

Environmental protection versus maritime commerce: are oil spill response regulations going too far?

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Examination of several significant US oil spills over the last five years reveals a pattern: a series of reactionary legislation that may negatively impact marine commerce at a time when the industry, particularly our ports, can least afford the economic hardship. Do these additional regulations add meaningful environmental protection or have we reached a point of diminishing returns?

2003 Buzzards Bay, MA

A barge grounds, spilling 98,000 gallons of #6 fuel oil.

Oil Spill Response: Cost: US\$36 Million. At its peak, 700 personnel were involved in the clean up.

Legislative Response: The Massachusetts Oil Spill Act which requires up to a US\$1 billion State Certificate of Financial Responsibility (COFR), double hulls on certain vessels, mandatory state pilots, tug escorts, vessel routing requirements and oil spill response and prevention fees. These State regulations may be in conflict with US regulations and were challenged by the US Coast Guard (USCG) as unconstitutional. In a related move, the USCG passed its own regulations for the region. The legal challenges between the state and federal governments continue.

2004 Seattle, WA

A barge overflows spilling 4,800 gallons of heavy fuel oil.

Oil Spill Response: Cost: US\$4.5 million. Resources included 250 personnel, 17,000' of boom, 14 skimmers and 24 boats.

Legislative Response: Washington passed regulations focused on pre-booming vessels transferring cargo. These regulations raised safety concerns such as whether vessels transferring more flammable cargo (e.g. gasoline) should be pre-boomed and whether it is safe for personnel to pre-boom during adverse weather and/or sea conditions.

2005 Delaware River, DE

A tanker strikes an uncharted object spilling 265,000 gallons of crude oil.

Oil Spill Response: Cost: US\$165 Million. Resources included 1,700 personnel, two Oil Spill Response Vessels (OSRVs), 191 smaller vessels, 20 oil skimmers and 110,000' of boom.

Legislative Response: The federal government enacts the Delaware River Protection Act raising federal COFR limits for single hull tank and nontank vessels, while providing incentives to double hull operators by not raising their COFR limits as much. It also includes notification requirements for objects lost overboard; as well as funding for the USCG and NOAA to develop sunken oil recovery technology.

2007 San Francisco, CA

A nontank vessel strikes the Oakland Bay Bridge spilling 54,000 gallons of bunker fuel.

Oil Spill Response: Cost: US\$61 million plus, since this response is ongoing. Resources included 1,400 personnel, 41 boats, 38,200' of boom and seven oil skimmers that totalled 75,000 barrels per day oil removal capacity.



38,200' of boom was used to help clean up a spill in San Francisco.



Extreme media attention and political fallout after a spill have given rise to additional regulatory proposals despite California having some of the most stringent oil spill response regulations in the US.

Legislative Response: Historically, California has some of the most stringent oil spill response regulations in the United States, with relatively new shoreline protection requirements that exceed federal containment and recovery regulations. Nevertheless, extreme media attention and political fallout have given rise to additional regulatory proposals. On the federal side, there are proposals to require double hulls for nontank vessels, further increase COFR limits, and improve the Vessel Traffic System (VTS) with mandatory routing procedures. California State legislators are calling for an increase in the response resource requirements for nontank vessels such that they meet more stringent existing tank vessel requirements and mandatory mutual aid agreements.



A nontank vessel struck the Oakland Bay Bridge spilling 54,000 gallons of bunker fuel.

Pending non-event driven legislation

The USCG has pending a number of spill response requirements that were initiated many years ago. These regulations have been delayed as the USCG focused on post 9/11 homeland security, diminishing its ability to address environmental protection. The pending regulations include dispersant, salvage & fire fighting, and federal nontank vessel requirements, which became law on August 8, 2005 but are still awaiting specific regulations. The USCG had advised that nontank vessel regulations were a lower priority than either dispersants or salvage and fire fighting requirements; however, the non tank vessel requirements may now take on a higher priority in light of the San Francisco spill.

Where are we as a result of this reactionary legislation?

Resistance occurred last year when the two primary oil spill response organisations operating in California, National Response Corporation (NRC) and Marine Spill Response Corporation (MSRC), concluded that it was not cost effective to meet California's shoreline protection requirements. The vessel activity was minimal in certain ports such that the fees needed to support the additional response equipment would have been substantial for the vessels that operate in those ports. As a result, California regulators admitted: "The unintended consequences from passing the new regulations is that as of September 1, 2007, plan holders currently do not have adequate shoreline protection coverage for covered vessels entering non-High Volume ports. Therefore, marine commerce trading in the harbours of Humboldt Bay, Monterey Bay, Port Hueneme, and San Diego may be in violation of the current regulations."

Subsequently, a cost effective commercial arrangement was reached where nontank vessels that had access to both primary response organisations (NRC and MSRC) via their Protection & Indemnity Clubs could satisfy the regulation in a number of those ports by citing both organisations in their response plans. Unfortunately, there was still one port where this arrangement was not sufficient; additional oil spill response fees must still be paid when vessels call Port Hueneme. Due to concern that vessels will divert to nearby busier ports where resources are more readily available and less costly, Port Hueneme officials have suggested that the California regulations be suspended until this issue can be resolved. Certainly the cost of meeting new regulations is a legitimate concern when sufficient resources may already exist.

Here's the rub: If the industry is successful in reaching compliance without adding more resources, the regulators are faced with the troubling fact that they passed new laws and did not gain additional resources and, worse still, the regulators will be



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seen as inattentive to the environmental community. One solution is for the industry to work cooperatively (as the OSROs did in California) to make the existing resources more widely available, thereby minimising compliance costs by spreading the increase as broadly as possible.

Industry, the environmental lobby and private citizens all share the same goal: thriving commerce that peacefully coexists with the environment. The easy solution to quell public outcry following an oil spill is implementation of stricter regulations. However, additional regulations that increase the resources, or shorten time frames to provide resources, are not necessarily the answer. Existing regulations (both federal and state) are, in fact, more than adequate. What is lacking is enforcement. A diligent enforcement program should be pursued before additional regulations are considered.

After the passage of OPA 90, the majority of the industry agreed that the best response available came from a combination of local and national assets. The local assets provide the first strike capability and the national assets provide umbrella coverage and the infrastructure to respond from day two and beyond. The vessel in the San Francisco spill had access to both nationally classified OSROs including their first strike capabilities. As a result, this vessel had more than adequate resources available to respond. Yet, there is still a cry for more. One reason is that factors other than resource availability influence how well an oil spill response is perceived. The circumstances of an individual incident, such as underestimating the amount of oil spilled, should not become the standard by which the entire industry and the laws which govern it are judged. Regrettably, that is often the case with reactionary legislation.

Interestingly, most foreign flagged vessels have access to one or both of the national OSROs, which certainly satisfies the regulations and will provide an effective response. Unfortunately, there are some vessels and even more waterfront facilities that do not have access to either national OSRO and rely solely on local resources that may not be sufficient. While these local OSROs provide a valuable first strike capability, they do not provide the breadth and depth of resources that are typically required on even a relatively small event. While some good corporate citizens continue to support the joint local and national OSRO model that existed through the mid nineties, some companies have chosen short term economics and dismissed long term environmental risks. The fact that they have selected this path makes it even more difficult for the environmentally conscious companies to support enhanced response capability. They need merely look across the river to see the competitive disadvantage.



Oil skimmers (such as the one pictured) are one of the most common types of equipment used during oil spill clean-up operations.

In the aftermath of the San Francisco spill, legislators should resist the temptation to implement additional reactionary regulations when more stringent enforcement of existing regulations is all that is needed and is more cost effective. The decision by some major oil companies and vessel owners to withdraw support for all national OSROs, choosing instead to employ the 'rolodex planning approach' that existed before OPA 90 is troubling. Without major national organisations that can call upon trained, out of area responders and equipment, spill responses will be limited to local labour pools that may not have sufficient resources.

By way of example, in 1993, every refinery in the Delaware Bay and River was covered by both a local and a national OSRO. Fifteen years later, although the intent of the existing law has not changed and still requires such coverage, more than half of the oil being transported through Delaware Bay and River refineries is only covered by a local OSRO. As the largest oil producing port in the US, this downtrend should be a concern to both state and federal regulators. This situation should not be permitted to continue following the San Francisco spill. More stringent enforcement of existing regulations is the panacea to a number of concerns. Very simply it will provide better environmental protection without driving up industry costs. Keeping costs reasonable is the best way to keep our ports economically viable.

ABOUT THE COMPANY

Since 1992, **National Response Corporation (NRC)** has provided government and its customers in the energy and maritime industries with practical, cost-effective solutions to meet their environmental obligations. From the United States' Oil Pollution Act of 1990 to the United Nations' MARPOL 73/78 regulations, NRC has supported the international community in their efforts to preserve our waters, beaches and wildlife.

NRC is part of the SEACOR Environmental Services Group, a division of SEACOR Holdings Inc. (NYSE:CKH).

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