

**STATEMENT OF
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ALASKA MARITIME PREVENTION & RESPONSE NETWORK**

**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE
ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES**

MARITIME TRANSPORTATION REGULATORY PROGRAMS

May 3, 2017

Good morning, Chairman Hunter, Ranking Member Garamendi and members of the Subcommittee. On behalf of the Alaska Maritime Prevention & Response Network, I appreciate the opportunity to discuss oil spill prevention and response in Western Alaska, and in particular, the implementation of Alternative Planning Criteria, in this region.

By way of background, the area referred to as Western Alaska has long been of interest to the U.S. Congress.

As the Committee knows, Western Alaska includes the U.S. Arctic region. Recent changes in climate have focused the attention of national policy makers on this region, which is subject to many national and international treaties and conventions. Many observers are concerned that predicted increases in maritime industry activity will introduce serious risk of marine casualties and oil spill in this region.

Another area of critical national interest in Western Alaska is the unique environment and critical habitat. Multiple National Wildlife Refuges have been established here to conserve marine mammals, seabirds and unique migratory birds, and the marine resources upon which they rely. Many of the Refuges are located in an area with large ocean-going ship traffic supporting billions of dollars in trade and commerce to and from the continental United States.

Also found in Western Alaska is Bristol Bay, the Bering Sea and Gulf of Alaska. These regions support the largest and most valuable commercial fishing industry in the United States. This multi-billion dollar industry is one of Alaska's largest employers.

Finally, but not less important, are the unique cultural interests in Western Alaska. Congress has already recognized the importance of Alaska Native culture and subsistence way of life in the region through the Alaska Native Claim Settlement Act and the Alaska National Interest Lands Conservation Act.

In short, Congress has a long and valued history in recognizing and addressing the many challenging issues that are unique to this area for the benefit of all Americans. As an Alaskan, I very much appreciate Congress's efforts in that regard.

The Western Alaska Captain of the Port (COTP) zone comprises over one million square miles of ocean. Because of this exceptionally large remote area with little infrastructure, the national planning criteria (NPC) used to meet the requirements of the Oil Pollution Act of 1990 (OPA 90) in the continental United States have been very difficult and challenging to obtain there. Instead, vessel owners and operators have been using Alternative Planning Criteria, or APC.

By way of background, the Network is currently an APC provider. In fact, the Network is the administrator of the only Coast Guard-approved non-tank vessel APC program that covers the entire WAK and Prince William Sound COTP zones and tank vessel APC program in the WAK COTP zone beyond Cook Inlet. The Network covers the entire COTP because it was what the Coast Guard expected when we initiated OPA 90 coverage in WAK. We value the safe passage of the crews and cargo of all vessels that pass through Alaska's waters while meeting environmental regulatory compliance requirements. Accordingly, the Network supports a diverse and complex maritime industry, including over 450 maritime companies around the globe operating in or transiting through this service area. The Network, as a non-profit organization, has designed, in close coordination with the Coast Guard, the most extensive, cost-effective, and resource-capable alternative spill response and risk reduction system that meets federal environmental protection regulations for the WAK Captain of the Port Zone.

Prevention focused – response ready are the Network's key principles. Helping to prevent an incident from occurring is our number one priority, using our programmatic risk mitigations strategies. Vessel owners and operators can rely on the Network to guide them through the necessary steps for complete compliance as they pass through all of Western Alaska. In the event an incident should occur, shipping companies can be assured that the Network's team of partners is ready to respond. Our dedication to maintaining safer and cleaner seas leads us to monitor safe routing measures, conduct tabletop and field exercises, and advocate for the maritime industry at the highest levels.

APC have been administered on a Captain of the Port-wide basis for over two decades and have been backed up by numerous Coast Guard policy documents, including Western Alaska Captain of the Port Marine Safety Information Bulletins (MSIBs) 03-14 and 01-15, and CG-543 Policy Letter 09-02. Starting approximately 18 months ago, and without any public notice, the Coast Guard changed the way APC are implemented in Western Alaska, putting less emphasis on oil spill prevention while allowing for-profit companies to carve up the Western Alaska Captain of the Port Zone in a way that focuses on the high-volume foreign-flag vessel traffic on the Great Circle Route through the Aleutians, all at the expense of the rest of Western Alaska.

Contrary to intent, the way the Coast Guard has implemented APC over past 18 months has actually resulted in an erosion of oil spill prevention and response capabilities in Western Alaska available to many vessel owners and operators. The Coast Guard's policies have also made it nearly impossible for the Coast Guard to enforce its own rules. This has benefited foreign flag vessels at the expense of Alaskans.

I would like to use my time today to provide detail on these issues, and to leave the committee with certain, key principles that the Network believes must be adhered to as policies governing

APC in Western Alaska are developed over the coming weeks and months.

The Coast Guard's implementation of APC in Western Alaska is eroding oil spill response capabilities in the Western Alaska Captain of the Port zone

It is probably not necessary to remind this Subcommittee that the maritime shipping industry is experiencing economic hardship, with container shipping lines likely to have incurred combined losses of over \$5 billion in 2016. As a result, the industry is seeking ways to meet OPA 90 requirements at the lowest possible price and with the minimum needed to meet oil spill response readiness.

The Coast Guard's implementation of APC in Western Alaska is playing into this dynamic. Following approval of the Network's plan for the entire Western Alaska area, the Coast Guard has approved APC providers that cover only limited areas and with minimal equipment, allowing them to lower prices to take market share. In the eyes of industry and the Coast Guard Vessel Response Plan (VRP) review process, the lesser capable provider's compliance certificate is equivalent to a certificate offered by a broader-based capable provider. This has led to a large disparity of prevention and response capabilities among the Western Alaska APC providers.

The Coast Guard believes that competition will incentivize APC providers to supply more equipment into the market. Competition works if lower prices attract additional customers, which in turn generates additional revenue that can be invested in additional oil spill response capability. In Alaska, the customer base is pretty set – it will not grow; in fact the advent of larger container vessels means few vessels may traverse this area. Hence, lowering prices only serves to reduce the amount of money available for oil spill response, and that has eroded the ability of APC providers to maintain, sustain, and build out prevention and response capabilities in Western Alaska.

In contrast, the Coast Guard claims there is now more response equipment in Western Alaska due to multiple providers. This is a mischaracterization of how equipment is allocated among holders of a vessel response plan. The only equipment available to a vessel planholder is the equipment provided in their specific APC provider's program. Approximately 40-45 percent of the vessels transiting through Western Alaska have less response capabilities than they did 18 months ago. This runs contrary to the Coast Guard's expectation that all the equipment in Western Alaska will be available for a response. Ironically this is the very definition of the utility model that existed when APC was administered on a Captain of the Port-wide basis and that the Coast Guard now eschews in favor of a competition model. The problem is that the Coast Guard's version of the utility model hamstring the ability of APC providers to build out and maintain a level of oil spill response equipment needed to protect Western Alaska.

The Coast Guard's implementation of APC in Western Alaska does not properly value prevention

APC guidance needs to be viewed holistically within the marine environmental protection program – a balance of prevention and response. Driving down risk of an oil pollution incident, and thus preventing it, should be on par if not greater than response capabilities. This is

particularly true in remote areas where NPC requirements are difficult to attain due to lack of infrastructure and prevailing environmental conditions.

The NPC are predominately based on mechanical recovery capabilities. Recovering spilled oil under the best of conditions is difficult. Numerous studies show mechanical recovery rate in ideal weather conditions average from 5-20%. The Aleutian Island Risk Assessment determined the response “weather” gap for open water mechanical recovery is 72 percent, meaning, at best, only 28 percent of the time, on average, will mechanical recovery methods be an option to deploy within the Aleutian Archipelago due to prevailing extreme weather and seasonal conditions. This would mean the mechanical recovery operations would be able to effectively recover only 1-6% of oil in open water in Western Alaska under ideal weather and seasonal conditions and within an effective timeframe.

Ultimately, an effective goal, consistent with OPA 90 objectives, should be to develop a maritime oil pollution prevention and response “system” in remote regions of Alaska – one that combines risk mitigation and response in a cost effective, practical, and sustainable manner.

The Coast Guard has failed to hold APC providers accountable, largely because of the agency’s inability to enforce its own rules.

Prior to the Coast Guard abandoning existing APC policies and going to the geographically limited subzone APC model, VRP compliance for nontank vessels was over 95%. Now in less than two years after the nontank vessel APC programs were implemented in Western Alaska, compliance has dropped to around 74%. This falloff of compliance can be attributed to the fact that it has become unexpectedly challenging and highly personnel-intensive for the Coast Guard to manage compliance for three APC providers who are approved for different geographic coverage areas within Western Alaska.

The creation of subzones within the Western Alaska Captain of the Port Zone has caused confusion to the shipping industry. Many shippers are unaware of the subdivisions within the Western Alaska Captain of the Port Zone for VRP compliance purposes. These subzones are not defined in federal regulations or even in any Marine Safety Information Bulletin (MSIB), and they have not been defined to industry. They only appear in the individual APC programs developed by for-profit providers and accepted by the Coast Guard. Compounding this problem is that subzone boundaries pay no attention to a vessel’s weather routing measures or the fact that a vessel master may want to transit on the shortest distance between two points – both requiring a vessel to operate outside the limited coverage area.

The Coast Guard’s answer to a vessel transiting outside of the limited subzone covered by its APC provider is to exercise Captain of the Port authority and issue permits for limited transits. In effect, the Coast Guard has allowed APC providers who only cover a small portion of the Western Alaska COTP Zone to freely expand their coverage area de facto without any investment in resources through the waiver process. The problem is exacerbated each time the Coast Guard provides permitted limited transits to a vessel that transits outside its approved APC coverage area, ignores the violation, or is unaware the vessel is transiting through the Captain of the Port Zone in violation of VRP regulations.

Further, when vessels are granted a waiver, they are outside of their APC provider's coverage area, which means that their APC provider is no longer required to monitor the operational status of that vessel and, more importantly, has no responsibility to have response equipment staged or any pertinent risk mitigation measures in place for that area. This leaves Alaskan communities completely exposed to a potential spill from a vessel that has a plan without the responsibility to respond to the incident. Plus, the issues regarding who assumes liability and responsibility for the vessel as it operates under the authority of the U.S. government in an area without VRP coverage and the vessel has an incident are unanswered.

The Coast Guard policy, as now administered, benefits foreign flag operators at the expense of Alaskans

New entrants entering the APC program market for Western Alaska have focused for the most part only on foreign flag vessels transiting the Great Circle Route where revenue can be collected with minimum investment in equipment. Under the Captain of the Port-wide model, APC coverage is provided to U.S. flag vessels providing most of the service to places along the vast coast of Western Alaska, in part with revenue derived from the high volume foreign flag traffic. As revenue is diverted away from the only APC provider covering the entire Western Alaska Captain of the Port, the U.S. flag vessels plying the coasts of Western Alaska must pay more. This, in turn, increases the cost of goods shipped on these vessels, which increases the cost of groceries, heating fuel, or fuel to generate electric power to remote and rural Alaska. Unfortunately, the determination of the true cost of developing and sustaining oil spill removal equipment in an area the size, remoteness, and complexities present in Western Alaska has never been conducted. Additionally, the potential adverse economic impacts to the coastal communities that are dependent upon the maritime industry have never been considered nor assessed by the government.

Key Principles for Implementing APC in Western Alaska

As Congress examines the path forward, and to the extent that changes are made to the way APC is implemented in Alaska, we hope the following principles will be considered:

1. APC providers must cover the entire Western Alaska Captain of the Port Zone. APC organizations must meet the obligation to provide prevention and response capabilities for ALL parts of the Captain of the Port Zone, not only selected "easier" portions, which would leave those few vessel owners and operators serving less traveled and larger areas with onerous and disproportionate costs of compliance. Make no mistake: continued fragmentation of the Captain of the Port Zone will continue to result in significantly reduced capacity to protect Western Alaska, including the more remote and frequently most vulnerable areas.
2. Oil spill prevention must be an essential component of APC. Oil spill recovery is after the fact of a spill. When transiting extremely remote and challenging conditions of locations such as the Bering Sea, Arctic Ocean, and other Western Alaskan waters, reducing the risk of a spill from ever happening is hugely important. Therefore, a qualified APC must

not only provide access to a response capability, it must include adequate risk reduction measures and capabilities.

3. The economic ramifications of how the Coast Guard is implementing APC in Western Alaska must be analyzed and understood. Allowing APC to only cover the Great Circle Route through the Aleutians is making it more expensive to maintain oil spill prevention and response measures for the vessels calling at ports along the Alaskan coast from the Aleutians north throughout the Bering Sea and the Arctic coastline. This will cause harm to small, remote communities in the form of higher prices for fuel oil and other essential supplies, as well as strand response resources to the detriment of the lesser travelled areas of Western Alaska, such as the Arctic region.
4. Accountability is paramount. When an oil spill happens, Alaskans want assurances that any APC organization that says they have the resources available to respond to that spill can actually deliver on those promises. Current regulations do not hold APC organizations accountable, and they certainly do not ensure that organizations that administer an APC have dedicated oil spill response equipment and the ability to deploy that equipment in a timely manner.
5. The Coast Guard must be able to enforce whatever rules it develops. If APC covers an entire COTP zone, a vessel owner or operator is either in compliance or not. We are concerned that if the Coast Guard continues to administer APC by allowing limited profit-centered subzones that it will be unable to ensure that all vessels traveling around different parts of the COTP are covered by APC in every part of the zone in which they travel. Plus, the Coast Guard will have to grant limited permitted waivers in areas it did not have to or should when there is a qualified APC provider for that particular area.
6. Regular order must be adhered to when regulating industry. Regulation by administrative policy allows the Coast Guard to change the rules without notice or an opportunity for comment, and without analyzing the economic impact. As an example, the Coast Guard has been managing APC programs on a COTP-wide basis for years with success. Then recently, without public notice, the Coast Guard commenced managing APCs in Western Alaska via subzones. That is unfair to those who comply with established policy and rely on it to be in compliance. There should be no question that oil spill response be implemented by regulations implementing the Oil Pollution Act of 1990 and other statutory requirements. A formal rule-making process under the Administrative Procedures Act must be followed when imposing regulations on industry. If this had been done, there would be no issue regarding the implementation of APC requirements in Western Alaska. Anything short of this will not provide certainty to the maritime industry or Alaskans.

What Actions Should the U.S. Congress Take?

1. Congress should provide clear direction to the U.S. Coast Guard on their expectations for oil spill prevention and response from vessels operating in Western Alaska and the Arctic, based on the principles detailed above.

2. Congress should ensure the policy directive results in continuity and predictability so that those who provide prevention and response services in the remote stretches of Western Alaska can make the required investments in capability to support the needs of the maritime industry in this region. The maritime industry, which is regulated in order to prevent and adequately respond to oil spills from their vessels, particularly in remote regions such as Western Alaska, deserve predictable regulations and implementing policies which do not play favorites. The unique attributes of this area are too important to allow unpredictable changes in the regulatory environment by way of policies that are not vetted or explained to industry.
3. The Congress should resolve the ambiguities in the regulations that allowed the Coast Guard to unilaterally depart from the successful approach, and direct the Coast Guard to return an area-wide APC requirement in Western Alaska and the Arctic. Up until recently, the Coast Guard managed oil spill prevention and response on a Captain of the Port wide basis in Western Alaska. The result was the long term, and sustainable, buildout of response resources for the benefit of the entire region.

CONCLUSION

These aforementioned principles are offered to bring order to the process of regulating the maritime industry in Western Alaska. More importantly, they will ensure that oil spill response is administered in a fair and balanced manner and will ensure that a robust and capable oil spill prevention and response program protects all of Western Alaska, which includes the U.S. Arctic region.

I have included additional documentation to support my testimony, including two charts that show the correlation of the decrease in revenues available to expand response capability and decrease in actual response equipment in Western Alaska, as a result of the Coast Guard's recent implementation of APC. Also attached is a chart that illustrates the oil spill response capabilities (equipment hubs) of each APC provider in Western Alaska. Comments filed by AMPRN on the WAK APC issue in response to a solicitation for comments by the Coast Guard (Docket No. USCG-2016-0437) can be found at the following link: <https://www.regulations.gov/document?D=USCG-2016-0437-0061>. I ask that they be included as part of the record.

Mr. Chairman, I appreciate the Subcommittee's examination of this important issue and I look forward to working with you to ensure that APC works for Western Alaska. I will be happy to respond to any questions you and the members of the Subcommittee may have.