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How Long to Pass an Oil Spill Bill? Try 18 Months

By ANNE C. MULKERN of [Greenwire](#)

An epic oil spill covers the sea, damaging wildlife and walloping the local economy. Congress demands changes to prevent similar disasters. But political arguments erupt and legislation stalls.

That was 1989 after the *Exxon Valdez* tanker smashed into Alaska's Prince William Sound reef. Despite unity among Democrats, Republicans, industry and environmental groups on the need for legislation, it took 18 months before the Oil Pollution Act of 1990 became law.

As the current Congress struggles over how to respond to the Gulf of Mexico spill, the experiences of 1990 offer insight into energy politics, said those involved with the legislation that year. But at the same time, they said, the two periods are politically different in ways that could make passage of legislation even more challenging this time.

Democrats controlled both the House and the Senate and George H.W. Bush sat in the Oval Office when Exxon's *Valdez* crashed March 24, 1989. Many say there was far more political cooperation in that era. But accord on the oil spill but did not come swiftly.

"There was quite a bit of wrangling going on," said Jerry Taylor, senior fellow at the Cato Institute, a libertarian think tank. "It took a great deal of time before you could get something that was actually passable, which isn't surprising. That seems to be the way it goes in the oil and gas sector."

Similar friction reoccurred after the BP PLC spill. Senate Majority Leader Harry Reid (D-Nev.) earlier this month delayed a vote on a legislative response until September, five months after the April 20 explosion of BP's Deepwater Horizon oil rig. Some fear that November's midterm election could cool the desire to act when Congress returns from its August recess.

Democratic leaders and activists hope that the senators will resolve differences on oil spill legislation in September. But there are major obstacles to overcome. Some Democrats from oil-producing states have sided with Republicans in opposing the current bill from Reid, [S. 3663](#) (pdf), a measure that would lift the current \$75 million limit on liability for damages in an oil spill. In addition to that battle, there is disagreement over when and how to lift a moratorium on deepwater drilling.

The American Petroleum Institute, the trade group for oil and natural gas companies, opposes unlimited liability. Republicans and some Democrats from states with offshore oil drilling do, as well, arguing that it will put smaller companies out of business.

"You've got a situation where the Democrats control both houses of Congress as well as the White House, and

even then, they're finding it extremely difficult to move forward," Taylor said.

Today's controversy over oil spill liability stems in part from decisions made in 1990. The Oil Pollution Act set the cap on oil spill damages at \$75 million, an amount that is a fraction of the damages in the BP spill.

Controversy over that cap existed in 1989-90, Taylor said.

"President George Herbert Walker Bush threatened to veto the act if that liability cap were not part of it," Taylor added. "He got his way, but to go as far as to threaten a veto over the lack of a liability cap suggests that it was a pretty substantial part of the debate."

The concern in 1990 was less for Exxon and similar companies than it was for the small, independent companies, Taylor said. That mirrors some of what lawmakers are saying today, that without a cap only the largest companies will be able to drill offshore.

"People who I talk to in the oil industry, when we talk about that liability cap, tell me that ... this was primarily there as a result of the lobbying efforts of smaller operators, not for the majors," Taylor said of the 1990 bill.

The \$75 million liability cap, however, covered all oil companies, including the larger oil companies. Taylor said those larger companies believed that the \$75 million cap "would never hold," and they would end up waiving the cap and paying for all damages as BP has said that it would for the spill this year.

At the time of the 1990 Act, \$75 million was a large figure compared with the \$50 million cap on natural resources damages in Superfund legislation passed in 1980, said Duncan Smith, who was Republican chief counsel on the now-defunct House Merchant Marine and Fisheries Committee, where the Oil Pollution Act started. Smith now is a principal at Blank Rome Government Relations.

There were other controversial issues in 1990, as well. Congress struggled over whether federal law should take precedence over state rules on oil spills, and that was one of the last items resolved, Smith said. Ultimately, the bill did not include pre-emption of state laws. There also were disagreements over how quickly new regulations should kick into place, including a policy forcing a switch from single-hull tankers to double-hull tankers. In the end, the law allowed smaller ships a longer time to phase in the double hulls.

Unlike in 1990, when lawmakers of both parties felt pressure from voters to act, there is clearly a belief among today's Republicans that any pro-environment sentiment among voters has weakened, Taylor said.

"Think about what they're willing to go to war over and filibuster," Taylor said of Republicans. "A bill which might remove liability protections on oil companies that are responsible for spills, and we've just had a spill only several months ago of major consequence," Taylor said.

"It's remarkable that Republicans think there's political capital associated with defending oil companies from the economic implications of their own actions," Taylor added. "They think this is a politically winning issue for them." Pollsters likely are telling Republicans their position links up with that of voters, Taylor said.

The Senate GOP has said that it is not opposed to oil spill legislation, only the wrong measure. The chamber's Republican caucus has offered its own oil spill bill, which would allow the moratorium on offshore oil drilling

to be lifted after safety standards are met. It would give the president the ability to set different limits on how much liability oil companies should have for damages connected to an oil spill.

Reid has criticized the Republican bill as not holding BP accountable, not helpful to Louisiana and failing to create jobs.

A new era

Even though the House and Senate are controlled by Democrats now, as they were in 1989-90, Congress was different politically then than it is today, several people said.

In 1989-90 there were "an appreciable number of moderate, business-oriented Democrats" and moderate Republicans, said Scott Segal, an industry attorney with Bracewell & Giuliani who worked on the 1990 bill for a coalition of inland tank barge operators.

It was almost as though there were four political parties, Segal said, with people interested in working together. The late Rep. Walter Jones (D-N.C.) chaired the House Merchant Marine and Fisheries Committee, where the bill started.

"Because of years of intervening redistricting, it has become more and more difficult to have moderate influences in each of the parties," Segal said. "Every issue ... tends to become polarized." As well, Segal said, changes in the media exert new pressures.

"Now we have instantaneous blogging. We have a 24/7, very picture-driven cable news cycle," Segal said. "That really was not the way people got their news in 1989-90." With the new media, he said, "there's no time to contemplate what the best legislative or regulatory debate will be because as soon as the debate occurs, there's instantaneous pressure because there's instantaneous media." That kind of urgency, he said, "makes it difficult to negotiate compromises."

The Republican president in 1989 had a political reason to work with Congress, Taylor said.

"In 1990, George Bush was attempting to put together a set of green credentials for his re-election campaign," Taylor said. "The event in Prince William Sound provided him an opportunity to do that. He signed very aggressive wetlands legislation into place," as well as the Clean Air Act, Taylor said.

"Of course he had to muscle a lot of the Republicans to get those things," Taylor added. "But the administration was not implacably hostile to environmental interests. The administration and thus the Republican leadership in the House and Senate were quite interested in putting together something ... and they were successful politically in doing so."

The political picture is different now, Taylor said.

"The Republican leadership is not particularly very interested in burnishing its environmental interests," Taylor said. "They think there's more political capital in demonizing environmental interests."

Smith, the Republican counsel who worked on the 1990 bill in the House, said that tighter party margins in today's Congress also are a factor. In 1990, Democrats outnumbered Republicans in the House 260-175.

Today's House has 255 Democrats and 178 Republicans (there are two vacancies). Those numbers do not include non-voting delegates. The larger number of Democrats in 1990, he said, pushed people to work together.

"There's a tendency for people to seek compromise because that's the way you get things done, versus a more evenly divided body because votes are so close," Smith said. With a more evenly divided Congress, he said, you also see people voting ideology instead of party loyalty.

"When you have these very close margins," Smith said, "you're going to have some members of the majority party, on any issue, they're going to be philosophically in tune with the other party."

Today's Senate, has more Democrats than in 1990. The Senate has 57 Democrats and 41 Republicans. Back then, there were 55 Democrats and 45 Republicans.

A different clock

Those who worked on the Oil Pollution Act of 1990 said that in reality, it took longer than 18 months to rewrite oil spill laws. Work on a measure that covered oil spills began about a decade earlier. Prior to 1989, there were a series of different regulations covering different kinds of spills. The effort to create one regulation that covered all spills had stalled in Congress because of disagreement over federal pre-emption.

"It was the *Exxon Valdez* spill that finally gave the political push to overcome," said Russell Randle, partner at Patton Boggs and author of the "Oil Pollution Deskbook," which details how the 1990 act became law.

Traditionally, it has been a crisis that forces changes in maritime law, Smith said.

"It was a very large spill that overwhelmed the response capability of states and the federal government," Smith said, which was why the bill enacted policies requiring oil companies to have proper preventions and response plans in place.

Smith said the bill took 18 months to pass in 1990 not so much because of disagreements but because that was the time available. The spill happened in 1989, which was not an election year.

"So there wasn't going to be an adjournment," Smith said. "So it was a very different political calendar you were dealing with at the time of the *Exxon Valdez* spill.

"There wasn't the need to go as rapidly" as there is for today's Congress, Smith added. "They could take their time. They just took the time they had to finish up a bill that was agreeable to everybody."

At the time, there was a sense that something had to be done, Segal said.

"It was not particularly acrimonious between environmentalists and industry groups," Segal said. "Everyone was kind of united in producing a bill that made sense."

"It needed 18 months in order to resolve a lot of controversies," Segal added. "There had been discussion of what oil spill legislation ought to look like dating back before *Valdez*. The Congress felt that it was better to get it right than get out fast."

There was a very long conference committee, Segal said, that was open and heard many people's opinions. The oil and natural gas industry supported the act when it passed, said Robin Rorick, American Petroleum Institute's director of marine and security.

The votes in 1990 were overwhelming. The House bill passed on a vote of 375-5 and the Senate bill on a voice vote. The final bill that emerged from conference committee passed both chambers unanimously.

Different pressures

There are key differences between the spills that also influence the politics, Taylor said, "in that the Price William Sound event produced a striking set of visual images for the public," while there are fewer of those pictures now from the Gulf of Mexico and a much larger body of water for the oil to spread out in.

"I'm not entirely sure that the public is as alarmed by events in the Gulf as they were alarmed about events in Alaska," Taylor said. "It's that kind of alarm that drives any kind of legislation. ... It's not clear that there's enough of it to drive a controversial bill today, given how hotly political these issues are." Meanwhile, there are people in some states like Louisiana, he said, who see oil drilling as important to the economy.

At the same time, he said, oil prices were comparatively low in 1989-90 versus prices now, even adjusting for inflation. There is belief that a loss of production could increase prices, he said.

But some have confidence Congress will pass some kind of oil spill bill this year.

"They're very determined to have a legislative response," Smith said. "They'll get it done." Time constraints could create problems, however, he said.

"The fear I have is that Congress may rush to get something done and act too quickly to meet the adjournment schedule without thinking through the consequences of their action," Smith said. "It may take a lot of time to get it corrected in the future if they do not get it right this time."

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