



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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April 28, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Coast Guard and Maritime Transportation
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation
RE: Hearing on “Maritime Transportation Regulatory Programs”

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Wednesday, May 3, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building to examine a number of maritime transportation regulatory programs. The Subcommittee will hear from the U.S. Coast Guard, Federal Maritime Commission, American Salvage Association, National Response Corporation, Rapid Ocean Response Corporation, Alaska Maritime Prevention and Response Network, American Waterways Operators, Ports America, and World Shipping Council.

BACKGROUND

Oil Spill Response:

The *Oil Pollution Act of 1990* (33 U.S.C. 2701, et al.) (OPA) was enacted in response to the 1989 T/V Exxon Valdez oil spill in Alaska. OPA established an oil spill prevention, response, liability, and compensation regime that partially uses Clean Water Act authorities. Prevention measures include double hulls for tankers, the use of towing vessels, and vessel communication systems, as well as liners for onshore facilities. Response measures are in the form of contingency planning, national response units, Coast Guard district response groups, and tank vessel and facility response plans. Liability measures define “Responsible Parties” as vessels, and onshore and offshore facilities where the owner or operator is required to pay for removal costs and any damages created by a spill. Compensation allows an injured party to seek payment for spill damages occurring to natural resources, personal or real property, subsistence use, or loss of revenues.

Section 311 of the *Federal Water Pollution Control Act* (33 U.S.C. 1321) requires the owner or operator of a tank vessel, non-tank vessel over 400 gross tons, offshore facility, and onshore facility to prepare a vessel response plan for spills of oil or hazardous substances. The plans must identify a qualified individual with authority to implement removal actions, identify

and ensure by contract (usually with an Oil Spill Removal Organization (OSRO)), the personnel and equipment needed to remove to the maximum extent practicable a worst case discharge, and describe the training, equipment, and other response actions that will be undertaken during a spill.

Several geographic areas under U.S. jurisdiction do not have sufficient resources to meet the national planning criteria outlined in 33 CFR Part 155 due to the low density of population and vessel traffic. Areas where response resources are not available, or the available commercial resources do not meet the national planning criteria, the owner or operator may request acceptance of alternative planning criteria (APC) by the Coast Guard. Coast Guard policy requires the Captain of the Port (COTP) to review APC applications to determine the status of response equipment available in the COTP zone and consider any basic ordering agreements that may be in place with pollution response contractors. The COTP should also seek input regarding available response resources from the regional response team, area contingency plan committee members, district response advisory team, and other port stakeholders. Finally, the COTP should verify the vessel's owner/operator has ensured that the maximum levels of response resources are available by contract or other approved means before issuing an APC.

Salvage and Marine Fire Fighting (SMFF)

The OPA mandated that tank vessel owners ensure the availability of adequate response resources to respond to a vessel's worst case discharge, including fire and explosion. At the time, the vessel response plan (VRP) regulations did not provide specific salvage or firefighting requirements and relied on the vessel owners or operators to identify contractor resources. On December 31, 2008, the Coast Guard issued SMFF regulations in 33 C.F.R. Part 155, Subpart I (SMFF regulations). These regulations require owners and operators of covered vessels to contract for or provide their own resources to meet the required salvage and marine firefighting capabilities.

In 2013, non-tank vessels, with a capacity of 2,500 barrels or greater of fuel oil, were also required to meet SMFF regulations in their VRPs. All vessels with VRPs are now required to determine the adequacy of the SMFF resource providers and must "ensure by contract or other approved means that response resources are available to respond." Concerns have been raised regarding the availability of SMFF companies or their subcontractors' ability to meet the response requirement, since response vessels are allowed to be put to other uses. Coast Guard started a SMFF system response review in December 2016. The plan calls for eventual testing of all four identified SMFF response providers in all 41 Coast Guard COTP zones. See Table 1 in the Appendix regarding the required SMFF services and response timeframes.

International Convention on Standards of Training, Certification and Watchkeeping (STCW)

In 2010, the International Maritime Organization (IMO) adopted the "Manila Amendments" to the STCW for Seafarers. The STCW is designed to ensure the necessary global standards are in place to train and certify seafarers. Changes made by the 2010 amendments include: improved measures to prevent fraudulent practices associated with certificates of competency and strengthen the evaluation process; revised requirements on hours of work and

rest and new requirements for the prevention of drug and alcohol abuse, and medical fitness; new certification requirements for able seafarers; new requirements relating to training in modern technology (i.e., electronic charts and information systems); new requirements for marine environment awareness training and training in leadership in teamwork; new training and certification for electro-technical officers; updating of competence requirements for personnel serving on board all types of tankers; new requirements for security training, including for pirate attacks; introduction of modern training methodology (i.e., distance and web-based learning); new training and guidance for personnel serving on board ships operating in polar waters; and new training and guidance for personnel operating Dynamic Positioning Systems. The STCW changes entered into force on January 1, 2012, with a five-year transitional period until January 1, 2017. The Coast Guard further delayed the implementation until July 1, 2017.

Commercial Fishing Vessel Exams

The *Coast Guard Authorization Act of 2010* (P.L. 11-281) and the *Coast Guard and Maritime Transportation Act of 2012* (P.L. 112-213) required mandatory dockside safety examinations for certain fishing vessels starting October 15, 2015. The *Coast Guard Authorization Act of 2010* required that all commercial fishing, fish tender, and fish processing vessels that operate more than three nautical miles offshore, carry more than 16 individuals, or, for the purposes of a fish tender, engage in the Aleutian trade, demonstrate full compliance with fishing vessel safety regulation by completing a biennial dockside safety examination.

The *Coast Guard and Maritime Transportation Act of 2012* required that dockside safety examinations be completed by October 15, 2015, and extended the biennial dockside safety examination to *at least* once every 5 years. On June 21, 2016, the Coast Guard issued a notice of proposed rulemaking to implement the requirements of the mandatory provisions of 2010 and 2012 legislation (Docket ID: USCG-2012-0025).

Towing Vessel Inspections

The *Coast Guard and Maritime Transportation Act of 2004* (P.L. 108-293), requires the Coast Guard to publish a rulemaking providing for the inspection of towing vessels. Section 701 of the *Coast Guard Authorization Act of 2010* (CGAA, P.L. 111-281) required the Coast Guard to publish the notice of proposed rulemaking (NPRM) by January 15, 2011, and issue the final rule by October 15, 2011.

On August 11, 2011, the Coast Guard published the NPRM for Inspection of Towing Vessels, entitled *Towing Vessel Safety*, and held a public comment period until December 9, 2011. The Coast Guard received 268 comments and is working to finalize this rulemaking, but has declined to provide a specific date for when a final rule will be published. In 2011, the Coast Guard estimated the cost of the rulemaking on industry could total \$14.3 to \$17 million, while the annualized benefits could reach \$28.5 million.

On June 20, 2016, the Coast Guard published the rule as subchapter M of title 46 of the U.S. Code of Federal Regulations providing for the establishment of third-party inspectors, the implementation of need for certificates of inspection (COI) on all applicable vessels, and a requirement for recurring compliance inspections or audits. The rule took effect 30 days after its

publication in the Federal Register on July 20, 2016, but the requirement to receive a COI will be phased in over several years.

Maritime Liens

A maritime lien is a privileged claim on a vessel or other maritime property that typically arises due to a vessel owner's failure to fulfill contractual obligations, or an injury caused by a vessel, and is attached not only to the vessel itself, but also to the vessel's appurtenances (accessories) and equipment, as well as to its cargo, freights, and subfreights.¹ Additionally, maritime liens generally remain attached to maritime property during a sale.

In 2001, a federal court ruled that fishing permits were an appurtenance to a vessel, and therefore can be seized to satisfy maritime liens.² Some have proposed clarifying existing law to state that a fishing permit is not included in the whole of a vessel, or as an appurtenance, or intangible of a vessel for any purpose, and therefore not subject to a maritime lien. Another reform would include prohibiting maritime liens on state and federal fishing permits.

Federal Maritime Commission

The *Shipping Act of 1984* (46 U.S.C. §§ 40101 – 41309) establishes a regulatory process for the common carriage of goods by water in the foreign commerce of the United States to be carried out by the Federal Maritime Commission (FMC or Commission). The FMC is tasked with reviewing agreements filed with the Commission and administers a limited antitrust exemption for ocean carriers pursuant to agreements filed with the FMC to ensure competition among carriers.

Another stated purpose of the *Shipping Act of 1984* is to create a regulatory process with minimum government intervention and regulatory costs. Agreements must be filed with the Commission when carriers discuss, fix, or regulate transportation rates as well as other conditions of service. Recently, the Commission approved key changes to regulatory requirements for ocean carrier service contract filings and non-vessel-operating common carrier (NVOCC) service arrangement filings that will make it easier and more efficient for shippers and carriers to do business. A NVOCC is a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

The Commission allowed an amendment to a roll-on roll-off carrier agreement³ which went into effect on January 23, 2017. U.S. industry raised concerns with the amendment due to it allowing ocean carriers to collectively negotiate rates with maritime service providers, including tugboat operators, which industry states would be disadvantaged by such negotiations. In March 2017, the Commission received another agreement,⁴ which also would permit ocean carrier alliances to jointly negotiate with maritime service providers. U.S. industry again raised concerns regarding maritime service providers having no counterbalancing ability to take collective action.

¹ Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 9-1, at 496 and 501(2001 ed.)

² *Gowen, Inc. v. F/V QUALITY ONE*, 244 F.3d 64 (1st Cir 2001)

³ WWL/EUKOR/ARC/GLOVIS Cooperative Working Agreement (FMC No. 012309-001)

⁴ The Tripartite Agreement (FMC Agreement No. 012475)

U.S. industry has also raised concerns with the limited timeframe of 12 days in which comments can be submitted to the Commission on agreements and amendments to agreements.

WITNESS LIST

Panel I

Rear Admiral Paul F. Thomas
Assistant Commandant for Prevention Policy
United States Coast Guard

The Honorable Michael A. Khouri
Acting Chairman
Federal Maritime Commission

Panel II

Mr. Todd Schauer
President
American Salvage Association

Mr. Steven Candito
Board Member
Former President and Chief Executive Officer
National Response Corporation

Mr. Nicholas Nedeau
Chief Executive Officer
Rapid Ocean Response Corporation

Mr. Norman “Buddy” Custard
President and Chief Executive Officer
Alaska Maritime Prevention and Response Network

Panel III

Mr. Thomas Allegretti
President and Chief Executive Officer
American Waterways Operators

Mr. Peter Ford
Chief Strategy Officer
Ports America

Mr. John Butler
President and Chief Executive Officer
World Shipping Council

APPENDIX

TABLE 1—SALVAGE AND MARINE FIREFIGHTING SERVICES AND RESPONSE TIMEFRAMES

Service	Location of incident response activity timeframe	
(1) Salvage	CONUS: nearshore area; inland waters; Great Lakes; and OCONUS: <or = 12 miles from COTP city (hours)	CONUS: offshore area; and OCONUS: <or = 50 miles from COTP city (hours)
<i>(i) Assessment & Survey:</i>		
(A) Remote assessment and consultation	1	1
(B) Begin assessment of structural stability	3	3
(C) On-site salvage assessment	6	12
(D) Assessment of structural stability	12	18
(E) Hull and bottom survey	12	18
<i>(ii) Stabilization:</i>		
(A) Emergency towing	12	18
(B) Salvage plan	16	22
(C) External emergency transfer operations	18	24
(D) Emergency lightering	18	24
(E) Other refloating methods	18	24
(F) Making temporary repairs	18	24
(G) Diving services support	18	24
<i>(iii) Specialized Salvage Operations:</i>		
(A) Special salvage operations plan	18	24

(B) Subsurface product removal		72	84
(C) Heavy lift ¹		Estimated	Estimated
(2) Marine firefighting	At pier (hours)	CONUS: Nearshore area; inland waters; Great Lakes; and OCONUS: <or = 12 miles from COTP city (hours)	CONUS: Offshore area; and OCONUS: <or = 50 miles from COTP city (hours)
<i>(i) Assessment & Planning:</i>			
(A) Remote assessment and consultation	1	1	1
(B) On-site fire assessment	2	6	12
<i>(ii) Fire Suppression:</i>			
(A) External firefighting teams	4	8	12
(B) External vessel firefighting systems	4	12	18

¹Heavy lift services are not required to have definite hours for a response time. The plan holder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in §155.4030(b) will apply to these services.