

2017-2018
BIENNIAL REPORT
BY THE
OIL SPILL TECHNICAL ADVISORY COMMITTEE TO THE
GOVERNOR AND THE LEGISLATURE

PURSUANT TO THE
LEMPERT-KEENE-SEASTRAND OIL SPILL PREVENTION AND RESPONSE
ACT
GOVERNMENT CODE SECTION 8670.1, *ET SEQ.*

November 1, 2019



Executive Summary

As required by statute, the Oil Spill Technical Advisory Committee (TAC) presents this report to the Governor and the Legislature of California as an opportunity to review our activities of the past two years and discuss priority issues and recommendations for the State's oil spill program for 2019-2020.

The report follows the format of recent reports, which we hope informs the Governor and the Legislature of the important issues with which the TAC has been engaged, as well as adequately highlights issues critical to our state oil spill preparedness, prevention, and response. The California Oil Spill Program encompasses programs administered by:

- Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR)
- California State Lands Commission (CSLC)
- California Coastal Commission (CCC)
- San Francisco Bay Conservation and Development Commission (BCDC)

Additionally, the Oil Spill Program works in partnership with the National Oceanic and Atmospheric Administration (NOAA), the California Department of Forestry and Fire Protection (CAL Fire), and the U.S. Coast Guard.

Throughout the period covered by this report, the TAC has received periodic updates on these agencies' day-to-day activities and continuing challenges and successes in carrying out the mandates of their respective programs.

The field response team responds in person to an average of 248 oil spills per year plus an additional 960 phone responses per year. As in previous years, the TAC is impressed with the professionalism of the dedicated staffs of these agencies in meeting their mandate of providing the best achievable protection of the State's valuable natural resources from oil spills.

In the 2017-2018 Issues and Accomplishments section of this report, we highlight topics the TAC monitored over the past two years, including:

- Status of Oil Spill Funds
- Implementation of the statewide oil spill program
- Oil spill-related legislation and regulation development and implementation

A discussion of issues the TAC feels will continue to be of interest and worthy of attention are included in the section of this report entitled Priority Issues for the TAC 2019-2020.

These issues include:

- Monitoring of oil spill funds
- Implementation of the statewide Oil Spill Program

- Regulation development and implementation
- Best Achievable Protection Report
- Submerged cables and pipelines
- Abandoned and derelict vessels
- Monitoring of oil spill-related legislation
- Petroleum product transportation by rail and pipeline
- TAC membership, roles, and responsibilities
- Funding challenges for non-petroleum spills
- Non-floating petroleum products
- Absence of a FOOSC at inland spills

Recommendations

The issues above form the basis for the following recommendations from the TAC to the Governor and Legislature.

- Continue monitoring movement of petroleum products by rail and enact additional legislation if necessary.
- Consider legislative action to ensure adequate funding of the Oil Spill Prevention and Administration Fund (Fund 320), which may include: (1) adopting an annual inflation adjustment for the fees, (2) pursuing additional revenue sources, and / or (3) adjusting / increasing the fees as necessary.
- Consider increasing OSPR spending authority to meet mandated operational needs.
- Address the lack of a dedicated funding source for responding to non-petroleum-based spills in state waters.
- Make appointments to fill the four (4) vacant TAC membership positions, one of which, the TAC recommends, should be filled by a member of the Oiled Wildlife Care Network.
- Find new source of funding to address abandoned and derelict vessels.
- Continuously appropriate Fund 322 (Environmental Enhancement Fund).

The TAC looks forward to continuing our excellent working relationship with the OSPR Administrator and the dedicated personnel at OSPR, the State Lands Commission, the Coastal Commission, and the San Francisco Bay Conservation and Development Commission. We would like to express our appreciation for their hard work to protect California's spectacular natural resources and expand knowledge to other states to prevent and respond to significant hazardous spills.

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Background

Lempert-Keene-Seastrand Oil Spill Prevention and Response Act

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act) was signed into law on September 22, 1990 (S.B. 2040, Stats. 1990, Ch. 1248). The overall purpose of the Act is to prevent and cleanup marine oil spills and to restore damage to the environment. Specific findings by the Legislature concerning the California coast and the threat of pollution from marine oil spills motivated the adoption of the Act. The Administrator of the Office of Spill Prevention and Response (OSPR) and the California State Lands Commission (CSLC) are vested with the primary responsibility for implementing the Act.

The staff of OSPR is comprised of personnel within the Department of Fish and Wildlife. They coordinate and directly respond to marine and inland oil spills and work with public and private entities to prepare for and prevent spills. Some notable federal partners include the United States Coast Guard; U.S. Environmental Protection Agency; National Oceanic and Atmospheric Administration; and the Bureau of Safety, Environment, and Enforcement (BSEE), as well as state and local agencies and communities through engaged Area Committees chaired by the USCG and DF&W.

In addition, to address marine spills, five Harbor Safety Committees develop harbor safety plans for the following:

- Port of San Diego
- Port of Los Angeles/Long Beach
- Port Hueneme
- San Francisco Bay Area
- Humboldt Bay

Similarly, Geographic Response Plans (GRPs) are developed for priority inland waters of the state with higher risk of an oil spill. GRPs are coordinated by OSPR and vetted through the regional Local Emergency Planning Committees (LEPCs) comprised of industry representatives, federal, State, and local government agencies, public health agencies, tribal representatives and other stakeholders.

Other services to aid in safer navigation of California State Waters are the U.S. Coast Guard Vessel Traffic Services in San Francisco and Los Angeles/Long Beach, and the Physical Oceanographic Real-Time Systems (PORTS).

Oil Spill Technical Advisory Committee

One component of the Act was the creation of the Oil Spill Technical Advisory Committee (TAC). The TAC provides public input and independent judgment of the actions of the Administrator of OSPR.

With the passage of SB 861, the Legislature expanded membership of the TAC to include Fourteen (14) members, as follows:

- Eight (8) members appointed by the Governor
- Three (3) members by the Speaker of the Assembly
- Three (3) by the Senate Rules Committee

The members must have background in marine transportation, local government, oil spill response and prevention programs, the petroleum industry, state government, environmental protection and ecosystems, the dry cargo vessel industry, the railroad industry, the oil production industry, and the public.

Pursuant to its by-laws, TAC members serve until being replaced by the appointing authority, resigning, or being asked to resign after a vote of at least two thirds of the appointed TAC members. (See Appendix B for current TAC member information).

The TAC makes recommendations to the Administrator, the California State Lands Commission (CSLC), the California Coastal Commission (CCC), and the San Francisco Bay Conservation and Development Commission (BCDC) on any provision of the Act including the promulgation of all rules, regulations, guidelines, and policies.

At its own discretion, the TAC may study, comment on, or evaluate any aspect of oil spill prevention and response in the State. To the greatest extent possible, these studies are to be coordinated with studies being done by the Federal government, the Administrator, the CSLC, the State Water Resources Control Board (SWRCB), and other appropriate State and international entities.

Since 2003, the TAC has been required to report biennially to the Governor and the Legislature on its evaluation of marine oil spill prevention and response within the State. As of this 2017-2018 biennial report and moving forward, assessment of inland spill prevention and response is also included. The TAC may prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

The TAC meets at least twice a year. All TAC meetings are open to the public pursuant to the Bagley-Keene Open Meeting Act, and portions of

each meeting are devoted to public input on any issue affecting California's statewide oil spill programs.

In Memorium

This reporting period saw the passing of Steve Ricks, longtime leader in the San Francisco oil spill response community and Chair of our Technical Advisory Committee. Steve was a member of the TAC for 17 years, having served since his appointment by Governor Davis in 2001. We as a TAC send our condolences to Steve's family and dedicate this report to his memory, as an acknowledgement of his dedicated service to California and his lasting impact protecting our valuable and delicate environs.

Issues and Accomplishments for 2017-2018

During the 2017-2018 reporting period, the TAC monitored the following issues.

Status of Oil Spill Funds – Funds 207, 320, 321, and 322

At each meeting of the TAC, OSPR provides reports on each oil spill fund. The following discussion covers fund status and the TAC's observations. The TAC receives regular briefings from OSPR on fund activity and balances. In the period covered by this report, the TAC finds any fund irregularities have been adequately explained. It should be noted that the recent state accounting system transition to the Financial Information System for California (FI\$CaL) resulted in the TAC not receiving financial information to the level of detail received in the past, making TAC financial evaluation challenging.

Fund 207 – Fish and Wildlife Pollution Account

After signing of SB 861 in 2014, spills of petroleum products in non-marine waters of the state obtained a dedicated funding stream; however, non-petroleum spills throughout state waters continued to have no source of dedicated funding. Historically, funding for Fund 207 was derived from fines and penalties for the aforementioned spills. The TAC has deemed availability of funds for response to be inadequate in the past, and the lack of ability to forecast based solely on fines and penalties has severely hampered the ability of the agencies to adequately prepare for non-petroleum spills.

Fund 320 – Oil Spill Prevention and Administration Fund

The Oil Spill Prevention and Administration Fund (OSPAF) finances OSPR's operating budget and the State oil spill programs. The Budget Act of 2014 and the enactment of SB 861 established the \$0.065 per barrel (42 U.S. gallons) fee on those owning crude oil or petroleum products received at a refinery, as specified by any mode of delivery that passed over, across, under, or through waters of the state, whether from within or outside the state. Previously this fee structure only covered crude oil and petroleum products imported into the state via marine transport or via pipelines off the coast of California. The TAC believes that this action resulted in the OSPAFA budget being restored to an appropriate level after several years of funding insufficient to cover program costs. These statutory changes also shifted the funding of the Oiled Wildlife Care Network from interest earned through Fund 321 (see below) to a fixed appropriation from Fund 320,

addressing chronic shortfalls to that program's funding. The TAC is committed to continuous monitoring of the OSPAF fund to ensure the fee level is appropriately set to fund the mandates of the Lempert-Keene-Seastrand Act and make recommendations accordingly.

Due to inflation and the declining use of oil across California, the projected balance of Fund 320 has experienced a steady decline, and this may eventually lead to insufficient funding for OSPR if not rectified. This topic is discussed further in the 2019-2020 Priority Issues and Recommendations section of this report.

Fund 321 – Oil Spill Response Trust Fund

The Oil Spill Response Trust Fund (OSRTF) is available to the OSPR Administrator to pay for the cost of responding to oil spills if the responsible party is unable or unwilling to fund cleanup and funding from the federal government's Oil Spill Liability Trust Fund will not be available in a timely manner. The OSRTF was initially funded by a twenty-five cent (\$0.25) per barrel (42 U.S. gallons) fee. The fee was discontinued once the fund balance reached a prescribed level. The fee may be reinstated if the Administrator determines that the amount in the fund is less than or equal to 95% of the designated amount of \$54,875,000 and that minimum funding is required. The OSPR Administrator has seen no need to reinstate the fee since the fund's inception.

Legislation in 2011 created a \$40 million loan from the OSRTF to the General Fund, with a planned repayment date in 2019 (see Stats. 2011, c. 11, SB 80; and Stats. 2014, c. 35, SB 861). The loan has reduced the amount of interest income the OSRTF earns. When the loan is repaid it is required to be repaid with interest. Any additional loans must be monitored and repaid to restore the fund to its appropriate level. The TAC will continue to track and monitor the planned reimbursement. As of the date of this report, no repayment has been received.

Fund 322 - Environmental Enhancement Fund

Penalties collected under the act are deposited into Fund 322, the Environmental Enhancement Fund (EEF). This fund pays for enhancement and restoration projects. In the past, funding was capped at \$358,000/year, even though additional funds were available, which was viewed as an unnecessary limit on supporting deserving projects. Enactment of SB 861 provided the authority required for a temporary increase in annual expenditures, but that increase ended in 2018. Being beholden to fiscal year boundaries and uncertain appropriations makes it inefficient to plan for EEF expenditures.

Implementation of Statewide Oil Spill Program

Since 2009, the OSPR Administrator (or their designee) has been designated as the Incident Commander for inland oil spill cleanup; made responsible parties for inland spills liable for damages similar to those for marine oil spills; and allowed for civil and administrative enforcement of inland oil spills (AB 2911, statutes of 2008). Enforcement penalties for both inland and marine oil spills were also strengthened. Those changes did not include any provisions for creating a dedicated funding source for the inland pollution program or require inland spill planning.

In 2014, the Legislature enacted SB 861 as part of the budget process. SB 861 made various changes to the State Budget, and included in the bill were provisions expanding the Administrator's responsibilities relating to oil spills to include all surface waters of the state (except groundwater).

All key provisions of the law were enacted during this reporting period and include:

- Developed regulations to expand oil spill preparedness, prevention, and response program from marine waters to all surface waters of the state. (COMPLETE)
- Required operators of refineries, pipelines, and oil terminals to register with the State Board of Equalization and to assess a per barrel fee on all oil imported or extracted from the state. (COMPLETE)
- Required the Administrator to amend the California Oil Spill Contingency Plan to provide for the best achievable protection of all state waters, not solely coastal and marine waters, and to submit the plan to the Governor and the Legislature on or before January 1, 2017. (COMPLETE)
- Changed the funding stream for the Oiled Wildlife Care Network (OWCN) from interest earned on the Oil Spill Response Trust Fund (Fund 321) to a flat appropriation of \$2,500,000 per year from the Oil Spill Prevention and Administration Fund (Fund 320). (COMPLETE)
- Expanded duties of the OWCN to include inland activities for preparedness and response and proactive capture and care of impacted wildlife. (COMPLETE)

The implementation of the statewide oil spill program has now been underway since 2014. After conducting a number of scoping sessions and workshops intended to solicit input and field concerns from new interested stakeholders, emergency oil spill contingency plan regulations were developed covering inland pipelines, inland production facilities, and railroads transporting petroleum products. Final regulations covering inland pipelines and inland production facilities were adopted in 2018.

Tracking Oil Spill-Related Legislation and Implementation

The TAC monitors all oil spill related legislation and implementation as a matter of course. Bills introduced in the 2017/2018 legislative session and signed into law, or prior years' legislation enacted in 2017/2018 are discussed here.

SB 295 (Jackson)

This bill (passed in 2015) established a requirement that began January 1, 2017, that the State Fire Marshal, or an officer or employee authorized by the State Fire Marshal, annually inspect all intrastate pipelines and operators of intrastate pipelines under the jurisdiction of the State Fire Marshal. It also required the State Fire Marshal to adopt regulations implementing the provision by the effective date.

The bill prohibits the State Fire Marshal from becoming an inspection agent for specified interstate pipelines unless all regulatory and enforcement authority over those pipelines is transferred to the State Fire Marshal from the federal Pipeline and Hazardous Materials Safety Administration. The bill required the State Fire Marshal to revise specified fees assessed to cover the costs associated with this measure.

AB 864 (Williams)

This bill (passed in 2015) established a requirement that began January 1, 2018, for any new or replacement pipelines situated in the state near environmentally and ecologically sensitive areas in the coastal zone to use best available technologies to reduce the amount of oil released in an oil spill to protect state waters and wildlife. The bill also required operators of existing pipelines in these sensitive areas to submit plans July 1, 2018 to retrofit the pipeline by January 1, 2020.

The TAC has monitored the implementation of **SB 295** and **AB 864** via ongoing reports from the State Fire Marshal. These bills necessitated substantial increases in staffing to meet the new pipeline inspection requirements. Staff openings have largely been filled and the State Fire Marshal is currently meeting all objectives dictated in these bills.

AB 1197 (Limon)

This bill, enacted in 2017, grants OSPR the authority to directly regulate Spill Management Teams (SMT) in a similar fashion to the authority granted OSPR over Oil Spill Response Organizations (OSRO) in the 90's. The bill directed OSPR to establish rating system criteria to certify SMTs for responding to and

managing a spill (COMPLETED). It also established drills for achieving and maintaining certification.

AB 2864 (Limon)

This bill was enacted in 2018. Quoting from the bill digest, it requires the OSPR administrator “to invite the California Coastal Commission or the San Francisco Bay Conservation and Development Commission, as applicable according to jurisdiction, to participate in the natural resource damage assessment process”, including the proposal of restoration projects. It does not make these commissions trustees under Lempert-Keene. This essentially codifies OSPR’s practice of coordinating with relevant local and state agencies and seeking expertise during the damage assessment and restoration process.

OSPR Regulations Development and Implementation

Inland Regulations Development

New inland regulations resulting from the expansion of OSPR to include all state waters were approved by the Office of Administrative Law (OAL) and are in effect as of January 1, 2019. These regulations include Certificates of Financial Responsibility (COFR) for inland producers and transportation; Contingency Plans for Inland Facilities; Ratings of Oil Spill Response Organizations; Drills and Exercises for Inland Regulations; and Definitions. Details of these regulations are available on the OSPR website at <http://www.wildlife.ca.gov/OSPR/Legal/Approved-Regulations>.

OSPR will be working towards harmonizing the marine and inland regulations. As this is a lengthy process involving multiple code sections, no rulemaking submissions to OAL are anticipated in 2019.

Shoreline Protection Tables

The Shoreline Protections Tables are on hold, pending anticipated updates in 2019 to the Area Contingency Plans. In the meantime, OSPR is exploring alternative methods for communicating the data in the tables.

Spill Management Team Regulations

Spill Management Team regulations (per AB 1197, discussed above) are in preliminary development. OSPR has already held several informal scoping meetings and released initial drafts to the stakeholders for feedback. The formal rulemaking process will begin in January 2020.

Tug Escort Regulatory Amendments

The Harbor Safety Committees of Los Angeles/Long Beach and San Francisco worked on proposed amendments to the existing Tug Escort regulations for each harbor to address articulated tug and barge (ATB) vessels that were not adequately covered under existing regulations. Recommendations were forwarded to the Administrator for consideration.

Priority Issues for the TAC in 2019-2020

For the 2019 and 2020 horizon, the TAC is focused on the following issues. These priorities can change based on current events and newly developing issues or concerns. Many of these are issues that have been addressed by the TAC in the past and require continued vigilance. *The order of listing of these issues does not reflect a particular ranking in terms of prioritization or importance.*

Monitoring of Oil Spill Funds

As a result of the Budget Act of 2014 and through the enactment of SB 861, the \$0.065 per barrel (42 U.S. gallons) fee on those owning crude oil or petroleum products received at a refinery, resulted in the OSPAF budget being restored to an appropriate level for the last few years.

However, as expenses and programmatic mandates cause expenditure increases, the OSPR financial trend now shows potential Fund 320 short falls in the coming years. While the TAC continues to monitor the status at each TAC meeting, the Governor and Legislature should consider appropriate action to quantify and address this shortfall through implementation of the recommendations made on Page 18, specifically:

- Consider legislative action to ensure adequate funding of the Oil Spill Prevention and Administration Fund (Fund 320), which may include:
- Adopting an annual inflation adjustment for the fees
- Pursuing additional revenue sources, and / or
- Adjusting / increasing the fees as necessary
- Consider increasing OSPR spending authority to meet mandated operational needs.

Regarding the unreimbursed loan against Fund 321, the TAC is concerned about the ability to quickly raise funds for responding to a major spill, as foreseen by the Legislature in the initial creation of the fund.

Additionally, being beholden to fiscal year boundaries and uncertain appropriations makes it inefficient to plan for Environmental Enhancement Fund (Fund 322) expenditures. The TAC recommends this fund be under continuous appropriation.

Implementation of Statewide Oil Spill Program

OSPR finalized the oil spill contingency regulations for inland pipelines, inland oil production facilities, and railroads carrying petroleum products in

2018. The TAC will continue to monitor full implementation of this program in 2019-2020.

Regulation Development and Implementation

In addition to the expansion of the statewide oil spill program and maintaining the best achievable protection, OSPR will be updating some of its regulations. The TAC will monitor the development of the OSPR rulemaking process. Some of the updates to the regulations are listed below:

Contingency Plan Regulation Amendments Regarding Spill Management Teams

OSPR held several informal workshops through 2018 and 2019 for developing amendments to the contingency planning regulations to require more specificity and performance standards for Spill Management Teams (SMTs). The proposed amendments included:

- Requiring a list of the spill management team personnel, describing the ability to mobilize SMT personnel within set timeframes.
- Describing minimum training requirements. The SMT must demonstrate their capability to establish and equip an incident command post appropriate to the needs of an incident response.
- Conducting announced and unannounced drills to ensure SMT personnel are adequately prepared to act for their planholder customers in the event of a spill.

Formal rule making will begin in early 2020.

Marine/Inland harmonization, plus other improvements

OSPR is working towards harmonizing discrepancies between marine and inland regulations. This process will also include some adjustments to pre-existing regulations, possibly including: adjustments to financial responsibility levels and reasonable worst-case spill volumes, contingency plan segmentation for pipelines and rail, and non-tank vessel arrival notification procedures. This process will enter formal rulemaking in 2020.

Best Achievable Protection Report

OSPR has completed the Best Achievable Protection report. However, the changing technology makes this activity an ever-evolving process. To ensure OSPR staff and all stakeholders are informed about changing technologies, OSPR conducts a technology workshop every other year, with

the next one scheduled in 2021. The TAC recommends increased OSPR staff participation at the many relevant in-state and out-of-state technology conferences.

Submerged Cables and Pipelines

Submerged cables and pipelines continue to be a concern because of navigational safety and potential spills. The TAC will continue to monitor the issue. Abandoned and Derelict Vessels

The TAC continues to be concerned about the large number of abandoned and derelict vessels in State Waters as they pose navigation and spill hazards. A dedicated funding source is needed to address the issue. The TAC and OSPR will explore a legislative fix.

Monitoring of Oil Spill Related Legislation

The TAC monitors legislation for 2019-2020. As of the date of this report, the following bills are relevant to OSPR and progressing through the legislative process.

AB 936 (Rivas)

This bill, which was on the Governor's desk at the time of this report, seeks to establish further preparedness measures for the cleanup of sunken (non-floating) oil.

It would:

- Re-define non-floating oil (NFO) as a Group V oil, as defined in 33 CFR 155.1020 (a Group V oil has a specific gravity greater than 1.0), including any Group V oil that is diluted with a diluent for purposes of transport.
 - The administrator may define additional types of oil as NFO if based on the oil's composition it is likely to sink rapidly.
- Require the Administrator to hold a technology workshop, on or before January 1, 2022, to include the topic of technologies that address NFO spills.
- Require the Administrator to include provisions addressing NFO in the revision to the California Oil Spill Contingency Plan.
- Require the Administrator to revise the rating criteria for oil spill response organizations (OSROs) capable of addressing NFO spills at least to the protective level equal to that of the U.S. Coast Guard's guidelines.

- Require plan holders that handle or transport NFO, to identify in their C-Plans at least one OSRO rated for NFO spill response, by January 1, 2023.
- Require the California Energy Commission (CEC) to collect details (e.g., the marketable crude oil name, whether it is NFO, etc.) and prepare and make publicly available reports on the transport and delivery of crude oil and NFO to or within California.
- Permit the CEC to disclose confidential information to the OSPR Administrator for oil spill planning, preparedness, and response purposes.

AB 255 (Limon)

This bill, signed by the Governor on July 12, 2019, clarifies the eligibility of Native American tribes, local government, and public entities with jurisdiction over or directly adjacent to waters of the state to receive grants for oil spill response equipment.

Petroleum Product Transportation by Rail and Pipeline

The volumes of crude oil and petroleum products delivered to California by rail, pipelines, tank vessels and barges is dynamic. The TAC continues to monitor this dynamic situation for potential consequences of spills related to rail cars carrying petroleum products through California's environmentally sensitive areas and populated communities.

TAC Roles and Responsibilities

In 2014, the Legislature increased the number of members of the TAC from 10 to 14. The law requires the Speaker of the Assembly and the Senate Committee on Rules to each appoint one additional member who has knowledge of environmental protection and the study of ecosystems and would require the Governor to appoint two additional members, with one having knowledge of the railroad industry and another having knowledge of the oil production industry.

As of the writing of the 2015/2016 Biennial report, eight (8) TAC seats sat vacant. 2018 saw five (5) appointments resulting in the largest TAC membership ever. Unfortunately, with the passing of long-time TAC chair Steve Ricks, there are still four (4) vacant TAC seats. The TAC encourages the Governor, the Speaker, and the Senate Committee on Rules to expeditiously appoint these additional TAC members so the Administrator may benefit from their input. ***The TAC strongly recommends one of these appointees be a member of the Oiled Wildlife Care Network, as until very***

recently, it was precedent to include OWCN on the TAC.

Ongoing Need to Secure a Dedicated Funding Source to Address Non-Petroleum Spills in State Waters

Nearly 50% of spills in California are non-petroleum spills. There is an expectation for the agency to respond to non-petroleum spills with the same level of efficiency and immediate response and cleanup as with petroleum spills. Unfortunately, as discussed above, there has never been a stable funding stream for these activities.

The TAC remains extremely concerned about the lack of dedicated funding for non-petroleum spills. While various bills have been attempted to rectify this situation, a solution has yet to be found. OSPR does administer Fund 207, derived from fines and penalties for the aforementioned spills; however, the fines and penalties are collected in arrears and often insufficient to support an appropriate response.

Non-Floating Petroleum Products

The TAC monitors the potential for increased volumes of non-floating petroleum products transported in California. These products pose challenges for response and recovery, and the TAC will be assessing changes in risk and mitigation and providing guidance to OSPR as appropriate.

Absence of FOSC at Inland Spills

It is a common scenario when responding to an inland spill where a Federal On-Scene Coordinator (FOSC) is not present. In such cases, there is a question as to the applicability of provisions of the Oil Pollution Act of 1990, the availability of federal resources and engagement of federal agencies, as well as the applicability of the National Response Plan (NRP) and the Incident Command System (ICS) in responding to the spill. The TAC will monitor for such scenarios to arise and what implications they pose to effective response. OSPR is working on resolving the issue and TAC is monitoring the progress.

Conclusions

The TAC is a forum to provide public input and independent oversight of the OSPR Administrator and the oil spill programs of California. The last two years have presented OSPR with significant challenges and opportunities to achieve best achievable preparedness and response through actions of the Legislature.

The TAC feels it is important to note that OSPR appears to now have a stable and capable management team that has enabled OSPR to deal with the many and varied challenges. The TAC is optimistic that, with their current management team, OSPR is well positioned to meet the challenges ahead with the ongoing implementation of the statewide oil spills program.

During 2019-2020, OSPR will face continued challenges implementing amended regulations and developing new regulations, policies, and procedures to address newly enacted legislation. This increase in activity will be in addition to continuing their primary mission of administering the prevention, preparedness, and response programs of the state.

The TAC looks forward to working very closely with the Administrator to provide public input and independent judgment regarding the operations of oil spill prevention and response activities in the state. The TAC will also make timely recommendations to the Administrator, the State Lands Commission, the California Coastal Commission, and the San Francisco Bay Conservation and Development Commission on pertinent provisions of the Act including the promulgation of all rules, regulations, guidelines, and policies.

Recommendations

- Continue monitoring petroleum products by rail and enact legislation if necessary.
- Consider legislative action to ensure adequate funding of the Oil Spill Prevention and Administration Fund (Fund 320), which may include: (1) adopting an annual inflation adjustment for the fees, (2) pursuing additional revenue sources, and / or (3) adjusting / increasing the fees as necessary.
- Consider increasing OSPR spending authority to meet mandated operational needs.
- Address the lack of a dedicated funding source for responding to non-petroleum-based spills in state waters.

- Make appointments to fill the four (4) vacant TAC membership positions, one of which should be with a member of the Oiled Wildlife Care Network.
- Find new source of funding to address abandoned and derelict vessels.
- Continuously appropriate Fund 322 (Environmental Enhancement Fund).

APPENDIX A

California Government Code [Selected Sections; January 2015]

Article 8. Oil Spill Technical Advisory Committee

§ 8670.54. Oil Spill Technical Advisory Committee established; appointment of members

- (a) The Oil Spill Technical Advisory Committee, hereafter in this article, the committee, is hereby established to provide public input and independent judgment of the actions of the administrator. The committee shall consist of 14 members, of whom eight shall be appointed by the Governor, three by the Speaker of the Assembly, and three by the Senate Rules Committee. The appointments shall be made in the following manner:
- (1) The Speaker of the Assembly and Senate Committee on Rules shall each appoint a member who shall be a representative of the public.
 - (2) The Governor shall appoint a member who has a demonstrable knowledge of marine transportation.
 - (3) The Speaker of the Assembly and the Senate Committee on Rules shall each appoint two members who have demonstrable knowledge of environmental protection and the study of ecosystems.
 - (4) The Governor shall appoint a member who has served as a local government elected official or who has worked for a local government.
 - (5) The Governor shall appoint a member who has experience in oil spill response and prevention programs.
 - (6) The Governor shall appoint a member who has been employed in the petroleum industry.
 - (7) The Governor shall appoint a member who has worked in state government.
 - (8) The Governor shall appoint a member who has demonstrable knowledge of the dry cargo vessel industry.
 - (9) The Governor shall appoint a member who has demonstrable knowledge of the railroad industry.
 - (10) The Governor shall appoint a member who has demonstrable knowledge of the oil production industry.
- (b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars (\$100) per day for each meeting and all necessary travel expenses at state per diem rates.
- (c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.

- (d) A chair and vice chair shall be elected by a majority vote of the committee.

§ 8670.55. Recommendations from committee; studies; attendance at drills or oil spills; biennially reporting

- (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, the Division of Oil, Gas, and Geothermal Resources, the Office of the State Fire Marshal, and the Public Utilities Commission, on any provision of this chapter, including the promulgation of all rules, regulations, guidelines, and policies.
- (b) The committee may study, comment on, or evaluate, at its own discretion, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.
- (c) The committee may attend any drills called pursuant to Section 8670.10 or any oil spills, if practicable.
- (d) The committee shall report biennially to the Governor and the Legislature on its evaluation of oil spill response and preparedness programs within the state and may prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

§ 8670.56. Funding

The administrator may expend from the Oil Spill Prevention and Administration Fund any amounts necessary for the purposes of carrying out this article.

§ 8670.56.1. Committee members; immunity from liability

- (a) The Legislature hereby finds and declares that because the administrator must rely on expertise provided by members of the committee and be guided by their recommendations in making decisions that relate to the public safety, members of the committee should be entitled to the same immunity from liability provided other public employees.
- (b) Members of the committee appointed pursuant to this article, while performing duties required by this article or by the administrator, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the committee.

END

APPENDIX B

As of July 2019
Office of Spill Prevention and Response
TECHNICAL ADVISORY COMMITTEE (TAC)

Mr. Matt Rezvani (Chair)
CALSTAD
2386 Fair Oaks Boulevard, Suite 100
Sacramento, CA 95825
Tel: (916) 640-8611
Fax: (562) 685-0500
Email: mrezvani@calstad.com

Appointed: May 11, 2001
By: Governor Davis

As: Petroleum Representative

Mr. John Berge (Vice Chair)
Vice President
Pacific Merchant Shipping Association
70 Washington Street, Suite 305
Oakland, CA 94607
Tel: (510) 987-5000
Fax: (510) 584-9565
Email: Jberge@pmsaship.com

Appointed: July 29, 2008
By: Governor Schwarzenegger

As: Dry Cargo Industry Representative

Ms. Janell Myhre
The Bay Area Urban Areas Security Initiative-UASI
711 Van Ness Avenue, Suite 420
San Francisco, CA 94102
Tel: (415) 353-5223
Email: janell.myhre@sfgov.org

Appointed: February 21, 2018
By: Governor Brown

As: Local Government Representative

Vacancy
Appointed:
By: Senate Rules Committee
As: Environment/Ecosystem Representative

Ms. Katherine Cole
661 Glenmore Blvd.
Glendale, CA 91206
Tel: (818) 822-6378 (Mobile)
Email: kit@kitcoleconsulting.com

Appointed: December 14, 2018
By: Speaker of the Assembly
Anthony Rendon

As: Environmental Representative

Ms. Lynn Korwatch
Marine Exchange of the San Francisco Bay Region
505 Beach Street, Suite 300
San Francisco, CA 94133
Tel: (415) 441-5045
Email: korwatch@sfmtx.org

Appointed: February 21, 2018
By: Governor Brown

As: Marine Transportation Representative

Mr. Peter Santillan
10503 Wiley Burke Avenue
Downey, CA 90241
Tel: (310) 722-8612
Email: psantillan@local1309.com

Appointed: July 3, 2018
By: Speaker of the Assembly

As: Public Representative

Mr. James Farner
BNSF Railway
740 East Carnegie
San Bernardino, CA 92408
Tel: (909) 386-4130
Email: james.farner@bnsf.com

Appointed: February 21, 2018
By: Governor Brown

As: Railroad Industry Representative

Vacancy
Appointed:
By: Senate Rules Committee
As: Public Representative

Mr. Joseph Cobb
Berry Petroleum Company, LLC
5201 Truxtun Avenue
Bakersfield, CA 93309
Tel: (661) 665-5751
Email: jcobb@bry.com

Appointed: February 21, 2018
By: Governor Brown

As: Oil Production Industry Representative

Ms. Sejal Choksi-Chugh
San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
Tel: (510) 735-9700 ext. 107
Fax: (510) 735-9160
Email: sejal@baykeeper.org

Appointed: January 24, 2018
By: Kevin de León, Chair
Senate Rules Committee

As: Environmental Representative

Ms. Tracy Van Houten
1691 E. Woodbury Road
Pasadena, CA 91104
Tel: (626) 372 9088
Email: TracyVH@gmail.com

Appointed: April 2, 2018
By: Speaker of the Assembly
Anthony Rendon

As: Environmental Representative

Vacancy
Appointed:

By: Governor
As: State Government Representative

Vacancy
Appointed:

By: Governor
As: Oil Spill Response Representative