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United States Coast Guard

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JANUARY 23 2007
COMDTPUB P167004A
NVIC 01-07

NAVIGATION AND VESSEL INSPECTION CIRCULAR (NVIC) 01-07

Subj: GUIDANCE ON VESSEL AND FACILITY RESPONSE PLANS IN RELATION TO OIL SPILL REMOVAL ORGANIZATION (OSRO) RESOURCE MOVEMENTS DURING SIGNIFICANT POLLUTION EVENTS

1. PURPOSE. This document provides guidance to Coast Guard units, vessel and facility plan holders, Oil Spill Removal Organizations (OSROs), and other members of the public in connection with spill removal resource movements after an oil spill associated with a significant pollution event such as a Spill of National Significance (SONS) or an Incident of National Significance (INS).

2. DIRECTIVES AFFECTED. None

3. ACTION.

   a. Captains of the Port (COTPs) and Officers in Charge, Marine Inspection (OCMIs) are encouraged to bring this guidance to the attention of the maritime industry within their area of responsibility.

   b. This NVIC is available on the World Wide Web at www.uscg.mil/hq/g-m/nvic/. Within the Coast Guard, it will be distributed by electronic means only.

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4. BACKGROUND.

a. A major feature of the National Response System under the Federal Water Pollution Control Act (FWPCA) is the requirement that owners or operators of certain facilities and vessels have approved response plans that identify and ensure the availability of personnel and equipment, by contract or other approved means, to remove to the maximum extent practicable a worse case discharge or to mitigate or prevent a substantial threat of such a discharge.

b. Following Hurricanes Katrina and Rita, vessel owners were concerned whether they would be in compliance with statutory and regulatory oil spill response plan requirements if they were to remain in operation while contracted OSROs were responding to spills and thus unable to provide full coverage to meet Average Most Probable Discharge (AMPD), Maximum Most Probable Discharge (MMPD) and Worst Case Discharge (WCD) provisions of their vessel response plans. Some vessel owners and operators took the position that continuing to conduct operations was an unacceptable risk and began to cease operations. This threatened to reduce critical petroleum transportation in the Gulf of Mexico; a significant national concern.

c. Based on concerns over limited OSRO ability to fulfill pre-existing spill response agreements after Hurricanes Katrina and Rita, vessel owners submitted to the Coast Guard requests for relief from response plan requirements. In response, the Coast Guard accepted temporary amendments to vessel response plans. Following the emergency, a Coast Guard-Industry workgroup was established to review lessons learned and to explore ways to improve the process for approving departures from established plans during extra-ordinary circumstances.

5. DISCUSSION.

a. General. The FWPCA requires that a response plan "identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge," (33 USC § 1321(j)(5)(D)(iii)). When response plan requirements were implemented as mandated by the Oil Pollution Act of 1990, the final rule established three levels of response coverage to address the FWPCA statute. Specific response resources and arrival times for worst case discharge (WCD), maximum most probable discharge (MMPD) and average most probable discharge (AMPD) scenarios were promulgated in 33 CFR § 154 Subpart F (Facilities) and § 155 Subpart D (Tank Vessels). Owners or operators of vessels and facilities are required to ensure to the Coast Guard, by contract or other approved means, the availability of WCD, MMPD and AMPD response resources. In the event of a significant national or regional pollution incident, these planned for response resources may be deployed away from the COTP zone in which they are normally assigned. Depending upon how these response resources are relied upon by planholders, (WCD, MMPD or

AMPD) there are important planning distinctions that should be understood by all and which are discussed below. As experienced with the aftermath of Hurricanes Katrina and Rita in the summer and fall of 2005, the maritime industry may experience problems with the "availability" of these response resources. The Coast Guard is committed to taking a flexible approach to compliance in these circumstances that will enable commerce to continue, while meeting the mandates of OPA 90. Considerations in exercising flexibility include:

i. Planning vs. Performance Standards. A plan holder must ensure by contract or other approved means that response resources are available to respond, however, the response criteria specified in the regulations (*e.g.*, quantities of response resources and their arrival times) are planning criteria, not performance standards, and are based on assumptions that may not exist during an actual oil spill incident, 33 CFR § 154.1010 and 155.1010. Compliance with the regulations is based upon whether a covered response plan ensures that adequate response resources are available, not on whether the actual performance of those response resources after a spill meets specified arrival times or other planning criteria. Failure to meet specified criteria during an actual spill response does not necessarily mean that the planning requirements of the FWPCA and regulations were not met. The Coast Guard will exercise its enforcement discretion in light of all facts and circumstances.

ii. Federal Direction and Monitoring. In certain circumstances, the Coast Guard may assist in the allocation of response resources to multiple discharges or threatened discharges. The FWPCA specifically authorizes the President to remove or arrange for the removal of a discharge and direct or monitor all Federal, State and private actions to remove a discharge (33 USC § 1321(c)(1)(B)).

iii. Exemptions Authorized. If warranted, the U.S. Coast Guard will give consideration to requests for temporary exemptions from specific response plan requirements on a case-by-case basis as authorized by 33 CFR § 154.108 and § 155.130 where:
   a. compliance with a specific requirement is economically or physically impractical;
   b. no alternative procedures, methods, or equipment standards exist that would provide an equivalent level of protection from pollution; and
   c. the likelihood of discharges occurring as a result of the exemption is minimal.

b. Worst Case Discharge (WCD). A WCD is defined as, "a discharge in adverse weather conditions of a vessel's entire oil cargo (33 CFR § 155.1020) or the largest foreseeable discharge of a facility in adverse weather conditions (33 CFR § 154.1029). The WCD planning requirement set forth in the FWPCA and implementing regulations states that a response plan must "identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge" (33 USC § 1321(j)(5)(D)(iii), 33 CFR § 155.1050(f), and § 155.1052).

i. Availability. There is no requirement that the equipment identified in a response plan to respond to a worst case discharge must remain within the specific Captain of the Port (COTP) Area as specified in the response plan. However, the resources necessary to respond to a worst case discharge must be available to meet the response times for the applicable geographic area(s), unless exempted under 33 CFR § 154.108 and § 155.130.

ii. Short Notice Plan Amendments. During response operations associated with significant pollution events such as a SONS or INS, the Coast Guard may consider requests for WCD requirement relief similar to those provided following Hurricanes Katrina and Rita (described above). Specifically, that the U.S. Coast Guard facilitated temporary amendments to response plans without applying the 30 day advance submission requirement of 33 CFR § 155.1070(d) or § 154.1065(b), provided proposed amendments were submitted in writing.

iii. Secondary or Cascading[1] Resources. If planned–for WCD response resources are not available, or have traveled beyond the required response times, secondary or cascading resources may be relied upon if approved by the Coast Guard. This may mean compliance with any one of the alternatives provided within the definition of contract or other approved means. (33 CFR § 154.1028 and § 155.1020). The WCD planning requirement may be met through a number of means as referenced above, and the Coast Guard will exercise discretion in implementation and enforcement of the requirements commensurate with the circumstances (as it did following Hurricanes Katrina and Rita). There are permissible alternatives to signing formal contracts with OSROs (33 CFR § 154.1028 and § 155.1020). As long as: the required response equipment has been readily identified; the resource provider has agreed and intends to commit its resources in the event of a response; the availability of these response resources can be verified by the Coast Guard; and the agreement is referenced in the response plan. The Coast Guard may deem such an arrangement to be consistent with the FWPCA language "other means approved by the President" (58 FR 7376, 5 February 1993).

c. Maximum Most Probable Discharge (MMPD). For a vessel, MMPD means, "a discharge of 2,500 bbls of oil for vessels with a cargo capacity equal to or greater than 25,000 bbls or 10 percent of the cargo capacity, (33 CFR § 155.1020). For facilities, MMPD means, "a discharge of the lesser of 1,200 bbls or 10 percent of the volume of a worst case discharge (33 CFR § 154.1020). The MMPD planning requirement set forth in the regulations states that the owner or operator of a vessel or facility must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to a vessel or facility's MMPD.

i. Required COTP Notification for Vessels. During the rulemaking establishing the implementing regulations for vessel response plans, "[t]hirty-five comments were submitted concerned with the vessel owner's or operator's potential liability if the

[1] A "cascade" plan contains an OSRO's strategy to meet planning arrival times and the availability of response resources for dependent plan holders due to the deployment of response resources.

Coast Guard "directed" response resources to another spill." In response to those comments, the preamble explained that required [WCD] resources must be capable of meeting the planned arrival times, but may be located in an adjacent COTP zone. It noted that, as to the lesser regulatory "maximum most probable discharge" planning requirements under 33 CFR § 155.1050(e), the COTP must be notified when response resources are not capable of meeting planned arrival times. If the COTP is notified, a response plan will remain valid and the Coast Guard will not require a plan holder to identify alternate sources of MMPD spill response capability within their plan, but cautioned that:

> "*…it may be prudent for a vessel owner or operator to plan for alternate sources of spill response capability with a response resource identified in the plan. We cannot exclude owners or operators from their statutory responsibility to clean up a spill or from potential liability if their identified resources are unavailable*." (58 FR 7376, 5 February 1993).

ii. Facilities. The COTP may determine that mobilizing MMPD response resources to an area beyond the response times required invalidates the response plan. In this event, the COTP may impose additional operational restrictions (e.g., limitations on the number of transfers at a facility) or, at the COTP's discretion, may operate with temporarily modified response plan development and evaluation criteria (e.g., modified response times, alternate response resources, etc.), 33 CFR § 154.1045(d)(4).

d. Average Most Probable Discharge (AMPD). For a vessel, AMPD means "the lesser of 50 bbls of oil or 1 percent of the cargo from the vessel during cargo transfer operations to or from the vessel." For a facility, AMPD means "a discharge of the lesser of 50 bbls or 1 percent of the volume of the worst case discharge." (33 CFR § 154.1020 and § 155.1020). The AMPD planning regulations set forth planning standards for the owner or operator of a vessel or facility to meet response times and to ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to a vessel or facility's AMPD.

i. Different by Design. For vessels and facilities, as opposed to the required WCD or MMPD coverages, AMPD coverage is normally arranged for just prior to when a cargo transfer is taking place. For vessels, the regulations allow for the switching of an AMPD provider on a case-by-case basis without formal notification to the Coast Guard (33 CFR § 155.1070(c)(5)). For facilities, a formal COTP notification and response plan amendment is required when changing AMPD providers. When routine AMPD response resources are moved in response to a significant spill event, it is anticipated that plan holders identify and ensure by contract or other approved means, alternate AMPD resource providers.

ii. Possible Exemptions. During response operations associated with significant pollution events such as a SONS or INS, the Coast Guard may consider requests for AMPD requirement relief similar to those provided following Hurricanes Katrina and

Rita, assuming that local AMPD response resources are not available. Specifically, the U.S. Coast Guard would consider requests for temporary exemptions from equipment and response time requirements as authorized by 33 CFR § 154.108 and § 155.130, provided proposed amendments were submitted in writing (See paragraph 5.a.iii on this NVIC).

e. OSRO Availability. The Coast Guard expects that OSRO will honor their contracts or commitments to plan holders. In general, most OSROs we communicated with indicated they would do this by calling on additional response resources or strategically moving their own resources from other locations. As noted above, the Coast Guard intends to allow the flexibility to substitute planned resources with equivalent capability, in exigent circumstances.

f. Action Based Process for Response Plan Stakeholders. Enclosure 1 to this NVIC provides an action based process guide for response stakeholders to follow after a significant pollution incident has occurred. In particular, this guide provides the Coast Guard, plan holders and OSROs with information for ensuring the availability of response resources after a SONS or INS despite the fact that a respective OSRO may dispatch a large amount of response resources to a discharge for one of its plan holders.

6. DISCLAIMER. This document provides guidance to Coast Guard units, vessel and facility plan holders, OSROs, and other members of the public in connection with spill removal resource movements after an oil spill associated with a significant pollution event. The guidance is not a substitute for applicable legal requirements nor is it a regulation. It is not intended to and does not impose legally binding requirements on the Coast Guard or any other entity.

C.E. BONE
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention

Encl: (1) Action Based Process Guidance for Response Plans following a SONS or INS.

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Action Based Process for Response Plan Stakeholders during Significant Pollution Events

The following establishes a recommended process for response plan stakeholders to evaluate the state of oil spill response resources during and after a significant pollution event.

Stage 1 A Significant Oil Spill has occurred	This process becomes applicable upon declaration of a major spill, Spill of National Significance or an Incident of National Significance as deemed so by the Commandant of the Coast Guard. It is anticipated that numerous response resources will be called in to respond to a SONS or INS.
Stage 2 OSROs and plan holders assess ability to maintain Response Plan Coverages	Based upon the movement of a large amount of OSRO equipment in response to a SONS or INS, it is recognized that this movement has the potential to have significant impact on vessel or facility response plan compliance to ensure the availability of response resources to respond to an average most probable, maximum most probable or a worst-case discharge. In order to maintain the necessary response coverage, it is anticipated that OSROs will strategically position response resources or backfill departed response equipment to maintain the necessary coverage. If these actions are not taken, it is anticipated that response plan holders will be immediately notified accordingly that their planned resources are no longer available.
Stage 3 OSROs Communicate Significant Changes to Response Resource Capabilities to USCG	The 2003 OSRO Classification Guidelines provides that OSROs are to report any significant changes to their response resource capabilities to the National Strike Force Coordinating Center (NSFCC) and local Coast Guard Captain of the Port (COTP) within 72 hours. The OSRO Classification Guidelines are available at: www.uscg.mil/hq/nsfweb/nsfcc/ops/OSRODoc/FinalOSROGuidelines.pdf Significant changes are defined in the OSRO Classification Guidelines as "a reduction in the OSRO's classified capacity by a factor of 10% or greater, for a period of 48 hours or longer."
Stage 4 USCG Assessment of OSRO Response Coverages	Upon receipt of an OSRO's cascade plan or response resources assessment, USCG National Strike Force Coordination Center (NSFCC) will review the "significant changes" within 24 hours of receiving the plan and evaluate the level of other OSRO resources remaining in the impacted COTP zones. NSFCC will provide a written report detailing gaps in local COTP, regional and national response coverage to the OSRO, applicable COTP zones and USCG Headquarters (CG-3P & CG-3R).
Stage 5 Management of Response Plan Compliance Issues	Based upon the result of OSRO notifications and NSFCC assessments, plan holders and COTPs may be faced with response plan compliance issues that may necessitate USCG assistance. Plan holder requests for relief due to OSRO and/or response equipment non-availability problems will be evaluated on a case-by-case basis.

Stage 6 Coast Guard Coordination of Response Resources	In the absence of identified response resources, the Coast Guard may assist plan holders, through the NSFCC in identifying available response resources. In the case where a proposed alternate coverage proposal does not address the need for required response coverage and no other response resources are available in a timely manner, the Commandant may direct the movement of USCG assets and resources to provide the necessary coverage.

Functional Assignments and Responsibilities of Stakeholders to the Process

In support of the stages discussed above, the following action items should be followed to expedite the resolution of response plan concerns associated with OSRO movements following a SONS or INS.

A. For OSROs:

1. Coast Guard classified OSROs should review their inventory and response capability and report any significant changes to the Coast Guard as soon as possible.

2. Every effort should be made to backfill unavailable response resources to prevent gaps in regional and national response coverage. This may be accomplished through a variety of methods such as subcontracting or mutual aid agreements.

4. OSROs should notify all COTPs in areas where the OSRO anticipates shortfalls in meeting plan holder coverage needs.

5. OSROs should inform contracted plan holders of their abilities to meet planning requirements, particularly any shortfalls in ability to meet plan holder needs.

6. The submission of cascade plans, repositioned and/or backfilled equipment to the NSFCC is highly recommended to assist with the assessment of national response coverage following a significant oil spill response.

7. In the event that an OSRO is unable to maintain, or obtain, the required response equipment, an OSRO may develop and submit to the NSFCC, an alternative means to temporarily address plan holder response equipment needs. A copy of the submission should be provided to the COTP. Guidance on requesting alternative standards is provided in the Alternative Compliance Methods section of the OSRO Classification Guidelines at Chapter 3. Additionally, the Coast Guard will consider allowing dispersants to be used as an “alternative means.” If the response resource alternative is deemed sufficient by the NSFCC and COTP, the NSFCC or COTP will provide written confirmation to the OSRO.

8. The OSRO should inform its plan holders of any action taken by the Coast Guard on response resource alternatives.

B. For Plan Holders:

1. Plan holders should review their response plans to ensure that AMPD, MMPD, and WCD equipment is ensured available as required.

2. Plan holders may take action to replace or backfill response resources by temporarily updating their CG approved Facility (FRP) or Vessel Response Plans (VRP) as outlined in this NVIC. For example, a plan holder may potentially switch to another OSRO that has enough equipment to provide for full planning to meet AMPD, MMPD and WCD scenarios. The process to make temporary plan changes is as follows.

   a. For Vessel Plan Holders:

      i. For AMPD ONLY: A vessel plan holder does not need CG approval to change their AMPD OSRO (33 CFR 155.1070(c)(5)) provided that it has been ensured available by contract or other approved means.

      ii. For MMPD/WCD: Send temporary VRP updates for Port Specific Annex changes to USCG Commandant (Command Center). The Commandant will expedite review on an immediate basis.

   b. For Facility Response plan holders: Temporary FRP revision requests should be submitted to the cognizant COTP showing, by contract or other approved means, resources are available to respond to an oil spill (AMPD, MMPD or WCD). COTPs will expedite review on an immediate basis.

3. If the scope of a SONS or INS prevents a plan holder from utilizing an OSRO due to deployment, or prevents required resources from being fully available, a plan holder may submit a request to the cognizant COTP to use alternative response resources. A plan holder may submit to the COTP a plan for temporary alternative response planning criteria (33 CFR §154.107(a) or 33 CFR § 155.1065(f)), outlining alternative measures to respond to an AMPD, MMPD and/or WCD. If the OSRO already has an approved alternative plan, the Coast Guard will automatically temporarily amend plans and a separate notification is not required.

4. A plan holder may, in exceptional circumstances, request a temporary exemption from specific vessel response plan requirements on a case-by-case basis if warranted under 33 CFR § 154.108 or § 155.130.

5. In accordance with 33 CFR 155.1050(e)(4), a plan holder must notify the cognizant COTP whenever MMPD response resources are not capable of meeting the planned arrival times.

C. For the U.S. Coast Guard:

COTPs should:

1. Immediately inform Commandant (Command Center) via their chain of command, and the appropriate Regional Response Team (RRT), if there is a shortage of response resources in their AOR.

2. If a Facility plan holder requests a temporary plan amendment, the COTP should expedite review to within 24 hours to help facilitate commerce.

3. COTPs will review and respond in writing to:

   a. An alternative response resource plan submitted by an OSRO.

      i. If the COTP approves an OSRO's proposed response resource alternative, the letter will include language that grants to all of the OSRO's contracted plan holders temporary approval/amendments of their response plan. In this case, the plan holders will not need to individually request an alternative to the COTP.
      ii. In addition to the confirmation letter, COTP will generate official message traffic indicating the temporary amendments.

   b. A temporary alternative Facility Response Plan IAW 33 CFR 154.107(a).
   c. A temporary alternative planning criteria revision to the Port Specific Annex of Vessel Response Plans IAW 33 CFR 155.1065(f).
   d. A plan holder's request for an exemption as per 33 CFR § 154.108 or § 155.130.

4. COTPs are to engage Sector, District, Area and Headquarters to request the deployment of regional National Strike Force (NSF) assets and resources to provide necessary coverage when gaps in national response coverage threaten the movement and transfer of oil in the United States. If all resource availability has been explored and determined to be inadequate, COTPs may request the deployment of Coast Guard response assets such as the NSF, air and afloat platforms to provide necessary coverage. The use of these resources should only be considered if, (1) the CG is able to validate that commercial backfill of OSRO resources and alternative equipments are not available, and (2) the CG assets are available.

USCG Districts/Areas:

1. In the event that the impact of a SONS or INS crosses COTP zones, the cognizant Districts or Area should coordinate with COTPs to provide consistency in approach where possible.

2. Notify Commandant (Command Center) immediately of any OSRO shortcoming and any actions taken.

USCG National Strike Force Coordination Center:

1. Review any significant changes to OSRO equipment capabilities and the equipment analysis, within 24 hours of receipt. Report the review findings in writing to the local COTPs, appropriate plan holder or OSRO and Commandant (Command Center). The written notification should indicate if proposed capabilities, cascade plans, response times, availability of response resources and the planning requirements for AMPD, MMPD, and WCD for the impacted or assessed areas are adequate.

2. NSFCC will also provide a status report of OSRO resources for relevant COTP zones to Commandant (Command Center). This status report will summarize response resources by OSRO name and a sense of its available resources by COTP zone.

3. NSFCC will provide their subject matter expertise as requested to COTP's/Districts/Areas/Commandant in the review of alternative response planning criteria and temporary equipment alternatives. NSFCC, as the managers of the Coast Guard OSRO classification program are highly knowledgeable in these areas and are available to provide recommendations and guidance on the adequacy of the short-term proposals to address potential risk of oil spills.

USCG Commandant:

1. Upon receipt of a request to revise a Port Specific Annex to a Vessel Response Plan (to change to an OSRO with full capabilities), CG-3PCV should expedite review with the goal of providing a written response to the plan holder within 24 hours.

2. Commandant (CG-3RPP) should make appropriate notifications to the National Response Team and Department of Homeland Security as deemed necessary.

3. If OSROs are unable to locate commercial resources to "back fill" their inventory, the USCG should verify resource availability within the impacted region and notify OSRO associations of regional response coverage voids.

Commandant (CG-3RPP and CG-3PCV) will complete this task by contacting OSROs listed in the NSFCC Response Resource Index database and other relevant organizations.

4. In the case where an OSRO's alternate coverage proposal does not address the need for required response coverage and no other response resources are available in a timely manner, the Assistant Commandant for Response (CG-3R) may direct the movement of Coast Guard response assets such as the NSF air and afloat platforms to provide the necessary coverage.

5. The Assistant Commandant for Prevention (CG-3P) will evaluate the state of WCD response plan compliance following a significant oil spill. This Commandant (CG-3P) evaluation is dependent upon the voluntary reporting by OSROs and the evaluation and assessment by the U.S. Coast Guard NSFCC. Upon notification from the NSFCC of a critical shortage of oil spill recovery resources for a given area, Commandant (CG-3P) in coordination with the respective Area Commander will assess the impacts to response plans.

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