

## Oil Spill Task Force

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PO Box 1032  
Neskowin, OR 97149  
Tel/Fax (503) 392-5860  
Email: [JeanRCameron@oregoncoast.com](mailto:JeanRCameron@oregoncoast.com)  
<http://www.oilspilltaskforce.org>

May 1, 2008

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

Re: Department of Homeland Security, Coast Guard  
Financial Responsibility for Water Pollution (vessels) and OPA 90 Limits of Liability  
(Vessels and Deepwater Ports) Notice of Proposed Rulemaking  
Coast Guard docket # USCG-2005-21780

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. Our U.S. member agencies' ability to respond to oil spills relies in part on response partnerships with the U.S. Coast Guard and U.S. EPA, which are funded by the Oil Spill Liability Trust Fund (OSLTF or the Fund). Our member agencies also rely on reimbursements of their own response costs from the Fund. In addition, it is in the interest of the British Columbia Ministry of Environment - our Canadian member agency - that the jurisdictions of Alaska and Washington are able to respond efficiently and effectively to transboundary spill events.

We submit these comments with that primary interest in mind - i.e., that the Fund stay solvent and able to meet its obligations. We are concerned that the Fund remains in a precarious position in spite of the renewal of the per-barrel fee. We note that the 1/2007 National Pollution Fund Center report to Congress stated on page 1 that "*...the overall trend continues to be toward an increasing average annual potential Fund liability despite the recently amended limits (for vessels).*" It also states "*In addition, because the Fund can be utilized to pay for up to \$1 billion in emergency cleanup costs for a major spill..., a major or catastrophic discharge could immediately liquidate the available fund balance.*"

In that same vein, the GAO report of 9/2007 titled "*Major Oil Spills Occur Infrequently, but Risks to the Federal Oil Spill Fund Remain*" notes on page 34 that "*The Fund has been able to meet all of its obligations, helped in part by the absence of any spills of catastrophic size. This favorable result, however, is no guarantee of similar success in the future.*"

In November, 2005 the Pacific States/British Columbia Oil Spill Task Force petitioned the U.S. Coast Guard to adjust the Limits of Liability for tank vessels, tank barges, non-tank vessels, and appropriate facilities by the Consumer Price Index (CPI) increase since the Oil Pollution Act (OPA) was passed in 1990. That petition for rulemaking and response are located at <http://www.regulations.gov>. The complete docket number is USCG-2005-23163.

Subsequent to that petition, the Delaware River Protection Act of 2006 (DRPA) amended and increased OPA liability limits for all vessel types - i.e. all tank vessels, which includes tank barges, as well as other non-tank vessels. The increases to limits were approximately 50%, which roughly corresponded to the consumer price index increases since OPA was enacted, although increases to liability limits for single hull tank vessels (approximately 150%) exceeded consumer price index increases. Thus, the DRPA increases satisfied our petition with regard to vessels, but not with regard to facilities.

Regarding facilities, a letter from Jan Lane, Director of the National Pollution Funds Center (NPFC), sent on 12/4/2006 in response to our continued request that the Limits of Liability for facilities be increased by the CPI, stated that "For those oil handling facilities falling within the responsibility of the Coast Guard...the NPFC will initiate rulemaking to adjust limits for significant CPI increases consistent with OPA section 1004(d) (4)."

With that history of our rulemaking petitions to the USCG in mind, we note the following two failures in the proposed rulemaking and urgently request that these be addressed in the final rule:

- The NPRM fails to increase (by the CPI since 1990) the Limits of Liability for facilities under the USCG's jurisdiction; and
- The proposed increases for vessels, including tank barges, is at the 2006 DRPA level only; no CPI increases since 2006 are reflected in the proposed rule. We note that the 2006 Act also amended the provision authorizing further increases to limits of liability based on consumer price index increases to begin from the date of enactment of the Act.

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 Cameron*

Jean R. Cameron  
Executive Coordinator

cc: CAPT John Bingaman, USCG Pacific Area  
National Pollution Fund Center  
Representative Peter DeFazio, Oregon  
Senator Gordon Smith, Oregon  
Senator Daniel Inouye, Hawaii  
Senator Barbara Boxer, California  
Senator Maria Cantwell, Washington  
Senator Ted Stevens, Alaska