

## Assembly Bill No. 2935

### CHAPTER 564

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.

[Approved by Governor September 29, 2008. Filed with Secretary of State September 29, 2008.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2935, 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 OEHHA, to make specific determinations with regard to the spill or discharge within 48 hours. The director would also be required, within 48 hours of notification or as soon as is feasible, in consultation with the OEHHA, to assess and determine the potential danger from consuming fish contained in a recirculating seawater tank onboard a vessel.

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 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 fisheries.

The bill would require the director to reopen the closed areas if the OEHHA notifies the director, within 24 hours of receiving the notification, that the closed areas be reopened but would authorize the director to maintain a closure in a remaining portion of the closed area if the OEHHA makes a specified finding or if the department determines contamination from the spill or discharge persists that may cause the waste of fish or shellfish. 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.

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

SECTION 1. Section 5654 is added to the Fish and Game Code, to read:

5654. (a) (1) Notwithstanding Section 7715 and except as provided in paragraph (2), the director, within 24 hours of notification of a spill or discharge, as those terms are defined in subdivision (aa) of Section 8670.3 of the Government Code, where any fishing, including all commercial, recreational, and nonlicensed subsistence fishing, may take place, or where aquaculture operations are taking place, shall close to the take of all fish and shellfish all waters in the vicinity of the spill or discharge or where the spilled or discharged material has spread, or is likely to spread. In determining where a spill or discharge is likely to spread, the director shall consult with the Administrator of the Office of Spill Prevention and Response. At the time of closure, the department shall make all reasonable efforts to notify the public of the closure, including notification to

commercial and recreational fishing organizations, and posting of warnings on public piers and other locations where subsistence fishing is known to occur. The department shall coordinate, when possible, with local and regional agencies and organizations to expedite public notification.

(2) Closure pursuant to paragraph (1) is not required if, within 24 hours of notification of a spill or discharge, the Office of Environmental Health Hazard Assessment finds that a public health threat does not or is unlikely to exist.

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

(1) The danger posed to the public from fishing in the area where the spill or discharge occurred or spread, and the danger of consuming fish taken in the area where the spill or discharge occurred or spread.

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

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

(c) Within 48 hours after receiving notification of a spill or discharge subject to subdivision (a), or as soon as is feasible, the director, in consultation with the Office of Environmental Health Hazard Assessment, shall assess and determine the potential danger from consuming fish that have been contained in a recirculating seawater tank onboard a vessel that may become contaminated by the vessel's movement through an area where the spill or discharge occurred or spread.

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

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

(f) (1) Within 24 hours of receiving a notification from the Office of Environmental Health Hazard Assessment that no threat to human health exists from the spill or discharge or that no contaminant from the spill or discharge is present that could contaminate fish or shellfish, the director shall reopen the areas closed pursuant to this section. The director may maintain a closure in any remaining portion of the closed area where the

Office of Environmental Health Hazard Assessment finds contamination from the spill or discharge persists that may adversely affect human health.

(2) The director, in consultation with the commission, may also maintain a closure in any remaining portion of the closed area where commercial fishing or aquaculture occurs and where the department determines, pursuant to this paragraph, that contamination from the spill or discharge persists that may cause the waste of commercial fish or shellfish as regulated by Section 7701.

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

(h) The director shall 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 this section, including, but not limited to, all testing.

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

8574.7. The Governor shall require the administrator, in consultation with the State Interagency Oil Spill Committee and not in conflict with the National Contingency Plan, to amend the California oil spill contingency plan by adding a marine oil spill contingency planning section that provides for the best achievable protection of the coast and marine waters. "Administrator" for purposes of this section means the administrator appointed by the Governor pursuant to Section 8670.4. The marine oil spill contingency planning section shall consist of all of the following elements:

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

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

- (1) Traffic and crowd control.
- (2) Firefighting.
- (3) Boating traffic control.
- (4) Radio and communications control and provision of access to equipment.
- (5) Identification and use of available local and regional equipment or other resources suitable for use in cleanup and removal actions.

(6) Identification of private and volunteer resources or personnel with special or unique capabilities relating to marine oil spill cleanup and removal actions.

(7) Provision of medical emergency services.

(8) Consideration of the identification and use of private working craft and mariners, including commercial fishing vessels and licensed commercial fishing men and women, in containment, cleanup, and removal actions.

(c) A coastal protection element that establishes the state standards for coastline protection. The administrator, in consultation with the State Interagency Oil Spill Committee, the Coast Guard and Navy, and the shipping industry, shall develop criteria for coastline protection. If appropriate, the administrator shall consult with representatives from the States of Alaska, Washington, and Oregon, the Province of British Columbia in Canada, and the Republic of Mexico. The criteria shall designate at least all of the following:

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

(2) Ship position reporting and communications requirements.

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

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

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

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

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

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

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

(1) Identification and prioritization of environmentally and ecologically sensitive areas in marine waters and along the coast. Identification and prioritization of environmentally and ecologically sensitive areas shall not prevent or excuse the use of all reasonably available containment and cleanup

resources from being used to protect every environmentally and ecologically sensitive area possible. Environmentally and ecologically sensitive areas shall be prioritized through the evaluation of criteria, including, but not limited to, all of the following:

- (A) Risk of contamination by oil after a spill.
  - (B) Environmental, ecological, recreational, and economic importance.
  - (C) Risk of public exposure should the area be contaminated.
- (2) Regional maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast that shall be distributed to facilities and local and state agencies. The maps shall designate those areas that have particularly high priority for protection against oil spills.
- (3) A plan for protection actions required to be taken in the event of an oil spill for each of the environmentally and ecologically sensitive areas and protection priorities for the first 24 to 48 hours after an oil spill shall be specified.
- (4) The location of available response equipment and the availability of trained personnel to deploy the equipment to protect the priority environmentally and ecologically sensitive areas.
- (5) A program for systemically testing and revising, if necessary, protection strategies for each of the priority environmentally and ecologically sensitive areas.
- (6) Any recommendations for action that cannot be financed or implemented pursuant to existing authority of the administrator, which shall also be reported to the Legislature along with recommendations for financing those actions.