

**2009-2010
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.*

JUNE 2011

June 17, 2011

Governor Edmund G. Brown, Jr.
Speaker of the Assembly John Perez
Senate Pro Tem Darrell Steinberg
Members of the California State Legislature

**2009-2010 Biennial Report
Regarding California Oil Spill Response and Preparedness**

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act) established the Oil Spill Technical Advisory Committee (TAC). The TAC consists of ten (10) members, six (6) of whom are appointed by the Governor, two (2) by the Speaker of the Assembly, and two (2) by the Senate Rules Committee. (*See*, Govt. Code ' 8670.54, *et seq.*).

The TAC is mandated with providing public input and independent oversight of the actions of the Administrator of the Office of Spill Prevention and Response, and the State Interagency Oil Spill Committee (SIOSC). The TAC may also provide recommendations to the Administrator, the California State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the SIOSC on any provision of the Act including the promulgation of all rules, regulations, guidelines, and policies.

The TAC is required to provide the Governor and the Legislature with a biennial report on their evaluation of marine oil spill response and preparedness programs within the State. This report covers calendar years 2009 and 2010. In addition, the TAC may also prepare and send to the Governor and the Legislature any additional reports it determines to be appropriate.

California continues to be a nationwide leader and model for oil spill prevention and response thanks in part to your support. On behalf of the TAC, we are proud to present this report for your consideration and we welcome any thoughts and comments.

Sincerely,



Stephen Ricks
Chair

California Oil Spill Technical Advisory Committee

Executive Summary

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 our priority issues for 2011-2012. The report has been prepared in a format that we hope informs the Governor and the Legislature of the important issues the TAC has been actively following, which we feel are critical to our State oil spill preparedness, prevention and response programs.

During the past two years, the Department of Fish and Game Office of Spill Prevention and Response (OSPR) successfully led the day-to-day operations and development of the future vision of the State's oil spill programs in conjunction with the California States Lands Commission (CSLC), the California Coastal Commission (CCC), and the San Francisco Bay Conservation and Development Commission (BCDC). In addition, OSPR has addressed challenges in dealing with the aftermath of the November 7, 2007 *Cosco Busan* oil spill in San Francisco Bay. A number of statutory, regulatory and administrative changes were made pursuant to lessons learned from that spill.

In the years since the *Cosco Busan* incident, OSPR has worked tirelessly to be more responsive to the concerns of the public, the legislature and local governments. Significant changes to state laws and regulations, as well as to best practices, have been phased in over the last few years, and as those new efforts have matured, the TAC believes that oil spill preparedness, prevention and response in California has improved.

The October 30, 2009 *Dubai Star* oil spill in San Francisco Bay, which spilled 423 gallons of fuel oil when the vessel's fuel tank overflowed during a refueling operation, resulted in the estimated deaths of 186 birds and approximately 212 acres of oiled shoreline habitat. This spill raised questions about the adequacy of existing regulations for oil transfer and vessel operations (14 CCR §840-845.2). Changes to these regulations are currently under review at OSPR.

Finally, the *Deepwater Horizon* well blowout in the Gulf of Mexico taxed the existing federal and state spill response programs and raised a series of new questions regarding federal and state spill response preparedness. That incident was catastrophic in terms of loss of life and serious injury, as well as the unprecedented impact to the environment and the economies of the Gulf States. On a positive note, the incident provided an opportunity for California's spill response personnel and programs to be tested under extremely stressful, real world conditions; resulting in a validation of many of OSPR's and Oiled Wildlife Care Network's (OWCN) programs and strategies, as well as an opportunity to improve based on lessons learned.

The *Deepwater Horizon* spill also raised many questions about the adequacy of federal oversight over offshore oil and gas drilling operations for systems safety and the prevention of oil spills from such operations. California has a rigorous regulatory and inspection program for offshore oil and gas platforms within State waters with some of the highest standards in the world for systems safety, seismic safety, and oil spill prevention and response. The California State Lands Commission - Minerals Resource Management (CSLC-MRM) continues to monitor the *Deepwater Horizon* spill investigation reports and is working with the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) to identify and incorporate new

technologies and training programs to further improve systems safety and oil spill prevention at the oil and gas platforms offshore California.

Entering into the 2011-2012 period, OSPR and other state agencies involved in oil spill preparedness, prevention and response will continue to benefit from new knowledge gained from the *Deepwater Horizon* response and will use this information to address new challenges. These will include dealing with potential changes to federal law and proposed and anticipated changes to state law. Again, these activities will be in addition to successfully carrying out their primary mission of administering the day-to-day activities associated with the State oil spill programs.

Ongoing issues on which the TAC has focused are highlighted in the 2009/2010 Issues and Accomplishments section of this report. Questions raised by the 2005 Department of Finance Audit of OSPR continue to be monitored and reviewed by the TAC. These include staffing, Oil Spill Prevention and Administration Fund (OSPAP) surplus and priority programs to be implemented. The TAC remains concerned about the staff redirections identified in our 2005/2006 Biennial Report and in the Bureau of State Audits August 2008 report.

Several of the 2009/2010 issues have been included in the TAC priority issues for 2011/2012. The TAC has significant concerns that the Administrator no longer appears to have direct responsibility for the DFG staff and programs funded by the OSPAP. In addition, it appears that significant comingling of the DFG and OSPR staff has contributed to the significant budget deficit going forward. In response to questions from the TAC, the Administrator has provided the Committee with adequate historical and planning information to justify the expansion of programs and staffing for which this funding was intended. The TAC will continue to work with the Administrator to ensure OSPAP monies are used only for authorized activities; however, we believe the legislature should authorize a thorough audit of the funds since OSPR's creation.

The TAC also followed the development of an Inland Spills Program. Additional responsibilities were placed on the Administrator in responding to inland spills pursuant to statutory requirements that entered into force in 2009.

A number of these issues form the basis for recommendations that the TAC is making to the Governor and Legislature. The TAC feels that without action these issues will continue to undermine the Administrator's independent authority to administer the California oil spill programs. A realignment of the relationship between OSPR and DFG must include assuring that the Administrator has authority over uses of OSPAP funds and control over OSPAP funded positions while maintaining Trustee authority.

The TAC looks forward to continuing our excellent working relationship with the OSPR Administrator and the dedicated men and women at OSPR, the States Lands Commission, the Coastal Commission, and the San Francisco Bay Conservation and Development Commission. The TAC would like to express our appreciation for their dedicated hard work to protect California's spectacular natural resources and expand knowledge to other states during disastrous circumstances.

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Background

The 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 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 Game. They coordinate and directly respond to marine oil spills and work with an array of public and private entities to prepare and prevent spills. Some notable partners include the United States Coast Guard, National Oceanic and Atmospheric Administration, and the newly formed Bureau of Ocean Energy Management, Regulation and Enforcement. In addition there are five Harbor Safety Committees that develop harbor safety plans. Other services to aid in safer navigation of California State Waters are the US 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 and the State Interagency Oil Spill Committee (SIOSC). The TAC consists of ten (10) members, six (6) of whom are appointed by the Governor, two (2) by the Speaker of the Assembly, and two (2) by the Senate Rules Committee. The membership must have background in marine transportation, local government, oil spill response and prevention programs, the petroleum industry, State government, environmental protection and ecosystems, and the dry cargo vessel industry, and must represent the public. Pursuant to its by-laws, TAC members serve until they are either replaced by the appointing authority, a member resigns, or a member is asked for their resignation after a vote of at least two thirds of the appointed TAC members. *(See Appendix B for current TAC member information.)* Future activities of the TAC are discussed at the end of this Report.

The TAC makes recommendations to the Administrator, the CSLC, the California Coastal Commission (CCC), the San Francisco Bay Conservation and Development Commission (BCDC), and the SIOSC 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 marine 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. The TAC may also prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

The TAC meets on a quarterly basis throughout the 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 marine oil spill programs.

Issues and Accomplishments 2009/2010

Monitoring of Oil Spill Fund Balances

The Oil Spill Response Trust Fund (OSRTF or Fund 321) is available to the OSPR Administrator to pay for the cost of responding to marine spills until such time that the Fund is reimbursed by the responsible party or by the Federal Government's Oil Spill Liability Trust Fund, if available. 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 must be reinstated if the balance falls below 95% of the prescribed level. The Fund has not fallen below the threshold for reinstatement of the fee since its inception. During 2005/2006 the TAC became aware of discrepancies in the Fund balance resulting in the resources within dropping close to the level required to trigger a reinstatement of the fee. The accounting and allocation errors have since been corrected without the need for such fee reinstatement. Since then, the TAC receives regular briefings from OSPR on fund activity and balance. Over the last two years the TAC has seen no irregularities with the Fund balance; however recent events in 2011 have, in the opinion of the TAC, seriously jeopardized the integrity of the Trust Fund. This is discussed later in this report.

As part of their periodic reports, OSPR also provides the TAC with financial reports for the Oil Spill Prevention and Administration Fund (OSPAF or Fund 320). This fund is used to finance OSPR's operating budget and the State marine oil spill programs. The funding is provided by \$0.05 fee per barrel (42 U.S. gallons) on crude oil and petroleum products received at a marine terminal, together with a fee assessed biennially on non-tank vessels when they apply for their Certificate of Financial Responsibility (COFR). That fee is set on a sliding scale based on the size of the vessel, with larger ocean going vessels paying \$2,500. The per-barrel fee was last increased in 2003, at which time the non-tank vessel fee was established. As part of the Department of Finance Audit recommendations, the TAC monitors the fund surplus to ensure the fee level is appropriately set to fund the mandates of the Lempert-Keene-Seastrand Act.

The latest OSPAF projections provided to the TAC indicate an on-going operational deficit and any surplus will be depleted commencing in fiscal year 2011/2012. With an increase in expenditures estimated by OSPR and other affiliated agencies combined with slightly reduced or flat revenue projections, Fund 320 is projected to face increasing deficits over the coming years. The TAC is concerned that the fiscal integrity of the fund be maintained, either through an increase in revenue, expenditure reductions within the confines of OSPR's statutory requirements, or a combination of the two.

Implementation of Department of Finance Audit Findings and Recommendations

In 2005 the Department of Finance published a report entitled, "*2005 Department of Finances' (DOF) Report on the Department of Fish and Game (DFG), Office of Spill Prevention and Response (OSPR), Review of Fiscal and Program Activities.*" The TAC 2005-2006 Biennial Report identified a number of audit issues for the Governor and Legislature that required further action.

OSPR has addressed a number of the identified issues, and the TAC continues to monitor those that need further action or are works in progress. These issues include the following:

- Need for full disclosure on perceived inequities between indirect costs charged to the OSPAF and those charged to other DFG funds.
- Development of an electronic system that will streamline spill data collection. OSPR has made some progress in this area, which the TAC strongly supports however that progress has slowed recently apparently due to a lack of resources at OSPR to accomplish this goal.
- Implementation of an Inland Spills Program made progress with the passage of AB 2911 in 2008; however as noted in more detail later in this report, there are still some systemic problems associated with funding this added responsibility. The TAC continues to monitor the implementation of this program.

Implementation of New Legislation and Regulations

As a result of the November 2007 *Cosco Busan* oil spill in San Francisco Bay, the Legislature adopted four oil spill related bills that the Governor signed into law in 2008. OSPR began implementation of those new laws in 2009. In addition to new legislation signed into law, OSPR promulgated regulations under their existing authority to address issues raised in the *Cosco Busan* spill. Administrative changes were also adopted where appropriate and state Harbor Safety Committees developed and approved Standards of Care and Best Management Practices. Examples of these changes include:

SB 1739 (Simitian, Chapter 566): Enhanced minimum training and drill requirements for oil spill contingency plans. OSPR promulgated regulations that were approved on May 3, 2010 and went into effect on July 1, 2010. The regulatory amendments included requirements for Independent Drill Monitors for out of state drill credits, as well as other clarifying changes to the drills and exercise program.

AB 2031 (Hancock, Chapter 563): The bill requires the OSPR Administrator to create training programs for local government spill response managers who would train and certify oil spill response volunteers; and to offer grants to provide spill response equipment to local governments. The bill also requires updates to the Office of Emergency Services by the Responsible Party if the initial spill report was inaccurate, incomplete, or if the quantity of the spilled oil has changed.

AB 2911 (Wolk, Chapter 565): This bill established two significant changes to California's spill response program. First, it extended OSPR's responsibilities to inland, non-marine oil spills and provided for expanded fines and enforcement provisions for those spills. Secondly, it increased the funding of the Oiled Wildlife Care Network (OWCN) by 33 percent to expand the focus of the OWCN to include "proactive oiled wildlife search and collection efforts." Among other requirements, this expansion requires the recruitment and training of adequate staff, volunteers and agency personnel for field rescue teams to ensure best achievable treatment for oiled wildlife, as well as ensuring that positions managing these teams during a spill also have adequate experience in finding and collecting oiled wildlife in the field. Finally, adequate equipment for field search and rescue teams was to be purchased. The effectiveness of OSPR's implementation of this program expansion has not yet been evaluated by the TAC. The regulatory changes to implement the expansion of responsibility to inland oil spills went into force in June of 2009. Unfortunately in regards to all types of inland spills, the bill did not identify or establish a dedicated funding stream for the prevention and response to inland spills. Expenses for managing these spills are currently only recoverable through penalties obtained in prosecuting those spills or from costs recovered from solvent responsible parties, deposited into the Fish and Wildlife Pollution Account (Fund 207), which is nearly exhausted.

AB 2935 (Huffman, Chapter 564): This bill requires the Director of the Department of Fish & Game (DFG) to close marine waters to fisheries within 24 hours of an oil spill. Within 48 hours of the spill, DFG, in collaboration with the Office of Environmental Health Hazard Assessment, is required to assess the public health hazard in the area of the spill, the need for additional closures, and develop weekly expedited testing. The responsible agencies have developed detailed fisheries closure protocols, which were tested and put into effect in multiple spills over the past few years. This includes the *Dubai Star* spill in November of 2009. The bill also directed OSPR to expand response planning for environmentally sensitive areas by including in the triennial revision of the State Oil Spill Contingency Plan (SOSCP) further prioritization of ecologically sensitive sites and the location of all available oil response assets. Further, the SOSCP is to consider utilization of private working craft for spill response. In practice response planning for environmentally sensitive areas has been implemented in the respective Area Contingency Plans (ACP) for many years and is constantly revised and updated; with drills and exercises included for those sensitive areas. However, additional work to prioritize sensitive sites per the bill's intent remains to be done. Private working craft are also identified in the respective ACPs and also the Harbor Safety Plans of the local Harbor Safety Committees for reference in the event of a spill.

Also during 2008, OSPR drafted proposed amendments to the tank and non-tank vessel oil spill contingency plan regulations in response to the Governor's request to review existing response requirements. This was promulgated under OSPR's existing statutory authority. Those

regulations entered into force in July of 2009, shortening on-water recovery times for waters of the state and establishing 2 hour containment requirements for areas identified as “Oil Pollution Risk Areas” (OPRA) in San Francisco Bay and San Pedro Harbor.

Beginning in 2010, OSPR began review of their existing regulations for oil transfer and vessel operations in response to the spill from the Dubai Star in October of 2009. These proposed regulatory amendments include the adoption of drills and exercises for transfer units and more rigorous provisions to minimize the extent of a spill from spreading. This regulatory package is expected to be completed in 2011.

Concurrent with the adoption these new laws and regulations, the San Francisco Harbor Safety Committee adopted Best Maritime Practices (BMP) directly after the Cosco Busan oil spill. These BMPs, which established standards for the prevention of ship, barge and commute ferry navigational incidents during fog and severe weather conditions, were developed at the direction of the Governor and in collaboration with OSPR, the US Coast Guard and all stakeholders represented on the Harbor Safety Committee. Further BMPs for bunkering at anchorage are in development for inclusion in the June 2011 revision of California’s Harbor Safety Plans for San Pedro and San Francisco Bays, where the vast majority of those activities occur.

OSPR Budget and Administrative Fund Issues

The TAC has continued to monitor the status of the Oil Spill Response Trust Fund and the Oil Spill Prevention and Administration Fund. OSPR has provided reports on the funds status at each quarterly TAC meeting. OSPR’s last projections estimated that the OSPAF surplus would be exhausted in fiscal year 2011/12 based on estimated revenues and expenditures. In addition, given the state of the national and California economies, the TAC is concerned that the level of OSPR funding generated from the \$0.05 per barrel (42 U.S gallons) fee on crude oil and petroleum products received at marine terminals may be impacted by the slowdown in the economy. The TAC has requested OSPR to develop contingencies in the event funding for their programs is diminished and to fully brief the TAC on strategies to maintain the OSPAF in a fiscally sound manner.

Marine Oil Terminal Engineering and Maintenance Standards

The Marine Facilities Division of the California State Lands Commission (CSLC) provides regular reports on their activities at each TAC quarterly meeting. Included in those reports are updates on the progress of the Marine Oil Terminals Engineering and Maintenance Standards (MOTEMS) program.

MOTEMS has been an enforceable part of the California Building Code (Title 24, CCR Part 2, Chapter 31F) since 2006. The California State Lands Commission, Marine Facilities Division (MFD) is tasked with the adoption and enforcement of this code by the California Building Standards Commission. To date, CSLC MFD has received 31 MOTEMS Initial Audits as follows:

11 “High” risk terminals - August 2008

17 “Medium” risk terminals - February 2010
3 “Low” risk terminals - February 2011

Successive audits are due every three (3) years thereafter. (Note: The MOTEMS risk level is determined as a function of the volume of oil at risk, vessel size and the number of transfers for the specific terminal.)

Based on the results of an audit, the terminal is evaluated for fitness-for-purpose in three broad categories, including operations, seismic vulnerability and general structural disrepair. More detailed specific deficiencies are also noted, with a schedule for rehabilitation. This schedule is to be mutually agreed upon between the operator and the MFD. It should be noted that marine structures commonly have a life span of 50 years, and the average age of the oil terminals in California is over 55.

The Initial Audit review process includes independent-verification of mooring, berthing and seismic analyses, to confirm that the work has been done correctly by the operator and/or consultant. This is rigorous audit and review process, requiring a significant amount of engineering man-hours to adequately determine that work is “MOTEMS compliant”. The status of the audit reviews is as follows:

- All eleven (11) “High” risk initial audits have been reviewed and some seismic upgrades reviewed (plans for many final upgrades and deficiency repairs have not yet been submitted for review)
- Eight (8) of the “Medium” risk initial audits have been reviewed, and many of the mooring/berthing analyses have been verified
- The three (3) “Low risk” terminals have not yet been reviewed

These audits and reviews are an ongoing program and the TAC will continue review of this program in the coming years.

Review of Platform Regulatory Requirements and Enforcement Protocols

At the request of the TAC, the Minerals Resource Management Division of the State Lands Commission provided briefings on the inspection and enforcement programs in place for ensuring minimum safety and performance standards for off-shore platforms located in state waters.

PORTS and Oceanographic Sensor Implementation

The Physical Oceanographic Real Time System (PORTS) has been slowly implemented in California commercial ports, with the bulk of funding and equipment situated in the San Francisco Bay. PORTS provides real-time data on tides, currents and winds to the maritime, scientific, academic and recreational communities and provides an aid in reducing the risk of navigational incidents and thus has demonstrated its benefits in terms of oil spill risk reduction through the facilitation of safer navigation. In addition PORTS provided real time tide, current and wind information used by NOAA in predicting the oil spill trajectories of the recent *Cosco Busan* oil spill in San Francisco Bay. PORTS is a program of the National Oceanic and Atmospheric Administration (NOAA), which verifies the data through its processing center in Silver Springs, Maryland. The PORTS system in San Francisco Bay and its estuaries is funded by the OSPAF, whereas the PORTS systems in other commercial ports are funded by a variety of maritime stakeholders, including pilotage organizations and port authorities. As PORTS is a federally administered program, the preference would be for federal funding. Efforts are underway at NOAA to seek such an appropriation for nationwide funding.

In addition to PORTS, the California Integrated Ocean Observing System (IOOS) and Coastal Data Information Program (CDIP) provide other technologies and associated strategies have been developed in California to monitor oceanographic and weather conditions that can provide data to improve navigational safety in addition to serving as tools for use during oil spill response. These include simple systems such as wave or sea height monitoring buoys to more sophisticated systems such as high frequency radar to measure surface currents. The PORTS, California IOOS and CDIP systems act in harmony with one another to provide a more complete picture of the marine environment. These systems share the common burden of developing and maintaining adequate funding streams to ensure their continued operation.

Harbor Safety Committees

The California State Legislature, in enacting the Oil Spill Prevention and Response Act in 1990, also created five Harbor Safety Committees for the major harbors of the State to plan “for the safe navigation and operation of tankers, barges, and other vessels within each harbor...encompassing all vessel traffic within the harbor.” The primary mandate for these committees is the prevention of marine incidents that might result in an oil spill. OSPR funds the Secretariat operations of each committee. These California Harbor Safety Committees have been instrumental in reducing the risk of navigational incidents and are a crucial component of the State’s oil spill programs. The TAC receives briefings on notable activities that arise from the committees.

Inland Pollution Program

During this reporting period OSPR has regularly briefed the TAC on the current planning and response system for inland pollution events. For most of this reporting period, inland pollution responses still had no single agency with Incident Command authority or clear jurisdiction over the response and prevention activities. Dedicated funding is still not available.

The TAC has been supportive of OSPR's efforts to enhance the Inland Spills Program despite these challenges.

During the 2008 Legislative Session, AB 2911 (Wolk, Chapter 565, Statutes of 2008) was signed by the Governor making certain marine oil spill provisions applicable to inland oil spills, such as designating the OSPR Administrator as incident commander for inland oil spill cleanup; makes responsible parties liable for damages similar to those for marine oil spills; and allows for administrative enforcement of inland oil spills. The bill also strengthens enforcement penalties for both inland and marine oil spills. The new law however does not include any provisions for creating a dedicated funding source for the Inland Pollution Program. The TAC will continue to be involved in discussions regarding a viable Inland Pollution Program.

Deepwater Horizon Incident and Implications to the California's Programs for Spill Preparedness, Prevention and Response

The *Deepwater Horizon* incident in the Gulf of Mexico had profound implications for the entire country in regards to oil spill preparedness, prevention and response. The scope of the disaster and the shortcomings exposed in our existing federal and gulf state programs provided many lessons to build upon and highlighted the opportunity to improve our existing programs, strategies and tactics. Lessons apply directly to off-shore oil extraction and also to other aspects of oil spill prevention and response.

The TAC was briefed by OSPR on a number of occasions both during and after the *Deepwater Horizon* incident. OSPR staff was actively involved in the response effort, sending more than 75 staff members and our Oiled Wildlife Care Network (OWCN) to support the response. Numerous studies and reports have been completed or are underway that discuss various aspects of the response. The OSPR and the TAC are reviewing these data from the response to determine if some of the lessons learned can be applied to improve California oil spill programs.

The Governor has issued executive order S-16-10 to strengthen California's oversight over spill preparedness, prevention and response at offshore oil production leases in State waters. Pursuant to this order, OSPR has amended their oil spill contingency plan regulations for offshore oil platforms in State marine waters to require OSCP's to be updated with a 30-day uncontrolled oil spill reasonable worst case spill scenario by July 1, 2011. The CSLC has amended their regulations to require third-party certification of the compatibility for blowout preventers from the operators of all wells. Over the next biennial period, the TAC will continue to monitor developments related to ongoing studies post-*Deepwater Horizon*.

Review of California Platform Safety and Inspection Program

Prior to the *Deepwater Horizon* spill, the Mineral Resources Management (MRM) division on the CSLC provided the TAC with an in depth presentation of the existing regulatory program covering oil platforms in California, and the inspection program developed for monitoring and enforcement. This monitoring and inspection program is well developed and implemented, with regular and frequent inspections of each platform, coupled with a great number of specific items to be inspected each time and reported on.

A comparison of the CSLC MRM program to the federal Minerals Management Service inspection and enforcement program shows that the CA program provides a more rigorous oversight of platform operations and safety. Based on lessons learned from the *Deepwater Horizon* incident, and pursuant to the Governor's Executive Order S-16-10 (mentioned above), CSLC-MRM is in the process of amending their regulations to require third-party certification of the compatibility for blowout preventers from the operators of all wells under their jurisdiction.

Priority Issues for TAC in 2011/2012

For the 2011 and 2012 horizon, the TAC intends to consider the following issues as potential areas of focus, recognizing the need to adjust priorities based on current events and newly developing issues of concern. Many of these are issues that have been addressed by the TAC on a regular or semi-regular basis; demanding constant vigilance. The order of listing of these issues does not reflect a particular ranking in terms of prioritization or importance.

- OSPAP and OSRTF

The TAC will continue to monitor the fiscal integrity of the California programs and their funding and expenditures. Fundamental systemic and structural aspects of OSPR and its relationship with other departments and agencies have led the TAC to arrive at a series of recommendations as outlined later in this report.

- OSPR relationship with DFG

As memorialized in previous state audits and TAC reports, the programmatic, fiscal and administrative relationship between OSPR and DFG continues to be of concern to the TAC. Under the existing framework, there is a marked lack of control by the Administrator over OSPR employees, and only a limited control over funds that is of great concern to the TAC.

Most recently, regulatory changes made to Section 700-704 of the Fish and Game code were debated at the January 2011 TAC meeting. Of particular concern was a change to Section 704 stating:

704. (a) Notwithstanding any other provision of law, the director is the appointing power of all employees within the department, and all employees in the department are responsible to the director for the proper carrying out of the duties and responsibilities of their respective positions.

DFG has created a straight-line reporting scenario where OSPR employees report directly to non-OSPR supervisors. This is patently evident in the enforcement, legal and IT divisions of OSPR. Blatant examples were recently noted by the TAC upon learning that decisions have been made by the DFG enforcement branch to remove or replace State On Scene Coordinators (SOSC) during the response to oil spills without the advice or consent of the Administrator. The SOSC acts as the face of OSPR in the Incident Command System of oil spill response. As the person ultimately responsible for California's oil spill program, this lack of direct line authority to OSPR staff is very troubling, and the TAC is concerned that this will usurp the authority of the Administrator and undermines the California program.

- OSPR's fiscal relationship with SLC

In conjunction with the issues raised in the previous bullet, the TAC is also concerned with the mechanisms in place to ensure equitable and transparent accounting of

expenditures and revenues between the OSPAF, OSPR, and the SLC Marine Facilities Division and Mineral Resources Management Division. The Administrator should have the ability to review Budget Change Proposals from other agencies such as SLC that are directly funded by the OSPAF, lacking this ability results in a loss of control over the fiscal integrity of the OSPAF.

- OWCN funding status

The ability of the Oiled Wildlife Care Network (OWCN) to fulfill their statutory mandates was strengthened in recent proposed legislation, but the TAC continues to be concerned about the fiscal integrity of these programs into the future. The TAC believes that the existing funding mechanism is not adequately sound and has agreed on recommendations to achieve that goal, as outlined later in this report.

- Deepwater Horizon studies

The impacts of the Gulf of Mexico spill and its implications on spill preparedness, prevention and response in California and other states are obvious. Among the specific developments arising from the incident that the TAC will review and follow are:

- Off-shore platform program
- Legislative impacts on California
- Role of OSPR staff in Deepwater Horizon spill
- Implications and lessons learned

- Track new Legislation

- Evaluate OSPR's implementation of AB 2935, AB 2911 and AB 2031

- Inland Spill management and funding

The TAC continues to be concerned with the responsibilities placed on OSPR to respond to non-marine spills, coupled with the lack of dedicated funding to fulfill those mandates. The TAC has identified funding gaps and predicts the near term exhaustion of existing funds currently used to pay for these efforts.

- Off shore platform decommissioning

- Changes in real time data technologies and their role in prevention and response

Although California as supported the Physical Oceanographic Real Time System (PORTS) as a valuable tool for spill prevention and, to a lesser extent, response, there have been significant developments in other technologies for monitoring or predicting oceanographic and atmospheric conditions that may prove to compliment or enhance PORTS.

- Impacts of the California Air Resources Board ship fuel regulation and consequences of vessel routing and navigational safety

After the adoption of regulations on the standards of fuel used by ships within twenty four nautical miles of the California coastline in July of 2009, there has been a resultant shift in some vessel traffic patterns on the coast and specifically entering and leaving San

Pedro Bay and San Francisco Bay. The TAC will continue to monitor this issue and its potential impact on navigational safety and consequent risk of oil spills.

- Impact of 2012/13 Americas Cup races in San Francisco Bay
With the awarding of the next Americas Cup sailboat races to the Saint Francis Yacht Club in San Francisco, there is an expectation of potential impediment or disruption of existing commercial traffic, as well as a large increase in large recreational boats plying the San Francisco Bay while the races are in progress. This may pose an increase in navigational risk and also place an administrative and personnel strain on OSPR.
- MOTEMS implementation and enforcement
A subsequent revision to the original MOTEMS became effective on January 1, 2011, and includes such additional requirements as the consideration of sea level rise and the call for a site-specific tsunami plan. There has also been a revision to the code for the inclusion of tsunami run-up values for the San Francisco Bay. These changes and a general review of the progress of the MOTEMS program will continue to be on the TAC radar.
- Monitoring of state and federal platforms
The Deepwater Horizon spill prompted a proposal from the State Lands Commission to strengthen the existing platform requirements in the state and programs for addressing impacts to the state from federal platforms. The TAC will be reviewing that proposal and monitoring its progress.
- Increased use of biodiesel and impacts to OSPR

Recommendations

The Oil Spill TAC recommends that the Legislature enact legislation to implement the following:

- Amend Fish and Game Code §704 to state that the Administrator has the managerial control for all DFG employees paid from the OSPAF and those employees are responsible to the Administrator to carry out the provisions of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.
- Ensure that OSPAF funded positions are not used for non-OSPAF related activities unless salaries and all associated costs are properly credited back to the OSPAF.
- OSPAF funds should not be available for uses not authorized under Government Code Section 8670.40 – including loans to other DFG funds.
- The OSPAF and OSRTF should be audited from their inception to ensure funds have been properly used.
- Funding provided from the OSPAF to CSLC Marine Facilities Division and Mineral Resources Management Division should be audited to ensure funding has and is being used for authorized purposes.
- The Secretary of Resources should grant the Administrator the opportunity to review and comment on Budget Change Proposals from all agencies requesting funding from the OSPAF.
- Administrative overhead charges by the DFG to OSPR should be capped at 10%.
- The OWCN should receive \$2,000,000 per year funding through interest on the OSRTF, with any deficiency being made up by a transfer of funds from the OSPAF to the OSRTF, should funds be available.
- As an alternative to several of these recommendations, the Legislature may consider a realignment of the relationship between OSPR and DFG, including separating the two agencies, while still providing OSPR with its trustee authority.

Conclusions

The TAC is a forum to provide public input and independent oversight of the OSPR Administrator and the oil spill programs of California. During the last two years, OSPR filled a high profile role in protecting the California environment and assisting in the Gulf Coast. The November 2007 *Cosco Busan* oil spill brought much attention to oil spill preparedness in California from the public and the Legislature. A number of important bills dealing with oil spill prevention and response were signed into law. The Governor also directed OSPR to review existing oil spill contingency planning regulations to ensure response requirements that provide the Best Achievable Protection to the California environment. OSPR has expended a tremendous amount of time and energy dealing with the aftermath of the *Cosco Busan*. In addition TAC has supported the OSPR directive to each of the five Harbor Safety Committees to adopt Best Maritime Practices for each harbor to prevent vessel accidents, particularly during periods of reduced visibility.

During 2011–2012, OSPR will face continued challenges implementing amended regulations and developing new regulations, policies, and procedures to address the 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, the San Francisco Bay Conservation and Development Commission, and the State Interagency Oil Spill Committee on any pertinent provision of the Act including the promulgation of all rules, regulations, guidelines, and policies.

APPENDIX A

California Government Code [Selected Sections]

Article 8. Oil Spill Technical Advisory Committee

‘ **8670.54. 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 and the State Interagency Oil Spill Committee. The committee shall consist of ten members, of whom six shall be appointed by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. The appointments shall be made in the following manner:

(1) The Speaker of the Assembly, and Senate Rules Committee shall each appoint members who shall be representatives 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 Rules Committee shall each appoint a member who has 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.

(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 chairman and vice chairman shall be elected by a majority vote of the committee.

‘ **8670.55. Recommendations from committee; studies**

(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, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, 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 8601.10 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 to be appropriate to the Governor and the Legislature.

(e) On or before August 1, 2005, the committee shall review the Department of Finance report required under Section 8670.42 and prepare and submit to the Governor and the Legislature comments on the report, including, but not limited to, recommendations for improving the state's oil spill prevention, response, and preparedness program.

‘ **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.

Appendix B
Office of Spill Prevention and Response
TECHNICAL ADVISORY COMMITTEE (TAC)

Member	Alternate
<p>Mr. Stephen Ricks (Chair) Marine Spill Response Corporation 702 National Court, Ste 1 Richmond, California 94804 Tel: (510) 478-0702 Cell: (925) 766-4741 Fax: (510) 478-0725 Email: ricks@msrc.org</p> <p>Reappointed: May 11, 2001 By: Governor Davis As: Oil Spill Response Representative</p>	<p>TBA</p>
<p>Ms. Joan Lundstrom (Vice Chair) 48 Frances Avenue Larkspur, California 94939 Tel: (415) 461-4566 Fax: (415) 927-5098 Email: jlundstrom@larkspurcityhall.org</p> <p>Appointed: May 11, 2001 By: Governor Davis As: Local Government Representative</p>	<p>Ms. Rosemary M. Corbin 114 Crest Avenue Richmond, California 94801 Tel: (510) 235-5779 Email: rdcorbin@sbcglobal.net</p>
<p>Dr. Jonna Mazet Wildlife Health Center School of Veterinary Medicine University of California – Davis One Shields Avenue Davis, California 95616 Tel: (530) 754-9035 Fax: (530) 752-3318 Email: jkmazet@ucdavis.edu Assnt: Amanda Tel: (530) 752-7526 Email: ammahler@ucdavis.edu</p> <p>Appointed: May 11, 2001 By: Governor Davis As: State Government Representative</p>	<p>Dr. Michael Ziccardi Wildlife Health Center School of Veterinary Medicine University of California – Davis One Shields Avenue Davis, California 95616 Tel: (530) 754-5701 Fax: (530) 752-3318 Email: mhziccardi@ucdavis.edu Assnt: Amanda Tel: (530) 752-4167</p>
<p>Mr. Matt Rezvani BP America, Inc. 6 Center Pointe Drive La Palma, California 90623 Tel: (714) 670-5462 Fax: (714) 670-5480 Email: matt.rezvani@BP.com</p> <p>Appointed: May 11, 2001 By: Governor Davis As: Petroleum Representative</p>	<p>Ms. Laura Kovary BP Shipping 1300 Pier B Street Long Beach, California 90813 Tel: (562) 499-2332 Fax: (562) 499-2300 Email: laura.kovary@BP.com</p>

Member	Alternate
<p>VACANT By: Governor As: Marine Transportation Representative</p>	<p>TBD</p>
<p>Mr. John Berge Vice President Pacific Merchant Shipping Association 250 Montgomery Street, Suite 700 San Francisco, California 94104 Tel: (415) 352-0710 Fax: (415) 352-0717 Email: Jberge@pmsaship.com</p> <p>Appointed: July 29, 2008 By: Governor Schwarzenegger As: Dry Cargo Industry Representative</p>	<p>Mr. John McLaurin President Pacific Merchant Shipping Association 250 Montgomery Street, Suite 700 San Francisco, California 94104 Tel: (415) 352-0710 Fax: (415) 342-0717 Email: jmclaurin@pmsaship.com</p>
<p>Tom Ford Director of Marine Programs Santa Monica Bay Restoration Foundation 1 LMU Drive Pereira Annex MS:8160 Los Angeles, Ca 90045 Tel: (310)-216-9824 Email: tford@santamonicabay.org</p> <p>Appointed: August 28, 2008 By: Don Perata, Chairman Senate Rules Committee As: Public Representative</p>	<p>Mr. Mark Abramson Senior Watershed Advisor Santa Monica Bay Restoration Foundation 1 LMU Drive Pereira Annex MS:8160 Los Angeles, CA 90045 Tel: (310)-961-4871 Email: mabramson@santamonicabay.org</p>
<p>Deb Self Executive Director San Francisco Baykeeper 785 Market Street, Suite 850 San Francisco, California 94103 Tel: (415) 856-0444, ext. 102 Email: deb@baykeeper.org</p> <p>Appointed: September 7, 2010 By: Darrell Steinberg, Chairman Senate Rules Committee As: Environmental Representative</p>	<p>TBD</p>

Member	Alternate
<p>Mr. R. Mitchel Beauchamp Pacific Southwest Biological Services 1434 East 24th Street National City, California 91950-6010 Tel: (619) 477-5333 Fax: (619) 477-5380 Email: mitch@PSBS.com</p> <p>Appointed: August 13, 2002 By: Herb J. Wesson, Jr. Speaker of the Assembly As: Public Representative</p>	<p>Michael McCollum McCollum Associates 10196 Clover Ranch Drive Sacramento, CA 95829 Tel: (916) 688-2040 Fax: (916) 688-7436 Email: mccollum@mccollum.com</p>
<p>Vacant</p> <p>Appointed: November 21, 2008 By: Assembly Speaker As: Environmental Representative</p>	

Agency Participants

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<p>Linda Scourtis Coastal Planner San Francisco Bay Conservation and Development Commission 50 California Street, Suite 2600 San Francisco, California 94111 Tel: (415) 352-3644 Fax: (415) 352-3606 Email: lindas@bcdc.ca.gov</p>	<p>LT David Reinhard Coast Guard Island, Bldg 50-7 Alameda, California 94501 Office: 510-437-3438 Mobile: 510-735-6761 Email: david.j.reinhard@uscg.mil Email: Kerry.g.karwan@uscg.mil</p>
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Constituents

<p>Ms. Jean Cameron Pacific States/British Columbia Oil Spill Task Force P.O. Box 1032 (mail) 6690 Pacific Overlook Drive (deliveries) Neskowin, Oregon 97149-1032 Tel: (503) 392-5860 Fax: same (call first) Email: jeanrcameron@oregoncoast.com</p>	<p>Mr. Tom Bartlett SF Response Manager National Response Corporation (NRC) 587 Ruby Drive Vacaville, California 95687 Tel: (707) 446-6464 Fax: (707) 446-6416 Email: tbartlett@nrcc.com</p>
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OSPR Participants

<p>Mr. Scott Schaefer Department of Fish and Game Office of Spill Prevention and Response 1700 K. Street, Suite 250 Sacramento, CA 95811 Tel: (916) 445-9326 Fax: (916) 324-9786 Email: sschaefer@ospr.dfg.ca.gov</p>	<p>Mrs. Julie Yamamoto Department of Fish and Game Office of Spill Prevention and Response 1700 K. Street, Suite 250 Sacramento, CA 95811 Tel: (916) 327-3196 Fax: (916) 324-9786 Email: sschaefer@ospr.dfg.ca.gov</p>	<p>Mr. Stephen Sawyer Department of Fish and Game Office of Spill Prevention and Response 1700 K Street, Suite 250 Sacramento, California 95811 Tel: (916) 324-9812 Fax: (916) 324-5662 Email: ssawyer@ospr.dfg.ca.gov</p>
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