



The Honorable Barbara Boxer, Chairwoman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable James Inhofe, Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

The Honorable Daniel Inouye, Chairman  
Committee on Commerce Science and  
Transportation  
United States Senate  
Washington, DC 20510

The Honorable Ted Stevens, Vice Chairman  
Committee on Commerce Science and  
Transportation  
United States Senate  
Washington, DC 20510

January 15, 2008

Dear Chairwoman Boxer, Ranking Member Inhofe, Chairman Inouye, and Vice Chairman Stevens:

It has been some two months since the container ship *Cosco Busan* struck the San Francisco Bay Bridge, spilling some 58,000 gallons of heavy bunker fuel oil into the water of the Bay. Although public attention on this tragic accident seems to have dissipated somewhat, we understand that the ecological fallout continues to mount.

As co-chairs of the Joint Ocean Commission Initiative, a collaborative bi-partisan effort of the U.S. Commission on Ocean Policy and the Pew Oceans Commission, we have been more than interested observers of the events that led to the accident and its aftermath. The protection of the marine environment and the need for appropriate federal agencies, in consultation with states, to conduct a risk-based analysis of the entire oil transportation system and associated infrastructure, were hallmark recommendations of the two Commissions.

We think it is clear that much of what happened in San Francisco Bay on the morning of November 7, 2007 and the days immediately following is a direct reflection of the lack of a coherent and coordinated national ocean policy. The Joint Initiative has consistently noted the need for a clear statement of ocean policy, one that is based on the principle of ecosystem-based management and is coordinated among all federal ocean agencies by an institution in the White House. Implementing such a policy would include the involvement of coastal states, tribal governments, and local stakeholders to establish an ocean management partnership among the federal government, states, and other entities. One of the key ideas behind a comprehensive, coordinated, and ecosystem-based ocean policy is to get out in front of incidents like the *Cosco Busan* and, if such an accident cannot be completely prevented, to make certain the response of governments at all levels is swift, effective, and coordinated so that the damage is minimized. In this regard, we would like to bring to your attention the following points:

**Lack of coordination.**

One clear factor contributing to the *Cosco Busan* spill was a lack of coordination among federal, state, and local authorities. A variety of missteps have been well documented, including delays in notification regarding the magnitude of the spill; serious communication problems; an unexplained hold up in the deployment of oil spill containment equipment; unexpected constraints on the ability of volunteers to get to the spill sight quickly; unclear arrangements with a private oil spill management contractor; an apparent lack of clarity and standardization of electronic navigation aids and radar; among others.

**Reduced Coast Guard Capacity.**

These known incidents related to the spill have led to a plethora of investigations and lawsuits and have raised questions about the Coast Guard’s Vessel Traffic Service System, deployment of oil spill containment equipment, and oversight of crew training by the owner. On a broader level, there is renewed concern regarding the Coast Guard’s capacity to fulfill its environmental safety mission as evidenced, among other factors, by a serious delay in some of its maritime safety rulemaking, particularly with respect to Vessel Response Plans.

**Lack of Preparation.**

Since the enactment of the Oil Pollution Act of 1990 (OPA 90, P.L. 101-380), the number and volume of large oil spills has generally declined, notwithstanding that the United States is importing more oil than ever before. (See *Major Oil Spills Occur Infrequently, but Risks Remain*, U.S. Government Accountability Office, Report 08-357T, Sept. 2007). This decline is most dramatic with respect to spills from oil tankers. Some have suggested that an unintended consequence of this generally good record since 1990 has been a loss of expertise, resources, and national capacity to respond effectively and efficiently to major oil spills, particularly in ocean waters. Although it is far too early to tell definitively, the *Cosco Busan* spill may be a vindication of that concern.

**Lack of Clarity: Oil Spill Laws and Regulations.**

Additionally, there are a number of questions about the interpretation of various laws and regulations that have emerged as a result of the *Cosco Busan* incident. For example, some observers now assert that one part of OPA 90 that may need amending is an apparent difference in liability limits for tank vessels, cargo vessels, and tank barges. There are also emerging issues with respect to the Oil Spill Liability Trust Fund (OSLTF), including a failure of the Coast Guard to adjust liability limits for inflation, as required by OPA 90, which could have saved the OSLTF \$39 million (See GAO Report -08-357T, noted above). One matter that has come to our attention involves NOAA’s natural resource response capacities, given the agency’s limited budget. It is our understanding that, unlike EPA and the Coast Guard, NOAA is not authorized to receive funding for their natural resource assessment and response programs from the OSLTF.

The issue of reviewing current laws and regulations and, to the maximum extent possible, bringing them in line with a new national ocean policy and the principles of ecosystem based management has been a constant theme of the Joint Initiative. We have urged all ocean agencies to identify their existing statutory and regulatory authorities that may need to be modified to resolve conflicts, fill gaps, and address new and emerging ocean issues for national and regional benefits. If this process had been carried out shortly after the ocean commissions had released their reports, perhaps some of the lack of

comprehensive coordination and integration of state and local (and non-governmental entities) in the *Cosco Busan* incident would have been avoided.

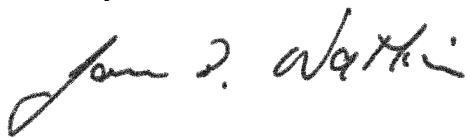
**Ocean Trust Fund.**

Finally, we have called for Congress to establish an Ocean Trust Fund (separate from the OSLTF) in the Treasury, based on a *dedicated* source of revenues coming to the government from activities carried out in federal waters. That fund would be shared with federal agencies (including the Coast Guard) and coastal states to enhance the ocean management partnership noted above. If such a fund had been in place, perhaps capacities at all levels of government to immediately address the *Cosco Busan* accident would have been significantly enhanced.

We believe that the *Cosco Busan* spill is a stark example that our system of ocean governance is broken. As your respective Committees continue to review the oil spill in San Francisco Bay and the many investigative reports that will be issued on the accident, we urge you to consider some of the larger ocean governance issues that were manifested by the apparent lack of preventive procedures, preparedness, accurate and expeditious communication processes, and immediate response capacities. The need for a comprehensive national ocean policy and a new governance regime to implement it will be of invaluable benefit as our nation struggles to address the economic and ecologic impacts on ocean and coastal resources associated with climate change, pollution, and natural disasters that we face in the coming years and decades.

We stand ready to work with you and your colleagues on an assessment of the recommendations in the reports of the ocean commissions and the follow-up work of the Joint Initiative to identify changes that can be made by the 110<sup>th</sup> Congress and the Administration to better protect our marine ecosystem and national economy. If you would like to discuss this further, please call Laura Cantral at 202.354.6444.

Sincerely,



James D. Watkins  
Admiral, U.S. Navy (Retired)  
Chairman, U.S. Commission on Ocean Policy



The Honorable Leon E. Panetta  
Chair, Pew Oceans Commission

cc: Senator Frank Lautenberg, Chairman, Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality  
Senator David Vitter, Ranking Member, Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality  
Senator Maria Cantwell, Chairwoman, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard  
Senator Olympia Snowe, Ranking Member, Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard