U. S. Department of Homeland Security

United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-ICA
Phone: (202) 366-4280
FAX: (202) 366-7124

DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

ADMIRAL THAD ALLEN
COMMANDANT

ON

OIL SPILLS FROM NONTANK VESSELS: THREATS, RISKS, AND VULNERABILITIES

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORATION

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES & COAST GUARD

U.S. SENATE

DECEMBER 18, 2007

Good afternoon Madam Chairman and distinguished members of the Committee. It is a pleasure to appear before you today to discuss the Coast Guard's efforts to reduce and mitigate oil spills from nontank vessels. Today I will discuss requirements and implementation of nontank vessel response plans and the status of rulemaking pertaining to nontank vessels. The Coast Guard is absolutely committed to protection of the environment as a valuable public good.

The Coast Guard plans and prepares for significant oil spill incidents, including worst case discharge scenarios, through Area Committees and Regional Response Teams. These entities represent a partnership of federal, state, and local agencies and tribal, non-governmental and private organizations. Through committee process, Area Contingency Plans are reviewed, tested, and updated to best manage oil spill response operations. These plans identify environmentally sensitive areas within the local area of responsibility, establish appropriate protection strategies, and list all potential locations for staging response equipment. The plans describe command and control structures, the role of volunteers, establish conditions for using special response procedures such as the use of dispersants, and identify the National Response System and local assets that can be brought to bear in the event of an oil spill incident.

The Area Committees and Regional Response Teams oversee other preparedness activities such as regular government and industry exercises, training evolutions, and risk assessments. Their activities are overseen by the National Response Team, and operate under the aegis of the National Contingency Plan and the National Response Framework.

The creation of Coast Guard Sectors unified port and coastal operational commands, placing increased resources in the hands of Federal On-Scene Coordinator. The Coast Guard conducts regular, rigorous, oil spill exercises, inspects vessels and facilities for safety and environmental compliance, and participates in a host of prevention, planning and preparedness activities related to environmental protection and response. Incident Command System training is required for all Coast Guard personnel ensuring the skills necessary to manage all hazards incidents, including oil spill response operations. In addition, Coast Guard Strike Teams offer unique capabilities and expertise to assist local response operations and the National Strike Force Coordination Center conducts regular assessments of the capabilities and readiness of privately owned Oil Spill Removal Organizations.

NONTANK VESSEL RESPONSE PLANS

The Coast Guard and Maritime Transportation Act of 2004 amended the Federal Water Pollution Control Act to require the preparation and submission of oil spill response plans for nontank vessels. The Act defined a "nontank vessel" as a self-propelled vessel of 400 gross tons or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that is a vessel of the United States or operates in the navigable waters of the United States. Under the Act, response plans for nontank vessels were required to be submitted to the Coast Guard by August 8, 2005. The Coast Guard and Maritime Transportation Act of 2006 was signed by the President on July 11, 2006 and further amended the Federal Water Pollution Control Act. Section 608 of the CGMTA 2006 contained provisions to further amend the FWPCA with regard to applicability standards for nontank vessels. All nontank vessels that are not assessed under the convention tonnage measurement system will use the regulatory tonnage admeasurements system for their applicability tonnage. Additionally, U.S. vessels that are not operating on the navigable waters of the United States are not required to comply with this law.

The Act provided one year for the development and submission of nontank vessel response plans. The Coast Guard did not have adequate time to provide for public comments and then develop and publish regulations within the one year timeframe. Under the authority provided by 33 U.S.C. 1321(j)(5)(G), until regulations are in effect, the Coast Guard has authorized nontank vessels to operate without an approved plan for up to two years if the owner or operator certifies availability of personnel and equipment necessary to respond to a worst case discharge. On February 4, 2005, the Coast Guard published Navigation and Vessel Inspection Circular 01-05 (NVIC 01-05) entitled, "Interim Guidance for the Development and Review of Response Plans for Nontank Vessels." This document provides guidance to help vessel owners and operators develop plans and receive interim operating authorization from the Coast Guard. The publishing of NVIC 01-05 was announced to the public and industry by Federal Register Notice.

On June 24, 2005, the Coast Guard published another Federal Register Notice and Request for Comments, concerning Nontank Vessel Response Plans (70 FR 36649) which informed the public of issues related to this legislation, posed questions on the size of the population of vessels affected, discussed Coast Guard efforts to engage the regulated community, and informed the owners and operators of nontank vessels of the Coast Guard's enforcement policy. The Coast Guard is currently reviewing, researching, and answering the comments received in response to the Federal Register Notice and Request for Comments and is drafting a regulatory work plan.

As of December 1, 2007, the Coast Guard has received and reviewed approximately 2,359 nontank vessel response plans covering 13,306 nontank vessels. As vessel owners submit their nontank plans, these plans are reviewed and two year interim operating authorization letters are issued. As these interim operating authorization letters expire, the Coast Guard reissues new interim operating authorizations based upon the vessel owner's certification that the necessary private resources needed to respond to a worst case discharge are ensured by contract or other approved means, per 33 USC 1321(j)(5)(D).

OIL SPILL THREAT

Nontank vessels pose a threat to the marine environment due to the fuel oil capacities of these vessels. Ship fuel, also referred to as "bunker", generally presents a response challenge due to its density and inability to break down in the marine environment as fast as lighter oils. This is problematic when bunker comes in contact with shorelines, marine mammals, birds and environmentally sensitive areas. Of the 13,000 nontank vessels in vessel response plan files, 8,364 of these vessels are oceangoing freight vessels such as container, breakbulk, roll-on/roll-off or bulk cargo ships. The majority of these freight vessels have a fuel capacity between 10,000 and 20,000 barrels. There are, however, over 360 freight ships with a fuel capacity of 50,000 barrels or more, and about 100 freight ships with a fuel capacity over 70,000 barrels. The highest fuel capacity we have listed for a freight ship is over 173,000 barrels. The M/V COSCO BUSAN, with a fuel capacity of approximately 52,000 barrels is on the larger side. Significant oil spills from nontank vessels over the years have clearly identified nontank vessels as an ongoing threat to the marine environment. Spills such as the Japanese freighter KUROSHIMA in Summer Bay, Alaska in 1997, NEW CARISSA off Coos Bay, Oregon in 1999, the SALENDANG AYU off Unalaska Island, Alaska in 2004 and the COSCO BUSAN in San Francisco Harbor in 2007 demonstrate the hazard posed by this type of vessel.

NEW REQUIREMENTS FOR OCEANGOING FREIGHT SHIPS

Nontank vessels are vulnerable to spills caused by groundings, collisions and allisions due to the location and capacity of onboard fuel tanks. Fuel is generally carried in tanks located in the bottom or side of the vessels without double hull protection. International oil spill prevention and response requirements applicable to oceangoing freight ships are based on build date and fuel capacity. These requirements address issues such as double hull requirements, accidental outflow requirements, and emergency response plans.

Oceangoing freight vessels are subject to the International Convention for the Prevention of Pollution from Ships other wise referred to as MARPOL 73/78. New MARPOL Annex I regulation 12A - Oil Fuel Tank Protection has entered into force and applies to all ships (a "ship" means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms) with an aggregate oil fuel capacity of 600 cubic meters (this equates to approximately 158,500 gallons or 3,775 barrels) and above with a building contract on or after 1 August 2007, or which are delivered on or after 1 August 2010. The 600 cubic meters applicability threshold was established because it generally equates to the MARPOL 600 ton deadweight applicability threshold for oil tanker double hull requirements in regulation 19. The regulation provides two options for the protection of fuel tanks: (1) a prescriptive double hull requirement; or (2) a probabilistic accidental oil outflow performance requirement. There is an exclusion for small fuel tanks of 30 cubic meters or less. OPA 90 requires all new build tank vessels (tank ships and barges) that carry oil in bulk to be double hulled. There is no bottom limit of how much cargo oils are carried and OPA 90 standards are enforced on all tank vessels that operate in the U.S. waters.

Regulation 37 of Annex I of MARPOL 73/78 requires that each ship maintain a Shipboard Oil Pollution Emergency Plan (SOPEP) that addresses and mitigates oil spills. There are significant differences between SOPEP and Federal Water Pollution Control Act requirements. SOPEPs require information in the following areas: spill reporting provisions, casualty/spill mitigation procedures, and vital vessel information (vessel name, VIN, principal characteristics). FWPCA plans require the same information as a SOPEP, but also include more stringent requirements including: follow-up report; procedures for equipment failure, discharge equipment deployment, internal transfers; emergency towing; geographical specific appendices including information on Oil Spill Removal Organizations (OSROs); shore-based response activities, including use of an ICS or equivalent system; identification of spill management team; Salvage and Marine Firefighting; lightering provider; Qualified Individual; training; exercises; and vessel-specific appendix, including maximum most probable and worst case discharge amounts, oil groups carried, tank capacities, and specific vessel diagrams.

ADEQUACY AND ENFORCEMENT OF VESSEL RESPONSE PLANS

The Coast Guard currently maintains 837 tank vessel response plans covering 7,841 vessels and 2,359 nontank vessel response plans covering 13,306 vessels, both U.S. and foreign flagged. The Coast Guard also reviewed and approved 2,594 individual Shipboard Oil Pollution Emergency Plans (SOPEPs) for U.S. flag vessels. Additionally, the Coast Guard reviewed and approved 570 Shipboard Marine Pollution Emergency Plans (SMPEPs) for U.S. flag vessels that carry some form of hazardous substance aboard to be in compliance with Regulation 17 of Annex II of MARPOL 73/78.

CHALLENGES

One area of vessel response plan enforcement that has been challenging is required transit coverage for vessels operating within our Exclusive Economic Zone, but beyond our territorial sea and navigable waters jurisdiction. As our maritime domain awareness improves with advances in technology, so does our cognizance that there are vessels transiting U.S. waters without the required coverage per vessel response plan regulations. We are currently examining this issue for possible changes in our enforcement practices to address areas in the nation where vessel traffic poses environmental risks and ensure the necessary response resources are in place.

Tank vessel response plans required by the Oil Pollution Act of 1990, required tank ship owners to ensure the availability of private personnel and response resources necessary to respond to a worst case discharge including fire and explosion. In the vast majority of U.S. ports, oil spill removal organizations, or "OSROs" are contracted by vessel owners to provide the required resource capacity and spill management expertise to respond to worst case discharge scenarios. However, in some ports there is far more freight ship traffic than tank ship transits. The introduction of nontank vessel response plan statutory and regulatory requirements provides for an opportunity to increase oil spill response equipment in support of the national response plan, especially in remote locations.

Many states, including Alaska, Washington, Oregon, California and Texas passed legislation requiring nontank vessels to have vessel response plans. The state requirements are founded upon OPA-90 tank vessel response plan requirements, however, there are inconsistencies from state to state in applicability and scope and no two states have adopted precisely the same requirements. Thus vessels seeking to trade between states have to satisfy increasingly disparate requirements including maintaining multiple response plans.

VESSEL RESPONSE PLAN RELATED RULEMAKING PROJECTS

The response plan regime for vessels will change in the future. New domestic and international requirements will build on the existing response plan foundation to provide an enhanced pollution response regime. The Coast Guard has several vessel response plan improvement rulemaking projects in various stages of development pertaining to the use of dispersants, oil spill tracking, salvage and marine firefighting response equipment, implementation and incorporation of International Maritime Organization standards into our domestic regulations and the development of hazardous substance response plans for vessels and facilities. The following is a list of related rulemaking projects:

> **Title:** VESSEL AND FACILITY RESPONSE PLANS FOR OIL: 2003 REMOVAL EQUIPMENT REQUIREMENTS AND ALTERNATIVE TECHNOLOGY REVISIONS
> **Docket Number:** USCG–2001–8661
> **Summary:** The Coast Guard proposes changes to its requirements for oil-spill removal equipment under vessel response plans and marine transportation-related facility response plans. These changes increase the minimum available spill removal equipment required for tank vessels and facilities, add requirements for new response technologies, and clarify methods and procedures for responding to oil spills in coastal waters.
> **Status:** A Notice of Proposed Rulemaking (NPRM) was published on October 11, 2002 (67 FR 63331). A Final Rule is expected in the near future.

Title: SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL
Docket Number: USCG–1998–3417
Summary: The Coast Guard proposes to revise the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. These revisions clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes will assure the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst-case scenario. The proposed rulemaking will also set new response time requirements for each of the required salvage and marine firefighting services.
Status: An NPRM was published on May 10, 2002 (67 FR 31868).

Title: NONTANK VESSEL RESPONSE PLANS
Summary: The Coast Guard will implement a statutory requirement that an owner or operator of a self-propelled, nontank vessel of 400 gross tons or greater, which operates on the navigable waters of the United States, must prepare and submit an oil spill response plan to the Coast Guard. The rulemaking will specify the content of a response plan, including the requirement to plan for responding to a worst-case discharge and a substantial threat of such a discharge. The rulemaking will also specify the procedures for submitting a plan to the Coast Guard.
Status: To provide guidance to industry, a Navigation and Vessel Inspection Circular (NVIC) was published on February 4, 2005. NVIC 01-05 is titled "INTERIM GUIDANCE FOR THE DEVELOPMENT AND REVIEW OF RESPONSE PLANS FOR NONTANK VESSELS." Change One to NVIC 01-05 was published on January 13, 2006. The work plan for this rulemaking is being finalized.

Title: TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES
Docket Number: USCG–1998–4354
Summary: The Coast Guard proposes regulations requiring response plans for certain tank vessels operating on the navigable waters of the United States that could reasonably be expected to cause substantial or significant and substantial harm to the environment by discharging a hazardous substance. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The primary purpose of requiring response plans is to minimize the impact of a discharge of hazardous substances into the navigable waters of the United States.
Status: An NPRM was published on March 22, 1999 (64 FR 13734).

ADEQUACY OF NONTANK VESSEL OPA LIABILITY LIMITS

While OPA liability limits for vessels were increased significantly under the Coast Guard and Maritime Transportation Act of 2006, further increases should be considered including increases for nontank vessels.

The Secretary addressed the adequacy of nontank vessel OPA liability limits in a January 5, 2007, report to Congress on vessel liability limits in general pursuant to section 603(c) of the CG&MT Act of 2006. The first annual update of the report was provided to Congress on October 10, 2007.

As updated, the limited data available indicates that increasing liability limits per incident for single hull tank ships, tank barges and nontank vessels greater than 300 gross tons in particular would result in a more balanced cost share between responsible parties and the Oil Spill Liability Trust Fund while positively impacting the Fund balance.

OPA 90 provides for exceptions from limits when, for example, the incident is caused by gross negligence, willful misconduct or a violation of a Federal safety, operating or construction regulation by a responsible party, its agents, employees or contractors.

OIL SPILL PREVENTION, PREPAREDNESS, AND RESEARCH AND DEVELOPMENT IN A POST-9/11 WORLD

Oil spill prevention and response is a very important function of the Coast Guard. The model set forth by Area Committees and the Area Contingency Plan process provided a valuable framework for the creation of Area Maritime Security Committees and Area Maritime Security Plans. Coast Guard oil spill response continues to serve as a model for all hazards response in the maritime domain. We strive to leverage our partnerships with the maritime industry, federal, state, and local agencies, and Congress to ensure our nations ports waterways operate safely, securely, and in a manner that protects our environment. The shared goal in preventing or responding to major maritime incidents, regardless of the cause, is the same, to save lives, preserve property, protect the environment and minimize disruption to the marine transportation system.

The Coast Guard continues to conduct regular, rigorous, oil spill exercises, inspect ships and facilities for safety and environmental compliance, and participate in a host of prevention, planning and preparedness activities related to environmental protection and response. We are absolutely committed to the environmental protection mission and recognize its importance to the public good. The environmental protection mission is part of the well-balance portfolio the Coast Guard maintains to ensure our nations ports and waterways remain safe, secure, and clean.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.