

OCEAN ADVOCATES

a voice for the silent sea

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U.S. Commission on Ocean Policy
1120 20th Street, NW
Washington, DC 20036

20 November 2002

Dear Commissioners:

The following comments are intended to supplement the oral testimony I made on behalf of Ocean Advocates and the Orca Conservancy at your 14 June 2002 public meeting in Seattle Washington.

I am disappointed to note that despite my testimony and those of the Marine Board of the Transportation Research Board on the need to enhance our nation's marine salvage capacity, there was no mention of the subject in the synthesis of Testimony and Comments received September 2001-June 2002. Ample comments on maritime issues were recorded in the Technology and Marine Operations section of the Commission's preliminary report, but none involving the long overlooked subject of salvage. The importance of this subject periodically reaches the public's attention during such high profile events as the grounding of the New Carissa on the Oregon Coast in 1999, the grounding of the Jessica in the Galapagos Islands in 2001 or most recently, with the sinking of the Prestige off the Coast of Spain.

Unfortunately, the lessons from these incidents are often not acted on after the heat of the moment passes. The Ocean Commission has a unique opportunity to provide the leadership to help assure that the importance of marine salvage is no longer neglected, especially as homeland security issues continue to get greater attention.

The Coast Guard has initiated a long overdue rule making process on salvage and fire fighting (USCG-1998-3417/33CFR 155). While this effort provides an important opportunity to advance our Nation's salvage capacity, the Coast Guard's proposed rule falls far short of the goal. I have attached Ocean Advocates' comments on this proposed rule in hopes that you will choose to address this important opportunity.

Sincerely,

Fred Felleman, MSc.

NW Director

Ocean Advocates works with policy makers in government, industry and the academic community throughout the world to provide information needed to form sound global ocean policies. Our approach is objective and open minded, but not neutral — we have a bias for the oceans.

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18 October 2002

Docket Management Facility
USCG-1998-3417/ 33 CFR 155
U.S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Dear Admiral Loy:

The following comments are submitted on behalf of Ocean Advocates, a national environmental organization dedicated to the protection of the marine environment. For over a decade, Ocean Advocates legal, scientific and technical staff has provided a lead role in advocating safe and clean shipping both here in the U.S. and abroad. We have long recognized salvage as a key ingredient to prevention of oil spills from vessels in distress, and have consistently encouraged the development of a national salvage policy that provides both the capacity and the readiness required for effective response to marine casualties.

The subject rulemaking is long overdue. It has been 12 years since the original expression of Congressional will to address this issue under the Oil Pollution Act of 1990 (hereafter OPA90). We note that the Coast Guard could have opted to implement this rule with greater flexibility under the Port and Waterways Safety Act (PWSA). It is also worthy of noting how the Coast Guard's current focus on homeport security has resulted in many important spill prevention measures being abandoned, including: Escort Vessels in Certain U.S. Waters (CGD 91-202A) - withdrawn 5/02; Improvements to Maritime Safety in Puget Sound-Area waters

(USCG-1988-4501) - withdrawn 5/02; Escort Vessels for Certain Tankers (CGD 91-202) - next action undetermined.

Nevertheless, we are pleased that the Coast Guard has recognized its responsibility to address this critical issue. Our submission begins with some general comments on the need for a far more robust salvage rule than is being proposed, and then provides more specific comments on the proposed rule. These comments were prepared in conjunction with the Northwest Office of Ocean Advocates. In addition to providing general observations, also includes specific references to issues of particular concern to the Pacific Northwest.

NATIONAL SALVAGE CAPACITY

The need to enhance our nation's salvage capacity has been known for many years, but has taken on particular urgency since September 11th. In 1994 the Marine Board's Committee on Marine Salvage Issues of the National Research Council wrote, "Congress should update the national salvage policy to ensure that an adequate level of salvage capacity is present in U.S. waters. The policy should clearly delineate the following goals: to protect national security, to minimize or prevent environmental impacts due to pollution from marine casualties, to protect public safety, and to ensure minimal disruption to the U.S. economy resulting from marine casualties in the nation's port and waterways (p.4)."

While the 1989 Exxon Valdez disaster will be forever remembered by the general public for 11 million gallons of oil spilled, among salvors it will be remembered for the vast majority of oil that was safely transferred to another ship. In contrast, the relatively small, New Carissa, that grounded off the Oregon Coast in 1999 is the poster child for what happens when adequate salvage capacity is not readily available. The costs of that one incident exceeded \$60 million, not counting the U.S. Navy's contribution and half the ship is still grounded on Oregon's coast.

The Federal On Scene Coordinator (FOSC) in the New Carissa, Captain Mike Hall, summed up the problem when he stated:

[W]e are essentially an island nation with over 47,000 miles of shoreline approximately 85 percent of all Americans live within 100 miles of these shorelines 90 percent of all international commerce enters the United States by vessel. One can see from these facts that our nation's ports and waterways are the backbone of the U.S. intermodal transportation system. This system must include a national salvage plan. We need a salvage plan more capable than that demonstrated during the initial stages of the NEW CARISSA casualty. It was my belief on 4 February 1999 and it remains my belief today, that adequate and timely salvage capability would have

significantly mitigated this crisis on the coast. There are currently only two salvage vessels on the Pacific coast capable of refloating a large grounded ship, and neither was readily available to respond in this case."

In January 2002, the U.S. Coast Guard and Navy hosted the National Maritime Salvage Conference in Seattle. The Admiralty Counsel to the U.S. Navy Supervisor of Salvage and Diving, Richard Buckingham presented a paper entitled, "Toward a National Salvage Policy." The abstract to his paper states:

The problem of inadequate domestic marine salvage capacity is well documented and recognized by both the government and commercial sectors; furthermore, the situation is not getting any better. Because of the nation's overriding interest in the protecting the environment/economy/marine transportation system (MTS), as well as meeting homeland security needs, we need a cohesive federal national salvage policy. The first step, however, will be identifying a federal agency to take the lead in forging such a policy. Should it be the Coast Guard, the Navy, or perhaps some other agency? Who appears best suited for the role? Once the appropriate agency assumes (or is tasked with) this leadership responsibility, what are some of the likely issues to be initially confronted? Also, this pressing need for a national salvage policy should really be a high profile issue on the agenda of the newly created U.S. Commission on Ocean Policy, as well as a specific focus of the Department of Transportation's MTS policy and SEA-21 maritime infrastructure funding initiatives.

The March 2002 issue of the Marine Digest provides a summary of the conference highlights. Richard Buckingham is quoted as saying, "This is no longer just a matter of transportation, economic and environmental concerns. It is also an issue of homeland security."

This point is underscored by the Captain of the Port Order: NOTICE OF SECURITY ZONE ESTABLISHMENT OF THE PORT PUGET SOUND, SEATTLE, WA:

SITUATION: The Coast Guard is establishing a temporary moving security zone of 500 yards surrounding tank ships while within the waters of Puget Sound and adjacent waters, WA. All vessels within 500 yards of a tank ship shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the Official Patrol or tank ship master. The Official Patrol will consist of a Coast Guard patrol, or a General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, Specially Commissioned Washington Peace Officer, or the tank ship master. This order is issued under the authority of the Ports and Waterways Safety Act, Title 33, U. S. Code 1221 et. Seq., and the regulations issued thereunder, Title 33, Code of Federal Regulations Part 165.

PHYSICAL BOUNDARIES: The following area is a security zone: All waters of Puget Sound, Washington State east of 123° 30'00" West Longitude [Datum: NAD 1983] within a 500 yard radius centered on tanks ships while they are underway, anchored or moored.

REASON FOR ISSUANCE: The Coast Guard has determined it is necessary to prevent access in order to safeguard all tank ships from sabotage, other subversive acts, or accidents. Recent events highlight the fact that there are hostile entities operating with the intent to harm U. S. National Security.

ESTIMATED DURATION: This security zone will be effective from October 15, 2002 to April 15, 2003 unless cancelled sooner by the Captain of the Port.

Arnold Witte, head of the American Salvage Association and president of Donjon Marine Co. is quoted in Marine Digest as saying, "The latest word is that federal regulations will not be in place until 2004. In today's world, that is unacceptable. We're still waiting for salvage regulations that are absolutely essential."

While the Coast Guard and Navy try to resolve this longstanding problem, the Makah Tribe have sought to have the U.S. Navy provide one of their uniquely qualified T-ATF tugs for dedicated rescue tug service in and around Neah Bay. The National Research Council found in their 1994 report on Salvage, "Surplus assets, particularly the T-ATF class of ships, if operated by the private sector and strategically deployed, could go a long way to restoring the traditional salvage capacity of the United States, particularly in rescue towing. The operation of these vessels by the private sector would require substantial subsidy, as it has been demonstrated in the United States and elsewhere that salvage revenues cannot cover the costs of operating and maintaining the vessels and their crews. The excess costs could be covered, as they were in the past, through the Salvage Facilities Act, and the plan could be implemented through the arrangements in place for Navy contracting for commercial salvage services." (p.55-56).

The Marine Board of the National Academy of Sciences wrote to the Ocean Commission in June 2002 on the issue of national salvage capacity. They wrote:

Within the maritime community, as well as government agencies, it is recognized that the nation's domestic salvage capacity is inadequate to meet basic and emergency needs. This inadequacy jeopardizes environmental, transportation and homeland security objectives. There is a need for a cohesive, federal national salvage

policy and a designated lead government agency to implement that policy.

In sum, an aggressive effort is needed to create effective national salvage capacity and readiness. While the proposed rule attempts to address parts of the problem, it does not go far enough. The key elements of a successful salvage policy are:

- A regulatory framework that will result in prompt, effective response.
- Necessary equipment and technological capability
- Trained and experienced personnel
- Standard contracting options for salvage and wreck removal to eliminate delay
- Preplanning among owners, underwriters, and regulatory agencies before the actual event.
- Effective system of communication and cooperation among all interested parties, including salvors, shipowners, cargo owners and coastal states
- Legal regime of fair compensation to salvors for performance of pollution prevention efforts

The proposed rule attempts to address, at least in part, some of these components. It does not, however, fully address any of them. The elements related to equipment and capability, training of experienced personnel, contracting options, effective communication and fair compensation, remain largely untouched.

SPECIFIC COMMENTS on the PROPOSED RULE:

Scope of Application

Application of the proposed rule should be expanded to include all vessels navigating in U.S. waters. Vessels regulated under OPA are not the only ships in need of salvage assistance. Freighters in particular are in need of attention due to the fact that they are often designed without adequate strong points for emergency towing. If the costs were shared with all commercial maritime sectors, the nation's salvage capacity would be greatly enhanced at a lower cost per sector. In addition, such broader application would render less necessary individual state regulatory initiatives, thereby promoting uniformity and consistency nationwide.

Cost/Benefit Analysis

As in previous rulemakings, here again the Coast Guard has applied a

cost/benefit analysis that relies on the "cost per barrel not spilled" as the only measure of economic cost or benefit. Because this form of analysis only evaluates costs and not net benefits, it results in a preposterous cost estimate of \$5,600/barrel not spilled for this rulemaking. A responsible evaluation of the net cost to industry for compliance with this proposed rule would also account for the costs associated with a spill and would evaluate how much enhanced salvage capacity will reduce the amount spilled. Furthermore, this analysis provides no consideration of the impacts to the environment, endangered species, or Native Americans who have treaty protected rights to use the marine environment. The folly of such a cost/benefit analysis was recently recognized by the National Research Council. Absent a voluntary attempt by the Coast guard to employ a more rigorous approach to cost/benefit evaluation, continued reliance on this biased measure may require resolution in the courts.

Use of "Expert Panel"

As in previous Coast Guard rulemakings this one utilized an "expert panel" to develop the proposed rule. The names, affiliations, and areas of expertise of the individual "experts" were not made publicly available in the rulemaking. It is unlikely the panel had a reasonable balance of perspective from academia in the areas of marine environmental impacts, oceanography, atmospheric sciences, statistics or from the environmental community, as well as local, state or tribal governments.

Salvor Immunity

The rulemaking fails to address the issue of liability of the salvors. The salvage industry has repeatedly requested a form of indemnification or immunity for efforts undertaken that result in illegal discharges of oil. We believe that the concerns of the salvage industry in this regard are valid, and must be addressed if we are to be successful in encouraging salvage efforts.

Definition of Salvage

The need to provide a sound definition of "salvage" was a key element in the delays associated with this proposed rulemaking. Yet, the definition provided remains quite vague. It would seem near impossible to drill a plan holder to determine if they have adequate salvage capacity because it is so poorly defined. The need to be able to drill plan holders, especially group plans, is underscored by the repeated failure of the Washington State Maritime Cooperative (WSMC) to succeed in their drills despite exaggerated representations of their capabilities to the Washington State Department of Ecology.

There appears to be more definition in the provisions related to exemptions and waivers than there is in the requirements themselves. For example, the proposed rule requires that, "Your plans must identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessels(s). These towing vessels must be capable of operating in environments where the winds are up to 40 knots." Without defining the term "capable of operating" this requirement cannot be verified. Furthermore, even if the basic characteristics of what makes a tug suitable for assisting a class of ships in different sea states is defined, the proposed rule suggests that a plan holder has between 12 and 18 hours to secure tug assistance. Such time frames and lack of specificity in capabilities does little to advance the status quo.

Exemption for Group V Petroleum Products

We strongly object to an exemption from the proposed rule for vessels carrying Group V petroleum products, or sinking oils. The Marine Board of the National Research Council's Commission on Engineering and Technical Systems wrote a 1999 report entitled Spills of Non-floating Oils - Risk and Response. Excerpts of the Executive Summary are attached to this document. That report presents the risks and challenges associated with sinking oils which makes their inclusion in this rule of particular importance.

Specifically, the Marine Board found that while heavy oils constituted only 17% of the petroleum products transported over US waters between 1991-1996, heavy oils accounted for 23% of the petroleum products spilled during that period. In addition, it was recommended that in areas where non-floating oils are frequently transported, the U.S. Coast Guard should make sure there is adequate readiness to respond to such spills. It is important to note that The BP refinery at Cherry Point, Washington is the world's largest exporter of petroleum coke, rendering adequate spill response capability of utmost importance in this region. Given the challenges for conventional response to sinking oils and their unique impact on the marine benthos, their inclusion in this proposed salvage rule is especially urged. It is worth noting that on January 31st 1988 the barge MCN#5 spilled 70,000 gallons of heavy oil off Anacortes, Washington. The unavailability of appropriate equipment made clean up both difficult and ineffective.

Geographic Scope of Application

We are particularly concerned that the implementation of this proposed rule would leave Washington State's wondrous inshore waters with less protection than other coastal states. The reason for this is the Coast Guard's indefensible decision to draw the "line of demarcation" 70 miles inshore of the coast, thereby classifying the majority of Juan de Fuca Strait as open-ocean, and thereby not

subject to the protections afforded under the rule. This provision needs to be revisited and explained in this rulemaking. There appears to be no justification for this distinction given the heavy vessel traffic throughout the Strait. It would appear that under this rule, a plan holder would have 12 hours to get a tug to a ship in distress 12 miles west of Port Angeles. While this timeframe is wholly inadequate for assuring the protection of the narrow passages between the San Juan Islands, vessels in distress in the other 50 plus miles of Juan de Fuca Strait would be allowed 18 hours to provide the same service. This places that part of the Strait outside of those 12 miles at even greater risk of a New Carissa type incident from one of the 10,000 ships entering and leaving the Strait annually.

The risk of oil spills is particularly great in this region. Trade statistics are often tabulated by individual Ports, which are then used to compare trade volumes around the Country. While the Port of Seattle generates a significant amount of trade to the region, it is but one of at least 10 ports and terminals located along the inland waterways of Washington State and British Columbia, Canada. The vast majority of traffic calls on the region through the Strait of Juan de Fuca which is exposed to the risk of over 15 billion gallons of oil being transported as cargo and fuel by 10,000 ships which enter and leave the Strait each year.

Puget Sound, being the closest deepwater port to Valdez, has become a major refinery center. In the year 2001, 115 individual tankers from many nations made 560 entries (1120 transits - some with refined products) into the Strait of Juan de Fuca. In addition, there were 2,856 oil barges transits in the Puget Sound region. Washington State also serves as a major source of refined oil, being the West Coast's largest producer of jet fuel. Barges continue to pose a great risk to Washington's waters due to the high volumes of oil they carry near shore with less crew than required for a tanker and with less maneuverability. There have been many incidents involving oil barges losing their tows in Washington State waters. Impending modifications to the TSS in the Strait of Juan de Fuca still allow for laden oil barges to travel near shore of the shipping lanes.

In comparison, 32 U.S. crude tankers made only 493 transits out of Prince William Sound the same year. In addition to the increased risk of an oil spill from the oil traffic, the combined freight traffic calling on the ports in Washington State and British Columbia, make the Strait of Juan de Fuca one of the busiest waterways in North America. Container traffic has steadily increased over the years as ships have gotten larger and ports have significantly expanded their container yards on both sides of the boarder. In contrast, as the North Slope oil reserves are depleted, Prince William Sound receives decreasing amounts of traffic over time.

The strategic nature of this waterway is further defined by the type of traffic

utilizing the glacially carved Strait of Juan de Fuca. Washington's waters serve as the homeport to 8 of the world's 18 Trident Submarines along with four other major Naval facilities. Military maneuvers are regularly conducted within the Strait and off the Coast, within the Olympic Coast National Marine Sanctuary. The activities of military vessels pose risks of oil spills from groundings and collisions with commercial vessels as well as from the transfer of oil at the docks.

There is also considerable oil holding capacity at two Navy facilities on the Sound. The Manchester depot has a capacity to hold 72 million gallons of fuel and the Whidbey Naval Air Station has tanks which hold 4.6 million gallons of fuel and transfer up to 2.25 million gallons of fuel a month.

Indeed, the Navy has the unfortunate title to the record of creating the largest oil spill in Washington State. This occurred on January 1st 1972, when the unmanned troopship, the General M.C. Meiggs snapped its tow wire grounding on what is now known as Wreck Beach, spilling 2.3 million gallons of heavy fuel oil along the shores of Olympic National Park. According to an Associated Press analysis of Navy data, from 1990 to 1997, the U.S. Navy spilled 181,453 gallons in U.S. ports. On average, there was a spill every two days. Puget Sound ports had the greatest spillage: 56,674 gallons during the eight-year period. That's 60 percent of all spills in the Sound according Navy and Coast Guard data. Some of the larger incidents included 70,000 gallons of diesel which spilled at the Manchester Naval Supply Depot 2.25.90 (not included in the analysis), 11,000 gallons of Jet Fuel at the Whidbey NAS 6.12.88 and 10,000 gallons of diesel at the U.S. Naval Supply Center on 3.28.90.

The average Navy port spill was 129 gallons. Nationwide, Navy spillage increased from 17,370 gallons in fiscal 1990 to 66,404 in '97. The service says improved record-keeping may make the situation look worse than it really is. The spill record from 1998 to 2000 for the Puget Sound Naval fleet reveals that during that time, they had 118 spills which amounted to only 3006 gallons of oil, for an average of just over 25 gallons/spill.

Washington State is also home to the nation's largest passenger ferry system and boasts one of the highest per capita private boat ownership.

Need For Dedicated Salvage

Ocean Advocates has been a long time proponent of a dedicated, standing salvage fleet. In contrast, the Coast Guard has chosen to rely largely on a "tug of opportunity" system that leaves largely to chance the capacity and readiness to respond to any given vessel casualty. The proposed rule provides a system of regulatory requirements to improve commercial salvage capacity, in much the

same way it has done with the oil spill removal organization (OSRO) requirements. One benefit of this approach is that it places responsibility for response capability (cost and response readiness) on the potential polluter, in accordance with the "polluter pays" principle. However, the potential disadvantage is that it creates little more than a "paper tiger," providing minimal salvage capability and readiness. Local consortiums or cooperatives may be formed to create an aura of readiness and capacity that is not a true reflection of reality, given the financial drive to keep personnel/equipment overhead costs as low as possible. This situation is further exacerbated by the absence of licensing or certification requirements or some other way to objectively evaluate the competency of a "response organization." Given the strong commercial pressures increased profitability, there is little incentive for most vessel owners/operators to minimally satisfy the regulatory requirements. For these reasons, a dedicated salvage fleet (whether provided under government contract to private entities or provided via government owned and operated vessels or some combination of the two) is more likely to satisfy the need for strong salvage capacity and readiness.

Ocean Advocates has been a major proponent of the long-term effort to establish a rescue tug in Neah Bay. Numerous studies have identified a gap in the region's ability to prevent and clean up oil spills along the Olympic Coast between Grays Harbor and Port Angeles. A multi-mission response tug stationed in Neah Bay year round has proven to be the best way to fill that gap in coverage. The State and federal governments have funded a rescue tug at the entrance to the Strait over the past 4 winters to be available to respond to shipping accidents. During that time the tug has been called out 18 times (<http://www.ecy.wa.gov/biblio/0208001.html>). Funding has been provided for yet one more winters' operation, but longer-term funding is needed to secure the services of the rescue tug for this region of expanding maritime trade.

Governor Locke wrote a letter to Senator Murray on 23 October 2001 requesting her help to secure federal funds for the Neah Bay rescue tug. In that letter he stated, "The Coast Guard has had to re-deploy some of their coastal personnel and vessels to augment the security of major Puget Sound ports, even while they have determined that the risk of major oil spills continues to increase. In addition to its primary mission of assisting disabled vessels, the tug is available to monitor or escort vessels that pose security or safety risks, provide initial containment during spill events, conduct search and rescue operations, and potentially assist the Coast Guard in any terrorist-initiated chain of events.

A Federal Port Security Grant Application was submitted by a partnership of the Port of Port Angeles, Makah Indian Tribe's Port of Neah Bay, and the Washington State Department of Ecology entitled, "Improving the Security of Puget Sound

Ports by Strengthening Port Security Measures in the Strait of Juan De Fuca.” Those parties sought just over \$1 million to match the State’s commitment of \$1.4 million to provide safety and security escorts for ships deemed to be high risk by the Coast Guard. This is particularly relevant given the Captain of the Port Order just issued for security zones around tank vessels.

In addition, those monies would be used to enhance the infrastructure of the Ports of Port Angeles and Neah Bay in order to facilitate the tug’s operation and inspection of vessels. It is our understanding that grant was rejected by Coast Guard reviewers of the project. We continue to be concerned about the appearance of a revolving door between the Coast Guard and industry. Too often the lines between the two have been blurred to the point of making them indistinguishable. It is unfortunate that despite the success of the rescue tug, and the need for additional resources to carry out its ever expanding mission, the Coast Guard continues to reject a dedicated salvage fleet as a viable option to address this pressing need – not only in Washington’s waters, but all along our nation’s coasts.

In sum, the proposed rule presents an incomplete and minimal approach to providing effective salvage and fire-fighting capability for ships in U. S. waters. It presents a system that is largely dependent upon private shipping interests to secure individual contracts for salvage services. Ocean Advocates strongly believes that such a system poses serious risks and falls far short of ensuring the level of capacity and readiness to meet salvage needs on a nationwide basis. A dedicated, standing salvage fleet is the key to a successful salvage policy. The Coast Guard’s continued failure to recognize this need is unreasonable and irresponsible. In addition, as noted above, the key components of a comprehensive national salvage policy are not reflected in this rulemaking. As such, we believe it will provide little improvement to the state of salvage that currently exists.

Sincerely,

Fred Felleman
Northwest Director
Ocean Advocates

Sally Ann Lentz
Executive Director
Ocean Advocates

Attachment I – Marine Board Executive Summary