

Committee on Transportation and Infrastructure

U.S. House of Representatives

May 3, 2017

Testimony of Nicholas J. Nedeau

Thank you for allowing me to provide information on the gap between required marine salvage and firefighting regulations, and the actual services contracted for by regulated vessel owners. This gap places the marine environment and vessel crews in considerable jeopardy. My name is Nicholas Nedeau. I am the Chief Executive Officer of Rapid Ocean Response Corporation. RORC provides dedicated, high-speed response vessels, and related transportation, to offshore fire fighters and surveyors as required pursuant to the Salvage and Marine Fire-Fighting (“SMFF”) regulations. The SMFF response regulations are derived from the Oil Pollution Act of 1990. (An amendment to the Clean Water Act; Federal Water Pollution Control Act, 33 USC §1251 et. seq.) The statute provides in relevant part, that tank vessels “identify, and ensure by contract or other means ... the availability of, private personnel and equipment necessary to remove ... a worst-case discharge (including a discharge resulting from fire or explosion), ...” Section 4205 of the Oil Pollution Act (“OPA”) Pub. L. 101-130, 104 Stat. 484 (August 18, 1990), 33 USC 1321(j)(D)(iii).

The clear import of that provision is that the Congress intended that when a fire or similar incident occurs offshore, marine salvage and fire-fighting resources be identifiable and ensured by contract to be available to respond. As my testimony will explain, neither of those requirements are currently being met.

Implementation of the SMFF Regulations was Delayed

In terms of the implementation of the SMFF regulations, the Coast Guard was surprisingly patient with the regulated community. Over a period of nineteen years, the effective date of the regulations governing SMFF response requirements and the related Vessel Response Plans (“VRPs”) was repeatedly pushed back. It wasn’t until 2009 that the actual VRP requirements became effective. 73 Fed. Reg. 80618 (December 31, 2008). The reason the COAST GUARD provided for the delays was usually the same, more time would be needed to allow the SMFF resource providers to build the vessels necessary to achieve compliance with the SMFF requirements. Even after nineteen years of delays, the COAST GUARD gave the salvage industry one more chance to develop the required response resources by allowing waivers of up to four years. Unfortunately, the dedicated network the COAST GUARD envisioned has not been established.

The SMFF Response Requirements

Looking at the SMFF regulatory requirements, it is clear that these requirements cannot be met consistently without a dedicated network. The law requires “A planholder must ensure by contract or other approved means that response resources are available to respond...” “33 CFR § 155.4010(b).

Although the COAST GUARD’s response regulations in some way echo the CWA requirements, in practice the COAST GUARD has not require vessel owners to adhere to these requirements.

Vessels of Opportunity

Instead of building the dedicated resources the regulations require, the regulated community attempted to achieve compliance with a probability based approach known in the industry as a “vessel of opportunity” strategy. Under this strategy, a vessel owner lists numerous vessels in its vessel response plan in hopes one will be available to respond. This approach is both legally and operationally deficient. Legally, the three of four of the contracts the vessel owners enter into with the SMFF resource providers do not ensure the availability of the response resources as required. Instead, the provider’s obligation to respond is conditioned on whether resources are “available.” If the SMFF resource provider does not have resources available, the contract allows that resource provider to use subcontracted vessels to respond. These subcontracts invariably are conditioned upon the availability of the subcontractor’s assets, clearly not adequate under the SMFF contractual requirements that require the vessel owner ensure by contract that the response resources are available.

Operationally, the vessel of opportunity approach also cannot achieve compliance consistently. Because the non-dedicated vessels are often engaged in other work, they must first disengage from those assignments and return to port where these vessels load the necessary material, and personnel and are fitted with fire-fighting pumps and equipment necessary to respond to the fire. It is unlikely that these activities can be accomplished, and mount a compliant response, within the 6, 12, or 18 hour required timeframes. There are numerous other response requirements related to carrying passengers, load lines and licensing that non-dedicated response vessels must comply with rendering many tugs ineligible to respond.

The COAST GUARD’s Failure to Require Drills and Exercises

The obvious question is how could these serious deficiencies not have come to the attention of the COAST GUARD. The SMFF regulations do provide a very specific list of exercises and drills which vessel owners are required to conduct. 33 C. F. R. § 155.4052. Unfortunately, the COAST GUARD has not required vessel owners to provide proof of these exercises. Vessel owners I have spoken with have offered that they are not conducting these required drills. Further, the results of the only audit of sorts conducted by the COAST GUARD in 2012-2013, were not shared with the public.

Two Recent Offshore Fires Reveal the Problems with the Vessel of Opportunity Approach

There are real life examples of these compliance issues. On March 14th, the *Grey Shark* lost power off the coast of New Jersey¹, fire broke out on the 15th and on the 17th she began a tow back to New York harbor where on March 18th the New York Fire Department extinguished the fire. During that time, the *Grey Shark* attempted to arrange a SMFF response from the vessels available under the vessel of opportunity approach. Unfortunately, none of the over two hundred vessels of opportunity contacted were available to respond. WNYF Magazine, December 1, 2015, [ICS Instrumental at Grey Shark Fire](#). The *Caribbean Fantasy* fire is another example of a failure of the vessel of opportunity approach to compliance. In that instance, a cruise ship caught fire within two miles of the entrance to San Juan's harbor. Although a very successful evacuation was performed, according to the COAST GUARD CMDR Janet Espino – Young, the “active fire – fighting component of the vessel response did not meet the criteria as required by the regulations.” COAST GUARD/NTSB Hearings San Juan, PR March 24, 2017.

RORC's Application for an Alternative Planning Criteria

In early 2015, RORC met with the COAST GUARD and proposed building a nationwide SMFF response network. We applied for an Alternative Planning Criteria (APC) for twenty- six COTP zones in the Continental U.S. RORC explained in its application that it had developed a network comprised of nineteen participants, mainly of harbor pilot groups, who had agreed to use their high- speed, ocean going pilot boats to transport fire teams and surveyors, on a temporary basis, to provide shippers with compliance with the SMFF regulations. These pilot boats could be utilized until custom built pilot boat/fire boats could be built and placed in service in each of the 19 locations. RORC provided examples of both legal and operational deficiencies in each COTP zone based on data collected in 2014. On March 14, 2016, the COAST GUARD responded, explaining that the COAST GUARD could not grant an Alternative Planning criteria without first determining that a gap in compliance existed. The response further explained that the COAST GUARD would embark on a “verification” process to determine whether gaps in compliance existed.

The COAST GUARD's 2017 Verification Process

On March 17, 2016, Admiral Paul Brown announced that the COAST GUARD would conduct a “verification” process. Inexplicably, this process has not come to fruition

In closing I think it is clear that the Congressional mandate, that Salvage and Marine Fire-fighting resources be identifiable and ensured by contract to be available to respond, has not been achieved. I ask that the Oversight Committee press the Coast Guard to reject VRPs that do not provide evidence of the required drills and exercises. Without requiring proof of compliance, the Congress' clear intentions will remain unfulfilled. Thank you.

¹The *Grey Shark* incident began outside of the 50- mile purview of the SMFF regulations. Her tow, however, brought her within the regulation's jurisdiction.