

## Oil Spill Prevention and Administration Fund

The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund

August 2012 Report 2011-123



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August 14, 2012

2011-123

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Department of Fish and Game's (Fish and Game) Office of Spill Prevention and Response's (spill office) management of the Oil Spill Prevention and Administration Fund (spill fund). The spill office is responsible for preventing and responding to oil spills and the administrator of the spill office is responsible for administering the spill fund. The revenue for the spill fund is mostly derived from its per-barrel fees, which are charged to owners or operators of crude oil and petroleum products received in California, and the fees paid by certain vessels carrying cargo other than oil, known as nontank vessels. Combined, these fees fund the majority of the spill office's oil spill prevention activities.

This report concludes that Fish and Game misstated the financial condition of the spill fund appearing in the governor's budget for four of the five fiscal years during our audit period from fiscal years 2006–07 through 2010–11. These misstatements were, in part, a result of Fish and Game's budget branch not having written procedures directing staff to reconcile the spill fund's financial condition to the State Controller's Office records. Moreover, the analysts in Fish and Game's budget branch lacked experience and training regarding the preparation of fund condition statements.

State law requires the administrator to produce a three-year projection of the spill fund's future revenues and expenses. Relying at least in part on financial information prepared by the spill office in June 2011, the Legislature recently approved a temporary increase to the per-barrel fee to cover projected deficits in the spill fund. However, the spill office's three-year projection contained inaccuracies because the spill office did not take the steps necessary to verify the accuracy of the financial information included in the projection. A factor that may have affected the three-year projection is the method Fish and Game used to calculate the federal government's share of its indirect administrative costs, such as those costs associated with accounting, personnel services, and general administration. Fish and Game's method for calculating the federal government's share led to an undercharge of \$27.3 million to the Federal Trust Fund that was incurred by other funds administered by Fish and Game. The federal government has agreed to allow Fish and Game to recover this amount over the next three fiscal years. As a result, the spill office will need to consider the reduction in the spill fund's indirect administrative costs when projecting its fund balance and, if necessary, adjust the fees accordingly moving forward.

This report also follows up on recommendations issued in our August 2008 report titled *Office of Spill Prevention and Response: It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement*, Report 2008-102. In that report, we concluded that Fish and Game's restructuring of certain spill office positions appeared to have caused friction between the spill office and Fish and Game management. To help reduce friction, we recommended that the spill office and other Fish and Game units discuss their respective authority and better define their roles. This report concludes that some of these issues still exist and that they may be resolved with the development of written policies and procedures. Our 2008 report also raised concerns regarding certain employees' salaries being improperly charged to the spill fund; however, we found that Fish and Game has since resolved these issues by providing guidance to its employees and implementing a new time reporting system.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game) is responsible for preventing and responding to oil spills. Following the 2007 Cosco Busan oil spill, the California State Auditor (state auditor) issued a report in August 2008 titled *Office of Spill Prevention and Response: It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement*, Report 2008-102. As discussed in the report, we concluded that Fish and Game and the spill office could improve their administration of the Oil Spill Prevention and Administration Fund (spill fund) and recommended several changes. One was that the spill office annually assess the reasonableness of the spill fund's reserve balance and the per-barrel fee charged to owners of crude oil and petroleum products received in California. The per-barrel fee, together with fees paid by certain vessels not designed to carry oil as cargo, known as nontank vessels, generates most of the spill fund's revenues. These revenues fund the majority of the spill office's oil spill prevention activities.

In the nearly four years since the issuance of our 2008 report, Fish and Game and the spill office have implemented most of our recommendations, but they still have not completely addressed others. Specifically, Fish and Game and the spill office have implemented 13 of the recommendations and partially implemented two. We determined that Fish and Game only partially implemented our recommendation about the assessment of the spill fund's fund balance, in part, because it misstated the balance appearing in the governor's budget for four of the five fiscal years during our five-year audit period, from fiscal years 2006–07 through 2010–11.<sup>1</sup> Generally, these misstatements resulted from a lack of written procedures in Fish and Game's budget branch directing staff to reconcile the spill fund's financial condition to the State Controller's Office's (state controller) records. The state controller's records contain up-to-date accounting information provided by the departments that use the fund, primarily Fish and Game, the State Lands Commission (State Lands), and the Board of Equalization. The omission of these procedures and a clerical error in one fiscal year caused the ending fund balance to be misstated in fiscal years 2006–07 through 2009–10.

<sup>1</sup> A "fund balance" is the amount of money in a fund that is available for appropriation, and in the governor's budget, three fund condition statements present the summary of the operations of a fund for the previous, current, and budget year.

### Audit Highlights . . .

*Our review of the management of the Oil Spill Prevention and Administration Fund (spill fund) highlighted the following:*

- » *The Department of Fish and Game (Fish and Game) has yet to fully implement two of the 15 recommendations we made four years ago regarding the assessment of the spill fund's fund balance and the friction between the Office of Spill Prevention and Response (spill office) and Fish and Game.*
- » *The spill fund's balance appearing in the governor's budget was misstated for four of the five fiscal years during our five-year audit period.*
- » *The Legislature recently approved an increase to the per-barrel fee to cover projected deficits in the spill fund. However, the spill office developed these projections using fund balances that were not as accurate as they could have been.*
- » *At least as far back as fiscal year 2006–07, Fish and Game undercharged the federal government for its share of Fish and Game's indirect administrative costs by using budgeted expenditures instead of actual expenditures.*
- » *The Oil Spill Technical Advisory Committee believes that Fish and Game's interpretation of state law has affected the administrator's authority to effectively perform certain statutory responsibilities.*

Although Fish and Game's budget branch accurately reported the fund balance as of June 30, 2011, it did not update its procedures to include this reconciliation step until April 2012, after we brought this issue to the attention of a budget branch supervisor. Moreover, the analysts within Fish and Game's budget branch lacked both experience in preparing fund condition statements and relevant training. The deputy director of the administration division acknowledged that staffing the budget branch with experienced staff has been difficult. As a result of these issues, the accuracy of the fund balances of other funds Fish and Game administers may be similarly affected.

Relying at least in part on financial information provided by the spill office, prepared in June 2011, the Legislature recently approved an increase to the per-barrel fee to cover projected deficits in the spill fund. The spill office administrator is required each year to produce a three-year projection of the spill fund's revenues and expenditures. However, the spill office developed its three-year projection using fund balances that were not as accurate as they could have been. The former acting administrator of the spill office (former administrator) explained that he used financial data that his office gathered independently, believing he could not rely solely on the financial information maintained by Fish and Game's budget branch. Although his lack of confidence in the budget branch's financial data may have been warranted, the spill office also lacked written procedures directing staff on how to prepare the three-year projection. Consequently, the three-year projection contained inaccurate financial information. Ultimately, however, due in part to clerical errors, this financial data closely reflected the spill fund's actual condition based on the state controller's records. We believe it is critical that the spill office take steps to ensure that financial information included in its three-year projection is accurate.

Possibly affecting the former administrator's ability to accurately project the revenues, expenditures, and resulting fund balance used as the basis for the three-year projection was the method Fish and Game used to calculate the federal government's share of indirect administrative costs. Typically, indirect administrative costs include the expenditures that benefit multiple programs or units within a department, such as the costs associated with accounting, personnel services, general administration, and facilities maintenance. At least as far back as fiscal year 2006-07 and continuing through fiscal year 2010-11, Fish and Game undercharged the Federal Trust Fund (federal fund) for the federal government's share of these costs because it used budgeted expenditures, as reported in the governor's budget, instead of actual expenditures, as the basis for determining its fixed indirect cost rate. Because it used budgeted expenditures for estimating its costs during those years, other funds administered

by Fish and Game, including the spill fund, paid the indirect costs that should have been charged to the federal fund. Ultimately, this situation may have reduced the balance of those other funds. According to Fish and Game, the federal government has agreed to allow Fish and Game to increase its fixed indirect cost rates over three years beginning in fiscal year 2011–12 to compensate for the \$27.3 million that was undercharged. Because the spill fund will benefit from the federal fund absorbing a greater share of the indirect administrative costs through fiscal year 2013–14, the spill office will need to consider the reduction in these costs when projecting its fund balance moving forward.

In our 2008 report, we also concluded that Fish and Game's restructuring of certain spill office positions appeared to have caused friction between the spill office and Fish and Game management. We recommended that the spill office and other Fish and Game units discuss their individual authority and better define their roles in managing spill prevention staff, consistent with the administrator's statutory responsibilities and other needs of Fish and Game. However, the Oil Spill Technical Advisory Committee (committee), which, among other things, provides public input and independent judgment on the actions of the spill office's administrator, asserted that issues still exist between Fish and Game and the spill office. Specifically, the committee believes that Fish and Game has interpreted certain changes made to state law in 2002 in such a way as to affect the legal authority of the administrator to effectively perform the statutory responsibilities granted under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (act). This act emphasizes prevention of marine oil spills through improved safety measures and stronger inspection and enforcement efforts. As a result of this statutory interpretation, the committee asserts that the spill office has encountered issues with other Fish and Game divisions, such as the law enforcement division (enforcement). For example, the committee's *2009–2010 Biennial Report by the Oil Spill Technical Advisory Committee to the Governor and the Legislature*, published in June 2011, noted that it learned about decisions made by enforcement to remove or replace key staff during the response to oil spills without the advice or consent of the administrator. In particular, during our interviews, committee members explained that this situation occurred during the response to the October 2009 Dubai Star oil spill, which released 400 gallons of oil into the San Francisco Bay. Although the former administrator and the chief of enforcement had agreed to work together in the future to approve such decisions, written policies and procedures would be in the best interest of all entities, ensuring that such collaboration occurs consistently in the future.

Our 2008 audit report also raised concerns about certain employee salaries being improperly charged to the spill fund. Specifically, the report described instances in which some Fish and Game employees inappropriately charged the spill fund for activities not related to spill prevention. The report raised further concerns that spill prevention wardens recorded insufficient details to justify their charges to the spill fund. Since our 2008 report, we found that Fish and Game has resolved these issues by providing guidance to its employees and implementing a new time-reporting system. However, during our review of selected labor distribution reports for State Lands' employees, who perform various activities, including conducting inspections of marine facilities, we found that an employee charged an unallowed activity to the spill fund. In particular, this employee charged the spill fund for several hours of meetings related to holiday planning because State Lands lacks sufficient controls to ensure that only allowable spill-related activities are charged to the spill fund.

### **Recommendations**

To prepare and report accurate fund condition statements for inclusion in the governor's budget each year, Fish and Game should do the following:

- Ensure that staff in its budget branch follow written procedures to develop fund condition statements.
- Train both new and existing staff on how to prepare fund condition statements for inclusion in the governor's budget.

To ensure that three-year projections of the spill fund's revenues, expenditures, and fund balances, all of which are used to determine fee rates, are based on accurate financial information, the spill office should, at a minimum, do the following:

- Develop written procedures directing staff on how to prepare the three-year projection, including steps to verify the accuracy of the financial information in the projection.
- Consider the reduction in the spill fund's costs, as a result of the recovery of indirect administrative costs, when projecting its fund balance moving forward.

To prevent under- or over-recovery of federal funds, Fish and Game should regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate results.

To eliminate confusion about the authority of the spill office and its relationship with Fish and Game, the Legislature should consider amending state law to clarify its intent regarding the administrator's authority.

To ensure that the spill office continues to work consistently with enforcement to resolve issues on the use of staff, the spill office should develop written policies and procedures with Fish and Game enforcement.

To comply with state law, State Lands should develop time sheet review procedures to ensure that its employees charge the spill fund only for oil spill prevention activities and that those charges are accurate.

#### **Agency Comments**

Fish and Game and State Lands agree with the audit report's recommendations and outlined steps they have already taken, or plan to take, to implement them.

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## Introduction

### Background

Following two significant oil spills affecting California's coast, the Legislature enacted the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (act) in 1990. In enacting the law, the Legislature declared among other things that emphasis should be put on preventing marine oil spills through improved safety measures and stronger inspection and enforcement efforts. The main source of funding for these spill-prevention activities is a per-barrel fee established by the act, which is charged to those who own crude oil and petroleum products at the time the products are received at California marine terminals. Additionally, the legislation declared the State's need for enhanced response efforts through improved control and cleanup technology, improved response management, and coordination with federal agencies. The act also led to the creation of the Office of Spill Prevention and Response (spill office) in 1991 within the Department of Fish and Game (Fish and Game).

As part of Fish and Game, the spill office is able to use the department's resources to carry out the provisions of the act. For example, the spill office relies on wardens within Fish and Game's law enforcement division to conduct spill investigations and enforce criminal statutes contained in the act. The spill office asserts that its mission is to "provide the best achievable protection of California's natural resources by preventing, preparing for, and responding to spills of oil and other deleterious materials, and through restoring and enhancing affected resources." The act specifies that the per-barrel fee must be used for a variety of preventive measures, including implementing oil spill prevention programs, researching prevention and control technology, carrying out studies that may lead to improved oil spill prevention and response, and financing environmental and economic studies relating to the effects of oil spills.

The administrator of the spill office, who is appointed by the governor, is responsible for implementing the State's oil spill prevention and response activities. When an oil spill occurs within California waters, the administrator represents the State in any coordinated response efforts with the federal government. The administrator is required by law to ensure that he or she has available for support, personnel who are fully trained to adequately respond to an oil spill. The act gives the administrator the authority, consistent with state civil service law, to hire and fire employees as necessary to fulfill the spill office's responsibilities.

The act also assigns certain oil spill prevention responsibilities to the State Lands Commission (State Lands), including inspecting and monitoring the State's marine facilities. State Lands' marine facilities

division is responsible for carrying out these activities. According to information obtained from State Lands' Web site, inspectors monitor activities and enforce regulations at marine oil terminals daily. These inspections include observing and assessing oil transfers to and from oil tankers and barges, with an emphasis on preventing pollution. Personnel from the marine facilities division also conduct comprehensive annual inspections at each marine oil terminal, making structural and marine oil pipeline assessments and reviewing operational procedures and training.

To provide public input and independent judgment of the actions of the administrator and the State Interagency Oil Spill Committee, the act also formed an Oil Spill Technical Advisory Committee (committee). The committee consists of 10 members, six of whom are appointed by the governor, two by the speaker of the Assembly, and two by the Senate Rules Committee. Committee members include representatives of the public as well as people with knowledge of marine transportation, environmental protection and the study of ecosystems, and oil spill response and prevention programs. The committee is required to meet at least twice a year and to provide recommendations to the administrator, State Lands, and other governmental entities on certain provisions of the act, including the promulgation of all rules, regulations, guidelines, and policies.

### **The Oil Spill Prevention and Administration Fund**

The main source of funding for the spill office's operations is the Oil Spill Prevention and Administration Fund (spill fund), which is administered by the spill office's administrator in accordance with state law. Appendix A presents the spill fund's revenues, which come from primarily two sources: a per-barrel fee on crude oil and petroleum products received in California and a nontank vessel fee collected from certain vessels. This appendix also details the spill fund's expenditures, authorized for readiness, prevention, and administrative support activities. The spill fund cannot be used to pay for response activities related to actual oil spills—the State's Oil Spill Response Trust Fund (trust fund) is used for spill response costs the State incurs. We did not examine the trust fund because it was not within the scope of this audit request.

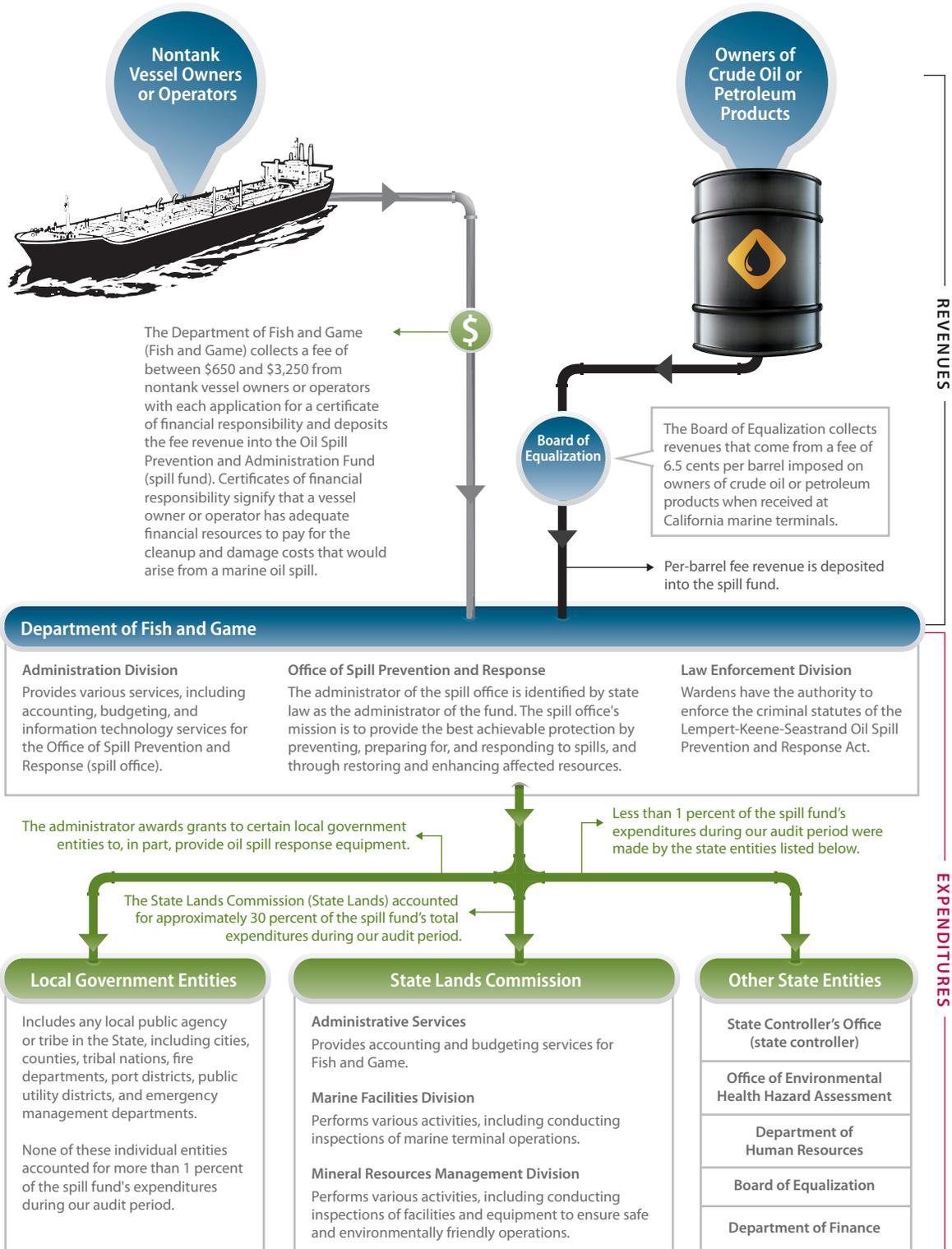
Appendix A also shows that Fish and Game and State Lands accounted for nearly all the expenditures from the spill fund during our audit period, from fiscal years 2006–07 through 2010–11, with the remaining expenditures made by various state and local government entities, including the State Controller's Office and the Office of Environmental Health Hazard Assessment. During this same period, the spill fund's revenues ranged from a low of \$26.8 million in fiscal year 2006–07

to a high of \$34.9 million in fiscal year 2007–08, while expenditures ranged from a low of \$32 million in fiscal year 2006–07 to a high of \$36.3 million in fiscal year 2007–08.

Figure 1 on the following page displays how the spill fund's revenues are collected and for what purposes various state and local government entities expend money from the spill fund. The Board of Equalization collects the per-barrel fee. The administrator determines the amount per barrel, up to a maximum amount permitted by the act, sufficient to carry out the oil spill prevention activities defined in the act while permitting a reasonable reserve. If the administrator determines that the per-barrel fee should be set above the statutory maximum, then state law must be amended. The spill office charged the maximum per-barrel fee of 5 cents from January 20, 2003, until January 1, 2012, at which time legislation approved by the Legislature and signed by the governor took effect and temporarily raised the statutory maximum. The former acting administrator of the spill office (former administrator) prepared a three-year projection in June 2011 indicating projected deficits in the spill fund's ending fund balance of roughly \$9 million for fiscal year 2012–13 and \$17 million for fiscal year 2013–14. Relying at least in part on that financial information, the Legislature approved a temporary increase to the statutory maximum of no more than 6.5 cents per barrel. The fee increase is effective until January 1, 2015, when the fee will revert to 5 cents per barrel.

At the same time that the per-barrel fee increased, the spill office increased the fee it charges for nontank vessels—vessels weighing 300 gross tons or more that carry oil, but not as cargo. Fish and Game collects this fee for each nontank vessel with each application for a certificate of financial responsibility. Certificates of financial responsibility signify that a vessel operator has adequate financial resources to pay for the cleanup and damage costs that would arise from an oil spill. The amount of the fee depends on the nontank vessel's carrying capacity: larger carrying capacities result in larger fees. During fiscal years 2006–07 through 2010–11, the spill office charged nontank vessel fees ranging from \$500 to \$2,500, and it increased the fee effective January 1, 2012, to a range of \$650 to \$3,250 per vessel. Because the nontank vessel fee ranges are established in regulation, the spill office consults with the committee when requesting an increase to the nontank vessel fees. In signing the legislation that authorized the per-barrel fee increase in October 2011, the governor directed the spill office to increase the nontank vessel fee and reduce program expenditures to address the structural imbalance of the spill fund. In response and wanting to implement both the per-barrel and nontank vessel fees by January 1, 2012, the spill office requested an emergency rulemaking action to amend regulations pertaining to the nontank vessel fee. The Office of Administrative Law endorsed and approved this requested action in November 2011.

**Figure 1**  
Summary of Oil Spill Prevention and Administration Fund Revenue Collection and Usage, as of January 1, 2012



Sources: California Government Code, Section 8670; financial records obtained from the state controller; and various documents obtained from Fish and Game, the spill office, and State Lands.

### **Additional Responsibilities Were Assigned to the Spill Office After the Cosco Busan Oil Spill**

In November 2007 the Cosco Busan, an outbound container ship, struck a support on the San Francisco-Oakland Bay Bridge in heavy fog, breaching two fuel tanks and releasing about 53,600 gallons of oil into the bay. The Legislature subsequently passed and the governor signed legislation that, among other things, expanded the scope of responsibilities for the spill office. According to the former administrator, the legislation did not include additional funding sources or resources to cover these new responsibilities, summarized in Table 1. Although the spill office did not seek to increase the per-barrel fee to address the 2008 legislation, it did submit three budget change proposals requesting additional spending authority from the spill fund for local assistance grants and new positions. The spill office's scientific branch chief asserted that the Department of Finance (Finance) approved the spill office's request for local assistance grants; however, Finance denied the spill office's budget change proposals requesting additional positions to implement the new responsibilities.

### **Concerns About the Administration of the Spill Fund**

As state law required, Finance published a special review report in January 2005 titled *Report on the Department of Fish and Game Office of Spill Prevention and Response, Review of Fiscal and Program Activities*. The scope of work included reviewing the financial basis and programmatic effectiveness of the spill office's prevention, response, and preparedness program. The report noted operational inefficiencies within both Fish and Game and the spill office, including a lack of clear delineation of the reporting structure and authority of the spill office administrator in relation to Fish and Game staff and operations. Finance also reported that the method Fish and Game used for distributing indirect costs was undocumented. Specifically, in its 1995 spill office program review, Finance reported perceived inequities in Fish and Game's distributed administration funding, causing the spill office to pay a higher percentage of its revenues for distributed administrative costs than any other Fish and Game fund. Finance noted that even though the 1995 program review described Fish and Game's plan to remedy the perceived inequities, as of 2004 Fish and Game had not initiated its plan. It further noted that Fish and Game had continued to charge unsupported distributed administrative costs to the spill fund. Although Fish and Game appears to have addressed some of the concerns raised by Finance regarding the spill office paying a higher percentage of its revenues for distributed administration costs than any other Fish and Game fund, as described in the Audit Results, we identified additional concerns about administrative costs during our audit period.

**Table 1**  
**Significant Responsibilities Assigned to the Office of Spill Prevention and Response by 2008 Legislation**

CHAPTER AND STATUTE	RESPONSIBILITY
Chapter 566, Statutes of 2008 (Senate Bill 1739)	<p>Specifies an alternative procedure if the administrator, the United States Coast Guard, or any other qualified public agency, as determined by the administrator of the Office of Spill Prevention and Response, is unable to attend a drill of the marine oil spill contingency plan held outside the State. In particular, the law authorizes the administrator to require the owner or operator of the vessel or marine facility to provide for an independent drill monitor to evaluate the drill and to submit the evaluation to the administrator and the owner or operator. Based upon the evaluation, the administrator is required to determine whether the drill satisfies the requirements of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The law required the administrator to adopt regulations to implement the provisions of this chapter on or before January 1, 2010.</p> <p>Requires the administrator to require a rated oil spill response organization to demonstrate that it can deploy the response resources necessary to meet the applicable provisions of a marine oil spill contingency plan in which the organization is listed. Additionally, the law requires the administrator to require satisfactory completion of one unannounced drill for each rated organization before being granted a renewal or before reinstatement of a revoked or suspended rating.</p>
Chapter 563, Statutes of 2008 (Assembly Bill 2031)	<p>Requires the administrator, as part of the training and certification program, to authorize a local spill response manager to train and certify volunteers, and requires the local spill response managers to participate in all drills upon the administrator's request. In the event of a marine oil spill, the local spill response manager is required to provide the State's on-scene coordinator with timely information on activities and resources deployed by local government in response to the oil spill, cooperate with the administrator, and respond in a manner consistent with the area contingency plan, to the extent possible.</p> <p>Requires the administrator to offer grants to a local government with jurisdiction over or directly adjacent to marine waters to provide oil spill response equipment to be deployed by a local spill response manager.</p>
Chapter 565, Statutes of 2008 (Assembly Bill 2911)	<p>Requires the administrator to submit to the governor and the Legislature an amended California oil spill contingency plan by January 1, 2010, that consists of both a marine oil spill contingency planning section and an inland oil spill contingency planning section.</p> <p>Requires the administrator to ensure the State's ability to prevent the contamination of wildlife and to identify, collect, rescue, and treat oiled wildlife according to specified requirements, including training of volunteers, stocking emergency equipment for rescue, and providing additional staffing.</p> <p>Provides the administrator with the primary authority to serve as a state incident commander and to direct removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any placement of petroleum or a petroleum product in the waters of the State.</p>
Chapter 564, Statutes of 2008 (Assembly Bill 2935)	<p>Requires the director of the Department of Fish and Game, in the event of a marine oil spill or discharge, to consult with the administrator in determining where the spill or discharge is likely to spread, when determining a fishery's closure.</p> <p>Requires the administrator to amend the California oil spill contingency plan 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. Additionally, the law requires that the California oil spill contingency plan include an element that would consider the utilization of specified private working craft and mariners in plans for containment and cleanup.</p>

Sources: California Government Code, sections 8574 and 8670, and Fish and Game Code, sections 5654 and 5655.

Subsequently, in August 2008, we issued an audit report of the spill office titled *Office of Spill Prevention and Response: It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement*, Report 2008-102. We concluded that the amount of reserves in the spill fund had increased significantly over the past several years, leading to a \$17.6 million reserve by June 30, 2007, and noted that a fee increase without corresponding expenditure increases

contributed to the high balance as did the failure of the spill office to assess the level of the reserve. However, we also reported that the spill office estimated that fund reserves could drop to \$7.4 million by the end of fiscal year 2009–10. To ensure an appropriate reserve balance for the spill fund, we recommended that the spill office annually assess the reasonableness of the spill fund’s reserve balance and the per-barrel fee on crude oil and petroleum products. In addition, we noted several instances in which salaries of Fish and Game employees were charged to the fund for purposes not related to oil spill prevention. As a result, we made several recommendations, including that the spill office provide guidelines to its employees concerning when to charge activities to the spill fund and when to charge other funds. We present the status of Fish and Game’s and the spill office’s implementation of these recommendations in Appendix B.

Additionally, in June 2011, the committee issued its *2009–2010 Biennial Report by the Oil Spill Technical Advisory Committee to the Governor and the Legislature*, in which it noted a number of accomplishments as well as concerns and priority issues. Although the committee stated that it believes that oil spill preparedness, prevention, and response in California has improved, it voiced various concerns, including the need to better maintain the fiscal integrity of the spill fund through either an increase in revenue or reduction in expenditure within the confines of the spill office’s statutory requirements, or a combination of the two. The committee also commented that one of its continuing concerns is the programmatic, fiscal, and administrative relationship between the spill office and Fish and Game. In particular, the committee noted that under the existing framework, there is a marked lack of control by the spill office administrator over spill office employees and only limited control over its funds.

### **Scope and Methodology**

We conducted this audit at the direction of the Joint Legislative Audit Committee, which approved the audit objectives listed in Table 2 on the following page. Our fieldwork generally included work at the spill office, Fish and Game, and State Lands.

**Table 2**  
**Audit Objectives and the Methods Used to Address Them**

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	<ul style="list-style-type: none"> <li>• Reviewed relevant sections of the California Government Code, California Public Resources Code, and other laws and regulations.</li> <li>• Interviewed legal counsel from the Department of Fish and Game (Fish and Game).</li> </ul>
2 Determine which state and local government entities receive funds from the Oil Spill Prevention and Administration Fund (spill fund).	Reviewed and agreed the accounting records from the State Controller's Office (state controller) with the financial statements of Fish and Game and the Board of Equalization (BOE) for fiscal years 2006–07 through 2010–11.
3 For each fiscal year beginning in 2006–07, determine the spill fund's revenues, expenditures, transfers, and fund balance.	<ul style="list-style-type: none"> <li>• Interviewed relevant staff and officials from the Office of Spill Prevention and Response (spill office), Fish and Game's budget branch and accounting services branch, BOE, and the state controller.</li> <li>• Reviewed Fish and Game's budget branch's written procedures regarding the preparation of fund condition statements reported in the governor's budgets for fiscal years 2008–09 through 2012–13.</li> <li>• Reviewed and agreed the accounting records from the state controller with the financial statements of Fish and Game and BOE for fiscal years 2006–07 through 2010–11.</li> </ul>
4 For each fiscal year beginning in 2006–07, determine the justification or statutory authority used for appropriating or transferring funds from the spill fund to each entity that receives the funds.	Reviewed relevant sections of the California Government Code, California Public Resources Code, and the budget acts of 2006 through 2010 for each of the entities we identified as part of our audit work related to audit objective 2.
5 Determine whether the spill office received additional resources following the 2008 legislation that increased the spill office's responsibilities. Further, determine if the spill office has assessed its current resource needs and whether that assessment is reasonable.	<ul style="list-style-type: none"> <li>• To address the first portion of this audit objective, we performed the following steps:               <ul style="list-style-type: none"> <li>• Reviewed relevant chapters and statutes from the 2008 legislation.</li> <li>• Interviewed relevant staff and officials from the spill office and reviewed relevant budget change proposals, including those requesting additional positions that were ultimately denied.</li> <li>• Reviewed and agreed the accounting records from the state controller with the financial statements of Fish and Game and BOE for fiscal years 2006–07 through 2010–11.</li> </ul> </li> <li>• To address the second portion of this audit objective, we performed the following steps:               <ul style="list-style-type: none"> <li>• Interviewed relevant staff and officials from the spill office, Fish and Game's budget branch and accounting services branch, BOE, and the state controller.</li> <li>• Reviewed the method and support used by the former acting administrator of the spill office to prepare the required three-year projection of the spill fund's future revenues and expenditures, which led to the January 1, 2012 increase in the per-barrel fee charged to owners of crude oil or petroleum products received in California.</li> <li>• Reviewed the governor's budgets for fiscal years 2008–09 through 2012–13 and the spill office's staffing levels as reported in the Salaries and Wages supplement to the governor's budgets for fiscal years 2006–07 through 2010–11.</li> </ul> </li> </ul>
6 For those entities that receive significant amounts from the spill fund, identify how those funds are used and evaluate whether those uses are consistent with state law. In particular, determine whether each entity maintains adequate records of staff time charged to the spill fund and evaluate whether staff time was appropriately charged.	<ul style="list-style-type: none"> <li>• Reviewed relevant sections of the California Government Code and California Public Resources Code.</li> <li>• Reviewed Fish and Game's new time-charging policies to ensure they issued guidance to staff on how to appropriately charge their time.</li> <li>• Interviewed relevant staff and officials from the State Lands Commission (State Lands), Fish and Game, and the spill office.</li> <li>• Reviewed the State Lands' and Fish and Game's cost-allocation plans to determine whether expenditures were allocated as described in their cost-allocation methodologies.</li> <li>• Observed staff from the accounting services branch distribute these costs to the various funds and determined that the spill fund was receiving an equitable share of these costs compared to other funds.</li> <li>• Tested a selection of 60 employee time sheets that charged the spill fund, including 36 from Fish and Game and 24 from State Lands, to determine whether time charged to the spill fund was for activities allowed by the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.</li> </ul>

AUDIT OBJECTIVE	METHOD
<p>7 Evaluate whether the organizational relationship between the spill office and Fish and Game promotes the spill office's mission, goals, and objectives.</p>	<ul style="list-style-type: none"> <li>• Reviewed relevant sections of the California Government Code, California Public Resources Code, and the California Fish and Game Code.</li> <li>• Interviewed relevant officials and staff from the spill office and Fish and Game, as well as members of the Oil Spill Technical Advisory Committee (committee).</li> <li>• Followed up on the concerns identified in our 2008 report regarding the spill office's legal and communications functions and determined that there were no reportable issues, as of June 2012.</li> <li>• Reviewed historical spill office and Fish and Game organizational charts.</li> <li>• Reviewed memorandums of understanding between the spill office and Fish and Game.</li> <li>• Reviewed Fish and Game's budget change proposals that affected the spill fund.</li> </ul>
<p>8 Assess whether the spill office and Fish and Game have fully implemented the recommendations from the California State Auditor's 2008 report (2008-102).</p>	<ul style="list-style-type: none"> <li>• Reviewed documentation supporting the spill office's and Fish and Game's 60-day, six-month, and one-year responses on the status of implementing our prior report's recommendations. Additionally, we reviewed our February 2009 and February 2010 special reports to Assembly and Senate Standing/Policy Committees titled <i>Implementation of State Auditor's Recommendations</i>, reports 2009-406 and 2010-406, respectively. Additionally, we reviewed assessments of the implementation of the report's recommendations included in our January 2010, January 2011, and January 2012 reports titled <i>Recommendations Not Fully Implemented After One Year: The Omnibus Audit Accountability Act of 2006</i>.</li> <li>• Interviewed relevant staff and officials from the spill office and Fish and Game and obtained and reviewed supporting documentation, as necessary, to determine whether the report's recommendations were fully implemented.</li> </ul>
<p>9 Identify any potential areas for improving oversight of the spill fund to ensure the most efficient and effective use of the funds.</p>	<ul style="list-style-type: none"> <li>• Interviewed relevant staff and officials from the spill office and Fish and Game, as well as members of the committee.</li> <li>• Reviewed the Department of Finance's January 2005 report titled <i>Report on the Department of Fish and Game Office of Spill Prevention and Response, Review of Fiscal and Program Activities</i>, as well as the committee's 2009–2010 Biennial Report by the committee to the governor and the Legislature, which it issued in June 2011.</li> <li>• Reviewed the spill office's method and procedures for preparing its three-year projection that it uses to justify its fees.</li> <li>• Tested a selection of 60 time sheets from Fish and Game and State Lands to determine whether they were reviewed and approved by a supervisor</li> </ul>
<p>10 Review and assess any other issues that are significant to the spill fund.</p>	<ul style="list-style-type: none"> <li>• Interviewed relevant officials and staff from Fish and Game, the spill office, as well as members of the committee to determine whether there were any other issues significant to the spill fund that warranted our review or analysis.</li> <li>• In conducting our fieldwork, we learned that the committee was concerned that State Lands did not always disclose to the spill office its budget change proposals that affected the spill fund. As a result, we performed the following steps:             <ul style="list-style-type: none"> <li>• Interviewed relevant officials and staff from the spill office and Fish and Game and State Lands, as well as members of the committee.</li> <li>• Reviewed State Lands' budget change proposals and budget change concept proposals that affected the spill fund.</li> </ul> </li> </ul>

Sources: The California State Auditor's analysis of audit request 2011-123 and of information and documentation identified in the table column titled *Method*.

## Assessment of Data Reliability

In performing this audit, we relied on various electronic data files obtained from the entities listed in Table 3. We adhere to the standards of the U.S. Government Accountability Office, which require us to assess the sufficiency and appropriateness of computer-processed information that is used to support findings, conclusions, or recommendations. Table 3 shows the results of this analysis.

**Table 3**  
**Methods of Assessing Data Reliability**

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Department of Fish and Game (Fish and Game): California State Accounting and Reporting System (CALSTARS) Data for the period July 1, 2010, through June 30, 2011.	To make a selection of Fish and Game employees whose wages were charged to the Oil Spill Prevention and Administration Fund (spill fund) between July 1, 2010, and June 30, 2011.	Our purpose did not require a data reliability assessment. Instead, we needed to gain assurance that the population was complete. <ul style="list-style-type: none"> <li>We performed data-set verification procedures and found no issues.</li> <li>We verified completeness by tracing a haphazard selection of time sheets to the data and found no errors.</li> </ul>	Complete for the purposes of this audit
State Lands Commission (State Lands): CALSTARS Data for the period July 1, 2010, through June 30, 2011.	To make a selection of State Lands' employees whose wages were charged to the spill fund between July 1, 2010, and June 30, 2011.	Our purpose did not require a data reliability assessment. Instead, we needed to gain assurance that the population was complete. <ul style="list-style-type: none"> <li>We performed data-set verification procedures and found no issues.</li> <li>We verified completeness by tracing a haphazard selection of time sheets to the data and found no errors.</li> </ul>	Complete for the purposes of this audit
State Controller's Office (state controller): Budgetary/Legal Basis System Data for the period July 1, 2006, through June 30, 2011.	To determine the spill fund's revenues, expenditures, and fund balance for the period July 1, 2006, through June 30, 2011.	We did not perform accuracy or completeness testing; however, we performed data-set verification procedures and found no issues. Additionally, we verified that the spill fund's expenditures as recorded in CALSTARS agreed to the state controller's records for the period we reviewed.	Undetermined reliability for the purposes of this audit

Sources: California State Auditor's analysis of various documents and data obtained from the entities listed in the table.

## Audit Results

### Until Recently, the Department of Fish and Game Misstated the Financial Condition of the Oil Spill Prevention and Administration Fund

Until June 30, 2011, and at least as far back as fiscal year 2006–07, fund condition statements for the Oil Spill Prevention and Administration Fund (spill fund) misstated the funds available for appropriation by the Legislature. The governor’s budget, which is largely based on the fund condition statements, includes the fund balance to show the balance of money in a fund that is available for appropriation.<sup>2</sup> We reviewed the fund balance reported in the governor’s budget during our audit period—fiscal years 2006–07 through 2010–11—and found that as of June 30, 2011, the spill fund’s balance had finally been corrected. However, as Table 4 indicates, in four of the five years of our audit period the fund balance, which appeared in the governor’s budget, was misstated.

**Table 4**  
**Ending Fund Balances for the Oil Spill Prevention and Administration Fund**  
**Fiscal Years Ending June 30, 2007, Through June 30, 2011**  
**(In Thousands)**

FISCAL YEAR END	FUND BALANCE REPORTED IN THE GOVERNOR'S BUDGET	FUND BALANCE REPORTED IN THE STATE CONTROLLER'S OFFICE RECORDS	FUND BALANCE OVERSTATEMENT OR (UNDERSTATEMENT)
June 30, 2007	\$18,781	\$14,229	\$4,552
June 30, 2008	11,994	12,986	(992)
June 30, 2009	13,622	10,858	2,764
June 30, 2010	9,829	9,638	191
June 30, 2011	8,424	8,425	(1)

Sources: California State Auditor’s analysis of governors budgets for fiscal years 2008–09 through 2012–13, data obtained from the State Controller’s Office’s Budgetary/Legal Basis system, and financial information provided by the Department of Fish and Game. Please refer to the Introduction’s Scope and Methodology for our assessment of the Budgetary/Legal Basis system’s data reliability.

Our review of the written procedures in place before April 2012 showed that the Department of Fish and Game’s (Fish and Game) budget branch did not include a step to reconcile the fund balance reported in the governor’s budget to the State Controller’s Office’s (state controller) records. The state controller’s records contain up-to-date accounting information provided by the departments that use the fund, consisting primarily of Fish and Game, the State

<sup>2</sup> A “fund balance” is the amount of money in a fund that is available for appropriation, and in the governor’s budget, three fund condition statements present the summary of the operations of a fund for the previous, current, and budget year.

Lands Commission (State Lands), and the Board of Equalization. The omission of this step contributed to the misstatement of the ending fund balance during our audit period. In April 2012, after we brought this issue to the attention of a budget branch supervisor, the supervisor updated the procedures with input from staff within Fish and Game's accounting services branch (accounting branch) to include a reconciliation of the fund balance. According to Fish and Game's deputy director of the administration division, the same procedures were used to prepare all Fish and Game fund condition statements for inclusion in the governor's budget. As a result, the fund condition statements for other funds that the budget branch prepares for inclusion in the governor's budget may contain similar misstatements.

Although written procedures directing staff to reconcile the fund balance to the state controller's records were not in place at the time, before preparing the spill fund's fund condition statements for the 2012–13 governor's budget published in January 2011, the fiscal information systems administrator (fiscal administrator) explained that budget branch staff, at the recommendation of the accounting branch, reconciled the amounts reported in the fund condition statements with the amounts reported in the state controller's records for the period ending June 30, 2010. However, the fiscal administrator stated that a clerical error caused the fund balance reported in the governor's budget to be overstated by \$191,000 for the fiscal year ending June 30, 2010, as shown in Table 4. In April 2012, when we brought this error to the attention of a budget branch supervisor, Fish and Game staff updated its existing procedures to include a step to reconcile past-year amounts reported in the governor's budget with the state controller's records.

***The errors we noted in the fund condition statements stemmed primarily from a lack of experience and training on the part of those preparing fund condition statements within Fish and Game's budget branch.***

The errors we noted stemmed primarily from a lack of experience and training on the part of those preparing fund condition statements within Fish and Game's budget branch. According to Fish and Game's deputy director of the administration division, three analysts were responsible for preparing fund condition statements for the spill fund during different times throughout our audit period, yet none had experience in preparing such statements. Additionally, although a supervisor within the budget branch indicated that some of the analysts responsible for preparing fund condition statements during our audit period had received training from the Department of Finance (Finance) related to budget preparation, he explained that this training only included a general section on fund condition statements and did not go into detail on how to prepare a fund condition statement. Not surprisingly, this lack of experience and relevant training meant the analysts were unaware that the procedures in place during our audit period omitted a step essential to accurately preparing fund condition statements.

Further, although managers in Fish and Game's budget branch reviewed the work performed by its analysts, the managers consistently failed to identify the previously noted errors in the fund condition statements during our audit period. According to the previous budget officer of the budget branch, he reviewed the fund condition statements each year before submitting the information to Finance for inclusion in the governor's budget. However, his review failed to identify and resolve significant errors in the spill fund's fund condition statement. Additionally, one of the three supervisors successively overseeing the work of the budget analysts during fiscal years 2007–08 through 2010–11 asserted that he also reviewed the spill fund's fund condition statements before submitting them to the previous budget officer of the budget branch. Despite these reviews, the fund balance was misstated during four of the five years of our audit period. Therefore, we question whether any of the budget branch staff preparing or overseeing the preparation of the spill fund's fund condition statements during the period of our audit had enough experience or training to ensure that the fund balance as reported in the governor's budget was accurate.

Fish and Game's budget branch experienced high employee turnover during our audit period. Since fiscal year 2006–07, a supervisor in the budget branch stated that, based on his best recollection, the branch lost one budget officer, two supervisors, and one budget analyst, all of whom were involved in preparing the spill fund's fund condition statements. According to the deputy over administration, staffing the budget branch with experienced staff has been difficult. She explained that the high turnover rate, combined with inexperienced staff and a lack of complete written procedures, contributed to the misstatements of the fund balance. These issues now raise the possibility that other fund balances have been misstated for other Fish and Game funds within the budget branch's purview.

### **Certain Practices May Have Affected Decisions Regarding Recent Fee Increases**

The spill office administrator is required each year to produce a three-year projection of the spill fund's revenues and expenditures. Based on the Office of Spill Prevention and Response's (spill office) former acting administrator's (former administrator) June 2011 projection, the spill fund was projected to have a negative fund balance of \$17.7 million by the end of fiscal year 2013–14. Relying at least in part on this financial information, the Legislature approved an increase in the per-barrel fee to cover the projected deficit. However, the fund balances used in developing the three-year projection were not as accurate as they could have been. Because the financial

*The high turnover rate, combined with inexperienced staff and a lack of complete written procedures, contributed to the misstatements of the spill fund's balance.*

condition of the spill fund drives the amount at which the per-barrel and nontank vessel fees are set, it is possible that—had the projection been based on complete and correct financial information and included the anticipated recovery of indirect administrative costs—the fee increases approved in 2011 might have been less.

### ***The Spill Office's Projections That, in Part, Supported Recent Fee Increases Contained Inaccuracies***

State law imposes certain requirements on the spill office related to its revenues and reserve levels, or fund balance. According to state law, the administrator must set a fee sufficient to carry out the purposes of the statute and must provide a reasonable reserve for contingencies. To ensure that the fee is appropriate, state law requires the administrator to annually project revenues and expenditures over three fiscal years, including the current year (three-year projection). The former administrator provided a member of the Legislature with the spill office's June 2011 three-year projection, which stated that the spill fund would have a negative ending fund balance of nearly \$9.4 million at the end of fiscal year 2012–13 and roughly \$17.7 million at the end of fiscal year 2013–14. Subsequently, this three-year projection was referenced in the Senate's latest bill analysis for the recent increase to the per-barrel fee.

In developing the three-year projection, the former administrator believed the spill office could not rely solely on the financial information maintained by Fish and Game's budget branch, so he also used financial data that his office gathered independently. Although his lack of confidence in the budget branch's financial data may have been warranted, the spill office lacked written procedures directing staff on how to prepare the three-year projection. Consequently, the three-year projection contained inaccurate financial information. According to the program analyst who prepared the three-year projection, she did not consult the budget branch or the accounting branch to verify the accuracy of the financial information included in the projection. Further, she explained that she did not reconcile this financial information to the state controller's records because she lacked the knowledge to perform this operation without the guidance of any written procedures. As a result, certain financial data, including the beginning and ending fund balances for fiscal years 2008–09 and 2009–10, were inaccurate. Ultimately, however, due in part to clerical errors, this financial data closely reflected the spill fund's actual condition based on the state controller's records. Moving forward, we believe it is critical that the spill office take the steps necessary to ensure that financial information included in its three-year projections is accurate, such as developing written procedures for staff to follow when preparing the three-year projections.

***Although certain financial data, including the beginning and ending fund balances for fiscal years 2008–09 and 2009–10 were inaccurate, ultimately this financial data closely reflected the spill fund's actual fund condition based on the state controller's records due in part to clerical errors.***

***The Spill Fund Temporarily Incurred Administrative Costs That May Have Played a Role in the Need to Increase Fees***

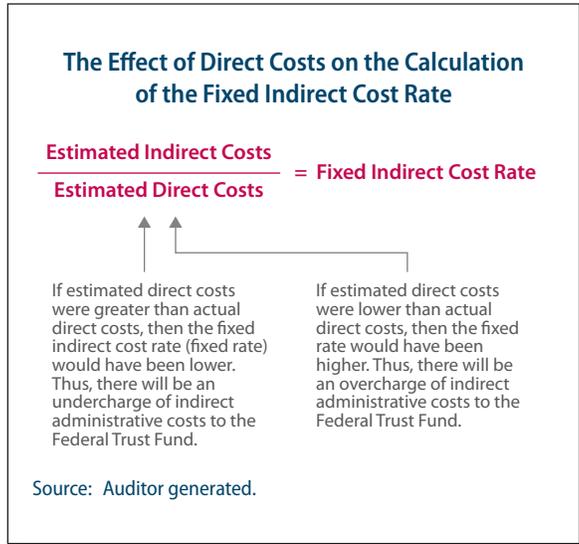
One factor possibly affecting the fund condition on which the three-year projection was based was the method Fish and Game used during this period to calculate the federal government's share of its indirect administrative costs, a method described below. At least as far back as fiscal year 2006–07 and continuing through fiscal year 2010–11, Fish and Game undercharged the Federal Trust Fund (federal fund) for the federal government's share of these costs. Using this method meant that the other funds administered by Fish and Game, including the spill fund, were overcharged for the indirect costs that the federal fund did not absorb, an error which ultimately may have led Fish and Game to reduce its various fund balances. As a result, the various Fish and Game funds had fewer resources to pay for designated program costs in at least each of the past five fiscal years. According to Fish and Game's accounting branch, the State's accounting system does not generate specific reports nor can this information be feasibly determined to quantify the impact this issue had on the spill fund. However, Fish and Game's method for recouping its indirect costs caused the spill fund's expenditures for indirect costs to be higher than they should have been for at least the past five fiscal years. This situation may have played some role in the spill office projecting a fund balance deficit, prompting the Legislature to approve an increase in the spill fund's fees effective January 2012.

The federal government allows state agencies that administer federal programs to charge the federal fund an approved rate—known as the indirect cost rate—for its share of a department's indirect administrative costs. Typically, indirect administrative costs include the expenditures that benefit multiple programs or units within a department, such as the costs associated with accounting, personnel services, general administration, and facilities maintenance. Generally, before the start of each fiscal year, Fish and Game estimates the costs it expects to incur in the upcoming fiscal year and, using these costs, develops a fixed indirect cost rate (fixed rate), which it submits to the U.S. Department of the Interior for review and approval. The U.S. Department of the Interior allows Fish and Game to estimate the costs that are part of its calculation of the fixed rate using the actual costs of a prior year, budgetary data for the current year, or a combination of the two. Two years later when the actual costs are known, Fish and Game calculates the difference between the actual costs and the costs it previously estimated to determine the amount that was overcharged or undercharged. Fish and Game then applies that amount to the estimated indirect costs in its calculation of the current year's fixed rate to compensate for the difference.

***Fish and Game's method for recouping its indirect costs caused the spill fund's expenditures for indirect costs to be higher than they should have been for at least the past five fiscal years.***

Until fiscal year 2010–11, with the U.S. Department of the Interior’s approval, Fish and Game chose to use budgeted expenditures, as reported in the governor’s budget, as the basis for determining its fixed rate. However, the resulting estimate of costs led to a fixed rate that was significantly lower than the rate necessary to recoup its

share of indirect administrative costs. Specifically, the ratio of estimated indirect costs to estimated direct costs drives the calculation of the fixed rate, as shown in the text box. Thus, if the amount of estimated direct costs included in the ratio is too high or too low, the calculated fixed rate will result in an under- or overcharge of indirect administrative costs to the federal fund. During our audit period, two factors significantly increased the estimated direct costs that caused the fixed rate to be too low. Primarily, Fish and Game included expenditures for bond funds, which incur very little indirect administrative costs, in the estimated amount of direct costs it used to calculate its fixed rate for those years. In addition, Fish and Game used budgeted expenditures to arrive at its fixed rate during years when it actually spent much less than the amount it budgeted for direct costs. When



combined, these factors resulted in the estimated direct costs being much higher than they should have been, causing the fixed rate to be too low. In May 2011, after receiving direction from the U.S. Department of the Interior, Fish and Game discontinued including the expenditures related to bond funds in its estimates and is also now using actual expenditures from a prior year rather than budgeted expenditures as a basis to calculate its fixed rate. However, as conditions change, Fish and Game will need to regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate results.

Because Fish and Game used the earlier calculation method for several years, by fiscal year 2010–11 the difference between the amount it had charged the federal government for indirect administrative costs, using estimated and actual costs, resulted in the department undercharging the federal fund by a total of \$27.3 million. The federal government has agreed to allow Fish and Game to recoup this amount over three years, beginning in fiscal year 2011–12 to compensate for the accumulated difference between the estimated and actual costs. This increase will recoup \$1.3 million in fiscal year 2011–12 and \$13 million in fiscal years 2012–13 and 2013–14. Fish and Game officials asserted that they chose to spread this difference in these costs over three years to reduce the burden on federal grant programs and to mitigate the amount the State would have to supply as the required matching fund component in any single year.

Had Fish and Game based its fixed rate on actual rather than budgeted expenditures and not included bond fund expenditures during our five-year audit period, the rate that it charged the federal fund for indirect administrative costs may have been higher. As a result, the other funds administered by Fish and Game may not have incurred the indirect costs that the federal fund was undercharged and, therefore, did not absorb. In particular, the spill fund may have reflected a higher fund balance than it actually had. Thus, the projections of the negative fund balances that the spill office prepared in June 2011 may have resulted in greater fee increases than were actually needed. Finally, because the spill fund will benefit from the federal fund absorbing a greater share of the indirect administrative costs through the end of fiscal year 2013–14, the spill office will need to consider the reduction in the spill fund's indirect administrative costs when projecting its fund balance and, if necessary, adjust the fees accordingly moving forward.

*The spill fund may have reflected a higher fund balance than it actually had; thus, the projections of the negative fund balances that the spill office prepared in June 2011 may have resulted in greater fee increases than it actually needed.*

### **The Spill Office Could Improve Its Relationship With Fish and Game and State Lands Through Written Policies and Procedures**

In 2008 the Joint Legislative Audit Committee asked us to examine the spill office's internal organization policies with regard to transferring employees and the effect of these policies on the spill office's ability to respond to spills. In our August 2008 report on the spill office, we determined that Fish and Game's restructuring of certain positions appeared to have caused friction between the spill office and Fish and Game management. In particular, we reported that, since 2000, Fish and Game had restructured some functions of the spill office so that legal, communications, enforcement, and information technology (IT) staff report to managers in other Fish and Game units rather than to managers in the spill office.

In general, the change seemed to have had little effect on the spill office's operations, according to the managers in charge of three of those functions. Nevertheless, we reported that the limited problems we identified, along with serious reservations by both the past administrator of the spill office and the deputy administrator at the time our report was issued, suggested the need for a better understanding between Fish and Game management and the spill office on their roles and authority related to these employees. To help reduce this friction, we recommended that the spill office and other Fish and Game units discuss their individual authorities and better define their roles in managing spill prevention staff, consistent with the administrator's statutory responsibilities and the other needs of Fish and Game.

In conducting our fieldwork, we learned that concerns regarding the spill office's relationship with Fish and Game persist and that additional concerns have been raised regarding the spill office's fiscal relationship with State Lands. In particular, in June 2011 the Oil Spill Technical Advisory Committee (committee), which, among other responsibilities, provides public input and independent judgment concerning the actions of the spill office administrator, released its *2009–2010 Biennial Report by the Oil Spill Technical Advisory Committee to the Governor and the Legislature* (2011 report). In this report, the committee stated that the programmatic, fiscal, and administrative relationship between the spill office and Fish and Game continues to be of concern. To follow up on these concerns, we interviewed members of the committee as well as officials from the spill office, Fish and Game, and State Lands.

The committee's 2011 report cited a provision of state law that has resulted in spill office employees reporting to non-spill office supervisors, which the committee asserted is patently evident in the enforcement, legal, and IT divisions of the spill office.<sup>3</sup> As enacted in 1990, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (act) establishes the administrator for oil spill response and, among other things, gives the administrator the authority to appoint spill office employees and administer the spill fund in accordance with state law. In 2001 the Legislature amended provisions of law that became effective in 2002 that apply generally to Fish and Game to specify, "notwithstanding any other provision of law," that all Fish and Game employees are responsible to the director of Fish and Game in carrying out their duties and responsibilities. Although the amendment was declaratory of existing law, the former administrator nonetheless stated that staff from the spill office may have been placed under the direct control of the director of Fish and Game as a result of this legislative change. The committee stated in its 2011 report that as the person ultimately responsible for California's oil program, the administrator's lack of direct line of authority over spill office staff is very troubling and it is concerned that the requirement to report to non-spill office supervisors will usurp the authority of the administrator and undermine the California program. During our interviews, one member of the committee stated that she discussed the impact resulting from this change to state law during a 2011 California Fish and Wildlife Strategic Vision Project meeting, which is intended to establish a strategic vision for Fish and Game and the California Fish and Game Commission, but commented that her concerns on this issue were met by indifference and resistance.

***The Oil Spill Technical Advisory Committee is very troubled by the administrator's lack of direct line of authority over spill office staff and is concerned that the requirement that these staff report to non-spill office supervisors will usurp the authority of the administrator and undermine the California program.***

<sup>3</sup> As mentioned in Table 2 of the Scope and Methodology section of this audit report, we followed up on the restructuring of the legal and communications functions and determined that there were no reportable issues.

It is unclear whether the Legislature intended the 2002 amendments related to the appointment power of the director of Fish and Game to have an impact on the reporting structure of the spill office. It appears that Fish and Game has interpreted and applied the 2002 amendments in a manner that has impaired the spill office administrator's authority to fully implement the act. As a result, it may be desirable for the Legislature to clarify its intent concerning the 2002 amendment.

In its 2011 report the committee noted that it learned about decisions made by Fish and Game's law enforcement division (enforcement) to remove or replace State On-Scene Coordinators (on-scene coordinators) during the response to oil spills without the advice or consent of the spill office administrator. During our interviews, committee members stated that the on-scene coordinator during the October 2009 Dubai Star oil spill, which spilled 400 gallons of oil into the San Francisco Bay, was relieved by an inexperienced enforcement warden, without the approval of the spill office's administrator. However, the chief of enforcement (enforcement chief) stated that the warden who relieved the on-scene coordinator was highly qualified for the role.

The enforcement chief and the former administrator stated that they participated in weekly executive meetings and monthly meetings together in which issues, including those related to staffing, could be communicated and addressed. Further, according to the former administrator, the spill office and enforcement have worked together since the Dubai Star oil spill to discuss staffing decisions during oil spill events. However, because the former administrator no longer works for the spill office, there is no guarantee that this arrangement will continue with future administrators. As a result, written policies and procedures would be in the best interest of all concerned to ensure that such collaboration continues.

The committee also stated in its 2011 report that it had concerns about the relationship between the spill office and Fish and Game's IT unit. We met with a few committee members to clarify these concerns and were told that spill office employees were unable to gain access to their IT equipment during an IT service outage. According to Fish and Game's previous chief information officer, after the former Office of the State Chief Information Officer—now the California Technology Agency—directed all state departments to consolidate their IT services and operations, the spill office's IT hardware was relocated in June 2011 to Fish and Game headquarters. According to the spill office's IT services unit chief, during an IT service outage in October 2011 spill office staff were denied access to their hardware because Fish and Game staff were responding to the issue. According to Fish and Game's previous chief information

*It appears that Fish and Game has interpreted and applied the 2002 amendments in a manner that has impaired the spill office administrator's authority to fully implement the act.*

*Without an official plan of action for future IT service outages, the spill office has little assurance that it can respond to an oil spill promptly during such outages.*

officer, although Fish and Game's IT unit met with the spill office to discuss lessons learned from the incident, they did not develop formal written policies and procedures detailing how to respond to future IT service outages. The spill office's former administrator stated that the spill office sent a comprehensive list of IT issues to Fish and Game; however, due to turnover in Fish and Game's IT unit, the spill office has yet to receive a response. Without an official plan of action for future IT service outages, the spill office has little assurance that it can respond to an oil spill promptly during such outages.

In addition, the committee's 2011 report described concerns that the spill office administrator was not being given the chance to review budget change proposals from State Lands that would directly affect the spill fund, potentially resulting in a loss of control over the fiscal integrity of the spill fund. According to the spill office's scientific branch chief and State Lands' chief of administrative services (administrative chief), at times State Lands did not communicate with the spill office when it submitted budget change proposals that affected the spill fund. For example, in fiscal year 2007–08, State Lands requested an additional \$702,000 annually to fund three new engineering positions and one new research analyst position, all three to be paid through the spill fund, but it did not communicate this request to the former spill office administrator. Without such information, the administrator, who is responsible under state law for administering the spill fund, is unable to ensure whether the spill fund has a sufficient balance to maintain the spill office's operations. State Lands' administrative chief stated that State Lands recently assured the committee that it will submit budget change proposals to the spill office administrator in the future and will work with the administrator to determine if the spill fund balance can sustain the fiscal effects of such proposals and that any request is consistent with the allowable uses of the fund.

We verified that State Lands sent its budget change proposal concepts for fiscal year 2013–14 to the spill office in June 2012. However, although State Lands shared with the spill office its most recent budget change proposal, without written policies and procedures in place, the spill office cannot ensure that this arrangement will continue.

### **Employees Are Generally Charging the Spill Fund for Authorized Purposes**

In our August 2008 report we raised concerns regarding the spill office's administration of the spill fund. That report described instances in which some Fish and Game employees inappropriately charged the spill fund for activities not related to

oil spill prevention. Additionally, the 2008 audit report noted that the daily activity reports for some spill prevention wardens had insufficient information to differentiate between spill prevention and general activities.

Money in the spill fund can be used only for statutorily authorized purposes related to oil spill prevention activities, such as those shown in the text box. Our 2008 report concluded that employees' activities had erroneously been charged to the spill fund because of a lack of guidance from Fish and Game management or because the employees failed to submit time sheets. In response to our finding, Fish and Game issued guidance to its employees instructing them on how to charge time for specific activities. To determine whether Fish and Game's corrective actions were effective, we reviewed 36 personnel costs charged to the spill fund during fiscal year 2010–11. For each of the charges identified, we obtained a time sheet and a job duty statement to determine whether the charge was allowable and found no exceptions.

#### Some Authorized Purposes of the Oil Spill Prevention and Administration Fund

- Implement oil spill prevention programs, and research prevention and control technology.
- Study improved oil spill prevention and response.
- Finance environmental and economic studies relating to the effects of oil spills.
- Implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills.
- Respond to an imminent threat of an oil spill.

Source: California Government Code, Section 8670.40(e).

Our August 2008 report also identified spill prevention wardens whose personnel costs were paid entirely or almost entirely by the spill fund, even though they may have performed general activities not related to spill prevention. The acting administrator of the spill office at the time acknowledged in our report that spill prevention wardens were encouraged to perform some general activities but that they were not directed to charge time to other Fish and Game funds for these activities, except for certain rare occasions. The acting administrator estimated that between 75 percent and 90 percent of a spill prevention warden's time is spent in a marine environment and on activities related to spill prevention but that virtually all of their time is charged to the spill fund. Additionally, our 2008 report concluded that the daily activity reports that we reviewed maintained by some of the spill prevention wardens had insufficient information to differentiate between spill prevention and general activities. As a result, we recommended that the spill office and Fish and Game take steps to ensure that spill prevention wardens' time is charged appropriately, such as performing a time study of wardens to use as a basis for allocating their time between the spill fund and other Fish and Game funding sources.

In its most recent response to the 2008 report, Fish and Game stated that it conducted three time studies to address this recommendation and also developed funding management tools to help both spill and non-spill wardens charge their working time to the appropriate fund. These tools allow all wardens to

code work efforts not in support of the spill fund to other specific funding sources. Supervisors and managers review the use of these codes monthly to verify the appropriateness of the charges and periodically to verify that funding charges are within allotted limits and that the charges to specific funding sources are appropriate. The enforcement chief stated that Fish and Game implemented this new time-reporting system in July 2011, the Web-based component of which has been in use since January 2012 and is still being refined. This new system contains a detailed listing of all Fish and Game warden activities and the specific fund to be charged for each activity. Our review of the new time-reporting system and 10 daily activity reports found that the wardens recorded sufficient details to ensure that each activity was charged to the proper fund.

However, our review of 24 time sheets from State Lands' employees revealed one instance in which an employee charged an unallowable general activity to the spill fund. Specifically, we found that in November 2010 an employee charged eight hours to the spill fund for meetings related to planning a holiday event. According to State Lands' administrative chief, the marine facilities division has two primary funding sources: the spill fund and the Marine Invasive Species fund. The administrative chief stated that charges by marine facilities employees for general administrative activity, such as training, are split between the spill fund, at 75 percent, and the Marine Invasive Species fund, at 25 percent. According to the assistant chief of State Lands' marine facilities division, the eight hours of meetings should have been distributed between the spill fund and the Marine Invasive Species fund rather than charged entirely to the spill fund and that this mistake was missed by the supervisor who reviewed the time sheet. However, given that the spill fund may be charged only for activities related to oil spill prevention, we do not believe that the fund should have been charged for any of the time spent planning the holiday event. In addition, we question whether this expenditure was an appropriate use of state resources. The assistant chief asserted that in response to the supervisor's mistake, all supervisors were reminded to be more careful during their time sheet reviews; however, the assistant chief could not provide any formal documentation of this reminder.

The chief of State Lands' marine facilities division asserted that although State Lands does not provide its supervisors with written instructions for reviewing time sheets, its supervisors receive the same time sheet training as marine facilities division staff as well as additional state-mandated training regarding their responsibilities when they assume supervisory duties. Even though State Lands' supervisors currently receive general time sheet training, we believe additional procedures detailing how supervisors should perform their time sheet reviews would provide clarity and consistency

*Even though State Lands' supervisors currently receive general time sheet training, we believe additional procedures detailing how supervisors should perform their time sheet reviews would provide clarity and consistency to the review process.*

to the review process. In particular, their reviews should include ensuring that the spill fund is charged only for activities related to oil spill prevention. Further, if State Lands had such procedures in place during our audit period, its supervisor may have prevented the incorrect charge of holiday planning meetings to the spill fund.

### **Recommendations**

To prepare and report accurate fund condition statements for inclusion in the governor's budget each year, Fish and Game should do the following:

- Ensure that staff in its budget branch follow written procedures to develop fund condition statements.
- Train both new and existing staff on how to prepare fund condition statements for inclusion in the governor's budget.

To ensure that three-year projections of the spill fund's revenues, expenditures, and fund balances, all of which are used to determine fee rates, are based on accurate financial information, the spill office should, at a minimum, do the following:

- Develop written procedures directing staff on how to prepare the three-year projection, including steps to verify the accuracy of the financial information in the projection. In developing these procedures, the spill office should consult with Fish and Game's accounting branch and budget branch to confirm that these procedures are thorough and complete.
- Consider the reduction in the spill fund's costs, as a result of the recovery of indirect administrative costs, when projecting its fund balance moving forward.

To prevent under- or over-recovery of federal funds, Fish and Game should regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate results.

To eliminate confusion about the authority of the spill office and its relationship with Fish and Game, the Legislature should consider amending state law to clarify its intent regarding the administrator's authority.

To ensure that the spill office continues to work consistently with other entities to resolve issues with the use of staff and equipment and that it has the necessary resources to carry out its operations, the spill office should develop written policies and procedures with the following department and divisions:

- Fish and Game enforcement regarding staffing decisions.
- Fish and Game's IT unit regarding the coordination of response to system outages.
- State Lands regarding its disclosure of budget change proposals affecting the spill fund.

To comply with state law, State Lands should develop time sheet review procedures to ensure that its employees charge the spill fund only for oil spill prevention activities and that those charges are accurate.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: August 14, 2012

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## Appendix A

### OIL SPILL PREVENTION AND ADMINISTRATION FUND REVENUES AND EXPENDITURES AND THEIR STATUTORY JUSTIFICATION

The Joint Legislative Audit Committee (audit committee) asked us to determine which state and local government entities received funds from the Oil Spill Prevention and Administration Fund (spill fund) during fiscal years 2006–07 through 2010–11 and to determine the spill fund’s revenues and expenditures for each fiscal year since 2006–07. The audit committee also asked us to determine the justification or statutory authority used for appropriating or transferring funds from the spill fund to each entity that receives funds. Table A on the following page presents this information.

As mentioned in the Introduction, most of the spill fund’s revenues come from two sources—a per-barrel fee on crude oil and petroleum products received at marine terminals in California and a nontank vessel fee collected from certain vessels. Table A shows that the Department of Fish and Game (Fish and Game) and the California State Lands Commission (State Lands) accounted for nearly all of the spill fund’s expenditures since fiscal year 2006–07, while the Board of Equalization, the State Controller’s Office (state controller), the Office of Environmental Health Hazard Assessment, the Department of Human Resources, and the Department of Finance collectively accounted for \$1.6 million of the \$167.2 million, or nearly 1 percent of the spill fund’s total expenditures from fiscal years 2006–07 through 2010–11. In addition, the local government entities that received funds through local assistance grants awarded by the spill office collectively accounted for \$5.7 million of the \$167.2 million, or just over 3 percent of the fund’s total expenditures during our audit period from fiscal years 2006–07 through 2010–11.

The audit committee also asked us to determine the fund balance of the spill fund for each fiscal year beginning in 2006–07. As noted in the Audit Results, in four of the five years of our audit period, the fund balance which appeared in the governor’s budget was misstated. In part, these misstatements were a result of Fish and Game not properly including a step in its written procedures to reconcile the spill fund’s financial condition to the state controller’s financial records until April 2012. As of June 30, 2011, the fund balance has finally been corrected. We present the fund balance for the spill fund in Table 4 on page 17 of the Audit Results. In addition, Table A shows that expenditures were consistently greater than revenues for each fiscal year we reviewed.

**Table A**  
**Oil Spill Prevention and Administration Fund Revenues and Expenditures and Their Statutory Justification**  
**Fiscal Years 2006–07 Through 2010–11**

REVENUES							
STATE DEPARTMENT	STATUTORY JUSTIFICATION	FISCAL YEAR					TOTALS
		2006–07*	2007–08	2008–09	2009–10	2010–11	
Board of Equalization (BOE) (per-barrel fees)	California Government Code, Section 8670.40 (a)	\$21,267,794	\$28,522,697	\$26,577,449	\$25,245,832	\$24,637,010	\$126,250,782
<i>Current-year revenues</i>		28,070,274	27,944,671	26,852,950	25,325,034	24,760,037	132,952,966
<i>Prior-year adjustments</i>		(6,802,480)	578,026	(275,501)	(79,202)	(123,027)	(6,702,184)
Department of Fish and Game (other revenues)	California Government Code, Section 8670.41(a)	5,538,815	6,397,265	5,679,188	5,875,458	6,131,449	29,622,175
<i>Current-year revenues</i>		5,402,083	6,266,779	5,196,411	5,782,000	6,057,464	28,704,737
<i>Prior-year adjustments</i>		136,732	130,486	482,777	93,458	73,985	917,438
<b>Total Revenues</b>		<b>\$26,806,609</b>	<b>\$34,919,962</b>	<b>\$32,256,637</b>	<b>\$31,121,290</b>	<b>\$30,768,459</b>	<b>\$155,872,957</b>

EXPENDITURES							
STATE DEPARTMENT	STATUTORY JUSTIFICATION	FISCAL YEAR					TOTALS
		2006–07	2007–08	2008–09	2009–10	2010–11	
State Controller's Office (state controller)	California Government Code, Sections 11270 and 11274	\$31,118	\$31,361	\$(276)	\$35,215	\$84,897	\$182,315
Board of Equalization	California Government Code, Section 8670.40(e)(6)	233,100	250,083	253,787	213,724	180,057	1,130,751
State Lands Commission	California Public Resources Code, Section 8759	9,382,969	10,231,558	9,990,637	9,932,084	10,192,923	49,730,171
<i>3560-001 State Operations</i>		9,500,182	10,242,519	9,783,342	9,643,491	10,172,548	49,342,082
<i>Reserve for Encumbrances</i>		(117,213)	(10,961)	207,295	288,593	20,375	388,089
Department of Fish and Game	California Government Code, Section 8670.40(e)	22,356,637	25,758,226	24,051,418	23,174,541	22,049,951	117,390,773
<i>3600-001 State Operations</i>		22,534,513	24,674,791	22,370,658	21,306,759	20,158,941	111,045,662
<i>3600-101 Local Assistance</i>		518,772	953,591	1,970,367	1,007,853	1,282,186	5,732,769
<i>Reserve for Encumbrances</i>		(696,648)	129,844	(289,607)	859,929	608,824	612,342
Office of Environmental Health Hazard Assessment	California Fish and Game Code, Section 5654, California Government Code, Section 8670.38, and Budget Acts of 2009 and 2010	-	-	-	93,535	107,615	201,150
<i>3980-001 State Operations</i>		-	-	-	98,206	104,041	202,247
<i>Reserve for Encumbrances</i>		-	-	-	(4,671)	3,574	(1,097)
Department of Human Resources	California Government Code, Sections 11270 and 11274	7,082	9,086	4,695	14,027	(1,741)	33,149
Department of Finance	California Government Code, Sections 11270 and 11274	-	1,363	1,675	1,361	1,508	5,907
State controller's adjustments (June to July payroll deferral)	California Government Code, Section 13302(d)(2)	-	-	-	(1,259,000)	(262,126)	(1,521,126)
<b>Total Expenditures</b>		<b>\$32,010,906</b>	<b>\$36,281,677</b>	<b>\$34,301,936</b>	<b>\$32,205,487</b>	<b>\$32,353,084</b>	<b>\$167,153,090</b>

Sources: California State Auditor's analysis of data obtained from the state controller's Budgetary/Legal Basis system and relevant laws and regulations. Please refer to Table 3 in the Introduction for our assessment of the Budgetary/Legal Basis system's data reliability.

\* In fiscal year 2003–04 the BOE overreported the spill fund's per-barrel fee revenue by \$5.8 million and did not correct the error until fiscal year 2005–06. Accordingly, in fiscal year 2006–07 the state controller recorded a \$6.7 million prior-year adjustment to its records, reducing the fund balance and revenue in this fiscal year, in part to correct for the overreported revenue.

## Appendix B

### STATUS OF PRIOR RECOMMENDATIONS

In 2008 the Joint Legislative Audit Committee (audit committee) asked us to assess the planning, oversight, and administrative activities of the Office of Spill Prevention and Response (spill office) and the coordinated response to the November 7, 2007, Cosco Busan oil spill in the San Francisco Bay. In August 2008 we issued a report titled *Office of Spill Prevention and Response: It Has Met Many of Its Oversight and Response Duties, but Interaction With Local Government, the Media, and Volunteers Needs Improvement*, Report 2008-102. This report concluded that although the spill office had met many of its key responsibilities related to the oversight of contingency planning and oil spill response organizations, it needed to update the state contingency plan as required by law and improve its efforts to involve local governments in the contingency planning process.

In that report, we made 15 recommendations to the spill office. In response, the spill office provided information to us that we used to assess its implementation of these recommendations. We presented these assessments in our February 2009 and February 2010 special reports to Assembly and Senate Standing/Policy Committees, titled *Implementation of State Auditor's Recommendations*, reports 2009-406 and 2010-406 (subcommittee reports). We also presented these assessments in our January 2010, January 2011, and January 2012 reports titled *Recommendations Not Fully Implemented After One Year: The Omnibus Audit Accountability Act of 2006* (accountability reports). Table B on the following pages summarizes those assessments presented in the subcommittee and accountability reports as well as our current findings. We concluded that the spill office has fully implemented 13 of the recommendations and partially implemented the remaining two, discussed in the Audit Results and referenced in Table B.

**Table B**  
**Status of Recommendations**

RECOMMENDATION	DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
1 To ensure that the State's activities in response to an oil spill are complete and well integrated with other efforts, the Department of Fish and Game's (Fish and Game) Office of Spill Prevention and Response (spill office) should regularly update the state plan and include references to sections of the regional plan and area plans that cover required elements.	January 2010	The draft State Oil Spill Contingency Plan (state plan) was shared with external partners and the Review Subcommittee of the State Interagency Oil Spill Committee in accordance with California Government Code, Section 8574.10. Further, the spill office reviewed submitted comments, provided responses, and is incorporating them into the plan. The spill office stated that the state plan was approved by the spill office administrator in December 2009.	The state plan was updated as of January 2010 and contains references to sections of the regional and area contingency plans that cover required elements. In addition, this plan is up to date in accordance with California Government Code, Section 8574.8.	Fully implemented	Not applicable
2 To better integrate local plans with the response activities in other types of contingency plans, and to keep local plans up to date, the spill office should work with local governments to improve participation and should consider whether additional grant funding is needed.	January 2010	The spill office stated that in fiscal year 2008–09 it awarded 26 equipment and training grants totaling more than \$650,000 to local government agencies. In addition, the spill office noted that the contractor providing equipment and training conducted three training sessions and would complete the remaining training sessions by October 31, 2009. Finally, language allowing for the inclusion of a local government representative in the unified command for spills in or near the San Francisco Bay has been added to the North Coast/San Francisco Bay and Delta/Central Area Contingency Plan.	The spill office has continued to work with local government agencies. For example, the spill office invited certain local government agencies to participate in a tabletop exercise held in December 2011 in Richmond, California.	Fully implemented	Not applicable
3 With regard to post-spill reviews, the spill office should determine whether the post-spill reviews are an effective means for identifying areas for plan improvement and then take steps to either ensure that the reviews are submitted or eliminate them from its regulations.	January 2012	The spill office stated that the requirement for a "post-spill review" has routinely run into legal challenges; the responsible party is reluctant to admit fault or deficiencies in its plan due to liability issues. Further, the spill office stated that the investigations conducted by the spill office and/or the U.S. Coast Guard regarding the cause of the spill is a better source for this information, which can then be addressed in the responsible party's contingency plan, if appropriate. Therefore, the spill office stated that rulemaking was promulgated that removed the requirement for a "post-spill review," effective June 2, 2011.	Not applicable.	Fully implemented	Not applicable
4 To ensure vessel preparedness for oil spills, the spill office should obtain and retain documentation related to completion of required tabletop exercises.	January 2010	The spill office stated that its Drills and Exercises Unit is fully staffed and trained and that its database system used to track drills and exercises by the oil and maritime industries is fully updated and properly maintained.	Based on a selection of tabletop exercises held in 2009 through 2011, the spill office obtained and retained documentation related to the completion of required tabletop exercises.	Fully implemented	Not applicable

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	RECOMMENDATION	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
January 2011	<p>5 To avoid logistical problems in responding to oil spills, the spill office should collaborate with area committees in California to identify potential command centers that are sized appropriately and possess all necessary communications equipment.</p>	<p>The spill office stated that the San Diego Area Committee, co-chaired by the spill office and the U.S. Coast Guard, established a subcommittee to develop a list of preidentified suitable incident command post locations in the area. The subcommittee identified the U.S. Coast Guard-Sector San Diego as the appropriate command post in the southern portion of San Diego County. For spills in the northern portion of the county, the subcommittee identified the city of Carlsbad's Emergency Operations Center as a suitable incident command post. The U.S. Coast Guard established a memorandum of understanding with the city of Oceanside for use of the facility.</p>	<p>Incident command posts are included in the area contingency plans for the U.S. Coast Guard port areas for San Francisco, San Diego, and Los Angeles/Long Beach.</p>	Fully implemented	Not applicable
January 2012	<p>6 To strengthen its role as a liaison between local governments and the unified command, the spill office should continue with its plans to develop qualification standards for liaison officers and to train more staff for that role. The spill office should also ensure that staff assigned as liaison officers participate in drills to gain experience. In addition, the spill office should ensure that staff in its operations center provide all necessary support, including communications equipment, to liaison officers in the field.</p>	<p>The spill office stated that it has developed a program for expanding the liaison staff depth. The spill office had identified three liaison position subject matter experts, which was the initial goal for all mission-critical incident command system positions that the spill office routinely fills. The spill office stated that these subject matter experts have developed a liaison training program for staff members for serving at either the incident command post or in the operations center in Sacramento. According to the spill office, several staff in addition to the subject matter experts have been trained and are getting their on-the-job training through in-house and industry drills.</p> <p>The spill office stated that it developed a liaison component for the Operations Center Manual that includes tasks, jobs, and additional information and that it activated the Operations Center liaison during the October 2009 Dubai Star incident in the San Francisco Bay and the statewide tsunami event in March 2011. The Operations Center liaison provided significant critical support to the field liaison officer and bridged the need for communication between the command post and the Assembly, Senate, and other agencies (local, state, and federal) that were not on the scene or directly involved with the response.</p> <p>Continuing education and skill development will be ongoing. The spill office stated that it plans to continue to train and drill identified liaison staff for both operations center and field positions. Designated liaison staff will need to attend drills and exercises regularly to maintain their skills.</p>	<p>The spill office completed its qualification standards for liaison officers, and it has trained staff in that role.</p>	Fully implemented	Not applicable

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	RECOMMENDATION	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
January 2010	7 To ensure that it performs and reports spill volume calculations quickly and accurately, the spill office should collaborate with the U.S. Coast Guard to establish spill calculation protocols, including transportation needs and the sharing of each entity's calculations. The spill office should also establish procedures to ensure that staff promptly report spill calculations to the state coordinator. Further, the spill office should include spill calculations as part of its drills.	According to the spill office, it wrote the "Joint USCG/Spill Office Protocol for Oil Spill Quantification" in early 2009 and submitted it to the Coast Guard's Eleventh District by March 2009. The spill office stated that the U.S. Coast Guard's District Commander determined that the proper place for the protocol was in each Federal On-Scene Coordinator's Area Contingency Plan. The spill office stated that the protocol is to be placed in the Area Contingency Plan addendums and will be referenced in the Area Contingency Plans at the next scheduled update. Further, the spill office stated that quantification has become a standard element in its required oil spill contingency plan drills and the protocol was properly used in the Dubai Star oil spill incident on October 30, 2009, to the satisfaction of the Unified Command (e.g. the Federal On-Scene Coordinator, the State On-Scene Commander, and the Responsible Party) and those analyzing the spill response.	The "Joint USCG/Spill Office Protocol" for Oil Spill Quantification describes how the spill volume is to be timely and accurately quantified.	Fully implemented	Not applicable
January 2011	8 To ensure that a state employee knowledgeable in oil spills is available to assist in public relations during a spill response, public relations staff in the communications office should participate in spill drills. The spill office should also develop protocols to ensure that key information, such as the role of volunteers, is disseminated to the public early in a spill response.	The spill office stated that it has created a strong public information officer team, which has included filling its vacant public information officer position and augmenting its management staff by hiring an individual with an extensive public affairs and emergency response background. Additionally, the spill office stated that assistant information officer positions have been created under the Incident Command System used as the management framework for emergency response and additional staff that have been designated to fulfill the assistant roles have completed multiple trainings and participated in drills with the lead public information officers. The spill office stated that future crisis trainings have also been scheduled and an operations agreement has been implemented between the spill office and Fish and Game's Office of Communication Education and Outreach (Education and Outreach) for additional support and reserve staff for spill response. In addition, the spill office stated that individuals from Education and Outreach have attended drills and training. Last, the spill office stated that the CalSpillWatch Web page, designated for oil spill emergency response communications, is live with 15 spill office staff trained in its use for posting information (across the Incident Command System organization system—public information officer, liaison, Planning, Operations). Following Fish and Game standard operating procedure, the social network has been established and the spill office now shares media distribution lists with Education and Outreach so that the spill office's public information officer team can distribute information while in the field more quickly and at any time day or night.	The spill office entered into an agreement with Fish and Game to obtain public relations staff who are knowledgeable in oil spills. In addition, the spill office uses the CalSpillWatch page for immediate posting of information on the Internet.	Fully implemented	Not applicable

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	RECOMMENDATION	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
January 2010	<p>9 The spill office should ensure that the Oiled Wildlife Care Network (wildlife network) identifies and trains a sufficient number of staff to carry out recovery activities outlined in contingency plans in the event of a large spill.</p>	<p>The spill office noted that Assembly Bill 2911, approved by the governor in September 2008, adds proactive oiled wildlife search and collection rescue efforts as a primary focus of the wildlife network. This bill also requires the spill office administrator to ensure that the State has the ability to identify, collect, rescue, and treat oiled wildlife according to specified requirements, including training volunteers, stocking emergency equipment for rescue, and providing additional staffing. Funding for the wildlife network increased from \$1.5 million for fiscal year 2008–09 to \$2 million for fiscal year 2009–10. The wildlife network says that it has conducted a number of workshops, trainings, and refresher courses, and hired a wildlife field operations assistant to perform readiness activities during nonspill periods and to support wildlife rescue efforts during oil spills.</p>	<p>The spill office communicated with wildlife network staff regarding training, and the wildlife network has trained staff.</p>	Fully implemented	Not applicable
January 2010	<p>10 To the extent that hazardous waste training requirements are a barrier to maintaining sufficient numbers of trained staff the spill office should continue to clarify with the California Occupational Safety and Health Administration (Cal/OSHA) whether reduced requirements for hazardous waste training are acceptable for volunteers assisting on recovery teams, and should consider working with the wildlife network to ensure that this training is widely available to potential volunteers before a spill.</p>	<p>Cal/OSHA responded to the spill office's questions about the level of hazardous waste training necessary for wildlife rescue volunteers. Cal/OSHA indicated that the hazardous waste training could not be reduced from the level currently required but that untrained volunteers could be used in support roles for wildlife rescue efforts.</p>	Not applicable.	Fully implemented	Not applicable

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)	STATUS OF RECOMMENDATION AS OF JUNE 2012	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION
<p>11 To ensure an appropriate reserve balance for the Oil Spill Prevention and Administration Fund (spill fund), the spill office should annually assess the reasonableness of the reserve balance and the per-barrel fee on crude oil and petroleum products. Using this annual assessment, the spill office should adjust expenditures or the per-barrel fee as necessary.</p>	<p>17 through 20</p>	<p>Partially implemented</p>	<p>Fish and Game misstated the spill fund's fund balance appearing in the governor's budget for four of the five fiscal years during our five-year audit period.</p> <p>To ensure that the per-barrel fee is appropriate, state law requires the administrator to annually project revenues and expenditures over three fiscal years, including the current year (three-year projection). The former acting administrator of the spill office prepared a June 2011 three-year projection of the spill fund, which he based, in part, on financial information his office gathered independently. Also, the spill office lacked written procedures directing staff on how to prepare the three-year projection and, consequently, the projection contained inaccurate financial information. Moving forward, we believe it is critical that the spill office take the steps necessary to ensure that financial information included in its three-year projections is accurate, such as developing written procedures for staff to follow when preparing the projections.</p>	<p>In January 2009 the spill office created a report projecting its fund balance through fiscal year 2012-13. At that time, the spill office said that it was making mid-year adjustments to offset decreased revenues from imported oil.</p>
<p>12 To ensure that the spill fund is charged only for oil spill prevention activities, the spill office and Fish and Game should do the following:</p> <ul style="list-style-type: none"> <li>• Provide guidelines to employees concerning when to charge activities to the fund and when to charge other funds for general activities.</li> </ul>	<p>26 through 28</p>	<p>Fully implemented</p>	<p>In conducting our testing of time sheets for Fish and Game employees, we did not identify any inappropriate charges to the spill fund.</p>	<p>The spill office updated its time-reporting guidelines in 2009 and stated that it has provided the guidelines to all employees.</p>

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
<p>13</p> <ul style="list-style-type: none"> <li>Take steps to ensure that spill prevention wardens' time is charged appropriately, such as performing a time study of wardens to use as a basis for allocating the wardens' time between the fund and other Fish and Game funding sources. Such a time study should be updated periodically to ensure that it remains valid and accurate.</li> </ul>	<p>In addition to conducting several time studies as recommended in our prior report, Fish and Game's law enforcement division (enforcement) developed funding management tools to help both spill and nonspill wardens charge their working time to the appropriate fund. These tools allow all wardens to code work efforts not in support of the spill fund to other specific funding sources. Supervisors and managers review the use of these codes monthly to verify the appropriateness of the charges. These codes are then reviewed periodically by management to verify that funding charges are within allotted limits and that the charges to specific funding sources are appropriate.</p>	<p>Fish and Game implemented a new time-reporting system for its spill prevention wardens. The procedures for the new system require game wardens to specify the nature of their activities and to identify the fund that should be charged for those activities. Further, as mentioned in the Audit Results, our review of the new time-reporting system and 10 daily activity reports found that the spill prevention wardens recorded sufficient details to ensure that each activity was charged to the proper fund.</p>	<p>Fully implemented</p>	<p>26 through 28</p>
<p>14</p> <ul style="list-style-type: none"> <li>Discontinue the current charge to the fund for the attorney we identified who does not perform spill prevention activities.</li> </ul>	<p>The spill office made adjustments so that the time of the attorney mentioned in our report is properly charged.</p>	<p>In conducting our testing of time sheets for Fish and Game employees, we did not identify any inappropriate charges to the spill fund.</p>	<p>Fully implemented</p>	<p>Not applicable</p>

DATE THE CALIFORNIA STATE AUDITOR (STATE AUDITOR) REPORTED THE RECOMMENDATION WAS FULLY IMPLEMENTED	RECOMMENDATION	SUMMARY OF THE STATE AUDITOR'S RATIONALE FOR ITS DETERMINATION	IF APPLICABLE, THE STATE AUDITOR'S CURRENT FINDING(S)	STATUS OF RECOMMENDATION AS OF JUNE 2012	RELATED TEXT IN CURRENT REPORT (PAGE # IF APPLICABLE)
January 2010	<p>15 To ensure that the spill office has necessary resources available to it, and to reduce friction regarding the use of staff, the spill office and other Fish and Game units should discuss their respective authorities and better define the role of each in the management of spill prevention staff consistent with the administrator's statutory responsibilities and the other needs of Fish and Game. Such discussions could clarify the spill office's role in hiring and firing employees, spell out specific training needs, and identify how staff will be funded.</p>	<p>In an effort to improve departmental organization and operations and deliver mission-critical programs at the highest level, Fish and Game refined its organizational structure and clearly defined roles and responsibilities. To provide a solid framework for those affected by direct reporting relationships, the spill office took the following steps:</p> <ul style="list-style-type: none"> <li>a. Fish and Game enforcement has agreed to collaborate with the spill office when filling vacancies and to provide notification when purchases of over \$5,000 are incurred.</li> <li>b. Minimal operational changes have been experienced by its legal branch, with the exception that all civil and criminal cases referred to the Office of the Attorney General will be directed to Fish and Game's Office of General Counsel deputy director for initial review.</li> <li>c. All information technology (IT) functions have remained at the spill office. Weekly coordination with Fish and Game's assistant deputy director of IT is carried out to discuss ongoing projects and future needs of the program.</li> <li>d. To improve communication, education, and outreach efforts, the spill office's public information and external affairs positions have been physically relocated back to the spill office's headquarters. Fish and Game stated that it hired a manager with an extensive communications background to manage and direct staff and coordinate with the deputy director of Fish and Game's Office of Communications and agency personnel.</li> </ul> <p>Further, all hiring and purchasing functions for the legal, communication, and IT divisions remain at the spill office. To ensure that adequate resources are available during a spill event, personnel departmentwide have been cross-trained to perform response and communication activities.</p>	<p>Since our prior audit report, other issues regarding organizational friction have surfaced. For instance, as we describe in the Audit Results, although the spill office and certain divisions within Fish and Game have worked to address these issues, the parties involved could benefit by developing written policies and procedures to ensure that similar issues do not occur in the future.</p>	Partially implemented	23 through 26

Sources: The California State Auditor's reports released in January 2010, January 2011, and January 2012 titled *Recommendations Not Fully Implemented After One Year: The Omnibus Audit Accountability Act of 2006*, and our assessments of the spill office's 60-day, six-month, and one-year audit responses as presented in our February 2009 and February 2010 special reports to Assembly and Senate Standing/Policy Committees titled *Implementation of State Auditor's Recommendations*.

*(Agency comments provided as text only.)*

July 27, 2012

California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, California 95814

Ms. Elaine M. Howle, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, California 95814

Dear Ms. Howle:

Thank you for providing the Agency with an opportunity to review the Bureau of State Audits' (BSA) draft report entitled Oil Spill Prevention and Administration Fund: The Department of Fish and Game and the Office of Spill Prevention and Response Need to Improve Their Administration of the Spill Fund.

The audit focused on The Department of Fish and Game (DFG) and the State Lands Commission tracking, management and expenditure of Oil Spill Prevention and Administration Fund. My staff and I have reviewed the report with DFG and the State Lands Commission and discussed the issues identified. I believe that this audit clearly demonstrates that DFG has made significant improvements in its administering of the fund. While the report notes improvements that can be made, DFG has taken actions to remediate these short comings.

Enclosed are DFGs and the State Lands Commission responses to your draft report. In closing, I would like to acknowledge the efforts of the BSA audit team; they conducted the audit in a professional and courteous manner that was appreciated by my staff.

Sincerely,

*(Signed by: John Laird)*

John Laird  
Secretary for Natural Resources

*(Agency comments provided as text only.)*

July 30, 2012

California Department of Fish and Game  
1416 9th Street, Rm 1205  
Sacramento, CA 95814

Elaine M. Howle, State Auditor  
California State Auditor  
Bureau of State Audit  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Subject: Bureau of State Audits Report #2011-123

Dear Ms. Howle:

Thank you for the opportunity to respond to the audit on the Oil Spill Prevention and Administration Fund (OSPAF). The Department of Fish and Game (Fish and Game) appreciates the efforts of your audit team to improve the processes and procedures for the OSPA. I take seriously the view that public service is an honor requiring us to operate to the highest standards. I also appreciate the role your Bureau plays in helping agencies achieve such standards.

Fish and Game has already implemented many of the improvements that the audit recommends. Fish and Game agrees with and has incorporated the Bureau of State Audits recommendations as it administers the OSPA. Below are the recommendations and Fish and Game's responses.

**Recommendation:** To prepare and report accurate fund condition statements for inclusion in the governor's budget each year, Fish and Game should do the following:

- Ensure that staff in its budget branch follows written procedures to develop fund condition statements.
- Train both new and existing staff on how to prepare fund condition statements for inclusion in the governor's budget.

**Response: Agree.** Fish and Game agrees and will ensure that staff in our budget branch follow written procedures to develop fund condition statements. Fish and Game has also trained both new and existing staff on how to prepare fund condition statements for inclusion in the governor's budget.

**Recommendation:** To ensure that three-year projections of the spill fund's revenues, expenditures, and fund balances, which are used to determine fee rates, are based on accurate financial information, the spill office should, at a minimum, do the following:

- Develop written procedures directing staff on how to prepare the three-year projection, which should include steps to verify the accuracy of the financial information included in the projection. In developing these procedures, the spill office should consult with Fish and Game's accounting and budget branch to confirm they are thorough and complete.

- Consider the reduction in the spill fund's costs, as a result of the recovery of indirect administrative costs, when projecting its fund balance moving forward.

**Response: Agree.** Fish and Game agrees and will ensure that staff in our OSPR Office will consult with Fish and Game's accounting and budget branch to confirm they are thorough and complete and will consider the reduction in the spill fund's costs, as a result of the recovery of indirect administrative costs, when projecting its fund balance moving forward.

**Recommendation:** To prevent under- or over-recovery of federal funds, Fish and Game should regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate result.

**Response: Agree.** Fish and Game agrees and will regularly reassess whether using budgeted expenditures or actual expenditures will produce the most accurate result.

**Recommendation:** To ensure that the spill office continues to work consistently with other entities to resolve issues regarding the use of staff and equipment and that it has the necessary resources to carry out its operations, the spill office should develop written policies and procedures with the following departments and/or divisions:

- Fish and Game's enforcement division regarding staffing decisions.
- Fish and Game's IT unit regarding the coordination of response to system outages.
- State lands regarding its disclosure of budget change proposals affecting the spill fund.

**Response: Agree.** Fish and Game agrees and will ensure that the spill office will continue to work consistently with other entities to resolve issues regarding the use of staff and equipment, including written policies and procedures, and that it has the necessary resources to carry out its operations.

Again, thank you for the opportunity to provide comments to the audit. The activities described in the audit pre-date my service as director. However, the responsibility to implement solutions is mine. Therefore, I intend to personally monitor our performance on your recommendations. Please contact me or Kevin Hunting, Chief Deputy Director, at (916) 653-7667, if you have any questions.

Sincerely,

*(Signed by: Charlton H. Bonham)*

Charlton H. Bonham  
Director

*(Agency comments provided as text only.)*

July 25, 2012

California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

Elaine M. Howle, CPA State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Dear Ms. Howle:

Initially, I want to acknowledge that the audit conducted by the Bureau of State Audits (Bureau) provided the staff of the California State Lands Commission (Commission) a valuable review and analyses of expenditures from the Oil Spill Prevention and Administration Fund (OSPAF). We have reviewed the draft report and agree with both of the Bureau's recommendations and are already working to implement them.

Commission staff concurs with the recommendation to share budget change proposal information regarding the OSPAFA with the Administrator. We have shared such information with the Administrator over the past two budget cycles and will work with the Administrator's staff to reach a more formal, mutually agreed upon process for the future.

Commission staff also concurs with the need for additional timesheet training and supervisory review procedures. We will be taking measures to improve the supervisory review process and provide new training for all staff in timesheet completion. Work is already underway to review current program account allocations and clarify the coding of administrative costs.

Again, we appreciate the efforts of the Bureau in providing constructive criticism and analyses of past and present practices, as well as its recommendations, which we look forward to implementing. The Commission and its staff are committed to the prevention of oil spills from occurring in California's coastal and other navigable waterways in the most efficient and cost effective manner.

Sincerely,

*(Signed by: Curtis L. Fossum)*

Curtis L. Fossum  
Executive Officer

cc: Members of the Legislature  
Office of the Lieutenant Governor  
Little Hoover Commission  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press