STATE OF MAINE
114TH LEGISLATURE
SECOND REGULAR SESSION

Report of the

COMMISSION TO STUDY MAINE'S OIL SPILL CLEANUP PREPAREDNESS

November 1990

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PREFACE

The Commission to Study Maine's Oil Spill Preparedness is pleased to present its report and recommendations. We have found the issues to be timely and important, but we also have found them to be numerous and complex. As a result, our primary recommendation is that the life of the Commission be extended in order to allow the completion of the work which we have begun. In addition, we have reached agreement on some recommendations which ought to be implemented immediately, but we believe more time is needed to do a complete review and make comprehensive recommendations on the issues specified in the establishing legislation. In that spirit, we hope the reader will view this as the initial report on the subject, with others to follow from a continued commission or a successor body.

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EXECUTIVE SUMMARY

The Commission

The Commission to Study Maine's Oil Spill Preparedness was established by the Maine Legislature in 1990 to review and make recommendations on:

- The State's response capacity for a worst-case scenario.
- Oil spill prevention strategies;
- Maine regulatory and statutory framework for prevention, planning and response to marine oil spills;
- Adequacy of Maine's Surface Oil Cleanup Fund for cleanup and 3rd party compensation;

The Commission members were: Sen. Joseph C. Brannigan and Rep. Susan Farnsworth (co-chairs); Alan M. Prysunka (DEP); John G.T. Anderson (fisheries biology); Sidney Bahrt (public member); Carol Jean Boggis (coastal wildlife habitat); Stephen M. Dickson (coastal geology); Cyrus Hamlin (naval architecture); Milton F. Huntington (petroleum industry); Jeffrey H. Kaelin (sardine industry); James Lemmon (public member); David T. Look (oil-spill technology); Wallace R. McGrew (petroleum industry); and David Norton (lobster industry). The representative of the aquaculture industry was unable to attend.

The Commission met 6 times over the summer and fall of 1990 to hear testimony and to develop recommendations pursuant to its charge. After circulating draft recommendations, the Commission held a public hearing to receive testimony on the recommendations prior to their final meeting.

The Commission's recommendations are embodied in two proposed bills:

- AN ACT to extend the Commission to Study Maine's Oil Spill Cleanup Preparedness and to Improve Maine's Oil Spill Prevention, Planning and Response.
- AN ACT Regarding Liability for Persons Responding to Oil Spills

Overview

Overall, the Commission found that:

A. Major oil spills of 100 thousand to 1 million gallons have occurred in Maine, and a worst-case spill of 11 to 30 million gallons or more could occur in Maine;

B. Maine is not ready to respond to a worst-case spill, or even a major spill, although the state is somewhat ready to respond to medium spills of 10 thousand to 100 thousand gallons in favorable weather;

C. There is unanimous agreement that prevention is the most effective oil spill strategy;

D. It is premature to make major changes in Maine's statutory and regulatory framework for oil spill prevention, planning and response. In addition to the sweeping new federal oil pollution law, there are major efforts, by the US Coast Guard, the Department of Environmental Protection, and the oil industry to address these issues, and it will take time for the results to develop;

E. Exposure of commercial contractors, vessel owners and others who respond to oil spills to unlimited, strict liability may inhibit them from being available for cleanup efforts; and

F. The Maine Coastal and Inland Surface Oil Cleanup Fund has an average balance in recent years of $3.5 million, well below the statutory cap of $6 million, yet the fee that funds it is scheduled to revert from 4 cents per barrel to 3 cents per barrel in February, 1991.

In summary, the Commission recommends:

A. Increased oil spill planning and response efforts by DEP and other state agencies, especially in the areas of oil spill response planning, protection of sensitive areas, and use of mitigation measures;

B. Development of various scenarios, including worst-case scenarios of 11 to 30 million gallons or more oil spilled, depending on the port, and the responses to be taken under these scenarios for inclusion in a State marine oil spill contingency plan;

C. Annual state inspections of licensed terminals to prevent oil spills, emphasizing shoreside areas not covered by the Coast Guard;

D. Extension of the life of the Commission to Study Maine's Oil Spill Clean-up Preparedness until June 1992 to monitor the progress of State, federal and industry efforts in oil spill prevention, planning and response; to develop and recommend ways to mesh the state program and fund with the national program and fund under the new federal Oil Pollution Act of 1990; to advise DEP on expenditures from the Surface Oil Clean-up Fund, and to plan for an advisory committee to oversee the fund in the future;

E. Provision of immunity for responders, except in cases of gross or willful negligence, but retention of the provision of unlimited, strict liability for the responsible party in an oil spill; and

F. Retention of the fee on oil brought into the state at the level of 4 cents per barrel.

The Commission recommends no other changes in Maine law or the Maine Coastal and Inland Surface Oil Cleanup Fund for at least a year, to allow time to evaluate the new federal law and industry and Coast Guard efforts.

I. Introduction

The devastating spill of 11 million gallons of crude oil when the EXXON VALDEZ ran aground in Prince William Sound, Alaska last year brought the issue of oil spills and their detrimental effects to public attention. Although Maine has never had a truly catastrophic spill of the magnitude of EXXON VALDEZ, such a spill is a possibility, and spills of 1 million gallons have occurred here. The VALDEZ spill extended for 500 miles along the coast, twice the direct distance from Kittery to Eastport, Maine.

While Maine has had oil spill legislation for 20 years, its effectiveness has never been comprehensively reviewed. This coupled with questions about Maine's ability to respond to a major oil spill prompted the Maine Legislature to pass Public Law 1989, Chapter 868, "An Act to Enhance the Ability of the State to Respond to Oil Spills". That Act established a 15 member Commission to Study Maine's Oil Spill Clean-up Preparedness. This report documents their findings and provides recommendations and proposed legislation for the first session of the 115th Legislature.

A. The Commission to Study Maine's Oil Spill Cleanup Preparedness

The Commission's charge was to review and make recommendations on:

- The State's response capacity for a worst case oil spill scenario at major vessel traffic areas and vessel facilities along the Maine coast;
- Technical and planning strategies to prevent oil spills;
- Maine's regulatory and statutory framework for preventing, planning for and responding to oil spills in the marine environment; and
- The financial adequacy of the Maine Coastal and Inland Surface Oil Clean-up Fund to address the potential risks and liabilities for cleaning up spills and the adequacy of the fund to compensate 3rd parties;

The Commission was composed of representatives from the petroleum industry, the environmental field, the fishing industry, the general public and the Legislature.

The Commission members and their organization or area of expertise were: Sen. Joseph C. Brannigan and Rep. Susan Farnsworth (co-chairs); Alan M. Prysunka (DEP); John G.T.Anderson (fisheries biology); Sidney Bahrt (public member); Carol Jean Boggis (coastal wildlife habitat); Stephen M. Dickson (coastal geology); Cyrus Hamlin (naval architecture); Milton F. Huntington (petroleum industry); Jeffrey H. Kaelin (sardine industry); James Lemmon (public member); David T. Look (oil-spill technology); Wallace R. McGrew (petroleum industry); and David Norton (lobster industry). The representative of the aquaculture industry was unable to attend.

The Commission met 6 times over the summer and fall of 1990 to hear testimony and to develop recommendations pursuant to its charge. After circulating draft recommendations, the Commission held a public hearing prior to their final meeting to hear testimony on the draft recommendations.

B. Other Efforts to Address the Oil Spill Issue

During 1990, there have been several other efforts undertaken to address the issues involved in oil spill planning and response that affect the State of Maine. These efforts are briefly discussed below:

1. Federal Legislation

The Oil Pollution Act of 1990, which became law August 18, 1990, will require double hulls on tank vessels, as well as certain other crew, vessel equipment, and navigation measures to enhance safety. It also requires expanded federal response capability and increased financial responsibility by the oil industry. The new law also requires a reactivated USCG strike team on the East Coast. The law requires terminals and ships to have response plans for major spills, and gives them 30 months to submit them for approval.

2. U.S. Coast Guard

The commanding officer of the Marine Safety Office for Region I established a Port Safety Forum in the late spring of 1990 to address safety and prevention efforts in major ports in Maine and New Hampshire. This forum, composed of representatives of harbor pilots, clean-up contractors, terminal operators, tank and barge companies and environmental groups, has been meeting through the summer and fall of 1990 to define actions to increase port safety and improve oil spill prevention and response capabilities. The draft recommendations under consideration are included in Appendix F. Their final recommendations will be available in early 1991.

3. Department of Environmental Protection

The Maine Department of Environmental Protection is preparing to update their rules under the Oil Discharge Prevention and Pollution Control Act in the spring of 1991. They are hiring a consultant to review the rules, compare them with other states, and also to review vessel traffic restrictions in Portland and Penobscot Bay/ River.

4. Terminal Operators

The terminal operators in Portland have been meeting in the summer and fall of 1990 to enhance operating procedures to reduce the risk of oil spills in Portland Harbor and to initiate formation

of a spill response cooperative like those in the major West Coast ports. Portland Pipe Line Corporation invited navigational experts to perform a navigational risk assessment of Portland Harbor and approaches, to review vessel screening methods and to recommend operational changes.

5. Marine Spill Response Corporation

The Marine Spill Response Corporation (MSRC) has been formed by the industry to provide a national supply of equipment and personnel for spills that are beyond local response capacity. They will be instrumental in the industry's response to the new federal requirement that vessels and terminals have response plans that identify the resources to remove a worst-case discharge. MSRC is planning 5 regional response centers, each equipped for a spill of 9 million gallons; they will also have 5 or 6 staging areas for equipment storage in each region. Apparently, Portland, Maine has been selected as one staging area.

C. The Report

After this introduction, the following chapters provide discussions of each major topic. Chapter II describes oil vessel traffic and oil spills in Maine. Chapter III summarizes the Oil Pollution Act of 1990 which makes sweeping changes in federal law. Chapter IV reviews oil spill prevention methods used in Maine and elsewhere. Chapter V deals with planning, including worst-case scenarios and contingency plans. Chapter VI discusses response equipment and organizations as well as mitigation techniques and overall readiness. Chapter VII addresses sensitive areas and wildlife rehabilitation. Chapter VIII discusses Maine's Coastal and Inland Surface Oil Clean-up Fund and compares it with the federal fund. Chapter IX discusses liability of vessels, terminals and responders for oil spills. Chapter X discusses Maine's statutory and regulatory framework. The body of the report concludes with Chapter XI, Findings and Recommendations.

The legislation establishing this Commission is included as Appendix A, and the legislation proposed as a result of this study is included as Appendix B. In addition, there are several other appendices bound separately, which provide further background information.

II. Oil Traffic and Spills in Maine

A. Oil Vessel Traffic

Oil vessel traffic in Maine uses 2 ports: Portland and Penobscot Bay. Portland includes the other Casco Bay terminals at Yarmouth, Harpswell and Wiscasset. Penobscot Bay includes Searsport, Bucksport and Bangor/Brewer. In addition, the terminals at Portsmouth, New Hampshire are just across the Piscataqua River from the Kittery, Maine area. Finally, tanker traffic to St. John, New Brunswick crosses the Gulf of Maine so a spill from a tanker bound for St. John could reach Maine waters. In fact, prevailing currents would make it likely.

About 400 oil tankers and 350 oil barges come to Maine per year, almost all to Casco Bay (Portland) and Penobscot Bay/River ports. In addition, there is significant traffic at neighboring ports: 75 tankers and 50 oil barges per year at Portsmouth, NH, and 300 tankers and 100 oil barges per year at St. John, NB.

Oil Vessel Traffic 1989

	Number of Vessels per yr.	Average cargo per vessel million gallons
Portland and Casco Bay		
large crude oil tankers (60-100K DWT)	53	23
other tankers (<50K DWT)	164	6
barges	233	2
Penobscot Bay and River		
tankers (<50K DWT)	165	3
barges	81	2
Portsmouth, New Hampshire		
tankers (<50K DWT)	73	7
barges	47	2
St. John, New Brunswick (Apr 88/Mar 89)		
very large crude tankers (300K DWT)	26	66
other tankers (10-40K DWT)	275	)[5]
barges	120	)

Source: US Coast Guard, Portland Marine Safety Office
KDWT represents thousands of deadweight tons.

Note: Various units are used for oil measurements. Ships are usually described in gross tons, their cargos in deadweight tons, deliveries in barrels and oil spills in gallons. 1 ton = 7 barrels (approximately) and 1 barrel = 42 gallons.

The largest oil vessels among these are 26 "Very Large Crude Carriers" of 300,000 deadweight tons (90 million gallons) calling in St. John per year and 50 Long Range Tankers of 80,000 to 100,000 DWT (25 to 30 million gallons) calling at the Portland Pipe Line per year. The EXXON VALDEZ was 211,000 DWT (carrying 53 million gallons).

Traffic varies greatly among the four major port areas, as shown in the following table. Portland is the largest by far in Maine and New Hampshire, but St. John traffic is as large as the other three combined.

Oil Freight Traffic 1986

	Million Tons	Million Barrels	Million Gallons
Portland, ME	6.7	47.0	1,974
Portsmouth, NH	2.6	17.9	753
Penobscot, ME	1.6	11.4	479
St. John, NB ('86/87)	11.5	80.7	3,390

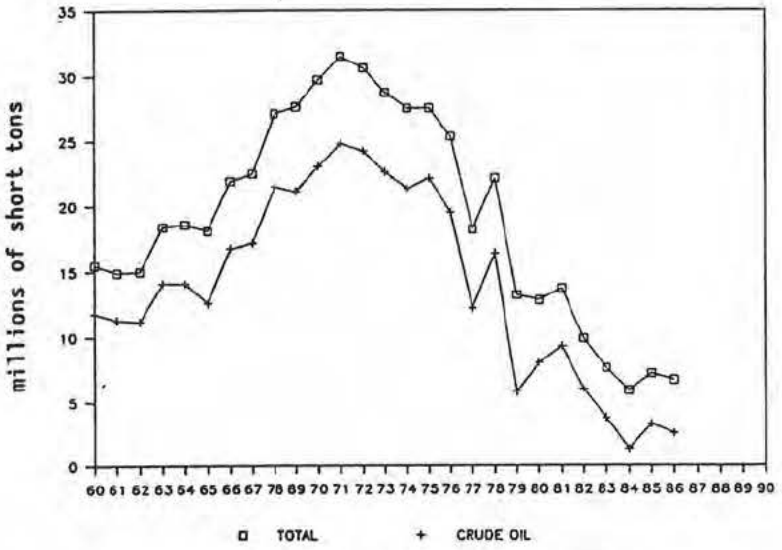
1 ton = 7 barrels (approximately); 1 barrel = 42 gallons
Source: US Army Corps of Engineers

Although this report does not focus on them, freighters, fishing boats and other vessels carry oil in substantial quantities for fuel purposes. These vessels are also potential sources of oil spills and they are not limited to the four major ports addressed here. They may occur at Eastport, Rockland or any other location along the Maine coast.

B. Historical Trends

Portland oil traffic experienced a long sustained period of growth from the 1940's until the peak year of 1971 when it reached about 220 million barrels annually. This included about 175 million barrels of crude oil to the Portland Pipe Line (which was opened in 1941) and 45 million barrels of refined petroleum products. A major decline in Portland oil traffic was triggered by the activities of OPEC, the Middle East war and the oil embargo of the early 1970's and the annual total dropped to about 155 million barrels by 1978. By 1979, the year of the Iran crisis, oil traffic had dropped again to about 90 million barrels. While annual traffic in refined oil products remained fairly constant at about 30 million barrels, refined crude oil to the Portland Pipe Line continued to decline until 1984. The decrease was due to a reduction in Canadian imports through the Portland Pipe Line. In that year, total oil traffic bottomed out at about 45 million barrels or only one-fifth of the historical peak. The following graph show oil traffic volume at Portland from 1960 to 1986.

Oil Traffic, Portland

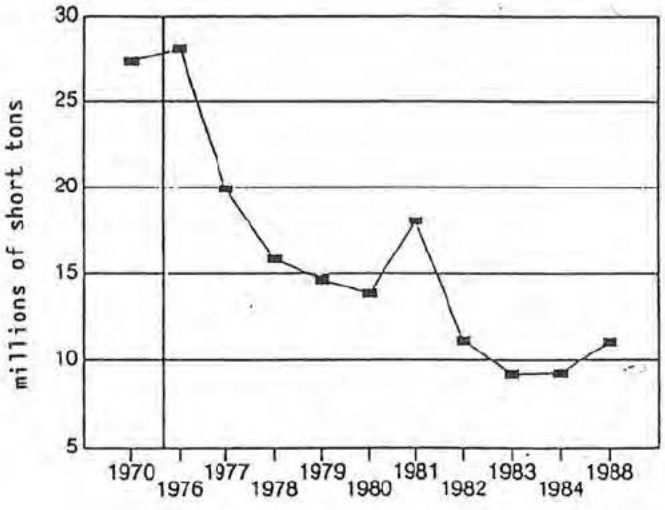


Source: US Army Corps of Engineers

The following graph shows petroleum traffic since 1970 for Maine ports, but not including Portsmouth or St. John. For Maine as a whole, the historical changes are dominated by the same effects discussed under Portland, above.

Since 1984 there have been modest rises in oil traffic in Maine due to growth in the domestic market. Corps of Engineers data is not yet available for 1988, but the USCG estimates total traffic at 86 million barrels (including 28 million barrels of crude oil), and the Canadian Coast Guard estimates traffic of 81 million barrels at St. John.

Petroleum Traffic, Maine Ports



Source: Maine Department of Transportation

C. Oil Spills

Any of the 1,275 oil vessels per year could have an oil spill, and depending on the winds and currents, a spill anywhere in the Gulf of Maine could impact the Maine coast. And, although Maine has never had a truly catastrophic spill of the magnitude of EXXON VALDEZ, such a spill is a possibility.

1. Major Oil Spills on the Coast of Maine

The Commission found that four major spills have occurred in Maine from 1963 to date, for a historical average of one every 7 or 8 years.

There are about 70 spills per year in Maine coastal waters, but most of these are very small. In the last 30 years, there have been only 4 major spills of 100,000 gallons or more, and 13 others in the 1,000 to 25,000 gallon range.

Major Oil Spills, Maine Coast 1960-1990

Year	Vessel	Spill Size	Reason and Location
1963	NORTHERN GULF	1,000,000 gal	grounded in Casco Bay
1972	TAMANO	100,000 gal	hit ledge in Portland
1975	ATHENIAN STAR	1,200,000 gal	storm damage,off Ptm.
1980	CHRISTIAN REINAUER	100,000 gal	grounded, Pen. Bay

Note: EXXON VALDEZ ran aground in Alaska, spilling 11 million gallons

2. Maine Oil Spill Trends in the 1980's

The Commission found that the number of coastal marine oil spills has remained constant in recent years. Most of these spills have been very small, averaging 20 gallons.

Maine Marine Oil Spill Trends

	DEP Field Office			Total
Year	Augusta	Bangor	South Portland	State
1986	18	14	38	70
1987	18	10	43	71
1988	22	26	24	72

Source: Department of Environmental Protection

Notes: This listing includes "coastal water" but does not include spills in the categories: "groundwater and coastal water"; or "land and coastal water." The South Portland field office covers coastal waters in York, Cumberland and Sagadahoc Counties; Augusta covers Lincoln, Knox and Kennebec; and Bangor covers Waldo, Hancock, Washington and Penobscot.

III. Federal Oil Pollution Act of 1990

After nearly 20 years of failed attempts, comprehensive oil spill legislation was passed unanimously in both Houses of Congress. On August 18, 1990, the Oil Pollution Act of 1990 was signed into law. This Act significantly changes oil spill prevention, response, liability and damage assessment. The Commission found that its full implementation will take time, since detailed regulations must be promulgated. A section-by-section outline of the major provisions follows.

FEDERAL OIL POLLUTION ACT OF 1990

TITLE I. OIL POLLUTION LIABILITY AND COMPENSATION

1. Liability

   - The owner or operator of a vessel or facility from which oil is discharged is liable.

   - That liability covers removal costs, natural resource damages, damages for economic loss including lost use of natural resources, and lost taxes.

   - Exceptions are included for acts of God, acts of war, or spills caused fully by a third party.

   - Immunity is provided for contractors cleaning up spills under direction of the President or in accordance with National Contingency Plan, except in cases of gross negligence or willful misconduct.

   - Liability limits are increased 8-fold to:
     the greater of $1,200 per gross ton or $10 million for tankers; the greater of $600 per gross ton or $2 million for other vessels; $350 million for onshore facilities and deepwater ports; removal costs plus $75 million for other offshore facilities.

   - Unlimited liability is specified for spillers that fail to report or that fail to participate in the cleanup.

   - States are not preempted from imposing more stringent liability. Eighteen states, including Maine, have unlimited liability.

2. Oil Spill Liability Trust Fund

   - The Oil Spill Liability Trust Fund is established, and funded by a 5¢/barrel fee which has been collected since January 1, 1990.

   - The limit to be paid for any single incident is $1 billion.

- The Fund is available for: cleanup costs, monitoring, resource restoration or replacement, planning and administration.

- The Governor of a State may obligate up to $250,000 for removal costs incurred by a State.

- The Fund is available for restoration or replacement of natural resources, up to $500,000.

- Claims may also be made to the fund for compensation of victims for damages above the liability limits of the responsible party, or in cases where the responsible party is unknown or fails to pay within 60 days.

- The Fund takes legal action to recover from the responsible party up to the liability limits where appropriate.

- The Fund is not available for damages caused by gross negligence or willful misconduct of claimant.

3. Financial Responsibility

   - An owner or operator of a vessel or facility must maintain evidence of financial responsibility up to the liability limits.

   - If not, a vessel may be denied entry or detained, and is subject to a civil penalty, up to $25,000/day.

4. State Laws

   - State liability laws are not preempted. (This is the primary issue that blocked federal oil spill legislation for 15 years.)

   - Other state laws, including those establishing state funds are not preempted.

   - States may enforce financial responsibility.

   - Removal action is complete only when so determined by the President after consultation with the Governor. States are not preempted from requiring additional removal actions.

TITLE II. CONFORMING AMENDMENTS

1. Trans Alaska Pipeline Act.

2. Intervention on the High Seas Act (33 USC 1486).

3. Federal Water Pollution Control Act (33 USC 1321).

4. Deepwater Port Act (33 USC 1501-1524).

5. Outer Continental Shelf Lands Act (43 USC 1811-1824).

TITLE III. IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

1. International Protocols

   - This Title encourages US participation in "an international oil pollution liability and compensation regime that is at least as effective as federal and state laws".

   - The House bill originally included the so-called international protocols but they were dropped in conference because of Senate opposition. These protocols to the International Civil Liability and Fund Conventions for oil pollution damage were negotiated in 1984, but the Senate has refused to ratify them because of low liability limits. They would have severely limited liability under federal and state law unless the damage was caused intentionally or recklessly.

TITLE IV. SUBTITLE A, PREVENTION

1. Tank Vessel Construction

   - Double hulls are required on all newly constructed tank vessels, and phased in over 20 years on existing ships. Exemptions for small inland barges and for tankers that discharge more than 60 miles offshore.

2. Vessel Personnel and Staffing Requirements

   - Merchant mariners' documents are changed from permanent to 5 years duration, and may be suspended for alcohol or drug abuse. Pre-employment, periodic, random, and for-cause drug testing authorized.

   - US DOT is required to set conditions for use of autopilot and for leaving engine room unattended.

   - US DOT must review manning standards of foreign countries and denial of entry to vessels from countries that do not maintain standards at least equal to the US or customary international law.

   - Crew working hours are limited to 15 hours out of 24, and 36 out of 72.

3. Vessel Traffic Safety

   - US DOT must study the need for new Vessel Traffic Service (VTS) systems in 23 different ports, including Portland and Portsmouth.

4. Equipment

   - Rulemaking is required by US DOT on whether to require electronic position reporting equipment.

   - Tank overfill and tank level warning devices are required.

TITLE IV. SUBTITLE B, REMOVAL

1. Presidential Responsibility

   - The President must ensure removal in accordance with the National Contingency Plan and may conduct or arrange for the removal. In case of major spills that are a threat to public health or welfare, the President is required to direct cleanup.

   - The President may direct the owner or operator to remove the oil.

2. Worst-Case Scenario

   - A worst-case scenario is defined as loss of an entire ship in adverse weather.

3. Contingency Plans and Response Plans

   - The national contingency plan and area contingency plans must address a worst-case scenario. Response resources would be combined from all regions in the event of a worst-case spill.

   - Tank vessel and facility response plans must be submitted within 30 months (by February 18. 1993), and operation without an approved plan is prohibited after 36 months (by August 18, 1993). These plans must identify private personnel and equipment for a worst-case oil spill.

   - The Act establishes a Response Group in each of the 10 Coast Guard Districts, and 3 Regional Response Strike Teams (there are now two) with personnel trained and equipped to carry out the contingency plans and funded by the Oil Spill Fund.

   - The Coast Guard National Response Unit at Elizabeth City, NC must maintain and continually update a national computer listing of spill response equipment in federal, state, local and private hands.

TITLE IV. SUBTITLE C, PENALTIES AND MISCELLANEOUS

1. Civil Penalties

   - The civil penalty for discharge of oil is increased from a maximum of $50,000 to a sliding scale of $1,000 per barrel ($3,000 per barrel for gross negligence).

   - Various other civil penalties are increased.

2. Criminal Penalties

   - Criminal penalties of the Clean Water Act sec. 309(c) are applied to discharges of oil.

3. Entry and Inspection

   - Authority for entry and inspection of onshore and offshore facilities is increased.

TITLE V. PRINCE WILLIAM SOUND (ALASKA) PROVISIONS

1. Research

   - Prince William Sound Oil Spill Recovery Institute is authorized.

2. Oversight

   - Oil terminal oversight and monitoring committees are established for Prince William Sound and Cook Inlet.

3. Vessel Traffic Safety

   - Construction of a light on Bligh Reef is funded.

   - Prince William Sound Vessel Traffic Service will be upgraded.

4. Response

   - Additional spill response personnel and equipment are required in Prince William Sound.

   - Pilots with both federal and Alaska state licenses are required from Valdez to Bligh Reef.

TITLE VI. MISCELLANEOUS

   - Annual appropriations are required.

TITLE VII. RESEARCH AND DEVELOPMENT

- Additional research in oil pollution technology and effects is authorized.

TITLE VIII. TRANS ALASKA PIPELINE SYSTEM

- The Trans Alaska Pipeline System Liability Fund is merged with the new National Oil Spill Liability Trust Fund.

TITLE IX. OIL SPILL LIABILITY TRUST FUND

- The Internal Revenue Code Section 9509 is amended. See discussion of the Oil Spill Trust Fund under Title I.

IV. Prevention of Oil Spills

The Commission found unanimous agreement that prevention is the most effective oil spill strategy. Historically, according to the Office of Technology Assessment, only about 10 to 15% of the oil has been recovered from major spills, and mechanical recovery is not usually effective in waves greater than 6 feet or winds greater than 20 knots. Research and development is proceeding on improved response equipment and techniques, but there is general agreement on the continued importance of prevention.

Common causes of major spills are vessel groundings due to severe weather, human error, or equipment failure. Smaller spills have been due to equipment malfunction or misuse.

Prevention measures include: vessel screening; vessel crew and equipment requirements; navigation aids and procedures; use of pilots; use of tugs; and safety inspections. They also may include radar vessel traffic control systems, and construction requirements such as double hulls.

Many of these items are not under state jurisdiction, but the State can monitor and recommend federal legislation and Coast Guard rules and procedures. The State does have some authority over vessels in State waters, and more authority over terminals on the shore.

A. Terminal Safety

Chapter 600 of the DEP's rules covers operational requirements for oil terminals and transfer operations. Although these rules are outdated and not very comprehensive, they do contain some requirements for drip pans, hoses, valve operation and use of booms. DEP inspects terminals every 2 years, in connection with re-licensing DEP is in the process of having the rules rewritten and updated over the next 6 to 12 months.

The USCG enforces safety and operating requirements for facilities handling hazardous materials in waterfront areas and marine oil transfer facilities. Facilities must be inspected annually.

B. Vessel Movement Restrictions

The State and the municipalities can and do impose additional requirements on waterways within their jurisdiction. For example, Chapter 600, Section 13 of DEP's rules restricts any vessel carrying bulk oil from entering or leaving any port in the State if visibility is one nautical mile or less unless it is equipped with operating radar or propelled by a vessel with operating radar. These rules also contain a restriction on transferring oil during gale winds. 38 MRSA §556 explicitly states that the Maine law does not preempt municipal jurisdiction. Examples of municipal restrictions include speed restrictions. Staff has not found any examples of weather or visibility restrictions imposed by municipalities.

The USCG Captain of the Port (COTP) through COTP orders can impose vessel, person or facility specific requirements. The USCG requires 2 operating radar systems for vessels over 10,000 gross tons and one radar system for vessels over 1600 gross tons. DEP requires one radar system regardless of size. Currently, COTP orders impose the following visibility limits for vessels with reduced navigation capability: Portland-- 1 nautical mile to Spring Point and 1/2 nautical mile within the inner harbor; Penobscot Bay-- 2 nautical miles; Portsmouth-- 2 nautical miles.

C. Vessel Safety

The DEP has a general right-of-entry to inspect property to determine compliance with any provision of laws administered by the DEP (38 MRSA §347-C). However, DEP does not administer comprehensive rules for vessels. Their rules cover hoses, valves, pipes and similar items used during ship-to-shore or ship-to-ship transfer operations.

The USCG has primary responsibility for promulgating and enforcing vessel safety and inspection requirements. These are very comprehensive requirements. Inspections are reported to be a good deterrent for oil spills, but there has been a decline over the years in the number of USCG inspections due to lack of staff. However, the scope of inspections has increased. USCG now screens all vessels against a computerized data base, and boards them for inspection every year. Some terminals also conduct some screening of vessel's records to help assure their safety.

D. Use of Tugboats

According to the Atlantic Coast Pilot, tug escorts are required to dock vessels at Searsport and at ports up the Penobscot River. Tugs are available in Portland Harbor, but they are not required by the Coast Guard or by Maine law, although the terminals generally require them at least for docking. Questions have arisen such as how many tugs are needed, what horsepower is appropriate and where the tugs should engage the vessel. Maine currently does not have specific tug requirements for vessels, and the Commission found that this may be more appropriately addressed at the federal level.

Tug requirements for a harbor may be instituted through formal federal rule-making procedures, or the US Coast Guard can require tugboats on a case by case basis through a COTP order.

E. Navigational Risk Assessment

The Coast Guard Port Safety Forum is considering preventive measures as one of their topics, and Portland Pipe Line Corporation has undertaken a risk assessment for crude oil tankers entering Portland Harbor. No other such efforts have been identified at this time.

F. Recreational Boating Safety

Recreational boating has increased dramatically in the past decade crowding commercial channels with sailboats, powerboats, wind-surfers and kayaks. Many marinas are adjacent to commercial waterways and channels. Large vessels are not very maneuverable, often have a limited channel to operate in because of draft restrictions, and need several miles to stop. This is creating the danger of a collision between an oil tanker and a recreational boater. Contrary to popular belief, large vessels have the right of way, because of their limited maneuverability. Recreational boaters need to be educated and reminded of the hazards of navigating near these vessels.

The USCG defines and enforces the "rules of the road", however, recreational boaters are not licensed so there isn't a formal mechanism to educate them. Other organizations such as the Power Squadrons, harbormasters, and the Coast Guard Auxiliary deal with boating safety and could address this issue with booklets, outreach activities, TV public service announcements, providing speakers or slide/tapes on safety to interested groups and posting signs at marinas, yacht clubs and harbor facilities.

V. Planning for Oil Spills

A. Scenarios

The Commission found it useful to define several scenarios at major vessel traffic areas and facilities along the Maine coast in order to specify the kinds of spills for which the State must plan.

1. Scenarios in General

Historically, as noted in Chapter II, Maine has experienced major oil spills of 100 thousand and even 1 million gallons. Possible scenarios for planning purposes include a major oil spill (greater than 100,000 gallons) and a catastrophic oil spill (a million gallons or more) in Penobscot Bay or Casco Bay under various conditions, as well as the worst-case scenarios of 11 to 30 million gallons or more, identified below. Spills off Portsmouth, NH, and St. John, NB, should also be considered because they would be likely to reach the Maine coast. Note that the type of oil will affect the scenario: for example, gasoline evaporates readily, while heavy crude oil does not. In addition, variations in weather conditions can lead to variations in the scenarios.

For comparison, the U.S. Coast Guard Marine Safety Office Local Contingency Plan for Portland, Maine identifies the following size classes of discharges, for guidance and response planning:

- minor discharge - less than 10 thousand gallons
- medium discharge - 10 to 100 thousand gallons
- major discharge - more than 100 thousand gallons
- loss of two cargo tanks - 6 million gallons
- maximum potential spill - 23 million gallons
  (loss of entire ship of largest size)

Another variation is contained in the Petroleum Industry Response Organization (predecessor to the Marine Spill Response Corporation) steering committee report, which specified minor spills as less than 50 thousand gallons and catastrophic spills as 1 million gallons in open water or 1.7 million gallons in protected water.

2. Worst-Case Scenarios

The Commission found that the federal Oil Pollution Act of 1990 requires both vessels and facilities to submit plans for responding to a worst-case discharge. The worst-case discharge for a vessel is defined as loss of an entire cargo in adverse weather.

The largest ships bringing oil to Maine waters are listed below for the four oil traffic ports. For Eastport and the rest of the coast, the worst-case discharge would be the fuel from a freighter or fishing vessel in the amounts indicated:

St. John, NB	300K DWT	90	million gallons
Portland	80 to 100K DWT	25	to 30 million gallons
Portsmouth, NH	40K DWT	13	million gallons
Penobscot Bay	35K DWT	11	million gallons
Eastport	cargo vessels	up to 100	thousand gallons
Elsewhere on the coast		up to 30	thousand gallons

B. Contingency Plans

There are many oil spill contingency plans at different levels of government and industry. Most of these plans are general in nature, but some have lists of equipment and personnel. Typically they are not in the form of an emergency operations manual. The Commission found a need for a comprehensive State contingency plan, and a need for some improvements in other plans.

1. State Marine Oil Spill Response Plan

The DEP is not required to develop a state plan for marine oil spill response, however, there is a handbook of emergency telephone numbers and procedures that DEP has compiled, and DEP has some response personnel and equipment located at various points around the State.

DEP personnel deal with spills on a regular basis and have the spill response expertise within the State. The Commissioner of Environmental Protection is the Governor's official representative on the Regional Response Team.

2. Maine Emergency Management Agency

If the Governor declares an oil spill to be a disaster or emergency, the Maine Emergency Management Agency (MEMA) is designated as the coordinating body for the spill, as described in chapter X. This procedure is the same as that followed for earthquakes, floods and hurricanes and it allows access to the National Guard and other resources.

MEMA is required to develop an emergency plan for all emergencies in which they are authorized to be involved. The overall state emergency response plan has been written, but the appendix dealing specifically with oil spills is not expected to be developed until November, 1990.

The Captain of the Coast Guard Marine Safety Office in Portland has asked that the relation between DEP and MEMA be clarified so that the command structure involving DEP remains intact.

3. Federal plans

   a. The National Oil and Hazardous Pollution Contingency Plan (NCP) is required by section 311(d) of the Clean Water Act, as amended, and published in 40 CFR part 300. It provides the organizational structure and procedures for preparing for and responding to discharges of oil. (The oil plan and the hazardous substances plan are combined in the regulation). It describes the national response organization, including the National Response Team, Regional Response Teams, the On Scene Coordinator (OSC), state and local participation, and non-governmental participation. It identifies 4 phases of operational response: discovery or notification; preliminary assessment and initiation of actions; containment, counter measures, clean-up and disposal; and documentation and cost recovery. General guidance is given for these and for certain other aspects of response, including: worker health and safety, public information, wildlife conservation, and trustees for natural resources, and use of dispersants and other chemicals.

   b. The Regional Contingency Plans (RCP) are prepared by the Regional Response Team (RRT), under 40 CFR 300.210(b) for the standard federal regions (Region I is New England). The 1st Coast Guard District (Boston) is responsible for this region. The RRT includes the appropriate federal agencies, such as the US Coast Guard, Environmental Protection Agency, US Navy, National Oceanographic & Atmospheric Administration, US Fish & Wildlife Service (USCG, EPA, USN, NOAA, USFWS) and others. It also includes state and local representation. Maine's representative is the Commissioner of DEP. The Regional Contingency Plan is required to follow the format of the National Contingency Plan and coordinate with OSC contingency plans (see c. below) and state emergency plans. The RCP does not appear to be readily available. It was last updated in 1986 and is being updated.

   c. The Local Contingency Plan is prepared by the On Scene Coordinator under 40 CFR 300.210(c). The Commanding Officer, USCG Marine Safety Office Portland, is the OSC for the coastal zone in Maine and New Hampshire. The federal regulations call this the OSC contingency plan and the new federal law calls it the area contingency plan. The plan is being updated annually. The 1990 update was published in draft form in June. This plan contains State and federal policies, identification of oil transfer facilities and response resources and areas all along the coast. It also contains general operational response actions for the four phases of response from the national plan. Finally, there are about 100 pages of appendices with forms, list of names

and addresses and other useful information. This plan is the most fully developed of the various federal or state plans for actual use in an oil spill. The plan was exercised in Portland in 1989 and Penobscot Bay in 1990. A chart is included in Appendix G, showing the decision process under the USCG local contingency plan.

d. The Canada-United States Joint Marine Contingency Plan is prepared by the US Coast Guard and the Canadian Coast Guard. It provides a framework for cooperation in response to pollution incidents that pose a significant threat to the coastal areas of both parties, or, although only affecting the waters of one party, are so large as to justify a call on the other for assistance. CANUSLANT is the annex to the plan dealing with the Gulf of Maine, and it is coordinated out of the 1st Coast Guard District in Boston. That was updated in 1989. The plan was exercised off St. John in 1988 and a drill was conducted simulating a collision off George's Bank in 1990.

4. Terminal and Vessel Response Plans

Currently, under DEP rules, Maine requires all licensed terminals to prepare contingency plans and to update them annually, outlining the response to spills of less than 10,000 gallons, 10,000 to 100,000 gallons and over 100,000 gallons. The terminals are required to outline what equipment they have on hand and what is available to them. Maine does not require vessel response plans.

Maine law (38 MRSA §546 sub-§4, ¶ E) also requires the "Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including periodic, unannounced drills to determine the adequacy of response plans and the preparedness of response teams." However, "periodic" drills is not a well-defined term.

The new federal law requires both vessels and facilities to submit plans for responding to a worst-case discharge. The plans must identify people and equipment available to respond and ensure their availability through contracts. The plans must also include provisions for training, equipment, testing and drills. These requirements will be further detailed through regulations. As part of the federal vessel or facility contingency plan, there must be a description of "periodic unannounced drills" to be carried out under the plan. However, the deadline for filing the plans is February 18, 1993.

Currently, there are no requirements for federal plans to be filed with the State, but Maine can enforce federal contingency plans (38 MRSA §545, sub-§2). The State can formally comment on these plans as part of the federal review process but has no authority to impose additional requirements on these plans.

The Commission found that further development of operational contingency plans would be helpful, as would updating and exercising the plans regularly.

VI. Response to Oil Spills

According to the US Coast Guard, the maximum existing response capability available in the first 24 hours in Maine waters is only 100,000 to 200,000 gallons under optimal weather conditions, including contractors, the Coast Guard, and DEP. For all of the response methods, timing is most important. In the hours after the spill, the oil begins to mix with seawater and to spread over ever widening areas, which makes the task of recovery increasingly difficult as time goes by. The best chance for effective response is in the first one to three days after the spill. Maine's readiness to respond to major oil spills is discussed in section E, below.

It should also be noted that research and development is proceeding on clean-up technology and mitigation measures. The comments here apply today, but there is hope for improvement. Certain common response devices are described below and illustrated in Appendix H.

A. Clean-up Technology

1. Booms

Booms are an essential part of any oil spill response system. They are mechanical barriers that float on the water, extending above and below the surface to contain oil spills for recovery or to direct a spill away from a sensitive area. They usually range in height from 1 foot for calm water to 3 feet for open sea. There are various kinds of booms: containment boom, diversion boom and fireproof boom. Booms are used around vessels during transfers to contain any spills that may occur. In the event of a spill, booms are used to contain the spill while pumps or skimmers are used to recover the oil. Booms, especially fireproof booms, may be used to contain oil while burning it in situ. Booms are also used to divert oil away from sensitive areas, even in currents that preclude containment. In addition, sorbent materials are sometimes fabricated in the form of booms to mop up oil. Booms are very useful, but they have their limits. Most booms are ineffective in perpendicular currents over 1 knot or waves over 6 feet. According to the USCG there are about 15,000 feet of 12 to 18-inch boom, and 8,000 of 24 to 36-inch boom available in Maine.

2. Skimmers

Skimmers are vessels or devices used with vessels and booms to mechanically recover spilled oil. OTA reports that skimmers can provide one of the best clean-up opportunities. In the past they have collected up to 10 to 15% of oil spilled in open water under favorable conditions, but the Commission also received testimony that new skimming vessels can do considerably better.

Like other cleanup techniques, skimmers must be used within days of a spill, before the oil mixes too much with water, and skimmers cannot be used in high wind or high seas. Some of the skimmed oil can be recovered and reused after separation. Adequate storage and separation services must be provided to offload skimmed oil, as discussed under barges, below.

There are about 10 weir or suction type skimmers in Maine for smaller spills, and Portsmouth Naval Shipyard has a 26 foot harbor skimmer vessel that would be available in an emergency. The Marine Spill Response Corp. is investigating putting a 200 foot vessel that can carry skimming equipment in Portland Harbor. Others have suggested deployment of a 100 foot skimming vessel similar to one recently ordered for Puget Sound.

The Oil Pollution Act of 1990 requires the Secretary to study the feasibility of transferring vessels for training to selected maritime training institutions and to train students in oil spill response. Maine Maritime Academy has commented that they may be available to provide volunteers for several days at a time, except between May 1 and September 1.

3. Sorbents

Oil sorbents are placed on the surface of an oil slick where they recover the spilled oil by either adsorption, in which the oil is attracted to the sorbent surface and then adheres to it, or absorption, in which the oil penetrates the pores of the sorbent material. Sorbents come in particulate form for spreading over a slick or as sheets, rolls, pillows, or booms. The sorbent material can be peat or straw, ash, vermiculite, or perlite, or synthetic products such as polyethylene or polypropylene. Sorbents can be very effective in smaller spills. Disposal of the oily debris is discussed below.

4. Pumps

Pumps are used during spill response operations to transfer oil from damaged vessels, boomed-off enclosures, or oil-collecting devices to another vessel or device for oil/water separation, reprocessing, and storage.

5. Barges

Barges are often needed to receive the oil after retrieval, since the tanks on skimmers and other recovery vessels are insufficient for a large spill. Barges can also be used as staging areas at sea for other recovery equipment. Preplanning (and possibly precontracting) could be useful because procuring barges can take time and it would be less expensive to use barges that are in commercial use than to keep dedicated barges on standby. There are no barges kept in Maine for spill recovery. They would have to be brought in under contract as needed.

6. Oily debris disposal

Oil spill debris is considered a "special waste" under state and federal law, and its disposal is essential to the cleanup effort. Disposal of this waste is regulated by DEP: small quantities can go into municipal waste facilities, but amounts over 500 cubic yards must either be incinerated or disposed of in a special waste landfill.

7. Other Spill Control Products

Other spill control products include: boom reels, trailers, boats, oil-water separators, foam, oil stop valves, incinerators, vacuums, and lights for nighttime oil recovery operations.

B. Mitigation Measures

Use of mitigation measures usually requires approval by a committee such as the Regional Response Team because they typically trade one environmental impact for another (surface pollution dispersed to water column; water pollution converted to air pollution; etc.) Because mitigation measures are only effective soon after the spill a rapid decision process is needed if they ever are to be used.

1. Dispersants

Dispersants are chemicals sprayed from planes or boats to accelerate the natural process of slick dispersal into the water column by reducing the surface tension between the spilled oil and water. Dispersants can be an effective clean-up tool in moderate sea and moderate wind, away from shoreline. They have not been used extensively to date, partly because of the cumbersome approval procedure. They are potentially toxic to a variety of marine and coastal plants and animals, although new formulations are said to be less toxic. Use of dispersants usually involves the choice of protecting the shoreline while increasing the environmental impact to the water column.

2. Oil-collecting Agents

Oil-collecting agents (also called gelling agents, chemical barriers or herding agents) reduce the spread of surface slicks and concentrate the oil into a thicker layer for easier recovery. These appear promising, but have only seen limited use to date.

3. Bioremediation

Technologies such as the use of genetically engineered bacteria and fertilizers are being developed to help natural bacteria and microorganisms break down toxic substances. Some field-testing of these techniques has been done recently in Alaska for the EXXON VALDEZ spill and in Texas for the MEGA BORG incident but they are not available for widespread use at this time. They appear to be more effective on shorelines than on the surface of the sea.

4. Burning in Situ

Burning of oil can be used to dissipate the oil, transferring the oil from the water to the air. This method is most effective for lighter oils such as gasoline and diesel fuel which burn most readily. It must be done early in a spill before the oil degrades or spreads out too much, and conditions must be controlled to avoid producing extreme heat and wind with the potential for further damage to the ship. In the past is has been difficult to get approval to burn oil except under limited circumstances, but it can be very effective in removing spilled oil, as evidenced by the 1990 MEGA BORG incident in the Gulf of Mexico, where practically all the spilled oil burned up.

5. State Law

DEP's rules (Chapter 600, Sec. 11(c)) allow the use of dispersants only when a "DEP representative" finds that they will prevent or substantially reduce hazard to human life or limb or substantial hazard of fire to property, or substantial hazard to vulnerable waterfowl; or that they will result in the least overall environmental damage or interference with designated uses. Burning is not addressed.

There are no other state policies governing how or when to use these tools. The Coast Guard has a memorandum of understanding with the States of New York and New Jersey on the conditions and locations where dispersants may be used.

6. Federal Law

Currently the Regional Response Team (RRT), composed of both State and Federal agency personnel, decides whether conditions are appropriate to allow the use of in-situ burning, dispersants or bioremediation. There appear to be no preapproved parameters and valuable time may be lost before the decision is made. The Oil Pollution Act of 1990 requires that the National Contingency Plan contain a schedule, prepared with the states, identifying: dispersants, other chemicals and other mitigating devices or substances that may be used in a spill; where these substances or devices may be used; and the quantities that can safely be used.

C. Response Organizations

1. Private Contractors

Private contractors are usually hired by the spiller to conduct response activities. In Maine these include Jetline, Seacoast Ocean Services, Clean Harbors and Consolidated Environmental Services. They have equipment and personnel in Portland, Penobscot Bay, Eastport and Portsmouth, NH. Commercial fishermen and other boatowners may also be hired or volunteer to assist.

2. US Coast Guard

The Coast Guard has resources for monitoring spills and some local resources for cleanup. In addition there are "strike teams" in Alabama and California that can be flown in with their equipment. They each have about a dozen "Open Water Oil Containment and Recovery Systems," consisting of boom, weir skimmer, pump, inflatable barge and delivery sled. An Atlantic strike team is also being reactivated.

The USCG keeps some pre-positioned response equipment in Portland, Rockland, Southwest Harbor, Jonesport, Eastport, Boothbay Harbor and Portsmouth. However, this equipment is only meant to be a quick response for very small spills of less than 100 gallons.

3. Department of Environmental Protection

State law (38 MRSA §549) allows DEP to pre-position equipment and personnel along the coast to respond to oil spills. DEP has equipment prestaged in South Portland, Bangor and Augusta. While there are personnel assigned to these offices, they also have other duties.

This response capability can be used on short notice. The spiller is then billed for the cost.

4. US Navy

The Navy has some vessels and salvage equipment at Portsmouth Naval Shipyard and elsewhere that can be made available for large spills.

5. Canadian Coast Guard

The Canadian Coast Guard has resources, especially in St. John, that can be deployed under the joint Canadian-US plan. These include skimmers: two oil recovery systems and two heavy oil recovery systems. They recently have developed a new single sweep oil recovery system which will be deployed on Canadian Coast Guard vessels.

6. Marine Spill Response Corporation

The oil industry has just formed the Marine Spill Response Corporation, (MSRC), an independent non-profit organization which will have equipment available to combat catastrophic spills throughout the United States. They will respond only to spills above local capability, which for Maine may be about 200,000 gallons. MSRC will take about 3 years to become fully operational. Then it will be the primary response organization for large spills.

MSRC will have five regional response centers, including one in the New York-New Jersey area. Each will be capable of responding to a spill of up to 9 million gallons of oil, roughly the size of the EXXON VALDEZ accident. Larger spills would require combining the resources of the regions.

Each of the regional centers will have four to six prestaging areas where equipment will be warehoused and where, in some instances, vessels and response personnel will be stationed. One prestaging area is planned for Portland. Most of the response personnel will not be employees but will be hired as contractors.

MSRC plans to employ a full-time staff of about 400 employees and initially acquire more than $315 million worth of equipment, including vessels, trucks, booms, skimmers, dispersants, and wildlife and shoreline rehabilitation tools to contain, mitigate and clean up spills. MSRC will also have funds for research purposes.

Funding for the MSRC will be provided by a separate, non-affiliated corporation, the Marine Preservation Association (MPA), whose membership is composed of the owners, shippers and receivers of crude oil and petroleum products, including, for example, the Portland Pipeline Corporation.

7. Spill Response Cooperatives

Spill response cooperatives have been formed by the terminal operators in several major ports to provide a combined oil spill response capacity. Of the 3 major oil transfer harbors in Maine:

a. the Penobscot River has a small spill response cooperative called PROPAC;

b. Portland Harbor used to have a spill cooperative. The terminal operators are in the process of forming a spill cooperative for the harbor to be called "Clean Casco Bay"; and

c. Portsmouth Harbor has the Portsmouth Harbor Oil Spill Cooperative. They have been less active in the 1980s and do not have a large inventory of equipment.

There are no laws or regulations requiring the formation of spill cooperatives, however, requirements for contracted equipment and personnel as part of a vessel or facility contingency plans required under the Oil Pollution Act of 1990 may encourage their formation.

D. Response Personnel Training

1. State Requirements

DEP's rules require "adequately trained men" and licensed tankermen or officers to be present or in charge of transfer operations, however, there are no standards for personnel training. Individual spill response companies or terminals may have in-house training but these programs are not standardized or consistent. There are periodic training drills but this does not guarantee that enough people will receive adequate training.

2. Federal Requirements

OSHA requires oil spill responders to have 40 hours of safety training before working on a spill. OSHA also requires personnel to have an 8 hour annual update for dealing with hazardous materials. The Oil Pollution Act of 1990 requires the Secretary of Transportation to study the feasibility of developing and implementing a Maritime Oil Pollution Prevention Program to include training requirements and programs.

E. Readiness

The Commission found that Maine is not ready to respond to a worst-case spill of 6 to 30 million gallons or more, or even a major spill in the range of 100,000 to 1,000,000 gallons although Maine is somewhat ready to respond to small and medium spills of under 100,000 gallons in good weather.

1. US Coast Guard

The Coast Guard Marine Safety Office in Portland has found the maximum spill response capability in the first 24 hours, including state, federal and private contractor capabilities to be 100,000 to 200,000 gallons at most.

The US Coast Guard has only 2 strike forces, one in Alabama and one in California. These have equipment for somewhat larger spills, but it would take at least 2 days for either to be deployed at a spill in Maine.

2. Readiness for Non-Catastrophic Spills

The Commission found that even at the 100,000 gallon level there were inadequacies including:

- infrequent training of responders;
- unclear lines of responsibility;
- incompatibility of equipment;
- insufficient pre-planning for dispersants, bioremediation and burning;
- sensitive area information outdated and inaccessible;
- no wildlife rehabilitation plan or capability

VII. Sensitive Areas and Wildlife Rehabilitation

Sensitive areas are locations that have valuable natural or cultural resources or that are specifically susceptible to damage from oil spills. The Commission found that sensitive area information exists, but much of it is outdated and in rather inaccessible hard-copy form. The Commission also found that sensitive area protection priorities have not been set. Priorities would be set on an ad hoc basis in the event of a spill.

A. Sensitive Area Mapping and Priority Setting

1. Mapping and Data

Typically the process of sensitive area mapping and priority setting proceeds in several layered steps:

a. Base maps consist of two kinds: USGS geographical and cultural maps for the land areas adjacent to the shoreline; and Maine Geological Survey coastal marine environment maps for the shoreline and adjacent waters. These maps are prepared at a scale of 1:24,000 (1 inch = 2,000 feet).

b. Coastal wildlife habitat data (e.g., for seabirds, shorebirds, waterfowl and marine mammals) can be superimposed on the base maps.

c. Fisheries resource data (marine and anadromous, and both natural and aquacultural) can be superimposed on the base maps.

d. Setting protection priorities involves several steps. Shorelines can be scientifically ranked in order of environmental or ecological sensitivity to oil spills based on their physical characteristics. Biological resources can also be ranked to some degree in order of sensitivity to oil spills, but public values and human uses must also be factored in to establish overall protection priorities.

e. Updating the data base, maps and priorities on a regular basis is essential. Otherwise they will soon become irrelevant or erroneous and possibly misleading.

2. Federal Efforts to Date

The US Coast Guard uses Environmentally Sensitive Inventory (ESI) maps prepared by NOAA in the early 1980's in planning their response to an oil spill. Presumably the maps also include information from the Ecological Characterization of the Maine Coast done by US FWS in 1980. Each Coast Guard District has a Scientific Support Coordinator, a NOAA employee who is available to the Regional Response Team and the federal On-scene Commander to help

interpret this information. The USCG Local Contingency Plan for the Maine coast contains descriptive text on each portion of shoreline, with comments on fish and wildlife, recreational areas and boating centers. The maps are in hard copy form. The information is descriptive, not quantitative, it is not priority-oriented, and it is becoming out of date.

3. State Efforts to Date

   a. Marine birds and mammals were included in a coastal resource inventory conducted jointly by DEP, IF&W, and DMR in Casco Bay, Sheepscot Bay, and Muscongus Bay in the early 1980's to: inventory wildlife resources seasonally; develop an evaluation system; and to document and assess damages from oil spills. The resources were given value ratings on a seasonal basis and some spill response recommendations were included. Most of this data is in computer files and has been mapped, but it is not in convenient format and it is not readily accessible. In addition, none of this data has been updated.

   b. Marine fisheries were included in an inventory of industry facilities such as lobster pounds and natural resources such as shellfish beds conducted by DMR from Cape Elizabeth to Deer Isle during 1980-83. The data is believed to be in hard copy form and has not been updated.

4. Geographic Information System

Maine, like most states, is creating a Geographic Information System (GIS). A GIS blends tabular data with maps and uses modern computer technology to display the data in a form that is convenient and flexible for users that may, for example, be engaged in a facility siting exercise or an oil spill response.

Creation of a GIS requires geographical base maps and spatially oriented data of the desired kind. The maps and data must then be digitized for storage in the computer. The software (i.e., computer program) allows the user to display selected data on a map at a video display terminal. Because the maps and data are digitized, they can be readily assessed and updated, unlike the existing hard-copy data. Inventory or resource data is stored in a spatially oriented form so it can be readily displayed on the maps, unlike conventional tabular data. Because GIS is a common state-wide system, data can be shared among agencies with little additional effort.

Maine's GIS is housed in the Department of Conservation in Augusta and has a steering committee of 17 members, mostly from state agencies that are users. There is a small central staff and a central computer/file server. The primary software is ARC/INFO from

Environmental Systems Research Institute along with ORACLE, a data base management system. Workstations and digitizers are located at various user locations around the State. The system became operational in January 1990, and there is a 7 year strategic plan to get mandatory, necessary, desirable and operational support functions in place, as identified to date.

5. Industry Efforts

The Marine Spill Response Corporation and the oil terminals, as part of their contingency plans, will be mapping sensitive areas in Casco Bay and have expressed their intention to map or help support the mapping of the Maine coastline. That effort may include hydrographic and meteorological information that would be helpful in predicting oil spill trajectories, and thus in planning a response.

B. Wildlife Rehabilitation

1. State Efforts

Although DEP, IF&W and private individuals have permits that allow them to collect and treat oil-damaged wildlife, there appear to be no plans, resources or equipment to carry this out. State agencies have no funds budgeted for these purposes.

Currently, there are few opportunities for training responders to rehabilitate wildlife within Maine. And, there are a number of human health and safety issues involved in wildlife rehabilitation. DEP has sent personnel to training programs in the past but there is no way to keep that information institutionalized.

2. Federal Efforts

The US Fish and Wildlife Service has two regional coordinators for pollution incidents in New England that would be in charge of rehabilitation efforts, but they have no plans, equipment or resources devoted to this effort at this time. There is a very rudimentary plan for response that essentially contains telephone numbers and contacts. The Oil Pollution Act of 1990 does require NOAA and the USFWS to develop a fish and wildlife response plan to protect, rescue, rehabilitate and minimize damage to fish and wildlife resources.

The USFWS has no ongoing training programs for their personnel in rehabilitation of oiled wildlife.

VIII. Funding

A. Maine Coastal and Inland Surface Oil Clean-up Fund

The Maine Coastal and Inland Surface Oil Clean-up Fund has been financed through a fee of 3 cents per barrel on crude oil or petroleum products assessed on all over water transfers and the first transfer of petroleum products coming in to the State by truck or rail. From August 1,1990 through February 1, 1991 this fee is increased to 4 cents per barrel to fund additional equipment purchases. Reimbursements of clean-up costs and third party damage claims paid by the state are also paid into the fund, but in March, 1990, approximately $2.5 million was outstanding. The fund is capped at $6 million and fee collections are suspended when this amount is reached. This cap has not been reached since the early 1980s, and the fund has an average balance of about $3.5 million.

For the past 5 years, income to the fund has averaged $1.34 million annually, while expenditures have averaged $1.37 million. This is primarily due to the cost of response to inland spills as well as coastal spills, as well as groundwater clean-up from the years before creation of the groundwater fund. Sixteen positions are paid for out of the fund, but these persons must deal with the large number of inland spills as well as coastal spills. A 20-year summary of revenues and expenses is included as Appendix J.

Under the statute, the fund is an "exclusive remedy" for third party damage claims filed under the state law (38 MRSA §551(2)(D)), however, a third party can file a claim under admiralty law in federal court for compensation of damages. Although the fund is set up to pay third party damages in the first instance, dischargers can settle with third parties without going through the fund.

The statutes are very unclear as to what happens if the cost of damages or clean-up efforts from a spill exceeds $6 million, especially if the discharger does not have assets to cover the clean-up or damages, is exempted from liability, or is not known. The statutes contemplate bonding authority for the state but again it is not clear how this would be implemented.

The Commission found that the Maine fund appears to work well for small spills, but it is unclear what would happen if costs exceeded the cap. The Commission also found that it is premature to let the fee drop back from 4 cents to 3 cents per barrel until DEP has conducted a full review of their equipment needs and the ongoing Commission has considered the possibility of establishing separate coastal and inland surface funds.

B. Federal Oil Spill Liability Trust Fund

The new federal Oil Pollution Act of 1990 increases the limits of the newly established Oil Spill Liability Trust Fund to $1 billion per incident.

That fund is financed by a 5 cent per barrel tax on domestic and imported crude oil initiated in 1990, which is expected to generate $250 million per year. The fund may be used for removal, restoration, and administration, as well as uncompensated economic damages. The regulations implementing the fund have not yet been developed.

Some other authorized uses of the federal fund include: funding USCG operating expenses up to $25 million/yr.; national response system, up to $30 million/yr., including: USCG inventory of personnel and equipment; strike teams; contingency plan review; research & development costs up to $27,250,000/yr.; up to $250,000 available to reimburse states for their response costs in the event of a spill; and the cost of assessing damages.

C. Comparison of Maine's Fund with the Federal Fund

The purpose of the Maine state fund is to compensate third parties quickly and give the State funds for response. Later the state seeks reimbursement from the responsible party.

The purposes of the federal fund are similar in some ways, but unlike the Maine fund, the federal fund does not receive reimbursement from the responsible party. In that respect the federal fund acts more like an insurance fund funded by the tax on oil coming into the State.

It is not yet clear how the new federal fund will mesh with the State fund.

D. Funds Lent to the Groundwater Oil Clean-up Fund

When the Groundwater Oil Clean-up Fund was first established, it was authorized to borrow up to $1,200,000 from the Surface Oil Clean-up Fund to serve as start-up capital. This money had to be repaid by the end of FY 1987, except for $500,000 that did not have to be repaid. Also, groundwater remediation and damage claims originating before the funds were split are being covered under the surface fund (PL 1985, c. 496, Sec. A-15).

The groundwater fund has recently been amended to provide a limitation on liability up to $1 million for underground storage tank owners. Assessments on gasoline and refined petroleum products were substantially increased as a result of this change. As a result, annual revenues into the groundwater fund are projected to increase 10-fold. On the other hand, expenditures from the surface fund have increased tremendously due to inland spills and continued groundwater clean-up costs while revenues have not, so preliminary projections indicate there may be a shortfall in the Surface Oil Clean-up Fund in the mid-1990's.

E. Collection of Reimbursements

Current law provides that all sums expended from the surface fund for spill response, damage compensation and arbitrators be recovered from the party responsible for the spill. DEP has commented that there are about $2.5 million in reimbursements outstanding. Practically speaking, the Attorney General's Office can only pursue larger claims. The law was amended last year to allow DEP to hire outside collection agents. The language is broad enough to allow DEP to hire an agency or an attorney (38 MRSA §551, sub-§5, ¶I). The amendments last year also strengthened the incentives to pay in a timely manner. DEP's present practice is to call in a collection agency after 45 days, or, if the amount is greater than $10,000, to call in the Attorney General. In cases where the Attorney General's Office does not have time to pursue the claim, DEP may retain an attorney to do so.

IX. Liability for Oil Spills

Liability for damages from oil spills can be broken into three categories: liability for vessels, for terminal operators and for spill responders. For this discussion, note that state waters within the oil pollution subchapter of state law are defined as 12 nautical miles out rather than the familiar "three-mile limit".

A. Vessels' Liability

In Maine, vessel liability is strict and unlimited as spelled out in 38 MRSA §552, sub-§2, which states:

> "2. **State need not plead or prove negligence.** Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, ***any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State.*** In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing or suffering the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter or occurred at or involved any real property, structure, equipment or conveyance under the custody or control of the person causing or suffering the discharge." (emphasis added)

Under the new federal law, for oil spills within the 200 mile exclusive economic zone, vessels are liable for removal costs and expenses up to $1200 per gross ton, and onshore facilities are liable up to a limit which may be as high as $350 million.

The Oil Pollution Act of 1990 specifically does not preempt states in assigning liability for oil pollution. Prior to this change, it appears that federal admiralty law preempted the states with regard to vessels (see Oswego Barge Corp., 439 F. Supp. 312 (NDNY 1977)) so that vessels were only liable for the value of their vessel and cargo after the accident.

B. Oil Terminal Operators' Liability

Under Maine law (38 MRSA § 552 sub-§2) terminal operators (licensees) have strict and unlimited liability for oil discharges

in Maine waters from their own facilities. In Maine, they are also made strictly liable for all acts and omissions of vessels going to and from their facilities, once they enter state waters. Recent federal legislation has not changed this responsibility.

> "1. **Licensee shall be liable.** A licensee shall be liable for all acts and omissions of its servants and agents, ***and carriers destined for the licensee's facilities*** from the time such carrier shall enter state waters until such time as the carrier shall leave state waters." (38MRSA §552 sub-§ 2) (emphasis added)

C. Unlimited Liability

The State liability law was initially enacted to allow the State to recover from a responsible party within Maine. Terminal operators were held ultimately liable because it was not clear that a vessel owner would have the assets to cover a spill. The constitutionality of this provision was upheld by the Maine Supreme Court in 1973. (Portland Pipeline Corp. and 10 major oil companies v. Environmental Improvement Commission, 307 Atlantic 2d (1-48)). However, now the picture has changed somewhat because vessels must certify financial assurance up to their federal liability limits. Industry representatives have requested that the State review the implications of Maine's unlimited liability law.

Eighteen of the 24 coastal states, including Maine, have unlimited liability. These include: AL, AK, CA, CT, GA, HA, LA, ME, MD, MA, MI, NH, NC, OR, PA, RI, SC, and TX. Six have limited liability, including: DL, FL, NJ, NY, VA, and WA (only on natural resources). (See Appendix K)

D. Spill Responders' Liability

1. Federal law

The Oil Pollution Act of 1990 exempts responders from liability in the event of a spill provided the actions are consistent with the National Contingency Plan and are not the result of gross negligence or willful misconduct, and provided that the "responsible party" is not exempted.

2. Maine law

Maine's good Samaritan law (38 MRSA, ch. 14) exempts from liability clean-up persons responding to hazardous material discharges if they are not compensated for other than out-of-pocket expenses. Commercial response and clean-up contractors are liable for their actions during a spill because they are paid for their work, and they are concerned they would be held strictly liable for any actions during a spill if things went awry. It is not clear that the State, or a terminal or vessel that initially paid for costs or damages would seek reimbursement from a responder, but it may be difficult to contract with individuals or spill response companies under these circumstances.

Emergency responders to chemical spills or releases as outlined in 37-B MRSA §795, are granted immunity under the Maine's Tort Claims Act for any services provided within the scope of a mutual aid agreement (14MRSA ch. 741).

The petroleum industry, through MSRC, has asked that commercial contractors, vessel owners and others who respond to oil spills also be granted immunity from liability except in cases of gross negligence. MSRC itself is a nonprofit corporation and thus would not be subject to ordinary liability, but they feel they could not contract with other companies or even fishing boats for spill response without exposing these people to unlimited liability.

The Commission reviewed several state and federal laws dealing with responder liability, including: the federal superfund for hazardous waste (42 USC 9607(d)), the new federal Oil Pollution Act, (33 USC 1321(c)(4), and the new California law (SB 2040). Each of these laws provides that, except for any person responsible for the original spill, there will be some immunity from liability for any person rendering care, assistance or advice if acting in accordance with the appropriate contingency plan or under direction of the Coast Guard (or the responsible state official). The remaining liability varies, as follows:

- Superfund: Responder is liable for negligence;
- Oil Pollution Act: Responder is liable for gross negligence, willful misconduct, personal injury and death;
- California Act: Responder is liable for gross negligence, willful misconduct, personal injury and death. For commercial responders the immunity is limited to 60 days, with a possible 30 day extension.

The Commission struggled with this issue, perhaps more than any other, but those not usually in favor of immunity were convinced that oil spills are a special case and that some immunity would be necessary to enlist sufficient responders, especially during the critical early days after a spill. As a result, the Commission recommended a limited form of immunity, with conditions similar to the federal Oil Pollution Act.

E. Right of Contribution

Under current law the State does not need to establish negligence on the part of a person responsible for an oil spill to recover spill removal and remediation costs, payments made on third-party claims and costs of arbitrators. Since marine terminal facilities are liable to the State for acts and omissions of carriers destined for their facilities while in state waters, an oil terminal facility could be liable to the State for substantial costs even though it had no direct control over the vessel discharging the oil and the spill did not occur at its facility.

The Maine statute is vague as to which party is primarily responsible for reimbursing the fund, but it appears that the State does not have to pursue the owners of an offending vessel up to the limit of their ability to pay before requiring reimbursement from the terminal operator. As a result, the terminal operators want the right to seek a contribution from the vessel or another party who may be at-fault. The Attorney General's Office interprets the statutes to say the right of contribution already exists, but the statute does not specifically provide that an oil terminal facility which is held liable for costs resulting from a spill by a carrier destined for its facility has a right to recover those costs from the carrier.

X. Maine's Statutory and Regulatory Framework

A. Oil Discharge Prevention and Pollution Control Act

Maine's Oil Spill Prevention and Pollution Control Act (38 MRSA Chapter III, Subchapter II-A) has been in effect since 1970. The Act prohibits the discharge of oil into or upon any waters of the state and any adjoining land. The Act requires licensing of oil terminals and regulates the activities of oil terminals and the vessels that serve them. The Act holds terminal operators liable for all damages from oil spills including those spills from vessels within 12 nautical miles of Maine's shore that are destined for that terminal. The State must be satisfied with the clean-up effort undertaken by the terminal operator or can contract for further clean-up and assess the operator.

The Act established the Maine Coastal and Inland Surface Oil Clean-up Fund. The primary purpose of the fund is to quickly compensate third parties damaged by an oil spill and to provide a ready source of funds for clean-up activities. It is also used to fund research and development, equipment purchases, and administrative expenses of the Department of Environmental Protection.

B. Relationship between Maine Law and Federal Law

The Federal role in a major oil spill incident can supersede the state role. The Marine Safety Officer in Portland is designated the on-scene coordinator (OSC) responsible for monitoring the overall spill response efforts. The OSC can "federalize" or takeover spill response efforts if not satisfied with the actions of the discharger. For smaller spills the Coast Guard generally defers to DEP for response, while continuing to maintain a watchful eye.

Maine's law reaches beyond federal law in several ways. First, it assigns strict and unlimited liability to the spiller. Second, it creates a state fund for clean-up expenses and third party damage claims. Third, it empowers the State to decide for itself when response efforts are adequate and clean-up efforts can stop.

C. Department of Environmental Protection Regulations

Maine's regulatory framework for marine oil spill prevention and response is contained in chapter 600 of the Department of Environmental Protection rules. These have not been updated for many years, but the department is now circulating a request for proposals to update the rules, budgeted at about $100,000. This update requires the consultant to review the adequacy of Maine's rules, compare them with those of 4 other states and 2 other nations and evaluate their requirements as they relate to Maine. It also requires a survey of existing transit restrictions to ensure vessel traffic safety.

D. Maine Emergency Management Agency

The Maine Civil Emergency Preparedness Act (37-B MRSA Chapter 13) establishes the Maine Emergency Management Agency (MEMA) and confers on the Governor and the heads of the political subdivisions of the State certain emergency powers.

In the event of a disaster beyond local control, the Governor may assume direct operational control over all or any part of the civil emergency preparedness and public safety functions within the state (37-B MRSA §741(1)). Whenever a disaster or civil emergency exists or appears imminent, the Governor shall declare a state of emergency. Then, the Governor may utilize all available resources of the State government and of each political subdivision and transfer the direction, personnel or functions of State departments and agencies for the purposes of performing or facilitating emergency services (§742(1)(C)(2 and 3)). The Governor may also prepare a comprehensive plan and program for the civil emergency preparedness of the state (§742(3)(B)).

The Act deals with the full range of civil emergencies and disasters: enemy attacks, riots, fire, flood, etc., and includes oil spills (§703(1 and 2)). MEMA is the agency which is responsible for carrying out the program for civil emergency preparedness, including coordination of the activities of all organizations for civil emergency preparedness within the state (Section 704, paragraph 3). Civil emergency preparedness includes a broad range of functions, such as: fire fighting, police, medical and health, emergency welfare, rescue, engineering, evacuation and transportation. In the emergency plans the roles of other agencies are specified in accordance with their capabilities and statutory duties.

The overall State emergency response plan has been written, but the appendix dealing specifically with oil spills is not expected to be developed until November 1990. The relationship between MEMA and DEP in the event of an oil spill may need clarification, as discussed in Chapter V, Section B(2).

E. Pilotage Laws

The State requirements for licensing and use of pilots on marine vessels are specified in Title 38, chapter I, subchapter III.

Every foreign vessel and every American vessel under register, with a draft of 9 feet or more, is required to take a state licensed pilot when entering or departing from ports and harbors on the Maine coast. In Portland Harbor, the Board of Harbor Commissioners sets and implements this policy. Elsewhere, it is the Maine State Pilotage Commission. The Piscataqua River is governed by New Hampshire law, since the port is on the New Hampshire side.

Vessels enrolled in coastwise commerce are treated differently: they are required to have federal pilots, under federal law. In some states, such as Alaska, both federal and state licensure is required for pilots on these vessels, but this is not the case in Maine.

F. Interstate Compacts and Agreements

State law (38 MRSA §553) allows the Governor to enter into interstate compacts and agreements for oil spill response. It is not clear whether a state can enter into compacts or binding agreements with Canada, but there are none at present. Canada and the U.S. have developed joint response plans at the federal level (CANUSLANT) that are exercised periodically.

XI. Findings and Recommendations

The Commission found that major oil spills of 100 thousand to 1 million gallons have occurred in Maine, and that a worst-case spill of 11 to 30 million gallons or more could occur. The major oil traffic areas are Portland, Penobscot Bay/River, Portsmouth, NH, and downeast near St. John, NB. The Commission also found that although the state is ready for small spills of less than 1,000 gallons it is only somewhat ready for medium spills of 10 thousand gallons, and not ready for a major or worst-case spill. As a result, the Commission is recommending that DEP develop a comprehensive State oil spill response plan and that the relevant agencies increase their efforts in planning for protection of sensitive areas and for use of mitigation measures.

The Commission found unanimous agreement that prevention is the most effective oil spill strategy. Many prevention measures are not under state control, but the Commission noted with approval new federal initiatives such as double hulls and radar Vessel Traffic Control Systems and expects improvements in navigational safety to result from the efforts of the USCG safety forum and the Portland Pipe Line's risk assessment of Portland Harbor. The Commission is recommending that DEP closely monitor these developments as well as implementing additional terminal safety inspections.

The Commission found that it is premature to make major changes in Maine's regulatory and statutory framework for dealing with oil spills in the marine environment. A comprehensive federal law with a billion dollar oil spill trust fund has just been enacted, and the Coast Guard, DEP and the industry are in the midst of major updates of their plans and capabilities. As a result, the Commission is recommending that its own life be extended, in order to monitor and respond to these developments.

The Commission is not recommending any change at this time in Maine's provision of strict, unlimited liability for the responsible party, but the Commission did find that exposure of commercial spill responders to unlimited, strict liability may hamper their availability for response and clean-up efforts. So, the Commission is recommending immunity for responders, except in cases of gross misconduct or willful negligence.

In view of the many activities identified in this report which may require State funding, the Commission found that it would be premature to let the fee that finances the Surface Oil Clean-up Fund revert in February 1991, as scheduled from 4 cents to 3 cents per barrel. The Commission is recommending a full evaluation of the needs of the Fund as well as a review of the relative allocations to coastal vs. inland uses including an analysis of the merits splitting the Fund.

The findings and 28 specific recommendations are arranged by subject below. The Commission's recommendations are embodied in two bills proposed to the 115th Legislature, which are included in Appendix B.

A. Oil Traffic (also see Chapter II-A and B, and Appendix D)

Findings: Oil Traffic

The Commission found that about 400 oil tankers and 350 oil barges come to Maine per year, almost all to Casco Bay (Portland) and Penobscot Bay/River ports. In addition, there is significant traffic at neighboring ports: 75 tankers and 50 oil barges per year at Portsmouth, NH, and 300 tankers and 100 oil barges per year at St. John, NB.

The largest oil vessels among these are 30 "Very Large Crude Carriers" of 300,000 deadweight tons (90 million gallons) calling in St. John per year and 50 Long Range Tankers of 80,000 to 100,000 DWT (25 to 30 million gallons average) calling at the Portland Pipe Line per year. The EXXON VALDEZ was 211,000 DWT, carrying 53 million gallons.

Since 1984, there have been modest rises in oil traffic in Maine, with the totals reaching 86 million barrels in 1988. This is still below the pre-embargo peak of 220 million barrels in 1971. The decrease was due to a reduction in Canadian crude oil imports through the Portland Pipe Line. The rises have been due to growth in the domestic market. In St. John, NB, traffic has increased from modest levels in 1971 to 81 million barrels in 1988, partly due to their major oil refinery.

B. Oil Spills (also see chapter II-C and Appendix E)

Findings: Oil Spills

The Commission found that four major spills have occurred in Maine from 1963 to date, for a historical average of one every 7 or 8 years.

There are about 70 spills per year in Maine coastal waters, including spills from other vessels as well as tankers and barges, but most of these are very small, averaging 20 gallons. In the last 30 years, there have been only 13 spills in the 1,000 to 25,000 gallon range, and only 4 major spills of 100,000 gallons or more.

The TAMANO (1972) and the CHRISTIAN REINAUER (1980) spills were 100,000 gallons, while the NORTHERN GULF (1963) and the ATHENIAN STAR (1975) were about a million gallons.

Any of the 1,275 oil vessels per year could have an oil spill, and depending on the winds and current, a spill anywhere in the Gulf of Maine could impact the Maine coast. Other vessels such as freighters and fishing boats carry oil for their own fuel and could cause significant spills.

C. Prevention of Oil Spills (also see Chapter IV and Appendix F)

Findings: Prevention

The Commission found unanimous agreement that prevention is the most effective oil spill strategy. Historically, only about 10 to 15% of the oil has been recovered from major spills, and mechanical recovery is not usually effective in waves greater than 6 feet or winds greater than 20 knots.

Common causes of major spills are vessel grounding due to severe weather, human error, or equipment failure. Smaller spills have been due to equipment malfunctions or misuse. The Commission found that increased inspections can reduce the likelihood of such problems.

Prevention measures include: vessel screening; vessel crew and equipment requirements; navigation aids and procedures; use of pilots; use of tugs; and safety inspections. They also may include radar vessel traffic control systems, and construction requirements such as double hulls. The Commission found that many of these items are not under state jurisdiction, but the State can monitor and recommend federal legislation and Coast Guard rules and procedures.

The State does have some authority over vessels in State waters and more authority over terminals. For example, DEP used to inspect terminals more frequently in the 1970's, but as priorities have shifted to inland spills and staff has not increased they only inspect at 2 year intervals now.

The Commission observed that there is a danger of a collision between an oil tanker and a recreational boater in harbors like Portland. Many recreational boaters seem unaware that large tankers have the right of way because of their limited maneuverability. This is a matter of public education, which is conducted by the Power Squadrons, Harbormasters, and the Coast Guard Auxiliary.

Recommendations: Prevention

1. Terminal Safety

   The Commission recommends that:

   a. DEP be required to increase the frequency of inspections of licensed terminals to annually, rather than every 2 years, timing these about halfway between the annual Coast Guard inspections if possible and emphasizing shoreside areas not covered by the Coast Guard; and that

b. DEP review and consider adopting as necessary additional rules for operating requirements for terminals.

2. Vessel Movement Restrictions and Vessel Safety

The Commission recommends that DEP study vessel movement restrictions in adverse weather, visibility, etc., as well as reviewing whether onboard vessel inspections are being conducted in sufficient number and sufficient detail and report to the ongoing Commission.

3. Navigational Risk Assessment

The Commission recommends that the DEP retain a consultant to advise them on navigational risk assessments and on navigational preventive measures, and that the ongoing Commission monitor DEP and USCG progress on these items.

4. Use of tugboats

The Commission recommends that the US Coast Guard consider:

a. Requiring increased tug escorts for vessels and barges of specified deadweight tonnage on approach to major harbors or when passing through channels or restricted passages. Examples: Portland Ship Channel, Hussey Sound, Broad Sound, lower reaches of the Kennebec and Penobscot Rivers and North Channel at Eastport.

b. Establishing specific tugboat horsepower requirements.

c. Requiring oil vessels to be fitted with towing capabilities.

d. Recommending tug maneuvering techniques.

e. The Commission also recommends that the ongoing Commission monitor USCG progress on tugboat requirements.

5. Recreational Boating Safety

If public education does not solve the problem of recreational boating safety in the presence of large tankers, it may be necessary to consider boater safety training or licensing by law. It is recommended that the ongoing commission monitor these issues.

D. Scenarios and Planning for Oil Spills (also see Chapter V and Appendix G)

Findings: Worst-Case and Other Scenarios

The new federal Oil Pollution Act of 1990 specifies a worst-case scenario of loss of an entire vessel in adverse weather.

The Commission found that for the Maine coast, loss of the entire vessel of the largest size calling at each port would result in "worst-case" spills of the following sizes:

St. John-bound, offshore	90 million gallons
Portland/Casco Bay area	30 million gallons
Portsmouth-Kittery area	13 million gallons
Penobscot Bay/River area	11 million gallons
Eastport area (bunker fuel)	100 thousand gallons
Elsewhere (diesel fuel)	30 thousand gallons

The Commission also found several other examples of severe spill scenarios that should be considered in response plans:

Loss of 2 cargo tanks (Portland)	6 million gallons
Largest historical spills (anywhere)	1 million gallons
Major spills (anywhere)	100 thousand gallons

Recommendations: Worst-Case and Other Scenarios

6. Worst-case scenario

The Commission recommends that the State marine spill response plan address a range of severe spill scenarios for each of the four oil traffic port areas. These should include spills of 100 thousand gallons, 1 million gallons, 6 million gallons, and a worst-case scenario of 11 to 30 million gallons or more (representing loss of an entire vessel of the largest size calling at the particular port). The plan should also address spills up to 100 thousand gallons of bunker fuel in Eastport and spills of diesel fuel up to 30 thousand gallons anywhere along the coast. All these scenarios should include both favorable and adverse weather variations.

Findings: Contingency Plans

There are many oil spill contingency plans at different levels of government, as listed below. Most of these plans are general in nature and some have lists of equipment and personnel. Typically they are not in the form of an emergency operations manual. Contingency plans applicable in Maine include:

- The US-Canada Joint Plan, Atlantic Annex, as updated in 1989; it was exercised off St. John in 1988, and off Portland in 1990;
- the National Contingency Plan, as published in the Code of Federal Regulations; it was updated in 1990;

- the First Coast Guard District regional plan, which is being updated;
- the US Coast Guard, Maine- New Hampshire local plan, which is being updated by the Marine Safety Office in Portland; it was exercised in Portland in 1989 and Penobscot Bay in 1990;
- the State of Maine doesn't have a published plan as such, but DEP has a list of resource people and phone numbers.
- Oil terminals also have contingency plans, and vessels will be required to have them under the new federal law.

The Commission found a need for a comprehensive state contingency plan for marine oil spills, and a need for some improvement in other plans. The Commission found that the Coast Guard and DEP appear to work well together, but that there is some lack of clarity as to the lines of responsibility.

The Commission found the exercises of existing response plans have identified some inadequacies, such as incompatibility of communications equipment, incompatibility and occasional improper deployment of booms.

The Commission also found that further development of operational contingency plans would be helpful, as would updating and exercising the plans regularly.

The Commission also found some confusion between the statutory roles of the Maine Emergency Management Agency and DEP in the case of an oil spill emergency, although the agencies report that they have sufficient role definition.

Recommendations: Contingency Plans

7. State Marine Oil Spill Contingency Plan

The Commission recommends that DEP be required to develop a State marine oil spill contingency plan by September 1, 1991. The plan should address a range of scenarios in each major port, including worst-case scenarios as identified above in adverse weather. The plan should be coordinated with and take into account all available response resources: federal and private as well as state. The plan shall at least do the following:

a. review the federal plans to identify any gaps or voids;
b. identify who is responsible for different sizes of spills;
c. establish a clear chain of command, including consideration of the need for a state oil spill coordinator;
d. list response equipment requirements and availability, storage capacity, back up equipment;
e. list personnel requirements and availability;
f. evaluate the possibility of pre-positioned spill response teams;

g. provide for sensitive area identification and protection;
h. identify resources for wildlife rehabilitation;
i. establish criteria for use of dispersants and other mitigation techniques;
j. identify facilities for disposal of oily debris (in consultation with the Maine Waste Management Agency; and
k. identify facilities for separation, transport and storage of recovered oil.

The initial version of the plan should be developed using informal procedures with some public input to meet the September 1, 1991, deadline. Further refinements can take place in subsequent years, and should be adopted by rule.

8. Terminal and Vessel Response Plans

The Commission recommends that:

a. Terminals should be required in state law to exercise terminal response plans at least every year.

b. Vessels and terminals should be required to file with the State, federal contingency plans filed pursuant to the Oil Pollution Act of 1990.

9. Maine Emergency Management Agency

The Commission recommends that the statute be amended to clarify the role of the Maine Emergency Management Agency (MEMA) relative to DEP in an oil spill emergency.

In consideration of MEMA's expertise and resources for any emergency situation, this could best be accomplished by amending 38 MRSA §547 and 37-B MRSA §742 to distinguish between pollution response activities (i.e. oil clean-up, protection of sensitive areas and liaison with Coast Guard and industry efforts), over which DEP would be in charge and emergency support services (i.e. drinking water, volunteers, emergency housing, communications and coordination among state agencies), over which MEMA would be in charge.

E. Response to Oil Spills (also see Chapter VI and Appendix H)

Findings: Response

The Coast Guard Marine Safety Office in Portland has found the maximum spill response capability in the first 24 hours, including state, federal and contractor capabilities to be 100,000 to 200,000 gallons in favorable weather. The US Coast Guard has only 2 strike forces, one in Alabama and one in California. These have equipment for somewhat larger spills, but it would take at least 2 days for either to be deployed at a spill in Maine.

The Commission found that Maine is not ready to respond to a catastrophic spill of a million gallons or more or even a major spill in the range of 100,000 to 1,000,000 gallons, although Maine is somewhat ready to respond to small and medium spills of under 100,000 gallons in good weather.

The Commission found that it may take 2 to 3 years before the new recovery and containment equipment to be provided by the industry through MSRC is in place. In the meantime, the State will continue to be under-equipped.

The Commission found that even at the 100,000 gallon level there were inadequacies including:

- infrequent training of responders;
- incompatibility of equipment;
- insufficient pre-planning for mitigation measures such as the use of dispersants, bioremediation and burning.

The Commission found that use of mitigation measures can be effective, but their use usually requires approval by a committee such as the Regional Response Team, because they typically trade one environmental impact for another (surface pollution dispersed to water column; water pollution converted to air pollution; etc.) However, because mitigation measures are only effective soon after the spill, a rapid decision process is needed if they ever are to be used. The Commission found that New York and New Jersey have signed an agreement with the Coast Guard specifying where and under what conditions dispersants may be used.

Oil spill debris is considered a "special waste" and its disposal is essential to the clean-up effort. Disposal of this waste is regulated by DEP: small quantities can go into municipal waste facilities, but anything over 500 cubic yards must either be incinerated or disposed of in a special waste landfill.

Recommendations: Response

10. Response Equipment

The Commission recommends that, in connection with the State marine oil spill contingency plan, DEP consider the need for additional equipment and supplies for responding to oil spills in the State and to determine whether DEP, the oil industry or the federal government should supply them. DEP shall take into account the extent and timing of equipment purchases by the Coast Guard and the MSRC in order to ensure compatibility and avoid duplication of equipment.

The DEP review should specifically address, with the assistance of experienced consultants, as appropriate: (1) the acquisition of additional skimming capacity, either large skimming vessels or equipment to be deployed from other vessels for open-ocean use; (2) the possibility of locating large scale skimming equipment at Maine Maritime Academy and Southern Maine Technical College for

training purposes, and possibly for spill response; (3) the acquisition of fire containment boom; (4) the acquisition of other boom; and (5) the acquisition of barge capacity for recovered oil.

The Commission recommends that DEP proceed without delay to make sure the equipment recommended is available, through industry sources or if necessary by direct acquisition, and report their findings to the ongoing Commission by September 1, 1991.

11. Response Cooperatives

The Commission recommends that:

a. the oil terminals in each major port be encouraged to form active, effective response cooperatives;

b. the ongoing Commission monitor those developments.

12. Mitigation Measures

The Commission recommends that DEP in consultation with the Coast Guard and other responsible agencies, develop as soon as possible preapproved criteria and procedures for use of dispersants, in-situ burning and bioremediation. These may include water depth, sea-state, wind, temperature and location, and should also include a list of those individuals who make the final decision on their use. It may be desirable to preapprove dispersant tests of a certain size on any spill outside sensitive or shallow areas. The Commission recommends that these criteria and procedures take the form of an agreement between the State of Maine and the Coast Guard, and that they initially be adopted after an informal public hearing and report to the ongoing commission but that they be finally adopted through rulemaking.

13. Oil Spill Debris

The Commission recommends that DEP review and report to the ongoing Commission by June 30, 1991 on the availability of facilities for disposal of oily debris.

F. Sensitive Areas and Wildlife Rehabilitation (also see Chapter VII, and Appendix I)

Findings: Sensitive Areas

The Commission found that sensitive area information exists, but much of it is outdated and in rather inaccessible hard-copy form. The Commission also found that sensitive area protection priorities have not been set. Priorities would be set on an ad hoc basis in the event of a spill.

The Marine Spill Response Corporation has expressed some interest in developing a spill trajectory tracking system, at least for Casco Bay. The State of Rhode Island has had some success with this type of computer system. This would help in predicting the movement of a spill and in deciding which sensitive areas to protect.

Recommendation: Sensitive Areas

14. Sensitive area data management and mapping (see Appendix I for further details)

The Commission recommends that:

a. DEP be required to conduct a program of sensitive area mapping, with the assistance of MGS, IF&W, DMR, SPO, and GIS;
b. a special allocation of $350,000 per year be established in the Surface Oil Cleanup Fund for this purpose;
c. three positions be established for this effort, one each in DEP, IF&W, and DMR;
d. the sensitive area database be computerized and integrated with GIS;
e. DEP be required to pursue and authorized to accept funds from federal and private sources for this purpose;
f. this effort be coordinated with those of other entities, public and private;
g. the sensitive area database be updated regularly;
h. the initial effort be to complete the base maps and to have existing coastal resource data entered on GIS, within 3 years.

The proposed budget to support this recommendation is based on initial submissions by the departments at the last meeting of the Commission. The Commission supports funding as necessary for the program, but did not have a chance to conduct a detailed review of the figures. The Commission is relying on the legislative process to provide that detailed review before final adoption of a budget.

15. Sensitive Area Priorities

The Commission recommends that DEP establish sensitive area protection priorities or set up a mechanism to do so, with the advice of the ongoing Commission.

16. Spill Trajectory Tracking

The Commission recommends that DEP evaluate the cost and feasibility of and consider establishing a computerized spill trajectory tracking and forecasting system after the sensitive area maps are in place.

Findings: Wildlife Rehabilitation

The Commission finds that there is no wildlife rehabilitation plan or capacity in Maine, although IF& W reports that there are 80 people trained to do this work (most of them veterinarians).

The Commission finds that because wildlife rehabilitation is a visible and socially-charged issue in any oil spill, it may be prudent to develop a network of trained personnel to manage volunteers.

Recommendations: Wildlife Rehabilitation

17. Wildlife Rehabilitation

The Commission recommends that the Department of Inland Fisheries and Wildlife be required to develop a plan that identifies and provides resources for wildlife rehabilitation. This should be integrated with the State spill response plan, but be developed separately. It should consider:

a. training programs;
b. volunteer coordination systems;
c. establishment of rehabilitation sites;
d. equipment and resource needs and inventories; and
e. procedures for capture, transport, cleaning and rehabilitation.

G. Funding (also see Chapter VIII and Appendix J)

Findings: Funding

The Maine Coastal and Inland Surface Oil Clean-up Fund has been financed through a fee of 3 cents per barrel on crude oil or petroleum products entering the State. For 6 months beginning in August 1990, the fee was increased to 4 cents per barrel to purchase additional spill response equipment, but it is scheduled to return to 3 cents in February, 1991. The fund is a revolving fund, capped at $6 million, but the balance has averaged only $3.5 million in recent years. Expenses have exceeded revenues since 1983, due to expenditures for inland spills and groundwater pollution cases and startup money provided to the Groundwater Oil Clean-up Fund. The fund may be used for: removal; remediation; third party damages; administration, personnel, and equipment; and research. In the event of a spill, costs are paid from the fund. Then reimbursement is sought from the responsible parties, although it is not always collected.

The new federal Oil Pollution Act of 1990 increases the limits of the Oil Spill Liability Trust Fund to $1 billion per incident. That fund is financed by a 5 cent per barrel tax on domestic and imported crude oil. The fund may be used for removal, restoration, and administration, as well as uncompensated economic damages. However, the regulations implementing the fund have not yet been developed.

The Commission found that:

- The Maine fund appears to work well for small spills, but it is unclear what would happen if costs exceeded the cap.
- In view of the many activities identified in this report which may require State funding, it would be premature to let the fee revert to the 3 cents level until a full evaluation of the needs is complete.
- The use of the same Surface Oil Clean-up Fund for both inland spills and coastal spills is ripe for review.
- The Surface Oil Clean-up Fund helped start the Groundwater Oil Clean-up Fund with a non-repayable loan of $500,000 in 1985-86.
- About $2.5 million in uncollected reimbursements is due to the Surface Oil Clean-up Fund from spillers.
- It is not yet clear how the revised federal fund will mesh with the State fund.

Recommendations: Funding

18. Maine Coastal & Inland Surface Oil Clean-up Fund

The Commission recommends that:

a. the State retain the present fee of 4¢ per barrel, pending further review of the needs of the fund and the uses of the fund; and

b. the ongoing Commission act as an advisory committee for the fund for the time being, while considering establishment of a permanent advisory committee. The review should consider the equity of coastal versus inland uses of the fund and possible establishment of separate coastal and inland surface funds, with a report to the 2nd Regular Session of the 115th Legislature.

19. Repayment by Groundwater Oil Clean-up Fund

The Commission recommends that the statutes be amended to repay within the next five fiscal years the $500,000 that the Groundwater Oil Clean-up Fund "borrowed" from the Surface Oil Clean-up Fund.

20. Collection of Reimbursements

The Commission recommends that:

a. DEP be given additional authority to hire attorneys to collect overdue reimbursements from spillers, and that the spillers be assessed the collection costs; and

b. DEP investigate establishing an administrative procedure to allow their own non-legal personnel to pursue smaller undisputed claims in court.

21. Federal Oil Spill Liability Trust Fund

The Commission recommends that the ongoing Commission review and make recommendations to update Maine's statutes to incorporate the availability of response money and damage compensation by the federal fund. To accomplish this, the Commission needs to track requirements and implementation of the federal fund to identify redundancies, gaps, and opportunities for Maine with regard to the State fund.

H. Liability for Oil Spills (also see Chapter IX and Appendix K)

Findings: Unlimited liability

Under federal law, for oil spills within the 200 mile economic zone, the owners of vessels are liable for removal costs and expenses up to $1200 per gross ton, and the overseers of onshore facilities are liable up to a limit which may be as high as $350 million. Under Maine law, the spiller is strictly liable for spills within State waters (12 miles from shore), with no dollar limit, without regard to fault. The terminal operators are also liable for vessels within State waters and destined for their facilities. Previously, federal admiralty law may have preempted state laws and limited the liability of vessels to the value of the vessel and cargo.

Eighteen of the 24 coastal states, including Maine, have unlimited liability. These include: AL, AK, CA, CT, GA, HA, LA, ME, MD, MA, MI, NH, NC, OR, PA, RI, SC, and TX. Six have limited liability, including: DL, FL, NJ, NY, VA, and WA (only on natural resources). (See Appendix K)

The new federal law allows unlimited liability under state laws to apply. The industry has suggested that unlimited liability will lead to transport of petroleum in Maine waters by smaller, less responsible companies which have less to lose. The Commission found that there does appear to be a trend towards smaller shipping companies, but there is no indication of lesser care at this time.

Recommendations: Unlimited Liability

22. Unlimited Liability

The Commission recommends that the ongoing commission study the impact of Maine's present unlimited liability on the potential for oil spills in Maine waters due to its effect on the structure of shipping companies and on the choice of ships.

Findings: Responder Liability

Under Maine law, oil spill responders that are not compensated are not liable for their actions during a clean-up unless they are willfully or grossly negligent. Responders that are paid for their work are fully liable under the strict liability standard. The new industry-sponsored Marine Spill Response Corporation will enjoy immunity from liability, except in case of gross negligence etc., because it is a non-profit corporation. They intend to employ commercial contractors and desire that immunity be extended to those response contractors and others hired to respond to oil spills.

The Commission struggled with the issue of responder liability, perhaps more than any other, but those not usually in favor of immunity were convinced that oil spills are a special case and that some immunity would be necessary to enlist sufficient responders, especially during the critical early days after a spill. As a result, the Commission is recommending a limited form of immunity, with conditions similar to those of the federal Oil Pollution Act of 1990.

The Commission debated whether to apply a threshold of negligence or gross negligence to responder liability. (Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, while gross negligence is very great negligence, or the absence of even slight diligence, or the lack of even scant care, typically with reckless disregard of the consequences).* Members noted the difficulty of defining what is "reasonable care" in the crisis atmosphere of an oil spill, and the majority of the Commission finally settled on a threshold of gross negligence for the purpose of introducing legislation. It is expected that the Legislature will carefully review the implications of this choice and the other details of the proposed bill before taking final action.

The Commission also noted that the question whether a particular action by a responder was in conformity with a contingency plan is not as clear as might at first appear, but is subject to debate and litigation. Nevertheless, the majority of the Commission decided to retain the conformity clause as a condition for responder immunity.

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*Paraphrased from Black's Law Dictionary, 5th ed., Henry Campbell Black, West Publishing Co., St. Paul, Minn. (1979)

Recommendations: Responder Liability

23. Responder Liability

The Commission recommends that the statute be amended to exempt responders from liability except in cases of gross negligence, willful misconduct, personal injury or death, provided that the response is consistent with federal or state contingency plans or in accordance with direction by federal or state authority. Responder liability would be limited to the incremental damage they cause.

Some members of the Commission were concerned that limiting liability might result in a reduced standard of care, and preferred a threshold of simple negligence. Others were concerned that consistency with a plan might be hard to determine in an emergency situation.

Findings: Right of Contribution

Under Maine's strict liability law, one party may end up paying the full reimbursement to the State. That party would likely seek contributions from the other responsible parties. The Commission found that the right of contribution is reasonable, but had some doubts whether it clearly exists in present law.

Recommendations: Right of Contribution

24. Right of Contribution

The Commission recommends that the statutes be amended to enact an explicit right of contribution to allow an oil terminal facility held liable for costs resulting from a spill by a carrier destined for that facility to recover those costs from the carrier.

I. General Items (also see Chapter X and Appendix L)

Findings: The Commission to Study Maine's Oil Spill Clean-up Preparedness

As described in the Introduction to this report, there are a number of other efforts to address oil spill prevention, planning and response besides the efforts of this Commission. These each will have a significant effect on the State's overall readiness. The Commission found that these efforts are responsive to the need, but they are long overdue and will take one to three years to fully develop. Therefore, continued state monitoring of and input to these efforts will be important.

This Commission is scheduled to finish work by November 1, 1990. The Commission still has much of the $90,000 originally budgeted and could contract to have consultants address some of the

issues that have been identified. The Commission found that the federal Oil Pollution Act of 1990 is a good framework to address oil pollution planning and response but many of the details and requirements have not been fleshed out. It may take several years before all the regulations are promulgated and the system is well-defined.

Recommendation: The Commission to Study Maine's Oil Spill Clean-up Preparedness

25. Continuation of the Commission

The Commission recommends that the life of this Commission be extended until June 30, 1992, to continue the study of oil spill planning and response and review implementation of the new federal law, and taking advantage of the existing Commission's institutional memory. This should be an emergency bill that allows the Commission to retain unexpended funds, and requires a report to the 2nd Regular Session of the 115th Legislature with recommendations and proposed legislation. Staff support would be provided by DEP when the Legislature is in session, and would be requested from the Legislative Council during the Legislative interim between regular sessions.

Findings: Department of Environmental Protection

The Commission found that many of the recommendations above will require more DEP staff, and additional expenditures from the Surface Oil Clean-up Fund.

Recommendation: Department of Environmental Protection

26. DEP Staff and Funding

The Commission recommends that sufficient funds be allocated from the Coastal and Inland Surface Oil Cleanup Fund to support the initiatives recommended in this report, and that sufficient persons be hired, whether as state employees or as contract personnel to carry out these efforts without delay.

Findings: Interstate/ Interprovincial Cooperation

The Commission found that the West coast states and British Columbia have a cooperative agreement under which they jointly developed a plan for improving oil spill prevention and response.

The Commission found that, in 1989, the governments of the States and Provinces bordering the Gulf of Maine signed a cooperative agreement to protect and conserve the renewable and non-renewable resources of the Gulf for the use, benefit and enjoyment of all their citizens, including generations yet to come. That agreement establishes a Gulf of Maine Council on the Marine Environment to discuss and act upon environmental issues of common concern. Each state or province has 2 representatives; Maine's representatives are the Commissioner of DEP and the Director of the State Planning Office.

Recommendations: Interstate/ Interprovincial Compact

27. Interstate/Interprovincial Compact

The Commission recommends that DEP, in consultation with the Gulf of Maine Council on the Marine Environment, pursue a response agreement or compact with the other states and provinces on the Gulf of Maine, and report to the ongoing Commission by July 1, 1991, on their progress in doing so.

APPENDICES

A. Public Law 1989, chapter 868, Establishing the Commission
B. Proposed Legislation
C. Commission Members and Interested Parties
D. Major Oil Ports on or near the Maine Coast
E. Oil Spills in Maine and Elsewhere
F. USCG Port Safety Forum Recommendations
G. USCG Local Contingency Plan (excerpts)
H. Typical Oil Spill Clean-up Devices
I. Sensitive Area Subcommittee Recommendations
J. Financial Data: Maine Surface Water Fund
K. Coastal State Statutes Regarding Oil Pollution Liability
L. Interstate/Interprovincial Agreement on the Gulf of Maine
M. Bibliography

(Appendices C through M are bound separately, and are available on request)

APPENDIX A

Excerpts from PL 1989, c. 868 establishing the Commission to Study Maine's Oil Spill Preparedness, effective April 19, 1990.

CHAPTER 868

H.P. 1691 - L.D. 2341

An Act to Enhance the Ability of the State to Respond to Oil Spills

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Maine's ability to respond to a catastrophic oil spill needs to be reviewed; and

Whereas, this Act sets up a mechanism to accomplish that review; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

* * *

Sec. 11. Commission established; membership. The Commission to Study Maine's Oil Spill Clean-up Preparedness is established and is composed of the following 15 members:

1. One Senator appointed by the President of the Senate;

2. One member of the House of Representatives appointed by the Speaker of the House of Representatives;

3. Three members representing the marine fisheries interest, including the lobster industry, aquaculture industry and sardine industry, appointed jointly by the President of the Senate and the Speaker of the House of Representatives;

4. Two members representing the general public appointed jointly by the President of the Senate and the Speaker of the House of Representatives;

5. The Commissioner of Environmental Protection or the commissioner's designee;

6. Two members representing the petroleum industry appointed by the Governor;

7. One member familiar with oil spill technology appointed by the Governor;

8. One naval architect appointed by the Governor;

9. One member with expertise in coastal geology appointed by the Governor;

10. One member with expertise in fisheries biology appointed by the Governor; and

11. One member with expertise in coastal wildlife habitat appointed by the Governor.

Sec. 12. Appointments; meetings. All appointments must be made no later than 30 days after the effective date of this Act. The appointing authorities shall notify the Executive Director of the Legislative Council when the appointments have been made. The first meeting must be held by June 15, 1990, and must be called by the Chair of the Legislative Council. The commission shall select a legislative member as chair.

Sec. 13. Duties. The commission shall hold a public hearing and meet as needed to study Maine's oil spill clean-up preparedness. Specifically, the commission shall review and make recommendations on:

1. Maine's regulatory and statutory framework for preventing, planning for and responding to oil spills in the marine environment;

2. The financial adequacy of the Maine Coastal and Inland Surface Oil Clean-up Fund to address the potential risks and liabilities for cleaning up spills and the adequacy of the fund to compensate 3rd parties;

3. Technical and planning strategies to prevent oil spills; and

4. The State's response capacity for a worst case scenario at major vessel traffic areas and vessel facilities along the Maine coast. This evaluation must include: an assessment of probable locations for oil spills; a description of a worst case scenario at each site; the equipment and resources available to deal with a potential disaster; and recommendations for changes to any contingency plans, equipment and resources necessary to take corrective action.

Sec. 14. Report. The commission shall submit its report and recommendations, together with any recommended legislation, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council by November 1, 1990.

Sec. 15. Staff assistance. The commission may request staff assistance from the Legislative Council.

Sec. 16. Reimbursement. The legislative and public members of the commission are entitled to legislative per diem and expenses for the days of attendance at commission meetings upon request from the Executive Director of the Legislative Council. The Executive Director of the Legislative Council shall administer the commission's budget.

Sec. 17. Consultants. The commission may hire consultants to provide needed expertise to evaluate and plan for Maine's oil spill clean-up preparedness.

Sec. 18. Allocation. The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the purposes of this Act.

	1989-90	1990-91
LEGISLATURE		
Commission to Study Maine's Oil Spill Clean-up Preparedness		
Personal Services	$770	$3,850
All Other	89,380	6,000
Provides funds for the per diem, travel, consultants and related expenses of the Commission to Study Maine's Oil Spill Clean-up Preparedness. Any unexpended funds lapse to the Maine Coastal and Inland Surface Oil Clean-up Fund upon completion of the study.		
LEGISLATURE TOTAL	$90,150	$9,850
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Coastal and Inland Surface Oil Clean-up Fund		
Capital Expenditures	$40,000	$320,000
Provides funds for a replacement containment boom budgeted in fiscal year 1990-91 and needed in fiscal year 1989-90 and other necessary capital equipment.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$40,000	$320,000
TOTAL ALLOCATIONS	$130,150	$329,850

Sec. 19. Effective date; repeal. Sections 4 and 5 of this Act take effect August 1, 1990, and are repealed February 1, 1991.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 19, 1990, unless otherwise indicated.

APPENDIX B

Proposed legislation

The Commission is proposing two bills to the 115th Legislature, as follows:

AN ACT to Extend the Commission to Study Maine's Oil Spill Clean-up Preparedness, and to Improve Marine Oil Spill Prevention, Planning and Response

proposed by the
Commission to Study Maine's Oil Spill Clean-up Preparedness,
under PL 1989, chapter 868

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Commission to Study Maine's Oil Spill Clean-up Preparedness has reviewed Maine's ability to respond to marine oil spills and has found that the response capability does not exist for a catastrophic oil spill along the Maine coast; and

Whereas, sweeping new federal legislation, the Oil Pollution Act of 1990, was just signed into law on August 18th; and

Whereas, there are major efforts underway to address marine oil spill prevention, planning and response by others including the U.S. Coast Guard, the Canadian Coast Guard, the Portland oil terminal operators, and the industry-sponsored Marine Spill Response Corporation; and

Whereas, there is a need for a continuing advisory body to monitor and evaluate these efforts, to study the effect of the new federal law, and to explore the relationship between the new federal fund and the Maine Coastal and Inland Surface Oil Clean-up Fund; and

Whereas, the fee which supports the Maine Coastal and Inland Surface Oil Clean-up Fund is scheduled to decrease from 4 cents to 3 cents per gallon in February 1991; and

Whereas, there is a need for the State to take further steps in oil spill prevention, planning, response, and sensitive area protection; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Part A

Continuation of the Commission to Study Maine's Oil Spill Clean-up Preparedness

Sec. A-1. PL 1989 c. 868 is amended in section 14 to read:

'**Sec. 14. Reports; sunset.** The commission shall submit its initial report and recommendations, together with any recommended legislation, to the Joint Standing Committee on Energy and Natural Resources and the Office of the Executive Director of the Legislative Council by November 1, 1990. The commission shall submit a follow-up report to the same authorities by November 1, 1991. The commission shall be disolved June 30, 1992. The continuing commission shall:

A. Track implementation of the Federal Oil Pollution Act of 1990 and regulations promulgated under it, and recommend to the Legislature and the Commissioner of Environmental Protection any appropriate statutory or regulatory changes;

B. Review opportunities and constraints of the new federal Oil Spill Liability Trust fund. Review and update Maine's statutes to incorporate the availability of response money and damage compensation from the federal fund;

C. Review expenditures and the priority for expenditures of the Maine Coastal and Inland Surface Oil Clean-up Fund and make recommendations to the Commissioner of the Department of Environmental Protection and the Legislature on how the Fund should be spent. The Commission shall also consider the establishment of a permanent advisory committee for this purpose. In making these recommendations, the Commission shall consider the advisibility of establishing separate coastal and inland surface funds;

D. Monitor development of the State's marine oil spill contingency plan by the Commissioner of Environmental Protection;

E. Identify needed additional response vessels and equipment and monitor the progress of The Department of Environmental Protection in obtaining them;

F. Monitor development of the state's sensitive area identification system;

G. Recommend resource protection priorities or a mechanism to establish them;

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

I. Monitor development of the state's wildlife rehabilitation plan;

J. Monitor the progress of the US Coast Guard and the Department of Environmental Protection on navigational risk assessments and spill prevention measures, including use of tugboats and other measures;

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

L. Study the impact of Maine's present unlimited liability standard on the potential for oil spills in Maine waters; and

M. Monitor the problem of public boating safety in the vicinity of oil vessels.'

Sec. A-2. PL 1989, c. 868 is amended by adding new sections 14-A, 14-B, and 14-C to read:

Sec. 14-A. Reports by Department of Environmental Protection

1. Quarterly reports. The Department of Environmental Protection shall report to the Commission to Study Maine's Oil Spill Clean-up Preparedness by June 30, 1991, and quarterly thereafter until June 30, 1992 on:

A. The progress of the department in revising its rules on marine oil spills;

B. The progress of the department in developing a State marine oil spill contingency plan; and

C. The progress of the department in developing a sensitive area identification and protection system.

2. Interstate/interprovincial compact. The department, in consultation with the Gulf of Maine Council on the Marine Environment, shall pursue a response agreement or compact with the other states and provinces on the Gulf of Maine, and report to the commission by July 1, 1991, on their progress in doing so.

3. Oily debris disposal facilities. The department shall report to the commission by June 30, 1991, on the availability of facilities for disposal of oily debris from a major oil spill.

4. Oil Spill prevention measures. The department shall study and report to the commission by September 1, 1991 on the possibility of additional state oil spill prevention actions such as vessel movement restrictions, shipboard inspections, and more stringent operating requirements for terminals. The department shall retain an experienced consultant to advise them on navigational and terminal risk assessment to support this effort.

5. Response equipment. The department shall, in connection with development of the state marine oil spill contingency plan, review and report to the commission by September 1, 1991, on its needs for specific response equipment, including booms, skimmers, sorbents, pumps, barges, dispersants and other spill control products, taking into account equipment that is or will be available from other sources. The report shall also specify the steps the department has taken to provide the needed equipment.

Sec. 14-B. Reports by Department of Inland Fisheries and Wildlife

The Department of Inland Fisheries & Wildlife shall report to the Commission to Study Maine's Oil Spill Clean-up Preparedness by June 30, 1991, and quarterly thereafter until June 30, 1992 on the progress of the department in developing a wildlife rehabilitation plan.

~~Sec. 14-C. Transition.~~ Members of the Commission to Study Maine's Oil Spill Clean-up Preparedness on November 1, 1990 shall continue to serve until reappointed or replaced by their respective appointing authorities.

Sec. A-3. Continuation of previous allocation. PL 1990 c. 868 is amended in section 18 to read:

'**Sec. 18. Allocation.** The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out the purposes of this Act.

	1989-90	1990-91
LEGISLATURE		
Commission to Study Maine's Oil Spill Clean-up Preparedness		
Personal Services	$ 770	$ 3,850
All Other	89,380	6,000
Provides funds for the per diem, travel, consultants and related expenses of the Commission to Study Maine's Oil Spill Clean-up Preparedness. ~~Any unexpended funds lapse to the Maine Coastal and Inland Surface Oil Clean-up Fund upon completion of the study.~~ Unexpended funds allocated in 1989-90 and 1990-91 for the Commission to Study Maine's Oil Spill Clean-up Preparedness shall be carried forward to fiscal year 1991-92. Any funds remaining on June 30, 1992, shall lapse and be returned to the Maine Coastal and Inland Surface Oil Clean-up Fund.		
LEGISLATURE TOTAL	$ 90,150	$ 9,850

	1989-90	1990-91
ENVIRONMENTAL PROTECTION, DEPARTMENT OF		
Maine Coastal and Inland Surface Oil Clean-up Fund		
Capital Expenditures	$ 40,000	$320,000
Provides funds for a replacement containment boom budgeted in fiscal year 1990-91 and needed in fiscal year 1989-90 and other necessary capital equipment.		
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$ 40,000	$320,000
TOTAL ALLOCATIONS	$130,150	$329,850

Part B

Prevention, Planning and Response Efforts by DEP and other State Agencies

Sec. B-1. 37-B MRSA §742 sub-§3 is enacted to read:

3. **Oil spill emergency proclamation.** In the event of a disaster due to an oil spill in coastal waters the Commissioner of Environmental Protection shall directly represent the Governor in all direct abatement, clean up and resource protection activities and in coordination with federal, industry and other states' response teams. The Maine Emergency Management Agency shall retain the other functions prescribed in subsection 1, paragraph C but shall have no supervisory authority over the Department of Environmental Protection in the conduct of response activities on the water.

Sec. B-2. 38 MRSA §546 sub-§4, ¶A is amended to read:

A. Operating and inspection requirements for facilities, vessels, personnel and other matters relating to licensee operations under this subchapter, including annual inspections of oil terminal facilities.

Sec. B-3. 38 MRSA §546 sub-§4, ¶E is amended to read:

E. Development and implementation of criteria and plans to meet oil and petroleum pollution occurrences of various degrees and kinds, including ~~periodic unannounced~~ the state marine oil spill contingency plan required under section 546-A. Those plans shall include provision for annual

drills, sometimes unannounced, to determine the adequacy of response plans and the preparedness of the response teams;

Sec. B-4. 38 MRSA §546 sub-§5 and 6 are enacted to read:

5. Facility Response plans. Every facility subject to licensing under this section shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under section 4202 of the Oil Pollution Act of 1990, or a statement that no such plan is required under federal law.

6. Vessel Response plans. Every tank vessel, as defined under section 2101 of title 56, United States Code shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under section 4202 of the Oil Pollution Act of 1990, or a statement that no such plan is required under federal law.

Sec. B-5. 38 MRSA §546-A is repealed and replaced by the following:

§546-A. State marine oil spill contingency plan

1. Plan. The Commissioner shall develop by September 1, 1991, a preliminary state marine oil spill contingency plan. The Commissioner shall hold a public hearing in the process of developing the plan.

2. Worst-case scenarios. The marine oil spill contingency plan shall address a range of scenarios, including spills of 100 thousand gallons, 1 million gallons, 6 million gallons, and the worst case scenario in each major port area, representing loss of an entire vessel of the largest size as follows, in both favorable and adverse conditions:

A. Portland, 30 million gallons;
B. Penobscot Bay and River, 11 million gallons;
C. Portsmouth, N.H., 13 million gallons;
D. St. John, N.B., 90 million gallons;
E. Eastport, 100 thousand gallons;
F. Elsewhere on the coast, 30 thousand gallons.

3. Contents of plan. The marine oil spill contingency plan shall include:

A. Designation of a State oil spill coordinator.

B. A clear definition of the roles of the Department of Environmental Protection, the industry and the U.S. Coast Guard in various circumstances as well as the roles of other state agencies including the Maine Emergency Management Agency.

C. A clear definition of the State role under the joint U.S.-Canadian agreement (CANUSLANT).

D. An inventory of oil spill response equipment available within the State.

E. A listing of sources for qualified, trained spill responders within the State.

F. Pre-approved criteria for use of dispersants, bioremediation and in-situ burning, developed in consultation with the Coast Guard and other responsible agencies, and the names of the individuals authorized to make the final decision for the state on their use.

G. Identification of sensitive areas and resources and management strategies to protect them.

H. Identification of resources for wildlife rehabilitation.

I. Identification of facilities for disposal of oily debris and for separation, transport and storage of recovered oil.

4. Considerations. In preparing the plan, the need for pre-positioned response teams and additional equipment shall be considered.

5. Rulemaking, review and revision. The Board shall adopt by rule by January 1, 1992, a state marine oil spill contingency plan based upon the preliminary plan developed by the Commissioner under subsection 1. The Commissioner shall annually review and make recommendations to revise the plan, and the Board shall act on those recommendations by rulemaking.

Sec. B-6 . 38 MRSA ss. 546-B and 546-C are enacted to read:

§546-B. Sensitive area identification and protection

1. Sensitive area identification and data management. The Commissioner of Environmental Protection, in consultation with the Departments of Marine Resources, Inland Fisheries and Wildlife and Conservation, the State Planning Office, the U.S. Fish and Wildlife Service, and other appropriate agencies and organizations, both public and private, shall assess the nature and extent of sensitive areas and resources in the marine environment that may be threatened by oil spills and shall develop a system to collect and maintain the necessary data.

2. Protection priorities. The board, in consultation with the Departments of Marine Resources, Inland Fisheries and Wildlife and Conservation and other appropriate agencies and organizations shall establish policies and guidelines to set priorities for protection of sensitive areas in the event of an oil spill.

3. Use of Geographical Information System. This effort shall be based on the State Geographical Information System (GIS) to the maximum extent practicable. The Commissioner of Environmental Protection will be responsible for the design, implementation, and execution of the marine oil spill prevention, planning and response program. The format and digital conversion of the data must comply with standards developed by the State GIS and data will be added to the State GIS database. The State GIS will provide technical assistance and serve as final repository for final GIS data. Development shall proceed in 3 phases, as follows:

A. Casco Bay pilot project to be completed December 31, 1991.

B. The Penobscot River/Bay area to be completed in 1992.

C. The remainder of the coastline to be completed in 1993.

§546-C. Wildlife rehabilitation plan

1. Wildlife rehabilitation plan. The Department of Inland Fisheries and Wildlife, in consultation with the Departments of Environmental Protection, Marine Resources, and Conservation, the U.S. Fish and Wildlife Service, and other appropriate agencies and organizations shall develop and implement a plan for rehabilitation of wildlife resources. This plan must include:

A. Policies and guidelines to address rehabilitation activities;

B. A mechanism for the use of volunteers, with due regard for their safety;

C. Identification of needed resources and facilities for rehabilitation efforts and an inventory of those available; and

D. Preliminary agreements with treatment centers or facilities.

2. Training. The Department of Inland Fisheries and Wildlife, in consultation with the Departments of Environmental Protection, Marine Resources, and Conservation, the U.S. Fish and Wildlife Service, and other appropriate agencies and organizations shall develop and implement training programs and training opportunities for volunteers and state and federal response personnel interested in wildlife rehabilitation.

Sec. B-7. 38 MRSA §547 is amended by adding after the first paragraph a new paragraph to read:

In the event of an oil spill emergency, the Commissioner of Environmental Protection shall represent the Governor in all direct abatement, Clean-up and resource protection activities and in coordination with federal, industry and other states response teams in accordance with 37-B MRSA §742, sub-§3.

Sec. B-8. 38 MRSA §551 sub-§1-A is enacted to read:

1-A. Sensitive area data management and mapping. The Legislature may allocate no more than $350,000 per annum of the amount then currently in the fund to mapping, data management, and computerization related to protection of sensitive areas and similar activities required under section 546-B. Such allocations shall be made in accordance with section 555.

Sec. B-9. 38 MRSA §551, sub-§4, ¶A as amended by PL 1989, c. 868, §4 and by PL 1989, c. 890, §B-119 is repealed and replaced by

4. Funding.

A. License fees are determined on the basis of 4¢ per barrel of unrefined crude oil and all other refined oil, petroleum products and their by-products, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel and diesel fuel, transferred by the licensee during the licensing period and must be paid monthly by the licensee on the basis of records certified to the commissioner. License fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund.

Sec. B-10. 38 MRSA §551, sub-§4, ¶D as amended by PL 1989, c. 868, §5 and by PL 1989, c. 890, §B-120 is repealed and replaced by

D. Any person who is required to register with the commissioner pursuant to section 545-B and who first transports oil in Maine shall pay fees that are determined on the basis of 4¢ per barrel for all refined oil, including #6 fuel oil, #2 fuel oil, kerosene, gasoline, jet fuel, diesel fuel and liquid asphalt transported by the registrant during the period of registration. Fees must be paid monthly by the registrant on the basis of records certified to the commissioner. Fees must be paid to the department and upon receipt by it credited to the Maine Coastal and Inland Surface Oil Clean-up Fund. The registrant shall make available to the commissioner and the commissioner's authorized representatives all documents relating to the oil transported by the registrant during the period of registration. This paragraph does not apply to waste oil transported into Maine in any motor vehicle that has a valid license issued by the department for the transportation of waste oil pursuant to section 1319-O and subject to fees established under section 1319-I.

Sec. B-11. 38 MRSA §551 sub-§6, ¶C is amended to read:

C. Requests for reimbursement to the fund if not paid within 30 days of demand ~~shall~~ may be turned over to the Attorney General for collection or may be submitted to a collection agency or agent or attorney retained by the department at the discretion of the department, notwithstanding Title 5, section 192.

Sec. B-12. PL 1989, c. 868, §19 is amended to read:

'**Sec. 19. Effective date~~; repeal~~.** Sections 4 and 5 of this Act take effect August 1, 1990~~, and are repealed February 1, 1991~~.'

Sec. B-13. PL 1985, c. 496, sec. 15 is amended in the second sentence to read:

'Any money borrowed shall be repaid with interest to the Maine Coastal and Inland Surface Oil Clean-up Fund before June 30, 1987, with the exception of $250,000 in fiscal year 1986 and $250,000 in fiscal year 1987~~ to be borrowed without repayment~~. That $500,000 shall be repaid without interest in five annual installments of $100,000 each, beginning in April, 1991.'

Sec. B-14 Allocation. The following funds are allocated from the Maine Coastal and Inland Surface Oil Clean-up Fund to carry out sensitive area data management and mapping. Any unexpended balances of allocations made from this fund on June 30, 1991 shall not lapse, but shall carry through June 30, 1992 to be used for the same purposes.

	1990-91	1991-92	1992-93
ENVIRONMENTAL PROTECTION, DEPARTMENT OF			
Sensitive Area Data Management & Mapping			
Positions	(1)	(1)	(1)
Personal Services	$ 10,000	$ 42,000	$ 45,000
All Other	43,000	48,000	$ 58,000
Capital Expenditures	45,000	____	____
Provides funding for an information systems manager position , GIS and oil spill response software, and GIS equipment, including workstation, plotter, digitizer, PC and printer.			
DEPARTMENT OF ENVIRONMENTAL PROTECTION TOTAL	$ 98,000	$ 90,000	$103,000
INLAND FISHERIES AND WILDLIFE, DEPT. OF			
Sensitive Area Data Management & Mapping			
Positions	(1)	(1)	(1)
Personal Services	$ 10,000	$ 39,000	$ 45,000
All Other	21,000	38,000	42,000
Capital Expenditures	34,000	_____	_____

Provides funding for a biologist I position, GIS software, and GIS equipment, including workstation, small plotter, digitizer, PC and printer.

DEPARTMENT OF INLAND FISHERIES & WILDLIFE TOTAL	$ 65,000	$ 77,000	$ 87,000

MARINE RESOURCES, DEPARTMENT OF
Sensitive Area Data Management & Mapping

Positions	(1)	(1)	(1)
Personal Services	$ 13,000	$ 53,000	$ 56,000
All Other	20,000	27,000	30,000
Capital Expenditures	20,000		

Provides funding for a Scientist II position, GIS software, digitizing contracts, and GIS equipment, including workstation and PC.

DEPARTMENT OF MARINE RESOURCES TOTAL	$ 53,000	$ 80,000	$ 86,000

CONSERVATION, DEPARTMENT OF,

MAINE GEOLOGICAL SURVEY
Sensitive Area Data Management & Mapping

All Other	$ 58,000	$ 52,000	$ 41,000
Capital Expenditures	7,000		

Provides funding for digitizing contracts and related expenses, and additonal computer storage.

GEOGRAPHIC INFORMATION SYSTEM
Sensitive Area Data Management & Mapping

Capital Expenditures	12,000	12,000	

Provides funding for additional computer storage

DEPARTMENT OF CONSERVATION TOTAL	$ 77,000	$ 64,000	$ 41,000
TOTAL ALLOCATIONS	$293,000	$311,000	$312,000

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect immediately upon approval.

STATEMENT OF FACT

This bill is proposed by the Commission to Study Maine's Oil Spill Clean-up Preparedness, under Public Law 1989, chapter 868. It is emergency legislation. There is a companion bill, An Act Regarding Liability for Oil Spills.

Part A of the bill continues the Commission to Study Maine's Oil Spill Clean-up Preparedness. To do this, the bill:

- extends the life of the Commission until June 30, 1992;
- extends the allocation of existing funds for the Oil Spill Commission until June 30, 1992. The bill does not allocate any new funds for the Commission;
- requires the Department of Environmental Protection to provide reports to the commission by June 30, 1991 and quarterly thereafter on: its progress in rulemaking; the state oil spill contingency plan; the sensitive area identification and protection system; the wildlife rehabilitation plan; the possibility of a Gulf of Maine oil spill compact; and the availability of oily waste disposal facilities.
- requires the Oil Spill Commission to report to the Legislature by November 1, 1991, on: the progress of the new federal, state, and industry response initiatives; the relationship between the new federal fund and the existing Maine Coastal and Surface Oil Clean-up Fund; and any recommendations for further state legislative or administrative action.

Part B of the bill requires increased oil spill response planning by DEP and other State agencies.

- Sections B-1 and B-7 clarify the relation between DEP and MEMA in the event of an oil spill emergency;
- Sections B-2 and B-3 require annual inspections and drills at licensed oil terminals;
- Section B-4 requires vessels and facilities to file federally-required contingency plans with DEP;
- Section B-5 (Sec. 546-A) requires DEP to prepare a state marine oil spill contingency plan, including a worst-case scenario;
- Section B-6 (Sec. 546-B) requires DEP to develop a computerized, GIS-based, sensitive area identification and protection plan, including guidance for protection priorities;
- Section B-6 (Sec. 546-C) requires IF&W to develop a wildlife rehabilitation plan;

- Section B-8 authorizes allocations up to $350,000 per year for sensitive area data management and mapping;

- Sections B-9, 10, and 12 retain the fee on oil coming into the state at 4 cents per barrel, rather than letting it revert to 3 cents on February 1, 1991, as scheduled. This fee is used to supportthe Coastal and Island Surface Oil Clean-up Fund.

- Section B-11 gives DEP additional authority to collect overdue reimbursements to the Maine Coastal and Inland Surface Oil Clean-up Fund;

- Section B-13 returns $500,000 within the next 5 years from the Groundwater Fund to the Surface Water Fund;

- Section B-14 makes the allocations for sensitive area data management and mapping for FY 1990-91, 1991-92, and 1992-1993, based on preliminary figures obtained from the departments.

AN ACT Regarding Liability for Persons Responding to Oil Spills

proposed by the
Commission to Study Maine's Oil Spill Clean-up Preparedness,
under PL 1989, chapter 868

Definitions

Sec. 1. 38 MRSA §542, sub-§4-A is enacted to read:

4-A. Federal contingency plan. "Federal contingency plan" means an area, regional, or local contingency plan for oil spill response prepared and published by the President under section 311(j) of the Federal Water Pollution Control Act as amended (33 USC 1321(j)).

Sec. 2. 38 MRSA §542, sub-§5-A is enacted to read:

5-A. National Contingency Plan. "National Contingency Plan" means the National contingency plan for oil spill response prepared and published by the President under section 311(d) of the Federal Water Pollution Control Act (33 USC 1321(d).

Sec. 3. 38 MRSA §542 sub-§9-A is enacted to read:

9-A. Responder. "Responder" means any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543, or in preventing, containing, cleaning up, removing or disposing of, or in attempting to prevent, contain, clean up, remove or dispose of any discharge of oil prohibited by section 543, except for any person who caused or is otherwise responsible for the actual or threatened discharge in the first instance.

Sec. 4. 38 MRSA §542, sub-§9-B is enacted to read:

9-B. State Contingency Plan. "State Contingency Plan" means a contingency plan for oil spill response prepared and published by the commissioner in accordance with this chapter.

Right of Contribution

Sec. 5. 38 MRSA §552 sub-§3 is enacted to read:

3. Right of recovery by licensee. Any licensee that is held liable for the acts or omissions of any carrier destined for the licensee's facilities pursuant to subsection 1 may recover in a civil action from the carrier, or any person responsible for those acts or omissions of the carrier, all loss, expense, damage or other liability incurred by the licensee for the acts and omissions of the carrier.

Responder Liability

Sec. 6. 38 MRSA §552, sub-4 is enacted to read:

4. Limited immunity for responders. Except for persons with immunity under chapter 14, and notwithstanding any other provision of law, the liability of any responder to a discharge of oil prohibited by section 543, or a substantial threat of a discharge, is governed by this section.

A. A responder is not subject to civil liabilities or penalties of any type for actions taken or omitted during the course of rendering care, assistance or advice consistent with the National Contingency Plan, a federal contingency plan, the state contingency plan, or at the direction of the federal on-scene coordinator or the commissioner unless:

(1) the responder is found guilty of gross negligence or willful misconduct; provided that any responder guilty of gross negligence or willful misconduct is liable only to the extent that the actions taken or omitted by the responder increase the costs or damages resulting from the spill; or

(2) the claim is for bodily injury to or death of a person.

B. The exemption of a responder under paragraph A does not affect the liability of any other person liable for the damages arising from the discharge, or from improperly executed response efforts.

STATEMENT OF FACT

This bill is proposed by the Commission to Study Maine's Oil Spill Preparedness, under Public Law 1989, chapter 868. There is a companion bill, An Act to Extend the Commission to Study Maine's Oil Spill Clean-up Preparedness, and to approve Marine Oil Spill Prevention, Planning and Response.

Sections 1 to 4 define certain terms and phrases.

Section 5 makes explicit the right of terminal operators to recover damages from a vessel that has spilled oil if the terminal ends up paying damages. Arguably, that right has previously existed implicitly in the law, but it is not entirely clear.

Section 6 grants additional immunity to oil spill responders. Under Maine law (38 MRSA ch. 14) persons assisting in the cleanup of hazardous materials including oil, that did not cause the discharge, and that are not compensated for other than out-of-pocket expenses, are exempted from liability except in cases of gross negligence, or reckless, wanton or intentional misconduct. This bill would extend similar immunity to oil spill responders that do work for pay, provided that they are not liable for the original spill, and provided that their actions are consistent with the appropriate federal or state contingency plan or direction from the responsible federal or state official.