

## CALIFORNIA COASTAL COMMISSION

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TO: Coastal Commissioners and Interested Parties

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SUBJECT: **Informational report on nontank vessel regulations to be implemented in early 2000 by the California Department of Fish and Game's (CDFG) Office of Spill Prevention and Response (OSPR).**

**Staff Note:** *Senate Bill 1644 (SB 1644) requires that after September 1, 1999, nontank vessel owners or operators planning nontank vessel transit in state waters must have an oil spill contingency plan submitted to and approved by the administrator for the Office of Spill Prevention and Response (OSPR). The OSPR administrator grants approval to a nontank vessel oil spill contingency plan based on its compliance with the requirements of the underlying nontank regulations; the nontank regulations are developed by the OSPR. Difficulties and delays in development of the OSPR nontank regulations resulted in the September 1 deadline passing without their implementation, or with the nontank vessel contingency plans having been filed.*

*Coastal Commission staff (Commission staff) used numerous formal and informal opportunities to comment on the nontank regulations as they went through their difficult evolution, yet many of the concerns expressed by Commission staff, and summarized in this report, remain. The OSPR recognizes many of the Commission staff concerns, but feels it cannot answer all the questions posed by Commission staff without further delays to implementation of the regulations. The OSPR has indicated it will proceed with implementation of the nontank regulations early in the year 2000.*

*However, the OSPR has agreed to support a future amendment to the nontank regulations provided that, among other things, an underlying data analysis is prepared those makes a compelling argument for an amendment. To that end, the two agencies are developing a Letter of Agreement (LOA) that will outline the timeline and goals of a multiagency workgroup effort that will provide data analysis and recommendations to the OSPR. To the degree the workgroup*

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*product supports nontank regulatory amendments, the OSPR will utilize it for that purpose.*

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## **BACKGROUND**

In the 1997-98 session, the California state legislature passed Senate Bill 1644 (SB 1644). Under the existing Lempert-Keene Seastrand Oil Spill Prevention and Response Act, tanker vessels (those carrying oil as cargo) entering the state's marine waters are to prepare and submit a vessel contingency plan to the administrator of the Office of Spill Prevention and Response (OSPR). The OSPR administrator is to review and approve that contingency plan before a tanker enters state marine waters. SB 1644, by adding Section 8670.32 to the Government Code, prohibits the operation of a nontank vessel (defined as self-propelled vessels greater than 300 gross tons that carry oil as fuel but not as cargo) from operating in the state's marine waters unless the nontank vessel owner or operator has an oil spill contingency plan submitted to and approved by the OSPR administrator. Those plans, which must rely on the OSPR regulations for their underlying guidance, were to be submitted to the OSPR on or before September 1, 1999.

In developing the nontank regulations, especially given the tight timeline imposed by SB 1644, the OSPR utilized as a model the regulations previously established for tanker contingency plans. However, the operational nature and setting for the tanker trade is substantially different than that for the nontank trade, as are the relative oil spill risks and the types of contingency plans that minimize risk. The regulations governing tankers did not therefore serve as an adequate model in developing the nontank regulations, although the OSPR endeavored through multiple redrafts of the nontank regulations to try and resolve discrepancies. In the process, the original September 1, 1999 deadline for implementation of the nontank regulations slipped considerably. The nontank vessel contingency plans, dependent as they were on the regulations, were therefore also not filed by September 1. The OSPR is now very anxious to get regulations finalized and implemented without further delay, and has indicated it will do so without resolving remaining Commission staff concerns.

## **COMMISSION STAFF CONCERNS**

There are large statewide and programmatic issues that affect and are affected by the proposed nontank vessel oil spill contingency plan regulations, many of which will take considerable time to resolve. Nevertheless, it is the opinion of Commission staff that fundamental restructuring and major revisions will be necessary before the regulations will satisfy the intent of the legislative requirements set forth in the governing laws to provide "best achievable protection" for California's coastal and marine resources.

Two major remaining concerns of Commission staff are as follows:

- Nontank vessels, with characteristic routes of travel that often put them as close as 4-6 miles from shore, are traveling outside the state's three-mile jurisdiction line. An oil spill accident involving these vessels nevertheless has a high potential to impact state waters. However,

the nontank contingency plan regulations only require plans – including an analysis of the risk of an accident – for vessels when they are within state waters. In practical application, the plans may only cover the nontank vessels as they enter or leave California ports (where response resources are readily available), and not address the risks of a spill occurring along the more isolated and vulnerable stretches of open California coastline.

- The nontank regulations in their current form require that owners-operators plan for an 18-hour response time to a disabled vessel or spill along California's "Balance of the Coast" areas (central and northern California). This is a response time standard established for the tanker vessels. Commission staff believes this standard is inappropriate for the nontank vessels. The multiagency effort that produced the 1997-98 Monterey Bay National Marine Sanctuary Vessel Routing plan, and its recommendations, demonstrate that resources to stabilize a disabled nontank vessel, even if it were traveling as far as 13-20 miles offshore, would need to reach the vessel in no more than 12 hours if the vessel were to be prevented from drifting ashore. Likewise, trajectories that model the path of oil spilled from a vessel 13-20 miles from shore would under many weather and current conditions be expected to impact the state waters and/or the shoreline and sensitive areas within at least 12 hours.

Commission staff believes that an 18-hour response time, as currently proposed under the nontank regulations, is inconsistent with existing data on the risk of a spill, the time it takes response resources to get to and stabilize a disabled vessel, the time expected for spilled oil to reach state waters and resources, and the time expected for response organizations to reach the spill site and contain the spill before it reaches shore. The 18-hour response time has been sufficiently demonstrated to be too long for vessels 13-20 miles from shore; it is certainly too long for those only 4-6 miles out. Therefore, Commission staff do not agree with the OSPR that the 18-hour response time set out in these regulations provide "best achievable protection" for the California's coastal and marine resources as required by the SB 1644 amendment to the Lempert-Keene-Seastrand Act (Government Code § 8670.32 and § 8574.1 *et seq.*).

## ACTIONS PROPOSED

In addition to the time constraints imposed on the OSPR by the legislature, the OSPR feels restricted in further modifying the regulations at this point for at least the following reasons:

- 1) The OSPR is not certain how to pursue the issue of state's jurisdiction over nontank vessels traveling outside state waters;
- 2) The OSPR does not feel it has the information necessary to determine appropriate disabled vessel or oil spill response times for the nontank industry;
- 3) The OSPR has not been able to fully assess the available inventory and readiness of tugs, rescue and assist vessels for use along California's central and north coasts, and;

- 4) The OSPR is in the process of evaluating the capabilities of various oil spill response organizations (OSROs) to contain and cleanup spills, including those originating in offshore waters.

Early in the year 2000, the OSPR plans to implement the regulations, without further modification to the draft of November 5, 1999. Commission staff has proposed the following steps as a way to help the OSPR address remaining information needs and thereby provide support for later regulatory amendment:

- 1) Commission staff is pursuing an opinion from the state Attorney General's office regarding the OSPR's authority to impose contingency plan regulations for nontank vessels traveling outside state waters, from which a spill would pose potential or actual threat to state waters and resources.
- 2) Commission staff is working with the OSPR on a Letter of Agreement (LOA) that will address the OSPR's information needs through a multiagency workgroup process. The workgroup will be tasked with providing data compilation and analysis of: 1) nontank vessel traffic patterns, 2) the probability of nontank vessel accidents, 3) locations and response times of oil spill response equipment and personnel, 4) the value of coastal and marine resources at risk from a spill, 5) the feasibility of protecting coastal and marine resources, and 6) emergency rescue and stabilization capability along the coast of California. It is intended that the workgroup begin meeting in early 2000 and produce a work product by July 2000. If the results of the workgroup analysis support the need to amend the nontank vessel contingency plan regulations, the OSPR will agree to author and support those changes.