2015-2016 Oil Spill Technical Advisory Committee Biennial Report Regarding California Oil Spill Response and Preparedness

Summary Abstract

Statute requires the Oil Spill Technical Advisory Committee (TAC) to report to the Governor and the Legislature of California about its activities on a biennial basis. The attached report reviews 2015-2016, presenting the important issues the TAC has been actively following. It highlights those issues the TAC feels are critical to California's oil spill preparedness, prevention, and response programs; and provides recommendations and details actions taken to address these issues. The California oil spill program encompasses programs administered by the Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR), the California State Lands Commission (CSLC), the California Coastal Commission (CCC), and the San Francisco Bay Conservation and Development Commission (BCDC). In this period OSPR continued to address the challenges of expanding from a primarily marine program to the statewide oil spill program, as mandated by Senate Bill 861 in June of 2014. This statewide oil spill program expands upon the existing oil spill preparedness, prevention, and response requirements and activities by requiring contingency plans and oil spill response capabilities for inland pipelines, inland oil producers, and railroads that transport crude oil by rail.

In its report, the TAC identifies the following issues of particular interest and concern:

- Status of Oil Spill Funds
- Implementation of statewide oil spill program, including the transport of petroleum products by rail and pipeline
- Monitoring of oil spill-related legislation and regulation development and implementation
- Status of the Oiled Wildlife Care Network
- Expanded Role and Membership of the TAC
- Ongoing need to secure a dedicated funding source to address non-petroleum spills in state waters

The TAC also provides several recommendations to the Governor and Legislature:

- Continue to monitor crude oil by rail and enact additional legislation if necessary to address any outstanding issues
- Make appointments to fill the eight (8) vacant TAC membership positions
- Identify funding for responding to non-petroleum based spills in state waters
- Seek repayment of any outstanding loans to the Oil Spill Response Trust Fund

The Administrator for OSPR will receive the report, which will be distributed to all OSPAF-funded agencies to review, discuss, and address.

2015-2016
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.*

August 9, 2017

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 2017-2018. 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 those issues that we feel are critical to our State oil spill preparedness, prevention, and response.

The California oil spill program encompasses programs administered by the Department of Fish and Wildlife's Office of Spill Prevention and Response (OSPR), the California State Lands Commission (CSLC), the California Coastal Commission (CCC), and the San Francisco Bay Conservation and Development Commission (BCDC). 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. As in previous years, the TAC continues to be impressed with the professionalism of the dedicated staffs of these agencies in meeting their primary mandate of providing the best achievable protection of the State's valuable natural resources from oil spills.

In the 2015-2016 Issues and Accomplishments section of this report, we highlight a number of issues the TAC has been monitoring and addressing over the past two years, including:

- Status of Oil Spill Funds
- Implementation of statewide oil spill program, including the transport of petroleum products by rail and pipeline
- Monitoring of oil spill-related legislation and regulation development and implementation
- Status of the Oiled Wildlife Care Network
- Expanded Role and Membership of the TAC
- Ongoing need to secure a dedicated funding source to address non-petroleum spills in state waters

Shifting Trends in Petroleum Product Transportation

During the past four years the methods and means of transporting crude oil within the state has gone through significant changes. With the development of unconventional means of producing petroleum products in the United States, the TAC anticipates that there may be a shift in the volume and means of transport of petroleum products in California from the more historically regulated use of tankers and marine terminals to rail and pipeline. This shift may result in a varying risk of oil spills in the inland areas of the state, historically not included in the robust marine oil spills program.

California's recently-adopted statewide oil spill program requires contingency plans and oil spill response capabilities for inland pipelines, inland oil producers, and railroads that transport petroleum products by rail. The implementation of these programs is currently established through emergency rulemaking, with formal rulemaking still underway. The enabling legislation provided additional funding through these alternative gateways for oil import to provide sufficient resources to administer this additional workload. The program implementation is discussed in more detail in this report. The TAC will continue to monitor and recommend action to guide the implementation of the statewide program in 2017-2018.

The TAC will also continue to monitor the evolving issues concerning petroleum product transportation by rail, particularly as this mode of delivery impacts the implementation of the statewide oil spill program. Recent new federal requirements for petroleum product transportation by rail compliment the state's program, and together they address multiple risks associated with oil-by-rail.

Oiled Wildlife Care Network Funding

Concern for funding of the Oiled Wildlife Care Network (OWCN) was resolved through provisions in SB 861, which provides funding for the OWCN through the Oil Spill Prevention and Administration Fund (Fund 320), as opposed to interest earned on the Oil Spill Response Trust Fund (Fund 321), which was not generating sufficient operating capital. A discussion of the financial health of the OWCN and its expansion into inland regions of the state is included in the body of this report. The TAC will continue to include the OWCN as a priority issue for 2017-2018.

Technical Advisory Committee (TAC) Membership

As discussed in this report, SB 861 has expanded the role and membership of the TAC. Membership has been expanded from ten (10) members to fourteen (14). The Governor, the Speaker of the Assembly, and the Senate Committee on Rules appoint TAC members. In addition to the four (4) open positions created by SB 861, four (4) other positions remain open. With eight (8) total open positions, less than half of the TAC membership positions are currently filled. The TAC strongly urges that appointments be made to fill these open positions so the TAC can function as intended.

Non-petroleum Spills

In the TAC's discussion of the Fish and Wildlife Pollution Account (Fund 207), it is noted that although SB 861 creates a statewide oil spill program, there continues to be a lack of a dedicated funding source to address non-petroleum spills of hazardous materials (hazmat) in state waters. Such spills can occur in all waters of the state, from vessels, marine facilities, pipelines, rail transport, or truck transport. The Legislature has attempted to address some hazmat spills through passage of SB 84 (statutes of 2015), which would assess a fee on hazmat moved by rail. That bill is being challenged by the railroads in federal court, and its legal status is in doubt. The challenge of funding

preparedness and response to non-petroleum spills has been an ongoing concern to TAC and the agencies for many years and needs resolution.

Senate Bill 414 (Jackson)

Of the bills monitored by the TAC and signed into law in the 2015/2016 session, SB 414 (statutes of 2015) was most closely followed. In addition to having several provisions that directly impacted OSPR and spill prevention and response, the law specifically directed the TAC to assess vessels of opportunity (VOO) for use in oil spill response. Another provision, the mandated assessment of emergency towing resources by the Harbor Safety Committees of San Francisco and Los Angeles/Long Beach has been underway since early 2016 and is expected to be completed in early 2017. In addition, the TAC convened a VOO Task Force in July of 2016, and the Task Force completed their preliminary assessment and report to the TAC in October of 2016. The TAC approved and submitted the report and recommendations to the Administrator on December 13, 2016. The Administrator submitted the final report and recommendations to the Legislature on January 5, 2017.

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 2017-2018; these issues include:

- Monitoring of Oil Spill Funds
- Implementation of statewide oil spill program, including the expansion of the Oiled Wildlife Care Network
- Regulation development and implementation
- Best Achievable Technology Report
- Monitoring of oil spill-related legislation
- Petroleum product transportation by rail and pipeline
- TAC membership, roles, and responsibilities
- Funding challenge for non-petroleum spills
- Audit recommendations and strategic plan development and implementation

The issues above form the basis for the following recommendations that the TAC is making to the Governor and Legislature.

Recommendations

- Continue to monitor petroleum product transportation by rail and enact additional legislation if necessary to address any outstanding issues
- Make appointments to fill the eight (8) vacant TAC membership positions

- Address the lack of a dedicated funding source for responding to non-petroleum based spills in state waters
- Seek repayment of any outstanding loans to the Oil Spill Response Trust Fund

The TAC looks forward to continuing our excellent working relationship with the OSPR Administrator and the dedicated men and women 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 dedicated hard work to protect California's spectacular natural resources and expand knowledge to other states to prevent and respond to significant hazardous spills.

Table of Contents

		PAGE
I.	BACKGROUND	1
II.	ISSUES AND ACCOMPLISHMENTS FOR CALENDAR YEARS 2015-2016	3
III.	PRIORITY ISSUES FOR THE TAC IN 2017-2018	10
IV.	CONCLUSION	14

APPENDICES

A. GOVERNMENT CODE	15
B. TAC MEMBER INFORMATION	17

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 was to prevent and cleanup marine oil spills and to restore 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. SB 861 broadened the scope of the Act from marine waters to all state waters. 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 oil spills to state waters and work with an array of 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 that are chaired by the USCG and OSPR. In addition, there are five Harbor Safety Committees that develop harbor safety plans for the ports of San Diego, Los Angeles/Long Beach, Port Hueneme, the San Francisco Bay Area, and Humboldt Bay. Similar local outreach is underway for inland areas, although those are still under evaluation and development. 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 NOAA's 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 the membership of the TAC to include fourteen (14) members; eight (8) of whom are appointed by the Governor, three (3) by the Speaker of the Assembly, and three (3) 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, the dry cargo vessel industry, the railroad industry, the oil production industry, and the general 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.)*

The TAC makes recommendations to the OSPR Administrator, the 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. The TAC may also prepare and send any additional reports it determines to be appropriate to the Governor and the Legislature.

The TAC meets at least 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 statewide oil spill programs.

Issues and Accomplishments for Calendar Years 2015-2016

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

At each meeting of the TAC, OSPR provides a report on the status of each of the oil spill funds. The following is a discussion of the status of the funds and the TAC's observations.

Fund 207 – Fish and Wildlife Pollution Account

After signing of SB 861 in 2014, spills of petroleum products in non-marine surface 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 has been derived from fines and penalties recovered from the parties responsible for the aforementioned spills. The availability of funds for response has proven to be inadequate, as indicated by the TAC in past reports, 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) is used to finance OSPR's operating budget and the State oil spill programs. As part 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, 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, was established. This changed the fee structure from one that was only charged to 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 OSPAF budget being restored to an appropriate level after several years of funding that proved 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, eliminating 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.

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 fee has not been reinstated since the fund's inception.

During 2005/2006, the TAC became aware of discrepancies in the fund balance resulting in the resources 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.

Legislation in 2011 authorized a $40,000,000 loan from the OSRTF to the General Fund, which, as of 2016, carried a repayment date of June 30, 2017. (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 to be repaid with interest. Any and all other loans must be monitored and repaid to restore the fund to its appropriate level.

The TAC receives regular briefings from OSPR on fund activity and balance. Over the last two years, the TAC has seen no irregularities that could not be adequately explained; however, the loans from the fund have, in the opinion of the TAC, seriously jeopardized the integrity of the Trust Fund. That situation has not been rectified and is discussed later in this report under the OWCN update.

Fund 322 - Environmental Enhancement Fund

All penalties collected under the act are deposited into Fund 322. The TAC has received a number of briefings on the status of the Environmental Enhancement Fund (EFF). This fund is used to pay 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 limiting factor in supporting deserving projects. Temporarily (for a two-year period), in fiscal year 2014/2015, the expenditure was increased to $759,000, and in fiscal year 2015/2016 it was set at $658,000. The TAC feels that if additional funds are available they should be expended for EFF projects. Enactment of SB 861 provided the authority required for increasing annual expenditures.

Implementation of Statewide Oil Spill Program

Since 2009, the OSPR Administrator (or his/her 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). Some of the key provisions of the law include:

- Development of regulations to expand oil spill preparedness, prevention, and response program from marine waters to all surface waters of the state.
- Requiring 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.
- Requiring 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.
- Changes to 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), as well as an expansion of duties of the OWCN to include inland activities for preparedness and response, as well as proactive capture and care of impacted wildlife.

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. Emergency regulations covering inland pipelines and inland production facilities were adopted in the Fall of 2015 and readopted in the Fall of 2016 for an additional 12 months. Final regulations for inland facilities and pipelines are expected to be completed in 2017.

OSPR Regulations Development and Implementation

Expansion of Program to Include All State Waters

Some of the emergency regulations adopted to expand the oil spill program to all waters of the state are still in effect, as of the drafting of this report, and the rulemaking process for adoption of formal regulations has not yet concluded for all aspects on the expansion.

As of the drafting of this report, these proposed regulations include contingency planning, drills and exercise, Certificates of Financial Responsibility (COFR), and Oil Spill Response Organization (OSRO) requirements for newly regulated inland oil facilities. The development and adoption of Geographic Response Plans similar to those in place for marine waters is also underway for inland locations.

Shoreline Protection Tables

The Shoreline Protection Tables have been moving through an amendment process to reflect changes adopted in the Area Contingency Plans. These amendments are still underway and the regulatory process is expected to conclude in late 2017.

Certificate of Financial Responsibility (COFR) Regulations

Amendments included clarification of existing requirements to aid in-house processing. The amendments were approved and went into effect on April 1, 2015.

Spill Management Team Rating

OSPR has made an effort through informal processes to develop draft regulations to assess and rate Spill Management Teams (SMT), who coordinate and, on behalf of the Responsible Party, staff many positions of the Incident Command System in the event of a spill. This effort was intended to mimic the rating system for Oil Spill Response Organizations adopted in the mid-1990s; however OSPR currently lacks statutory authority over SMTs and is in the process of evaluating how best to move forward.

Tug Escort Regulatory Amendments

The Harbor Safety Committees of Los Angeles/Long Beach and San Francisco have been working on proposed amendments to the existing Tug Escort regulations for each harbor to address articulated tug and barge vessels that are not adequately covered under the existing regulations. Recommendations have been forwarded to the Administrator for consideration and potential formal rulemaking in the near future.

Tracking Other Oil Spill-Related Legislation

The TAC monitors all oil spill related legislation. Of the several bills that were introduced in the 2015/2016 legislative session, the following were signed into law:

AB 815 (Ridley-Thomas)

This bill addressed the potential for duplicate collection of the Oil Spill Prevention and Administration per barrel fee for petroleum received at a marine terminal or refinery from outside or inside the state. The bill declared that the intent of the Legislature is for the Board of Equalization to collect the fee only upon first delivery to a marine terminal or refinery.

AB 864 (Williams)

This bill established a requirement, beginning 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 an operator of an existing pipeline in these sensitive areas to submit a plan by July 1, 2018 to retrofit the pipeline by January 1, 2020 as provided.

AB 1842 (Levine)

This bill provided for civil penalties under the Fish & Game code section 5650 or $10 per gallon of discharged pollutant into state waters, with a subsequent reduction for every gallon of material recovered and disposed of properly by the responsible party. The Lempert, Keene, Seastrand Oil Spill Prevention and Response Act also has similar penalty provisions, and AB 1842 prohibits assessment of such penalty under both codes for the same infraction.

SB 84 (Budget Committee)

This budget trailer bill included several provisions related to hazardous materials transported by rail. Provisions included coordination of agencies involved with hazardous materials spills from rail transport and the creation of the Regional Railroad Accident Preparedness and Immediate Response Force in the office, consisting of specified representatives, and would designate this force as being responsible for providing regional and onsite response capabilities in the event of a release of hazardous materials from a railcar or a railroad accident involving a railcar designated to transport hazardous material commodities. The bill also included a provision for the state to assess a fee on the owner of hazardous materials transported by rail to fund these efforts.

SB 414 (Jackson)

This bill contained several provisions related to California's Oil Spill Prevention and Response Act.

- The bill directed the OSPR Administrator to provide to the Legislature by January 1, 2017 a report assessing the best achievable technology of equipment for oil spill prevention, preparedness, and response and to update regulations governing the adequacy of oil spill contingency plans before July 1, 2018.
- The bill requires the Administrator to direct the Harbor Safety Committees for various regions to assess, among other things, the presence and capability of tugs within their respective regions of responsibility to provide emergency towing of tank and non-tank vessels to arrest their drift or guide emergency transit.
- The bill requires the Administrator, in conducting the study and updates, to consult current peer-reviewed published scientific literature. The bill would require the administrator, by May 1, 2016, to request that the federal California Dispersant Plan be updated, as provided, and to provide support and assistance in that regard.
- The bill requires the administrator, if dispersants are used in response to an oil spill, to submit to the Legislature a written notification of, and a written justification for, the use of dispersants and a report on the effectiveness of the dispersants used, as provided.

- The bill requires the TAC to convene a task force to evaluate the feasibility of using vessels of opportunity for oil spill response. The bill required the task force to provide a report and recommendations to the TAC on whether vessels of opportunity should be included in oil spill response planning. The bill also required the TAC to evaluate the task force findings and provide recommendations to the Administrator and the Legislature.
- The bill removed the provision to reduce penalties assessed against a polluter for the amount of oil recovered and disposed of properly by the responsible party.

Of the bills monitored by the TAC and signed into law in the 2015/2016 session, SB 414 was most closely followed. In addition to having several provisions that directly impacted OSPR and spill prevention and response, the law specifically directed the TAC to assess vessels of opportunity (VOO) for use in oil spill response.

OSPR has kept the TAC apprised of progress on the various mandates of the bill. The Best Achievable Technology reports are being done in-house at OSPR and are expected to be completed by the target date. The assessment of emergency towing resources by the Harbor Safety Committees of San Francisco and Los Angeles/Long Beach has been underway since early 2016 and is expected to be completed in early 2017.

The TAC convened a VOO Task Force in July of 2016, and the Task Force completed their preliminary assessment and report to the TAC in October of 2016. Based on the Task Force's assessment the TAC developed recommendations and submitted them to OSPR on December 13, 2016. The Administrator submitted the final report and recommendations to the Legislature on January 5, 2017. The report and recommendations can be found on the OSPR website at the following link: https://www.wildlife.ca.gov/OSPR/Public-Meetings/Technical-Advisory-Committee/Vessel-of-Opportunity

Oiled Wildlife Care Network (OWCN)

The operations of the Oiled Wildlife Care Network had been funded through interest earned on the Oil Spill Response Trust Fund (Fund 321) since its inception, with a mandated mission to provide best achievable care of wildlife oiled in marine waters of the state.

As a result of the $40,000,000 loan from the Oil Spill Response Trust Fund (OSRTF) to the General Fund in 2011 and the continued low interest rates available to the Surplus Money Investment Fund (SMIF), interest earned on the OSRTF had been insufficient to support the statutory operational requirements of the OWCN. With the passage of SB 861 (statutes of 2014) Statewide Spill Program, the role of OWCN was also expanded to prepare for and respond to inland spills. In order to ensure these activities could be operationalized, SB 861shifted the OWCN's funding stream to the more secure Oil Spill Prevention and Administration Fund (OSPAF), thereby also preserving the OSRTF from going into a negative balance.

Expanded Role and Membership of TAC

In 2014, the Legislature increased the number of members of the Technical Advisory Committee 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.

The TAC encourages the Governor, the Speaker, and the Senate Committee on Rules to expeditiously appoint these additional TAC members so that the Administrator can benefit from their input and so the TAC can ensure there is a quorum at each meeting. As of the date of this report, these newly created TAC positions have not been filled. Therefore in total, there are eight (8) current vacancies on the TAC that await new appointments. These should be filled as soon as possible so that OSPR can be provided with the greatest input and, consequently, the Legislature can have the broadest view on OSPR's efforts.

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

Non-petroleum spills occur in the state of California with an expectation by the public for effective and immediate response and cleanup. Unfortunately, as discussed above, there has never been a stable funding stream for these activities. The TAC remains extremely concerned about the instability of funding and inability to prepare for non-petroleum spills to the standard expected by the public for 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 recovered from the aforementioned spills; however, the fines and penalties are collected in arrears and often insufficient to support an appropriate response.

Priority Issues for the TAC in 2017-2018

For the 2017 and 2018 horizon, the TAC intends to focus on the following issues as potential areas of interest. These priorities can change based on current events and newly developing issues of concern. 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

The TAC will continue to monitor the status of the oil spill funds as discussed in the 2015-2016 Issues and Accomplishments section of this report. The TAC will request that OSPR provide fund status reports at each TAC meeting. It is envisioned that the fund conditions will improve with the implementation and additional funding associated with the statewide oil spills program.

Implementation of Statewide Oil Spill Program

The TAC will be closely monitoring the implementation of the statewide oil spill program during the 2016-2017 reporting period. OSPR will begin drafting of the final oil spill contingency regulations for inland pipelines, inland oil production facilities, and railroads carrying petroleum products.

In addition, OSPR will be creating the infrastructure to administer the expanded statewide program and is in the process of developing Geographic Response Plans similar to those in place for the marine environment. OSPR will be providing frequent updates to the TAC on its progress in implementing the program.

Oiled Wildlife Care Network Funding and Expansion

The passage of SB 861 in 2014 has restored the funding of the Oiled Wildlife Care Network (OWCN) for existing operations and the expanding statewide program. The TAC will be monitoring the expansion of the OWCN program.

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:

Shoreline Protection Tables 2016-2017

As mentioned in an earlier section of this report, the Shoreline Protection Tables have been moving through an amendment process to reflect changes adopted in the Area Contingency Plans. The regulatory process is underway and expected to conclude in late 2017.

Contingency Plan Regulation Amendments Regarding Spill Management Teams

OSPR began an informal workshop process in 2014 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 of announced and unannounced drills to ensure the SMT personnel are adequately prepared to act for their plan holder customers in the event of an oil spill.

With the introduction of AB 1197 (Limon) in 2017 (see below), which would provide statutory authority over SMTs, this regulatory effort is on hold as of the drafting of this report. OSPR will revisit regulatory proposals for SMTs in the future, with the outcome of AB 1197 (see below) influencing that effort.

Best Achievable Protection Reports

As mentioned above, SB 414 (statutes of 2015) directed the OSPR Administrator to provide to the Legislature by January 1, 2017 a report assessing the best achievable technology of equipment for oil spill prevention, preparedness, and response and to update regulations governing the adequacy of oil spill contingency plans before July 1, 2018.

The Best Achievable Technology report focuses on the following:

- Prevention
- Remote Sensing
- Mechanical Response
- Applied Response Technologies

As of the drafting of this report, their first three reports have been approved and posted on the OSPR website for public consumption. They can be found at the following link: https://www.wildlife.ca.gov/OSPR/Science

The final section of the report, covering Applied Response Technologies is still under final review, and will be adopted and posted in 2017.

Monitoring of Oil Spill Related Legislation

The TAC will be monitoring development of oil spill related legislation during the 2017-2018 legislative sessions. As of the drafting of this report, two pieces of legislation have been introduced that could impact OSPR's mission.

AB 1197 (Limon)

This bill would grant 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 would direct OSPR to establish criteria for a rating system to certify SMTs for responding to and managing a spill. It would also establish drills and exercises for achieving and maintaining certification.

SB 709 (Weiner)

This bill would direct OSPR to define petroleum products that tend to sink to the bottom in a spill due to characteristics of their components specific gravity (non-floating oils), and require C-plan holders who carry such products to contract with Oil Spill Response Organizations (OSRO) that have demonstrated a capability to adequately respond to such spills.

Petroleum Product Transportation by Rail and Pipeline

The TAC is monitoring the changing patterns and volumes of petroleum products delivered to California by rail and pipeline, as well as the 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 Technical Advisory Committee 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 requires the Governor to appoint two (2) additional members, with one having knowledge of the railroad industry and another having knowledge of the oil production industry. As of this report's drafting, there are only six (6) appointed members, with eight (8) vacancies.

The TAC encourages the Governor, the Speaker, and the Senate Committee on Rules to expeditiously appoint these additional TAC members so that the TAC and the Administrator can benefit from their input.

Funding Challenge for Non-petroleum Spills

The TAC will continue to encourage creative processes to identify a stable funding stream for non-petroleum spills statewide and will also continue to monitor the status of Fund 207.

Audit and Other High-priority Issues

A Department of Finance audit of OSPR was conducted during the period of this report, with the findings provided to OSPR at the end of the report's timeframe (December 2016). The TAC will review the findings of this audit and will monitor implementation of recommendations, as well as necessary mitigation of any significant findings. The TAC has received notice from OSPR that a strategic planning process has begun that will, at least in part, focus on audit recommendations. The TAC will follow this process closely and provide guidance as appropriate.

Non-Floating Petroleum Products

The TAC will be monitoring 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

A possible scenario may arise 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 funding 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 the potential for such scenarios to arise and what implications they might pose to effective response.

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 2017-2018, 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 any pertinent provision of the Act including the promulgation of all rules, regulations, guidelines, and policies.

Recommendations

- Continue to monitor petroleum products by rail and enact additional legislation if necessary to address any outstanding issues.
- Make appointments to fill the eight (8) vacant TAC membership positions.
- Address the lack of a dedicated funding source for responding to non-petroleum based spills in state waters.

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

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

Member	Alternate
Mr. Stephen Ricks (Chair) Tel: (925) 766-4741 Email: s.ricks@comcast.net Reappointed: May 11, 2001 By: Governor Davis As: Oil Spill Response Representative	Mr. Scott Morris Tel: (510) 478-0701 Email: morris@msrc.org
Ms. Deb Self (Vice Chair) San Francisco Baykeeper 1736 Franklin Street, Suite 800 Oakland, CA 94612 www.baykeeper.org Tel: (510) 735-9700 Email: spills@baykeeper.org Appointed: September 7, 2010 By: Darrell Steinberg, Chairman Senate Rules Committee As: Environmental Representative	Ms. Sejal Choksi-Chugh San Francisco Baykeeper 1736 Franklin Street, Suite 800 Oakland, CA 94612 www.baykeeper.org Tel: (415) 856-0444 ext. 107 Email: sejal@baykeeper.org mailto:spills@baykeeper.org
Dr. Jonna Mazet Wildlife Health Center School of Veterinary Medicine University of California – Davis 1089 Veterinary Medicine Drive Davis, CA 95616 Tel: (530) 754-9035 Fax: (530) 752-3318 Email: jkmazet@ucdavis.edu Appointed: May 11, 2001 By: Governor Davis As: State Government Representative	Dr. Michael Ziccardi Wildlife Health Center School of Veterinary Medicine University of California – Davis 1089 Veterinary Medicine Drive Davis, CA 95616 Tel: (530) 752-4167 Fax: (530) 752-3318 Email: mhziccardi@ucdavis.edu

APPENDIX B

- continued -

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

Member	Alternate
Mr. Matt Rezvani 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 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	Mr. John McLaurin President Pacific Merchant Shipping Association 70 Washington Street, Suite 305 Oakland, CA 94607 Tel: (510) 987-5000 Fax: (510) 584-9565 Email: jmclaurin@pmsaship.com
Mr. R. Mitchel Beauchamp Pacific Southwest Biological Services 1434 East 24th Street National City, CA 01950-6010 Tel: (619) 477-5333 Fax: (619) 477-5380 Email: mitch@PSBS.com Appointed: August 13, 2002 By: Herb J. Wesson, Jr. Speaker of the Assembly As: Public Representative	Mr. Michael McCollum McCollum Associates 10196 Clover Ranch Drive Sacramento, CA 95829 Tel: (916) 688-2040 Fax: (916) 688-7436 Email: mccollum@mccollum.com

APPENDIX B

- continued -

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

Member	Alternate
Vacancy Appointed: By: Senate Rules Committee As: Public Representative	
Vacancy Appointed: By: Speaker of the Assembly As: Environmental Representative	
Vacancy Appointed: By: Governor As: Marine Transportation Representative	
Vacancy Appointed: By: Governor As: Local Government Representative	
New vacancies added by SB 861 as follows:	
Vacancy Appointed: By: Governor As: Railroad Industry Representative	
Vacancy Appointed: By: Governor As: Oil Production Industry Representative	

APPENDIX B

- continued -

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

Member	Alternate
Vacancy Appointed: By: Speaker of the Assembly As: Environmental Representative	
Vacancy Appointed: By: Senate Rules Committee As: Environmental Representative	