



Transmitted via e-mail

December 31, 2012

Chair
Senate Budget and Fiscal Review Committee

Honorable Bob Blumenfield, Chair
Assembly Budget Committee

Honorable Adam C. Gray, Chair
Joint Legislative Audit Committee

Final Report—Review of the State’s Oil Spill Prevention, Response, and Preparedness Program

In accordance with Government Code section 8670.42, the Department of Finance, Office of State Audits and Evaluations respectfully submits its final report on the review of the financial basis and programmatic effectiveness of the State’s Oil Spill Prevention, Response, and Preparedness Program (Program) for the period July 1, 2011 through June 30, 2012.

The enclosed report is for your information and use. The California Department of Fish and Game’s (DFG) and the California State Lands Commission’s (Commission) responses to the report observations are incorporated into this final report. DFG and Commission agreed with our observations and we appreciate their willingness to implement corrective actions. The observations in our report are intended to assist management in improving the Program. This report will be placed on our website.

We appreciate the assistance and cooperation of DFG and the Commission. If you have any questions regarding this report, please contact Susan Botkin, Manager, or Angie Williams, Supervisor, at (916) 322-2985.

Sincerely,

Original signed by:

David Botelho, CPA
Chief, Office of State Audits and Evaluations

cc: On following page

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Honorable John Chiang, State Controller
Honorable Gavin Newsom, Lieutenant Governor
Assemblymember Ben Hueso, Chair, California State Assembly Committee on Water,
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Assemblymember Wesley Chesbro, Chair, California State Assembly Committee on
Natural Resources
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Ms. Marina Voskanian, Acting Chief, Mineral Resources and Management Division,
California State Lands Commission
Mr. Don Hermanson, Chief, Marine Facilities Division, California State Lands Commission
Mr. William Craven, Chief Consultant, Senate Committee on Natural Resources and Water
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Ms. Rachel M. Wagoner, Chief Consultant, California Senate Committee on Environmental
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Mr. Mark McKenzie, Staff Director, California Senate Appropriations Committee
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Audit Report

Review of State's Oil Spill Prevention, Response, and Preparedness Program



Marine Spill Response Corporation Spill Chaser at the Chevron Richmond - Long Wharf

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Final reports are available on our website at <http://www.dof.ca.gov>

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TABLE OF CONTENTS

Results Summary.....	1
Background.....	2
Scope and Methodology	4
Results.....	6
Responses.....	17

RESULTS SUMMARY

Based on our review of the financial basis and programmatic effectiveness of the State's Oil Spill Prevention, Response, and Preparedness Program (Program), we determined that the Program's overall financial basis is sound and the Program is effective with the exception of two components, the Inland Spill Response and the Oiled Wildlife Care Network programs.

Pursuant to Government Code section 8670.42, we analyzed the Program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The other relevant issues we reviewed were the State Lands Commission's (Commission) oversight of its spill prevention program, the Program's Oil Spill Tracking Database, the Inland Spill Response Program, staff training, communication, the Oiled Wildlife Care Network, and Program responsibilities and authority. The detailed analysis is provided under the Results section.

We identified the following areas of risk and recommend measures to improve the Program's efficiency and/or effectiveness. Additional information is provided under the Results section.

- Potential Duplication of Effort with Administrative Functions
- Inventory Problems Continue
- Inaccuracies in the Oil Spill Tracking Database
- Opportunity for Increased Oversight by Commission
- Commission Not Performing Timely Reviews
- Inland Spill Response Program Lacks Funding and Preventive Activities
- Training Policy Not Fully Implemented
- Communication Needs Improvement
- Oiled Wildlife Care Network Lacks Funding
- Lack of Method to Determine Efficiency in Prevention and Response Activities
- Possible Conflict of Responsibilities and Authority

Significant improvements have been made to the existing contingency plan requirements and protection of the sensitive shoreline sites since our last report dated January 1, 2005. We did not identify any new measures to modify existing contingency plan requirements or improvements for the protection of sensitive shoreline sites.

BACKGROUND

In 1990 the California Legislature enacted legislation called the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act). The Act covers all aspects of marine oil spill prevention and response in California. It established an Administrator who is given broad powers to implement the provisions of the Act. The Act also gave the State Lands Commission certain authority over marine terminals. In 1991 the Office of Spill Prevention and Response (OSPR) was created as a division within the California Department of Fish and Game (DFG). (Source:<http://www.dfg.ca.gov/ospr/About/history.aspx>)

OSPR's mission is to provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources. OSPR is the lead state agency charged with oil spill prevention, response, and natural resource restoration in California's marine environment. OSPR is also the lead state agency for off-highway inland spills. (Source: <http://www.dfg.ca.gov/ospr>)

The State Lands Commission (Commission) provides stewardship of state lands, waterways, and resources. The Commission, through the Oil Spill Prevention, Response, and Preparedness Program (Program) is charged with protection of the marine environment by stressing the prevention of oil spills. The Commission's Marine Facilities Division and the Mineral Resources Management Division are responsible for spill prevention. Both divisions develop and oversee the implementation of regulations affecting the safety of marine oil transfers, pipelines and transfer facilities, and oil production facilities. (Source: Commission's website)

The State Board of Equalization (BOE) collects the fee of six and one-half cents (\$0.065) per barrel of crude oil or petroleum products received as required in Government Code section 8670.40. BOE also assesses a fee on petroleum products received from outside California at a marine terminal. The terminal operator or pipeline operator is required to collect the fee from the owner of the product and remit the fees to the BOE. These revenues collected are deposited into the Oil Spill Prevention and Administration Fund. Because BOE's role is very limited in the Program, it was not examined further. (Source:http://www.boe.ca.gov/sptaxprog/oil_spill_prev_resp_adm_fee)

The Oiled Wildlife Care Network (OWCN) is a statewide collection of trained wildlife care providers, regulatory agencies, academic institutions and wildlife organizations working to rescue and rehabilitate oiled wildlife in California. OWCN's role in the Program is limited; however, we identified a funding issue that is explained in detail in the Results section of this report. (Source: http://www.owcn.org/about_us)

The Program funds one and one-half positions at the California Coastal Commission (CCC). Annually, OSPR enters into a payable agreement with the CCC to perform services such as attend various committee meetings, participate in Program oil spill response drills, analyze oil spill risk and potential coastal resource impacts of a spill, and develop oil spill prevention and response mitigation measures, as necessary, for proposed oil and gas related projects and repairs, among other services. (Source: DFG). Due to its limited role in the Program, the CCC was not examined further.

SCOPE

Pursuant to Government Code section 8670.42, the Department of Fish and Game (DFG) and the State Lands Commission (Commission), independently, shall contract with the Department of Finance (Finance) for the preparation of a detailed report that shall be submitted on or before January 1, 2013, to the Governor and the Legislature on the financial basis and programmatic effectiveness of the State's Oil Spill Prevention, Response, and Preparedness Program (Program). This report shall include an analysis of all the Program's major expenditures, fees and fines collected, staffing and equipment expenditures, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the Program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and ensure adequate and equitable funding for the Program.

The review period was July 1, 2011 through June 30, 2012.

METHODOLOGY

To determine the Program's financial basis and programmatic effectiveness, we performed the following:

- Reviewed applicable laws, regulations, and criteria to identify authorized fund uses and restrictions.
- Reviewed applicable laws and regulations to identify criteria for evaluating the Program's effectiveness.
- Interviewed key personnel at DFG and Commission to gain an understanding of the Program.
- Reviewed accounting records to determine total revenues and expenditures for the period under review.
- Compiled and analyzed data pertaining to: expenditures, revenue, staffing, equipment, spills responded to, and other relevant issues.
- Attended a sample of drills conducted by DFG's Office of Spill Prevention and Response (OSPR) to understand the preparedness activities.
- Attended tours and meetings conducted by the Commission to gain an understanding of the Marine Facilities Division and Mineral Resources Management Division in Long Beach, California.
- Surveyed Program staff to identify opportunities for improvement, areas of success, and workload analysis.

In addition, to recommend measures to improve the efficiency and effectiveness of the Program, we performed the following:

- Reviewed existing contingency plan requirements.
- Determined current processes for protection of sensitive shoreline sites.
- Reviewed revenues collected to determine adequate and equitable funding levels.
- Obtained a complete list of the Program's fiscal year 2011-12 appropriations and analyzed the data.
- Reviewed and analyzed spill data obtained from the Spill Tracking Database to determine the effectiveness of activities.
- Reviewed training courses recommended and taken to determine the adequacy of training for Program staff.
- Reviewed the Program's prior audit findings to determine if appropriate corrective actions have been taken.

Except as discussed in the following paragraph, we conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In connection with our audit, there are certain disclosures required by generally accepted government auditing standards. Finance is not independent of the audited entities, as they are part of the State of California's Executive Branch. As required by various statutes within the California Government Code, Finance performs certain management and accounting functions. These activities impair independence. However, sufficient safeguards exist for readers of this report to rely on the information contained herein.

RESULTS

We reviewed the State's Oil Spill Prevention, Response, and Preparedness Program (Program) and found that the financial basis and programmatic effectiveness are adequate. Based on our review, the Program has effective and efficient prevention, preparedness, and response activities in place.

However, with any Program there are opportunities for improvement. We identified these as issues on the following pages.

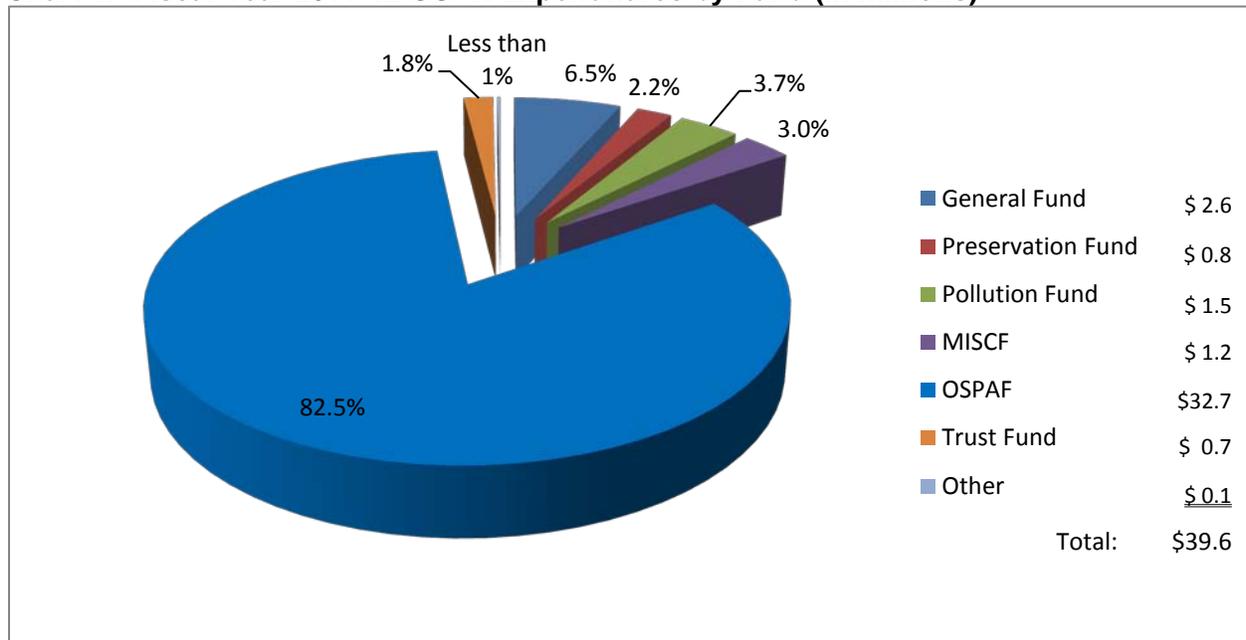
PROGRAM EXPENDITURES

The Program is funded from several sources, including:

- General Fund
- Fish and Game Preservation Fund (Preservation Fund)
- Fish and Wildlife Pollution Account (Pollution Fund)
- Marine Invasive Species Control Fund (MISCF)
- Oil Spill Prevention and Administration Fund (OSPAF)
- Oil Spill Response Trust Fund (Trust Fund)
- Environmental Enhancement Fund
- Federal Trust Fund
- California Sea Otter Fund

The Environmental Enhancement Fund, Federal Trust Fund, and California Sea Otter Fund represent less than one percent of the Program's expenditures and are listed as "other" in Chart 1. Total Program expenditures for fiscal year 2011-12 were \$39.6 million; of which Program expenditures from the OSPAF were \$32.7 million (82.5 percent). Chart 1 illustrates the relative percentages of expenditures by fund.

Chart 1: Fiscal Year 2011-12 OSPR Expenditures by Fund (in millions)



Source: CALSTARS Final Budget Report

OSPAF is used for all costs related to preventing and preparing for marine oil spills. Because OSPA is the Program’s major funding source for fiscal year 2011-12, our review primarily focused on OSPA expenditures.

Our review did not identify any issues regarding Program expenditures.

REVENUES/APPROPRIATIONS, FEES, AND FINES COLLECTED

The Program primarily funds its activities with revenues collected through OSPA. Chart 2 shows OSPA collections by agency for fiscal year 2011-12.

Chart 2: OSPA Collections by Agency	Fiscal Year 2011-12
Revenues collected by BOE:	
BOE Reported Revenues (per barrel fees)	\$28,379,804
Accounts Receivable Adjustments	1,900,000
BOE Collections Total:	30,279,804
Revenues Collected by DFG:	
OSPA Nontank Vessel COFR Fees	7,118,884
Income from Surplus Money Investments	30,815
Other Revenues - Cost Recoveries	37,162
Other Revenues – Miscellaneous	2,049
DFG Collections Total:	7,188,910
OSPA Total Revenues	\$37,468,714

Source: BOE and CALSTARS Summary of Receipts by Appropriation

OSPAP receives revenue from the following sources:

- Per barrel fees based on movement of crude oil shipped into California via marine terminal and/or pipeline (where the pipeline crosses under, across, or through marine waters).
- Fees collected from non-tank vessels at the filing of the biennial Certificate of Financial Responsibility (COFR).
- Interest earned through the State Surplus Money Investment Fund (SMIF) on excess cash deposits.
- Cost recovery for pollution and cleanup.
- Miscellaneous revenues and other cost recoveries.

BOE collects the per barrel fees. DFG collects non-tank vessel COFR fees that range from \$650 to \$3,250 depending on the vessel tonnage. Other revenues, such as cost recoveries, reimbursements, and interest, are collected through OSPR at DFG. The State Lands Commission (Commission) does not collect any revenues.

Based on our analysis, OSPAP is receiving sufficient revenues. Assembly Bill 1112 increased the per barrel fee of crude oil or petroleum from \$0.05 to \$0.065. We reviewed the fee increase and determined it is reasonable and sufficient to carry out oil spill prevention activities.

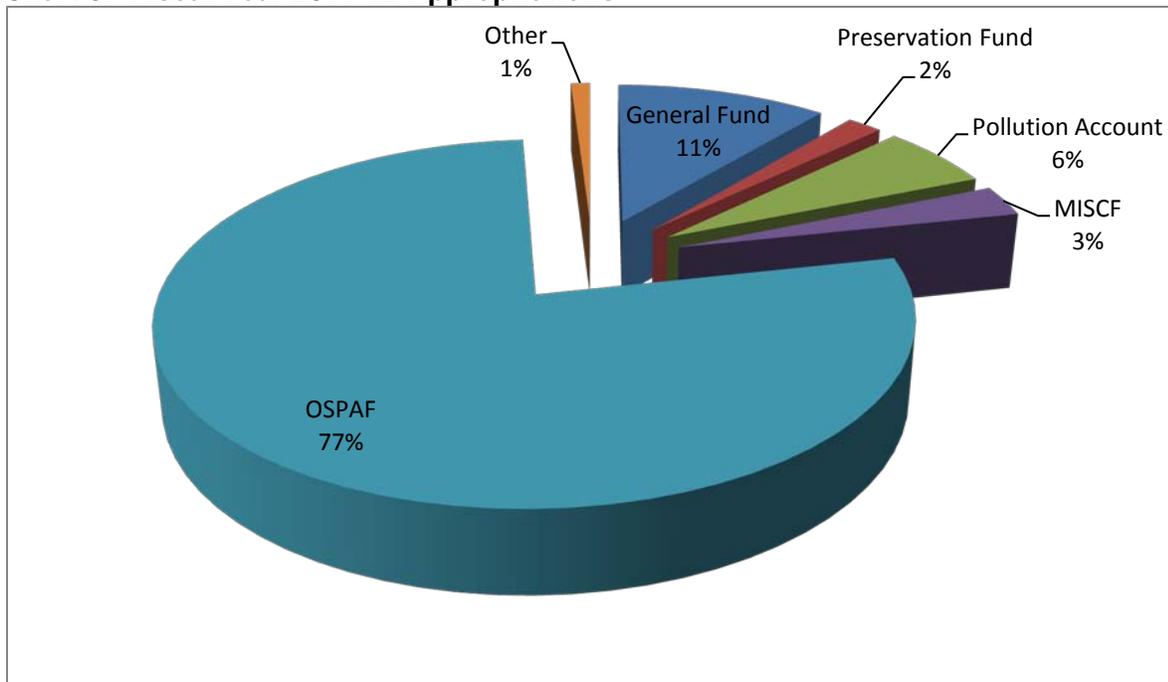
OSPAP reported excess revenues in 2011-12 of \$4.7 million which was due in part to the January 1, 2012 increase of the per barrel fee and a 30 percent non-tanker COFR increase. Program staff stated that the excess revenue will be used for other Program activities. Further, Government Code section 8670.4 allows for a surplus to cover possible contingencies.

In fiscal year 2011-12, OSPAP accounted for 77 percent of the total Program appropriations. The remaining appropriations are from the following funds:

- General Fund
- Preservation Fund
- Pollution Account
- MISCF
- Trust Fund
- Environmental Enhancement Fund
- Federal Trust Fund
- California Sea Otter Fund

The Trust Fund, Environmental Enhancement Fund, Federal Trust Fund, and California Sea Otter Fund represent approximately one percent of the Program's funding and are listed as "other" in Chart 3.

Chart 3: Fiscal Year 2011-12 Appropriations



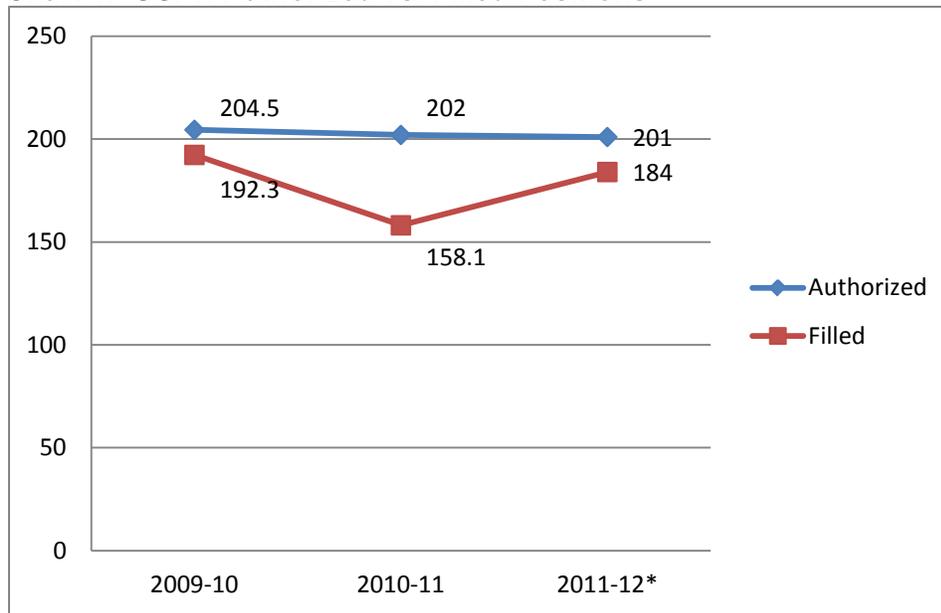
Source: CALSTARS Final Budget Report

Our review did not identify any issues regarding OSPAF revenues, appropriations, fees and fines collected.

STAFFING LEVELS

OSPAF funds 154.2 filled positions at OSPR and 74.6 filled positions at the Commission. The number of OSPR personnel fluctuated throughout the last three fiscal years as illustrated in Chart 4 below. The changes were mainly due to the movement of 27 warden positions from OSPR to the Law Enforcement Division of DFG's Executive Office and the hiring freeze. In July 2011, OSPR began filling the positions once the hiring freeze was no longer in effect.

Chart 4: OSPR Authorized vs. Filled Positions



Source: Governor's Budget, Salaries and Wages Schedule

*Authorized positions per the 2012-13 Salaries and Wages Schedule were 174 for fiscal year 2011-12. Per OSPR staff, there were 27 additional authorized positions reported under DFG's Law Enforcement Division.

Two divisions within the Commission perform Program functions and are funded by OSPAF. Those two divisions are the Mineral Resources Management Division (Mineral Resources) and the Marine Facilities Division (Marine Facilities). OSPAF funded 74.6 of the Commission's positions in fiscal year 2011-12.

Our review did not identify any issues regarding staffing levels at the Commission. However, we did identify a possible issue at OSPR as described below.

Issue—Potential Duplication of Effort with Administrative Functions

A potential duplication of effort exists between DFG's administrative functions and OSPR's administrative functions. Both DFG and OSPR have their own administrative staff performing similar duties, which could cause redundancies and inefficiencies. OSPR staff interviews and survey results indicated a concern that there is a large administrative team and a lack of sufficient work to keep them busy.

Recommendation

Program management should review the necessity of having a separate administrative staff for OSPR and look for opportunities to reduce redundancies in administrative functions already performed by DFG staff.

EQUIPMENT LEVELS

Issue—Inventory Problems Continue

Several entities have audited the inventory records and noted a lack of appropriate recordkeeping and oversight of fixed assets. The 1999 fixed asset internal audit report stated DFG had not completed a property inventory since 1995. While a physical count of inventory has been completed, it has not been reconciled to the general ledger.

Per State Administrative Manual (SAM) section 8600, property accounting procedures are designed to maintain uniform accountability for state property. These standard procedures are used to provide accurate records for the acquisition, maintenance, control, and disposition of property. The combination of accurate accounting records and strong internal controls must be in place to protect against and detect the unauthorized use of state property. Also, SAM section 8651 states that departments will make a physical count of all property and reconcile the count with accounting records at least once every three years.

Recommendation

Reconcile fixed asset inventory records and develop procedures to ensure adequate recordkeeping and oversight of fixed assets.

SPILLS REPONDED TO

Our review determined that the response to marine and inland spills appears effective. The Program's response rate for marine and inland oil spills was 98 percent and 95 percent, respectively, as shown in Chart 5.

Chart 5: Spill Response Activity for Fiscal Year 2011-12

	No. of Spills	Spills Responded to Physically		Spills Responded to by Phone		No Action Needed ^		Rate of Response when Action taken %
		#	%	#	%	#	%	
Marine	661	188	28%	463	70%	10	2%	98%
Inland	138	63	46%	68	49%	7	5%	95%
Total	799	251	31%	531	66%	17	2%	97%

Source: Program Spill Tracking Database for FY 2011-12

^ Per Program staff, these were incidents that did not require a response because the spill is outside state waters; the oil is natural seepage, or a sheen.

Issue—Inaccuracies in the Oil Spill Tracking Database

The Oil Spill Tracking Database does not always have the most current and accurate information regarding the volume of oil spilled. Specifically, the initial estimated volume of oil spilled may change during the course of the recovery and cleanup process. However, this information may not be updated in the database; and inaccurate data can lead to inaccurate conclusions.

The Program's mission "is to provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources." Ensuring accurate and reliable data is input to the Oil Spill Tracking Database will provide assurance that any conclusions drawn from the data are accurate and complete.

Recommendation

The Program should improve its process to ensure the volume of oil spilled and volume of oil recovered during the recovery and cleanup process is completely and accurately input to the Oil Spill Tracking Database.

OTHER RELEVANT ISSUES

Issue—Opportunity for Increased Oversight by Commission

The Commission is effectively and efficiently administering spill prevention programs through a variety of monitoring tools and activities. However, opportunities exist to strengthen oversight by requiring process safety management reviews. The Commission currently assists operators with safety assessments through a question and answer process referred to as the Safety Assessment of Management Systems. However, this may not go far enough. A more robust process safety management review should take the operating process, the hardware, and the human element interactions into consideration to better identify risks that could lead to spills. Current oil industry literature acknowledges the importance of process safety management reviews which take into consideration the interaction of all three safety components (operating process, hardware, and human element).

The process safety management review can be implemented through an update of the facility operations manual. Operations manuals are required by law. Public Resources Code section 8758 requires facility operators to have an operations manual describing the equipment and procedures which the operator will use to protect public health and safety, the environment and to prevent oil spills. Further, the law requires the operations manual to be updated based on findings in the hazards and operability study or when facility operations or technology change. Additionally, Government Code section 8670.3 defines the "best achievable protection" to mean the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The Commission can advance best achievable protection by updating the operations manual to include process safety management reviews.

Recommendation

Include requirements in the operations manual to implement process safety management reviews and ensure the reviews are performed.

Issue—Commission Not Performing Timely Reviews

The operators of the marine oil terminals are required to conduct comprehensive engineering audits of their facilities. These audits provide the terminal operator with information about the current condition and upgrades needed to their infrastructure. A copy of the audit is submitted to the Marine Facilities Division for review and approval. Each terminal was rated as a high, medium, or low risk terminal based on the risk of oil spill. The Marine Facilities Division used the risk rating to determine when the 31 marine oil terminal audits needed to be submitted to the Marine Facilities Division for review.

- High risk audits were due in August 2008; 11 terminals were in this group.
- Medium risk audits were due February 2010; 17 terminals were in this group.
- Low risk audits were due February 2011; there were 3 terminals in this group.

The Marine Facilities Division has not completed the reviews in a timely manner. Currently, the high risk terminal audits are being reviewed. The Marine Facilities Division has not begun the review of the medium and low risk audits. The Commission expressed a concern of lack of staff with the technical skills necessary to perform the reviews. Failure to perform timely reviews may increase the risk of spills occurring.

Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) section 3101F.6.1 requires the audits be reviewed and approved by the Marine Facilities Division. There are 31 marine oil terminals that must comply with MOTEMS because they are defined as structures within California's jurisdiction. Authority for the MOTEMS is the Public Resource Code sections 8755 and 8757.

Recommendation

Reviews of the marine oil terminal audits should be conducted on a timely basis. Also, the Commission should perform a study to determine what steps are necessary to complete the reviews timely.

Issue—Inland Spill Response Program Lacks Funding and Preventive Activities

As noted above, the Program's mission is to provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources. However, the Program's Inland Spill Response program lacks (1) a dedicated funding source, and (2) preparedness and prevention activities to allow the Program to efficiently and effectively clean-up inland spills. In September 2012, the Fish and Wildlife Pollution Account, which funded the Inland Spill Response Program, had a negative balance of \$26,838. As of the end of field work, September was the most current data available. Without a dedicated funding source for the Inland Spill Response program, California may not be adequately protected against inland spills of oil and other deleterious materials.

Recommendations

The Program should (1) explore feasible options to obtain a dedicated funding source for the prevention, preparedness, response, and clean up of inland spills; and (2) develop formalized prevention and preparedness activities for the Inland Response Program. This may require amending existing or creating new legislation.

Issue—Training Policy Not Fully Implemented

The Program is developing training standards, tracking tools, and assessing training needs of the staff. The training standards include training courses for each staff classification. Although these courses are not mandatory, they are recommended to enhance Program effectiveness. These courses were given a priority number (1 being most job critical to 3 least critical). However, there is no formal policy currently in place that requires staff enroll and complete these training classes within a specific timeframe. We tested 39 of the Program's full time employees funded by OSPAF by looking at the priority 1 courses. The 39 employees are classified as Analyst, Enforcement, Oil Spill Prevention Specialist, Public Information Officer, or Environmental Scientists. We found these staff completed only 9 percent through 14 percent of the priority 1 courses as of June 30, 2012. Without training for staff, the Program may not be well prepared to respond to the next major oil spill in marine waters.

Per Government Code section 8670.8 (a) "The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs."

Recommendation

The Program should implement a written policy to make training classes mandatory within specific timeframes to ensure Program staff are meeting training objectives and have the skills to perform their job effectively.

Issue—Communication Needs Improvement

Communication continues to be an issue between OSPR staff and DFG headquarters as noted in previous audit reports. From interviews and comments made on the staff surveys, it is clear that communication could be improved to make the Program more effective.

Commission staff stated the level of communication between them and OSPR staff has been unsatisfactory at times. The deficiency in communication was observed during a site visit and drill exercise we attended in which there was minimal to no interaction between OSPR and the Commission. Further, communication deficiencies were noted between Commission Divisions in Long Beach.

Recommendation

The Program staff should work on strengthening the communication within their respective agencies and with each other to maximize the Program's efficiencies and effectiveness.

Issue—Oiled Wildlife Care Network Lacks Funding

The Program will be unable to fund the Oiled Wildlife Care Network (OWCN) beginning in fiscal year 2014-15.

Current year costs are funded from the interest earned from the Oil Spill Trust Fund. Per DFG staff, a \$40 million loan to the General Fund from the Oil Spill Trust Fund is the major cause for the lack of funding. The loan is intended to be repaid to OSPR on June 30, 2014 with interest earned; however, there is no assurance of repayment. Even if the loan is repaid, due to the economy's low interest rates, interest earned is no longer sufficient to support the cost of the Program. To date, there are no other funds available to support OWCN's activities. Without funding, the oiled wildlife in California is in jeopardy of not being rescued and rehabilitated.

Per Government Code section, 8670.37.5 (a) "The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. In addition to rehabilitative care, the primary focus of the Oiled Wildlife Care Network shall include proactive oiled wildlife search and collection rescue efforts. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network."

Recommendation

The Program should explore feasible options to obtain a dedicated funding source for OWCN. This may require amending legislation.

Issue—Lack of Method to Determine Efficiency in Prevention and Response Activities

The Program does not have methods and metrics in place to measure and determine whether the prevention and response activities are efficient. While developing and implementing methods and metrics to make such measurements can be complex, having a framework to measure will allow the Program to determine how efficiently it is using its resources to carry out these activities.

This would also provide an accurate measure of the effectiveness of the prevention and response process and enhance the Program's efforts in meeting its mission.

Recommendation

The Program should develop and document a feasible and reasonable framework and methodology to measure and determine whether the prevention and response activities are efficient.

Issue—Possible Conflict of Responsibilities and Authority

In 1990, the California Legislature enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), which divided the prevention responsibilities between OSPR and the Commission. Because of this separation of responsibilities, it gives the appearance of duplication of roles and staffing. Now that the program is mature, we believe it would be beneficial to have an independent evaluation to determine if the current organizational structure and division of responsibilities are the most effective and efficient way to meet the Program's mission.

A conflict appears to exist between the Administrator and DFG Director roles. The Act gives the Administrator authority to direct Program employees and administer the Program's funds in accordance with state law. However, in 2002 the Legislature amended provisions of the law giving the DFG Director authority over all employees including OSPR staff. This conflict has created numerous issues and it appears DFG has interpreted and applied the 2002 amendment in a way (such as the redirection of staff resources) that has impaired the Administrator's authority to fully implement the Act. This issue is also identified by the California State Auditor in its report issued in August 2012.

Recommendations

The Program should commission an independent study to determine the most effective and efficient organizational structure and division of roles that best meets the Program's mission. The results of the study should be provided to the Legislature and the Department of Finance for review.

The Program should request the Legislature to clarify its intent of the 2002 amendment regarding the authority of the Administrator and the DFG Director over OSPR operations.

RESPONSES



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
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EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



December 17, 2012

David Botelho
Chief, Office of State Audits and Evaluations
Department of Finance
915 L Street
Sacramento, CA 95814-3705

Subject: Response to Department of Finance Audit Report #123600155/133560007

Dear Mr. Botelho:

Thank you for the opportunity to respond to the audit on the State's oil spill prevention, response, and preparedness program. The Department of Fish and Game (DFG) appreciates the efforts of your audit team to improve the processes and procedures for our Office of Spill Prevention and Response (OSPR). While the audit and request for response is addressed to me as Director of the Department, I am committed to working with the OSPR Administrator (Thomas Cullen). A real and lasting partnership between the Director and Administrator is crucial for program success. Together, we have already implemented many of the improvements that the audit recommends. Below are the audit's recommendations and Fish and Game's responses, which were developed jointly with OSPR.

Issue: Potential Duplication of Effort with Administrative Functions

"A potential duplication of effort exists between DFG's administrative functions and OSPR's administrative functions. Both DFG and OSPR have their own administrative staff performing similar duties, which could cause redundancies and inefficiencies. OSPR staff interviews and survey results indicated a concern that there is a large administrative team and a lack of sufficient work to keep them busy."

Recommendation

"Program management should review the necessity of having a separate administrative staff for OSPR and look for opportunities to reduce redundancies in administrative functions already performed by DFG staff."

Response

Agree. The Department and OSPR will jointly review administrative staff responsibilities and work loads. Specifically, this review will identify administrative necessities, and consider whether redundancies and inefficiencies exist.

Issue: Inventory Problems Continue

“Several entities have audited the inventory records and noted a lack of appropriate recordkeeping and oversight of fixed assets. The 1999 fixed asset internal audit report stated DFG had not completed a property inventory since 1995. While a physical count of inventory has been completed, it has not been reconciled to the general ledger.

Per State Administrative Manual (SAM) section 8600, property accounting procedures are designed to maintain uniform accountability for state property. These standard procedures are used to provide accurate records for the acquisition, maintenance, control, and disposition of property. The combination of accurate accounting records and strong internal controls must be in place to protect against and detect the unauthorized use of state property. Also, SAM section 8651 states that departments will make a physical count of all property and reconcile the count with accounting records at least once every three years.”

Recommendation

“Reconcile fixed asset inventory records and develop procedures to ensure adequate recordkeeping and oversight of fixed assets.”

Response

Agree. The Department maintains the official property records for all its programs, and will reconcile this information to the general ledger. Additionally, with regards to OSPR property, the Department and OSPR will jointly develop procedures to ensure adequate recordkeeping and oversight of fixed assets.

Issue: Inaccuracies in the Oil Spill Tracking Database

“The Oil Spill Tracking Database does not always have the most current and accurate information regarding the volume of oil spilled. Specifically, the initial estimated volume of oil spilled may change during the course of the recovery and cleanup process. However, this information may not be updated in the database; and inaccurate data can lead to inaccurate conclusions.

The Program’s mission “is to provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources.” Ensuring accurate and reliable data is input to the Oil Spill Tracking Database will provide assurance that any conclusions drawn from the data are accurate and complete.”

Recommendation

“The Program should improve its process to ensure the volume of oil spilled and volume of oil recovered during the recovery and cleanup process is completely and accurately

input to the Oil Spill Tracking Database.”

Response

Agree. The Department and OSPR will jointly review current processes to ensure the volume of oil spilled and volume of oil recovered during the recovery and cleanup process is completely and accurately input to the Oil Spill Tracking Database. As with the recommendation above regarding recordkeeping, continuing to move data management from manual to automated, wherever feasible, should better ensure efficient and effective systems.

Issue: Inland Spill Response Program Lacks Funding and Preventive Activities

“... the Program’s mission is to provide the best achievable protection of California’s natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources. However, the Program’s Inland Spill Response program lacks (1) a dedicated funding source, and (2) preparedness and prevention activities to allow the Program to efficiently and effectively cleanup inland spills. In September 2012, the Fish and Wildlife Pollution Account, which funded the Inland Spill Response Program, had a negative balance of \$26,838. As of the end of field work, September was the most current data available. Without a dedicated funding source for the Inland Spill Response program, California may not be adequately protected against inland spills of oil and other deleterious materials.”

Recommendations

“The Program should (1) explore feasible options to obtain a dedicated funding source for the prevention, preparedness, response, and cleanup of inland spills; and (2) develop formalized prevention and preparedness activities for the Inland Response Program. This may require amending existing or creating new legislation.”

Response:

Agree. We note OSPR has made several attempts over approximately the last decade to create a stable fund source for Inland Spill Response. The Department and OSPR will continue to explore feasible options to obtain a dedicated funding source for the prevention, preparedness, response, and cleanup of inland spills; and develop formalized prevention and preparedness activities for the Inland Response Program. As the audit illustrates, time is of the essence here.

Issue: Training Policy Not Fully Implemented

“The Program is developing training standards, tracking tools, and assessing training needs of the staff. The training standards include training courses for each staff classification. Although these courses are not mandatory, they are recommended to enhance Program effectiveness. These courses were given a priority number (1 being

most job critical to 3 least critical).

However, there is no formal policy currently in place that requires staff enroll and complete these training classes within a specific timeframe. We tested 39 of the Program's full time employees funded by OSPAF by looking at the priority 1 courses. The 39 employees are classified as Analyst, Enforcement, Oil Spill Prevention Specialist, Public Information Officer, or Environmental Scientists. We found these staff completed only 9 percent through 14 percent of the priority 1 courses as of June 30, 2012. Without training for staff, the Program may not be well prepared to respond to the next major oil spill in marine waters.

Per Government Code section 8670.8 (a) "The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs.' "

Recommendation

"The Program should implement a written policy to make training classes mandatory within specific timeframes to ensure Program staff are meeting training objectives and have the skills to perform their job effectively."

Response

The Department agrees with the general sentiment behind this recommendation that staff should be provided adequate training as necessary. The Department and OSPR will continue to review and update training classes and decide if any should be mandatory. A decision that some of the training should be mandatory will require collaboration with relevant employee unions to ensure appropriate implementation. Further, the Department and OSPR will inventory existing written training policies and update as necessary and appropriate.

Issue: Communication Needs Improvement

"Communication continues to be an issue between OSPR staff and DFG headquarters as noted in previous audit reports. From interviews and comments made on the staff surveys, it is clear that communication could be improved to make the Program more effective. Commission staff stated the level of communication between them and OSPR staff has been unsatisfactory at times. The deficiency in communication was observed during a site visit and drill exercise we attended in which there was minimal to no interaction between OSPR and the Commission. Further, communication deficiencies were noted between Commission Divisions in Long Beach."

Recommendation

"The Program staff should work on strengthening the communication within their respective agencies and with each other to maximize the Program's efficiencies and

effectiveness.”

Response

Agree. The department will work on strengthening communication to maximize the Program’s efficiencies and effectiveness. In fact, pursuant to the California State Auditor report issued August 2012, which the Finance audit references, the Department Director, OSPR Administrator, and senior staff have completed (or are very close to completing) for the first time written protocols between our internal law enforcement, administration, and communications functions to ensure a functioning and committed team effort. As for communication externally with the Commission, the Department and OSPR support improved communication there as well.

Issue: Oiled Wildlife Care Network Lacks Funding

“The Program will be unable to fund the Oiled Wildlife Care Network (OWCN) beginning in fiscal year 2014-15. Current year costs are funded from the interest earned from the Oil Spill Trust Fund. Per DFG staff, a \$40 million loan to the General Fund from the Oil Spill Trust Fund is the major cause for the lack of funding. The loan is intended to be repaid to OSPR on June 30, 2014 with interest earned; however, there is no assurance of repayment. Even if the loan is repaid, due to the economy’s low interest rates, interest earned is no longer sufficient to support the cost of the Program.

To date, there are no other funds available to support OWCN’s activities. Without funding, the oiled wildlife in California is in jeopardy of not being rescued and rehabilitated. Per Government Code section, 8670.37.5 (a) “The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. In addition to rehabilitative care, the primary focus of the Oiled Wildlife Care Network shall include proactive oiled wildlife search and collection rescue efforts. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.’ ”

Recommendation

“The Program should explore feasible options to obtain a dedicated funding source for OWCN. This may require amending legislation.”

Response

Agree. The Department and OSPR will continue to explore feasible options to obtain a dedicated funding source for OWCN. Here too time is of the essence. Moreover, California’s oil spill contingency plan holders rely on OWCN existing in order to meet regulatory requirements. This issue is a top priority.

Issue: Lack of Method to Determine Efficiency in Prevention and Response Activities

“The Program does not have methods and metrics in place to measure and determine whether the prevention and response activities are efficient. While developing and implementing methods and metrics to make such measurements can be complex, having a framework to measure will allow the Program to determine how efficiently it is using its resources to carry out these activities. This would also provide an accurate measure of the effectiveness of the prevention and response process and enhance the Program’s efforts in meeting its mission.”

Recommendation

“The Program should develop and document a feasible and reasonable framework and methodology to measure and determine whether the prevention and response activities are efficient.”

Response

Agree. The Department and OSPR will develop and document a feasible and reasonable framework and methodology to measure and determine whether the prevention and response activities are efficient.

Issue: Possible Conflict of Responsibilities and Authority:

“In 1990, the California Legislature enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), which divided the prevention responsibilities between OSPR and the Commission. Because of this separation of responsibilities, it gives the appearance of duplication of roles and staffing. Now that the program is mature, we believe it would be beneficial to have an independent evaluation to determine if the current organizational structure and division of responsibilities are the most effective and efficient way to meet the Program’s mission. A conflict appears to exist between the Administrator and DFG Director roles. The Act gives the Administrator authority to direct Program employees and administer the Program’s funds in accordance with state law. However, in 2002 the Legislature amended provisions of the law giving the DFG Director authority over all employees including OSPR staff. This conflict has created numerous issues and it appears DFG has interpreted and applied the 2002 amendment in a way (such as the redirection of staff resources) that has impaired the Administrator’s authority to fully implement the Act. This issue is also identified by the California State Auditor in its report issued in August 2012.”

Recommendations

“The Program should commission an independent study to determine the most effective and efficient organizational structure and division of roles that best meets the Program’s

Mr. Bothelo

Response: DOF Audit #123600155/133560007

Page 7 of 7

mission. The results of the study should be provided to the Legislature and the Department of Finance for review. The Program should request the Legislature to clarify its intent of the 2002 amendment regarding the authority of the Administrator and the DFG Director over OSPR operations.”

Response

This recommendation has two parts. First part: If the Program has appropriate funds available, the Department and OSPR will consult with the Commission and consider the necessity of an independent study to determine the most effective and efficient organizational structure and division of roles between the Commission and OSPR that best meets the Program’s mission. Second Part: We are unaware of any specific examples during my tenure as Director or Thomas Cullen’s as Administrator where a conflict in roles has impaired oil spill response and preparedness. However, the Department and OSPR will jointly develop and pursue mechanisms to clarify authorities and prevent future conflicts.

Again, thank you for the opportunity to provide comments to the audit. Please contact Thomas Cullen, OSPR Administrator, at (916) 445-9326, if you have any questions.

Sincerely,

Original signed by

Charlton H. (Chuck) Bonham
Director

**CALIFORNIA STATE
LANDS COMMISSION**

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December 13, 2012

Mr. David Botelho, CPA
California Department of Finance
915 L Street
Sacramento, CA 95814-3706

Dear Mr. Botelho:

The staff of the California State Lands Commission (Commission) appreciates the opportunity to review the draft audit report entitled "Review of the State's Oil Spill Prevention, Response, and Preparedness Program." I commend your staff on the hard work and effort they put into understanding our program. They were very professional and diligent in performing their duties. I would like to take this opportunity to address the issues in the report applicable to the Commission as confirmed in discussions with your staff:

OPPORTUNITY FOR INCREASED OVERSIGHT BY COMMISSION: The draft audit report recommends that the Commission include requirements in the operations manual to implement process safety management reviews and ensure the reviews are performed. I believe the Commission's Human and Organizational Factors program has been very successful to ensure safe operations at offshore platforms and marine oil terminals. I agree with this recommendation and would like to expand the Commission's role in conducting system safety audits at marine oil terminals. Commission staff have recognized this opportunity and will continue to work with the Administration to secure additional resources to perform this needed work.

MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS): The draft audit report notes that marine oil terminal audits should be conducted on a timely basis. I believe these comprehensive MOTEMS audits are a key component to ensuring safe operations at marine oil terminals. Substantial efforts have been put into these reviews given our available resources. Audits of all terminals designated high risk and 70% of the audits of terminals designated medium risk have been reviewed. However, additional resources are needed to effectively monitor, track and enforce compliance with those audit results on all State marine oil terminals whose average age is in excess of 50 years.

COMMUNICATIONS: The draft audit report recommends that Program staff work on strengthening the communication within their respective agencies and between the two agencies to maximize the Program's efficiencies and effectiveness. Effective communications is an ongoing challenge for all organizations and can always be improved. Commission management goes to great lengths to foster an environment

that encourages communications among staff and the divisions. The Marine Facilities Division and Mineral Resources Management Division leadership meet weekly with the Commission's senior staff to discuss issues and upcoming meetings. The divisions also share Operations Duty Officer responsibilities and they routinely collaborate on marine oil terminal and pipeline issues.

Commission staff work with OSPR staff frequently. The spill drill observed by the auditors is not an appropriate example as those participating from OSPR are fully occupied with the drill scenario and the Commission staff is strictly there to observe any improvement to equipment readiness and preparedness that could be within the Commission's purview. Commission staff make presentations at the quarterly Oil Spill Technical Advisory Committee and Commission staff invite OSPR representatives to speak at State Lands Commission Marine Facilities customer service meetings. OSPR staff are also heavily involved in the Commission's biennial Prevention First Oil Spill Symposium and Technology Summits. Commission staff and OSPR also have recently signed an agreement to share budget information to ensure effective management of the available funding.

FUNDING: The Oil Spill Prevention and Administration Fee (OSPAF) is the largest funding source for the Commission. The draft audit report states that with the passage of AB 1112 (Huffman) the fee increase is reasonable and sufficient for the program to carry out spill prevention activities. However, the per barrel fee increase authorized by AB 1112 is temporary. Without further legislative action, the higher fee (\$.065/bbl) will end December 31, 2014 and OSPAFA revenue will drop approximately \$7.6 million per year. Additionally, the current \$.065/bbl OSPAFA fee is not sufficient to fund any augmentation to the Commission's MOTEMS and Human Factors programs which I believe is necessary to correct the "areas of risk" identified in the draft audit report.

The Commission staff fully supports the outstanding work of California's Oiled Wildlife Care Network. Given the Commission's strong history of environmental leadership, I anticipate Commission staff being actively involved in helping to identify a permanent funding source for this worthwhile program.

The draft report also discusses the lack of funding for OSPR's Inland Spill Response Program. In examining potential funding sources, I believe it is important to note that using the OSPAFA to fund inland spill responses is not authorized by Government Code section 8670.40(e) and there is not a strong nexus between the OSPAFA fee payers and the Inland Spill Response Program.

EFFICIENCY AND EFFECTIVENESS MEASURES: The Marine Facilities Division and the Mineral Resources Management Division have well-established performance and activity measures that help ensure the efficiency and effectiveness of the program and which were provided to the Department of Finance auditors. In further conversations with the auditors regarding this finding, staff has been assured that the

Mr. David Botelho
December 13, 2012
Page 3

issue regarding the need for efficiency and effectiveness measures was not directed at the Commission's programs.

The Commission and its staff remain fully committed to preventing oil spills and ensuring the best achievable protection of California's marine environment.

Please let me know if you have any questions.

Sincerely,

Original signed by:

JENNIFER LUCCHESI
Executive Officer

cc: Honorable Controller John Chiang, Chair
Honorable Lt. Governor Gavin Newsom, Commissioner
Director of Finance Ana Matosantos, Commissioner