

PACIFIC STATES/BRITISH COLUMBIA

Oil Spill Task Force

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Docket Management Facility (M-30)
US Department of Transportation
West Bldg Ground floor, Rm. W12-140
1200 New Jersey Ave., SE
Washington, DC 20590-0001

Re: (USCG-2008-1070)

Non-tank Vessel Oil Spill Response Plans and Other Vessel Response Plan Requirements, Notice of Proposed Rulemaking

Dear Madam/Sir,

These comments are submitted on behalf of the Pacific States/British Columbia Oil Spill Task Force, whose membership includes the oil spill regulatory agencies of Alaska, British Columbia, Washington, Oregon, Hawaii, and California. Recognizing the spill risks associated with fuel carried on nontank vessels, and having responded to nontank vessel spills here on the West Coast (such as the *M/V Kuroshima* in Alaska in 1997, the *M/V New Carissa* in Oregon in 1999, the *M/V Selendang Ayu* in Alaska in 2004, and the *M/V Cosco Busan* in California in 2007), the states of Alaska, Washington, Oregon, and California all have laws requiring that nontank vessels submit oil spill contingency plans or show that they are covered by umbrella response plans covering the ports and waterways in our states. The oil spill regulatory agencies in these states review and approve vessel, fleet, or umbrella plans. Our comments below focus on aspects of the Proposed Regulations which we heartily support and others which we recommend amending.

We are encouraged that the U.S. Coast Guard has determined that these proposed regulations are consistent with state-mandated response plans and would not preempt any such state laws.

We are also encouraged that approved Vessel Response Plans (VRPs) will be assigned a reference number which will facilitate Notice of Arrival references by Captains of the Port to determine that a nontank vessel planning to enter his/her port has an approved plan.

We are pleased that Integrated Tug Barges not currently required to have vessel response plans as tank barges will be covered by this rule. We also support the requirements that nontank vessels carrying group V oils provide for recovery of submerged oils in their VRPs.

Section 155.5050 - Response plan development and evaluation criteria for nontank vessels carrying groups I through IV petroleum oil

One of the most important benefits of these proposed rules for nontank vessel planning is broadening the group of vessel operators who can sustain the spill response, salvage, and firefighting systems in our nation's ports, rivers, harbors and coastlines. From this perspective we are concerned about provisions that exempt certain categories of nontank vessels from having to ensure access to these assets through contracts, allowing response resources merely to be "identified" in the plan with written consent from the contractor/provider, or not even requiring written consent. In *Section 155.5050*, for example:

- Operators of nontank vessels carrying less than 250 bbls of oil as fuel or cargo are not addressed under the proposed regulations for Average Most Probable or Worst Case spill planning. They are only required to identify salvage resources without contract or written consent, and are only required to provide written consent to list response resources for maximum most probable spills, but not to secure contracts with funding. Nontank vessels in this category are not addressed with regard to planning for Worst Cast spills.
- Operators of nontank vessels carrying 250 - 2500 bbls of oil as fuel or cargo are required to provide written agreements for salvage resources, but not to secure salvage/firefighting contracts with funding. They may identify response resources for Average Most Probable spills by area, but need not provide written agreements or secure contracts with funding. Nontank vessels in this category are not addressed with regard to planning for Worst Cast spills.
- Operators of nontank vessels carrying more than 2500 bbls of oil as fuel or cargo are required to identify and ensure salvage and firefighting resources by contract. In their plans for average most probable spills, they need only identify response resources by area, but need not provide written agreements or secure contracts with funding. They are required to secure contracts with funding to respond to maximum most probable spills and worst case spills, but the plans for worst case spills only address Tier 1 times. Requiring planning for only Tier 1 means that there is no requirement to contract for additional equipment to continue cascading in at hours 48 and 72. Nontank vessels can carry hundreds of thousands of gallons of fuel on board, and a response to a nontank incident could last for days and weeks.

We understand that in developing this rule, the U.S. Coast Guard has taken into account practical constraints as well as economic impacts on regulated entities. We ask that the U.S. Coast Guard reexamine these exemptions to ensure that negative effects of including these provisions on potential response resource and readiness gains are justified by other concerns.

Section 155.5067 - Alternative Planning Criteria

The summary of this section on page 44982 states that *"There are numerous remote areas in Alaska, as well as Guam and American Samoa, where it is noted that the level of required response resources do not meet the national planning requirements even for tank vessels under subpart D. It is anticipated that nontank vessels that transit or plan to transit these remote areas may have initial difficulty in meeting the proposed requirements of subpart J. It is expected that any vessel owner or operator required, but unable, to meet the requirements due to this reason will meet with the cognizant Coast Guard Captain of the Port to discuss what resources are available and what alternative planning and mitigation strategies can be put in place to receive authorization for operations in these areas. We encourage Area [Planning] Committees to address this issue and facilitate solutions to include recommending acceptable alternative planning criteria for nontank vessel response plan approval and building up required response resources in applicable areas."*

The establishment of response resources and preparedness are a direct result of state and federal legal requirements. The fundamental state/federal legal framework in the U.S. places that burden on the

regulated entity. The establishment of response planning standards determines the level of response resources and preparedness that must be met by the regulated entity. It is left to the regulated entity to determine the best and most economical way to meet the response planning standards through the creation of spill cooperatives, response cooperatives, mutual aid arrangements or others. The addition of nontank vessels to the nation's oil spill safety net through this rulemaking is a significant step forward and will result in the development of response resources and preparedness that will meet minimum response planning standards. However, we are concerned that the Alternative Planning Criteria framework proposed for remote areas does not include sufficient detail and structure to ensure at least some practical, achievable improvement in those remote areas.

The buildup of response resources and preparedness since the passage of the Oil Pollution Act and many state laws is the direct result of state and federal legal requirements. Without the legal requirements and minimum standards there is no buildup. The Alternative Planning Criteria framework eliminates requirements and substitutes undefined alternative measures. While we acknowledge the need for flexibility, we encourage the U.S. Coast Guard to further develop the Alternative Planning Criteria framework adding specificity as to how alternative measures will be derived and sideboards as to what alternatives may be acceptable. The U.S. Coast Guard should consider making the Alternative Planning Criteria framework an interim approach intended to be replaced by a more permanent set of requirements at some future date.

We note that the proposed rule does not require or suggest that either the state or federal governments will provide the response resources or preparedness if the regulated entity is not required to do so under the alternative planning criteria. We are not aware of any efforts or intent at the state or federal level to provide the required response resources and preparedness that would substitute for what is otherwise required by this proposed rulemaking.

We also note that Area Planning Committees are not equipped to be able to build response resources. They are a planning group – not a response contractor – and are not designed, budgeted or intended to purchase, operate and maintain response resources for regulated entities. We also do not believe that Area Committees can or should be the surrogate for making regulatory decisions related to compliance with response planning requirements for the regulator. It is not appropriate for Area Committees to either provide the response resources and preparedness for regulated entities or make decisions granting relief to regulated entities.

In summary, we recommend an Alternative Planning Criteria framework that calls and provides for incremental improvements in remote areas. Approval of alternative compliance measures should rest solely with the Captain of the Port. This approach should not sacrifice the needed buildup of response resources and preparedness necessary to provide a minimum response capability. This approach should also be consistent with the intent of both state and federal legal frameworks which places the burden for development and maintenance of this response capability on the regulated entity while providing the flexibility to attain compliance in an orderly and planned manner.

Section 155.5050(j) - Dispersants

We note that dispersant application is a tool available to assist in oil spill response in remote locations such as the Arctic where little to no response capability currently exist. Currently, however, no dispersant stockpiles are located in the Arctic region. Given the right conditions, dispersants can effectively reduce the impacts of a discharge to the surrounding environment. Recognizing that on September 30, 2009, the Coast Guard effected final rules regarding dispersant capabilities under 33 CFR Parts 154 and 155 (74 Fed. Reg.

45004 (August 31, 2009)), once these rules are final, all nontank vessels subject to the requirements of 155.5050(j) must meet the new dispersant standards in the State of Alaska's two pre-authorized zones, Prince William Sound and Cook Inlet.

Sections 155.1015(c)(7) and 155.5015(c)(2)

Vessels transiting Unimak Pass in "innocent passage" - and not travelling to or from a U.S. port - would be exempt from these proposed rules. The Great Circle route is a major east-west shipping corridor. The majority of vessels using the Great Circle route pass through Unimak Pass, which is a strait that narrows to 10nm in width. Nontank vessels transiting Unimak Pass meet the first requirement for the proposed rule since they, therefore, are within the 12nm jurisdictional threshold. The second requirement is whether or not they are also bound to or from a U.S. port. The majority of nontank vessels transiting through Unimak Pass is believed to be bound to or from a U. S. port and would, therefore, be subject to the proposed nontank rulemaking. Nontank vessels subject to the rulemaking would be required to have a geographic specific response plan that would include this area. This area is currently under study through the Aleutian Islands Risk Assessment of which the U.S. Coast Guard is a participant. The Aleutians Island Risk Assessment, when completed, will provide critical information and recommendations that should be incorporated into the geographic specific response plans used by nontank vessel plan holders. In Alaska the geographic specific response plan for this area is called the Aleutians Subarea Plan. The proposed rulemaking should provide the U.S. Coast Guard with the ability to require modifications to the geographic specific response plans for nontank vessels that may emanate from the Aleutians Island Risk Assessment.

There is a second transit passage of concern that is not identified or discussed in the proposed rule making, i.e., the Bering Straits, which will be the transit passage for international navigation through the Arctic. All vessels that use the Arctic route must pass through the Bering Straits. It is likely that nontank vessel traffic using this route will not be destined to or from a U. S. port, thus it is less likely that Arctic shipping will develop the response resources and preparedness necessary to protect these waters. This transit passage is compounded by the international boundary between the U. S. and Russia. Presumably there is an overlap between the 12nm territorial sea of the U. S. and international waters that may allow vessels to avoid U. S. requirements by staying beyond whatever boundary is used to require vessel response plans.

The proposed rulemaking needs to explicitly clarify these boundaries for purposes of requiring vessel response plans for the Bering Straits. The Bering Straits, like Unimak Pass, is the control point that defines whether or not vessels destined for U.S. ports via the Arctic will have to develop response resources and preparedness that meets U. S. requirements. Vessels may be able to avoid the imposition of the regulations by how they navigate the Bering Straits.

The Arctic Council has prepared the Arctic Marine Shipping Assessment which projects future growth and use of this area by marine vessels as well as the needs for oil spill response. The proposed rules are the best available tool for incentivizing the development of response resources and preparedness for this area. If the U. S. requirements can be avoided by staying outside the 12nm limit or if vessel traffic over the Arctic is not bound to or from a U. S. port then there will be no development of a response capability for the Arctic. Working at the international level to make international standards comparable to U. S. standards, while an option, is an arduous process. It is important and necessary that application of the proposed rule in the Bering Straits is carefully examined and that clarity is provided so that the State of Alaska and others will precisely know the circumstances when nontank vessels using this area will have to comply with the proposed rulemaking. The USCG is encouraged to consult with the State of Alaska on this matter before the rule is finalized.

Coordination needed with Transport Canada

Finally, we again submit a recommendation which we made on September 21, 2005 regarding the *Non-tank Vessel Oil Spill Response Plans, Notice and Request for Comments*, published June 24th of that year. That recommendation is that the U.S. Coast Guard should work with Transport Canada to coordinate contingency plan requirements for vessels transiting through traffic separation schemes in the transboundary area of the Straits of Juan de Fuca.

Not only have most member agencies of the Pacific States/British Columbia Oil Spill Task Force implemented contingency planning requirements for nontank vessels themselves, they have long advocated for response planning requirements nationwide. We encourage the U.S. Coast Guard to expedite these regulations and to do so in a way that both maximizes environmental protection and enhances the availability of response, salvage, and firefighting resources. We also encourage the U.S. Coast Guard to set high standards for response resources in remote areas in order to facilitate resolution of the response challenges that currently exist in such locations.

Please contact me if you have any questions. Thanking you for your consideration of these comments on behalf of the member agencies of the Pacific States/BC Oil Spill Task Force, I remain,

Sincerely yours,

Jean R. Cameron

Jean R. Cameron
Executive Coordinator