Following the 1989 Exxon Valdez spill, Members faced great pressure to overcome the disputes discussed above. The spill highlighted the inadequacies of the existing coverage and generated public outrage. The end result was the Oil Pollution Act of 1990 (OPA)—the first comprehensive law to specifically address oil pollution to waterways and coastlines of the United States.

Oil Pollution Act of 1990

With the enactment of OPA on August 18, 1990, Congress consolidated the existing federal oil spill laws under one program. The 1990 law expanded the existing liability provisions within the CWA and created new free-standing requirements regarding oil spill prevention and response. Key OPA provisions are discussed below.

Spill Response Authority

When responding to a spill, many considered the lines of responsibility under the pre-OPA regime to be unclear, with too much reliance on spillers to perform proper cleanup. OPA strengthened and clarified the federal government’s role in oil spill response and cleanup. OPA Section 4201 amended Section 311(c) of the CWA to provide the President (delegated to the USCG or EPA) with three options: perform cleanup immediately (“federalize” the spill), monitor the response efforts of the spiller, or direct the spiller’s cleanup activities. The revised response authorities addressed concerns “that precious time would be lost while waiting for the spiller to marshall its cleanup forces.”

The federal government determines the level of cleanup required. Although the federal government must consult with designated trustees of natural resources and the governor of the state affected by the spill, the decision that cleanup is completed and can be ended rests with the federal government. States may require further work, but without the support of federal funding.

31 A handful of other oil spills followed the Exxon Valdez in 1989 and 1990 (e.g., the Mega Borg spilled 5 million gallons of oil in the Gulf of Mexico), further spurring congressional action.
36 OPA Section 1011.
**National Contingency Plan**

OPA expanded the role and breadth of the NCP. The 1990 law established a multi-layered planning and response system to improve preparedness and response to spills in marine environments. Among other things, the act also required the President to establish procedures and standards (as part of the NCP) for responding to worst-case oil spill scenarios.

**Tank Vessel and Facility Response Plans**

As a component of the enhanced NCP, OPA amended the CWA to require that U.S. tank vessels, offshore facilities, and certain onshore facilities prepare and submit oil spill response plans to the relevant federal agency. In general, vessels and facilities are prohibited from handling, storing, or transporting oil if they do not have a plan approved by (or submitted to) the appropriate agency (Table 1).

The plans should, among other things, identify how the owner or operator of a vessel or facility would respond to a worst-case scenario spill. Congress did not intend for every vessel to have onboard all the personnel and equipment needed to respond to a worst-case spill, but vessels must have a plan and procedures to call upon—typically through a contractual relationship—the necessary equipment and personnel for responding to a worst-case spill.

In 2004, Congress enacted an amendment requiring non-tank vessels (i.e., ships carrying oil for their own fuel use) over 400 gross tons to prepare and submit a vessel response plan. Congress reasoned that many non-tank vessels have as much oil onboard as small tank vessels, thus presenting a comparable risk from an oil spill. Moreover, the international standards for oil spill prevention apply to tanker and non-tanker vessels alike. Thus, the 2004 amendment brought the U.S. law more in line with international provisions.

**Double-Hull Design for Vessels**

The issue of double hulls received considerable debate for many years prior to OPA, and it was one of the stumbling blocks for unified oil spill legislation. Proponents maintained that double-hull construction provides extra protection if a vessel becomes damaged. However, opponents

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37 OPA Section 4202, amending Section 311(j) of the CWA.
38 OPA Section 4201(b), amending Section 311(d)(2)(J) of the CWA.
39 The response plan requirement is applicable only to an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into navigable waters, adjoining shorelines, or the exclusive economic zone. CWA Section 311(j)(5)(iii).
40 OPA Section 4202, amending Section 311(j)(5)(E) of the CWA.
43 Primarily the shipboard oil pollution emergency plans required by MARPOL 73/78, discussed later in this report.
argued that a double-hulled vessel might cause stability problems if an accident occurred, thus negating the benefits. Stakeholders also highlighted the impacts that a double-hull requirement would entail for the shipping industry (e.g., cost and time of retrofitting, ship availability). The OPA requirements for double hulls reflected some of these concerns.

The act required new vessels carrying oil and operating in U.S. waters to have double hulls. However, OPA provided certain exceptions, depending on the size of the vessel (e.g., less than 5,000 gross tons) and its particular use (e.g., lightering). For older vessels, OPA established a staggered retrofitting schedule, based on vessel age and size. Many of the age-based deadlines have already passed. By 2015 at the latest, the law requires that all oil-carrying vessels operating in U.S. waters have double hulls.

**Liability Issues**

OPA unified the liability provisions of existing oil spill law, creating a freestanding liability regime. Section 1002 states that responsible parties are liable for any discharge of oil (or threat of discharge) from a vessel or facility to navigable waters, adjoining shorelines, or the exclusive economic zone of the United States (i.e., 200 miles beyond the shore).

Regarding the existing oil spill law prior to OPA, Congress recognized that “there is no comprehensive legislation in place that promptly and adequately compensates those who suffer other types of economic loss as a result of an oil pollution incident.” OPA broadened the scope of damages (i.e., costs) for which an oil spiller would be liable. Under OPA, a responsible party is liable for all cleanup costs incurred, not only by a government entity, but also by a private party. In addition to cleanup costs, OPA significantly increased the range of liable damages to include the following:

- injury to natural resources,
- loss of personal property (and resultant economic losses),
- loss of subsistence use of natural resources,


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OPA Section 4115, amending 46 U.S.C. 3703.

This exception applied to many inland barges.

Lightering is the process of transferring oil from a large vessel to a smaller vessel. This common practice occurs in designated areas that are typically many miles away from shore.

The definition of “facility” is broadly worded and includes pipelines and motor vehicles. OPA Section 1001.


OPA Section 1002(b)(1).
• lost revenues resulting from destruction of property or natural resource injury,
• lost profits resulting from property loss or natural resource injury, and
• costs of providing extra public services during or after spill response.54

OPA provided several defenses from liability: act of God, act of war, and act or omission of a third party. Although these defenses are more narrow than those for oil spills under the pre-OPA framework (primarily the CWA), they are similar to those of the Superfund statute,55 established in 1980 for releases of hazardous substances.

Except for certain behavior, including acts of gross negligence or willful misconduct,56 OPA set liability limits (or caps) for cleanup costs and other damages. Until 2006, liability limits for vessels were based on vessel carrying capacity, generally $1,200 per gross ton. As an example, the liability limit for the 2004 Athos tanker spill in Delaware River was approximately $45 million.57

OPA requires the President to issue regulations to adjust the liability limits at least every three years to take into account changes in the consumer price index (CPI). Despite this requirement, adjustments to liability limits were not made until Congress amended OPA in July 2006. The Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241) increased limits to $1,900/gross ton for double-hulled vessels and $3,000/gross ton for single-hulled vessels. Furthermore, the Coast Guard made its first CPI adjustment to the liability limits in 2009, increasing the limits to $2,100 and $3,200, respectively.58

Mobile offshore drilling units (MODUs), like the Deepwater Horizon unit involved in the April 2010 incident in the Gulf of Mexico, are first treated as tank vessels for their liability caps. If removal and damage costs exceed this liability cap, a MODU is deemed to be an offshore facility for the excess amount.59

Offshore facility liability is capped at “all removal costs plus $75 million”; onshore facilities and deepwater port liability is limited to $350 million. Although these limits are much higher than under the pre-OPA liability structure, Congress did not alter the limits with the tank vessel increases.

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54 OPA Section 1002(b)(2).
55 Section 107(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund), P.L. 96-510.
56 In addition, liability limits are unavailable if the violation of a federal safety, construction, or operating requirement proximately caused the spill. Spillers must also report the incident and cooperate with response officials to take advantage of the liability caps. OPA Section 1004(c).
57 37,895 gross tons x $1,200/ton = $45.47 million. Vessel data from United States Coast Guard, Investigation into the Striking of Submerged Objects by the Tank Vessel Athos I in the Delaware River on November 26, 2004 with a Major Discharge of Oil, January 2006, p. 4.
59 33 USC 2704(b).