

# MAINE STATE LEGISLATURE

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**Final Report of the**  
**COMMISSION TO STUDY**  
**MAINE'S OIL SPILL**  
**CLEAN-UP PREPAREDNESS**

**June 1992**

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**STATE OF MAINE  
115TH LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report of the  
COMMISSION TO STUDY MAINE'S  
OIL SPILL CLEAN-UP PREPAREDNESS**

**June 1992**

**A Summary of Actions Taken Since  
the Commission Was Re-established in 1991  
and Final Recommendations Supplementing  
the November 1991 Progress Report**

**Staff:**

**Mary Rudd James  
Department of Environmental Protection  
State House Station #17  
Augusta, ME 04333**

**(207) 289-2651**

**Members:**

**\*Rep. Susan Farnsworth  
Sen. Harry Vose  
William Altvater  
John G.T. Anderson  
Jane Arbuckle  
Sidney Bahrt  
Stephen M. Dickson  
Don Grant  
Cyrus Hamlin  
Milton F. Huntington  
Jeffrey H. Kaelin  
James Lemmon  
David T. Look  
Wallace R. McGrew  
David Norton  
Alan Prysunka  
Granville Smith**

**\*Denotes Chair**

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## EXECUTIVE SUMMARY

This report repeats some of the information contained in the Commission's progress report issued November 1991, since it is a summary of actions taken since the Commission was re-established in 1991. It also contains final recommendations made since the progress report. However, this report is largely supplemental, and should be read in conjunction with the November 1991 progress report.

Several terms are used to describe actions and recommendations of the Commission. The following should be kept in mind when reading the detail of actions and recommendations.

Action	Actions taken during the period from 9/91 to 6/92
Preliminary Recommendation	Recommendation made in the November 1991 progress report
Final Recommendation	Change made to the November 1991 progress report, or decision made after the November 1991 progress report

Significant changes from the November 1991 progress report are in the following areas:

Claims Against State Fund. The Commission recommended the Oil Spill Advisory Committee work with the Attorney General's Office to discuss amendments to State law to clarify if rights to recover damages from an oil spill originate within the 3-12 mile offshore limit.

Expenditures from the Coastal and Inland Surface Oil Fund. The Commission recommended the Oil Spill Advisory Committee work with DEP on the issue of training volunteers in oil spill response. In addition, the Commission was concerned about de-appropriations and transfers made by the Legislature from the Fund, and has written the Legislature to express these concerns.

Response Cooperatives. In addition to encouraging the formation of response cooperatives, the Commission recommended the new Oil Spill Advisory Committee assist the DEP in identifying vessels of opportunity for each major port area.

Spill Prevention. The Commission recommended encouraging and monitoring the efforts of the U.S. Coast Guard, and recommended they encourage industry to undertake navigational risk abatement exercises for major ports.

Public Boating. The Commission corrected its preliminary recommendation to state that public boating in the vicinity of spills is not the problem, but rather the concern is from public or recreational boaters causing spills due to unsafe operation.

Sensitive Area Identification. The Commission recommended that all sensitive area maps should be simple to read with detailed legends. Maps should be produced for each coastal region, and include information such as shoreline types, living marine resources, wildlife concentration areas, and endangered species. The Commission recommended the new Oil Spill Advisory Committee coordinate this effort with the Gulf of Maine Council on the Marine Environment.

Resource Protection Priorities. The Commission acknowledged that resource protection priorities cannot truly be set until after a spill occurs. They recommended the Marine Oil Spill Contingency Plan contain a list, in text form, of priorities for sensitive areas and important resources.

## DETAIL OF ACTIONS AND RECOMMENDATIONS

### STATUTORY CHARGE (P.L. 1991, ch. 530, Sec. 3)

### STATUS

Consider establishment of an advisory committee.

**Action:** Establishment of ongoing advisory committee to succeed the Commission to Study Maine's Oil Spill Clean-Up Preparedness discussed at meetings held 10/16 and 11/1/91. The Commission submitted a bill which was enacted during the second regular session, creating the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of oil-spill related issues should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Additional tasks were recommended for the Advisory Committee. See other recommendations in this report.

Track implementation of the federal Oil Pollution Act of 1990 ("OPA") and rules promulgated under it, and recommend statutory and regulatory changes.

**Action:** Commission discussed the status of implementation of OPA and OPA draft rules at meetings held 11/1/91, 2/7/92 and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of OPA by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of OPA should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Same as preliminary.

Review opportunities and constraints of the federal Oil Spill Liability Trust Fund and recommend changes to Maine law to incorporate the availability of response money and damage compensation from the federal fund.

**Action:** Federal fund discussed at meetings held 11/1/91, 4/29 and 6/18/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of the federal fund by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of the federal fund should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Oil Spill Advisory Committee should review the need for statutory changes with the Attorney General's Office. Specifically, change 38 M.R.S.A. § 544(1) to strike out the phrase "... to the areas described in 543 and ....", and clarify different limitations on remedies for spills in coastal waters versus inland waters.

**STATUTORY CHARGE**  
**(P.L. 1991, ch. 530, Sec. 3)**

**STATUS**

Review expenditures of the Maine Coastal and Inland Surface Oil Fund and recommend to DEP and the Legislature how the fund should be spent.

**Action:** Fund expenditures reviewed at meetings held 9/27, 10/16, 11/1/91, 2/7, and 4/27/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of expenditures by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of expenditures should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** DEP should purchase two barges to collect recovered oil. Oil Spill Advisory Committee should work with DEP on the issue of training volunteers and vessels of opportunity in oil spill response. The Commission will write the Governor, Appropriations Committee, and Legislative leadership regarding deappropriation of funds from the surface oil account.

Consider establishing separate coastal and inland surface funds.

**Action:** Issue discussed at meeting held 9/27/91.

**Preliminary Recommendation:** The Commission recommended not to split the fund, provided the current fee and cap remain the same. The Commission will not make a recommendation in the event that the Joint Standing Committee on Audit and Program Review does vote to regulate above-ground storage tanks.

**Final Recommendation:** Same as preliminary.

Identify needed additional response vessels and equipment and monitor their purchase by DEP.

**Action:** Vessels and equipment discussed at meetings held 10/16, 11/1/91, 2/7, and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of the Commissioner's assessment of adequate oil spill response equipment and vessels by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of equipment purchases should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** DEP should proceed with purchase of two oil-recovery barges.

**STATUTORY CHARGE**  
(P.L. 1991, ch. 530, Sec. 3)

**STATUS**

Encourage and monitor formation of response cooperatives by the oil terminal operators in each major port area.

**Action:** Response cooperatives discussed at meetings held 9/4, 9/27, 11/1/91, and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of oil spill planning and prevention activities by industry, oil spill response organizations and the U.S. Coast Guard by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of response cooperatives should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** In addition to encouraging the formation of response cooperatives, the Oil Spill Advisory Committee should assist the DEP in identifying vessels of opportunity for each major port area.

Monitor progress of USCG and DEP on navigational risk assessment and spill prevention measures.

**Action:** Discussed at meetings held 9/4, 10/16, 10/30, 11/1/91, 2/7, and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of oil spill planning and prevention activities by industry, oil spill response organizations, and the U.S. Coast Guard. In addition, Maine law was amended to: 1) provide a penalty for vessels failing to engage a licensed marine pilot when required; 2) repeal a requirement for the DEP to receive a copy of every vessel contingency plan; and 3) repeal a requirement that the marine oil spill contingency plan be adopted by rule. Licensees and interested parties will be notified of significant changes and may request a public hearing (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Encourage and monitor the efforts of the Ad Hoc Vessel Operations Committee of the Port Safety Forum in its work to reduce the risk of oil spills in Maine waters. The U.S. Coast Guard should undertake and encourage industry to undertake navigational risk abatement exercises for the major harbors supporting oil traffic in Maine. Table the issue of financial assurance requirements for oil terminals until the federal government specifies decreased limits of liability under OPA '90. Monitoring should continue under the Oil Spill Advisory Committee.



**STATUTORY CHARGE**  
(P.L. 1991, ch. 530, Sec. 3)

**STATUS**

Study the impact of the State's unlimited liability standard on the potential for oil spills in Maine waters.

**Action:** Unlimited liability discussed at meetings held 10/16, 10/30, 11/1/91, and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of the effects of the State's oil spill liability laws on oil spill prevention by the Oil Spill Advisory Committee. The bill also amended Maine law to clearly state that responsible parties are liable for the costs of studies related specifically to the spill they have caused, and any collection costs associated with the damages and clean-up costs (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** More information should be collected. The Advisory Committee should continue to monitor the issue of liability for oil spills under Maine law, no matter what changes may be made.

**Final Recommendation:** Same as preliminary.

Evaluate and consider the establishment of a computerized spill trajectory tracking system.

**Action:** Spill trajectory tracking discussed at meetings held 10/16 and 11/1/91. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of scientific, engineering and technical advances in oil spill response and prevention techniques by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** State agencies should continue to monitor computerized spill trajectory tracking and forecasting systems, and continue to explore the need for the State to develop its own capabilities. Monitoring of OPA should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Same as preliminary.

**STATUTORY CHARGE**  
(P.L. 1991, ch. 530, Sec. 3)

**STATUS**

Monitor safety problems of public boating in the vicinity of oil spills.

**Action:** Safety problems discussed at meeting held 10/16/91.

**Preliminary Recommendation:** The Commission agrees this is a growing problem that can have unfortunate consequences. However, this issue requires actions in numerous other jurisdictions and fields. The Commission does not feel that the members have the expertise nor the purview to develop solutions for the problem. The Commission did agree that educating recreational boaters might improve the situation and would be more cost-effective and less controversial than other solutions discussed, such as licensing.

**Final Recommendation:** The Commission corrected the preliminary recommendation to state it feels the problem is not safety of public boating in the vicinity of spills, but rather with public or recreational boaters causing spills due to unsafe operation. As stated above, this issue requires actions in numerous other jurisdictions and fields outside of the purview of the Commission. The Commission did agree that educating recreational boaters might improve the situation and would be more cost-effective and less controversial than other solutions discussed, such as licensing.

Monitor development of the marine oil spill contingency plan.

**Action:** Components of plan discussed at meetings held 10/30, 11/1/91, and 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of the marine oil spill contingency plan by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of marine oil spill contingency plan should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Same as preliminary.

**STATUTORY CHARGE**  
(P.L. 1991, ch. 530, Sec. 3)

**STATUS**

Monitor development of sensitive area identification system.

**Action:** Sensitive area ID discussed at Commission meetings held 10/30, 11/1/91, and 4/29/92. Subcommittee formed to monitor development of system; several meetings held. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of the sensitive area identification system by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** The Commission recommended continuing financial support for the sensitive area identification system. The database should be developed using the modified NOAA environmental sensitivity index. Coordinate development with MSRC, spill response organizations and other industry sources of information. Monitoring of the sensitive area identification system should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** In addition to the preliminary recommendation, additional recommendations include:

1. The goal should be to produce maps through the Geographic Information System (GIS) containing as much information as possible. Several maps showing shoreline types, living marine resources, wildlife concentration areas, endangered species, etc. will be needed for each coastal region. GIS data tables will provide details about sensitive resources and seasonality. Maps should also be created detailing which areas (e.g., inlets, marshes, etc.) that response teams have the ability to protect, and identify other areas that simply cannot be protected well with existing equipment and technology. All maps should be simple to read with detailed legends, and be as similar to other state's and USCG maps (i.e., NOAA EIS maps) to be easily used by the Regional Response Team and On-Scene Coordinator.

2. The Oil Spill Advisory Committee should coordinate its efforts with those of the Gulf of Maine Council on the Marine Environment on oil spill response preparedness and sensitive area identification. In addition, the Commission recommends the U.S. Coast Guard incorporate the maps developed under #1 above into the Local Contingency Plan, in coordination with the Department of Environmental Protection.

**STATUTORY CHARGE**  
(P.L. 1991, ch. 530, Sec. 3)

**STATUS**

Recommend resource protection priorities or a mechanism to establish them.

**Action:** Resource protection priorities discussed at meetings held 10/30 and 11/1/91, and several sensitive area ID subcommittee meetings. The Commission submitted a bill which was enacted during the second regular session, requiring continued monitoring of resource protection priorities by the Oil Spill Advisory Committee, and repealing the requirement that the Board of Environmental Protection adopt the priorities by rule (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Resource protection priorities should be further refined as the sensitive area identification system is further developed. Priorities must remain flexible at this time. Monitoring of resource protection priorities should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** In addition to the preliminary recommendation, additional recommendations include:

Because priorities cannot truly be set until after a spill occurs, a decision matrix should not be included in inventory maps. Instead, the Marine Oil Spill Contingency Plan should list, in text form, priorities for natural (sensitive) areas and important resources. This list would be consulted by the Regional Response Team and On-Scene Coordinator for guidance during a spill. In addition, the contingency plan should include the names and telephone numbers of people with expertise in specific areas. This will enable the On-Scene Coordinator at a spill to obtain the necessary information as quickly as possible.

Monitor development of wildlife rehabilitation plan.

**Action:** Plan discussed at meeting held 4/29/92. The Commission submitted a bill which was enacted during the second regular session, requiring monitoring of the implementation of the wildlife rehabilitation plan by the Oil Spill Advisory Committee (P.L. 1991, ch. 698, approved 3/20/92).

**Preliminary Recommendation:** Monitoring of wildlife rehabilitation should continue under the Oil Spill Advisory Committee.

**Final Recommendation:** Same as preliminary.