "polluter" or a "third party ... shall assume the tort liability", while Article 41 of the Environmental Protection Law of the People's Republic of China provides that "A UNIT (emphasis added) that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses." In addition, the Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation describe the responsible party as "THE ENTERPRISE, INSTITUTION OR OPERATOR (emphasis added) who has violated Marine Environment Protection Law and the present Regulations". By "Operator" it refers to "an entity engaged in operations of offshore oil exploration and exploitation". COPC is not only the "operator" but also the polluting entity. This liability cannot be ascribed to any third party, therefore by law COPC must assume responsibility for the damages inflicted. However, as to whether CNOOC is also a responsible party, the relevant laws and regulations do not provide a definitive answer. Article 25 of the Regulations of the People's Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises provides that "[i]n case an operator or subcontractor violates the provisions of these Regulations in implementing petroleum operations ... [a]ll economic losses caused as a result of

this shall be borne by the responsible party." The term "responsible party" as used in this article appears to indicate the operator or subcontractor who violates the regulation, and according to article 26 of the same regulations, "operator" means an entity in charge of implementing the operations pursuant to the provisions of a petroleum contract, and "subcontractor" refers to an entity that renders services to the operator. In the case of the Peng Lai 19-3 spills, CNOOC acted as the party awarding the contract, not as an operator or subcontractor, and so it cannot be considered a responsible party under these regulations. But it should be noted that CNOOC is not a responsible party under the Regulations of Offshore Petroleum Resources in Cooperation with Foreign Enterprises does not mean it is not obliged to assume its liability under article 90 of the Marine Environment Protection Law, Article 65 of the Tort Law of the People's Republic of China, and Article 41 of the Environmental Protection Law, because these articles use potentially vague terms like "polluter", "any party who is directly responsible for the pollution" and "a unit who has caused the pollution" without appending any detailed definition. Such ambiguous provisions make it difficult to quickly determine the responsible party and pursue a claim after an incident of oil spill pollution.

Returning to the Gulf of Mexico incident, the site of the spill, called MC252, was jointly exploited by BP, Anadarko and MOEX, who hold 65%, 25% and 10% of equity respectively. At the time of the accident BP was acting as the operator.[①] According to Sec. 1002 (a) of the Oil Pollution Act of 1990 (OPA 1990), "each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages …"[②] Sec. 1001 (32) specifies that the term "responsible party" means the following: (A) In the case of a vessel, any person owning, operating, or demise-chartering the vessel; (B) In the case of an onshore facility (other than a pipeline), any person owning or operating the facility …; (C) In the case of an offshore facility, the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301 - 1356) for the area in which the facility is

① Li Zhigang, Analysis and Enlightenment of Mexico Oil Leakage Accident Liability Divided, *International Petroleum Economics*, Vol. 8, 2010, pp. 15～21.

② OPA 1990, Sec. 1002 (a).

located …;(D) In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C.1501 - 1524), the licensee;(E) In the case of a pipeline, any person owning or operating the pipeline;(F) In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility".[①] Sec. 1002 (d) prescribes the third party liability, that is, in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 1003(a)(3) (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability.[②] According to these statutes, the three co-exploiting companies must assume responsibility on the basis of the relevant provisions of the Joint Operating Agreement, which contractualized their operations at the Macondo drill site. Transocean Offshore Deepwater Drilling Inc. owned the Deepwater Horizon Platform and leased it to BP, so it assumed the third-party liability if the causes of the accident included the inferior quality of the platform. In sum, as the OPA 1990 has detailed and specific provisions on the responsible parties for oil pollution damages caused by each kind of vessel or facility, the relevant responsible parties can be identified quickly in accordance with the law in case of an accident, which lays a sound foundation for subsequent compensation claims and penalty administration.

Ⅱ. Claimants Include Two Categories: SOA and Units or Individuals Suffering Losses

Claimants for oil pollution damages fall into two categories under Chinese law, namely the marine environmental administration competent to file a lawsuit on behalf of the state and units or individuals suffering losses, with respect to the damages caused by oil pollution to marine ecological environment, marine resources and marine protected areas and losses incurred to the life or property of any unit or individual. On one hand, article 90 of the Marine Environment Protection Law provides that "for any damages caused to marine eco-

① OPA 1990, Sec.1001 (32).
② OPA 1990, Sec.1002 (d).

systems, marine aquatic resources or marine protected areas that result in heavy losses to the State, the interested department empowered by the provisions of this Law to conduct marine environment supervision and control shall, on behalf of the State, claim compensation to those held responsible for the damages." In other words, the SOA has the right to sue COPC on behalf of the State for any damages caused to marine ecosystems, marine aquatic resources or marine protected areas. In the Peng Lai 19-3 oil spill incident, the North Sea Branch of the SOA established a special work group led by chief director Fang Jianmeng in early July to comprehensively launch the marine ecological damage claims by offering legal services, ecological evaluation, evidence collection, and so on. By September, after the review by experts on law and ocean science, the public selection of law firms was almost completed.[①] The SOA selected four law firms, Zhong Lun of Beijing, Hai Jian of Guangzhou, Ying Tai Jin Da of Shanghai and Wen Tai of Shandong, and was going to institute legal proceedings against COPC in the Qingdao Maritime Court.[②] On the other hand, article 41 of the Environmental Protection Law provides that "a unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses." There are similar provisions on environmental tort in the Tort Law of the People's Republic of China, which is to say that any unit or individual who has suffered direct losses, such as farmers in the polluted areas, can bring suit to claim damages from oil pollution. On December 13, 2011, 107 farmers from Laoting County of Hebei Province filed a lawsuit against COPC with the Tianjin Maritime Court, requesting cessation of infringement, elimination of hazard, and RMB 490 million as compensation for losses.[③] The Tianjin Maritime Court accepted this case on December 30, 2011.[④]

The legislation on claimants in China is relatively reasonable, though it has certain flaws. First, the categories of claimants are not comprehensive. For in-

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① Anonymous, ConocoPhillips is facing its deadline, and the SOA will claim compensation for ocean ecological damages, *Ocean World*, Vol. 9, 2011, p. 6.

② Du Hai and Jiang Wang, The lawsuit against ConocoPhillips is around the corner, *Economic Guidance (Ji Nan)*, 7 September 2011, at http://news.163.com/11/0907/03/7DAMG99S00014AED.html, 20 December 2011.

③ Wang Jiajun and Shi Qiao, Farmers from Laoting county Hebei province sued ConocoPhillips, and Tianjin Maritime Court hasn't accepted it yet, at http://www.cnr.cn/newscenter/gnxw/201112/t20111214_508924283.shtml, 20 December 2011.

④ Xinhua News Agency, Tianjin Maritime Court accepted the ConocoPhillips case, at http://news.sina.com.cn/c/2011-12-30/132923724284.shtml, 31 November 2011.

stance, Chinese law only provides that the state ocean administration shall file a lawsuit in the event of damage against marine ecosystems, marine aquatic resources or marine protected areas, without identifying relevant claimants with respect to removal costs, reduction of tax revenues, costs for providing increased or additional public services, among others. Second, the legal setup of claimant and damages evaluator is unreasonable. The SOA is not only the claimant on behalf of the State for damages to marine ecology, resources and protected areas, but also the body organizing evaluation of these damages. The SOA is part of the government, so its damages evaluation was credible to the public. As an important basis for determining the amount of compensation, the conclusion of the evaluation could hardly be questioned as a normal proof provided by the plaintiff in the court, which would compromise the equality of the plaintiff and the defendant.

In Sec. 1002 (b) of OPA 1990, the compensation covers seven kinds of damages and costs, and the corresponding claimants are the United States, a State, an Indian tribe, or a political subdivision of a State; a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee;[①] corporations and individuals, etc.[②] Compared with Chinese laws, OPA 1990 is obviously more specific and comprehensive. For example, it specifies that the government or individuals may claim compensation for removal costs incurred pursuant to law; and there are specific provisions on damages such as net loss of taxes and "net costs of providing increased or additional public services", which are absent in Chinese laws. Furthermore, in the United States, the investigation of oil spill accidents is led by the United States Coast Guard, and the lawsuit is filed by the Department of Justice. Such an arrangement avoids a department acting concurrently as plaintiff and damages evaluator. On December 15, 2010, Attorney General Eric Holder announced a civil lawsuit regarding Deepwater Horizon oil spill in Washington, naming nine defendants, including the oil well developer BP Exploration and Production Inc., Anadarko Exploration & Production LP, Triton Asset Leasing GMBH and Transocean Offshore Deepwater Drilling Inc., the last of which owned the drilling platform, and clai-

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① OPA 1990, Sec. 1006 (a) identifies "trustee": The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

② OPA 1990, Sec. 1002(a).

ming compensation for direct or indirect damages such as removal costs, economic losses, natural resource damages and environmental damages.[①] Besides, more than 140 thousand corporations and individuals had joined the civil suit against the responsible parties of the Gulf of Mexico oil spill accident. The claimants were mainly owners and proprietors of fishing enterprises; farmers who also catch fish, shrimp and crabs; processors of marine products; owners, proprietors of distribution markets, retail markets, seafood markets and restaurants, and their employees; entertainment enterprises' owners, proprietors and their employees; ship-owners, seamen, charters; among others (13 kinds in total).[②] These lawsuits, having developed into class action No. MDL-2179, were heard by Judge Carl J. Barbier of the Louisiana Federal District Court beginning February 27, 2012.

Ⅲ. Fuzzy Scope of Compensation and Lack of Effective Method for Calculating Losses

The scope of compensation was the biggest problem encountered in the course of suing COPC. Article 47 of the Fisheries Law of the People's Republic of China provides that "[f]or anyone who destroys the ecological environment of fishery water areas or causes any fishery pollution accident, his legal liabilities shall be investigated in accordance with the provisions in the Law of the People's Republic of China on the Protection of Sea Environment and the Law of the People's Republic of China on the Prevention and Cure of Water Pollution." However, none of the provisions in the Marine Environment Protection Law and the Environmental Protection Law touches on the scope of compensation. The only specific provision on the scope of compensation is article 28 of the Implementation Measures of Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation: (1) the removal costs incurred by the sufferers of the seawater, biological sources damages of the ocean environmental pollution caused by operators' actions; (2) the economical losses, repair costs of damaged instruments of pro-

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① Attorney General Eric Holder Announces Civil Lawsuit Regarding Deepwater Horizon Oil Spill, at http://www.justice.gov/iso/opa/ag/speeches/2010/ag－speech－101215.html, 9 February 2012.

② The 13 kinds of claimants can be gotten, at http://www.gulfoilspilllitigationgroup.com/, 22 November 2011.

duction, and costs of preventive measures resulted from the ocean environmental pollution caused by operators' actions; (3) costs of investigation on the accidents caused by Offshore Oil Exploration and Exploitation.[①] In sum, the scope of compensation in this provision includes water and biological sources damages, removal costs, economic losses, costs of investigation, etc. Though potentially useful, those guidelines are merely departmental rules that carry little legal weight, to the point that they probably will not be considered in court. In addition, the scope of compensation provided for by these measures is very limited, mostly from the perspective of the State, hardly covering the scope of compensation for enterprises or individuals suffering losses. Consequently, in the COPC oil spill incidents, the compensation claims lodged according to the current laws and regulations are far from offsetting the losses suffered by victims, and on top of that, many of the reasonable claims have no legal basis.

With respect to the scope of compensation, the provisions in the relevant U.S. law are detailed and specific, which provide a helpful tutorial for Chinese legislators. Sec. 1002 of OPA 1990 stipulates that the compensation shall cover removal costs and damages. The removal costs referred to in subsection (a) are—(A) all removal costs incurred by the United States, a State, or an Indian tribe ...; and (B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

The damages referred to in subsection (a) are the following:

(A) NATURAL RESOURCES.—Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) REAL OR PERSONAL PROPERTY.—Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) SUBSISTENCE USE.—Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

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① The Implementation Measures of Regulations of the People's Republic of China Concerning Environmental Protection in Offshore Oil Exploration and Exploitation, at http://www.soa.gov.cn/soa/governmentaffairs/faguijiguowuyuanwenjian/bumenguizhang/webinfo/2008/05/1270102486971287.html, 22 December 2011.

(D) REVENUES.—Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) PROFITS AND EARNING CAPACITY.—Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimants.

(F) PUBLIC SERVICES.—Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State. ①

It is not hard to draw a conclusion that OPA 1990 has provided a well-rounded scope of compensation, so well-defined as to specify loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimants.

In addition, with respect to operability, no effective method for calculating environmental and personal damages is available in China, despite the fact that the calculation of damages is the basis for making claims of compensation. Due to the absence of an effective calculation method, the reasonability and objectivity of the claims tend to be regarded with suspicion, as the court lacks a solid legal ground during its hearing and judgment. In the mentioned case of Laoting County, 107 farmers claimed a total of RMB 490 million as compensation. However, it is uncertain whether this amount will be supported by the court because there is no uniform and credible method of calculation. The Marine Environment Protection Law and other relevant laws and regulations in China are far outdated, which gives rise to difficulties in damages calculation. Since the amended Marine Environment Protection Law was enacted in 2004, related supporting regulations have not been amended and improved accordingly, and no related rules for implementation of the Law have been delivered. Moreover, some important standards concerning the oceanic environment are still unavailable. ②On the contrary, the U.S. National Oceanic and Atmospheric Adminis-

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① OPA 1990, Sec. 1002 (a).

② Wang Shuming, Zhou Yan and Li Yan, Study and review on the pollution and rehabilitation of Bohai, *Journal of China Ocean University*, Vol. 4, 2009, pp. 27～31.

tration (NOAA) and Department of the Interior (DOI) have both made rules about the calculation of damages. The current DOI rules provide that the damages include "the cost of restoration, rehabilitation, or replacement or acquisition of the equivalent of any resources and their services", "the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline," and administrative costs and expenses necessary for, and incidental to, the assessment as well as interest. The natural resource damages assessment under the NOAA rules includes pre-assessment, restoration planning and restoration implementation.[①] Such procedure has been formulated especially to address oil spill damages or the threat of oil spill damages as defined by the OPA. The NOAA rules and DOI rules have specified the method of calculation of environmental and resources damages as well as the assessment procedure, by which the calculation of damages can be operated with a solid legal basis.

Ⅳ. Administrative Penalty is too Mild to Have a Deterrent Effect

With respect to administrative penalty, the range of penalty on which relevant punishments are based is obviously too limited to play a role in deterring COPC. In the Peng Lai 19-3 field oil spill case, the ceiling for administrative penalty is RMB 200 thousand, as provided in article 38 of the Environmental Protection Law: "An enterprise or institution which violates this Law, thereby causing an environmental pollution accident, shall be fined by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management in accordance with the consequent damage …" and article 85: "In case of the conduct of any offshore oil exploration and exploitation in violation of the provisions of this Law, thus causing pollution damage to the marine environment, the State oceanic administrative department shall give a warning and impose a fine not less than RMB 20,000 but not more than RMB 200,000." To major corporations such as COPC, a fine of RMB 200,000 for inflicting serious economic and environmental damages is but a drop in the bucket. The mild punishment was an important reason why COPC concealed the real situation

① Wang Shuyi, Liu Jing, Analysis of U.S. compensation system of natural resources damages, *Law Review*, Vol.1, 2009, pp.71～79.

several times after the incident and was insincere in making an apology.

As to administrative mediation, on January 25, 2012, the Ministry of Agriculture, CNOOC and COPC together announced that following administrative mediation, COPC had agreed to put up RMB 1 billion to settle claims of losses related to marine products cultivation and natural fishery resources in the affected areas of the Hebei and Liaoning provinces; and that COPC and CNOOC would also designate a portion from their committed marine environmental and ecological protection funds, which are RMB 100 million and RMB 250 million, respectively, to be used for natural fishery resources restoration and preservation, fishery resources environmental monitoring and assessment, as well as related scientific research.[①] Nevertheless, the issues of whether the mediation was authorized and approved by the fishermen suffering losses, how the amount of RMB 1 billion was arrived at, whether this sum of money is enough to settle all damages, and how the damages are to be allocated are being widely discussed by the public, and one must wait to know if the actual results of mediation will withstand the test of time.

The U.S. laws, on the contrary, do not draw a line between civil liability and administrative responsibility, but instead set a uniform liability limitation instead. The applicable law for liability in the Gulf of Mexico Case is the OPA 1990. Sec. 1004 (a) (3) of the law provides that "for an offshore facility except a deepwater port, the total of all removal costs plus $75,000,000".[②] In addition, Sec. 1004 (c) (1) provides that "[s]ubsection (a) does not apply if the incident was proximately caused by—(A) gross negligence or willful misconduct of, or (B) the violation of an applicable Federal safety, construction, or operating regulation by, the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail)."[③] In the Gulf of Mexico oil spill incident, the U.S. Department of Justice filed a lawsuit against the responsible parties of this incident, citing violations of federal safety and operational regulations, including: 1. Failure to take necessary precautions to secure

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① An administrative agreement has been reached on fishing damages caused by Peng Lai 19-3 field oil spill incidents, at http://www.moa.gov.cn/sydw/hbhyzj/bjdt/201201/t20120131_2471823.htm, 7 February 2012.

② OPA 1990, Sec. 1004(a)(3).

③ OPA 1990, Sec. 1004(c)(1).

the Macondo well prior to the April 20th explosion; 2. Failure to utilize the safest drilling technology to monitor the well's condition; 3. Failure to maintain continuous surveillance of the well; and 4. Failure to utilize and maintain equipment and materials that were available and necessary to ensure the safety and protection of personnel, property, natural resources, and the environment.[①] Therefore, according to the OPA 1990, BP and the other defendants must shoulder responsibility for removal costs and damages compensation without limitation. Thus we can see that the U.S. government has set a strict and high liability limitation against the responsible parties through legislation to facilitate the comprehensive enforcement of claims in case of an accident.

In China, however, no such provision is available that stipulates limits of liability for offshore platform oil pollution damages, and liability limitation has only been set forth for oil pollution damages from ships in the corpus of Chinese law. Besides setting a strict and high liability limitation, as the United States has done, administrative penalty is also an indispensable measure. It is imperative to increase the degree of punishment so that it effectively deters potential polluters, for due to the lack of timely amendment, the penalties included in the relevant laws and administrative regulations are conspicuously insufficient in light of present needs. Some local regulations have set good examples for the eventual amendment of central governments laws and regulations concerning administrative penalty. For example, the Measures of Oceanic Ecological Damages and Losses Compensation of Shandong Province have raised the limits of liability to RMB 200 million. Indeed, the central Chinese government has made progress in some areas: article 83 of the Law of the People's Republic of China on the Prevention and Control of Water Pollution provides that "if the accident is ordinary or relatively serious, the fine shall be calculated on the basis of 20% of the direct losses caused by the accident; if the accident is serious or extraordinarily serious, the fine shall be calculated on the basis of 30% of the direct losses caused by the accident." This article recognizes no upper limit of penalty, and the pro rata administrative punishment method it provides is more flexible.

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① Attorney General Eric Holder Announces Civil Lawsuit Regarding Deepwater Horizon Oil Spill, at http://www.justice.gov/iso/opa/ag/speeches/2010/ag-speech-101215.html, 9 February 2012.

Ⅴ. Conclusion

In sum, the accountability system of offshore drilling platform oil pollution damage is a relatively new area of law, and relevant Chinese laws and regulations should be improved in several aspects, such as more adequately defining ambiguous legal terms, particularly that of "responsible party", supplementing incomplete legal provisions, addressing a lack of specificity, expanding the narrow scope of compensation, raising low administrative penalties, and devising a consistent and fair method of calculation, among others. The Peng Lai 19-3 field oil spills brought all of these weaknesses to light, and each merits our close attention. We should draw on strengths of the U.S. domestic laws to establish and improve related Chinese laws by unequivocally identifying responsible parties for different sources of pollution, expanding the scope of claimants and the scope of compensation, and increasing liability limits etc., so that the frailty of our current laws would be done away with and another incident like that of COPC might ultimately be averted.

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