

Statement of

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Maritime Transportation Regulatory Issues:

U.S. Salvage and Marine Firefighting

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Good morning Chairman Hunter, Ranking Member Garamendi, and Members of the Subcommittee. I am Todd Schauer, President of the American Salvage Association. Joining me today are representatives of ASA member U.S. marine salvage companies and members of the ASA Executive Committee. The four salvage companies that provide OPA 90 salvage and marine firefighting services nationwide are represented.

I think it is appropriate to note that I am not a professional lobbyist. While I serve as an elected officer of the ASA and I am acting in that capacity today, my normal job is serving as Director of Global Operations for one of the core 4 Marine Salvage and Fire Fighting providers. I started my career at the U.S. Coast Guard Academy, graduating in 1991 with a bachelor's degree in Naval Architecture. I rounded out a career in the U.S. Coast Guard with advanced degrees in Naval Architecture, Marine Engineering and Mechanical Engineering from the University of Michigan and as a registered Professional Engineer. Highlights of my Coast Guard duty included an afloat tour on a Polar Class Icebreaker with trips to the Arctic and Antarctica, and serving here in Washington for 5 years on the Coast Guard's Salvage Emergency Response Team (SERT) as Duty Officer and Team Leader. In these capacities, I responded to numerous shipboard emergency responses throughout the U.S. I transitioned to the private sector after 9 years on active duty, but completed a 20 year career in the Coast Guard Reserve where I served at various postings and qualified as a Federal On-Scene Coordinator. I have since culminated more than 17 years of experience as an emergency salvage responder and Salvage Master, responding to, planning, and directing the responses to more than 100 major salvage operations around the world.

On behalf of the ASA, I very much appreciate the opportunity to provide this committee with an overview of the ASA and the U.S. commercial marine salvage industry, and to discuss recent issues concerning the industry's response capability.

ASA Overview

The mission of the ASA is to be a unifying association of the commercial marine salvage industry, serving as the definitive spokesman for this industry in Washington, D.C. and elsewhere in North, Central and South America to include the Caribbean as well. The ASA membership represents approximately 90% of the United States salvage capability.

Please note that the terms "salvage" and "salvors," in this discussion also include marine firefighting.

The ASA membership is comprised of companies that provide all marine salvage services, as well as firms offering services that support salvage operations, including tug operators, diving companies, naval architects, response managers, underwater survey companies, lightering companies, pollution responders and other associated service providers. Port authorities and associated trade associations are also included in our ranks, as well as retired senior members of the U.S. Navy and U.S. Coast Guard. In recent years, our membership has expanded to

include companies and organizations that respond throughout the Americas and around the world.

The ASA was created in 2000 as an organization of professional salvors to improve marine casualty response in North American coastal and inland waters. Since inception, the association has become very active in educating government, industry and the public on the vital role of the marine salvor in protecting life, the environment, marine transportation systems and property from the impact of maritime casualties. Our association promotes compliance with specialized safety standards for often hazardous operations in which our members engage, and not only improved but standardized the salvage contracting process. Importantly, the ASA, actively participates in rulemaking processes which establish effective federal regulations and policies. Our goal has always been to assist in promulgating the best public policy that will protect life, property, the environment while facilitating commerce.

Of particular note is our longstanding working relationship with the U.S. Coast Guard. We work closely with this agency, as well as other federal and state agencies, municipalities and other response organizations to ensure coordinated, effective and professional responses to marine casualties. The ASA also leads and participates in numerous salvage response training sessions with the Coast Guard every year.

The U.S. marine salvage capability dates back many decades. It has evolved into an industry that employs a highly skilled, experienced and professional workforce utilizing the very latest technologies. One need look no further than the recent wreck removal of the passenger ship COSTA CONCORDIA in Italian waters to appreciate the technological sophistication of the U.S. salvage industry. This was the largest operation of its kind ever and it was conducted by a U.S. salvage company in partnership with an Italian construction firm.

Marine salvage spans a vast range of services from emergency towing to heavy lift, from underwater welding to complex structural and stability analysis, from fighting chemical fires to conducting diving operations in zero visibility. In all, the Coast Guard Salvage and Marine Firefighting (SMFF) Regulations cite 19 separate services that must be provided to meet OPA 90 response requirements. These salvage operations are often conducted under extremely challenging weather and sea conditions.

Historically, marine salvage involved the saving of lives, ships and cargo. Of significance is that, in the past several decades, protection of the marine environment has become an equally important service of the salvor. Salvors both prevent and mitigate marine pollution. Our objective is always source control, to "Keep it in the ship!" While pollution cleanup contractors may be able to achieve single digit oil recovery rates, keeping a vessel off the rocks or preventing a sinking may eliminate the entire loss of cargo and bunker fuel. If a vessel has incurred damage to cargo oil or fuel tanks, patching or transferring (known as lightering) to other tanks, another vessel or to shoreside facilities will greatly mitigate or halt further discharge. Although the salvage and marine firefighting regulations were promulgated under

OPA 90, some in the marine industry, the public and even some in government have been slow to recognize the vital role the salvor plays in pollution prevention and mitigation.

Another vital role of the U.S. salvage industry is response to the potential blockage of our nation's waterways, either through accident or, in recent years, terrorism. The nature of our harbors and rivers is such that slowing or completely stopping commercial traffic is not difficult. For example, in 2007 near the mouth of the Mississippi River, an Offshore Supply Vessel collided with a freighter and sank, with the loss of five crewmen. All river traffic, which included tankers inbound to supply major refineries and Military Sealift Command ships outbound to Iraq in support of the ongoing troop surge, was completely stopped. A major U.S. salvor, under conditions of heavy fog and high river current, conducted operations to open the river to one-way traffic in just four days with complete traffic restoration in seven days. This is but one example of incidents over the years where the U.S. salvage industry has responded to potentially catastrophic waterway and harbor closures.

The U.S. salvage industry not only responds to vessels in immediate distress under OPA 90, it removes wrecks that may have presented pollution and navigational threats, some for many years. Working in concert, the industry is very active in response to recent catastrophic events of national significance such as hurricanes Katrina and Sandy. During Hurricane Sandy, the salvage industry's response was principally to assist in restoring shoreside infrastructure—a departure from its traditional marine role.

As you can appreciate, the role of our industry has expanded over the years. It is vital to the nation that this organic American capability be maintained to protect life, property, the environment and the free flow of commerce.

Due to the leadership of the Subcommittee the Coast Guard Salvage and Marine Firefighting (SMFF) Regulations, 33 Code of Federal Regulations (CFR) Part 155 were promulgated. The regulations have had a major impact on the U.S. marine salvage industry as well as its client vessel operators. The Oil Pollution Act of 1990 is the governing statute of the SMFF regulations. This statute requires each vessel maintain a Vessel Response Plan (VRP) and that each plan must name a salvor, firefighting organization, and lightering resource.

The SMFF regulations were promulgated in December 2008 for tank ships and barges, and were extended to all commercial nontank self-propelled vessels over 400 gross tons in October 2013. As such, the regulations apply to all but the smallest U.S. and foreign-flag vessels operating in U.S. waters. Estimates place the number of vessels subject to the SMFF regulations at over 24,000 vessels.

The SMFF regulations have four principal components:

- Define salvage and marine firefighting services and resources
- Establish planning timeframes for response
- Provide criteria for determination of resource adequacy

- Provide for pre-arranged contracts

Notably, compliance with the SMFF regulations is required through the VRP. This plan is maintained by the vessel owner and/or operator (referenced as “planholder” in the regulations). The planholder is charged with ensuring compliance with the SMFF regulations and providing response, through contracted resource providers, in the event of a casualty. As is the case with the pollution response regulations, the planholder is also the “responsible party” when a casualty occurs.

Critical to an understanding of these SMFF rules is that they are planning criteria, not performance standards. This is specifically stated in the SMFF regulations in 33 CFR 155.4010. Compliance with the regulations is based on assumptions that may not exist during an actual incident such as weather, channel blockage, etc.

The marine salvage companies and associated subcontractors, or “resource providers” as termed in the SMFF regulations, provide response services in much the same manner as Oil Spill Removal Organizations respond to spills, which also are named in the VRP. As noted previously, there are four primary resource providers offering all 19 SMFF services nationally required by the SMFF regulations. There are also several regional providers and a host of companies providing specialized services. Together, these companies constitute a robust, professional and extensive U.S. response capability.

The response structure established by the U.S. marine salvage industry to meet the SMFF regulations is extensive. Even before the enactment of OPA 90 and the promulgation of the SMFF regulations, the U.S. salvage industry responded professionally and rapidly to all types of casualties. The only circumstance that might have caused a delay, in certain instances, was the establishment of a contract for services with the stricken vessel’s owner and/or operator. In a business that is extremely competitive, a salvor’s rapid and professional response was, and continues to be, crucial. If you don’t mount effective responses, you’re out of business! For the salvage industry, the SMFF regulation’s principal impact was the elimination of unqualified and unprofessional “salvors.” Pre-SMFF regulation, over 300 companies, some with virtually no salvage experience, had been listed in various Vessel Response Plans.

When the SMFF regulations came into effect, the salvage industry greatly expanded its existing equipment inventories, response staffing levels, and administrative support to ensure the regulatory timeframes are met for all 19 SMFF services. This expansion is concurrent with an even greater role internationally for American salvors. The U.S. SMFF providers through recent growth and continuous improvements in capability now represent a majority of the globally operating salvage providers; in essence, the strength of the US capability is growing and also being exported. This is also a substantial benefit to the US Navy’s global salvage response capability which is directly supported by emergency response contracts with ASA members in a time of declining organic Navy capability.

For the salvage companies providing OPA 90 response nationwide, the response structure is comprised of company personnel, and company-owned and operated equipment located nationwide along with a wide ranging network of subcontractors, also providing equipment and personnel. Each subcontractor supporting one or more of the 19 services is contracted to respond and is fully vetted. This subcontractor network is “duplicated” in that, for example, several contractors offering the same service may be available in a particular port complex which provides for redundancy. In some locations, the local municipal fire department, if trained for marine firefighting, is listed in the VRP as the OPA 90 responder. One example is the New York City Fire Department, which has a substantial fleet of fireboats and extensive training and experience in marine firefighting.

Please note that “nationwide” locations of equipment and personnel, include the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands and Guam.

This system of national salvage resource providers, qualified subcontractors and other providers is fully capable and, importantly, cost effective for the salvage industry, the ship operators and, ultimately, the consumer. It spreads the opportunity for response over a range of existing businesses, from small tugboat operators to large diving contractors, precluding the need for new investment in equipment that may sit idle and be employed only occasionally.

This system of resource providers works. In the over 180 OPA 90 responses since the SMFF regulations came into effect, to our knowledge, there has never been a Coast Guard after-action report, much less a hearing critical of any response to a casualty conducted by an ASA member.

What assurances are there to the government and public that planholders and their resource providers meet the response times and resource requirements? In addition to the industry’s superb response record, a system of oversight, exercise and vetting - likely the most vigorous in the marine industry - provides these assurances. The U.S. salvage companies, as resource providers, are subject to:

- SMFF regulatory drill and exercise requirements (33 CFR 155.4052) which include remote assessment and consultation exercises, shore-based SMFF tabletop exercises, and equipment deployment exercises
- SMFF regulatory rules (33 CFR 155.4045) requiring planholders ensure resource providers meet 15 selection criteria (as applicable) before contracting a provider
- Two separate Coast Guard resource verification programs
- Oversight by Coast Guard Captains of the Port on every OPA 90 response and, in some cases, oversight by state authorities
- Coast Guard Captain of the Port approval of salvage and towage plans, including review by Coast Guard naval architects and salvage engineers in certain cases
- Vetting of resource providers by insurance underwriters

For your further information and in support of statements made herein, we have included a PowerPoint presentation which we trust will be helpful.

It has come to the attention of the ASA leadership that the resource and response capabilities of the four national SMFF resource providers have been questioned recently, that these companies are not willing or contractually obligated to respond or somehow lack the resources to meet response requirements. I will address these issues separately.

Regarding the contractual obligation for an SMFF provider to respond, 33 CFR 155.4025 defines *Contract or other approved means* as a written contractual agreement that states the resource provider is capable of, and intends to commit to, meeting the Vessel Response Plan. 33 CFR 155.4045(b) states that the resource provider must consent to provide specified SMFF services and state these services are capable of arriving within the required response times. All four national SMFF resource provider agreements in question meet these regulations by making the necessary statements of capability and commitment to respond within the required response times. These contracts and consents are part of the Vessel Response Plan which is reviewed and approved by the U.S. Coast Guard. Rest assured that there will not be response delays due to contracting issues; the USCG clearly addressed this via the implementation of the SMFF regulations.

In addition to Coast Guard contract acceptance, the SMFF response contracts have undergone the scrutiny of the marine insurance International Group of Protection and Indemnity clubs, which have also approved the contracts of all national SMFF providers as meeting the SMFF regulations.

The agreements do contain statements of qualification that resources may not be immediately available, and that cascading of resources from other locations or providers may be necessary. In fact, no SMFF resource provider, nor, for that matter any provider in any response service, can warrant 100% availability of resources unless multiple backup is provided.

The crux of the matter is that 24-hour dedicated availability of each supporting resource in each location was never intended by the SMFF regulations. Such a commitment to have the vast myriad of SMFF support resources (tug boats, divers, derrick barges, supply boats, crew vessels, etc.) specifically dedicated for the 19 SMFF services in all U.S. ports and for all U.S coastal and offshore areas would be absolutely cost prohibitive for the salvor and its clients, and would virtually require the establishment of a second response infrastructure. This was clearly not considered by the original economic analysis of the SMFF Tank Vessel Regulations. Unlike pollution cleanup contractors that have focused kits of specialized equipment (boom, spill boats, and skimmers, etc.), the diversity of the 19 salvage services demands a vast network of high value support resources *in addition* to specialized salvage equipment and these support resources simply must routinely perform other marine related work and services to be commercially viable. (Please refer to the Federal Register Dec 31, 2008, Pg 80645, VII Regulatory Analysis, for a detailed discussion.)

SMFF providers rely heavily on this ‘vessel of opportunity’ and ‘resource of opportunity’ system that exists throughout the ports and waterways of the United States and throughout the industrial maritime infrastructure of the U.S. This includes thousands of tugs, workboats, supply and crew boats, hundreds of derrick barges, cargo barges and a nationwide network of other marine and industrial resources including heavy equipment, commercial logistics and transportation assets, industrial service providers, divers, welders, small boat operators, etc. The U.S. commercial support fleet alone is extensive with estimated 7,300-plus self-propelled vessels.

An underpinning critical element of emergency response salvage is logistics. Salvor’s livelihoods are based on the ability of their logistics systems and networks to meet the extreme demands of the emergency salvage business. Salvors rely heavily on all air, sea, and ground transport modes.

Regarding the SMFF regulations, the table of services TABLE 155.4030(b) requires no specific logistical service requirement for means of delivering assets to the casualty scene. Such logistical support is, however, one of the resource provider selection criteria (33 CFR 155.4050) which states that the “Resource Provider has the logistical and transportation support capability to sustain operations for extended periods of time in arduous sea states.” Such transportation, depending on the nature of the casualty, may include deck barges, oil barges for lightering (cargo transfer), supply boats to carry pumps and other heavy equipment, cargo and passenger aircraft, helicopters and crew boats to deliver salvage and firefighting personnel and equipment. Is there a regulatory expectation that a new logistics fleet of vessels, ground transport vehicles, and aircraft be created and dedicated 24-7 to OPA 90 response? Any such suggestion is not only illogical, but highly impractical and not founded by any past performance issues that we are aware of. Further, it would set a very disturbing precedent and create a host of other issues if the logic were extended to the entirety of support functions required for all 19 salvage services.

We are aware of some derogatory comments that are being circulated by special interests regarding a very small number of recent cases. We are not believers in arm chair speculation by third parties; if there are any concerns with an actual response we recommend that the Coast Guard engage individual providers directly to address any issues or lessons learned.

In summary, the ASA submits that the present resource provider contracting is in accordance with the SMFF regulations and was accepted by the U.S. Coast Guard and P&I Clubs. We further submit that through extensive oversight by various agencies and organizations, compliance with a number of exercise and verification programs, and, importantly, a proven track record of successful response, the nationwide SMFF providers meet the OPA 90 regulatory requirements while continuing to improve overall capability. A key element of this compliance is the incorporation of the expansive ‘vessel of opportunity’ and ‘resource of opportunity’ system. Any attempt to regulate the creation of a dedicated and redundant network for logistics and support resources for SMFF response would at the very least place

undue financial burden on the vessel owners and/or operators, shipper and, ultimately, the consumer.

In closing, the U.S. salvors will continue their proud and growing legacy of professional and effective salvage response throughout U.S. waters and in support of U.S. interests abroad. We will continue to meet or exceed SMFF response standards and work closely with ship owners, regulators, and resource providers to grow and improve upon our substantial response capabilities. The ASA member salvors will continue the time-honored marine salvage tradition of “best endeavors” in responding anywhere, any time and for any incident to protect life and the environment, to keep our waterways open for commerce, and to save valuable ships and cargo.

Thank you.