

COMPLAINT NUMBER	17/080
COMPLAINANT	A Stewart
ADVERTISER	Greenpeace NZ
ADVERTISEMENT	Greenpeace NZ, Television
DATE OF MEETING	11 April 2017
OUTCOME	Not Upheld

SUMMARY

The Greenpeace television advertisement shows seismic blasts being fired into the ocean. Intercut with footage of the blasts are shots of humpback whales, a ship, a Greenpeace inflatable boat, and land and birds covered in oil following a spill. A voiceover talks about how seismic blasts are being fired into the ocean off New Zealand's East Coast in a search for oil. It says the deafening blasts can cause chronic distress to whales and dolphins, even leading to death. It continues: 'You can stop this by texting your name to 963'.

The Complainant said the advertisement was misleading because it claimed that whales would be seriously harmed or killed as a result of seismic activities. The Complainant said the advertisement implied that climate change was due entirely to offshore oil and gas exploration and that by focusing on oil spills, the advertisement implied that a spill would occur in areas of sensitive or abundant wildlife as a result.

The Complainant said the advertisement was socially irresponsible because it implied that large scale environmental damage was imminent and would be permanent, as a result of deep sea oil exploration. This could cause fear in viewers.

The Advertiser, Greenpeace, believed the advertisement complied with the Code of Ethics and that it served the public interest by raising awareness about deep sea oil exploration. It said the effects of seismic surveying on whales were well documented. Research by leading marine scientists has shown the detrimental effects suffered by these mammals. The New Zealand Government and the oil and gas industry have acknowledged the risks.

The Complaints Board confirmed the advertisement was an advocacy advertisement and that the identity of the Advertiser was clear.

The Complaints Board found that the advertisement did not contain anything which, directly or by implication, was likely to mislead or deceive the consumer. It also found that the advertisement did not create unreasonable fear and had been prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rules 2, 6 and 11 of the Code of Ethics.

This required the Board to consider whether the advertisement contained anything which, directly or by implication, was likely to mislead or deceive the consumer; whether it played on fear; and whether, as an advocacy advertisement, the identity of the advertiser was clear and opinion was clearly distinguishable from fact. The advertisement must also have been prepared with a due sense of social responsibility to consumers and to society.

The Chair noted that the complaint referred to the Code for Environmental Claims rather than the Code of Ethics. Greenpeace is an environmental advocacy organisation; the Code for Environmental Claims is intended to cover advertising for products and services making environmental claims, such as “environmentally friendly”. For this reason the advertisement was most appropriately considered under the Code of Ethics.

The Advocacy Principles are also relevant. These were developed by the Complaints Board in previous Decisions for the application of Rule 11.

These say:

1. That Section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people’s rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the right granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant considered the advertisement to be misleading because:

- It claimed that whales would be seriously harmed/maimed/killed as a result of seismic activities.
- It showed humpback whales without evidence that they are affected by deep sea oil exploration.

- It implied that climate change was due entirely to offshore oil and gas exploration and didn't put the effects of oil spills into context.
- By focusing on oil spills, the advertisement implied that a spill will occur in areas of sensitive or abundant wildlife as a result of deep sea oil exploration.
- The advertisement fails to say that there's currently no deep sea oil exploration drilling happening in New Zealand.
- No explanation was given as to how contributing to Greenpeace would affect deep sea oil exploration.

The Complainant said the advertisement was socially irresponsible because it implied that large scale environmental damage was imminent and would be permanent, as a result of deep sea oil exploration. This could cause fear in viewers.

The Advertiser's Response

The Advertiser, Greenpeace, said the advertisement complies with the Code of Ethics and that it serves the public interest by raising public awareness about deep sea oil exploration.

The Advertiser responded to the Complainant's concerns as follows:

- No claim is made that whales will be 'seriously harmed, maimed or even killed' as a result of seismic activities. Rather, that these activities can cause chronic distress to whales, even leading to death.
- The effects of seismic surveying on whales are well documented. Research by leading marine scientists has shown the detrimental effects suffered by these mammals. The New Zealand Government and the oil and gas industry have acknowledged the risks.
- Humpback whales were used in the advertisement as an example of the type of whales that could be affected. There's no suggestion that the whales in the footage are in imminent danger. Humpback whales are frequently seen in the vicinity of the seismic survey featured in the advertisement and could be put at risk by the survey.
- The advertisement does not state or imply that deep water oil exploration is the sole cause of climate change. Greenpeace's position in the advertisement is that continued burning of oil drives us closer to climate change. It is now settled science that burning oil and other fossil fuels is a major cause of climate change.
- Greenpeace does not accept that a reasonable viewer would think that every oil well drilled, will result in a spill, but would understand that if there were a spill, it could have potentially devastating consequences on the environment, as was seen in the Deepwater Horizon disaster in the Gulf of Mexico. The fact that deep sea oil drilling carries a spill risk that could have devastating consequences is well documented.
- Greenpeace denies that the advertisement is misleading because it fails to acknowledge that deep sea oil drilling is not currently happening in New Zealand. The exploration process involves a number of stages, including seismic data

acquisition. It is a natural consequence that if oil deposits are identified through the seismic process, a well will be drilled.

- Greenpeace is an advocacy organisation campaigning to stop deep sea oil exploration in New Zealand. Footage of a Greenpeace inflatable at the scene of the seismic survey in the advertisement illustrates the type of work Greenpeace does. The advertisement asks viewers to text their name to a number, in order to find out more and to sign up to support Greenpeace. The advertisement is clearly an advocacy advertisement.

In answer to the Complainant's accusation that the advertisement was socially irresponsible because it could cause viewers to be fearful of the results of deep sea oil exploration, the Advertiser said the advertisement was designed to raise awareness and generate public debate.

The Complaints Board Discussion

Having considered all the information provided, the Complaints Board turned to consider whether the advertisement had breached Basic Principle 4 and Rules 2, 6 and 11 of the Code of Ethics.

The Complaints Board agreed that both the identity and the position of the Advertiser were clear, in compliance with Rule 11, and therefore the advertisement should be reviewed in the context of advocacy advertising, which is advertising designed to express an opinion. As such, and in the interests of freedom of expression under section 14 of the Bill of Rights Act 1990, a more liberal interpretation of the Code was appropriate.

Taking into account the Advocacy Principles, the Complaints Board found that the advertisement did not contain anything which, directly or by implication, was likely to mislead or deceive the consumer. It said information supplied by the Advertiser supported the claims made in advertisement and it did not use information in a misleading way. In particular the Board noted that the advertisement did not claim that whales will be "seriously harmed, maimed or even killed" as result of seismic activities and did not state or imply that deep water oil exploration is the sole cause of climate change. The consumer take out of the advertisement was not that every oil well drilled would result in a spill, but would understand that if a spill occurred it could have devastating consequences.

The Complaints Board considered the advertisement was intended to raise awareness of the Advertiser's perspective on the use of seismic blasts in deep sea oil exploration. It found that the advertisement did not create unreasonable fear and had been prepared with a due sense of social responsibility to consumers and to society

Accordingly, the Complaints Board ruled to Not Uphold the complaint.

Decision: Complaint Not Upheld

DESCRIPTION OF ADVERTISEMENT

The Greenpeace television advertisement shows seismic blasts being fired into the ocean. Intercut with footage of seismic blasts are shots of humpback whales in the sea, a ship, a Greenpeace inflatable boat witnessing a blast, and land and birds covered in oil following a spill. A voiceover goes:

'Right now, every 8 seconds, 24 hours a day, 7 days a week, a giant ship is firing seismic blasts into the ocean off New Zealand's East Coast in a search for oil.

The deafening blasts can cause chronic distress to whales and dolphins, even leading to death.

You can stop this by texting your name to 963.

Oil drilling in these ultra deep waters risks devastating spills and drives us closer to climate catastrophe.

Greenpeace is working right now to stop oil exploration in New Zealand.

You can help protect our oceans, the climate and our future.

Text your name to 963 now.'

COMPLAINT FROM A STEWART

Basic Principle 3: No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer.

Environmental Claims Principle 2 – Advertisements making environmental claims should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive or is likely to deceive or mislead the consumer. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

A. Environmental claims shall be accurate and able to be substantiated by evidence that is current and reflects legislative, scientific and technological developments.

The advertisement claims that whales will be seriously harmed, maimed or even killed as a result of seismic acquisition activities. This is untrue and there is no conclusive or indisputable evidence of such harm being done to whales. Also, the advertisement shows humpback whales without context or evidence that they are somehow affected by deep sea oil exploration.

The advertisement implies that climate change is due entirely to offshore oil and gas exploration. Anthropogenic induced climate change is not put into context let alone even inaccurately broken down to sufficiently identify or quantify how much is due to deep sea oil exploration, let alone how much contributes to total climate change measures.

The effects of oil spills, including all major known deep sea spills are not put into context of either the need for oil nor the thousands upon thousands of wells drilled; And, by focusing on local, immediate effects of a single incident, appear as though each and every deep sea exploration well has a real and present danger of causing permanent harm to the environment and wildlife. The incident shown also implies that an oil spill will occur in an area of sensitive or abundant wildlife and this is without context, or evidence, that it is in fact a result of deep sea oil exploration.

The advertisement does not make it clear that there is currently no deep sea oil exploration drilling occurring in New Zealand, nor where there are campaigns that they (the advertiser) are concerned about occurring in such areas of sensitive or vulnerable wildlife likely to be affected in the event of a spill.

H. Statements about aspirations of future environmental performance shall be clear and able to be substantiated.

The advertiser fails to explain how contributing to them will have an effect on deep sea exploration and what the campaign entails and what the likely outcome of the campaign will be.

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

The advertiser fails in this duty as they are being irresponsible in their advocacy by creating fear by making claims implying that large scale environmental damage is imminent and permanent in nature as a result of the activity, and because they have not put the possibility or probability of incident after mitigation into context of the overall deep sea oil exploration industry nor the many benefits oil brings to mankind. The advertiser presents deep sea oil exploration solely as an unnecessary and destructive activity.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2 Truthful Presentation: Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

Rule 6 Fear: Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.

Rule 11 Advocacy Advertising: Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

RESPONSE FROM ADVERTISER: GREENPEACE NZ

Introduction

Greenpeace believes the advertisement in question complies with the Code of Ethics (**Code**). It says further that the advertisement serves the public interest by raising public awareness and generating discourse on deep sea oil exploration, while highlighting the risks associated with it.

The context of this advertisement is that there is an ongoing national debate of significant public interest in New Zealand around offshore oil exploration generally, as well as around current seismic exploration activities of oil companies, Statoil and Chevron, on the East Coast of New Zealand.

The essential issue in this debate is the effect the end use (burning for energy) any new oil discovered will have on the climate. Other key issues include the harmful effects of seismic surveying on marine mammals and the risk of an oil spill if these companies find oil and drill exploratory wells.

Based on substantive publically available scientific information, Greenpeace holds and advocates the following views:

- That no new oil can be extracted and burnt if the world is to avoid catastrophic impacts of climate change;
- That seismic surveying poses an unacceptable risk to marine life, particularly whales; and
- That deep water unconventional oil drilling poses an unacceptable risk to the New Zealand marine environment.

These impacts are widely scientifically documented and acknowledged by the oil industry itself.

The Complaints

The complaint alleges various breaches the Code. The relevant Principles and Rules appear to be:

- BP4 All advertisements should be prepared with a due sense of social responsibility to consumers and to society.
- R2 Truthful Presentation — Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).
- R6 Fear - Advertisements should not exploit the superstitious, nor without justifiable reason, play on fear.
- R11 Advocacy Advertising — Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.

It is noted that the complaint refers to the Environmental Claims Code, rather than the Code of Ethics, while the ASA has directed Greenpeace to respond to the above Rules in the Code of Ethics. Greenpeace is an environmental advocacy organisation, funded by private donations from individuals and receives no government or industry funding. It submits that the advertisement in question is an advocacy advertisement within Rule 11 of the Code, and as such, Greenpeace's view is that the reference to the Environmental Claims Code is misplaced. It is understood that those principles are mainly directed at claims about products or services. Accordingly, this response does not refer to the Environmental Claims Principles specifically.

Alleged breaches of the Code

The Code is alleged (in broad terms) to have been breached in the following ways:

1. The advertisement is misleading and/ or inaccurate and / or unable to be substantiated by current evidence.

- (a) By alleging that whales will be seriously harmed, maimed or even killed as a result of seismic acquisition activities.
 - (b) By using imagery of humpback whales without evidence that they are affected by deep sea oil exploration.
 - (c) By implying that climate change is due entirely to offshore oil and gas exploration.
 - (d) By focusing on the effects of a single oil spill incident, implying that every deep sea exploration well endangers the environment and wildlife.
 - (e) By failing to acknowledge that there is currently no deep sea oil exploration drilling occurring in New Zealand.
2. The advertisement is misleading in that statements about aspirations of future environmental performance are unclear.
- (a) There is no explanation of how contributing to Greenpeace will have an effect on deep sea oil exploration.
3. The advertisement creates fear by making claims that large scale environmental damage is imminent and permanent as a result of oil exploration.

These complaints are responded to in turn below.

The advertisement is not misleading

The effect of seismic activities on whales

Greenpeace denies that the comments made about whales are misleading, or unable to be substantiated by evidence. It says further that there is no claim made in the advertisement that whales will be "seriously harmed, maimed or even killed", but rather that seismic activities "can cause chronic distress to whales, even leading to death".

These effects of seismic surveying on whales are well documented. Many of the relevant reports are publically available. The New Zealand Government and the oil industry also acknowledge these risks.

In essence, the research shows that:

- Seismic airguns create one of the loudest manmade sounds in the ocean, firing intense blasts of compressed air every 8 - 10 seconds, 24 hours a day, for weeks to months on end.
- The noise from these blasts is so loud that it can be heard up to 2,500 miles from the source.
- Whales rely on their hearing and vocal behaviour to communicate, find food and breeding partners.
- Seismic activity is likely to have significant, long lasting and widespread impacts on the reproduction and survival of marine mammal populations in the region.

- Seismic surveys have been shown to disrupt essential activities for whales, including foraging and reproduction. There could also be an increased risk of calves being separated from mothers.
- Over time, seismic blasting causes chronic behavioural and psychological distress for whales impacting on reproduction and increasing mortality.

In testimony to the United States Congress in 2014, Professor Douglas Nowacek summarised the available scientific knowledge:

"adverse effects can include displacing animals, changing whale foraging patterns, predator avoidance, feeding behavior, and silencing whales or otherwise causing them to alter their vocal behavior. Of utmost importance... is that the noise can and does 'impact individual fitness (i.e., the basis of population level effects) and the structure of ecological communities'.

Seismic airguns generate the most intense sounds that humans put in the ocean short of explosives. Firing a standard airgun array deployed behind a seismic survey vessel generates approximately 250-260 dB of sound, and while it is difficult to draw exact equivalents in air, these levels approximate the epicenter of a grenade blast and would easily cause the rupture of the human eardrum."¹

In March 2015, a group of 75 leading marine research scientists presented an open letter to President Obama on the impacts of seismic airgun blasting in the Atlantic Ocean expressing concern over "significant, long-lasting, and widespread impacts [from seismic surveys]" on the region's marine mammal populations, urging him to reject seismic activity in the Atlantic.

That letter summarised the effects on whales, which included increased mortality.

*"Airgun surveys have an enormous environmental footprint. For blue and other endangered great whales, for example, such surveys have been shown to disrupt activities essential to foraging and reproduction over vast ocean areas. Additionally, surveys could increase the risk of calves being separated from their mothers, the effects of which can be lethal, and **over time, cause chronic behavioural and physiological stress, suppressing reproduction and increasing mortality and morbidity.**"*

Based on this evidence, in January 2017, Obama formally [denied](#) all pending permits to conduct seismic surveying in the Atlantic Ocean.'

In New Zealand, the impacts of seismic testing on whales are also recognised. The Department of Conservation recognises "the potential exists for seismic survey operations at sea to have adverse impacts on marine mammals" and because of this the law requires any party proposing to carry out seismic surveying for oil in New Zealand to comply with a Seismic Survey Code of Conduct and complete a Marine Mammal Impact Assessment and carry observers on-board.⁵

Humpback whales used as an example of type of whale that could be affected

Humpback whales are used in the advertisement as an example of the type of whale that could be affected. There is no suggestion that the specific whales in the footage are in imminent danger.

Greenpeace does not accept that a reasonable viewer would have understood the advertisement to make any claim that these particular whales have been or would be harmed, but would understand they were represented to help illustrate the concerns described above.

While in the advertisement the humpback whale footage is used to represent whales generally, humpback whales are frequently seen in the vicinity of the seismic survey featured in the advertisement (East Coast between Cape Kidnappers (Hawke's Bay) and Conway Flat (North Canterbury) and are known to travel along the east-coast of the South Island and through Cook Strait. This means that humpback whales, as well as other species, could indeed be put at risk by the seismic survey featured in the advertisement. The company operating the seismic survey has recognised this in its Marine Mammal Impact Assessment.⁶

A general summary of the science around seismic effects on whales has already been set out above. As it pertains specifically to humpback whales, the science is equally clear. Humpback whales are negatively impacted by seismic testing.

One study found that Humpback whales appear to communicate over very large distances of at least tens of kilometres, and interference with this by seismic reduces their ability to communicate.⁷

Seismic surveys have also been found to negatively affect humpback whale singing activity, which is how the male humpback calls for breeding partners. A 2014 study found that the number of singing humpback whales significantly decreased (they stopped singing) with increasing levels of seismic survey pulses, suggesting the breeding display of humpback whales is disrupted by seismic survey activity.⁸

In summary, Greenpeace's position is that its allegations about the effects on whales is based on well documented evidence, and is not misleading.

Climate Change is caused by oil exploration

Greenpeace denies that the advertisement states or implies that deep water oil exploration is the sole cause of climate change. Greenpeace submits that no reasonable viewer would interpret the advertisement as suggesting this, and that any reasonable viewer would understand that there are various and complex factors contributing to anthropocentric climate change.

Instead, the position put forward by Greenpeace in the advertisement is that that continued burning of oil drives us closer to climate change. It is now settled science that burning oil and other fossil fuels, is a major cause of climate change.

The science is equally clear that the world cannot afford to burn most of the known reserves of fossil fuel, let alone any new fossil fuels, such as the oil Statoil and Chevron are looking for.

A leading and influential study in the journal, *Nature*, found that all unconventional oil, including deep sea oil, must be left in the ground if we are to ensure greenhouse gas emissions do not exceed 2 °C above pre-industrial levels, the level the world now recognises as the tipping point. The report found:

"It has been estimated that to have at least a 50 per cent chance of keeping warming below 2 °C throughout the twenty-first century, the cumulative carbon emissions

between 2011 and 2050 need to be limited to around 1,100 gigatonnes of carbon dioxide (Gt CO₂)^{2, 3}. However, the greenhouse gas emissions contained in present estimates of global fossil fuel reserves are around three times higher than this^{2, 4}, and so the unabated use of all current fossil fuel reserves is incompatible with a warming limit of 2 °C."

"globally, a third of oil reserves, half of gas reserves and over 80 per cent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2 °C. We show that development of resources in the Arctic and any increase in unconventional oil production are incommensurate with efforts to limit average global warming to 2 °C."⁹

To the extent the complainant makes a distinction between the search for new oil and the end use of that oil, Greenpeace submits that this is an arbitrary distinction and the issues are inseparable. The inevitable consequence of discovering oil through the exploration / seismic process is that it will be extracted and then burnt for energy. Indeed this is the only reason the New Zealand Government invites offshore oil exploration, and international oil companies Statoil and Chevron commission 3D seismic surveys to search for oil.

Greenpeace's position is that its statement that oil drives us closer to climate change is true, founded on indisputable evidence, and is not misleading.

Deep Sea Oil Drilling puts the marine environment at risk

Greenpeace denies that by focusing on footage of one particular oil spill disaster, it implies that all oil wells have a real and present danger of harming the environment.

Greenpeace's position is that deep water unconventional drilling poses an unacceptable risk to the New Zealand marine environment, particularly due to the oil industry's established inability to prevent and mitigate the effects of an oil disaster. While an oil spill is a low probability risk, the consequences are potentially ecologically devastating.

The advertisement expressly acknowledges that an oil spill is a risk associated with deep sea oil exploration, rather than a certainty, as the complainant alleges. Greenpeace does not accept that a reasonable viewer would think that every oil well drilled will result in a spill, but would understand that if there were a spill, it could have potentially devastating consequences on the environment, as was seen in the Deepwater Horizon disaster in the Gulf of Mexico.

The fact that deep sea oil drilling carries a spill risk that could have devastating consequences is well documented. On 20 April 2010, the world was forced to wake up to the inherent dangers of deep-sea oil drilling and the unique difficulties of containing a deep-water spill when BP's Deepwater Horizon rig suffered a catastrophic blowout that killed 11 crew members. Over the next three months the spill ran unchecked, disgorging 660,000 tonnes of oil into the Gulf of Mexico, devastating both wildlife and local fishing and tourism. Commonly used images from that disaster are used in the advertisement to illustrate that point.

It is also well established that drilling at depth is the most risky and exploratory drilling is the most dangerous stage. A major reason it took so long to stop the Deepwater Horizon leak was the extreme depths of water the oil companies were drilling in. The rig was operating in 1,544m of water, with the well reaching down another 4,051m below the sea floor.¹⁰ The risks of ultra deep-water drilling are many times greater. In the Statoil / Chevron operational

areas, drilling will potentially be at depths of up to 3250 metres —more than twice as deep as the waters in which Deepwater Horizon was exploring when the disaster occurred.¹¹

The final report to the United States President by the National Commission on the Deepwater Horizon disaster, 'Deep Water', stated:

"[Drilling] in deepwater brings new risks, not yet completely addressed by the reviews of where it is safe to drill, what could go wrong, and how to respond if something does go awry. The drilling rigs themselves bristle with potentially dangerous machinery. The deepwater environment is cold, dark, distant, and under high pressures... When a failure happens at such depths, regaining control is a formidable engineering challenge—and the costs of failure, we now know, can be catastrophically high."¹²

According to Tim Robertson at the Alaska-based consulting firm Nuka Research and Planning Group, "The technical demands of drilling are magnified enormously with depth".¹³ At depths of below 200 metres, for example, it is no longer possible to use divers. Operators are therefore dependent on robotic instruments,¹⁴ which are prone to technical failure¹⁵ and which make it harder to assess and fix any problems that might occur.¹⁶

Greenpeace's position is that the inexperience of oil companies operating at these depths is another reason to be concerned about the potentially catastrophic impacts of a spill on the environment. Indeed, BP's Chief Executive Tony Hayward has admitted:

"The energy industry is clearly working at the frontiers of geology, geography and technology."¹⁷

BP chief operating officer Doug Suttles acknowledged a month after the Deepwater Horizon blowout that while techniques were theoretically available for plugging the leak,

"the challenge is... that they haven't been done in 5,000 feet of water."¹⁸

The fact that BP used ten different techniques to try to stem the oil flow¹⁹ in the weeks after the disaster reveals how little oil companies really know.

Globally, governments have also acknowledged that the industry is alarmingly unprepared across its operations for 'black swan' events — events which they deem to be unlikely, but which once they have occurred, have devastating consequences. Recently, the UK Energy and Climate Select Committee's inquiry into deep water drilling in the UK raised concerns that — "the offshore oil and gas industry is responding to disasters, rather than anticipating worst-case scenarios and planning for high-consequence, low-probability events".²⁰

The possibility of major oil spills is a real risk, with potentially permanent consequences, especially in difficult environmental conditions. For example, the United States Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) in assessing another frontier zone, the Alaskan Arctic, estimated a 75% chance of a spill of over 1,000 barrels of oil, occurring in the lifetime of the project.²¹

In summary, Greenpeace submits that the claim that oil exploration risks a spill, and that spill could have devastating environmental consequences, is well supported by evidence and history, and is not misleading.

Deep Sea Oil Drilling in New Zealand

Greenpeace denies that the advertisement is misleading because it fails to acknowledge that deep sea oil drilling is not currently happening in New Zealand.

The exploration process involves a number of stages, including 2D and 3D seismic data acquisition, and finally exploratory drilling. It is a natural consequence that if oil deposits are identified through the seismic process, is that a well will be drilled. In fact, it is a requirement of Statoil and Chevron's exploration permits that they do drill exploratory wells.²² While these companies are currently at the second phase of exploration (3D seismic stage), the next stage is exploratory drilling.

Greenpeace's campaign seeks to highlight the risks of oil exploration across these various phases of exploration and to generate public debate across the different issues. In Greenpeace's view, it would be artificial to seismic activities without referring to the inevitability that any oil found will next be drilled for and extracted.

Environmental Claims

Greenpeace rejects the claim that there is no explanation of how contributing to Greenpeace will have an effect on deep sea oil exploration.

Greenpeace is an advocacy organisation that is campaigning to stop deep sea oil exploration in New Zealand, through a number of different means. These include promoting regulatory change at the national and regional levels, challenging industry, raising public awareness and generating public debate for better environmental outcomes. Greenpeace submits that a reasonable viewer would have understood that the advertisement invited viewers to support this campaign generally, and would not have been confused.

Further, the footage of a Greenpeace inflatable bearing witness at the scene of the seismic survey in issue, illustrates the type of work Greenpeace does.

In any event, the advertisement asks viewers to text their name to a number, in order to find out more and to sign up to support Greenpeace. Greenpeace then responds to these text messages with a follow up phone call, presenting an opportunity to have a conversation about Greenpeace's work and allowing the viewer to ask any questions.

Greenpeace submits that the advertisement is clearly an advocacy advertisement, and does not accept that a reasonable viewer would have been confused without further explanation of the particular campaigning methods Greenpeace uses.

Fear

Greenpeace denies that the advertisement creates unreasonable fear. The advertisement highlights the real environmental impacts and risks of oil exploration on marine life, the coastal environment and most importantly, the climate. The advertisement is not designed to create fear, but to raise awareness and generate public debate.

The relevant issues are ones that carry high, urgent and potentially irreversible risks on a number of levels. In particular, the risks associated with failing to meet a 2 degree climate target are potentially devastating and irreversible for humans and entire ecosystems, and must be addressed now.

The last three years have each been the hottest on record, since records started in 1880. In June 2016, David Carlson, director of the World Meteorological Society's climate research programme said:

*"What we've seen for the first six months of 2016 is really quite alarming. We would have thought it would take several years to warm up like this. We don't have as much time as we thought."*²³

This means more frequent and extreme weather events such as droughts floods wildfires and superstorms impacting everyone's lives. One of the frontlines of impacts is the Pacific. Every year, month and day that we delay taking climate action we are closer to the point where it will be too late for humanity to change the course of runaway climate change. In Greenpeace's view, based on undisputed evidence, there is no issue that is more urgent or frightening.

Any inference that environmental dangers are imminent or permanent, in part because of offshore oil exploration, is, in Greenpeace's submission, completely reasonable and supported by science.

Footnotes:

1. Nowacek, *Douglas, 2014, testimony before US House of Representatives subcommittee, 14 July, 2015* see <https://nicholas.duke.edu/about/news/nowacek-testifies-congress-impacts-seismic-activity-marine-life>.
2. Letter dated 5 March 2015 to President Obama. [http://usa.oceana.org/sites/default/files/75_marine_scientist_letter-seismic.pdf? ga=1.149827760.785018502.1483908495](http://usa.oceana.org/sites/default/files/75_marine_scientist_letter-seismic.pdf?ga=1.149827760.785018502.1483908495) cited in <https://www.newscientist.com/article/dn27120-obama-asked-to-protect-whales-from-sound-blasting/>
3. <http://oceana.org/press-center/press-releases/president-obama-denies-all-pending-permits-seismic-airgun-blasting>
4. <http://WWW.d0C.q0Vt.nZ/OUr-WOrk/SeiSrniC-surveys-Code-Of-COnDUctiOVerVieW/>
5. s7, EEZ and Continental Shelf (Environmental effects — permitted activities) Regulations 2013. Under EEZ (Environmental Affects) Act 2012.
6. <http://www.doc.govt.nz/Documents/conservation/marine-and-coastal/mmia/schlumberger-2016-pegasus-basin-3d-seismic-survey-mmia-approved-public.pdf> at pages 53-54.
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<https://permits.nzpam.govt.nz/ACA/Cap/CapDetail.aspx?Module=Permits&capID1=1.4ATX8tca pi D2=00000&capID3=00157&agencyCode=NZPAM>
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RESPONSE FROM MEDIA: COMMERCIAL APPROVALS BUREAU

The single complainant quite clearly works within the mining/drilling/oil sector.

In this instance Greenpeace obviously has a differing viewpoint on the effects of deep water drilling off the New Zealand coast but the advertisement falls within the realms of freedom of speech and advocacy.

The TXT number graphic on screen and voiceover towards the close of the commercial directs interested viewers to gain further information on the topic.

We see no reason to uphold this advocacy complaint.