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**The National Contingency Plan (NCP)
The Oil Pollution Act (OPA)
The Clean Water Act (CWA)
The Comprehensive Environmental
Response, Competition and Liability
Act (CERCLA)
& other things that tie into them**

During the past three decades the number of oil spill incidents and volume of oil spilled have been on the decline. The April 2010 deep horizon Gulf of Mexico oil spill has been the only anomaly in the declining trend. The declining trend can be attributed to changes in oil spill legislation after the occurrence of the Exxon Valdez oil spill which highlighted weak governance in the area of oil spills in the U.S. The subsequent comprehensive reform of oil spill legislation by congress in response to the Exxon Valdez spill produced the Oil Pollution Act of 1990 which has significantly improved governance in this area.

A number of federal authorities are responsible for governing oil spills in the United States. These main actors in the governing system are a combination of state, federal and international authorities. They are collectively responsible for creating and implementing legislation to prevent oil spills and handling the aftermath decisions and procedures that follow.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) 1968:

The NCP established the response system the federal government was to follow in the event of oil spills and release of hazardous materials into the environment. The NCP was a response by U.S policy makers to the Torrey Canyon oil tanker spill off the coast of England. It has since been amended by:

- The Clean Water Act (1972) [CWA]
- The Oil Pollution Act (1990) [OPA 90]
- The Comprehensive Environmental Response, Competition and Liability Act (CERCLA) 1980.

OPA 90 increased the role and dimensions of the NCP by establishing a more robust planning and response system to improve response and prevent spills in marine environments.

The Oil Pollution Act (1990):

The OPA is the primary legislation that governs oil spills in the U.S. The establishment of the OPA substantiated the federal government's role in responding to oil spill cleanups. The OPA made amendments to the already existing CWA to provide 3 options to the delegated authorities through the president. The options include:

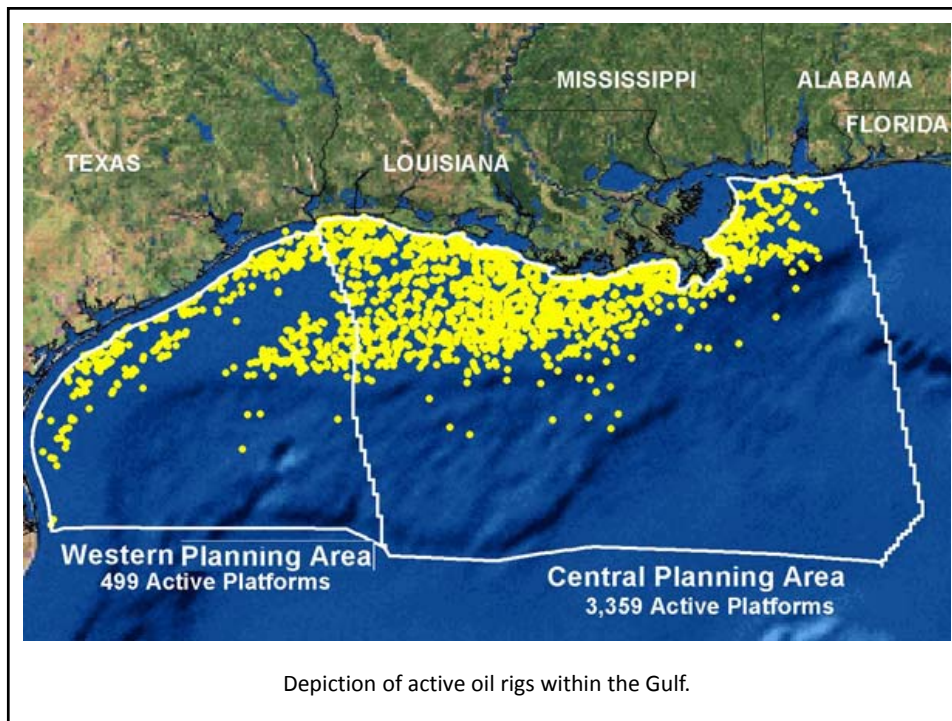
- Conducting immediate cleanup by federal authorities
- To monitor the response of the responsible party
- Or commandeer the cleanup activities of the responsible party.

Hence giving the federal government the authority to determine the level of clean up required.

The oil spill framework in the U.S employs a multilateral system of governance where the federal authorities, NGO's and private parties are all actively involved in response and clean up procedures. Although the U.S. government plays an important role in regulating oil spills, it however does not entirely command and control every aspect of the process.

Due to the complex nature of oil and gas operations and limited technical expertise by the government in such industries, industry standard setting and self-policing play a significant role in the governing process of oil spills. This has inevitably led to the network governance approach used to govern oil spills. The insufficient expertise and specialist technical knowledge in the public sector makes it difficult for the government to rely entirely on its personnel hence resulting in public-private partnership known as a type II partnership. This style of new public management to oil spill governance is common in other aspects of environmental governance (e.g. climate change) in the U.S and differs from the typical bureaucratic role of enforcement the federal government usually play.

The governance process of oil spills relies on input from national, private and international institutions. To effectively implement response, prevention and clean up procedures a number of public authorities were given responsibility under different jurisdictions. Since the 1970s the number of institutions governing oil spills has increased, indicating a steady shift from state led government approach to a broader and multi layered governance process.



Purpose of the NCP

- To provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants.

40 CFR 300.1

4 General Priorities

- 1. To give safety and human health top priority during every response action.
- 2. To stabilize the situation in order to prevent the event from worsening.
- 3. To use all necessary containment and removal tactics in a coordinated manner to ensure timely, effective response.
- 4. To take action to minimize further environmental impact from additional discharges.

40 CFR 300.317

Notification Requirements

- Notice of discharges and releases must be made telephonically through a toll free number or a special local number to the National Response Center (NRC). [800-424-8802]
- In accordance with 33 CFR 153.203 and 40 CFR 302, the notice of an oil discharge or release of hazardous substances in an amount equal to or greater than the reportable quantity must be made immediately.

40 CFR 300.125

4 Phases (Oil)

- Phase I – Discovery or Notification
- Phase II – Preliminary assessment and initiation of action
- Phase III – Containment, countermeasures, cleanup, and disposal
- Phase IV – Documentation and cost recovery

40 CFR 300.300-315

8 Phases (Haz Sub)

- Discovery or notification
- Removal site evaluation
- Removal action
- Remedial site evaluation
- Establishing remedial priorities
- Remedial investigation/feasibility study
- Remedial design/action, operation & maintenance
- Procedures for planning and implementing off-site response actions

40 CFR 300.400-440

Agency Jurisdiction

- USCG - Discharges of oil; release of hazardous substances, pollutants and/or contaminants into the environment in the coastal zone
- US EPA - Discharges of oil; release of hazardous substances, pollutants and/or contaminants into the environment in the inland zone

40 CFR 300.120

Agency Jurisdiction

- Department of Defense - Discharges of oil; release of hazardous substances, pollutants and/or contaminants into the environment from military operated facilities, installations, munitions and/or military vessels
- Department of Energy - Discharges of oil; release of hazardous substances, pollutants and/or contaminants into the environment from DOE facilities or non-DOD radiation sources

40 CFR 300.175

OPA 90

- The Oil Pollution Act of 1990 was established as a result of the Exxon Valdez Incident in 1989
- Created the OSLTF (& a tax to fund it)
- Allowed USCG to designate BOA contracts to OSRO's
- Built the OSC position to what it is & enabled FOOSC's to issue Admin Orders
- Built liability (and limits) into the system

Key Provisions of National Contingency Plan

Establishes the National Response Team and its roles and responsibilities in the National Response system, including planning and coordinating responses to major discharges of oil or hazardous waste, providing guidance to Regional Response Teams, coordinating a national program of preparedness planning and response, and facilitating research to improve response activities. EPA serves as the lead agency within the National Response Team (NRT). §300.115 Establishes the Regional Response Teams and their roles and responsibilities in the National Response System, including, coordinating preparedness, planning, and response at the regional level. The RRT consists of a standing team made up of representatives of each federal agency that is a member of the NRT, as well as state and local government representatives, and also an incident-specific team made up of members of the standing team that is activated for a response. The RRT also provides oversight and consistency review for area plans within a given region.

§300.120 Establishes general responsibilities of federal On-Scene Coordinators.

§300.125(a) Requires notification of any discharge or release to the National Response Center through a [toll-free telephone number](#). The National Response Center (NRC) acts as the central clearinghouse for all pollution incident reporting.

§300.135(a) Authorizes the predesignated On-Scene Coordinator to direct all federal, state, and private response activities at the site of a discharge.

§300.135(d) Establishes the unified command structure for managing responses to discharges through coordinated personnel and resources of the federal government, the state government, and the responsible party.

§300.165 Requires the On-Scene Coordinator to submit to the RRT or NRT a report on all removal actions taken at a site.

§300.170 Identifies the responsibilities for federal agencies that may be called upon during response planning and implementation to provide assistance in their respective areas of expertise consistent with the agencies' capabilities and authorities.

§300.175 Lists the federal agencies that have duties associated with responding to releases.

§300.210 Defines the objectives, authority, and scope of Federal Contingency Plans, including the National Contingency Plan (NCP), Regional Contingency Plans (RCPs), and Area Contingency Plans (ACPs).

Oil Removals

§300.317 Establishes national priorities for responding to a release.

§300.320 Establishes the general pattern of response to be executed by the On-Scene Coordinator (OSC), including determination of threat, classification of the size and type of the release, notification of the RRT and the NRC, and supervision of thorough removal actions.

§300.322 Authorizes the OSC to determine whether a release poses a substantial threat to the public health or welfare of the United States based on several factors, including the size and character of the discharge and its proximity to human populations and sensitive environments. In such cases, the OSC is authorized to direct all federal, state, or private response and recovery actions. The OSC may enlist the support of other federal agencies or special teams.

§300.323 Provides special consideration to discharges which have been classified as a spill of national significance. In such cases, senior federal officials direct nationally-coordinated response efforts.

§300.324 Requires the OSC to notify the National Strike Force Coordination Center (NSFCC) in the event of a worst case discharges, defined as the largest foreseeable discharge in adverse weather conditions. The NSFCC coordinates the acquisition of needed response personnel and equipment. The OSC also must require implementation of the worst case portion of the tank vessel and Facility Response Plans and the Area Contingency Plan.

§300.355 Provides funding for responses to oil releases under the Oil Spill Liability Trust Fund, provided certain criteria are met. The responsible party is liable for federal removal costs and damages as detailed in section 1002 of the Oil Pollution Act (OPA). Federal agencies assisting in a response action may be reimbursed. Several other federal agencies may provide financial support for removal actions.

Subpart J Establishes the NCP Product Schedule, which contains dispersants and other chemical or biological products that may be used in carrying out the NCP. Authorization for the use of these products is conducted by Regional Response Teams and Area Committees, or by the OSC in consultation with EPA representatives.

Hazardous Substance Removals

§300.415(b) Authorizes the lead agency to initiate appropriate removal action in the event of a hazardous substance release. Decisions of action will be based on threats to human or animal populations, contamination of drinking water supplies or sensitive ecosystems, high levels of hazardous substances in soils, weather conditions that may cause migration or release of hazardous substances, the threat of fire or explosion, or other significant factors affecting the health or welfare or the public or the environment.

§300.415(c) Authorizes the OSC to direct appropriate actions to mitigate or remove the release of hazardous substances.

The **Clean Water Act (CWA)** is the primary federal law in the United States governing water pollution. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands. It is one of the United States' first and most influential modern environmental laws. As with many other major U.S. federal environmental statutes, it is administered by the U.S. Environmental Protection Agency (EPA), in coordination with state governments.

In the wake of the Exxon Valdez disaster, Alaska Governor Jay Hammond authorized the creation of the Alaska Oil Spill Commission in 1989 to examine the causes of the oil spill and issue recommendations on potential policy changes. Hammond appointed Walter B. Parker, a longtime transportation consultant and public official, as the chairman of the commission. Under Parker, the Commission issued 52 recommendations for improvements to industry, state and federal regulations. The U.S. Congress would ultimately adopt 50 of the Alaska Oil Spill Commission's 52 recommendations into the Oil Pollution Act.

The bill was introduced to the House by Walter B. Jones, Sr., a Democratic Party congressman from North Carolina's 1st congressional district. Jones along with 79 cosponsors involved with the 1989 Exxon Valdez oil spill, which at the time was the largest oil spill in U.S. history. It enjoyed widespread support, passing the House 375-5 and the Senate by voice vote before conference, and unanimously in both chambers after conference. The U.S. Constitution, as interpreted in *Gibbons v. Ogden* (1824), gives Congress the sole authority to regulate navigable waters.

The Oil Pollution Act of 1990 was born due to the imperfections of the two previous acts, which were the Clean Water Act of 1977 (CWA) and the Federal Water Pollution Control Act (FWPCA). The FWPCA was enacted in 1972 as part of a reorganization of the Water Quality Improvement Act. The CWA, enacted in response to the grounding of the Argo Merchant off Nantucket, Massachusetts, in 1976. Together with the FWPCA, they formed the oil pollution containment, response, and liability framework that applied during the Exxon Valdez casualty.

In April 1998, Exxon argued in a legal action against the federal government that the Exxon Valdez should be allowed back into Alaskan waters. Exxon claimed the OPA was effectively a bill of attainder, a regulation that was unfairly directed at Exxon alone. In 2002, the 9th Circuit Court of Appeals ruled against Exxon. As of 2002, OPA had prohibited 18 ships from entering Prince William Sound. The act also banned single-hull tank vessels of 5,000 gross tons or more from U.S. waters from 2010 onward, apart from those with a double bottom or double sides, which may be permitted to trade to the United States through 2015, depending on their age. The double-hull tanker came into effect. The double-hull tanker has an inner hull, separated from the outer by approximately ten feet. Over the past decade, collisions and groundings have been responsible for approximately 70 percent of the oil spillage from tank vessels. In the case of a collision or grounding, double-hull tankers are four to six times less likely than single-hull tankers to spill oil. Average outflow is three to four times less with a double-hull compared to a single-hull tank vessel. If the current fleet predominantly comprising single-hull vessels were all replaced with double-hull vessels, it is projected that the double-hull requirements would eliminate four out of every five oil spills and realize a two-thirds reduction in the total volume of oil spills attributable to collisions and groundings.

Enforcement

Following the 2010 Deepwater Horizon oil spill in the Gulf of Mexico, numerous U.S. Senators attempted to pass a bill to raise the \$75 million cap limit to \$10 billion, retroactive to before the spill occurred. Senators of both Republican Party and Democratic Party blocked efforts for new legislation on multiple occasions, arguing that the new law could have unintended consequences. Democratic Party senator Mary Landrieu of Louisiana was quoted in saying "We want to be careful before we change any of these laws that we don't jeopardize the operations of an ongoing industry, because there are 4,000 other wells in the Gulf that have to go on." This statute limits BP's monetary damages to \$75 million for losses to private parties, although it still remains liable for all cleanup costs under the law.