

AMENDED IN SENATE AUGUST 12, 2008

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AMENDED IN SENATE JUNE 23, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

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CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2935**

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**Introduced by Assembly Member Huffman**  
**(Coauthors: Assembly Members DeSaulnier, Hancock, Laird, Leno,**  
**Mullin, Ruskin, and Wolk)**

February 22, 2008

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An act to add Section 5654 to the Fish and Game Code, and to amend Section 8574.7 of the Government Code, relating to toxic spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 2935, as amended, Huffman. Oil spill prevention and response. The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. Existing law requires the administrator to amend, on a triennial basis, the California

oil spill contingency plan containing specified elements, including an environmentally and ecologically sensitive element for the preparation and distribution of maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast.

This bill would additionally require the environmentally and ecologically sensitive element to include the identification and prioritization of environmentally and ecologically sensitive areas, a plan for protection actions to be taken in the event of an oil spill in those areas, the location of available response equipment and personnel to deploy the equipment to protect priority environmentally and ecologically sensitive areas, and a program for testing protection strategies for each of the priority environmentally and ecologically sensitive areas. The bill would additionally require the California oil spill contingency plan to include an element that would consider the utilization of specified private working craft and mariners in plans for containment and cleanup.

Existing law with regard to fish generally makes it unlawful to deposit in, permit to pass into, or place where it can pass into, the waters of this state any of certain listed petroleum products. Existing law authorizes the Department of Fish and Game to clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, to order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

This bill would require the Director of Fish and Game, within 24 hours of notification of a spill or discharge, as described, to close certain waters to the take of all fish and shellfish. *The bill would provide that closure is not required if the Office of Environmental Health Hazard Assessment (OEHHA) finds, within 24 hours of the notification, that a public health threat does not or is not likely to exist.* The bill would require the director, in consultation with the ~~Office of Environmental Health Hazard Assessment~~ OEHHA, to make specific determinations with regard to the spill or discharge within 48 hours. The director would be required, after complying with the above provisions, but in no event more than 7 days from notification of the spill or discharge, to order expedited tests of fish and shellfish known to be taken for commercial,

recreational, or subsistence purposes in the closed area, to determine the levels of contamination, if any, and whether the fish or shellfish are safe for human consumption. The bill would require, if the ~~Office of Environmental Health Hazard Assessment recommends to~~ *OEHHA notifies* the director ~~and he or she concurs~~, within 24 hours of receiving the ~~results of the tests, and subject to certain findings~~ *notification*, that the closed areas be reopened. The director would be authorized to immediately reopen the closed area and waive the testing requirements, if the director determines in the assessment that there is no significant risk to the public or to the fisheries. The bill would require the director to seek full reimbursement from the responsible party or parties for the spill or discharge for all reasonable costs incurred by the department in carrying out these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5654 is added to the Fish and Game Code,  
 2 to read:  
 3 5654. (a) (1) Notwithstanding Section 7715 *and except as*  
 4 *provided in paragraph (2)*, the director, within 24 hours of  
 5 notification of a spill or discharge, as those terms are defined in  
 6 subdivision (aa) of Section 8670.3 of the Government Code, where  
 7 any fishing, including all commercial, recreational, and nonlicensed  
 8 subsistence fishing, may take place, or where aquaculture  
 9 operations are taking place, shall close to the take of all fish and  
 10 shellfish all waters in the vicinity of the spill or discharge or where  
 11 the spilled or discharged material has spread, or is likely to spread.  
 12 In determining where a spill or discharge is likely to spread, the  
 13 director shall consult with the Administrator of the Office of Spill  
 14 Prevention and Response. At the time of closure, the department  
 15 shall make all reasonable efforts to notify the public of the closure,  
 16 including notification to commercial and recreational fishing  
 17 organizations, and posting of warnings on public piers and other  
 18 locations where subsistence fishing is known to occur. The  
 19 department shall coordinate, when possible, with local and regional  
 20 agencies and organizations to expedite public notification.  
 21 (2) *Closure pursuant to paragraph (1) is not required if, within*  
 22 *24 hours of notification of a spill or discharge, the Office of*

1 *Environmental Health Hazard Assessment finds that a public health*  
2 *threat does not or is unlikely to exist.*

3 (b) Within 48 hours of notification of a spill or discharge subject  
4 to subdivision (a), the director, in consultation with the Office of  
5 Environmental Health Hazard Assessment, shall make an  
6 assessment and determine all of the following:

7 (1) The danger posed to the public from fishing in the area where  
8 the spill or discharge occurred or spread, the danger of consuming  
9 fish taken in the area where the spill or discharge occurred or  
10 spread, and, *as soon as is feasible*, the potential danger from ~~fish~~  
11 *consuming fish that have been contained in a recirculating*  
12 *seawater tank* onboard a vessel ~~becoming~~ *that may become*  
13 contaminated by the vessel's movement through an area where  
14 the spill or discharge occurred or spread.

15 (2) Whether the areas closed for the take of fish or shellfish  
16 should be expanded to prevent any potential take or consumption  
17 of any fish or shellfish that may have been contaminated by the  
18 spill or discharge.

19 (3) The likely period for maintaining a closure on the take of  
20 fish and shellfish in order to prevent any possible contaminated  
21 fish or shellfish from being taken or consumed or other threats to  
22 human health.

23 (c) If the director finds in ~~its~~ *his or her* assessment pursuant to  
24 subdivision (b) that there is no significant risk to the public or to  
25 the fisheries, the director may immediately reopen the closed area  
26 and waive the testing requirements of subdivisions (d) and (e).

27 (d) Except under the conditions specified in subdivision (c),  
28 after complying with subdivisions (a) and (b), the director, in  
29 consultation with the Office of Environmental Health Hazard  
30 Assessment, but in no event more than seven days from the  
31 notification of the spill or discharge, shall order expedited tests of  
32 fish and shellfish that would have been open for take for  
33 commercial, recreational, or subsistence purposes in the closed  
34 area if not for the closure, to determine the levels of contamination,  
35 if any, and whether the fish or shellfish is safe for human  
36 consumption.

37 (e) Within 24 hours of receiving ~~the results of the tests ordered~~  
38 ~~pursuant to subdivision (d)~~, *if a notification from* the Office of  
39 Environmental Health Hazard Assessment ~~recommends to the~~  
40 ~~director and the director concurs~~ that no threat to human health

1 exists from the spill or discharge or that no contaminant from the  
2 spill or discharge is present that could contaminate fish or shellfish,  
3 ~~he or she~~ *the director* shall reopen ~~all of~~ the areas closed pursuant  
4 to this ~~section, excepting~~ *section*. *The director may maintain a*  
5 *closure in any remaining portion of the closed area where* ~~he or~~  
6 ~~she~~ *the Office of Environmental Health Hazard Assessment* finds  
7 contamination from the spill or discharge persists that may  
8 adversely affect human health or contaminate fish or shellfish, or,  
9 in the case of commercial fishing and aquaculture, *where the*  
10 *director finds that contamination from the spill or discharge may*  
11 *affect* the marketability of the fish or shellfish. In determining  
12 whether contamination persists that may adversely affect the  
13 marketability of commercial fish, shellfish, or aquaculture, the  
14 department may consider, but is not limited to, both of the  
15 following:

16 (1) Whether there is any detectable contaminant still present  
17 that may adversely affect the quality of the fish or shellfish being  
18 marketed, including any adverse effects on odor, taste, coloration,  
19 or any other detectable effect on the quality of the fish or shellfish.

20 (2) Whether the presence of any detectable amount of  
21 contamination has the effect of otherwise rendering the fish or  
22 shellfish commercially unmarketable.

23 (f) To the extent feasible, the director shall consult with  
24 representatives of commercial and recreational fishing associations  
25 and subsistence fishing communities regarding the extent and  
26 duration of a closure, testing protocols, and findings. If a spill or  
27 discharge occurs within the lands governed by a Native American  
28 tribe or affects waters flowing through tribal lands, or tribal  
29 fisheries, the director shall consult with the affected tribal  
30 governments.

31 (g) The director shall seek full reimbursement from the  
32 responsible party or parties for the spill or discharge for all  
33 reasonable costs incurred by the department in carrying out this  
34 section, including, but not limited to, all testing.

35 SEC. 2. Section 8574.7 of the Government Code is amended  
36 to read:

37 8574.7. The Governor shall require the administrator, in  
38 consultation with the State Interagency Oil Spill Committee and  
39 not in conflict with the National Contingency Plan, to amend the  
40 California oil spill contingency plan by adding a marine oil spill

1 contingency planning section that provides for the best achievable  
2 protection of the coast and marine waters. “Administrator” for  
3 purposes of this section means the administrator appointed by the  
4 Governor pursuant to Section 8670.4. The marine oil spill  
5 contingency planning section shall consist of all of the following  
6 elements:

7 (a) A state marine response element that specifies the hierarchy  
8 for state and local agency response to an oil spill. The element  
9 shall define the necessary tasks for oversight and control of cleanup  
10 and removal activities associated with a marine oil spill and shall  
11 specify each agency’s particular responsibility in carrying out these  
12 tasks. The element shall also include an organizational chart of  
13 the state marine oil spill response organization and a definition of  
14 the resources, capabilities, and response assignments of each  
15 agency involved in cleanup and removal actions in a marine oil  
16 spill.

17 (b) A regional and local planning element that shall provide the  
18 framework for the involvement of regional and local agencies in  
19 the state effort to respond to a marine oil spill, and shall ensure  
20 the effective and efficient use of regional and local resources in  
21 all of the following:

- 22 (1) Traffic and crowd control.
- 23 (2) Firefighting.
- 24 (3) Boating traffic control.
- 25 (4) Radio and communications control and provision of access  
26 to equipment.
- 27 (5) Identification and use of available local and regional  
28 equipment or other resources suitable for use in cleanup and  
29 removal actions.
- 30 (6) Identification of private and volunteer resources or personnel  
31 with special or unique capabilities relating to marine oil spill  
32 cleanup and removal actions.
- 33 (7) Provision of medical emergency services.
- 34 (8) Consideration of the identification and use of private working  
35 craft and mariners, including commercial fishing vessels and  
36 licensed commercial fishing men and women, in containment,  
37 cleanup, and removal actions.

38 (c) A coastal protection element that establishes the state  
39 standards for coastline protection. The administrator, in  
40 consultation with the State Interagency Oil Spill Committee, the

1 Coast Guard and Navy, and the shipping industry, shall develop  
2 criteria for coastline protection. If appropriate, the administrator  
3 shall consult with representatives from the States of Alaska,  
4 Washington, and Oregon, the Province of British Columbia in  
5 Canada, and the Republic of Mexico. The criteria shall designate  
6 at least all of the following:

7 (1) Appropriate shipping lanes and navigational aids for tankers,  
8 barges, and other commercial vessels to reduce the likelihood of  
9 collisions between tankers, barges, and other commercial vessels.  
10 Designated shipping lanes shall be located off the coastline at a  
11 distance sufficient to significantly reduce the likelihood that  
12 disabled vessels will run aground along the coast of the state.

13 (2) Ship position reporting and communications requirements.

14 (3) Required predeployment of protective equipment for  
15 sensitive environmental areas along the coastline.

16 (4) Required emergency response vessels that are capable of  
17 preventing disabled tankers from running aground.

18 (5) Required emergency response vessels that are capable of  
19 commencing oil cleanup operations before spilled oil can reach  
20 the shoreline.

21 (6) An expedited decisionmaking process for dispersant use in  
22 coastal waters. Prior to adoption of the process, the administrator  
23 shall ensure that a comprehensive testing program is carried out  
24 for any dispersant proposed for use in California marine waters.  
25 The testing program shall evaluate toxicity and effectiveness of  
26 the dispersants.

27 (7) Required rehabilitation facilities for wildlife injured by  
28 spilled oil.

29 (8) An assessment of how activities that usually require a permit  
30 from a state or local agency may be expedited or issued by the  
31 administrator in the event of an oil spill.

32 (d) An environmentally and ecologically sensitive areas element  
33 that shall provide the framework for prioritizing and ensuring the  
34 protection of environmentally and ecologically sensitive areas.  
35 The environmentally and ecologically sensitive areas element shall  
36 be developed by the administrator, in conjunction with appropriate  
37 local agencies, and shall include all of the following:

38 (1) Identification and prioritization of environmentally and  
39 ecologically sensitive areas in marine waters and along the coast.

40 Identification and prioritization of environmentally and ecologically

- 1 sensitive areas shall not prevent or excuse the use of all reasonably  
2 available containment and cleanup resources from being used to  
3 protect every environmentally and ecologically sensitive area  
4 possible. Environmentally and ecologically sensitive areas shall  
5 be prioritized through the evaluation of criteria, including, but not  
6 limited to, all of the following:
- 7 (A) Risk of contamination by oil after a spill.
  - 8 (B) Environmental, ecological, recreational, and economic  
9 importance.
  - 10 (C) Risk of public exposure should the area be contaminated.
- 11 (2) Regional maps depicting environmentally and ecologically  
12 sensitive areas in marine waters or along the coast that shall be  
13 distributed to facilities and local and state agencies. The maps shall  
14 designate those areas that have particularly high priority for  
15 protection against oil spills.
- 16 (3) A plan for protection actions required to be taken in the  
17 event of an oil spill for each of the environmentally and  
18 ecologically sensitive areas and protection priorities for the first  
19 24 to 48 hours after an oil spill shall be specified.
- 20 (4) The location of available response equipment and the  
21 availability of trained personnel to deploy the equipment to protect  
22 the priority environmentally and ecologically sensitive areas.
- 23 (5) A program for systemically testing and revising, if necessary,  
24 protection strategies for each of the priority environmentally and  
25 ecologically sensitive areas.
- 26 (6) Any recommendations for action that cannot be financed or  
27 implemented pursuant to existing authority of the administrator,  
28 which shall also be reported to the Legislature along with  
29 recommendations for financing those actions.