

The Gulf of Mexico Oil Spill and the Oil Pollution Act of 1990

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Take Home Point: Major Oil Spills Promote Changes in the Law



Santa Barbara Oil Spill, 1969

- January 1969: Blowout at Union Oil's platform in the Santa Barbara channel off California
- 10 days and 80,000 to 100,000 barrels of oil = > 3 million gallons
- One of the sparks that led to the National Environmental Policy Act of 1969 and California's state-law equivalent

What the Oil Pollution Act Replaced

- Section 311 of the federal Clean Water Act, 33 U.S.C. § 1321
- Declares U.S. policy “that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States . . . or in connection with activities under the Outer Continental Shelf Lands Act”



Leaking *Exxon Valdez*, 1989

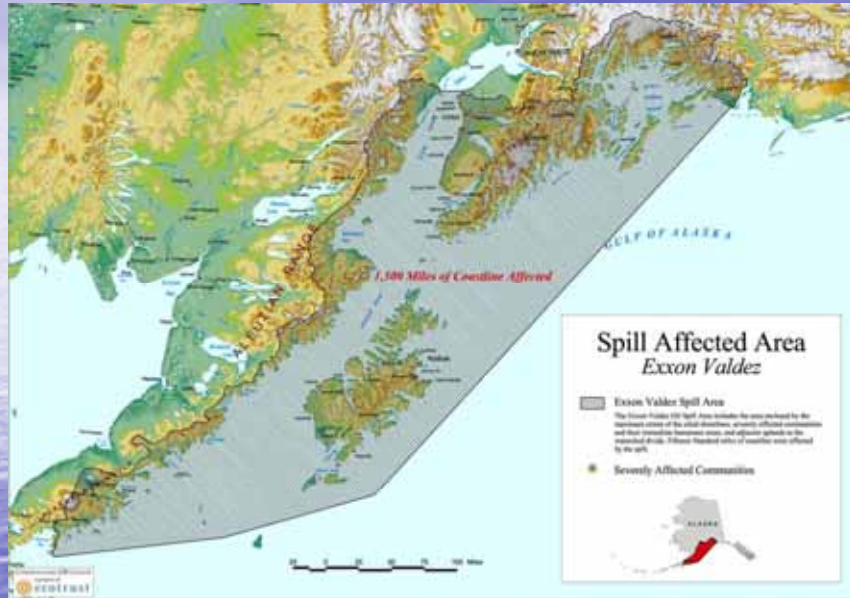
Clean Water Act § 311, con't

- Prohibits the discharge of oil into or upon the navigable waters or in connection with OCSLA activities "which may affect natural resources . . . in such quantities as may be harmful," as determined by the EPA.
- EPA promulgated regulations that included natural resources damages.



Oil-Soaked Otter in Alaska

Clean Water Act Oil Spill Liability



NOTE:
Private law remedies
PRESERVED.

- Class I Civil Penalties: \$10,000 per violation, up to \$25,000
- Class II Civil Penalties: \$10,000 per day, up to \$125,000
- Failure to Remove Oil: \$25,000 per day, up to 3X amount paid from the Oil Spill Liability Trust Fund to pay for cleanup.
- Failure to Comply with Regulations: \$25,000 per day
- Gross Negligence: At least \$100,000, but not more than \$3000 per barrel of oil.
- Liability for Cleanup & Removal:
 - Vessels: Actual costs incurred up to \$150 per gross ton of vessel or \$250,000
 - Onshore & Offshore Facilities: Actual costs incurred up to \$50,000,000; no cap if willful negligence or willful misconduct.

Exxon Valdez Leads to Oil Pollution Act of 1990 (OPA)

- 33 U.S.C. §§ 2701-2762
- “Notwithstanding any other provision or rule of law, . . . each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for removal costs and damages . . . that result from such incident.”



Exxon Valdez Cleanup on Alaska Shoreline

OPA "Responsible Parties" for Offshore Facilities



**April 2010 British Petroleum
Deepwater Horizon Platform Fire,
Gulf of Mexico**

- Lessee or permittee of the area in which the facility is located, OR
- Holder of a right of use and easement granted under state law or the OCSLA for the area in which the facility is located, if different from the lessee or permittee.
- NOT government owners of the submerged lands.

OPA "Removal Costs"

- "[T]he costs of removal that are incurred after a discharge of oil has occurred"
- "Removal" = "containment and removal of oil . . . From the water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches."



Deepwater Horizon Oil Slick

OPA "Damages"



**Oil-Soaked Bird Near
Deepwater Horizon Platform**

- Damages for injury to, destruction of, loss of, or loss of the use of, natural resources
- Damages to and economic losses as a result of damages to real and personal property.
- Damages for loss of subsistence use of natural resources
- Lost revenues, taxes, royalties, etc.
- Lost profits
- Net costs of providing increased or additional public services.
- Costs of assessing all of the above.

OPA Limitation on Liability

- OPA § 1004, 33 U.S.C. § 2704
- Offshore facility other than a deepwater port: “the total of all removal costs plus \$75,000,000”. The OPA also stresses that the owner or operator of an OCS facility is liable for all removal costs incurred by a government.
- No cap if the responsible party committed gross negligence, engaged in willful misconduct, or violated an applicable Federal safety, construction, or operating regulation.



**Gulf of Mexico Oil Spill
Worst Case Scenario**