Crises have played an important role in the history of regulation of the offshore oil and gas industry. The conventional wisdom is that major changes in US policy were the direct result of significant oil spills. This chapter provides much-needed context and nuance to that conventional wisdom by examining the policy response to two events separated by 20 years: the Santa Barbara oil spill of 1969 and the Exxon Valdez spill of 1989. While both events did result in significant new environmental legislation and regulation, the nature of the responses were the product of the political times and built upon a substantial, albeit slower, evolution in environmental policy. The Santa Barbara accident resulted in the institution of a new liability-based regulatory system that satisfied the need for significant policy response during the peak of the environmental movement and appeased the market-based sensibilities of the Nixon administration. The new regime for oil spills created in the wake of the Exxon Valdez – the Oil Pollution Act of 1990 – did not spring fully formed from Congress in the wake of the accident. Rather it evolved over two decades, and reflected successive changes in oil spill policy and the policies created to manage a related problem, toxic wastes. Over the course of this period, members of the policy community expanded and clarified liability, created new mechanisms for funding oil removal and remediation, and ultimately emphasized prevention and response preparedness.

1 The author would like to thank Jonathon Free and Vanessa Freije for research assistance.
7.1 Policy Communities and the Environment

In the past several decades, political scientists have devoted a great deal of attention to the dynamics of policy-making. This research has generated a rich literature on policy communities or subsystems, issue networks, and advocacy coalitions. While the differences between competing frameworks is beyond the scope of this paper, each recognizes that the development of public policy is shaped by the interaction of interested actors drawn from the relevant congressional committees, bureaucracies, interest groups and private sector organizations (e.g. universities, corporations) (see Sabatier 2007). Following Frank R. Baumgartner and Bryan D. Jones, the institutional structures and a shared understanding of policy (a “policy image”) create a structurally induced equilibrium that conveys stability and promotes incremental change along a particular trajectory (see Baumgartner and Jones 1993). However, focusing events such as crises can disrupt this stability, creating opportunities for significant changes in policy. Thomas Birkland provides a useful definition of a focusing event as “an event that is sudden, relatively uncommon; can be reasonably defined as harmful or revealing the possibility of potentially greater future harms; has harms that are concentrated in a particular geographical area or community of interest; and that is known to policy makers and the public simultaneously” (Birkland 1998: 54) (see also Chapter 5 in this volume). Such events are important because they can change popular perceptions of risk, leading what was once an apathetic public to mobilize. Advocacy groups, previously excluded from the policy monopoly, may enter the fray, hoping to change the dominant policy image and seek significant changes in public policy. Political elites may simply hope to capitalize on the crisis to take advantage of the spike in issue salience.

Following the disruption, new actors, new institutions, and new understandings of core policy problems may once again lead to a new equilibrium, creating a context for successive incremental changes along an altered trajectory. Two qualifications are necessary at this point. First, one might suspect, given this dynamic, that policy history is best understood as qualitatively different regimes separated by crises. But more often than not, new initiatives are layered upon the old and draw heavily on the legacy of past. Second, although crises and their immediate aftermath often attract a good deal of attention, a longer-term perspective is quite useful given that policies often evolve over periods that may span a decade or longer after a focusing event has occurred (Busenberg 2001). Most
certainly, this was the case in environmental policy in general and oil spill policy in particular.

The Santa Barbara oil spill of January 1969 occurred near the beginning of—and played an important role in triggering—a period of rapid and substantial change in environmental policy. The fact that it was more or less concurrent with other highly visible events—the Torrey Canyon spill (1967), the burning Cuyahoga River (1969), the Lake Erie fish kills—and reinforced the core messages of earlier publications like Rachel Carson’s *Silent Spring* contributed to its impact (see Johnson and Frickel 2011; Carson, 1962). The emerging narrative was that significant new government action was required to reverse a wide range of environmental damages (see Chapter 6 in this volume for more on narratives in the policy process). High levels of mobilization were sufficient to punctuate the equilibrium that formed around issues of pollution control in the immediate postwar decades. For many activists inspired by the New Left critique of capitalism, these events provided further evidence that the government needed to force higher levels of corporate accountability. New institutions were needed to provide greater access for citizen groups that could advocate a broader understanding of the public interest (see Eisner 1993). In the aftermath of Santa Barbara, events unfolded rapidly. On February 18, 1969, Senator Henry M. Jackson (D-WA) introduced the National Environmental Policy Act, which was signed into law on January 1, 1970. The salience of environmental protection continued to grow, as exhibited by the prominence of the environment in Richard Nixon’s 1970 State of the Union Address and Earth Day on April 22, 1970. By the end of the year, Congress had passed the landmark Clean Air Act Amendments and the Nixon administration had created the Environmental Protection Agency (EPA). Two years later, Congress passed the Federal Water Pollution Control Act Amendments (Clean Water Act). The modern environmental era was well underway.

But this was only the beginning. In the next several years, environmental policy-makers turned their attention to the problems of toxic and hazardous wastes. Congress created a system of cradle-to-grave regulation for hazardous waste management (the Resource Conservation and Recovery Act of 1976). It established a new regime for assigning liability for, and funding the remediation of, toxic waste sites (the Comprehensive Environmental Response, Compensation, and Liability Act of 1980). It experimented with mandatory information disclosure on the use of toxic chemicals (the Emergency Planning and Community Right-to-Know Act of 1984). Thus, within fifteen years of Santa Barbara,
environmental policy-makers designed and implemented policies that provided a far more systematic means of managing the health and environmental risks associated with various forms of pollution, many of which had been previously ignored.

As institutions were created and innovative statutes were passed, a new environmental policy subsystem emerged, uniting the EPA and state regulators, environmental committees and subcommittees in Congress, a new generation of environmental advocacy groups, and analysts drawn from think tanks and academia. Policy subsystems, as noted above, provide a stable context within which policy evolves. They also provide a context for a process of policy learning that can cut across discrete policy areas. Policy-makers borrow solutions from one policy area and apply them to others. In environmental policy, for example, participants often drew upon the lessons learned in pollution control in one medium to other mediums. They questioned whether certain policy instruments (e.g. tradable permits in acid rain) might be applicable in other areas (e.g. water quality or climate change policy). As experience accumulates, a new understanding of how to manage related problems emerges and may find an expression across multiple related policy areas.

In the present case, the deliberations over oil spills that were triggered by the Santa Barbara oil spill and reinforced by high levels of social mobilization resulted in a series of new statutes. Even if oil spill policy seemed to reach an impasse by the late 1970s, the regulatory regime for oil spills continued to inform the policy debates as Congress turned to address the related issue of toxic wastes in the aftermath of another crisis, Love Canal. Earlier decisions regarding the correct liability regime for oil spills and possible mechanisms for funding remediation found a clear expression in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. In 1989, policy-makers faced a new crisis in the Exxon Valdez disaster. As with Santa Barbara, it revealed in striking terms the inadequacy of existing policies. The policy response – the Oil Pollution Act of 1990 – would borrow from CERCLA much as CERCLA had borrowed from earlier oil spill statutes. In short, as a result of two decades of deliberations stimulated by the events of 1969, members of the policy subsystem would develop a far more comprehensive system for managing the risk of oil spills, creating a prevention, response, liability, and compensation regime that increased and broadened liability; required owner/operators to develop response plans for prevention, containment, and cleanup; and funded an Oil Spill Liability Trust Fund through a tax on the petroleum industry. There is
good evidence that the new policy contributed to a reduction in the number and severity of oil spills in the subsequent decades, at least until the catastrophic Deepwater Horizon spill of 2010 once again revealed the limitations of the existing regime (see Birkland and DeYoung 2011).

7.2 SANTA BARBARA AND A NEW REGIME

The Santa Barbara oil spill began on January 28, 1969, as oil began to gush from a six-inch gap between the drill and the drilling hole in Union Oil’s Platform A, located some six miles off the California Coast. By February 7, up to 230,000 barrels of oil had been leaked, despoiling some 40 miles of coastline along Santa Barbara and Ventura counties. It was the single largest offshore spill thus far in the nation’s history – a fact that was driven home by heavy media coverage (Graetz 2011). In an editorial entitled “Deadly Blanket of Blackness,” the *Los Angeles Times* described the carnage in striking terms: “Half an inch deep and an untold hundreds of miles in length and breadth, a black blanket of crude oil was still riding the long Pacific swells, spreading death and destruction along the Southern California coastline” (“Pollution: Deadly Blanket of Blackness” 1969: G5). The *Washington Post* editorial board refused to view this event in isolation. It attributed Santa Barbara and other recent events to the “crass indifference to the consequences of technological advance in exploiting nature which is leading to the despoiling of nature. That is to say, the gains from technology seem to run only one way – to profits rather than to the preservation of a planet on which man can comfortably live” (“The Loss of a Few Birds” 1969: G5).

The industry response appeared quite callous. In a Senate hearing on February 5, Fred Hartley, President of Union Oil, stated, “I don’t like to call it a disaster, because there has been no loss of human life. I am always impressed by the publicity the death of birds receives compared with that of people.” He continued, “relative to death that occurs from crime in our cities, the desecration to the offshore area of Santa Barbara – although it’s important and a problem we are fully devoted to – should be given a little perspective” (Quoted in: Jackson 1969: A34). The Nixon administration, in contrast, understood the potential political implications of the spill. By February 9, a newly formed advocacy group, GOO (Get Oil Out), had secured 40,000 signatures on a petition – nearly 30 percent of Santa Barbara residents – calling for an end to oil operations (Greenwood and Dye 1969). Senator Edmund Muskie (D-ME) – the Senate’s chief environmentalist and, in Nixon’s mind, the likely
Democratic contender in the 1972 presidential election – had arrived on site to hold informal hearings. President Nixon moved quickly to visit Santa Barbara, along with his newly confirmed Interior Secretary, Walter Hickel. As Nixon surveyed the cleanup efforts, he remarked,

It is sad that it was necessary that Santa Barbara should be the example that had to bring [the environment] to the attention of the American people. What is involved is the use of our resources of the sea and of the land in a more effective way and with more concern for preserving the beauty and the natural resources that are so important to any kind of society that we want for the future (Quoted in Farmbry 2012: 162).

Although the Santa Barbara oil spill stimulated the larger debates about environmental protection, it also forced new thinking about federal regulation of petroleum industry. When the spill occurred, the federal government had little formal authority to act. When Secretary Hickel sought to force oil companies working off the Santa Barbara coast to suspend operations, for example, he discovered that he did not have legal authority to do so unless they had violated the terms of their leases. The best he could achieve was the voluntary commitments of six oil company presidents to suspend operations – and this commitment was broken in 24 hours (Hickel 1971). Moreover, it was unclear whether Union Oil could be held liable for the damages. As the Los Angeles Times reported, “Under terms of the lease granted by the federal government ... Union ... is required only to exercise ‘reasonable diligence’ in drilling and producing operations” (Blake 1969). Although Union voluntarily assumed the costs of the cleanup, there was little question that the existing regulatory regime for petroleum was wholly inadequate.

To place things in context, one must step briefly into policy history. Traditionally, maritime law imposed limited liability for loss of cargo, personal injury and death, and collision damage. In 1851, Congress drew on this tradition and passed the Shipowner’s Limitation of Liability Act, capping liability to the value of the vessel and its cargo as a means of promoting investment in the shipbuilding and maritime industries (Zimmermann 1999). Subsequently, the Oil Pollution Act of 1924 prohibited discharge of oil in coastal waters, imposing a fine ($500 to $2,500) and/or imprisonment (30 days to one year). The Clean Water Restoration Act (1966) built on the 1924 legislation and introduced civil liability for oil pollution. It expanded the reach of the law to prohibit discharge on shorelines and the navigable waters of the United States. Those responsible for the discharge were required to remove it immediately. Failing
this, the Interior Secretary was authorized to arrange for the removal and the responsible party was subject to a higher fine ($10,000) and reasonable removal costs incurred by the government. However, liability was capped at the lesser of $5 million or $67 per gross ton of the vessel in question. Moreover, the federal government faced a significant obstacle in assessing these penalties insofar as it had to prove that the spill resulted from gross negligence (Wang 2011).

The regime for oil spills clearly lagged behind the changes in the sources of oil for domestic use. Traditionally, oil was extracted from wells on land and oil imports were quite limited. The 1960s, however, had witnessed a significant growth both in the international transportation of oil and the exploitation of offshore petroleum resources (see Figures 7.1 and 7.2). Between 1960 and 1970, imports almost doubled, from 1.8 million barrels per day to 3.4 million barrels per day. Moreover, offshore oil production increased fivefold, from 319 thousand barrels per day to 1.6 million barrels per day. But public policy had failed to keep pace with the changes in the sources of petroleum and the risks they imposed (see Murchison 2011; US Energy Information Administration 2012).

In the immediate aftermath of the Santa Barbara spill, Interior Secretary Hickel introduced new regulations for oil companies working under federal leases. Some of these regulations were technology-based, the kinds of regulations that would be referred to subsequently as

![Figure 7.1 Petroleum imports, 1960–2000 (Thousands of Barrels per Day)](https://www.cambridge.org/core/static/images/...)

“command-and-control” regulations (e.g. technical specifications for well casings, blowout preventers, the inspection regime). Henceforth, any variances from these regulations would have to be approved by the Geological Survey rather than on site (see Rich 1969). The most important changes, however, came in the area of liability, departing from the prevailing approach to oil spills described above. Hickel imposed *absolute* liability without having to prove gross negligence. As Hickel explained, this decision largely reflected the practical need for an immediate response:

Cleaning up a spill cannot wait for a court judge to decide who is liable. It has to be done before the pollution kills the wildlife and ruins the beaches. For this reason I demanded that all companies who hold drilling leases on the outer Continental Shelf accept liability for clean up even before the cause of a spill is determined. This became known in short as “absolute liability without cause.” (Hickel 1971: 91)

All of this came as something of a surprise. As Governor of Alaska and Interior Secretary-designee, he had expressed concerns over the impact of water standards on industrial development (Frome 1992). Now, as Interior Secretary, he proved unresponsive to claims that absolute liability could undermine oil production and the incentives of current leaseholders, and render some independent operators uninsurable.
As oil pollution policy was moving forward at the Department of the Interior, US delegates were simultaneously participating in the development of an international convention. Following the 1967 Torrey Canyon disaster, which resulted in the spill of some 32 million gallons of oil, damaging the coastlines of France and the UK, an international convention was called in Brussels to address issues of liability on an international level. The resulting International Convention on Civil Liability for Oil Pollution Damage, finalized in 1969, imposed strict liability on ship owners and required that ship owners carrying in excess of 2,000 tons of oil have insurance or exhibit the capacity to pay for damages. Assuming that the incident was not a result of negligence, liability was capped at $125 per ton of the ship’s tonnage, with an aggregate cap of $140 million. Although the US delegation was actively involved in negotiating the terms of the convention, and President Nixon urged prompt ratification, in the end, the Senate refused to ratify it. The core problem for the Senate was rather straightforward. The international convention would have required the federal pre-emption of state laws, many of which imposed no cap on liability (a point we will return to later). Moreover, given the urgency of the problem in the aftermath of Santa Barbara, there was little desire to tie national policy to the protracted negotiations that were common in the development and ratification of international conventions (Zimmermann 1999).

Although the Senate refused to ratify the international convention, Congress nonetheless moved quickly to incorporate expanded liability into the Water Quality Improvement Act (WQIA) of 1970, an amendment to the Federal Water Pollution Control Act. The WQIA declared “there should be no discharges of oil . . . into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.” It authorized the president to issue regulations regarding the quantities of oil deemed harmful, the methods and procedures for the prevention of discharges, and remediation. Moreover, in recognition of the patchwork of state policies, it authorized the president to coordinate and direct public and private cleanup efforts, establish criteria for local and regional contingency plans, and develop a National

2 33 U.S.C. § 1321 (b)(I)
3 In September 1970, the Department of the Interior provided a rather imprecise definition of harmful quantities as “any discharge which (a) violates any applicable water quality standard (state or federal), or (b) causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or causes a sludge or emulsion to be deposited.” See Keener (1971).
Contingency Plan for the removal of oil (borrowing from the international response to the Torrey Canyon spill) (see Murchison 2011; Keener 1971).

The WQIA required that the owner/operator report any discharge of a harmful quantity to the US Coast Guard (USCG), or face a fine of $10,000, up to a year in prison, or both. More important, it established civil and criminal penalties for violations of the act. Assuming the spill was not the product of acts of God, acts of war, or acts/omissions of a third party with no contractual relationship with the potentially liable party, Congress authorized the federal government to recover cleanup costs within statutorily prescribed limits (e.g. $100 per gross ton or $14 million for a vessel; an $8 million liability ceiling was imposed for onshore facilities). Vessels of over 300 gross tons, moreover, were required to establish and maintain evidence of financial responsibility to meet their potential liability. The most controversial provision of the act – one which met with the opposition of insurers, the oil and shipping industries, and the Nixon administration – established absolute (i.e. strict) liability. That is, liability existed “without regard to whether any such act or omission was or was not negligent” (Kenworthy 1970: 28). If the government could prove that the spill was a product of willful negligence or willful misconduct, the owner/operator’s liability was unlimited. The government could seek to recoup additional cleanup costs via tort actions, although its success could be constrained by the Shipowner’s Limitation of Liability Act of 1851, which capped liability at the value of the vessel and its cargo (“Oil Spills and Cleanup Bills: Federal Recovery of Oil Spill Cleanup Costs” 1980). In a nod to federalism, the WQIA did not pre-empt state laws (Murchison 2011).

When Congress passed the Federal Water Pollution Control Act Amendments (Clean Water Act) in 1972, it incorporated the provisions of the WQIA into § 311 of the new statute and extended them to hazardous wastes. The act once again established liability limits and required that owner/operators provide proof of their financial ability to meet the cleanup costs noted above. Although the act did not include an explicit strict liability provision, the courts nonetheless interpreted it as imposing this standard (Klass 2004). Under § 311(b)(4), the EPA was required to determine “those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare.” The need to set reportable quantities of some 271 substances deemed hazardous resulted in enormous delays, a product of the complexity of the underlying science and legal challenges issued by the Manufacturing
Chemists Association (see Garrett 1979). Section 311(k) created a $35 million revolving fund (the 311 Fund) in the US Treasury, controlled by the USCG. Funded by appropriations and monies recovered from past liable parties, it could be used to finance future cleanup and mitigation before liable parties reimbursed the costs incurred by the government.

The Clean Water Act was amended again in 1977, further strengthening the oil spill regime. Under the amendments, jurisdiction was extended 200 miles offshore. The amendments raised the liability of vessels to $150 per gross ton and removed the $14 million cap; at the same time, it raised the liability caps for onshore facilities to $50 million, with lower liabilities for inland oil barges, which posed less of an environmental threat (Hall 1978). Importantly, the 1977 amendments went well beyond the removal of oil. Section 311(f)(4) noted that liability extended to “any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of the discharge of oil.” Section 311(f)(5) provided that the president “shall act on behalf of the public as trustee of the natural resources to recover the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies” (Quoted in: Schenke 1990: 14). While conferees reported that both chambers were committed to some sort of “superfund” legislation to cover the costs of catastrophic spills, the creation of such a fund would have to be put off for another day (Hall 1978).

A few additional pieces of legislation are worth mentioning. In 1973, Congress passed the Trans-Alaska Pipeline Authorization Act. Following the Clean Water Act, it imposed a standard of strict liability on the owners of the pipeline right-of-way and owners and operators of oil tankers carrying Alaskan oil transported through the pipeline. In addition to removal costs, liability for holder of the pipeline right-of-way was capped at $50 million per incident (additional liability could be determined under ordinary rules of negligence) and $14 million per incident for vessel owner/operators. The Act also created the Trans-Alaska Pipeline Liability Fund, which was to be maintained at $100 million and funded through a five cent per barrel fee, collected by the pipeline operator (Stone 1975).

The next year, Congress passed the Deepwater Port Act of 1974, creating a process for licensing and regulating the construction and operation of deep-water ports (i.e. structures used as terminals for the loading and unloading oil and its transfer to onshore facilities via pipelines). Once
again, Congress imposed a standard of strict liability. Responsible parties were liable for oil removal. Liability for damages was limited to $250 per gross ton or $20 million for vessels, and $50 million for the licensees of deep-water ports. A newly created Deepwater Port Liability Fund would cover immediate costs and removal expenses and damages that could not be compensated by responsible parties. It was to be maintained at $100 million, funded from fees collected by port licensees from owners of oil (Pfennigstorf 1979).

The new regime for oil spills was further strengthened in 1978, when Congress passed the Outer Continental Shelf Lands Act Amendments. Under Title III of the act, owner/operators of vessels and offshore facilities were jointly and severally and strictly liable for the costs of cleanups and other economic damages. The act, once again, established different levels of liability for vessels and offshore facilities but in both cases owner/operators were responsible for removal and cleanup costs paid by the federal or state governments. The act required that owner/operators establish “evidence of financial responsibility sufficient to satisfy the maximum amount of liability” to which they could be exposed (e.g. in the case of offshore facilities, a maximum of $35 million). In recognition of the fact that cleanup costs could exceed the statutory limits, the Act also created a new Offshore Oil Pollution Compensation Fund, capitalized at $200 million and funded through a fee on oil extracted from the Outer Continental Shelf (Murchison 2011).

Congress sought to strengthen the regime in subsequent years to produce a single, comprehensive policy for oil spills. But these efforts were stymied by the same vagaries of federalism that had previously prevented ratification of the International Convention on Civil Liability for Oil Pollution. Several states had their own oil spill statutes, and the majority of these states placed no caps on liability. For states with unlimited liability, federal legislation that pre-empted state laws to impose a national liability standard would constitute a weakening of state laws. Senators representing coastal states with stricter laws were steadfast in their opposition, whereas a majority in the House of Representatives, the petroleum industry, shippers and insurers strongly supported uniform federal liability caps.

To recap, within less than a decade of the Santa Barbara oil spill, Congress had passed a series of statutes that expanded and clarified liability and required that owner/operators have the resources to meet their potential liability. Government can adopt various strategies for managing risks. In the areas of environmental and occupational health,
much of the core statutes of the 1970s focused on risk reduction via command-and-control regulations. Regulators prescribed acceptable levels of emissions, imposed technological standards, and banned the production or use of various substances known to constitute an unreasonable risk to health or the environment. Certainly, the regime for oil spills had some command-and-control elements. But as David A. Moss (2002: 283) notes, these statutes “harnessed the power of risk shifting.” They “purposefully and aggressively utilized liability as an environmental tool.” The underlying theory was that higher levels of liability would create incentives for greater risk management on the part of industry actors, leading to a reduction in oil spills. Moreover, to fund removal and remediation, four funds were created, three of which would draw on fees from the petroleum industry. Arguably the liability approach is more pro-business than equivalent command-and-control approaches, as it gives businesses the right to choose the most cost-effective means of reducing risk. Thus, given the political demands for action in the wake of the Santa Barbara spill, it may have been more appealing to the pro-business elements of the Nixon administration.

Ultimately, the patchwork of state and federal statutes would remain in place until the next salient event: the Exxon Valdez disaster in 1989. But before turning to that event, it is worth noting that the liability-based regulatory approach adopted after Santa Barbara also set the trajectory for environmental policy in the US much more broadly. To see that we must examine the efforts to design a new regime for toxic and hazardous wastes that drew heavily on the oil spill statutes.

7.3 FROM OIL SPILLS TO TOXIC CHEMICALS

While congressional efforts to strengthen the oil spill regime bore little fruit in the years following the passage of the Outer Continental Shelf Lands Act Amendments, another incident triggered major changes in the regulation of toxic chemicals. In 1978, a series of exposés revealed a tragic series of events at Love Canal in Niagara Falls, New York. During the 1940s, the Hooker Chemical Company had disposed of some 21,000 tons of toxic waste in a clay-lined canal. Although Hooker had sold the property to Niagara in 1953 for $1 – with full disclosure of the wastes – the city subsequently permitted development on the site (including a school, a playground, and housing). By the 1970s, the toxic mix of mercury, benzene, chlorinated compounds, and dioxins contaminated the groundwater and the soil, resulting in a range of serious health problems
The contemporaneous revelations of the “Valley of the Drums” – a site with more than 20,000 leaking barrels of hazardous wastes in Louisville, Kentucky – only increased the public attention drawn to the problem. Members of Congress clearly understood that the “nation’s hazardous waste problem was made more difficult by the fact that existing statutory authority, common law authority, and funding for cleanup of existing hazardous waste sites was woefully inadequate” (Klass 2004: 928).

In 1976, Congress had passed the Resource Conservation and Recovery Act (or RCRA) to regulate hazardous wastes. It created a cradle-to-grave system of regulation that imposed stringent record-keeping and reporting requirements to document the generation, use, transportation, and disposal of wastes. Treatment, storage, and disposal facilities, moreover, were required to meet construction and performance standards promulgated by the EPA. But even if RCRA performed as intended – and there is much evidence that the demands of the new policy simply overwhelmed the analytical and financial resources of regulators – it did nothing to address the problems posed by Love Canal, the “Valley of the Drums,” and other yet-undisclosed toxic waste sites that predated RCRA. In the wake of these striking revelations, Congress turned to strengthen regulations with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (see Eisner 2007).

Although the details of CERCLA are beyond the scope of this paper, the act created a system for identifying and prioritizing hazardous waste sites, assessing liability for responsible parties, and funding remediation. Several connections between CERCLA and earlier oil spill policies are worth noting. First, CERCLA drew on the example of the National Contingency Plan that had been authorized by the WQIA to coordinate cleanups and further expanded to cover hazardous wastes under the provisions of the Clean Water Act in 1972. Under CERCLA, the National Oil and Hazardous Substances Contingency Plan was broadened once again to cover the releases from hazardous waste sites. Second, Congress drew on the examples of the recently passed oil statutes (see above) that created various funds that were financed through a fee on oil. Under CERCLA, Congress created the Superfund, which was financed through an excise tax on the petroleum and chemical industries. It would be used to cover the costs of remediation where it was impossible to identify and/or recover costs from responsible parties (e.g. because the firms in question no longer existed).
Third, CERCLA adopted the liability regime and thus the risk-shifting strategy that had been applied to oil spills. The House and Senate bills (H.R. 7020 and S. 1480) that provided the foundations for CERCLA included language expressly referring to strict, joint, and several liability. In the waning days of the lame duck Congress, opposition to the liability language threatened to stall passage. The sponsors feared that the window of opportunity for policy change could close quite abruptly once the 97th Congress was sworn in and Ronald Reagan assumed the presidency. To facilitate passage, the sponsors substituted new language in CERCLA §101(32), noting that the act adopted “the standard of liability which obtains under section 1321 of Title 33,” that is, §311 of the Clean Water Act. As noted above, the courts had interpreted this section of the Clean Water Act as imposing strict liability. The concession, in short, was not a genuine concession. It did nothing to weaken the liability standards in CERCLA but rather extended the existing liability standards in petroleum to hazardous waste sites more generally (Klass 2004).

Congress drew heavily on existing oil spill policy when shaping CERCLA and there was some hope of extending the new legislation to oil spills, thereby creating a unified scheme. This goal, alas, became another victim of lame duck session. During the legislative debates, a House bill covered oil spills, but the final version of the Senate bill that became CERCLA contained an exclusion for petroleum. While members of both chambers recognized this as a major defect that could complicate liability under CERCLA, there was insufficient time to forge a compromise. In the end, §101(14) of CERCLA stated that the term hazardous substance “does not include petroleum, including crude oil . . . natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).” Ironically, CERCLA would not extend the new regime to oil spills, even if its very design drew on the legislative efforts stemming from the Santa Barbara spill (Knopf 2011).

7.4 THE EXXON VALDEZ AND THE OIL POLLUTION ACT OF 1990

Since the 1970s, further progress on oil spill liability law has been thwarted by a conflict over states’ rights. As noted earlier, the core question was whether federal law should pre-empt state laws. Some observers believed that the stalemate would not be broken until another devastating spill forced the issue onto the agenda (Hager 1989a). On March 24, 1989,
this proposition was tested when the Exxon Valdez ran aground on Bligh Reef. The resulting spill dumped some $250,000$ barrels of North Slope crude oil into Alaska’s Prince William Sound, creating a slick larger than the state of Delaware and giving rise to an environmental disaster that was far greater than the Santa Barbara spill two decades earlier. Media coverage was, once again, critical in bringing images of the ecological impacts to a broader public. As one analyst observed: “The Valdez spill, with its dramatic television footage of a huge and grotesque environmental disaster was the ‘Pearl Harbor’ of the US environmental movement” (Randle 1991). Conservative estimates of the initial casualties included $250,000$ seabirds, $144$ bald eagles, $4,400$ sea otters, and $20$ whales, as well as significant and long-term declines in the local fisheries. Moreover, the initial human impacts included “high levels of collective trauma, social disruption, economic uncertainty, community conflict, and psychological stress.” In short, the biological, commercial and social impacts were nothing short of catastrophic (Gill, Picou, and Ritchie 2011).

The accident revealed in stark terms the inadequacy of industry practices. The tanker’s captain, Joseph Hazelwood, was intoxicated and asleep, leaving control of the ship to the third mate who lacked a license to pilot the ship in Prince William Sound. (Hazelwood had completed an alcohol treatment program a few years earlier, a fact that was known by Exxon.) Alyeska Pipeline Service (a consortium co-owned by Exxon, British Petroleum, Arco, Mobil, Amerada Hess, Phillips, and Unocal) was responsible for deploying a contingency plan for responding to spills. However, its response was delayed and piecemeal due to inadequate supplies of barrier booms and dispersants and the fact that the containment barge had been stripped of equipment for repairs from storm damage some two weeks earlier. Because Alyeska had disbanded its full-time response team in 1981 as a cost-cutting measure, it proved particularly difficult to assemble an emergency crew on a holiday weekend. Alyeska’s problems dated back several years, with documentation of failed oil spill drills, inadequate equipment, and poor personnel training. Indeed, state records had described its spill response capacity as having “regressed to a dangerous level” (McCoy and Wells 1989). As the Wall Street Journal reported: “The oil companies’ lack of preparedness makes a mockery of a 250-page containment plan, approved by the state, for fighting spills in Prince William Sound.” Regardless of the causes of this particular wreck, “the disaster...exposed a much deeper problem: the seeming inability of the oil industry to fight major oil spills” (Wells and McCoy 1989).
The corporate response did not help matters. Exxon’s chairman, Lawrence Rawl, did not comment on the event for six days, and then there was a consistent effort to deflect responsibility for the slow response away from Exxon and Alyeska (e.g. Rawl claimed that some of the blame should be assigned to environmentalists who questioned the toxicity of dispersants and to the Alaskan officials and USCG that “wouldn’t give us the go-ahead to load those planes, fly those sorties, and get on with it.”). Although Exxon ran full-page apologies in the newspaper, the chairman consistently argued that the company had gotten a “bad rap.” When asked in a *Fortune* interview what lessons he would offer other CEOs based on the crisis, Rawl responded: “You’d better prethink which way you are going to jump from a public affairs standpoint before you have any kind of a problem. You ought to always have a public affairs plan...I just keep putting one foot in front of the other, and I’m hoping with a little bit of luck to prove to you that we’re going to make this thing work out better than the greatest, most optimistic expectations (“Rawl: In Ten Years You’ll See Nothing” 1989).

While Exxon’s chairman may have viewed the spill through the lens of public relations, Congress drew a different lesson: the existing patchwork of policies for oil spills was simply inadequate. Although Congress had established four separate funds to cover the costs of cleanups, three were location specific (the outer continental shelf, the Louisiana Offshore Oil Loop, and the Alaskan pipeline), and the revolving fund created under § 311 (k) of the Clean Water Act was grossly underfunded. Although it had been authorized at $35 million, at the time of the Exxon Valdez spill, it contained a mere $4 million. It could cover but a small fraction of the estimated $1 billion that would be required for cleanup, restoration, and economic damages. To place things in perspective, Exxon itself was spending $1 million per day on the cleanup. Even if there was dissatisfaction with Exxon’s efforts, there was a valid concern that any efforts to federalize the cleanup could lead the company, in the words of USCG Commandant Paul A. Yost Jr., “to close their checkbook.” If the federal government sought to replicate Exxon’s efforts, the 311 revolving fund would be fully depleted in a matter of days (Hager 1989b; Hager 1989a).

As the media attention and public outrage over the Exxon Valdez mounted, Congress turned again to the issue of oil spill liability. The salience of the event – when combined with contemporaneous spills in Rhode Island, Delaware, and the Houston Ship Channel – was sufficient to break the stalemate of the past, resulting in the passage of the Oil Pollution Act (OPA) of 1990. As Congress considered liability, it was
forced to return to the issue of pre-emption and the related question of international protocols. The majority of states had oil pollution liability regimes in place and the majority of these imposed unlimited liability on shippers and in many cases, the oil cargo owners as well (see Table 7.1). For the past decade, further progress on oil spill regulation had been blocked by the inability of the House and Senate to agree on the question of pre-emption. Under the 1984 Protocols to the International Convention on Civil Liability for Oil Pollution Damage and the Protocol to the International Fund for Compensation for Oil Pollution Damages, liability would have to be capped at $260 million per vessel (assuming that the spill was not a product of willful negligence or misconduct). Participation in these international protocols would be impossible absent federal pre-emption. In the deliberations following the Exxon Valdez, the House forwarded legislation that would pre-empt state laws – a position that was supported by the Bush administration and the shipping industry. Insurers also supported the caps, arguing that they could not provide insurance to cover unlimited liabilities and, hence, caps were required to secure functioning insurance markets (see insurance

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*Source: Kim (2002)*
discussion in Chapter 3 of this volume). In the Senate, however, there was once again a steadfast refusal to accept legislation that would weaken state laws (or to support a protocol that would have the same effect). Senate Majority Leader George J. Mitchell (D-ME) warned that there would be no vote on any law that pre-empted state laws. Ultimately, the conferees agreed that the OPA would not interfere with state laws, even if it precluded participation in the international conventions (Cushman 1990; Kuntz 1990).

As with CERCLA, the OPA adopted “the standard of liability which obtains under section 311 of the [Clean Water Act].” In other words, responsible parties are strictly, jointly and severally liable for cleanup costs (without limit) and damages (within statutory limits). With respect to damages, the OPA increased liability well above the levels established under the Clean Water Act. For tankers above 3,000 tons, liability was capped at the greater of $1,200 per gross ton or $10 million. For vessels below this size, liability was capped at $2 million (with liability limits of $500,000 or $600 per gross ton for nonoil vessels). As in the past, liability for damages was unlimited if the spill was the product of willful negligence or willful misconduct, or if the responsible party failed to report the spill or make reasonable efforts to remove the oil. As with § 311 of the Clean Water Act and CERCLA, acts of God or war, or acts/omissions of third parties with no contractual relationship to the responsible party were recognized as defenses against liability for removal and damages (see Nichols 2010; Grumbles and Manley 1995).

Under the OPA, the range of recoverable damages was comprehensive, including (1) natural resources damages; (2) real and personal property damages including use value; (3) the loss of subsistence use of natural resources; (4) the loss of tax and other revenues; (5) the loss of profits or earning capacity; and (6) the increased costs of public services. Of these categories, damages to natural resources, loss of tax revenues and increased costs of public services were recoverable only by government (federal, state, foreign) and Indian tribes. In the remaining categories, government and private parties could both recover damages (Randle 1991).

The OPA also addressed another gap in the oil spill regime: the lack of funding sufficient to clean up a catastrophic spill. In 1986, Congress had created the Oil Spill Liability Trust Fund as part of the Omnibus Budget Reconciliation Act, building on the precedents set in the Outer Continental Shelf Lands Act Amendments (1978) and CERCLA. However, it failed to authorize its use or provide a funding mechanism.
The OPA addressed these issues. It consolidated the four existing funds into the Oil Spill Liability Trust Fund; the Offshore Oil Pollution Compensation Fund transferred $216 million in 1990, with another $335 million subsequently transferred from the Trans-Alaska Pipeline Liability Fund (National Pollution Funds Center 2008). Moreover, the OPA authorized a five-cents per barrel fee on imported and domestic oil to bring the fund up to $1 billion (the tax ceased on December 31, 1994, due to a sunset provision but was reinstated under the Energy Policy Act of 2005). Under the process established by the OPA, claimants could seek compensation from the trust fund if the responsible parties denied liability or failed to make payment within 90 days. At that point, the Attorney General could recover costs incurred from the responsible party (Meltz, Ramseur, and Pettit 2010).

In addition to establishing liability and a funding mechanism to assist in remediation, the OPA focused on preventing the recurrence of events like the Exxon Valdez. It imposed tighter regulations for licensure of merchant mariners and the manning of vessels. It required that new tankers operating in US waters have double hulls; existing single hull tankers would have to be retrofitted or retired in accordance with a statutory timetable. It also mandated that tankers participate in the USCG vessel monitoring and tracking system, to help ships avoid navigation hazards, and the use of escort vessels in Prince William Sound and Puget Sound.

More importantly, it strengthened contingency planning requirements at all levels. At the national level, the OPA required that the National Contingency Plan be expanded to include a fish and wildlife response plan and a worst-case discharge response plan. It mandated a more demanding system of contingency planning, involving a national response unit to be established by the USCG at Elizabeth City, North Carolina, to maintain an inventory of spill removal resources and equipment and to coordinate public and private responses to spills. The national response unit would also coordinate with newly created USCG strike teams and district response groups that were created for each of the ten USCG districts. The OPA strengthened the requirements that vessels and facilities have response plans, including emergency response procedures to address worst-case scenario spills. These plans had to be filed with the relevant agencies (e.g. the USCG, the EPA, or the Department of Transportation) by February 1993 and approved by February 1995. Facilities and vessels were prohibited from transporting or storing oil if they failed to meet these requirements. There was no expectation that each vessel would have the equipment and personnel on hand to implement their response plans.
Rather, they could secure these resources via contractual relationships (Ramseur 2010; Randle 1991). This provision, in turn, stimulated an increase in the self-regulatory capacity of the petroleum industry.

The financial consequences of the spill created incentives for Exxon to invest more heavily in safety and environmental performance. In the immediate aftermath of the spill, environmentalists called for a boycott of Exxon’s gasoline, and some 40,000 consumers returned their Exxon charge cards. While Exxon’s stock initially lost value, the impact was surprisingly minor and short-lived.⁴ In the end, however, Exxon paid out more than $3.8 billion in cleanup and damages, with an additional $507 million in punitive damages (reduced from $5 billion awarded earlier by a jury). Exxon, in turn, filed suit against its insurers for their “bad faith” conduct in refusing to cover the costs of the spill. The insurers, led by Lloyd’s of London, had justified their refusal on number of factors, including “Exxon’s willful, wanton, reckless and/or intentional misconduct.” Exxon demanded $3 billion, but ultimately settled for $300 million, a fraction of the costs it had incurred (Lenckus 1996).

Beyond Exxon, the spill was a public relations disaster for the petroleum industry as a whole. It revealed its lack of preparation for a catastrophic spill (e.g. prior to the event, the oil industry’s worst-case scenario was a spill one-quarter of the size of the Exxon Valdez) (Hager 1989b). In an immediate response, the American Petroleum Institute – the industry trade association – convened a task force to consider the need for new industry procedures for preventing, containing, and cleaning up oil spills. The end result was the creation of a new Petroleum Industry Response Organization, which was subsequently chartered as the Marine Spill Response Corporation (MSRC) (see O’Reilly 1993). The MSRC was created to maintain the equipment and personnel necessary to mitigate catastrophic spills. The industry also created a new non-profit corporation, the Marine Preservation Association, to fund the MSRC via the dues paid by member corporations. Rather than developing their own catastrophic response plans and negotiating agreements with contractors, members could simply join the association and obtain a MSRC service contract to meet the requirements of OPA.

In recognition of the fact that the resources necessary for future cleanups would need to come from the private sector, Congress supported the

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⁴ On March 24, 1989, Exxon’s stock closed at $11.13 a share. It fell to a low of $10.44 on April 11, recovering its full value within three months of the spill. Surprisingly, by the end of the year, Exxon’s stock closed at $12.50 a share (see White 1995).
efforts of the Petroleum Industry Response Organization (which became the MSRC). The Conference Committee for the OPA, which was conducting its work as the consortium of twenty oil companies was developing the industry response, explicitly cited it as an organization with which the USCG National Response Unit should work as it engaged in its contingency planning (Randle 1991). Over the next five years, the MSRC would devote $900 million to create five regional response centers with 23 equipment staging areas (Grumbles and Manley 1995; Wald 1991). In sum, as a result of the deliberations surrounding the OPA, the petroleum industry increased its capacity for managing risks and its efforts became partially integrated with those of the federal government. Regulation gave rise to coregulation that was embedded into a stronger scheme for liability and prevention.

7.5 THE OIL POLLUTION ACT AS A SUCCESSFUL REGIME?

Crisis can stimulate high levels of political mobilization, force issues on to the agenda, and ultimately lead to rapid and significant changes in public policy. Yet, one must be cautious. As John W. Kingdon reminds us, there are always solutions waiting for problems to happen (see Kingdon 1984). When crises occur, advocates move quickly to couple their pre-existing solutions to the problems at hand before the window of opportunity closes, as it invariably will (and often quite abruptly). In so doing, they may move to premature closure, framing policies before they have an adequate understanding of the factors that caused the crisis in question and the appropriateness of competing policy instruments. There is nothing to guarantee that the resulting policy will be successful in enhancing the government’s capacity to prevent new crises from emerging or to manage the attendant risks.

Ideally, the response to a crisis would incorporate what had been learned about the underlying causality. If policy-makers are successful in understanding issues of causality and select the appropriate policy instruments, they may avert future crises or, at the very least, reduce their magnitude so that they fall within acceptable parameters. The response to the Santa Barbara spill did not primarily engage issues of causality. Rather, it worked to shift risk to industry actors by adjusting the liability scheme. By imposing norms of strict liability and raising the monetary ceilings on liability, Congress hoped to create the incentives for corporations to adopt a more proactive stance and attend to issues of risk management. In the event that this failed, funds were established to facilitate oil.
removal and compensate those who had borne the costs of a spill. The contrast with the Exxon Valdez is clear. Congress once again increased the caps on liability and dramatically increased the resources available for remediation. But there was also a stronger emphasis on prevention (e.g. the mandate for double hulls on vessels and participation in the USCG monitoring and tracking system, and the requirements that vessels and facilities develop response plans and have the resources on hand to respond to spills at an early stage). The introduction of these preventive measures, one might argue, marked a clear departure from the regime put in place in the 1970s.

How did the new oil spill policies perform? The USCG collects data on oil spills, and this data, as presented in the Polluting Incident Compendium provides clear evidence of significant improvement following the passage of the OPA in 1990. In the 1973–1990 period, an average of 11.86 million gallons of oil were spilled on an annual basis. In the 1991–2009 period, an average of 1.9 million gallons of oil were spilled annually. This reduction is particularly impressive given that this latter period includes the 8 million gallons discharged from facilities following Hurricane Katrina and another spill of 1.8 million gallons from a tanker barge and a platform that had sunk as a result of Hurricane Rita, both in 2005 (US Coast Guard 2012). As Figure 7.3 shows, the sharp drop in the total volume of spills occurred following the passage of the OPA in 1990. Figure 7.4 provides a graphical representation of the number of significant spills by spill size over 1,000 gallons. What is particularly notable is the dramatic reduction in spills over 100,000 gallons that, in turn, suggest the importance of contingency planning and the rapidity of response. Indeed, between 1991 and 2009, there were only two years out of 18 when there were spills of over 1 million gallons, and as noted above, the most significant spills of 2005 were a product of hurricanes. This contrasts sharply with the pre-1991 period, when spills in excess of 1 million gallons occurred on an annual basis every year but 1977.

The data presented here supports the conclusion that the series of policy changes that stemmed from the Santa Barbara spill and, following the Exxon Valdez, culminated in the Oil Pollution Act of 1990 significantly enhanced the nation’s ability to manage the risks from oil spills, in many cases, it would appear, preventing spills (e.g. through double-hulled vessels) or reducing their magnitude (e.g. through expanded contingency

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5 The Coast Guard began collecting data with the creation of the Pollution Incident Reporting System in 1973.
Figure 7.3 Total volume of spills by spill size, 1973–2009
Source: US Coast Guard, Pollution Incident Compendium (2012).

Figure 7.4 Number of significant spills by spill size, 1973–2009
Source: US Coast Guard, Pollution Incident Compendium (2012).
planning and response plans based on more realistic worst-case scenarios). Yet, as subsequent events would reveal, there was much work yet to be done.

On April 20, 2010, an explosion on BP’s Deepwater Horizon mobile offshore drilling unit would result, ultimately, in a spill of 206.6 million gallons of oil and another 400,000 gallons of oil products. To place things in perspective, the spill from Macondo would account for 86 percent of all the oil discharged between 1973 and 2010. Even though things would return to “normal” in 2011 – there were no spills above 5,000 gallons for the first time on record – the Deepwater Horizon catastrophe triggered a new round of critical reflections on the policies and practices in place for managing the risk of oil spills, the quality of regulation, conflicts of interest in the regulatory model, and the adequacy of industry response plans. Certainly, BP had a comprehensive spill plan (some 582 pages in length, with 52 pages dedicated to the Deepwater Horizon rig). But it grossly understated the worst-case scenario and was riddled with errors, identifying walruses, sea otters, sea lions and seals as “sensitive biological resources” in the Gulf and listing experts to be consulted who had long-since relocated and in one case died years before the completion of the plan (see Mohr, Pritchard, and Lush 2010). Clearly, the kind of complacency that had been so evident two decades earlier in the Exxon Valdez event had not been eliminated.

Based on the precedents set by earlier significant spills, one might have expected the Deepwater Horizon to stimulate another substantial change in the regime for oil spills. The growing technological complexity of deepwater drilling and the evidence of inadequate industry preparation suggested in stark terms that the regime created under the Oil Pollution Act of 1990 was no longer sufficient to manage the risks of catastrophic damages. According to a Gallup (2010) poll conducted in May 2010, 87 percent of the nation was following media coverage of the spill closely; fully 72 percent believed that the Deepwater spill constituted a disaster, with 37 percent agreeing that it was the worst environmental disaster in the past hundred years. With the White House and Congress under unified Democratic control and President Obama’s emphasis on environmental issues and sustainable energy in the 2008 campaign, one might have anticipated the kind of rapid and significant policy change witnessed in the wake of the Exxon Valdez. Yet, the response was surprisingly inconsequential.

Perhaps the explanation can be found in the larger economic context. As the nation was slowly recovering from the deepest recession since the
Great Depression, the environment remained a second-tier issue. The Pew Research Center conducts an annual poll on what the public believes the top priorities should be for the president and Congress. In 2010, the top two priorities were strengthening the economy (83 percent) and improving the job situation (81 percent). Protecting the environment (44 percent) ranked seventeenth on a list of 21 domestic priorities. One year later, the priority attached to the economy and jobs had increased (87 and 84 percent, respectively), whereas protecting the environment had fallen to 40 percent (Economy Dominates Public’s Agenda, Dim Hopes for the Future 2011). Further evidence can be found in the Gallup poll. Since 1984, Gallup had polled Americans on whether they prioritized economic growth or environmental protection. In the wake of the 2008 financial collapse, a majority of Americans prioritized economic growth for the first time. The Deepwater Horizon reversed this trend, but only temporarily. By 2011, economic growth was once again prioritized over environmental protection (54 percent to 36 percent) (Jones 2011). Similarly, while a majority (55 percent to 39 percent) prioritized environmental protection over energy development in the wake of the BP spill, by 2011, a majority once again favored energy development (Jones 2012).

As for the Deepwater Horizon, public opinion data from polls taken during the crisis was difficult to interpret. Although 75 percent of respondents in a Gallup poll believed that BP bore a great deal of blame for the leak and 81 percent rated the BP’s response as poor or very poor, a majority (53 percent) also had a negative assessment of President Obama’s handling of the crisis. Despite this evaluation, a majority believed that BP (68 percent) rather than the federal government (28 percent) should be in charge of the cleanup. And although the federal government had issued a temporary ban on offshore drilling in the Gulf of Mexico, a narrow majority (47 percent to 46 percent) believed the ban should be lifted and BP (49 percent to 46 percent) should be allowed to drill in the same area in the future (Gallup 2010). There was little evidence that the Deepwater Horizon stimulated a broad demand for a thoroughgoing overhaul of the oil spill regime. This, when combined with the priority attached to the economy, created few incentives for elected officials to invest in policy change that would expand the role of the federal government, particularly in a year that was dominated by the small-government rhetoric of the Tea Party and would end with hotly contested midterm elections and a new Republican majority in the House of Representatives.

There is another interpretation worth consideration. The muted policy response to the Deepwater Horizon may have been a product of policy
success. Following Santa Barbara, Congress created a liability regime that shifted the risk to the industry. This regime, as refined and extended by a series of statutes culminating in the Oil Pollution Act of 1990, would ultimately combine risk-shifting, preventive measures, and a new funding mechanism for remediation. As the performance record reveals, the period since 1990 was characterized by sharp reductions in the total volume and number of significant spills. While there were exceptional events – most notably, the Deepwater Horizon – the larger record is quite positive, particularly when compared to the decades separating Santa Barbara and the Exxon Valdez. It may be the case that further advances are most difficult to achieve when the risk of disaster has already been brought within what are broadly seen as acceptable parameters.

References


