

THE INCOMING REGIONAL RESPONSE REGIME IN ASEAN

Joselito Guevarra

Project Manager

IMO – IPIECA Global Initiative for Southeast Asia

Email: joselito.guevarra@ipieca.org**ABSTRACT**

After more than 20 years of work, the Southeast Asian region is poised to finalize a landmark Regional Oil Spill Contingency Plan (ROSCP), which will form a solid foundation for a new regional response regime. The development of a Regional Plan is a commitment made by the ten member states of ASEAN (Association of Southeast Asian Nations) and is currently undergoing internal approval by the ASEAN Maritime Transport Working Group (MTWG) prior to implementation.

The ASEAN member states committed to supporting the Regional Plan when the Transport Ministers of each member country signed the Memorandum of Understanding (MoU) on the ASEAN Cooperation Mechanism for Joint Oil Spill Preparedness and Response on November 28, 2014. This MoU is the renewed and revitalized ASEAN Oil Spill Response Action Plan (OSRAP) that was signed in 1994 but was never implemented. The MoU is based on the principles of the International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC 1990), specifically Articles 5, 6, 7 and 10.

The aim of this paper is to document the historical evolution of the Regional Plan, starting from the early days of ASEAN until 2015 where it was developed by the ten member states. More importantly, this paper will highlight the current status of oil spill preparedness and response regimes in the region and how these will likely integrate into the Regional Plan when it is finally adopted. This will offer a unique perspective on the dynamics of intergovernmental agreements and on the important role of the oil and gas industry in helping governments achieve their goals of preparedness and response through capacity building and other activities, including through the partnership between the International Maritime

Organization (IMO) and the Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA) which manages the Global Initiative for Southeast Asia (GISEA) Programme.

A SOLID FOUNDATION

The history of regional preparedness in ASEAN is complex. The timeline below (adapted from Guevarra, 2014) explores this and gives a summary of the important events and milestones that shaped the new ASEAN MoU on Oil Spill Preparedness and Response.

<u>YEAR</u>	<u>MILESTONE</u>
1991	<ul style="list-style-type: none"> The Japan Association of Maritime Safety (JAMS) and the Nippon Foundation initiated the ASEAN OSRAP (Association of Southeast Asian Nations Oil Spill Response Action Plan).
1993	<ul style="list-style-type: none"> On May 20, 1993 the six ASEAN member countries, namely Brunei Darussalam, Indonesia, Malaysia, Philippines, Thailand and Singapore signed an MoU establishing the ASEAN OSRAP. The main objective was to provide a co-operative plan for mutual assistance from Member States and organizations in the event of a major oil spill incident that exceeds the response capability of the national government. The geographic scope of the ASEAN OSRAP includes all the waters within the EEZ (Exclusive Economic Zone) of the ASEAN member countries.
1994	<ul style="list-style-type: none"> Japan sponsored the OSPAR (Oil Spill Preparedness and Response) project in 1994 where 1 billion yen was donated to the ASEAN countries for the purchase of oil spill equipment to reinforce national stockpiles in 11 key locations. The OSPAR project also enabled the development of the ASEAN Oil Spill Information Network System.
1995-1999	<ul style="list-style-type: none"> Burma (now Myanmar), Cambodia, Lao PDR, and Vietnam joined ASEAN. They did not, however, sign the ASEAN OSRAP MoU.
2009	<ul style="list-style-type: none"> The implementation of the original ASEAN OSRAP had met with challenges, as only six countries were party to the MoU. The IMO set out to revitalize the MOU by

	<p>holding a National Focal Points Meeting and a Workshop in 2009 hosted by Indonesia. The MoU was reviewed and a draft Strategy and Action Plan (SAP) was agreed to strengthen it.</p>
2011	<ul style="list-style-type: none"> On October 2011, a follow-up Regional Workshop funded by IMO made policy recommendations on the establishment of a Regional Cooperation Mechanism on oil spill preparedness and response including the development of a regional action plan. It was also agreed that the revised MOU would include all the 10 ASEAN member states within the Brunei Action Plan. This was followed up by another IMO funded Regional Workshop a year later where the draft MOU for the ASEAN Cooperative Mechanism was drafted for submission to the 24th meeting of the ASEAN MTWG.
2013	<ul style="list-style-type: none"> On March 19, 2013, the 4th IMO funded Regional Workshop for the establishment of a Regional Cooperative Mechanism for Oil Spill Preparedness and Response in the ASEAN region was held in Jakarta, Indonesia. The outcome of the workshop included the final draft MoU on Joint Oil Spill Preparedness and Response in the ASEAN region for endorsement by the 35th session of the Senior Transport Officials Meeting (STOM) and an action plan to implement the provisions of the draft MoU. The final text of the draft MoU was subsequently approved during the 26th Meeting of the ASEAN MTWG held in Yangon, Myanmar August 22-24, 2013.
2014	<ul style="list-style-type: none"> On November 28, 2014, the ASEAN Transport Ministers (ATM) signed the MoU on ASEAN Cooperation Mechanism on Joint Oil Spill Preparedness and Response during the 20th ATM Meeting in Mandalay, Myanmar.

Table 1. Important Milestones in ASEAN Regional Preparedness for Oil Spills

The signing of the MoU on ASEAN Cooperation Mechanism on Joint Oil Spill Preparedness and Response facilitated the transformation of the ASEAN OSRAP into an official ASEAN document that is signed and accepted by all the ten member countries.

A HELPING HAND

The launch of the Global Initiative for Southeast Asia (GISEA) was held back-to-back with the 4th Regional Workshop for the establishment of a Regional Cooperative

Mechanism for Oil Spill Preparedness and Response in the ASEAN region. The GISEA Workshop and Launch was organized jointly by the IMO, IPIECA and the Directorate General of Sea Transportation (DGST), Ministry of Transportation (MoT) of Indonesia. The Workshop was organized within the framework of the IMO-IPIECA Global Initiative (GI) Programme and more than 70 participants attended from across the world including government representatives of the ASEAN Maritime Transport Working Group (MTWG). The Workshop featured seven sessions, which gave a solid background on GI, and the rationale and details for establishing a GI programme in the ASEAN region. The event culminated in the signing of the Statement of Intent between IMO and IPIECA on the establishment of the GISEA Programme (Guevarra, 2013).

The mission of the GISEA Programme is to strengthen the national and regional oil spill response capability through cooperation between the oil industry and the authorities in charge of oil spill preparedness and response at national level. In ASEAN, a large part of this mission is the establishment of an ROSCP.

The discussions and preparations for the ROSCP started when the MoU was signed in November 2014 and progressed during a Regional Meeting in Kuala Lumpur (KL) hosted by the Marine Department and the Ministry of Transport of Malaysia. The objectives of the Regional Meeting were to review and determine the key areas for development of oil spill preparedness and response in the ASEAN region and among the ASEAN Member Countries, in order to facilitate the development of a work program for GISEA to help address the identified needs (IMO, 2014). This led to the GISEA Strategic Framework for 2015-2017, which guides the work of the Programme.

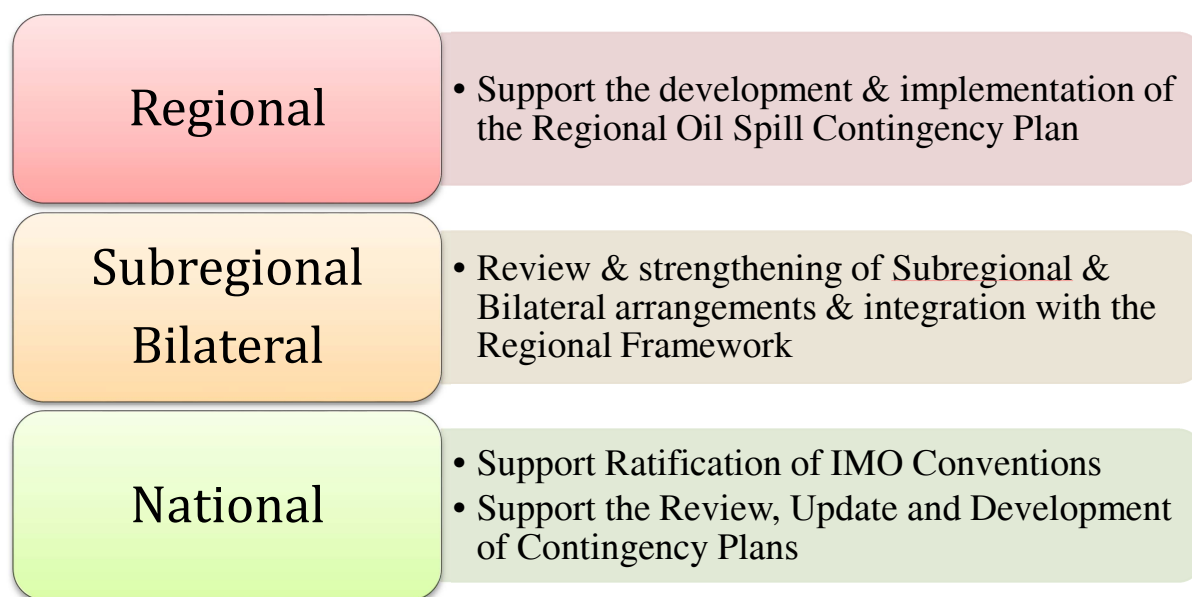


Figure 1. GISEA Programme Strategic Framework for the 2015-2017 Period

The ten member countries of ASEAN approved the Strategic Framework (2015-2017) above during the Regional Meeting in KL. As part of the planning process, a gaps and needs assessment was done and the results are summarized in the table below:

AREA OF CONCERN	CURRENT SITUATION
Legislation (International Conventions and National Law)	<ul style="list-style-type: none"> • Not all countries have ratified OPRC and the compensation conventions due to different priorities in each of the countries, limited government resources, technical assistance needed for development of national laws and implementation. • Most of the countries have their own national regulations and internal arrangements in dealing with oil pollution. These must be considered when drafting the ROSCP.
IMS or Incident Management System (National Authority)	<ul style="list-style-type: none"> • Each country has their own incident management system to respond to incidents and is usually composed of multiple national agencies operating under a central authority (national competent authority), which is usually a ministry. • Some countries do include or follow elements of IMS (Incident Management Systems) in their organization and structure as in IMO's Guidance Document on the Implementation of an Incident Management System • The development of the Regional Oil Spill Contingency plan would need to recognize the diversity of the management systems and respect the sovereignty of

<p>Contingency Planning</p>	<p>each member country.</p> <ul style="list-style-type: none"> • Most countries have their own National Plans (either in draft or officially approved) • Several subregional and bilateral agreements exist in the region • The Regional Plan needs to integrate the existing national, subregional and bilateral plans but also need to respect the national regulations of each party • The Regional Contingency Plan can be developed using templates that already exist in other parts of the world. These can be adapted to the region.
<p>International and Regional Cooperation</p>	<ul style="list-style-type: none"> • The ASEAN MoU is the legal basis for regional cooperation among the member countries. • Any regional assistance must be facilitated through the country's National Oil Spill Contingency Plan • Sub-regional cooperation also needs to be considered in the development of the Regional Plan
<p>Response Capabilities (including Dispersants Regulation)</p>	<ul style="list-style-type: none"> • Dispersants capability and use of dispersants are key priority issues in the region especially its use in spills near national borders. National guidelines are not in place in some of the countries. • Governments mostly rely on industry response resources for major incidents and only a few countries have industry cooperatives that keep and maintain response resources • There are disparities in capabilities and resources among the countries in the region • The difficulty of moving response equipment across the countries is a key issue and must be seriously considered when the regional plan is developed
<p>Training and Exercise</p>	<ul style="list-style-type: none"> • Effective exercising and training need to be improved in the region. • Encourage more industry and government collaborative exercises and training so expectations from both can be better managed • Promoting a standardized approach to the exercise evaluation process and reporting may be beneficial. The capturing and sharing of a relevant lessons learned from exercises within the region could be promoted by, or channeled through, GISEA. • Potential to use new reference materials that have been produced by industry such as the IOGP-IPIECA OSR JIP (Joint Industry Project) as appropriate to the needs of the training/exercise of the member state.

Table 2. Summary of Working Group Discussions During the Regional Meeting

An area of obvious importance is the ratification status of various IMO conventions that pertain to oil spill preparedness and response. The table below shows the ratification status.

ASEAN COUNTRIES	OPRC 90	CLC 92	FUND 92	BUNKERS CONVENTION
Brunei	✗	✓	✓	✗
Cambodia	✗	✓	✓	✗
Indonesia	✗	✓	✗	✓
Laos	✗	✗	✗	✗
Malaysia	✓	✓	✓	✓
Myanmar	✓	✓	✓	✗
Philippines	✓	✓	✓	✗
Singapore	✓	✓	✓	✓
Thailand	✓	✗	✗	✗
Vietnam	✗	✓	✗	✓

Table 3. Status of Ratification of Key IMO Conventions (Source: IMO, 2017)

A key focus of efforts in the region was to support national signing and ratification of OPRC and these efforts started to bear fruit when Myanmar became the 111th State to accede to the 1990 International Convention on Oil Pollution Preparedness, Response and Co-

operation Convention (OPRC) in late 2016. The country also ratified the CLC (Civil Liability Convention) earlier in the same year.

BUILDING BLOCKS

The development of the ROSCP is one of the key objectives of the GISEA Programme based on its Strategic Framework for the 2015-2017 period. It is, more importantly, a firm commitment of the MoU from the ASEAN member countries. The MoU is the essential building block in the development of the ROSCP. The fundamental basis of the MoU is the OPRC Convention, particularly articles 5, 6, 7, and 10. The areas of cooperation in the MoU include (Guevarra, 2015):

- Implement IMO conventions to prepare for, reduce and control oil spills
- Undertake measures to prepare for and respond to oil spills incidents in the ASEAN region
- Develop a Regional Oil Spill Contingency Plan to coordinate and integrate response to oil spill incidents that may affect one or more ASEAN member or exceeds the capacity of an ASEAN member
- Develop strategies and programs to strengthen capacity and capability of ASEAN members including regular joint training courses or joint exercises to improve the level of preparedness, cooperation and coordination among operational personnel and response teams
- Share information to enhance level of research and studies on the scientific and technical aspects of oil spill preparedness and response
- Jointly conduct and/or share the results of research and studies on the scientific and technical aspect of oil spill preparedness and response

- Promote partnerships with relevant stakeholders, including ASEAN dialogue partners, governmental and non-governmental organizations and shipping and petroleum industries

With the MOU in place, plans were laid out to develop the draft text of the ROSCP. There are a number of active regional plans that can be used as a model for the ASEAN ROSCP but the critical part was to make it relevant to the current situation of the Southeast Asian region. The IMO, in cooperation with Singapore MPA (Maritime and Ports Authority) and GISEA, conducted the *Regional Workshop on the Development of a Regional Spill Contingency Plan for Association of Southeast Asian Nations (ASEAN)* at the end of September 2015.

The workshop brought together twenty representatives from the ten ASEAN member countries that have expertise and/or direct involvement in oil spill preparedness and response in their country. The primary objective was to initiate and develop the draft Regional Oil Spill Contingency Plan (ROSCP). This is a critical part of implementing the MOU on the ASEAN Cooperation Mechanism for Joint Oil Spill Preparedness and Response. The participants were successful in developing the draft Regional Plan and a series of follow-up actions and recommendations were proposed and agreed upon. These included the establishment of a Correspondence Group to complete the other elements (i.e. Appendices) and discuss revisions and feedback from their internal discussions with stakeholders in their own countries. The formation of a Technical Advisory Group was also recommended to ensure the effective implementation of the Regional Plan.

THE NEW REGIONAL COOPERATION FRAMEWORK

The OPRC encourages a regional approach and almost every region in the world has a regional agreement on Oil Spill Preparedness and Response. In developing the Regional Plan, some of these agreements were considered and some of their provisions were adapted to fit

the circumstances in the ASEAN region. The draft Regional Plan has been undergoing internal reviews and approval processes among the ASEAN member states since its inception in October 2015. The ROSCP was written based on the following values and standards:

- It recognizes the principles that are embodied in OPRC.
- The regional cooperation that this Plan facilitates aligns with OPRC and is designed to integrate with other bi-lateral or multi-lateral agreements concerning oil pollution incidents within the ASEAN region;
- It respects the sovereignty of each member country;
- It acknowledges the diversity of the different management systems used in each country.
- The coordination, control and command framework that is used when the Regional Plan is activated neither alters nor replaces the National response system of the affected State (the State that activates the Plan);
- The National Plan or National response system of each member state is the basic foundation of the Regional Plan;

The preparedness levels within ASEAN vary from country to country and the implementation of the Regional Plan will need to take this into consideration. There are also a number of sub-regional and bilateral agreements in place between the ASEAN member countries, which needs to be looked at and integrated into the Regional Framework. Some of these have been in place for a number of years but rarely updated and their status remains unclear (Guevarra, 2014).

SUB-REGIONAL / BILATERAL AGREEMENTS	GEOGRAPHIC COVERAGE	COUNTRIES
Joint Statement on Oil Spill Response	Gulf of Thailand Subregion	Cambodia Thailand Vietnam
Memorandum of Agreement between the Government of the Socialist Republic of Vietnam and the Government of the Republic of the Philippines on Cooperation in Oil Spill Preparedness and Response	Waters within the national boundaries and/or jurisdiction of the Contracting Parties	Philippines Vietnam
Memorandum of Understanding between the Republic of the Philippines and the Kingdom of Thailand on Joint Oil Spill Response	Waters within the national boundaries and/or jurisdiction of the Contracting Parties	Philippines Thailand
Standard Operating Procedure (SOP) for Joint Oil Spill Combat in the Straits of Malacca and Singapore	Straits of Malacca and Singapore	Indonesia Malaysia Singapore
Standard Operating Procedure for Joint Oil Spill Combat in the South China Sea including Brunei Bay	Waters within the national boundaries and/or jurisdiction of the Contracting Parties	Brunei Malaysia
Sulawesi Sea Oil Spill Response Network	Straits of Lombok, Makassar and Sulawesi Sea	Indonesia Malaysia Philippines

Table 1. Sub-Regional and Bilateral Agreements between ASEAN Member Countries

The new Regional Plan does not supersede or replace any of the agreements that are already in place. Instead, it will act as a coordinating mechanism between the member countries and will complement the existing arrangements. The coordinated, multi-country response in a major oil spill incident will still follow the National Plan of the affected state or the state that activates the Plan.

A LOOK INTO THE FUTURE

The ASEAN Maritime Transport Working Group (MTWG) is the custodian of the MoU. Anything regarding the implementation of these instruments needs to go through this coordinating body, which is composed of representatives from the different Maritime Administrations of each member state. It also includes “Dialogue Partners”, which are countries and International Organizations (IOs) that provide assistance and work closely with the member countries on issues of common interest such as shipping, environmental management and pollution response. These countries are China, India, Japan and South Korea.

The various matters regarding the Regional Plan and regional preparedness are discussed under the IMO-ASEAN Partnership, where GISEA sits (refer to Figure 3). The MTWG meets only twice a year so any issues that come up during these two official sessions are discussed in a Correspondence Group that is managed by GISEA. These are then presented and discussed in the next MTWG meeting.

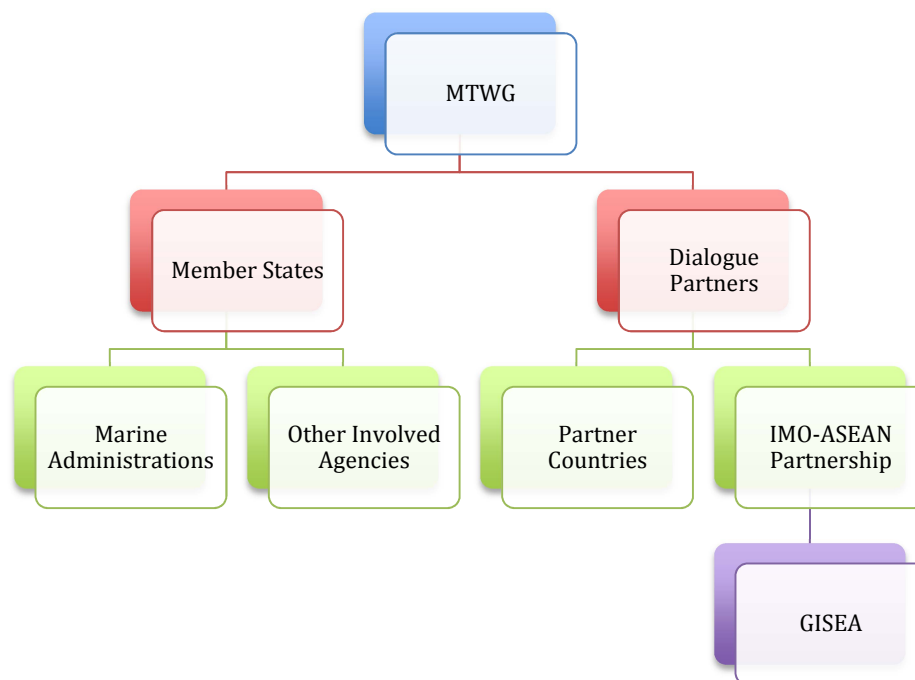


Figure 2. The working structure of the ASEAN MTWG

SUMMARY AND NEXT STEPS

The ASEAN region stands on the threshold of a new era of cooperation with the development of the draft Regional Plan. Next steps will include the finalization of the text and the subsequent adoption by the ASEAN member states through the MTWG. This is likely to take place during 2017. The implementation of the Plan, once adopted, will likely be led by Malaysia, who has been identified as the potential lead country for this activity.

REFERENCES

- Forrest, C. 2016. State Cooperation in Combating Transboundary Marine Pollution in South East Asia. *Australia and New Zealand Maritime Journal*: Vol 30, No 1 (2016), pp. 78-89.
- Guevarra, J. 2014. The Global Initiative for Southeast Asia. *International Oil Spill Conference Proceedings*: May 2014, Vol. 2014, No. 1, pp. 1375-1387.
- Guevarra, J. 2015. The Global Initiative for Southeast Asia: The Journey Towards Regional Cooperation in Oil Spill Preparedness and Response in ASEAN. *Interspill Conference Proceedings*: Available online at <http://www.interspill.org/previous-events/2015/WhitePapers/Interspill2015ConferenceProceedings/25%20MARCH%202015/IMO-IPIECA%20Global%20Initiative/Global-Initiative-for-Southeast-Asia.pdf> (last accessed on 2 January 2017).
- IMO, 2017. Status of Conventions. Available online at <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx> (last accessed 26 December 2016).
- IMO, 2013. Workshop for the establishment of a regional cooperative mechanism for oil spill preparedness and response in the ASEAN region. Available online: <http://www.imo.org/OurWork/TechnicalCooperation/TCActivities/Pages/ASEAN-OSRAP.aspx>. Accessed on 30 December 2016.
- IMO-IPIECA Global Initiative. 2008. Basis for Action Plan 2009-2010.
- Oil Spill Response & East Asia Response Ltd. 2007. Oil Spill Preparedness and Response in the East Asian Seas Region, A Report to the GI East Asia Regional Task Force.
- Raaymakers, S. 2009. Review of: ASEAN Oil Spill Response Action Plan, A Report to the International Maritime Organization. Internal Report.