

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

DONJON-SMIT, LLC,

Plaintiff,

v.

ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, in their official capacity as officers of
the UNITED STATES COAST GUARD,

Defendants.

No. 2:20-cv-00011 LGW-BWC

**UNITED STATES COAST GUARD’S OPPOSITION TO PLAINTIFF’S
MOTION FOR PRELIMINARY INJUNCTION**

Defendants, Admiral Karl L. Schultz, Captain John W. Reed, Commander Norm C. Witt, and Commander Matthew J. Baer (collectively, the “Coast Guard”), provide the following response in opposition to Plaintiff Donjon-SMIT, LLC’s motion for a preliminary injunction, ECF No. 6.¹

I. INTRODUCTION

On September 8, 2019, the M/V GOLDEN RAY, a carrier vessel with 20 crew members and approximately 4,200 cars aboard, capsized in St. Simons Sound. Complaint, Dkt. No. 1, at ¶¶ 9, 12. At the time of the casualty, Plaintiff Donjon-SMIT, LLC had already been designated

¹ Plaintiff states that, pursuant to Rule 65, it seeks “a temporary restraining order, preliminary injunction, and permanent injunction.” Dkt. No. 6 at ¶ 26. The Court denied the motion for a temporary restraining order on February 18, 2020. Dkt. No. 12. In this filing, the Coast Guard responds to the motion only to the extent that it seeks a preliminary injunction.

as a provider of salvage and marine firefighting services under the GOLDEN RAY's approved non-tank vessel response plan ("NTVRP") required under the Oil Pollution Act ("OPA"), 33 U.S.C. § 1321(j); 33 C.F.R. § 155.5035. Dkt. No. 1 at ¶ 13. Such vessel response plans are developed under the OPA's implementing regulations in order to prepare for a "nontank vessel's worst case discharge or substantial threat of such a discharge." 33 C.F.R. § 155.5010. Pursuant to the NTVRP, Plaintiff assisted in the response to the capsizing, including the rescue of four crew members, stabilization of the site, and removal of approximately 300,000 gallons of fuel from the vessel's fuel tanks. Dkt. No. 1 at ¶ 14. The vessel was determined to be a constructive total loss on October 12, 2019, and will have to be removed from the Sound in sections.

In its Complaint, Plaintiff asserts a variety of claims related to the Coast Guard's December 21, 2019 approval of a deviation from the GOLDEN RAY's NTVRP. While Plaintiff asserts that it is seeking to "prevent an almost certain environmental disaster" in St. Simons Sound, Dkt. 1 at ¶ 1, it is plain on the face of the Complaint and motion for preliminary injunction that what Plaintiff is actually concerned with is Plaintiff's status as a provider of services to GL NV24 Shipping, Inc., the owner of the GOLDEN RAY ("Owner"). *See id.* at ¶ 23 ("Moreover, Defendants have deprived Donjon-SMIT of its contractual agreement with Owner to provide [salvage and marine firefighter] services in addition to causing damage to Donjon-SMIT's reputation that will directly harm its ability to contract in the future."); ¶ 27 (alleging injuries to Plaintiff); Dkt. No. 6 at ¶ 30-33 (claiming irreparable injury to Plaintiff in the form of a potential loss of contract to provide services and a loss of resources spent negotiating to become a provider).

Plaintiff's motion for preliminary injunction should be denied. Even if Plaintiff's delay in bringing its motion is excused, Plaintiff has not met its burden to obtain such extraordinary

relief. Plaintiff cannot show a likelihood of success on the merits of its claims, as the Coast Guard’s Federal On-Scene Coordinator, Commander Norm C. Witt, articulated a reasonable justification for approving a deviation from the NTVRP. In addition, Plaintiff’s claims of irreparable harm are unsupported, and unsupportable, as they are based on a fundamental misunderstanding of Plaintiff’s status as a services provider under the NTVRP. Finally, the balance of equities and public interest do not favor the granting of preliminary relief sought by Plaintiff, which goes far beyond preserving the status quo. And even if Plaintiff were only seeking to temporarily enjoin the approval of the deviation from the NTVRP, such relief would result in harm to the Coast Guard and the public interest, as it would further delay of the removal of the GOLDEN RAY and increase the risk of harm to the environment.

II. BACKGROUND

A. Statutory and Regulatory Background

Section 311 of the Clean Water Act Section, 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701-2762, focuses on the prevention of and response to oil spills. The OPA “provides a framework for preventing and responding to potential oil spills” and “mandates oil spill contingency planning at four levels: the national, regional, and area levels, and, lastly, at the level of individual owners and operators of offshore oil facilities.” *Alaska Wilderness League v. Jewell*, 788 F.3d 1212, 1215 (9th Cir. 2015) (citing 33 U.S.C. § 1321(b)); *see also Water Quality Ins. Syndicate v. United States*, 225 F. Supp. 3d 41, 48 (D.D.C. 2016) (“The OPA was designed to streamline federal law so as to provide quick and efficient cleanup of oil spills, compensate victims of such spills, and internalize the costs of spills within the petroleum industry.”) (internal quotation marks omitted).

On the national level, the President (acting through the Coast Guard) is responsible for preparing a National Contingency Plan (“NCP”) that sets forth “efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges.” *Jewell*, 788 F.3d at 1215. To fulfill this mandate, the NCP specifies that a Federal On-Scene Coordinator (“FOSC”) is the federal official with responsibility to direct the spill removal and clean-up efforts. The FOSC, a Coast Guard official, will enlist the help of the Coast Guard’s national strike force and state and local response teams.

Vessel response plans are required for owners of non-tank vessels carrying oil under OPA, and are developed to prepare for a “nontank vessel’s worst case discharge or substantial threat of such a discharge.” 33 C.F.R. § 155.5010. Once such a discharge occurs, or may be imminent, a non-tank vessel owner or operator shall act in accordance with the NCP and the NTVRP. 33 U.S.C. § 1321(c)(3)(B). If another resource provider, not listed in the approved NTVRP for the specific service required, is to be contracted for a specific response, justification for the selection of that resource provider needs to be provided to, and approved by, the FOSC. If the FOSC determines a deviation would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects, he may allow the owner or operator to deviate from the NTVRP. *Id.* The FOSC has the discretion to authorize deviation from the resource provider listed in the approved NTVRP plan in instances where exceptional circumstances exist and the deviation would best affect a more successful response. *Id.*; 33 C.F.R. § 155.4032(a).

B. The FOSC’s Approval of the Deviation from the Vessel Response Plan

When the GOLDEN RAY was deemed a constructive total loss on October 12, 2019, Plaintiff, as the designated services provider under the NTVRP, had a 21-day exclusive time

period to provide a salvage plan to the Owner's representative and insurance provider, North of England P&I ("North"), for their review and approval. See Attachment 1, Declaration of Charles Anglin, Exhibit 1 (Oct. 16, 2019 North Letter of Intent to Plaintiff), Exhibit 2 (Oct. 28, 2019 Reminder to Plaintiff). The 21-day period ended on November 6, 2019 with the Owner ultimately rejecting Plaintiff's plan because it did not meet the Owner's demands for an effective containment strategy and Large Section Demolition ("LSD"). Anglin Decl., Exhibit 3 (Nov. 22, 2019 North Response to Administrative Order); see also Dkt. No. 1 at ¶ 15 (describing Plaintiff's proposal for cutting the vessel into small sections).

On November 8, 2019, the Owner, Plaintiff, and a different salvage services provider, Donjon Marine Co. Inc. ("Donjon Marine"), entered into an agreement under which Plaintiff's contract with the Owner to provide wreck removal services terminated on November 9, 2019, and the Owner entered into a new wreck removal contract with Donjon Marine. Anglin Decl., Exhibit 4 (Transitional Agreement). Donjon Marine was not a listed resource provider in the approved NTVRP, meaning this was a deviation from the NTVRP that required approval from the FOSC. When approval was requested for a deviation of the GOLDEN RAY's NTVRP, the FOSC denied the requested deviation because the change did not make the response more expeditious, effective, or environmentally safe. Anglin Decl., Exhibit 5 (Dec. 1, 2019 Reply to Owner).

Meanwhile, on November 18, 2019, North sent an Invitation to Tender for the wreck removal to nine companies, including Plaintiff; six of those companies provided bids, including Plaintiff. Anglin Decl., Exhibit 6 (Invitation to Tender). On December 20, 2019, after reviewing the bids, the Owner requested a deviation from the NTVRP in order to add another resource provider, T&T Salvage ("T&T"), as a designated service provider to conduct salvage operations

on the M/V GOLDEN RAY. Anglin Decl., Exhibit 7 (NTVRP Deviation Request). T&T's salvage plan met the Owner's demands and proposed Large Section Demolition and an Environmental Protection Barrier that would be constructed during the preparation phase, before cutting of the vessel. Anglin Decl., Exhibit 7 at 10, 46 (T&T Plan). The Owner represented that T&T's plan would be faster and cleaner than Small Section Demolition which Plaintiff had proposed.

Thus, Plaintiff submitted its plan to the Owner twice for consideration, once at the end of its exclusive 21-day negotiating period and again during the Owner's Invitation to Tender process. Plaintiff's plan was substantially similar both times and proposed Small Section Demolition and the commencement of cutting operations at the same time as the placement of its protective perimeter. Dkt. No 1-2 at ¶¶ 23. The Owner requested to deviate from its NTVRP and use T&T as a salvage and marine firefighting services provider on the grounds that T&T's plan met its preferred demolition methodology and preference for placement of an environmental barrier prior to cutting, which would provide for a more successful response. Anglin Decl., Exhibit 7 (NTVRP Deviation Request).

The FOSC, Commander Norm C. Witt, reviewed the Owner's NTVRP deviation request in consultation with salvage technical experts from the U.S. Navy Supervisor of Salvage and Diving ("SUPSALV") and U.S. Coast Guard Salvage Engineering Response Team ("SERT"). Anglin Decl., Exhibit 8 (Dec. 21, 2019 FOSC Decision Memo ("Decision Memo")) at 6.A. The FOSC first determined the request was for a specific service, salvage, and limited in scope to this specific response. *Id.* The FOSC then determined exceptional circumstances existed to consider the Owner's request given the location, scale, and rarity of a casualty of this magnitude in U.S. coastal waters. *Id.* The FOSC conducted an assessment of how T&T's plan compared to

Plaintiff's plan in consultation with SUPSALV and SERT. Technical experts from SUPSALV and SERT completed preliminary review of both the Plaintiff's and T&T's salvage plans and concluded that both plans were technically feasible. Anglin Decl., Exhibit 9 (SERT Response RE T&T Plan), Exhibit 10 (SERT Response RE Donjon-SMIT plan).

After completing a technical review of the plans, the FOSC considered the expediency of T&T's plan. The FOSC found that T&T's plan using Large Section Demolition would be faster than Plaintiff's Small Section Demolition plan by approximately four months. Anglin Decl., Exhibit 8 (Decision Memo) at 6.B. An estimation of the plans' respective timelines was calculated using the P&I's risk register and assessed with 90% confidence. *Id.* SUPSALV and SERT reviewed T&T's timeline and confirmed it was reasonable given the proposed plan. *Id.* at 6.B. Based on that information, the FOSC determined T&T's plan would provide for a more expeditious response. *Id.*

The FOSC then considered each of the plans' mitigation of environmental impacts. T&T's proposed plan included the placement of an Environmental Protection Barrier prior to commencing cutting operations, which would provide containment for remaining pollutants and mitigate the effects of a potential discharge. Anglin Decl., Exhibit 8 (Decision Memo) at 5. T&T's plan also reduced the duration of noise pollution and acoustic disturbances to the marine environment, and anticipated the threat of light pollution by using huts to cover on-scene lighting. *Id.* Plaintiff's plan did not provide as much protection for the environment since it proposed to commence cutting work at the same time as it constructed an Environmental Protection Barrier. Dkt. No 1-2 at ¶¶ 14, 23. Based on the information provided in Plaintiff's and T&T's plans, the FOSC determined T&T's plan would better mitigate adverse

environmental impacts associated with salvage operations. *See* Anglin Decl., Exhibit 8 (Decision Memo) at 6.C.

On December 21, 2019, after a thorough review of the Owner's request and relevant information, the FOSC approved the Owner's NTVRP deviation request under 33 C.F.R. § 155.4032 as he determined doing so would provide for a more expeditious and effective response to the spill or mitigation of its environmental effects in accordance with 33 U.S.C. § 1321(c)(3)(B). Anglin Decl., Exhibit 11 (Deviation Approval Letter).

C. Status of the Removal Work

Since approving the Owner's deviation request, pollution mitigation and salvage operations have continued without delay. *See* Attachment 2, Declaration of Capt. Ricardo Alonso at ¶ 3. Response operations are currently in a removal and containment mobilization phase. The U.S. Army Corps of Engineers has approved T&T's Clean Water Act Section permit applications and given T&T a Nationwide Permit 22 verification letter, including a Section 408 Permit for the construction of the Environmental Protection Barrier and wreck removal.

The Environmental Protection Barrier will include a large floating boom to contain surface pollutants and double layer netting to contain subsurface debris. The Owner is prepared to start installing the Environmental Protection Barrier on February 21, weather dependent. T&T submitted a draft Environmental Monitoring Plan to the Corps of Engineers, including proposed monitoring (of natural resources and acoustics) and adaptive management plans.

The vessel remains steady in its current position. T&T Salvage has finalized a scour prevention plan and intends to use "ballast-filled" 40-foot containers strategically placed under the vessel's fore and aft port quarters to stabilize the vessel during planned cutting operations. Placement of scouring protection is set to begin within the next week.

The Owner is also finalizing Large Section Demolition plans for wreck removal, to include anchoring plans within the Environmental Protection Barrier and use of a mesh netting to catch large falling debris. The Large Section Demolition will consist of the use of a heavy lift asset, the VersaBar 10,000, to cut the vessel into eight sections and remove it from St. Simons Sound. The Owner is currently fabricating lifting lugs and lifting rigging for the safe and effective removal of the eight sections. At this time, cutting is expected to commence in early May.

D. Plaintiff's Complaint and Motion for Preliminary and Permanent Relief

Plaintiff's Complaint, filed nearly two months after the approval of the Owner's deviation request, asserts that the Coast Guard violated the OPA when it approved a deviation to the GOLDEN RAY's NTVRP on December 21, 2019. Dkt. No. 1 at 13-14. Plaintiff seeks review of the Coast Guard's approval decision under the Administrative Procedure Act. *Id.* at 13. Plaintiff also asserts that the Coast Guard violated Plaintiff's procedural and substantive due process rights under 42 U.S.C. § 1983 and the Fifth Amendment of the United States Constitution. *Id.* at 14-15. Plaintiff seeks declaratory and injunctive relief, and also seeks a writ of mandamus "compelling [the Coast Guard] to reverse its approval of . . . the deviation from the [vessel response plan]." *Id.* at 12-13, 16-17. Plaintiff asserts that the following provisions provide this Court with subject matter jurisdiction: 28 U.S.C. § 1331, 28 U.S.C. § 1346; and 33 U.S.C. § 1321(e)(2). *Id.* at ¶ 7.

At the same time Plaintiff filed its Complaint, it also filed a motion pursuant to Rule 65, seeking "a temporary restraining order, preliminary injunction, and permanent injunction." Dkt. No. 6 at ¶ 26. In the motion, Plaintiff asks that the Court grant Plaintiffs the same final relief it

seeks in its Complaint, i.e., a revocation of the FOSC's approval of the deviation from the NTVRP for the GOLDEN RAY. *Id.* at ¶ 40.

III. STANDARD OF REVIEW

Preliminary Injunctions. “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The grant of a motion for preliminary injunction “is the exception rather than the rule” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (per curiam) (internal citation omitted). Plaintiff is entitled to preliminary relief only if it demonstrates (1) likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of an injunction, (3) the balance of hardships tips in its favor, and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20; *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1128 (11th Cir. 2005). This Court should not grant preliminary relief unless Plaintiff “clearly establishes the burden of persuasion” on each factor. *McDonald's Corp v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (internal quotation marks and citation omitted).

The Administrative Procedure Act. The approval of the request to deviate from the NTVRP is a final agency action subject to judicial review under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. Accordingly, the approval action must be upheld unless it was “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The scope of judicial review under the APA is limited to the administrative record before the agency at the time the decision was made. 5 U.S.C. § 706; *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985). Ultimately, the Court's role under the APA is to ensure that the agency came to a rational decision, “not to conduct its own investigation and substitute its own judgment for the administrative agency's decision.” *Pres. Endangered Areas*

of *Cobb's History, Inc. v. U.S. Army Corps of Eng'rs (PEACH)*, 87 F.3d 1242, 1246 (11th Cir. 1996). In the context of a preliminary injunction, a reviewing court may consider *de novo* evidence submitted by a party to support its allegations regarding harm or the public interest, but such evidence should not be considered by the court in determining a party's likelihood of success on the merits. See *Nat'l Pork Producers Council v. Bergland*, 631 F.2d 1353, 1359 (8th Cir. 1980) (district court should limit its inquiry to administrative record).

Review under the APA standard is narrow and "exceedingly deferential." *Fund for Animals, Inc. v. Rice*, 85 F.3d 535, 541 (11th Cir. 1996). "The court's role is to ensure that the agency came to a rational conclusion, not to conduct its own investigation and substitute its own judgment for the administrative agency's decision." *Sierra Club v. Van Antwerp*, 526 F.3d 1353, 1360 (11th Cir. 2008) (internal quotation marks omitted). The party challenging the agency action must set forth specific facts to show that it is entitled to relief. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 884-85 (1990).

IV. ARGUMENT

A. Plaintiff is not likely to succeed on the merits of its claims.

Plaintiff's motion contains but a single paragraph of argument with respect to Plaintiff's likelihood of success on the merits.² Dkt. No. 6 at ¶ 29.

² Plaintiff also points generally to its Complaint and "facts" set forth in the motion in contending that "is substantially likely to prevail on the merits of its claims, and at the very least has a substantial case" against the Coast Guard. Dkt. No. 6 at ¶ 28. A plaintiff which only cursorily addresses its claims in seeking the extraordinary relief of a preliminary injunction has not shown a substantial likelihood of success on those claims. Cf. *Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc.*, 188 F. Supp. 2d 1350, 1358 (S.D. Fla. 2002) (finding a failure to show a substantial likelihood of success on the merits in part because plaintiff did not articulate its arguments as to all of its claims).

First, Plaintiff contends that the Coast Guard violated OPA “by not providing any justification for its approval of Owner’s deviation request removing [Plaintiff] as the [salvage and marine firefighting] provider.” *Id.*; see also Dkt. No. 1 at 13-14 (Count Two, alleging a violation of OPA and seeking APA review of the approval of the NTVRP deviation).³ The provisions cited by Plaintiff in Count Two – 33 C.F.R. § 155.4032 and 33 U.S.C. § 1321(c)(3)(B) – do not contain any requirement that the FOSC provide a justification for his decision to approve a deviation of the NTVRP. In any event, the Coast Guard has “disclose[d] the basis” of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–169 (1962) (internal quotation marks omitted); see also *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (“[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.”). Here, the FOSC prepared a contemporaneous decision memorandum setting forth the reasons for his decision. See Anglin Decl., Exhibit 8 (Decision Memo), Exhibit 11 (Deviation Approval Letter). The Decision Memo, and all other nondeliberative materials considered by the FOSC in making his decision, will be certified in the administrative record and form the scope of this Court’s review.

Second, Plaintiff asserts that the Coast Guard failed to show that there were “exceptional circumstances” that would allow for a deviation from the resource provider identified in the

³ The Coast Guard acknowledges that Plaintiff may seek review of the FOSC’s approval of the deviation from the NTVRP under the APA, and in so doing may assert that the approval was not consistent with law. 5 U.S.C. § 706(2)(A). But the OPA does not waive sovereign immunity to bring a private right of action to enforce the Act. *Int’l Marine Carriers v. Oil Spill Liab. Trust Fund*, 903 F. Supp. 1097, 1102 (S.D. Tex. 1994) (finding that nothing in several sections of the OPA can be construed as a waiver of sovereign immunity, or imply a private right of action to sue the government under the OPA); *Rick Franklin Corp. v. United States Dep’t of Homeland Security*, No. 06-1647, 2008 WL 337978, at *3 (D. Ore. Feb. 4, 2008) (“The OPA does not contain a waiver of the government’s sovereign immunity from suit.”). Any claims by Plaintiff under the OPA are therefore subject to dismissal under Rule 12(b)(6).

NTVRP. Dkt. No. 6 at ¶ 29; *see also* Dkt. No. 1 at ¶¶ 29, 32-33 (Count Two), 41 (Count Three).

Not so. To determine whether the circumstances here warranted such a deviation, the FOSC considered the relevant facts, including:

(1) The vessel is very large (656 feet in length) and in very close proximity to a navigable channel that is the sole access route to the one of the busiest ports in United States - the Port of Brunswick;

(2) The vessel is grounded in an environmentally sensitive area that includes prime shrimping grounds and a significant roosting area for migratory birds; and

(3) The vessel is aground in close proximity to the major tourist destinations of Saint Simons and Jekyll Islands.

See Anglin Decl., Exhibit 8 (Decision Memo) at 4.

Based on these facts, the FOSC reasonably determined that these were exceptional circumstances. Indeed, Plaintiff itself recognizes that the capsizing of the GOLDEN RAY is a rare case, as it alleges in the Complaint that it “is the largest cargo shipwreck in U.S. coastal waters since the Exxon Valdez,” and acknowledges the significant environmental concerns regarding the removal of the vessel and its contents. Dkt. No. 1 at ¶ 10.

Further, the Court should credit the Coast Guard’s interpretation of what may constitute “exceptional circumstances” warranting the deviation of a NTVRP to add a new services provider under 33 C.F.R. § 155.4032. The NCP provision of the Clean Water Act, 33 U.S.C. § 1321(c)(3)(B), was amended in 1996 to add the language that “the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.” Coast Guard

Authorization Act of 1996, Pub. L. No. 104-324 § 1144. The amendment provides the FOSC with the flexibility to depart from the NTVRP where appropriate. The statute does not include the term “exceptional circumstances.” The term originated in a rulemaking promulgated by the Coast Guard in 2008 in which it stated that:

[T]here is a need to ensure that an incident be responded to quickly and without the need for contract negotiations during an actual emergency. In order to ensure this happens, contracts must be in place as part of the vessel’s response plan. *In regards to the ability of the unified command to select other than contracted resource providers . . . the U.S. Coast Guard agrees that there may be a need for flexibility to use other than contracted resources, under exceptional circumstances, during an incident if it is in the best interest of the response.* We have added this authorization into § 155.4032(a) of the final rule.

73 Fed. Reg. 80,618, 08, 635 (Dec. 31, 2008), Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (emphasis added).

Thus, while the preferred means of obtaining response resources is by pre-approved contracts, the Coast Guard recognizes that the FOSC must have flexibility under exceptional circumstances to deviate from the service provider(s) listed in the approved NTVRP. While the Coast Guard’s regulations do not define “exceptional circumstances,” the agency has explained in its “Guidance for Implementation and Enforcement of the Salvage and Marine Firefighting Regulations for Vessel Response Plans” that the FOSC “determines what exceptional circumstance will lead to deviation from the response plan in order to provide for a more expeditious or effective response to the spill or mitigation of its environmental effects. *It is up to the individual FOSC to make this determination from his understanding of the facts of the situation.*” Navigation and Vessel Inspection Circular No. 2-10, at 32-33 (Sept. 27, 2010) (emphasis added) (citing 33 U.S.C. § 1321(c)(3)(B); 33 C.F.R. § 153.103(n); 33 C.F.R. §

155.4032) (Attachment 3). Thus, whether there are exceptional circumstances justifying a deviation from a NTVRP is a case-specific and fact-based question to be decided by the FOSC.⁴

The Court should also recognize the expertise of the FOSC, as the federal official with the responsibility to direct the spill removal and clean-up efforts, in determining when there are exceptional circumstances. Here, the FOSC, Commander Witt, is also the Captain of the Port of Savannah and the official responsible for maintaining and protecting the navigable channels of St. Simons Sound. *See* 46 C.F.R. Pt. 6. And because the FOSC carefully analyzed the facts on the ground, and articulated a rational basis for concluding that the circumstances here are “exceptional,” Plaintiff cannot prevail on this point.

Third, Plaintiff argues that the Coast Guard violated 33 U.S.C. § 1321(c)(3)(B) by failing to articulate “why or how the T&T plan ‘would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.’” Dkt. No. 6 at ¶ 29. Plaintiff is simply incorrect. In the FOSC’s Decision Memorandum, he specifically determined that the use of “*another* resource provider would provide for a more successful response” since it would be more expeditious or effective and would mitigate the environmental effects of the removal of the vessel. Anglin Decl., Exhibit 8 (Decision Memo) at 4 (emphasis added). The Owner’s request to use another response provider (T&T) was made for the purpose of conducting Large Section Demolition on the GOLDEN RAY. *See id.* at 4. Plaintiff repeatedly

⁴ Because the FOSC has the discretion to make a determination whether a “deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects,” 33 U.S.C. § 1321(c)(3)(B), Plaintiff cannot maintain its action for a writ of mandamus (Dkt. No. 1 at 16-17). *In re Wellcare Health Plans, Inc.*, 754 F.3d 1234, 1238 (11th Cir. 2014) (recognizing that one of the conditions that must be satisfied before a writ of mandamus may issue is that the movant must show that their right to issuance of the writ is “clear and indisputable”) (citing *Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 381 (2004)).

proposed only using Small Section Demolition instead. *See id.* After reviewing the Owner's request and the report of the owner's engineering and salvage experts – who stated that Large Section Demolition would be the more expeditious, effective, and environmentally safe means of removing the GOLDEN RAY – the FOSC directed the U.S. Navy Supervisor of Diving and Salvage and the U.S. Coast Guard Marine Safety Center's Salvage and Engineering Response Team to perform a separate technical review. *Id.* That review determined – with 90% certainty – that T&T's plan would be feasible and more expedient than Plaintiff's plan by four months. *See id.*; Anglin Decl., Exhibit 9 (SERT Response RE T&T Plan). Importantly, this expedited schedule would reduce the likelihood that salvage operations would extend into the 2020 hurricane season. *See id.* at 5. The faster timeline would also avoid a prolonged impact on the navigation channel. *See id.* The Coast Guard's and Navy's technical experts' conclusions regarding the demolition proposals “require[] a high level of technical expertise” warranting deference. *Marsh v. Oregon Nat'l Res. Council*, 490 U.S. 360, 377 (1989).

The FOSC also considered the positive environmental outcomes from T&T's expedited schedule. Large Section Demolition requires fewer cuts to the vessel compared to Small Section Demolition, thereby reducing the threat of potential discharge. *See Anglin Decl.*, Exhibit 8 (Decision Memo) at 5. Noise pollution and acoustic disturbance of the marine environment will also be reduced under T&T's expedited schedule. *See id.*

The FOSC appropriately determined that T&T's timeline would be more expeditious and decrease the likelihood of salvage operations being conducted throughout the 2020 hurricane season, and that T&T's proposed placement of an environmental protective barrier prior to cutting would reduce risk to the environment.

Finally, the FOSC considered the deteriorating working relationship between Plaintiff and the Owner that may impede progress to remove the GOLDEN RAY. *See* Anglin Decl., Exhibit 8 (Decision Memo) at 5-6. Neither of Plaintiff's proposed plans included Large Section Demolition or the construction of an Environmental Protection Barrier around the removal activity area prior to demolition of the vessel, both of which had been articulated as preferred by the owner.⁵ *See id.* at 6. In addition, there were other incidents that demonstrated problems in the working relationship between the owner and Plaintiff that threatened to delay the response. *See id.* at 6.

Based on his assessment of the facts, the technical review of the Large Section Demolition proposal, the mitigation of environmental impacts, the working relationship between Plaintiff and the owner, and the unique challenges posed by a casualty of this magnitude situated in St. Simons Sound, it was reasonable that the FOSC concluded exceptional circumstances were present under 33 C.F.R. § 155.4032, and that a deviation from the NTVRP would provide for a more effective response, pursuant to 33 U.S.C. § 1321(c)(2)(B). Anglin Decl., Exhibit 8 (Decision Memo) at 1, 4, 7. Applying the APA standard of review, 5 U.S.C. § 706(2), the Court should find that the FOSC's approval decision was reasonable and consistent with the applicable law. Thus, Plaintiff is not likely to succeed in showing that the FOSC's decision was arbitrary, capricious, or contrary to law.

Fourth, Plaintiff asserts that the Coast Guard has failed to explain why Plaintiff "was removed as the salvage and marine firefighter services provider not only for wreck removal, but also for each of the nineteen different services for which Plaintiff was pre-contracted under the

⁵ Plaintiff's proposal provided for the possibility of a 4.6 acre "protective perimeter" comprised of a cofferdam built close to the vessel. Dkt. No. 1-2 at 13, 22. But Plaintiff proposed building the protective perimeter at the same time it would be undertaking cutting of the vessel. *Id.* at 22.

GOLDEN RAY NTVRP.” Dkt. No. 6 at ¶ 29. Plaintiff does not cite any language in OPA or its implementing regulations as the basis for any requirement that the Coast Guard explain to a response provider why it approved changes to a NTVRP. And even if there were a requirement to do so, the FOSC did not remove Plaintiff as a response provider under the NTVRP.⁶ As made clear in the FOSC’s December 21, 2019 Decision Memo and Reply to Request for Approval for Deviation from NTVRP, the FOSC only approved adding T&T as “another resource provider” for the purpose of salvage and marine firefighter services. *See* Anglin Decl., Exhibit 8 (Decision Memo) at 1, 7; *id.*, Exhibit 11 (FOSC Letter to Owner Approving NTVRP Deviation Request) at 1. The decision does not purport to remove Plaintiff as a response provider, and has no effect on Plaintiff’s status as such.⁷ For this reason, and those stated above, the Plaintiff is unable to succeed on the merits and is not entitled to its requested relief.

B. Plaintiff’s assertions of irreparable harm are wholly unsupported.

“A showing of irreparable harm is ‘the *sine qua non* of injunctive relief’” and must be “neither remote nor speculative, but actual and imminent.” *Ne. Fla. Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (citations omitted). Indeed, establishing imminent and irreparable harm is “[p]erhaps the single most

⁶ Because Plaintiff was not removed as a services provider under the GOLDEN RAY’s NTVRP, it is unclear how the Coast Guard could have violated Plaintiff’s due process rights.

⁷ As explained above, on November 8, 2019, Plaintiff entered into a Transitional Agreement with the Owner of the GOLDEN RAY and Donjon Marine Co., for the purpose of replacing Plaintiff as the contractor for future services for the Golden Ray. Anglin Decl., Exhibit 4 (Transitional Agreement). Although the agreement has no impact on the NTVRP, it appears to indicate that even if the deviation from the NTVRP had not taken place, Plaintiff and the Owner have agreed that Plaintiff will not be a services provider for the GOLDEN RAY. If that is the case, then it is unclear how Plaintiff has standing to bring this action.

important prerequisite for the issuance of a preliminary injunction.” 11A Charles Alan Wright, Arthur R. Miller, Mary Kay Kane, *Fed. Prac. & Proc.* § 2948.1 (3d ed. 2018).

In addition, before a preliminary injunction may issue, imminent and irreparable harm must be “not merely possible, but likely.” *United States v. Jenkins*, 714 F. Supp. 2d 1213, 1221 (S.D. Ga. 2008) (citing *Winter*, 555 U.S. at 22). Absent such a showing, no preliminary injunction may issue. *Jenkins*, 714 F. Supp. 2d at 1220.

Plaintiff’s delay in seeking relief from this Court is alone a sufficient basis for concluding that an urgent need for the speedy relief of a preliminary injunction is not warranted. *See generally Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (ten week delay in seeking injunction undercut claim of irreparable harm); *Boire v. Pilot Freight Carriers, Inc.*, 515 F.2d 1185, 1193 (5th Cir. 1975) (affirming denial of temporary injunctive relief where movant, among other things, delayed three months in making its request). This is especially true in the context of a vessel response operation where there is the imminent threat of a discharge.

Indeed, Plaintiff asserts that it has already suffered and will continue to suffer significant and irreparable harm because it will “lose its contract to provide salvage and marine firefighting services” under the NTVRP, which Plaintiff incorrectly describes as “a contract that was supposed to be secured by statute absent exceptional circumstances.” Dkt. No. 6 at ¶ 30. Plaintiff also asserts that it will lose the “significant resources it expended” in negotiating to be a salvage and marine firefighting service provider for the GOLDEN RAY and in preparing its wreck removal proposal. *Id.* at ¶ 31. As discussed above, even though Plaintiff has terminated its contract with the Owner, *see* Anglin Decl., Exhibit 4 (Transitional Agreement), Plaintiff remains a services provider under the NTVRP, as the FOSC’s approval of the Owner’s deviation request did not change Plaintiff’s status as a listed resource provider on the Owner’s NTVRP.

If Plaintiff has lost its contract rights, it is due to the exercise of the Plaintiff's freedom to contract in consenting to being replaced by Donjon Marine for the purposes of providing the very services the Plaintiff now seeks to reclaim.⁸ *See supra* at 5 and note 7; Anglin Decl., Exhibit 4 (Transitional Agreement). The FOSC's action did not cause the Plaintiff to lose its contract with the Owner.

Plaintiff's reliance on *Georgia by & through Georgia Vocational Rehab. Agency v. United States by & through Shanahan*, 398 F. Supp. 3d 1330, 1344 (S.D. Ga. 2019), is wholly misplaced. There, this Court found that, absent a preliminary injunction, the defendants would have been allowed to award the contract to another party and the plaintiffs would have been unable to compete for the contract since they had been eliminated from consideration. *Id.* Plaintiff remains a services provider for the GOLDEN RAY, and can compete (and has competed) for contracts under the NTVRP. Because Plaintiff has not been removed as a services provider under the NTVRP, it will not be "nearly impossible" to restore Plaintiff as a services provider. Dkt. No. 6 at ¶ 15. Moreover, while the plaintiff in *Georgia Vocational Rehabilitation Agency* had no ability to recoup its lost profits if the government contracted with another vendor, Plaintiff here has not shown it has no cause of action to recover such losses from the Owner. Indeed, Plaintiff has indicated it may seek legal redress from the Owner. Anglin Decl., Exhibit 12 (Dec. 23, 2019 Demand Letter from Plaintiff to Owner).

Plaintiff also cites *Cardinal Maintenance Service, Inc. v. United States*, for the proposition that a party suffers irreparable injury "when it loses the opportunity to compete on a level playing field with other bidders." 63 Fed. Cl. 98, 110 (2004). But Plaintiff has had a more than level playing field in which to compete. Plaintiff had an exclusive 21-day bidding period,

⁸ Donjon Marine Co., Inc. is a separate business entity from Donjon-SMIT, LLC.

during which it competed with no one, to provide a wreck removal plan to the Owner. Plaintiff simply failed to provide a plan that the Owner found satisfactory. Plaintiff then had another opportunity to compete for the bid during the Owner's Invitation to Tender process. Plaintiff squandered both opportunities by repeatedly proposing a plan that did not address the Owner's stated preference for Large Section Demolition and placement of a pre-demolition Environmental Protection Barrier. The FOSC had no involvement in these transactions and did not interfere with the Plaintiff's ability to compete for the wreck removal contract. For this reason, Plaintiff has failed to show how the Coast Guard is responsible for any harm that has been, or will be, suffered by the Plaintiff's abdication of its contractual rights.

C. The balance of the harms and the public interest disfavor an injunction.

Courts must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief [and] [i]n exercising their sound discretion, courts of equity should pay particular regard for the public consequences." *Winter*, 555 U.S. at 24 (citations omitted). Where the federal government is a party, the third and fourth injunction factors—the balance of equities and the public interest—"merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"The chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *Ne. Florida Chapter of Ass'n of Gen. Contractors of Am.*, 896 F.2d at 1284. Relief that goes beyond simply maintaining the status quo is "particularly disfavored." *Powers v. Sec'y, Fla. Dep't of Corr.*, 691 Fed. App'x 581, 583 (11th Cir. 2017) (internal quotations and citation omitted). Plaintiff appears to ask the Court to revoke the FOSC's approval of the deviation, Dkt. No. 6 at ¶ 40, and to "delay[] the approval" of the Owner's deviation request. In this context, the only temporary or preliminary

relief Plaintiff could possibly seek is an order staying the Coast Guard's decision to approve the deviation to the vessel response plan until this action can be fully litigated.

Plaintiff claims that "[t]emporarily delaying the approval of [the] Owner's deviation request" would not harm the Coast Guard. Dkt. No. 6 at ¶ 34. The deviation has already been approved, however, so the Coast Guard understands Plaintiff to be seeking to enjoin the effectiveness of the FOSC's decision.

More importantly, Plaintiff is wrong in asserting that an injunction would not harm the Coast Guard. Any further delay in moving forward with the removal of the vessel would harm the Coast Guard's interests in protecting the marine environment and integrity of the waterway, as well as safety of life at sea. As set forth in the Declaration of Captain Ricardo Alonso, Attachment 2, it is in both the Coast Guard's interest and public interest that the Owner proceed promptly with containment and removal at the site of the GOLDEN RAY. Time is of the essence in a response and salvage operations such as this, involving a very large vessel containing thousands of cars and resting on its side with a list of approximately 100 degrees. *Id.* at ¶ 4; Anglin Decl., Exhibit 8 (Decision Memo) at 5.B.ii.; *see also* Alonso Decl. at ¶ 4 ("The ocean is a harsh environment—it rusts and deteriorates materials, leading to the breakdown of a vessel's integrity and structure.").

It is also important to be aware that granting Plaintiff's request to halt the salvage operations will not do anything to lessen the Coast Guard's continuing obligations in this area. Alonso Decl. at ¶ 9. On the contrary, to put a stop to the Owner's response activities will prolong (and likely also increase) the ongoing burden on Coast Guard (and State of Georgia) personnel and resources to maintain security and safety in the area and continue to monitor the status and risk presented by the grounded vessel. *Id.* Further, if resources are taken away from

the removal now, more state and federal resources will have to be expended during hurricane season in order to mitigate the harms of the delay. *Id.* Since hurricane season already stretches the resource availability of the Coast Guard, prolonging the GOLDEN RAY salvage has the potential to deprive impacted communities of these much-needed resources. *Id.*

An injunction would also be harmful to the public interest because the current phase of the response, in which the Environmental Protection Barrier is being installed, is a critical one. The barrier plays an important role in the containment of oil, debris, and other pollutants that may emanate from the vessel (including during the next planned phase where the vessel is cut apart and the pieces are removed). Alonso Decl. at ¶ 5. Such a containment method reduces the risk of these pollutants entering the water, washing up on nearby beaches or shores, or interfering with vessel (and craft) navigation on waterways. *Id.* Every day in which on-scene personnel are stopped from installing a protective barrier presents a significant risk to both the environment and to the safety of persons in the vicinity. *Id.*

As the FOSC outlined in his Decision Memo, the particular location in which the vessel is grounded is an environmentally sensitive area which includes prime shrimping grounds and Bird Island—a significant roosting area for migratory birds. Anglin Decl., Exhibit 8 (Decision Memo) at 5.B.ii.; *see also* Alonso Decl. at ¶ 5. The longer a vessel remains in a grounded position such as this, the more time that the environment (including marine aquatic species) are exposed to the risks, for example from release of oil and other harmful substances. *Id.* In addition, the GOLDEN RAY is grounded in very close proximity to a navigable channel which serves as the only access route to the Port of Brunswick and in close proximity to major tourist destinations for coastal Georgia. Anglin Decl., Exhibit 8 (Decision Memo) at 5.B.ii.; *see also*

Alonso Decl. at ¶ 5. Its continued presence there presents ongoing risk to vessel navigation and flow of commerce.

The need for expediency in response situations such as this is further magnified by the approaching of the annual hurricane season for the Atlantic Ocean. Alonso Decl. at ¶ 8. Conducting salvage operations during hurricane season (or winter storm months) presents additional safety risks and reduces ability to effect salvage and removal. *Id.* Hurricanes (even those that do not pass in close proximity) bring many dramatic changes to the marine environment – including high winds, storm surges, and shifting of the ocean floor – all of which increase chances of the vessel becoming destabilized or splitting apart. *Id.* A delay in salvage and removal operations puts the safety of individuals working on scene at risk and increases the chance of worsening the physical condition of the vessel. *Id.*

In his Decision Memo, the FOSC clearly documented the importance of T&T's faster timeline for removing the GOLDEN RAY wreck. *See* Anglin Decl., Exhibit 8 (Decision Memo) at 6.B. Delays in the response will only serve to exacerbate the potential threat to the environment as the structural integrity of the vessel may decline as it is exposed to the elements and structural stresses for which it was not designed. Alonso Decl. at ¶ 8.

V. CONCLUSION

Plaintiff's motion for a preliminary injunction should be denied, as Plaintiff has not met its heavy burden to show entitlement to such extraordinary relief.

Date: February 21, 2020

Respectfully submitted,

/s/ Martha C. Mann
MARTHA C. MANN
SYDNEY A. MENEES
U.S. Department of Justice

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Counsel for Defendants

Attachment 1

Declaration of Charles Anglin

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

Plaintiff,

VERSUS

**ADMIRAL KARL L. SCHULTZ,
CAPTAIN JOHN W. REED,
COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER, IN
THEIR OFFICIAL CAPACITY AS
OFFICERS OF THE UNITED STATES
COAST GUARD,**

Defendants

2:20-cv-00011 LGW-BWC

DECLARATION OF CHARLES E. ANGLIN

I, Charles E. Anglin, submit the following declaration pursuant to 28 U.S.C. § 1746, and declare as follows:

1. I am currently serving as the Documentation Unit Leader for the Saint Simons Sound Incident which is the official incident name of the response to the capsizing of the M/V GOLDEN RAY. I am a full-time Coast Guard documentation specialist and have served in that capacity for almost twenty years. As the Documentation Unit Leader, I am responsible for the maintenance of accurate, up-to-date incident documentation, for organizing all of the incident documentation into the administrative record of the incident, and for the storage and ultimate disposition of the administrative record. This administrative record is required by the National Contingency Plan, 40 C.F.R. § 315. This declaration is made in support of the United States' Opposition to Donjon-SMIT LLC's Verified Complaint, Writ of Mandamus, and Request for Injunctive Relief.

2. The below listed documents constitute part of the administrative record for the Saint Simons Sound Incident and are attached as exhibits to this Declaration. As such all are official Coast Guard records kept in the normal course of business as required by the National Contingency Plan. These documents would also be part of the administrative record supporting the Federal On-scene Commander's decision to approve the deviation from the Non Tank Vessel Response Plan for the M/V GOLDEN RAY that would be produced in this litigation. The attached exhibits are all true and accurate copies of the documents contained in the administrative record.

Exhibit	Document Name
1	NORTH Letter Of Intent to DJS 16Oct19
2	GSC Letter Of Intent Reminder Email 28Oct19
3	NORTH Response to Admin Order 22Nov19 - Conditions 1 and 2
4	Transitional Agreement 8Nov19
5	FOSC Reply to Owner 1Dec19
6	Invitation to Tender GOLDEN RAY WR
7	NTVRP Deviation Request 20Dec19
8	FOSC decision memo concerning Deviation request 21Dec2019
9	SERT Response RE T&T Plan
10	SERT Response RE Donjon-SMIT plan
11	FOSC NTVRP Deviation Approval Letter - Signed
12	DJS Demand Letter to Owner 23 Dec19

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 21, 2020


Charles Anglin

Exhibit 1



Donjon-SMIT LLC
15402 Vantage Parkway East, Suite 316
Houston
Texas
77032 USA

Our Ref: NL306419VR
Your Ref: 19/001/ARY
Date: 16 October 2019

LETTER OF INTENT

Dear Sirs

"GOLDEN RAY" – Aground at St. Simon's Sound, Brunswick, Georgia

1. Following our recent discussions regarding the salvage of the "GOLDEN RAY" (the "**Vessel**"), we hereby agree to enter into exclusive negotiations with you in order to conclude suitable contracting principles for recovery or removal of the Vessel and cargo and their disposal (the "**Services**") to the satisfaction of the competent authorities.
2. These exclusive negotiations shall continue for a period of 21 days from the date of this Letter of Intent (the "**Negotiation Period**"), during which you shall engage with us and our consultants to agree in general terms (it being recognised that equipment, personnel working hours etc may depend upon the Methodology and the authorities):
 - (a) contractual basis and form (Club proposes suitably amended BIMCO WRECKSTAGE); and
 - (b) where applicable separate rates for personnel and standard equipment; and
 - (c) working hours during the project (Club proposes 24/7)upon which the Services will be performed (the "**Contracting Principles**").

**Global service
built around you**

The North of England Protecting & Indemnity Association Limited
100 The Quayside, Newcastle upon Tyne, NE1 3DU, UK
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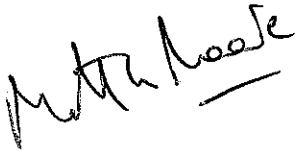
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MEMBER OF
IGP&I

3. The parties shall use their best endeavours to agree the Contracting Principles within the Negotiation Period, unless both parties agree in writing to extend the Negotiation Period to such later date as is mutually acceptable.
4. Once the Contracting Principles are agreed, it is envisaged that the parties will reach agreement on a methodology for the Services to be performed under a subsequent removal contract (the "**Methodology**"). It is already agreed that full parbuckling is not feasible. We have discussed with you the Vessel being cut up in situ with an option to possibly parbuckle or refloat smaller sections after a partial cut down, as well as building a cofferdam around the Vessel to assist with removal operations. As part of the Methodology, the Contractor will provide a broad indication of the likely overall duration and costs (with breakdown) of the removal Methodology to the Company to be charged by the Contractor.
5. In the event that the parties reach agreement on the Contracting Principles and Methodology (to be evidenced in writing as signed by the Club and a representative of Donjon-SMIT), the Club shall arrange a meeting with the Unified Command the United States Coast Guard, US Army Corp of Engineers and the State of Georgia (the "Authorities") at which the parties shall jointly present the agreed Methodology to the Authorities for approval and the Club will allow the Contractor the opportunity to do so. However, in the event that agreement cannot be reached between the parties on either the Contracting Principles and/or Methodology within the Negotiation Period the Club shall be under no obligation to arrange a meeting and/or joint presentation with the Authorities or continue further discussions, likewise if the Authorities reject the Methodology.
6. The Wreckhire contract to be entered into between you and the owners of the Vessel shall not be terminated during the exclusive Negotiation Period afforded to you pursuant to Clause 2.
7. Each party shall be responsible for their own legal fees incurred in negotiating the Contracting Principles.
8. The Methodology approved by the Authorities and the Contracting Principles will form the basis of negotiations regarding the terms of the final contract for the removal of the Vessel.
9. In the event that the Contracting Principles cannot be agreed to the satisfaction of both parties within the Negotiation Period or such later date as is mutually acceptable, then this Letter of Intent shall terminate on written notice to the other party.
10. We undertake not to engage in any negotiations or discussions concerning the performance of the Services save with you, nor will we seek, encourage or respond to any approach that might lead to negotiations with any other companies or other third parties for the performance of the Services.
11. We shall, and we shall cause our consultants to, sign Non-Disclosure Agreements in a suitable form in relation to the engineering activities referred to in Paragraphs 2-3 above.

12. The parties hereby agree that the subject matter of, the commercial terms of and all other provisions of this Letter of Intent are confidential to the parties and their respective advisers, save as may be required for enforcement hereunder. We agree that you may use this Letter of Intent to assist in the application to obtain any necessary permits, permissions and/or approvals from the Authorities.
13. The parties further agree that this Letter of Intent shall be governed by the laws of England and Wales and that English Courts shall have exclusive jurisdiction in relation to any dispute arising hereunder.
14. This Letter of Intent may be signed in counterparts which together shall constitute a single instrument.
15. Please acknowledge receipt and acceptance of this letter by signing, dating and returning the enclosed copy.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M S Moore', with a horizontal line underneath the name.

M S Moore
Global Director (Claims)

We hereby acknowledge and accept the terms of this Letter of Intent

Date:

Name:

Authorised signatory for and on behalf of Donjon-SMIT LLC

Exhibit 2



To : John Witte
E-Mail : john.witte@donjon.com

To : Doug Martin
E-Mail : d.martin@smit.com

CC: : North of England P&I Club
E-Mail : goldenray@nepia.com

CC: : Hans van Rooij
E-Mail : hansvanrooij@marineconsultant.nl

CC : Global Salvage Consultancy
E-Mail : info@salvageconsultancy.com

Date : Monday 28th of October 2019

From : Jacob Hogendorp / Company Representative

Subject : “MV GOLDEN RAY Reminder Letter”

Dear Sirs,

With reference to the LOI between the Owners of the GOLDEN RAY and yourselves and the meeting which is scheduled for the 6th of November in New Jersey, we agreed that the Owners, their P&I Club and their Consultants would be presented with various scenarios for the removal of the Wreck from its present location. In our conference call of last week, we have agreed to have an interim conference call to discuss progress and the feasibility of the various scenarios. For the interim conference call scheduled for Wednesday the 30th of November we understand that you are working on providing us with your scenarios and philosophy behind these. In order to manage our expectations we would like to reiterate the following points of attention being addressed in the presentation.

- Preferably a minimum of three high level dismantling scenarios inclusive of pro's and con's on feasibility or other issues you feel the need to address. The scenarios should be substantiated with a risk register and possible timelines, with the ultimate focus to find the right solution.



- It is known that the Wreck is located in a sensitive area with rather strict controls from local Stakeholders, NGO's and State Representatives. From this perspective a sufficient containment arrangement should be accompanying the dismantle scenarios. This could be, as we have proposed earlier, a cofferdam type barrier however if you believe that this is not feasible/practical any other solution, which would satisfy Local Interests and protect the liability exposure of the Owners and their P&I Club.
- Progress on the activities and results relating to the permitting required to remove the Wreck and her Cargo.
- Progress in relation to the final disposal of scrap from the Wreck and her Cargo.

Furthermore, apart from the scenario planning, we also need to focus on the non-technical issues and we are looking forward to your proposals as per Letter of Intent:

2. These exclusive negotiations shall continue for a period of 21 days from the date of this Letter of Intent (the "Negotiation Period"), during which you shall engage with us and our consultants to agree in general terms (it being recognized that equipment, personnel working hours etc., may depend upon the Methodology and the authorities):
 - (a) contractual basis and form (The P&I Club proposes suitably amended BIMCO WRECKSTAGE); and
 - (b) where applicable separate rates for personnel and standard equipment;
and



(c) working hours during the project (Club proposes 24/7)

We appreciate your attention to the above and looking forward to your presentation on Wednesday.

Kind regards,

Jacob Hogendorp
Company Representative

MV GLOBAL RAY Wreck Removal Project

Exhibit 3



From: Hyundai Glovis Co. Ltd

To: N.C. Witt, Commander, U.S. Coast Guard

Re: Administrative Order: Amendment 2

Date: 25 November 2019

Dear Sir,

Please see response for both conditions 1 and 2 as per your requirement.

Condition 1

We address below the requests made in relation to the replacement of "Wreckhire#1" with Wreckhire#2".

Deviation

Whilst we offer our sincere apologies for any misunderstanding and inconvenience, we do not view the shift from Donjon-Smit LLC ("Donjon-Smit") to Donjon Marine Co Inc. ("Donjon") to constitute a deviation to a resource provider outside the NTVRP. In our view, the shift was a simple transition from a joint venture (Donjon-Smit) to one of its partners (Donjon), made with the consent of the joint venture. Further leading us to believe this was not a deviation to a new, unlisted resource provider was the fact that even prior to the transition from Wreckhire#1 to Wreckhire#2, Donjon had taken the lead in terms of providing personnel and equipment for the response effort. As a result, the majority of individual responders and salvage assets remained on-site following the transition from Donjon-Smit to Donjon (we can provide details of the spread and personnel if required, before and after the transition).

Consensual Agreements

Please find attached the Transitional Agreement dated 8 November 2019 (attachment 1) confirming the agreement between Owners (represented by the P&I Club), Donjon-Smit, the outgoing contractor under Wreckhire#1, and Donjon, the incoming contractor under Wreckhire#2.

Relevant statements explaining shift from Wreckhire#1 to Wreckhire#2

The shift from Wreckhire#1 and Wreckhire#2 came about following the conclusion of the Letter of Intent exclusivity period during which Donjon-Smit had been given the opportunity to bid to remove the wreck. As will be dealt with elsewhere in detail, the Donjon-Smit bid was rejected.

The decision to move from Wreckhire#1 to Wreckhire#2 was made with three key points in mind:

1. With a view to improving the response to the incident. In particular, narrowing the management on site and achieving clearer command and communication in respect of the performance of the services through Donjon taking control / the lead.
2. Recognition following the Letter of Intent process and discussions that had taken place on site, we were more aligned to Donjon than to Smit Salvage Americas Inc in terms of the future of the project, in particular the benefits of containment and LSD methodology.
3. From a day-to-day work perspective the response would not be delayed or interrupted because of the continuation on near identical Wreckhire terms and the majority involvement/input of Donjon personnel and equipment.

We should also say that the work of Smit across the globe is respected by us and although the transition from Wreckhire #1 to Wreckhire#2 means Donjon are taking the lead (as opposed to Donjon and Smit Salvage Americas Inc. who together form Donjon-Smit) this is on the basis that the streamlined management of the response was preferable in this case. It should not be interpreted as a broader view of Smit or issue with them.

We should add that the change was not made for financial reasons as all rates under the replacement Wreckhire remained unchanged.

Input from the mentioned resource provider(s)

We understand the Administrative Order has been provided to Donjon-Smit and they are aware that their input has been sought.

Request for deviation

Further to our e-mail of 20 November 2019, in the event the transition from Donjon-Smit to Donjon constitutes a deviation within the meaning of 33 CFR §155.4032, we respectfully request that you approve the deviation.

Elements listed in 33 CFR § 155.4032

“Exceptional circumstances”

We submit that in this case the change from the approved resource provider Donjon-Smit to the replacement provider Donjon was in exceptional circumstances because whilst there was a change of legal entity (i.e. Smit Salvage Americas Inc no longer being involved):

- One of the partners in the listed provider maintained its role leading the response effort.
- The transition was seamless.
- There was no change to the scope of work being carried out under the Wreckhire, save that obligations in respect of a fixed barrier were added.
- The majority of personnel performing the services remained unchanged.
- The spread of equipment on site remained unchanged.
- The delivery of the services were uninterrupted.

Whilst we would not want to underplay the importance of 33 CFR § 155.4032, on one view the change was in name only because Donjon (as part of Donjon-Smit) provided the majority of input to the provision of the services from the outset. This, as submitted, makes the circumstances exceptional because the contractor actually leading the response effort remained unchanged.

“Best affect a more successful response”

We submit that since the change there has been clearer management of the services brought about by the streamlining of the management of the Wreckhire#2 contract, which was an objective of the change. This has been evidenced by:

- Improved communication.
- A clearer command structure.
- No repeat of incidents that occurred during the course of the Wreckhire#1 contract.
- Progress made in a cooperative and collaborative manner in respect of the Environmental Protection Barrier.

We trust these improvements have been evident to the FOSC and others on scene.

Condition 2

We address below the requests made in relation to the rejection of the Donjon-Smit LLC proposal for the removal of the wreck of "GOLDEN RAY".

We respectfully request that this response be read in conjunction with "Position Report 26.11.2019" prepared by Global Salvage Consultants ("GSC PR") and which is/will be submitted as a supporting document to this response. Reference is made to sections of that report where necessary.

Opening comment on delay

In the context of the question of delay the focus has been on accurately assessing the likely **completion date** for the wreck removal as opposed to the start date for the wreck removal operation. Put very simply this is because a removal operation could be commenced immediately. However if an inappropriate (slower) methodology is employed the completion date may be much later than as compared with starting later with an appropriate alternative (faster) methodology.

The question of delay should also be considered in conjunction with the question of the protection of the environment. Again, an early commencement must be balanced with the best available options to protect the environment. So, whilst an immediate start could be made if this was in the absence of environmental protections the benefits in start time may be outweighed by the burdens in terms of environmental impact.

Through the Letter of Intent period and now in the Expression of Interest/Invitation to Tender period work is continuing on-site to sanitise the vessel. It is not the case that a period of inactivity has arisen.

We now address the four specific questions.

a) Letter of Intent

We attach a copy of the Letter of Intent ("LOI") dated 16.10.2019 (attachment 2).

We also attach a follow-up reminder letter ("Reminder") sent on 28.10.2019 (attachment 3).

The context to this follow-up reminder was to ensure the LOI period was as meaningful and constructive as possible in terms of it yielding a fast and environmentally friendly wreck removal solution. This is relevant because rather than there being a gap of 21 days between the LOI being

issued and the proposal being made the actual position is that there was a significant amount of contact between the Owner's, the P&I Club's technical representatives and Donjon-Smit LLC.

When the proposal was provided on 5 November 2019. it was assessed in the context of the ongoing work which had taken place, rather than the assessment having to take place from a standing start. In consequence of this it was possible for a prompt decision to be made as to whether the proposal was acceptable in the form presented, whether it should be explored further or whether it should be rejected.

b) Entire Proposal

The full proposal was sent to us in the form of a zip file from Donjon-Smit LLC. A soft copy of this has been provided to you. The key document in that file is the Wreck Removal Method Statement Doc. No: Golden Ray-SUS192139-MS2121 ("DJS Methodology").

c) Detailed explanation why the proposal was unacceptable

We refer to a message from the P&I Club dated 20 November 2019. This message was sent prior to the non-disclosure requirements for the DJS Methodology in the Transitional Agreement being lifted by Donjon-Smit LLC. In that message the issues of small section demolition and absence of a barrier were raised.

The DJS methodology has since been released from the non-disclosure requirements and this has been provided under (c) above. We now summarise the reasons for rejections of the proposal:

1. Small section demolition – this methodology gives a longer period of work and would likely mean working through the 2020/21 winter. It was less preferable to large section demolition (see: GSC PR section 5).
2. Absence of commitment to an environmental barrier from outset – the proposal envisaged commencement of work in the absence of any barrier and this work would continue through phases 1 and 2 for 5 – 6 months (see: DJS Methodology pg. 22) with the environment being exposed to pollution and debris from the vessel.
3. Lack of clarity on 24/7 working – there was no clarity whether 24/7 working would be employed. Clarity on this point was sought because it was relevant to the duration of the work.

Taking these points together – slow methodology/late completion date; no initial environmental protection; lack of clarity on 24/7 working – it was apparent that the preferred solution of large section demolition in the confines of a barrier was not available from Donjon-Smit LLC. For further detail see GSC PR section 5.

For these reasons the proposal was rejected.

d) Additional response or explanatory information

Considering the proposal fell short of the best solution in terms of completion date and containment of pollutants, it was decided that rather than hold discussions with Donjon-Smit LLC to overcome the differences. The preferable course of action was to issue an Expression of Interest document followed by an Invitation to Tender with a view to determining if the wider salvage contractor market could make a proposal satisfying the twin goals of speed to completion and protection of the environment.

There is no doubt that if a proposal had been in accordance with the LOI and Reminder we would have sought to develop the proposal to a form, which was capable of acceptance so the earliest possible completion could be achieved in an environmentally conscious manner. There was no benefit to 'Golden Ray' interests entering into the LOI other than to seek to achieve an acceptable outcome as quickly as possible i.e. without having to run an ITT process.

Early indications in the tender process are that methodologies that are preferable to the proposal received after the LOI period will be offered. The return date for the tenders is 8 December 2019 so it will be possible for us update the FOSC shortly after that time.

We remain at your disposal to address any information and/or statements which you or your technical advisors require as a result of the review of this material or otherwise.

Exhibit 4

Transitional Agreement

- (1) GL NV24 Shipping Inc of Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands, MH 96960 (the "**Company**")
- (2) Donjon-SMIT LLC, 15402 Vantage Parkway West, Suite 316, Houston, Texas 77032 USA (the "**Original Contractor**")
- (3) Donjon Marine Co Inc. of 100 Central Avenue, Hillside, New Jersey NJ 07205, United States (the "**Replacement Contractor**")

together the "**Parties**"

WHEREAS:-

- A. On 8 September 2019, the m.v. GOLDEN RAY (IMO No. 9775816) (the "**Vessel**") grounded at the entrance to Brunswick, Georgia, USA at approximate position 31 08'N 081 24' W.
- B. Pursuant to an amended BIMCO Wreckhire 2010 contract dated 16 October 2019, the Original Contractor was engaged by the Company to provide services to the Vessel (the "**Original Wreckhire**").
- C. Pursuant to a Non-Disclosure Agreement dated 16 October 2019 (the "**NDA**") the Company and Original Contractor agreed that certain confidential information and documentation was not to be disclosed to a non-party to the NDA.
- D. The Parties intend to transfer responsibility for providing future services to the Vessel from the Original Contractor to the Replacement Contractor in accordance with the terms of this Agreement.

For all good and valuable consideration, the Parties hereby agree that:

1. The Original Wreckhire between the Company and the Original Contractor shall be terminated at 00:01hrs on 9 November 2019 (the "**Transition Date**") at which time the Company and the Replacement Contractor shall enter into a new BIMCO Wreckhire 2010 contract on the terms attached as Schedule I to this Agreement (the "**New Wreckhire**").
2. As at the Transition Date any personnel, craft or equipment presently engaged under the Original Wreckhire shall be deemed to have been demobilised under the terms of the Original Wreckhire and no further sums shall fall due under the same.
3. As at the Transition Date any personnel, craft or equipment presently engaged under the Original Wreckhire (and Annex I thereto) shall be deemed to have been mobilised on commencement of the New Wreckhire and shall be remunerated in accordance with the terms of the New Wreckhire.
4. The Replacement Contractor undertakes and warrants that as at the Transition Date they will have suitably qualified personnel, craft and equipment mobilised to the Worksite to replace any personnel, craft or equipment demobilised by the Original Contractor pursuant to Clause 2 of this Agreement. It is envisaged that the majority of the personnel, craft or equipment will remain on site, however, in the event that the Replacement Contractor is required to mobilise replacement personnel, craft or equipment under the New Wreckhire, the Replacement Contractor warrants that the personnel, craft

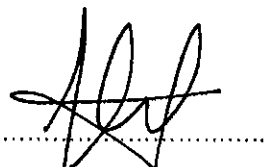
or equipment will be of equal experience, specification and capability as the personnel, craft or equipment presently on site. The Replacement Contractor shall notify and seek the approval of the Company Representative of the intended replacement personnel, craft or equipment, the Company Representative's approval and consent not to be unreasonably withheld.

5. The Original Contractor expressly authorises the Company and/or Replacement Contractor to use and/or disclose and/or exploit and/or make available any Confidential Information provided by the Original Contractor to the Company and/or the Company's P&I Club pursuant to the NDA to any sub-contractor and/or any third party who may be approached or engaged by either the Company or Replacement Contractor to provide future services to the Vessel, save for any information in respect of costs and/or pricing and/or specific details of the wreck removal methodology contained within the Original Contractor's Wreck Removal Method Statement dated 5 November 2019. The Company's obligations under the NDA shall be modified accordingly.
6. This Agreement, nor any of the terms contained herein shall in any way affect the Parties rights, obligations or liabilities existing as at the Transition Date, in respect of the services provided to the Vessel pursuant to the Original Wreckhire.
7. This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and any dispute or claim (whether contractual or otherwise) arising out of or in connection with it or its subject matter shall be referred to arbitration in London in accordance with the provisions of Clause 21(a) of the Original Wreckhire.

North of England Ltd
 Martin Rose for and on behalf of

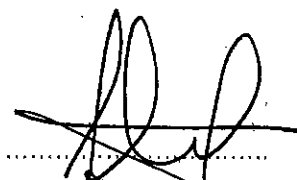
08.11.2019

GL NV24 Shipping Inc


 Donjon-SMIT LLC

Director - Donjon-Smit, LLC
 John A. Witte, Jr.

11/08/19


 Donjon Marine Co Inc

Donjon Marine Co Inc
 John A. Witte, Jr.
 Executive V.P.

11/8/19

Exhibit 5

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Marine Safety Unit Savannah

Juliette G. Low Federal Bldg.
100 W. Oglethorpe Ave., Ste 1017
Savannah, GA 31401-3604
Phone: (912) 652-4353
Fax: (912) 652-4052

16450
01 December 2019

Hyundai Glovis CO., LTD.
Registered Owner: GL NV24 Shipping Inc,
Vessel: M/V GOLDEN RAY IMO: 9775816

REPLY TO RESPONSE OF ADMINISTRATIVE ORDER: 01-19 Amendment 2

Dear Hyundai Glovis CO., LTD.:

Thank you for your efforts to date in working towards completion of the requirements established in Administrative Order 01-19 (dated September 15, 2019) and for your prompt reply to Amendment 2 (November 22, 2019). After carefully reviewing the documentation provided, I have made the following determinations regarding the four requirements issued in Amendment 2.

Condition 1

I have determined the shift from "Wreckhire#1" to "Wreckhire#2" changed the resource provider from "Donjon/Smit" to "Donjon." This change constitutes a deviation from your Coast Guard approved Non-Tank Vessel Response Plan (NTVRP) in which Donjon is not a designated resource provider. I have further determined the justifications you provided do not meet the standards for approval detailed in Title 33 CFR §155.4032 or §155.5012 and hereby disapprove that deviation.

Under 33 CFR §155.5012, the owner or operator of a non-tank vessel may not deviate from the approved VRP unless the FOSC determines that a deviation from the NTVRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects. In requesting a deviation from the NTVRP for Wreckhire#2, you noted that the transition to Wreckhire#2 was consensual with the express agreement on the part of Donjon/Smit, Donjon, and you, on the recommendation of your P&I Club. The mere consent of the parties to Wreckhire#2 does not provide sufficient justification for a deviation from the NTVRP.

Additionally, your justification noted the change in resource providers had little to no impact on the continuity of operations. You made claims, such as: "one of the partners...maintained its role in leading the response effort;" "no change to the scope of work... save that obligations...were added;" "majority of personnel...remained unchanged;" "equipment on site remained unchanged," and; "delivery of the services were uninterrupted." I agree there is wide consensus we have seen no change in capability or delays based on the change from "Wreckhire#1" to "Wreckhire#2." The fact that there has been little or no change in the day-to-day operations since the transition to Wreckhire #2 supports my finding that this deviation was not warranted as this change did not substantially change operations to make the response more expeditious, effective or environmentally safer.

16450
01 December 2019

Because your justification does not support a finding that the transition to Wreckhire 2 was necessary to provide for more expeditious or effective response to the spill or mitigation of its environmental effects, I disapprove "Wreckhire#2" as a deviation to the NTVRP. This determination is effective immediately and you shall take action to comply with your approved NTVRP no later than December 7, 2019.

Condition 2

Thank you for supplying Donjon/Smit's proposal for wreck removal and supporting documentation, which I am reviewing with the support of the US Navy Supervisor of Salvage and Diving (SUPSALV) and the USCG Marine Safety Center (MSC).

Condition 3

Thank you for providing a copy of the Invitation to Tender issued November 18, 2019. During the projected review period of December 9-13, 2019, I intend to coordinate with SUPSALV and MSC for assistance with the technical review of proposals. Please understand, this review does not constitute an endorsement of any resource provider other than the one listed in your approved NTVRP. If you choose to employ an alternate resource provider in the future, a written request and justification for deviation from your NTVRP must be submitted to the FOSC for consideration. You may not proceed with the use of an alternate resource provider until you have received written approval from the FOSC to do so.

Condition 4

Thank you for the statement detailing the roles and responsibilities of the parties acting on your behalf. Per your input and the approved NTVRP, I agree Gallagher Marine Systems, as Qualified Individual, is most appropriate as the Owners' Representative within the Unified Command (UC). I also agree the other parties provide important contributions to the overall success of the response. I request your representatives continue to work with the UC in reaching a resolution to this response.

If you desire to appeal my decision you may do so in accordance with 33 CFR § 155.5075. You may submit a petition for reconsideration to the Commandant (CG-MER), Attn: Marine Environmental Response, U.S. Coast Guard Stop 7516, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7516 or vrp@uscg.mil within 7 days from the date of receipt of this determination.

Sincerely,



N. C. Witt
Commander, U.S. Coast Guard
Federal On-Scene Coordinator

Acknowledgement: (Name) _____ Date: _____

Signature: (Name) _____ Date: _____

Exhibit 6

GOLDEN WRECK REMOVAL PROJECT



Photo taken by Kevin Tate/ GSC

PROJECT NAME:	M.V. GOLDEN RAY
DATE OF ITT:	18 NOVEMBER 2019
DATE OF DOCUMENT:	17 NOVEMBER 2019
GSC PROJECT NUMBER:	GSC_GR_2019



INVITATION TO TENDER

TABLE OF CONTENTS

<u>1</u>	<u>GENERAL</u>	<u>4</u>
1.1	PARTIES INVOLVED	4
1.2	NARRATIVE	4
<u>1.3</u>	<u>PRINCIPAL INFORMATION</u>	<u>6</u>
1.4	SCOPE OF INVITATION TO TENDER	7
1.5	RELIANCE ON INFORMATION PROVIDED	7
<u>2</u>	<u>SCOPE OF CONTRACT</u>	<u>7</u>
<u>3</u>	<u>TENDER DELIVERABLES</u>	<u>8</u>
3.1	METHOD OF WORK	8
3.2	SCHEDULE OF PERSONNEL CRAFT AND EQUIPMENT	10
3.3	BASELINE PROJECT SCHEDULE	10
3.4	PROJECT RISK REGISTER	11
3.5	COST	12
3.6	TYPE OF CONTRACT	12
<u>4</u>	<u>TENDER TIME LINES</u>	<u>13</u>
<u>5</u>	<u>COST AND ACCEPTANCE</u>	<u>13</u>
<u>6</u>	<u>WRECK DETAILS</u>	<u>14</u>
6.1	POSITION	14
6.2	CURRENT CONDITION	14
<u>7</u>	<u>CARGO</u>	<u>15</u>
<u>8</u>	<u>MEDIA CONTACTS</u>	<u>16</u>
<u>9</u>	<u>APPENDICES</u>	<u>16</u>



INVITATION TO TENDER

CONFIDENTIALITY:

This report is confidential. It is written for the benefit of the addressee but solely for the purpose of assisting in the purpose of the issues with which it deals. It is to be used for that limited and confidential purpose alone. In the event of unauthorised release, it and all records or copies of it are to be returned immediately. No reproduction, nor repetition, nor disclosure, of any conclusion in it, nor of any information drawn from it, in whatever form, for any purpose than that, is permitted without the specific written permission of GLOBAL SALVAGE CONSULTANCY.



INVITATION TO TENDER

1 GENERAL

1.1 PARTIES INVOLVED

On behalf of the Owner HYUNDAI GLOVIS (Owners) together with their P&I Club, The North of England P&I Association Limited, you are hereby invited to tender for the removal and disposal of the GOLDEN RAY ('the wreck') and her cargo from her present position 31° 07'68N and 081° 24.23W, off Brunswick, GA, USA.

On behalf of Owners and their P&I Club, Global Salvage Consultancy (GSC), Global Marine Solutions and CL Risk Solutions are acting as leading ITT management team.

1.2 NARRATIVE

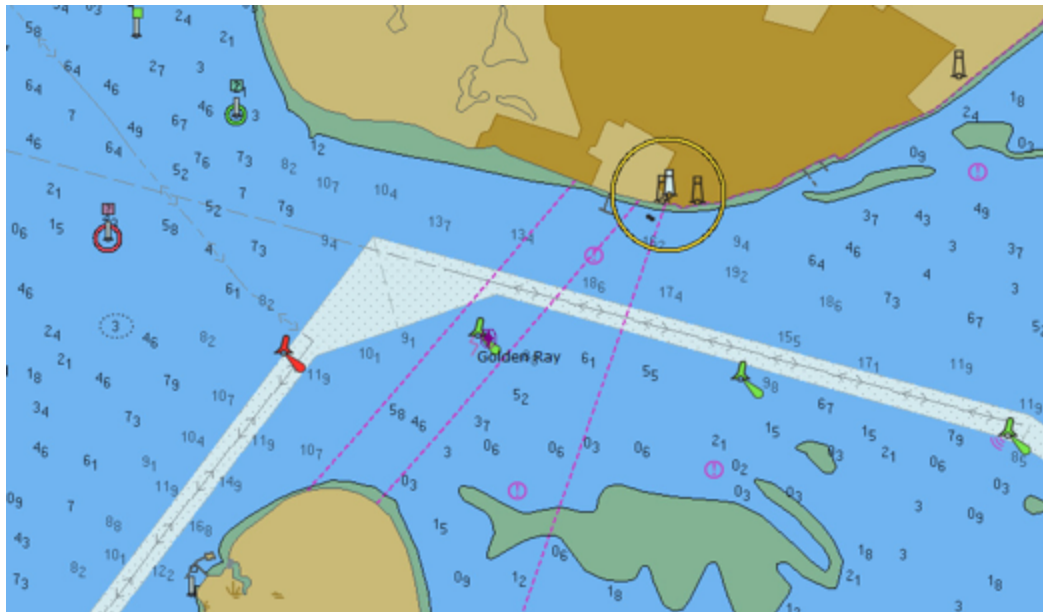
Whilst outbound, transiting the Saint Simon's channel, the entrance channel to the Brunswick port in Georgia, USA, the Vessel encountered problems and commenced listing to her portside. The incident occurred during the early hours, at around 01:45 hours LT on the 8th of September 2019. The reported initial list was about 80 to 85 degrees to portside. The Vessel subsequently grounded in position 31° 07.68 N 081° 24.23 W and caught fire in her cargo decks.

Owners, under their OPA 90 pre-arrangements signed, shortly after the incident occurred, a Lloyds Open Form salvage agreement. Salvors mobilized a vast amount of resources, including tugs and barges to commence with the removal of the bulk of the pollutants remaining inside the Vessel.

In addition, engineering works commenced with the aim to determine whether the Vessel could be parbuckled in one piece and subsequently be transported to a repair facility. These calculations showed however that this option was no longer feasible, certainly when taking into consideration that the list continued to increase to portside due to an ongoing scouring process, commencement of deformation of the top side decks and the removal of the bunkers. Owners and the Property Underwriters thereafter consented that there was no further prospect to salvage the Vessel and declared her a Constructive Total Loss.

The draught of the vessel at the time of grounding was approximately 9.4m forward and 9.45m aft.

INVITATION TO TENDER



GOLDEN RAY LOCATION

The wreck's heading is 147°.

The wreck currently has a list of close to 100°. Shortly after the incident the list was around 087°. During the initial weeks stakeholders have been challenged with scouring in the immediate surroundings of the wreck. This to the extent that it was decided to deposit 6000MT smaller aggregates to further protect the area from scour.

The wreck still contains 4122 vehicles with a combined weight of approximately 8950MT. There have been several fires after the incident occurred in the cargo decks. All vehicles contain a small minor quantity of fuel and other contamination i.e. batteries, etc.

A contractor has been engaged by the Owners to remove all accessible and pumpable oils from the wreck. This operation is currently ongoing and a detailed report will be made available once completed. Although the wreck will be sanitised in the coming period it should be anticipated that inaccessible and un-pumpable hydrocarbons and other pollutants may remain inside.

The wreck is located close to the sole navigation channel for access to and from the port of Brunswick and the car marine terminal. The area is subject to seasonal hurricanes which may temporarily halt the wreck removal works. High winds may occur throughout the year but are prevalent during the winter and early spring.

The structural integrity of the wreck has been compromised since the beginning of the incident. All cargo decks and engine room are tidal. There are no reports available of sediment accumulation, however it is likely to assume that this is taking place.



INVITATION TO TENDER

Tidal currents around the wreck have caused significant scouring underneath the bow and stern. The scouring has resulted in increased deformation and corresponding high stresses in the structure of the wreck. The list measured on the wreck has slowly increased close to 100° to port as of today.

The bidder will be required to dispose of the wreck sections and her cargo, debris and any other appurtenances recovered in a manner compliant with all of the applicable rules and regulations, including import fees, taxes, levies, permits, etc. A disposal plan should be included as part of the bidder's method of work. The bidder is requested to provide details on who is responsible for the transport and explain the reasoning behind selection of the location where the recovered wreck sections, debris, cargo, pollutants etc. will be landed ashore and processed. The bidder is also requested to name the subcontractor responsible for the disposal and provide details of the final disposal. In case of interest, Owners can provide contact details of a local company who may have suitable land available.

1.3 PRINCIPAL INFORMATION

Name	GOLDEN RAY
Homeport	Majuro
Type	Ro-Ro / Vehicle Carrier
Flag	Marshall Islands
IMO Number	9775816
Year Built	2017
Length over all	199.95m
Length between perpendiculars	188.70m
Breadth	35.40m
Depth	21.14m
Draft	10.60m
Deadweight tonnage	20,995.0
Gross tonnage	71,178
Net tonnage	25,380
Lightship weight	21,433MT



INVITATION TO TENDER

1.4 SCOPE OF INVITATION TO TENDER

This ITT covers the complete removal and disposal of the wreck of M.V. GOLDEN RAY all / any residual hydrocarbons, its cargo and any identified / resulting debris field from its current location, including the scour protection installed under and besides the wreck.

Contract negotiations will be governed by a risk based contracting process to allow shortlisted bidders to refine their work method on the basis of an open risk dialogue and to determine how the parties effectively mitigate, transfer or share the risks. This process will be used to establish a reasonable reimbursement.

1.5 RELIANCE ON INFORMATION PROVIDED

Any information (including diagrams and drawings) as to the condition and circumstances of the wreck in this ITT or previous communications is provided solely for guidance purposes. No reliance can be made on any representation, statement or information that may have been supplied by GOLDEN RAY interests. No warranty is given by Owners in relation to the characteristics, condition or situation of the wreck.

2 SCOPE OF CONTRACT

The scope of the contract is as follows:

- A. The complete removal and disposal of the wreck and her cargo from its current location including but not limited to any debris, stores, all appurtenances and equipment, from the wreck location and, without limitation, any other material relating to or emanating from the wreck, or otherwise which the Owners' or their P&I Club and any other relevant insurers may reasonably require, or as otherwise ordered by the relevant local authorities.
- B. Complete removal and disposal handling of the cargo from the wreck including but not limited to any cargo debris or spillage that may have arisen from handling the cargo during and demolition works on site.
 - i. *Detailed separate plans should be provided for the cargo- & wreck disposal operations, which should state the proposed method / port / location of scrap disposal.*
- C. Obtaining the approval and permits from all the relevant authorities for the entire process of the works and its completion.



INVITATION TO TENDER

- D. Communication, with and to all relevant governmental authorities and other stakeholders as required.
- E. The proposed method of disposal of any recovered pollutants shall be mentioned in the proposal. Approval of relevant authorities shall include but not be limited to customs bonds, duties and arrangements, waste disposal notes and any other operational permits.
- F. Preventing any pollution from the wreck, its cargo, any marine spreads deployed and any wastes associated with the operation during the works.
- G. Once the wreck has been removed a debris removal operation must be conducted. The exact area for a post-removal survey and the subsequent debris removal will need to be agreed by the parties. A survey will be required to be conducted on and around the area of the wreck in order to locate debris and to remove any debris found on the seabed.
- H. In case that an environmental protection barrier is in place it will be required to be removed as part of the remediation works.

3 TENDER DELIVERABLES

Each bidder should submit a brief company history that is focused on relevant projects involving offshore demolition and subsea lifts, past experience in USA and past experience with intended subcontractors.

Please do not to send your entire company history or recount all of the projects you have completed in the past.

The preferred bidder will be required to have competent HSE policies, a Site Safety Plan and Risk Management policies etc.

The bidder is requested not to include this type of information in their pre-contract submissions, but to provide same information if requested by Owners and/or their consultants.

3.1 METHOD OF WORK

Bidders should provide a detailed technical method statement for the different works setting out their proposed method for the selected scope of contract.



INVITATION TO TENDER

It is anticipated that the removal of the wreck can be achieved through the utilization of large section demolition as opposed to small section demolition. Large section demolition is the preferred option and will be given high priority in selection of the contractor.

The complete removal of the wreck, landing of the wreck pieces and cargo ashore and remediation works of the wreck site.

Receipt of the wreck pieces and cargo at the shore site and safe and proper disposal of it, in accordance with any relevant State and/or Federal legislation and/or vehicle manufacturers' requirements.

Owners have the right to appoint a representative on-site to attend and monitor the progress of the removal works at all times. The successful contractor will allow reasonable access to the site to the Owners' representative and the relevant authorities.

The method statement should afford due consideration to the following:

- The primary method of works including detailed plans, drawings and supporting calculations;
- Proposals for residual bunker, contaminated water, cargo and/or wreck disposal in a legal, safe and environmentally friendly manner;
- Contingency planning through each phase of the residual bunker, cargo and wreck removal operations;
- Management of the operation with an organizational chart identifying the positions & responsibilities of all key personnel;
- Liaison with, and reporting to, the competent maritime authority and any other stakeholders throughout the operation, whenever required, and with strict adherence in accordance with any relevant legislation;
- Health & safety measures proposed throughout this particular project wreck removal operation;
- Site preparations;
- Debris recovery;
- Transport & disposal operations. Please bear in mind that the USA Jones Act is in force. Please find further details in the appendix folder of this document;
- Final survey of worksite;
- Drawings should be included as necessary to explain the operations. Engineering calculations should be included only where necessary to prove the concept;
- To obtain all the relevant permits and permissions from relevant authorities; and
- To communicate with and report to the authorities as required.



INVITATION TO TENDER

3.2 SCHEDULE OF PERSONNEL CRAFT AND EQUIPMENT

The bidder is requested to provide a list of all personnel, craft and equipment that will be required to complete the services. Where third party assets are to be sub-contracted these should be named explicitly along with an indication of availability of said assets for the duration of the required operations.

3.3 BASELINE PROJECT SCHEDULE

Bidders shall provide an estimated timeline for the project identifying all phases of the operations. The timeline should quantify realistic durations for each task based on normal operational conditions. Normal *workability uncertainty* ranges (mean/min/max durations) should then be assigned to each task as appropriate.

Furthermore, bidders shall clearly identify which tasks, activities and operations could be safely executed during hours of darkness. Hence, a clear overview of daylight only and 24 hours operations should be shown in the schedule.

The schedule shall include, but not necessarily be limited to, the following:

- Design / fabrication / transport and other preparation activities;
- Mob. / demob. of all assets and equipment;
- Obtaining licenses, permits etc. from the competent authorities;
- Customs and immigration clearance;
- Site preparation;
- Wreck removal & transfer operations;
- Transport & disposal operations;

Workability uncertainties for environmental conditions should be based on historic wind and sea data for the Worksite and any relevant supporting documents.

The timeline may be developed in MS Project, Primavera or Asta Powerproject software, based on the expected normal workability per activity (mean) with additional columns for minimum (min/p05) and maximum (max/p95) durations if an uncertainty is applicable.

Bidders shall include their estimated timeline (baseline project schedule) in PDF format.



INVITATION TO TENDER

3.4 PROJECT RISK REGISTER

Bidders shall identify and assess the project risks and opportunities which may impact the feasibility of the proposed method of work, timeline and costs. This risk assessment is not expected to be a fully developed project risk profile but should reflect all of the key threats and opportunities.

The risk register replaces the traditional clarification matrix which means that all technical and commercial concerns the bidder wishes to address must be reported in an online risk register format and assessed for:

- Quantification of initial risk levels (unmanaged risk) for probability and for applicable direct cost (not time-phased cost), time, health, safety, environment, security, quality and reputation effects;
- Risk control strategies (acceptance, self-control or an alternative vision on risk mitigation);
- Risk control measures (actions);
- Quantification of residual risk levels (managed risk following implementation of identified risk control measures) for probability and for applicable direct cost (not time-phased cost), time, health, safety, environment, security, quality and reputation effects:
 - Be objective when scoring your residual risk scores;
 - Refer to your baseline project schedule;
 - Refer to your risk control measures - a risk is most frequently reduced and not completely avoided or eliminated.
- Risk allocations: status;
- Risk owners: Indicate the desirable contractual risk owner of a risk based on the question: "Who is in the best position to manage the risk?" (the Bidder, Owners or to-be-agreed);
- Risk areas addressed in the risk assessment should include, but not limited to:
 - Cargo removal
 - Customs & immigration
 - Debris removal & site clearance
 - Environmental conditions & workability
 - Insurance
 - Licenses & permits
 - Local partners
 - Local stakeholders
 - Oil removal
 - Outfitting & mobilization
 - Project management
 - Taxes & duties
 - Wreck/cargo removal – preparations, execution, transfers & disposal



INVITATION TO TENDER

The risk assessment shall be developed in the web application XpoSure.

Login credentials and user instruction will be provided to bidders within 2-3 working days after confirmation of receipt of this tender.

A Starter Kit Risk Register and XpoSure Getting Started documentation are provided with a variety of 'starter risks' some of which have been carried over from experiences during oil removal operations. Causes and effects have been included for these risks. Individual bidders are left to refine these inputs, to devise Initial risk levels (unmanaged), mitigation strategies and control measures for these risks and to score the residual (managed) risk levels.

The Starter Kit Risk Register can be found in the appendix-folder linked to this document.

Bidders are then encouraged to identify, assess and continuously update their own perceived risks as an ongoing process throughout all the stages of this tender.

3.5 COST

The bidder shall provide lump sum budgets clearly stating whether the budgets are for PHASE 1 only, PHASE 2 only or PHASES 1 and 2 combined, including but not limited to:

- Work permits, licenses and any other approvals required by the competent authorities;
- All transportation, lodging, victualling of personnel;
- Customs and immigration costs;
- Legal costs;
- Insurance;
- Port and pilotage fees;
- Fees & taxes;
- Vessel spreads (bearing in mind the Jones Act might be applicable);
- Daily out of pocket and other incidental expenses;
- Credit for the value of the scrap;
- Disposal costs.

3.6 TYPE OF CONTRACT

Any agreement between the successful bidder and Owners will be based on a suitably amended BIMCO International Wreck Removal Agreement. BIMCO WRECKSTAGE 2010 will be the preferred form of contract. English law and jurisdiction will apply in all cases.



INVITATION TO TENDER

4 TENDER TIME LINES

Submissions of the ITT should be received latest Sunday, 8 December 2019, before 24:00, USA Eastern Standard Time (UTC -5h), in soft copy (PDF) only to cdj@salvageconsultancy.com.

The anticipated timeline for this ITT process is as follows:

Tender issue date	18 th of November 2019
Tender due date	08 th of December 2019
Tender evaluation completed and shortlist	13 th of December 2019
Tender clarification meetings	15 th December 2019
Tender award	22 nd December 2019

5 COST AND ACCEPTANCE

Bidders are kindly requested to make their commercial proposal on an all-inclusive basis in United States Dollars.

Owners and any other relevant insurers do not have any obligation to accept the lowest bid and the Owner and their underwriters has full discretion to accept or reject any of the proposals. Any response to this ITT shall not create any legal relationship.

Any enquiries during the tender period should be made in writing to Owners' Representatives using the following email address cdj@salvageconsultancy.com.

Any communications addressing material changes to or clarification of the ITT will be circulated to all Bidders / parties without revealing the source of the enquiry.

The tender should be in the English language.

Any and all costs and time for tender preparation, including but not limited to inspection of the site, review of wreck and pollutants, development of removal plan, drafting of the tender



INVITATION TO TENDER

document, shall be borne by the Bidder. Owners / their P&I Club do not have any obligation to pay for such cost and time, whether or not your tender is successful.

The contents of this invitation to tender and information submitted shall be confidential between Owner, Bidder and their legal representatives.

No warranty is given by Owners in relation to the characteristics, condition or situation of the wreck.

6 WRECK DETAILS

6.1 POSITION

On the early morning of the 8th September 2019 at approximately 01h45LT the Vessel, GOLDEN RAY capsized to 80/85 degrees to PS, grounded and later caught fire in position 31° 07.68N 081° 24.23W at the entrance of the St. Simons Sound, Brunswick, Georgia, United States.

The wreck is located close to the sole navigational channel leading to the car marine terminal of Brunswick. The area is subject to seasonal hurricanes which may temporarily halt the

salvage works. High winds may occur throughout the year, but are prevalent during the winter and early spring.

The position of the wreck is in a very sensitive area in terms of wildlife, residential communities, wetlands and tourism. Due care should be given to these sensitivities. Prospective contractors are expected to address how they will deal with these sensitivities.

6.2 CURRENT CONDITION

The structural integrity of the wreck has been compromised since the beginning of the incident. All cargo decks and engine room are tidal. There are no reports available of sediment accumulation.

A contractor has been engaged by the Owners to remove all accessible and pumpable hydrocarbons and other pollutants from the wreck. Currently sanitizing operations are ongoing in order to clean the wreck as much as possible from any hydrocarbons. A detailed



INVITATION TO TENDER

report will be made available in due course. However, as always, it should be assumed that inaccessible and un-pumpable hydrocarbons and other pollutants may remain in the wreck.

An overview of the pumped quantities and amounts currently remaining on board can be found in appendix folder linked to this document.

The current list of the wreck is 100° to her portside. This list is primarily due to internal structure failing and not the total rotation of the wreck itself.

Tidal conditions, along with channel flow, riverbed scouring is occurring underneath the bow and stern of the wreck. The expanding void poses a threat of additional structural damage to the vessel.

Therefore, it was decided that the emergency response contractor install a 6000MT, 1.5ft thick layer of 1-3" stone on the already scoured areas, to prevent further scouring. The measures appear to have been successful.

There is damage at the upper decks on the portside and the submerged portside vents have made all of the car(go) decks tidal. There is an exchange of the internal water with each change of tide.

Over a period of time the structural integrity of the wreck may deteriorate.

Details of the current condition, scour protection measures and pumped quantities of hydrocarbons can be found in the appendix-folder linked to this document.

7 CARGO

Within the wreck are 4122 vehicles with an approximate combined weight of 8950MT. There have been several fires, after the incident occurred, mainly in the cargo decks. All vehicles contain a limited quantity of fuel and other contaminants such as, but not limited to, batteries, etc.

It is expected that all cargo is or will be declared a total loss and require complete removal and disposal, including but not limited to any cargo debris or spillage that may arise from handling of the cargo during removal and demolition works on site. This will be part of the contract. Further information/confirmation regarding the cargo disposal will be made available as soon as received.

Details of the cargo can be found in the appendix-folder linked to this document.



INVITATION TO TENDER

8 MEDIA CONTACTS

Bidders, should not have any contact with the media at any time prior, during or after tender period regarding the wreck removal operations.

9 APPENDICES

Please use below link to find and download all relevant appendices to this document.

Link: <https://marinesolutions.sharefile.eu/d-sa69e9d154634077a>

In case bidders have a need for additional information this can be requested by sending us an email to cdj@salvageconsultancy.com

-0-0-0-0-

Exhibit 7

HYUNDAI GLOVIS

From: Hyundai Glovis Co. Ltd

To: N.C. Witt, Commander, U.S. Coast Guard

Re: Request for Approval for Deviation from NTVRP

Date: 19 December 2019

Dear Sir,

GL NV24 Shipping Inc. ("Owners"), registered owner of the M.V. GOLDEN RAY, request approval for deviation from their Non-Tank Vessel Response Plan ("NTVRP") pursuant to 33 C.F.R. §§ 155.4032 and 155.5012. As set forth in detail below, this deviation will result in a wreck removal operation that is more expeditious, efficient, and effective at removing the vessel and mitigating environmental impacts, and thus would best affect a more successful response.

BACKGROUND

The approved NTVRP for the GOLDEN RAY designates Donjon-Smit, LLC ("DJS") as the primary salvage and marine firefighting resource provider for the vessel. Upon the occurrence of the casualty, DJS was activated and mobilized to the site to begin emergency response, pollution containment and removal, and vessel stabilization efforts. Pursuant to the NTVRP, DJS' response was initially governed by a Lloyd's Open Form Salvage Agreement (2011). The response was thereafter transitioned to a Bimco Wreckhire 2010 contract ("Wreckhire #1") dated 16 October 2019. Following a series of discussions and receipt of DJS' 5 November 2019 Wreck Removal Method Statement (the "Method Statement"), however, it became clear that Owners and DJS had a serious philosophical difference as to the proper methodology for conducting the removal of the GOLDEN RAY.

As a result of these philosophical differences, Owners entered into a Transitional Agreement dated 9 November 2019 with DJS and Donjon Marine Co., Inc. ("Donjon"), pursuant to which Wreckhire #1 was terminated and Wreckhire #2 was seamlessly entered into with Donjon. Donjon thus assumed the full range of services provided for in Wreckhire #1. The transition from DJS (Wreckhire #1) to Donjon (Wreckhire #2) was made with DJS' express consent, as evidenced by the 9 November 2019 Transitional Agreement signed by DJS.

PREFERRED WRECK REMOVAL METHODOLOGY

Owners contracted with wreck removal experts Global Salvage Consultancy ("GSC") to perform a detailed analysis of the GOLDEN RAY and surrounding marine environment and determine the safest, most environmentally conscious and efficient wreck removal procedure. In its 28-page report dated 26 November 2019, a copy of which was previously provided to the

Unified Command, GSC explained its analysis and concluded that the wreck removal should be performed using Large Section Demolition techniques on a 24-hour per day, 7-day per week schedule after the construction of an environmental protection barrier ("EPB") around the wreck worksite to prevent environmental contamination. GSC's conclusions rest in large part on the self-evident propositions that erection of an EPB prior to initiation of cutting operations presents the best chance of mitigating the escape of pollutants from the vessel during the cutting and removal operation, and Large Section Demolition is the most efficient and expedient means of removal.

Environmental Protection Barrier

As set forth in GSC's report, erection of an EPB, whether fixed or flexible, will result in a higher success rate for preventing the release of small debris including plastics, larger debris including cars, and oil and acid pollutants, than would occur in the absence of an EPB. Environmental considerations are of particular import where, as here, the wreck is located in an environmentally sensitive area. As explained by GSC, a high value should therefore be placed on erecting an EPB prior to the start of the cutting operation.

Large Section Demolition

The GSC report further concluded that Large Section Demolition, as opposed to Small Section Demolition, will result in a shorter and more efficient wreck removal process. Large Section Demolition involves cutting larger sections of the wreck, which requires a larger, more capable heavy lift asset. By cutting larger sections, fewer time consuming and pollution-threatening cuts are required for the wreck removal, which means the operation will proceed in a significantly faster and more efficient manner. Reducing the duration of the wreck removal project in this efficient manner has several benefits, including reduction of:

- The environment's exposure to risk of contamination;
- The wreck's exposure to environmental conditions;
- Commercial and recreational vessel impact from the obstruction to navigation;
- Exposure of local residents and tourists to the visual obstruction of the wreck and the removal equipment;
- Wreck removal worker exposure to work-related injury; and
- Federal, state, and local government monitoring efforts and expenses.

Unlike Large Section Demolition, Small Section Demolition will take longer and increase the risks and exposures identified in the above bullet points. With more "cuts" come more opportunities for accident, injury, and contamination. Thus, as explained in GSC's report, the Large Section Demolition process is preferable to Small Section Demolition.

DJS' METHODOLOGY

DJS was provided two opportunities to propose its approach to this wreck removal project. Both times, DJS submitted a wreck removal plan that did not include complete Large Section Demolition. Instead, DJS proposed to perform Small Section Demolition and for Owners to separately contract for the erection of an EPB with a third-party. Moreover, under DJS' Small Section Demolition timeline, complete removal of the wreck would not be expected to occur until a P-90 date of 7 October 2020.¹ As a result, the wreck would be exposed during the majority of the 2020 hurricane season. Making matters worse, once the cutting operation commences the vessel will further lose hull integrity and ground reaction will be reduced by the lightening load, meaning the wreck will be more susceptible to damage and deterioration due to the forces of nature during that portion of the hurricane season. Simply stated, the DJS proposal fails to satisfy the concerns of the wreck removal experts and would result in a noisy, prolonged, inefficient and less environmentally responsible wreck removal operation. Finally, the timeline produced by DJS was calculated using a 'yield' rate of 12.5mt per hour utilizing 2 spreads of 6.25mt/hour. GSC opined that the 12.5mt yield rate was unachievable due to the nature of the wreck, therefore prolonging the anticipated timeline beyond the end of the hurricane season and further into the winter. It should be noted there was a disagreement between GSC and DJS as to the achievable yield rates.

T&T'S METHODOLOGY

During the open tender process, T&T Salvage ("T&T") submitted a proposal for the removal of the GOLDEN RAY. T&T's methodology is consistent with GSC's recommendations for an efficient and successful operation. T&T's wreck removal proposal calls for erection of a flexible EPB prior to the start of the cutting operation and use of Large Section Demolition. T&T's plan calls for the use of a heavy lift asset with significantly greater lifting capacity than that offered by DJS. As a result, under T&T's proposal the wreck operation will require only seven (7) cuts as opposed to the myriad cuts required under DJS' methodology. Because of the reduced number of cuts, T&T's method is expected to result in the wreck being removed in its entirety by a P-90 date of 6 June 2020, *i.e.*, the first week of the 2020 hurricane season and a full fourmonths before the wreck would be expected to be removed under the DJS proposal. Moreover, noise concerns associated with the wreck removal operation are mitigated under T&T's proposal due to the significant reduction in cutting days (each cut is expected to take only 24-48 hours).

During the process of vetting and validating the various methodologies, a potential issue was raised with respect to whether the wreck's hull is structurally sound enough to support Large Section Demolition. While T&T remains confident that Large Section Demolition is achievable throughout the wreck (and certainly for the bow and stern sections), in the event

¹ P90 refers to the 90% probability.

circumstances require a shift to Small Section Demolition, T&T are ready, willing and able to adapt their methodology to accomplish a safe wreck removal operation.

REGULATIONS

The NTVRP regulations are found in 33 C.F.R. § 155.5010 *et seq.* and require owners of non-tank vessels to develop spill response plans and identify the necessary resources to respond to worst case discharge or substantial threat of such a discharge. 33 C.F.R. § 155.5010. Among the requirements for certain non-tank vessels is the obligation to have a Vessel Response Plan which meets the requirements for salvage and marine firefighting. The SMFF regulations are found in 33 C.F.R. § 155.4010 *et seq.* Both the NTVRP and SMFF regulations require, *in the absence of an approved deviation request*, the owner of a non-tank vessel to utilize the resource provider listed in the NTVRP to perform salvage services. 33 C.F.R. § 155.5012; 33 C.F.R. § 155.4032. Owners respectfully submit that the criteria for approval of a deviation request under both the NTVRP and SMFF regulations are satisfied in this case.

NTVRP Deviation Standard

A deviation from the listed primary resource provider under the NTVRP may be issued when the "Federal On-Scene Coordinator determines that the deviation from the [NT]VRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects." 33 C.F.R. § 155.5012. In this case, T&T's wreck removal plan would be both more expeditious and more effective than DJS' wreck removal plan. As noted above, T&T's methodology will result in the wreck being removed by a P-90 date of 6 June 2020, whereas DJS' methodology will result in the wreck being removed by 7 October 2020 or later in view of the doubt as to yield rates. By removing the wreck a full four (4) months earlier than DJS, T&T will eliminate the exposure of the compromised wreck for the majority of the 2020 hurricane season. This is significant, as once the cutting operation begins (i) the stability and integrity of the wreck will be further compromised and (ii) the wreck will become lighter and thus more susceptible to movement due to wind and sea conditions. Movement of the vessel during the cutting operation could lead to catastrophic results, such as the wreck breaking apart and dumping its load of damaged vehicles. Moreover, by virtue of its plan to construct an EPB prior to the commencement of cutting operations and complete the removal at the start of the hurricane season, T&T's plan provides greater mitigation of environmental effects of the wreck removal operation.

In sum, by virtue of its expedited timeline for completion and erection of an EPB prior to the commencement of cutting operations, the T&T methodology provides for a more expeditious *and* effective response *and* mitigates the environmental effects. A deviation from the NTVRP pursuant to 33 C.F.R. § 155.5012 is therefore warranted.

SMFF Deviation Standard

A deviation from the listed primary resource provider under the SMFF should be granted where, as here, exceptional circumstances exist and an alternate resource provider “would best affect a more successful response.” 33 C.F.R. § 155.4032. As noted above, a side-by-side comparison of the DJS and T&T wreck removal methodologies demonstrates that T&T’s methodology would result in a more successful response.

Criteria	T&T Methodology	DJS Methodology
Environmental Barrier Prior to Cutting	Yes	No
Type of Demolition	Large Section	Small Section
P-90 Timeline for Completion	6 June 2020	7 October 2020 ²
Wreck Exposed to 2020 hurricane Season	No, although wreck removal could carry into the first month of hurricane season.	Yes, the wreck will be exposed for over half of the 2020 hurricane season.

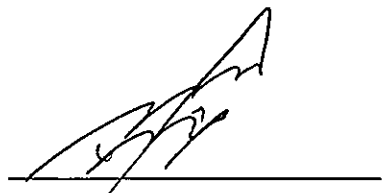
The fact that the listed primary resource provider, DJS, proposes a Small Section Demolition method of cutting presents exceptional circumstances, as doing so would create an unreasonable and unnecessary level of risk to the project and the surrounding marine environment. T&T’s methodology, as confirmed by Owners’ independent wreck removal consultants, significantly increases the likelihood that the wreck will be removed quickly, efficiently, and with a minimum impact on the surrounding marine environment. Accordingly, a deviation from the listed primary resource provider is warranted under 33 C.F.R. § 155.4032.

For the reasons stated above, Owners respectfully request a deviation from the NTVRP in accordance with 33 C.F.R. §§ 155.4032 and/or 155.5012 to employ T&T and its wreck removal plan. Please let us know if you have any questions or if you need any additional information.

Yours faithfully

Hyundai Glovis Co. Ltd

For and on behalf of GL NV24 Shipping Inc, registered owner of M.V. GOLDEN RAY



² The 7 October 2020 completion date is based on DJS’ projected yield rate, which as noted above is in question.

Exhibit 8

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
United States Coast Guard
Marine Safety Unit Savannah

Juliette G. Low Federal Bldg.
100 W. Oglethorpe Ave., Ste. 1017
Savannah, GA 31401
Phone: (912) 652-4353
Fax: (912) 652-4180

16465
21 Dec 2019

MEMORANDUM

AC Witt
From: N.C. Witt, CDR
CG MSU Savannah

To: File

Subj: DECISION MEMO – ANALYSIS OF THE FOSC'S APPROVAL OF THE OWNER'S
REQUEST TO USE ANOTHER RESOURCE PROVIDER

1. BLUE. On 20 December 2019, the Owner requested authorization to use another resource provider, T&T Salvage (T&T), to conduct salvage operations. T&T's salvage plan utilizes Large Section Demolition (LSD) with an Environmental Protection Barrier (EPB). The Owner claims that T&T's plan will be faster and cleaner than Small Section Demolition (SSD), which DonJon-SMIT (DJS) had proposed. The FOSC has reviewed the deviation request and determined the Owner's justifications are well-founded. The FOSC will approve the Owner's request under 33 CFR § 155.4032 as doing so would affect a more successful response.

2. CURRENT INCIDENT STATUS. The M/V GOLDEN RAY ran aground on 8 September 2019. When the vessel grounded, it was carrying a total of approximately 380k gallons of oil. Oil and hazardous materials that were safely accessible have been removed from the vessel. However, approximately 44k gallons of oil remain on board, or are otherwise unaccounted for.

A substantial threat of pollution remains as petroleum products and hazardous substances are still on board the vessel. Those products and substances will be removed during salvage operations because doing so beforehand is not feasible due to limited accessibility and concerns with compromising the vessel's structural integrity. The Owner is finalizing plans for the construction of an EPB in anticipation of salvage operations. The Owner has not yet filed a permit application for either the EPB or salvage operations.

3. BACKGROUND. M/V GOLDEN RAY's Non-Tank Vessel Response Plan (NTVRP) is a contract between the technical managers, G-Marine, the resource provider, DonJon-Smit (DJS), and the Qualified Individual (QI), Gallagher Marine Systems, Inc (GMS). DJS is responsible to react and provide for all salvage, firefighting, and lightering safety services for a contract fleet of vessels, including the M/V GOLDEN RAY. GMS works with both G-Marine and the bareboat charterer, Hyundai Glovis (Owner), to assist in any issues with the contracted fleet of vessels. The NTVRP contract renews automatically if not terminated with two months' notice by the parties.

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465
21 Dec 2019

When the vessel was deemed a constructive total loss on 12 October 2019, DJS was given the exclusive opportunity and 21-days to provide a salvage plan to the Owner’s representative and insurance provider, North of England P&I (North) for review and approval. The 21-day period ended on 6 November 2019 with the Owner ultimately rejecting DJS’ plan. On 18 November 2019, North sent a Scope of Work solicitation for the wreck removal to nine companies, including the resource provider listed in the NTVRP; six of those companies provided bids, including DJS.

On 20 December, after reviewing the bids, the Owner submitted a request for approval to deviate from the NTVRP. The Owner’s request included a written justification for authorization to use another resource provider, T&T, to take over salvage and wreck removal efforts. This transition to a new resource provider requires authorization from the FOSC.

4. LEGAL FRAMEWORK: The Owner, with approval from the FOSC, may use a resource provider not listed in NTVRP for the purpose of salvage and marine firefighting.

- A. Salvage and Marine Firefighting (SMFF). SMFF requirements are addressed in reference (a) § 155.4010 *et seq.* The purpose of the SMFF subpart “is to establish vessel response plan salvage and marine firefighting requirements for vessels, that are carrying group I-IV oils, and that are required to by § 155.1015 and § 155.5015 to have a vessel response plan. Salvage and marine firefighting actions can save lives and property, and prevent the escalation of potential oil spills to worst case discharge scenarios.”

Salvage is defined in 33 CFR § 155.4012 as “any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.” *Special salvage operations* include the use of heavy lift and/or subsurface product removal. *Id.*

Under 33 CFR § 155.4032(a), “if another resource provider, not listed in the approved NTVRP for the specific service required, is to be contracted for a specific response, justification for the selection of that resource provider needs to be provided to, and approved by, the FOSC. Only under exceptional circumstances will the FOSC authorize deviation from the resource provider listed in the approved vessel response plan in instances where that would best affect a more successful response.”

- B. Non-Tank Vessel Response Plan (NTVRP). NTVRP requirements are addressed in 33 CFR § 155.5010 *et seq.* The purpose of the NTVRP subpart “is to establish requirements for oil spill response plans for non-tank vessels. The planning criteria in this subpart are intended for use in non-tank vessel oil spill response plan development and the identification of resources necessary to respond to a non-tank vessel’s worst case discharge or substantial threat of such a discharge....[the] planning criteria [are] based upon a set of assumptions that may not exist during an actual oil spill incident.”

A self-propelled vessel must comply with NTVRP regulations if it: (1) Carries oil of any kind as fuel for main propulsion; (2) Is not a tank vessel or is not certificated as a tank vessel; (3) Operates upon the navigable waters of the United States; and (4) Is 400 gross tons or more. 33 CFR § 155.5015.

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465

21 Dec 2019

- C. Statutory Authority for the Removal of Oil. Under 33 USC § 1321(c)(3)(b), “an owner or operator participating in oil removal efforts shall act in accordance with the National Contingency Plan and the applicable response plan...except that the owner or operator may deviate from the applicable response plan if the FOSC determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.”

5. ANALYSIS:

- A. The FOSC may consider the request to deviate from the NTVRP in accordance with 33 CFR § 155.4032. The M/V GOLDEN RAY was a self-propelled vessel required to have a NTVRP in accordance 33 CFR § 155.5015. The Owner contracted a resource provider, DJS, to fulfill the salvage and marine firefighting requirements and purpose of the NTVRP regulations. The NTVRP and the Owner’s contracted arrangement with DJS worked effectively during the initial incident response and fulfilled the primary purpose of the NTVRP regulations.

At this time, all safely accessible liquid pollutants have been removed from the vessel and the NTVRP has fulfilled its primary purpose under 33 CFR 155.5015. However, the purpose of the SMFF regulations and certain requirements of the NTVRP continue to apply. The purpose of the SMFF regulations are to establish salvage plans to prevent the escalation of a potential oil spill to a worst case discharge scenario. The SMFF regulations define salvage to include any act undertaken to assist a vessel in potential or actual danger, to prevent the release of its contents into the marine environment. 33 CFR § 155.4012. Here, the Owner is developing a salvage plan to mitigate the release of remaining oil and other hazardous materials.

In conducting salvage operations, the Owner must use a resource provider listed in the NTVRP. However, 33 CFR § 155.4032(a) allows the Owner to seek approval from the FOSC to use a resource provider not listed in the NTVRP for a specific service required. The FOSC may approve that request if the resource provider is to be contracted for a specific response, under exceptional circumstances, and when doing so would best affect a more successful response.

- B. Consideration of the Owner’s deviation request. The FOSC has reviewed the Owner’s deviation request and finds that it is for a specific response and under exceptional circumstances.
- i. Specific Service and Specific Response. The Owner’s request to use T&T is limited to this specific response and the specific service of marine firefighting and salvage of the M/V GOLDEN RAY. For this reason, the FOSC has determined this request to be in accordance with 33 CFR § 155.4032.
 - ii. Exceptional Circumstances. The M/V GOLDEN RAY is a 656 ft, roll-on/roll-off (RORO) foreign freight vessel. Since the vessel ran aground on 8 September 2019, it has come to rest on its port side with a list of approximately 100 degrees. The vessel

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465

21 Dec 2019

is in very close proximity to a navigable channel which serves as the only access route to the Port of Brunswick, the second busiest RORO port in the U.S. by tonnage. The vessel is grounded in an environmentally sensitive area which includes prime shrimping grounds and Bird Island – a significant roosting area for migratory birds. Additionally, the vessel is aground in close proximity to Saint Simons and Jekyll Islands, which are major tourist destinations for coastal Georgia. When considering the totality of the aforementioned circumstances, the FOSC has determined the M/V GOLDEN RAY casualty and salvage operations to be an exceptional circumstance in accordance with 33 CFR § 155.4032.

iii. Ensuring a more successful response. The FOSC has determined the use of T&T as another resource provider would provide for a more successful response. The FOSC has made this determination in accordance with 33 USC § 1321 (C)(3)(b); the FOSC’s review of the Owner’s justification supports a finding that a deviation would provide for a more successful response, including one that is more expeditious or effective and mitigates the casualty’s environmental effects. Detailed basis for this determination are outlined below.

6. Basis for authorization of deviation. The Owner has requested to use T&T on the basis that this resource provider is able and willing to conduct Large Scale Demolition (LSD) with the use of an EPB. The Owner’s expert engineering and salvage advisors have found LSD to be the most expeditious, effective and environmentally safe means of removing the vessel.

A. Technical review. USN SUPSALV and USCG MSC SERT have completed a preliminary review of T&T’s salvage plan. This review noted limited technical detail provided in T&T’s plan. The FOSC understands this is to be expected as the plan was submitted pursuant to a bidding process. However, sufficient detail was provided for SUPSALV and SERT to determine T&T’s plan is technically feasible.

T&T’s plan indicates further analysis will be conducted prior to operations, to include a full structural analysis of the vessel. As T&T’s plan is finessed, the FOSC intends to require detailed step-by-step wreck removal plans and analysis for each phase, to include information such as rigging components, sea fastenings, receiving barge structure/stability, tow transit, and detailed waterway impacts.

B. Expediency associated with T&T’s salvage plan. T&T’s salvage plan uses LSD and a heavy lift asset to remove the vessel by severing it into eight sections. The Owner asserts that this methodology is more expedient than Small Scale Demolition (SSD), which was proposed by DJS.

The FOSC compared operational timelines between T&T’s LSD plan and DJS’s SSD plan. The FOSC found that T&T’s plan using LSD is faster than DJS’ plan using SSD by approximately four months. An estimation of the plans’ timelines was calculated using the P&I’s risk register and assessed with 90% confidence. The timeline in T&T’s plan accounts for the placement of the EPB before any work commenced. DJS’s plan proposed to commence work without the prior placement of the EPB; if DJS were to wait

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465

21 Dec 2019

to commence work until after the construction of an EPB, DJS’ timeline would have been extended.

USN SUPSALV and USCG MSC SERT reviewed T&T’s timeline and confirmed it was reasonable given the proposed plan. Assessments by Global Salvage Consultancy (GSC) and CL Risk also support these timeline assessments. After a thorough review of T&T’s plan, the FOSC is convinced that Owner’s assertions of LSD’s expediency are well-founded, particularly in comparison to SSD.

In assessing T&T’s plan and the Owner’s request, the FOSC has prioritized the protection of the environment and integrity of the waterway. The faster timeline associated with T&T’s plan will reduce the likelihood of salvage operations being conducted throughout the 2020 hurricane season or winter storm months. The faster timeline will also avoid a prolonged impact on the unrestricted use of the navigation channel. For these reasons, the FOSC has determined the Owner’s request provides for a more successful response in accordance with 33 CFR § 155.4032 as it provides for a more expeditious response.

- C. Mitigation of environmental impacts. The Owner asserts that they prefer the LSD be performed within an EPB to maximize containment and minimize any adverse environmental impact. T&T’s plan proposes the placement of an EPB prior to commencing cutting operations. The Owner asserts that the use of an EPB provides the best containment of remaining pollutants and mitigates the effects of a potential discharge.

The FOSC is also compelled by other environmental safety and mitigation concerns. The faster timeline associated with LSD and T&T’s plan will reduce the duration of risk and impact to the environment. T&T’s plan includes the use of seven cuts of the vessel’s shell. The use of fewer cuts to the vessel will allow for faster operations and completion of salvage. Faster salvage reduces the time the environment, including marine aquatic species, is exposed to the risks and impacts of operations. T&T’s plan includes fewer cuts to the vessel, which reduces the threat of a potential discharge as fewer partitions allow some tanks to remain intact and reduce the number of cuts along existing pipelines. T&T’s quicker timeline will also reduce the duration of noise pollution and acoustic disturbances to the marine environment. The plan also anticipates the threat of light pollution by using huts to cover on-scene lighting. For these reasons, the FOSC has determined the Owner’s request provides for a more successful response in accordance with 33 CFR § 155.4032 as it mitigates the casualty’s environmental effects.

- D. Consistency of Owner’s position and DJS’ inability or unwillingness to meet the Owner’s demands. Since the Owner began considering salvage operations, the Owner maintained the position that LSD and the use of an EPB, which should be constructed before operations commence, is the preferred methodology for salvage operations.

Throughout contractual negotiations and technical discussions, DJS maintained a position that SSD was preferred. DJS submitted two proposals to the Owner: an initial proposal after an exclusive negotiating period submitted on 5 November 2019 and a secondary

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465
21 Dec 2019

proposal submitted during the Invitation to Tender process, which closed on 8 December 2019. Both of DJS’ plans focused on the use of SSD, despite the Owner articulating a preference for LSD and an EPB in their Invitation to Tender and technical discussions. Neither of DJS’ plans satisfy the concerns of the Owner and their salvage experts as they do not commit to LSD or use of an EPB before starting operations. The Owner maintains this method is contrary to their objectives of speed and environmental protection.

It is unclear why DJS has been unwilling or unable to acquiesce to the Owner’s reasonable requests for LSD and an EPB. However, DJS’ lack of adaptability in meeting the Owner’s demands supports a determination that DJS and the Owner have philosophical disagreements as to the preferred methodology for salvage operations.

- E. The collapse of a functional, working relationship between the Owner and DJS. The philosophical differences regarding salvage operations between the Owner and DJS created an apparently ineffective relationship. This ineffective relationship was apparent during a few incidents and threatened to delay the response due to an inability of the Owner and DJS to enter into a timely contractual agreement.

This contentious relationship was noted by the Unified Command on many occasions, but is best evidenced by the Owner’s filing of a Letter of Dissent (LoD) with Lloyd’s Open Forum. The Letter of Dissent is a mechanism to file a formal complaint between contractual parties. The Owner’s LoD addressed DJS’ actions related to the application of scouring protection laid around the end of October and beginning of November.

DJS was directed by the Owner to lay scouring protection around the M/V GOLDEN RAY. The Owner directed DJS to lay a blanket of gravel around the perimeter of the vessel. This tasking was developed with great precision as to the locations and amounts of gravel to be laid. DJS proceeded to misapply nearly 6,000 tons of gravel without adhering to the highly detailed, specified plan. This mistake created delays and incurred additional financial costs to reapply a significant portion of the scour protection. This incident caused the Owner to file a LoD.

Other incidents have reflected problems in the working relationship between the Owners and DJS. Incidents have included the cross contamination of high-sulfur and low-sulfur fuel oil during recovery operations which destroyed the marketability of those oils and negated the Owner’s ability to resell the recovered oil. Although it is unclear exactly where blame for these incidents may lie, these incidents could be attributed to poor communication, unclear expectations and managerial conflicts. The FOSC has determined these incidents contributed to the now defunct relationship between the Owner and DJS.

- F. The ability of the Owner and T&T to maintain a functional, working relationship. T&T has met the initial demands of the Owner by providing a salvage plan that complies with the Owner’s preferred salvage methodology. The FOSC has determined that T&T’s

Subj: DECISION MEMO – ANALYSIS OF THE FOSC’S APPROVAL OF
THE OWNER’S REQUEST TO USE ANOTHER RESOURCE PROVIDER

16465

21 Dec 2019

willingness to comply with the Owner’s demands tends to show T&T and the Owner are better suited to maintain a functional, working relationship for the purpose of salvage operations. T&T has met the Owner’s demands and has maintained an adaptable posture as their plan provides for the ability to alter demolition methodologies, as needed, in the course of operations. For these reasons, the FOSC has determined the Owner’s request to use a resource provider with whom they have a more functional relationship would provide for a more successful response in accordance with 33 CFR § 155.4032.

7. Impact on the outstanding order to comply with NTVRP. On 1 December 2019, the FOSC issued the Owner an order to comply with their NTVRP after the Owner was no longer in contract with DJS as the resource provider. On 7 December 2019, after good cause being shown, the FOSC granted the Owner an extension to comply with this order. This extension was contingent on the Owner providing a detailed explanation of attempts to comply with the order by contracting DJS.

On 20 December 2019, the Owner provided that information which included key dates during which the Owner attempted to re-contract with DJS to no avail. In summary, DJS refused to contract with the Owners without being given exclusive contract for salvage operations. This demand for a salvage contract was not accompanied by a salvage plan that met the Owner’s demands for LSD and an EPB. In essence, DJS held that if the Owner was to recontract with DJS and comply with the order, the Owner would have to accept the use of a salvage methodology to which the Owner fundamentally objected – an objection which was clearly known to DJS.

As the Owner attempted to comply with the order, there was no noticeable impact on the day-to-day operations of the response.

The grant of an authorization to use T&T moots the previous order. The order of 01 December 2019 stated that the Owner’s transition from Wreckhire 1 to Wreckhire 2 was an unauthorized deviation from the NTVRP. The transition to Wreckhire 2 effectively removed DJS and meant the Owner was operating without a resource provider. The order directed the Owner to return to compliance with the NTVRP. By the FOSC approving the Owner’s request to use another resource provider, the Owner may now operate with an approved deviation from that plan. This approved deviation serves to moot the previous order as the Owner is now in compliance with 33 CFR Part 155.

8. CONCLUSION: The FOSC has determined, based on all the facts and information presented in the Owner’s request for deviation, that the use of another resource provider, T&T Salvage, would provide for a more successful response. Accordingly, the FOSC approves the Owner’s request.

#

Exhibit 9

Briggs, Salomee G LCDR

From: Beck, Kevin M CDR
Sent: Thursday, December 19, 2019 6:26 PM
To: Briggs, Salomee G LCDR
Subject: FW: M/V GOLDEN RAY Salvage Plan Review

From: Duty, Sert SMB <Sert.Duty@uscg.mil>
Date: Thursday, Dec 19, 2019, 6:21 PM
To: Beck, Kevin M CDR <Kevin.M.Beck@uscg.mil>, Baer, Matthew J CDR <Matthew.J.Baer@uscg.mil>, Witt, Norm C CDR <Norm.C.Witt@uscg.mil>
Cc: Duty, Sert SMB <Sert.Duty@uscg.mil>, Lawrence, Andrew R CIV <Andrew.R.Lawrence@uscg.mil>, 'vincent.jarecki@navy.mil' <vincent.jarecki@navy.mil>
Subject: M/V GOLDEN RAY Salvage Plan Review

Good evening CDR Beck,

Our comments on the M/V GOLDEN RAY wreck removal plan are provided below. Please let us know if you have any questions or additional concerns.

Very Respectfully,

LT Scott Arbeiter
Marine Safety Center
Salvage Engineering Response Team (SERT)
24x7 Mobile: (202) 327-3985
Sert.Duty@uscg.mil

M/V GOLDEN RAY (IMO 9775816)
656' Vehicle Carrier

Information Provided to Us:

SERT was provided T&T Salvage's Preliminary Wreck Removal Plan - MV Golden Ray, as well as the associated appendices as referenced in the plan.

Expectations:

SERT was asked to review the attached documents and provide feedback on the feasibility of the proposed wreck removal plan.

Detailed SERT Response:

Overall, SERT finds the preliminary wreck removal plan proposed by T&T to be technically feasible. Although limited technical detail is provided, the plan indicates further analysis will be conducted prior to operations. We recommend that the FOSC require detailed step-by-step wreck removal plans and analysis for each phase (rigging components, sea fastenings, receiving barge structure/stability, tow transit, and waterway impacts). SERT has the following comments:

- (1) The wreck removal plan references installation of an environmental protection barrier with limited technical detail. The details of this barrier will be critical to environmental protection as well as ensuring sufficient clearance around the wreck and the ability to safely operate VB10,000 during lifting. Plans for the protection barrier and lifting should be further developed to address future heel angle increases of GOLDEN RAY as well as tolerance for lifting operations.
- (2) The structural analysis does not include an analysis of the structure in the current condition, nor does it include an analysis of remaining sections throughout cutting and removal; this should be addressed in future revisions of the wreck removal plan.

SERT is standing by to provide further assistance.

If you have any questions, please contact the SERT duty officer at (202) 327-3985 or Sert.Duty@uscg.mil.

Exhibit 10

Briggs, Salomee G LCDR

From: Lawrence, Andrew R CIV
Sent: Friday, December 20, 2019 4:42 PM
To: Briggs, Salomee G LCDR
Subject: SERT Response - M/V GOLDEN RAY wreck removal plan

As requested below.

From: Lawrence, Andrew R CIV <<mailto:Andrew.R.Lawrence@uscg.mil>>
Date: Tuesday, Dec 03, 2019, 2:41 PM
To: Witt, Norm C CDR <<mailto:Norm.C.Witt@uscg.mil>>
Cc: Duty, Sert SMB <<mailto:Sert.Duty@uscg.mil>>, Kelly, Scott J CAPT <<mailto:Scott.J.Kelly@uscg.mil>>, Baer, Matthew J CDR <<mailto:Matthew.J.Baer@uscg.mil>>, Reed, John W CAPT <<mailto:John.W.Reed@uscg.mil>>, 'Young, Jay A CAPT USN COMNAVSEASYS COM DC (USA)' <<mailto:jay.a.young@navy.mil>>, Cost, Daniel H CDR <<mailto:Daniel.H.Cost@uscg.mil>>, Peterson, Sean M LCDR <<mailto:Sean.M.Peterson@uscg.mil>>, Beck, Kevin M CDR <<mailto:Kevin.M.Beck@uscg.mil>>
Subject: SERT Response - M/V GOLDEN RAY wreck removal plan

CDR Witt,

Please find SERT's comments below.

We met with SUPSALV yesterday and generally agreed regarding these technical comments. SUPSALV has additional comments that they will be providing separately.

Please let me know if you have any questions. As we discussed on the phone a few weeks ago, I'll be the SERT/Marine Safety Center project manager from this point forward.

Best regards,
Andy

--

Andy Lawrence, P.E.
Salvage Engineering Response Team (SERT)
USCG Marine Safety Center
(202)327-3986 (mobile)
(202)795-6783 (office)

M/V GOLDEN RAY (IMO [9775816](#))
656' Vehicle Carrier

Information Provided to Us:
SERT was provided with the following documents:

- a. Donjon-SMIT Document No. GOLDENRAY-SUS192139-MS2121, Rev. 0, "Wreck Removal Method Statement," 31 pages, dated November 5, 2019

- b. Donjon-SMIT Document No. GOLDENRAY-SUS192139-CN1118, Rev. 0, "Structural Analysis Hull," 24 pages, dated November 2, 2019
- c. Global Salvage Consultancy Document, "Position Report 26-11-2019," 28 pages, dated November 26, 2019
- d. Vuyk Engineering Rotterdam Document No. 19174-R02, Rev. B, "Structural Stability GOLDEN RAY Global Marine Solutions," 13 pages, dated November 25, 2019

Expectations:

SERT was asked to review the attached documents and provide feedback on the feasibility of the proposed wreck removal plan.

Detailed SERT Response:

Overall, SERT finds the wreck removal method proposed by Donjon-SMIT to be conceptually feasible. However, limited technical detail is provided and significant additional analysis should be expected of any plan before moving forward. We have the following comments regarding technical feasibility:

1. The wreck removal methodology outlined in reference (a) above indicates that installing a cofferdam around the wreck is optional. However, no discussion of debris containment is included if the cofferdam is not installed. Details on debris and spill containment should be included with or without the cofferdam installed.
2. The structural analysis in reference (b) has several technical flaws and lacks accuracy when compared to actual observations of the wreck. SERT recommends further analysis be conducted prior to demolition. Prior to removal of structure, we recommend analyzing the flow of stresses to ensure safety of personnel, especially if torch cutting is used. Our major concerns include:
 - a. Simple beam theory may not accurately capture the global stresses. This theory assumes the body remains rigid, which may not be true for the vertical orientation of the decks. Additionally, simple beam theory assumes that the deflections are orthogonal to a "neutral axis" which may not be true as indicated by the deflection data.
 - b. The stress calculations are not accurate as noted on page 12 of reference (b) which shows stresses 2.5 times yielding. It is not clear where the maximum stress is predicted within the section at frame 144 or how this calculation accounts for buckled decks.
 - c. The global model is not used to inform the local finite element model. The global model indicates concerning levels of stress but this is neglected within the finite element analysis as noted on page 13 of reference (b). It is not clear how the relatively small section finite element model receives input regarding global stresses and what impact this may have during demolition.
 - d. As indicated on page 14 of reference (b), the finite element model does not match the actual observation, but this conflict does not appear to be properly addressed.
 - e. The buckling of the uppermost port side decks is a major structural concern as indicated by progressive listing to the port side over time. This transverse structural stability is not addressed by reference (b) despite a cutting sequence that would remove transverse structure at the bow and stern as a first step.
3. The report in reference (d) does not present any additional technical information, however, we concur with the conclusion that the structure will continue to degrade at a slow pace.
4. The alternative wreck removal concepts presented on behalf of the owners and their P&I Club (reference (c)) are also potentially feasible. However, no technical information was included for SERT to review.

SERT is standing by to provide further assistance.

If you have any questions, please contact the Andy Lawrence, SERT Advisor at [\(202\) 327-3986](tel:2023273986) or <mailto:andrew.r.lawrence@uscg.mil>

Exhibit 11

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
United States Coast Guard
Marine Safety Unit Savannah

Juliette G. Low Federal Bldg.
100 W. Oglethorpe Ave., Ste 1017
Savannah, GA 31401-3604
Phone: (912) 652-4353
Fax: (912) 652-4052

16450
21 December 2019

Hyundai Glovis CO., LTD.
Registered Owner: GL NV24 Shipping Inc.
Vessel: M/V GOLDEN RAY IMO: 9775816

REPLY TO REQUEST FOR APPROVAL FOR DEVIATION FROM NTVRP

Dear Hyundai Glovis CO., LTD.:

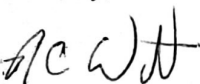
Thank you for your efforts in working towards completion of the requirements established in Administrative Order 01-19, dated September 15, 2019, and subsequent amendments. Regarding your request of December 19, 2019, in accordance with 33 CFR § 155.4032, I approve your request to deviate from your Non-Tank Vessel Response Plan (NTVRP) for the purpose of using T&T Salvage as a salvage and marine firefighting resource provider.

This approval is limited to this specific incident. Additionally, this approval to use another resource provider is limited to your use of T&T Salvage. If you decide to use a different resource provider, you must submit an additional written request and justification to deviate from your NTVRP.

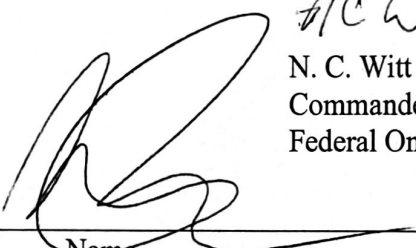
I have received your request for an extension to comply with the Reply to Admin Order 01-19, Amendment 2. This approval of a deviation from your NTVRP fulfills the requirements of 33 CFR Part 155 and meets the demands of my order. Please provide me, no later than December 29, 2019, an executed Letter of Consent between you and T&T Salvage. Also, at your earliest convenience, please provide me an executed contract.

Please feel free to contact me if you have any questions or concerns regarding this decision.

Sincerely,


N. C. Witt
Commander, U.S. Coast Guard
Federal On-Scene Coordinator

Acknowledgement:


Name

12/21/19
Date

Signature:

Michael Mavne
Name

12/21/19
Date

Exhibit 12



DONJON-SMIT, LLC

An OPA-90 Alliance



Via Messenger

23 Dec 2019

HYUNDAI GLOVIS CO., LTD.

RE: GOLDEN RAY IMO: 9775816

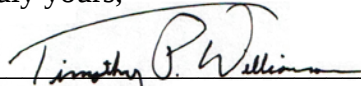
Gentlemen:

We refer you to our letter of even date herewith to the U.S. Coast Guard, a copy of which is attached.

This letter is notice to Hyundai that, as a result of recent actions by it and its P&I Club, you are in breach and default of your obligations to Donjon-Smit with respect to your NTVRP and have violated applicable laws and regulations relating to OPA90 and, in particular, relevant provisions of 33 CFR §155.

Demand is hereby made of you to meet with us and appropriate officers of the U.S. Coast Guard, as requested in our letter to them today, to resolve the matters relevant to this urgent undertaking. If you fail or refuse to resolve these matters, Donjon-Smit will seek legal redress from you and other responsible parties.

Very truly yours,

By: 
Tim Williamson, Managing Director

cc: Commandant (CG-MER)

Attn: Marine Environmental Response
U.S. Coast Guard Stop 7516
2703 Martin Luther King Jr. Avenue SE
Washington DC 20593-7516 [vrp\(cv.uscg.mil\)](mailto:vrp(cv.uscg.mil))

FOSC, Brunswick, GA
Gallagher Marine (Qualified Individual)



15402 Vantage Pkwy E. Suite 316, Houston, Texas 77032 U.S.A.
Tel. (703) 299-0081 Fax. (703) 299-0085 www.donjon-smit.com

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Marine Safety Unit Savannah

Juliette G. Low Federal Bldg.
100 W. Oglethorpe Ave., Ste 1017
Savannah, GA 31401-3604
Phone: (912) 652-4353
Fax: (912) 652-4052

16450
01 December 2019

Hyundai Glovis CO., LTD.
Registered Owner: GL NV24 Shipping Inc,
Vessel: M/V GOLDEN RAY IMO: 9775816

REPLY TO RESPONSE OF ADMINISTRATIVE ORDER: 01-19 Amendment 2

Dear Hyundai Glovis CO., LTD.:

Thank you for your efforts to date in working towards completion of the requirements established in Administrative Order 01-19 (dated September 15, 2019) and for your prompt reply to Amendment 2 (November 22, 2019). After carefully reviewing the documentation provided, I have made the following determinations regarding the four requirements issued in Amendment 2.

Condition 1

I have determined the shift from "Wreckhire#1" to "Wreckhire#2" changed the resource provider from "Donjon/Smit" to "Donjon." This change constitutes a deviation from your Coast Guard approved Non-Tank Vessel Response Plan (NTVRP) in which Donjon is not a designated resource provider. I have further determined the justifications you provided do not meet the standards for approval detailed in Title 33 CFR §155.4032 or §155.5012 and hereby disapprove that deviation.

Under 33 CFR §155.5012, the owner or operator of a non-tank vessel may not deviate from the approved VRP unless the FOSC determines that a deviation from the NTVRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects. In requesting a deviation from the NTVRP for Wreckhire#2, you noted that the transition to Wreckhire#2 was consensual with the express agreement on the part of Donjon/Smit, Donjon, and you, on the recommendation of your P&I Club. The mere consent of the parties to Wreckhire#2 does not provide sufficient justification for a deviation from the NTVRP.

Additionally, your justification noted the change in resource providers had little to no impact on the continuity of operations. You made claims, such as: "one of the partners...maintained its role in leading the response effort;" "no change to the scope of work... save that obligations...were added;" "majority of personnel...remained unchanged;" "equipment on site remained unchanged," and; "delivery of the services were uninterrupted." I agree there is wide consensus we have seen no change in capability or delays based on the change from "Wreckhire#1" to "Wreckhire#2." The fact that there has been little or no change in the day-to-day operations since the transition to Wreckhire #2 supports my finding that this deviation was not warranted as this change did not substantially change operations to make the response more expeditious, effective or environmentally safer.

16450
01 December 2019

Because your justification does not support a finding that the transition to Wreckhire 2 was necessary to provide for more expeditious or effective response to the spill or mitigation of its environmental effects, I disapprove "Wreckhire#2" as a deviation to the NTVRP. This determination is effective immediately and you shall take action to comply with your approved NTVRP no later than December 7, 2019.

Condition 2

Thank you for supplying Donjon/Smit's proposal for wreck removal and supporting documentation, which I am reviewing with the support of the US Navy Supervisor of Salvage and Diving (SUPSALV) and the USCG Marine Safety Center (MSC).

Condition 3

Thank you for providing a copy of the Invitation to Tender issued November 18, 2019. During the projected review period of December 9-13, 2019, I intend to coordinate with SUPSALV and MSC for assistance with the technical review of proposals. Please understand, this review does not constitute an endorsement of any resource provider other than the one listed in your approved NTVRP. If you choose to employ an alternate resource provider in the future, a written request and justification for deviation from your NTVRP must be submitted to the FOSC for consideration. You may not proceed with the use of an alternate resource provider until you have received written approval from the FOSC to do so.

Condition 4

Thank you for the statement detailing the roles and responsibilities of the parties acting on your behalf. Per your input and the approved NTVRP, I agree Gallagher Marine Systems, as Qualified Individual, is most appropriate as the Owners' Representative within the Unified Command (UC). I also agree the other parties provide important contributions to the overall success of the response. I request your representatives continue to work with the UC in reaching a resolution to this response.

If you desire to appeal my decision you may do so in accordance with 33 CFR § 155.5075. You may submit a petition for reconsideration to the Commandant (CG-MER), Attn: Marine Environmental Response, U.S. Coast Guard Stop 7516, 2703 Martin Luther King Jr. Avenue SE., Washington, DC 20593-7516 or vrp@uscg.mil within 7 days from the date of receipt of this determination.

Sincerely,



N. C. Witt
Commander, U.S. Coast Guard
Federal On-Scene Coordinator

Acknowledgement: (Name) _____ Date: _____

Signature: (Name) _____ Date: _____

Attachment 2

Declaration of Captain Ricardo Alonso

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC

Plaintiff,

VERSUS

**ADMIRAL KARL L. SCHULTZ,
CAPTAIN JOHN W. REED,
COMMANDER NORM C. WITT, and
COMMANDER MATTHEW J. BAER, IN
THEIR OFFICIAL CAPACITY AS
OFFICERS OF THE UNITED STATES
COAST GUARD,**

Defendants

CIVIL ACTION

NO.:

**2:20-cv-00011 LGW-
BWC**

DECLARATION OF CAPTAIN RICARDO ALONSO

I, Captain Ricardo Alonso, submit the following declaration pursuant to 28 U.S.C. § 1746, and declare as follows:

1. I am currently serving as the head of the Coast Guard Office of Marine Environmental Response Policy at Coast Guard Headquarters in Washington, DC., which includes policy oversight of the Marine Environmental Response mission. I have served as the Federal On Scene Coordinator Representative on numerous oil pollution events. I lead a staff that administers, develops and maintains the Coast Guard's marine environmental response program and provides guidance to operational field units. I also serve as the Vice Chair for the National Response Team and the Chair for the Interagency Coordinating Committee on Oil Pollution Research. I make this declaration based on my personal knowledge and facts learned by me in the course of carrying out my duties as a Coast Guard officer in this field for over 20 years.

2. This declaration is made in support of the United States' Opposition to Donjon-SMIT LLC's Verified Complaint, Writ of Mandamus, and Request for Injunctive Relief. By their verified complaint and request for temporary restraining order and other injunctive relief, Donjon-SMIT seeks to halt the response entirely in order to challenge an approved deviation from a Non-Tank Vessel Response Plan ("NTVRP") that would allow the Owner of the GOLDEN RAY to utilize another salvage and removal company for the removal of the vessel.

3. It is my understanding that the response operation which is the subject of this Complaint is currently in the Removal/Containment Mobilization Phase (since December 15, 2019) and plans are currently being developed for transition to the next phase: Source/Wreck Removal Phase. As with this type of response and salvage operation, there are numerous elements of the process simultaneously underway. Some of the activities I understand to be currently in process include the following: Necessary equipment has already been mobilized and the driving of piles for the installation of an Environmental Protection Barrier (EPB) is expected to begin on February 20, 2020. The fabrication of lifting lugs is currently underway but this has experienced delays due to availability of materials and yard capacity. Actions are actively underway to seek additional facilities for this production, but with the current facilities, cutting of the vessel is expected to commence in the beginning of May. The response is progressing, but it is a complicated process that involves a lot of preparation work. This means that to interrupt now would potentially magnify the delay to a significantly greater degree than just the number of days during which the operation is brought to a halt.

4. Delay will be problematic to Coast Guard's interests of protection of marine environment and integrity of the waterway, as well as safety of life at sea. All of these missions are for the

protection of the public. It is in both the Coast Guard's interest and public interest that the vessel owner proceeds promptly with containment and removal at the site of the GOLDEN RAY.

It is my experience that time is truly of the essence in dealing with response and salvage operations, particularly involving a vessel such as this which is grounded, contains cars, and is resting on its side with a list of approximately 100 degrees. [See FOSC Memo 5.B.ii.]. The ocean is a harsh environment—it rusts and deteriorates materials, leading to the breakdown of a vessel's integrity and structure.

5. The current phase of the response in which the EPB is being installed is a critical one. The EPB plays an important role in the containment of oil, debris, etc. that emanates from the vessel (including during the next planned phase where the vessel is cut apart and the pieces are removed). Such a containment method reduces the risk of these things entering the water, washing up on nearby beaches or shores, or interfering with vessel (and craft) navigation on waterways. Every day in which on-scene personnel are stopped from installing a protective barrier presents a significant risk to both the environment and to the safety of persons in the vicinity.

6. As the FOSC outlined in his Decision Memo, the particular location in which the vessel is grounded is an environmentally sensitive area which includes prime shrimping grounds and Bird Island—a significant roosting area for migratory birds. [FOSC Memo 5.B.ii.]. The longer a vessel remains in a grounded position such as this, the more time that the environment (including marine aquatic species) are exposed to the risks, for example from release of oil and other harmful substances.

7. In addition, GOLDEN RAY is grounded in very close proximity to a navigable channel which serves as the only access route to the Port of Brunswick—the second-busiest roll-on roll-off port

in the U.S. by tonnage. The grounding site is also in close proximity to major tourist destinations for coastal Georgia. [FOSC Memo 5.B.ii.] Its continued presence there presents ongoing risk to vessel navigation and flow of commerce.

8. All of the above factors that demand expediency in response situations are further magnified by the approaching of the annual hurricane season for the Atlantic Ocean, which begins on June 1 and extends through November 30. Conducting salvage operations during hurricane season (or winter storm months) presents additional safety risks and reduces ability to effect salvage and removal. Hurricanes (even those that do not pass in close proximity) bring many dramatic changes to the marine environment--including high winds, storm surges, and shifting of the ocean floor, all of which increase chances of the vessel becoming destabilized or splitting apart. A delay in salvage and removal operations puts the safety of individuals working on scene at risk and increases the chance of worsening the physical condition of the vessel.

9. It is also important to be aware that a granting of Donjon-SMIT's request to halt the salvage operations will not lessen the Coast Guard's continuing obligations in this area. On the contrary, to put a stop to the vessel owner's response activities will prolong (and likely also increase) the ongoing burden on Coast Guard (and state government) personnel and resources to maintain security and safety in the area and continue to monitor the status and risk presented by the grounded vessel. Further, if resources are taken away from the removal now, more resources will have to be expended during hurricane season in order to mitigate the harms of the delay. Since hurricane season already stretches the resource availability of the Coast Guard, prolonging the GOLDEN RAY salvage has the potential to deprive impacted communities of these much-needed resources.

10. Regarding the role of the Federal On-Scene Commander (FOSC), the FOSC coordinates and directs response efforts to an incident in coordination with appropriate federal, state, and local agencies, as well as other private response organizations and stakeholders. Deviations from a vessel owner's NTVRP may be granted by the FOSC pursuant to 33 U.S.C. § 155.5012 in order to provide for a more expeditious or effective response or mitigation of environmental effects. The Coast Guard has provided guidance to the maritime industry about when deviations from vessel response plans are authorized in Navigation and Vessel Inspection Circular 2-10 (NVIC 2-10). This publication makes it clear that the individual FOSC is empowered to make this decision based on his/her understanding of the facts of the particular situation. [See NVIC 2-10 Enclosure (3) pages 32-33]. Federal regulations specifically authorize the FOSC to take responsive measures deemed necessary to protect the public health or welfare or environment from releases of hazardous substances, pollutants, or contaminants. [See 40 CFR § 300.310, §300.317]

11. An attempt to override the FOSC by seeking to delay the removal only validates the self-serving concerns of one party over the broader response concerns of the Unified Command, including protection of the environment, maritime commerce, and human safety.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: February 20, 2020

A handwritten signature in blue ink, appearing to read "Ricardo Alonso", is written over a horizontal line.

Ricardo Alonso
Captain
U.S. Coast Guard
Office Chief, Marine Environmental
Response Policy (CG-MER)
2703 Martin Luther King Ave. SE
Washington DC 20593

Attachment 3

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2100 Second Street, S.W.
STOP 7581
Washington, DC 20593-7581
Staff Symbol: CG-5431
Phone: (202) 372-1229
Fax: (202) 372-1921
Email: vrp@uscg.mil

COMDTPUB P16700.4
NVIC 2-10

SEP 27 2010

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 2-10

Subj: Guidance for Implementation and Enforcement of the Salvage and Marine Firefighting Regulations for Vessel Response Plans

- Ref:
- (a) Title 33, Code of Federal Regulations, Part 155, Subpart I – Salvage and Marine Firefighting
 - (b) Title 33, Code of Federal Regulations, Part 155, Subpart D – Response Plans
 - (c) Title 40, Code of Federal Regulations, Part 300 – National Oil and Hazardous Substances Pollution Contingency Plan
 - (d) National Preparedness for Response Exercise Program (PREP) Guidelines
 - (e) Guidelines for the U.S. Coast Guard Oil Spill Removal Organization Classification Program, June 2008
 - (f) The Information and Life Cycle Management Manual, COMDTINST M5212.12 (series).

1. PURPOSE. This circular provides voluntary guidance to vessel owners and operators, salvage and marine firefighting resource providers, and other members of the maritime industry for preparing and submitting the necessary information to comply with the requirements contained in reference (a).
2. ACTION.
 - a. Captains of the Port and local port partners should actively review the Salvage Annexes in the Area Contingency Plan (ACP), and Area Maritime Security Plan (AMSP), to ensure that they are updated to include pertinent details of the local Salvage and Marine Firefighting (SMFF) resources.

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Navigation and Vessel Inspection Circular NVIC No. 2-10

- b. Regulated vessel owners and operators need to submit new vessel response plans (VRPs) and update existing VRPs in accordance with the regulations found in reference (a). VRPs must be updated and submitted to the Coast Guard before February 22, 2011, in order for vessels to remain in compliance with references (a) and (b).
- c. Captains of the Port and Officers in Charge, Marine Inspection are encouraged to bring this document to the attention of the marine industry within their area of responsibility.
- d. This Navigation and Vessel Inspection Circular (NVIC) is available online at www.uscg.mil/hq/g-m/nvic/. Within the Coast Guard, it will be distributed by electronic means only. Questions regarding this NVIC may be emailed to vrp@uscg.mil, or call the VRP Helpdesk at 202-372-1000.

3. APPLICABILITY.

- a. Reference (a) and this NVIC apply to tank vessels required by 33 CFR 155.1015 to have a VRP for vessels carrying groups I through IV petroleum oil.
- b. Reference (a) and this NVIC do not apply to tank vessels required to have a VRP and that carry group V oil (33 CFR 155.1052), animal fats and vegetable oils as a primary cargo (33CFR 155.1230), or other non-petroleum oils as primary cargo (33 CFR 155.2230).

4. DIRECTIVES AFFECTED. None

5. BACKGROUND.

- a. The Oil Pollution Act of 1990 mandated that tank vessel owners ensure the availability of adequate response resources to respond to a vessel's worst case discharge, including fire and explosion.
- b. The VRP regulations contained in reference (b), did not provide specific salvage or firefighting requirements and relied on the vessel owners or operators to identify contractor resources. On December 31, 2008, the Coast Guard issued reference (a), Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil; Final Rule, which defines the SMFF capability required to be listed in the VRP, establishes how quickly these planned resources should be capable of arriving on scene, and provides selection criteria for planholders to use in determining the adequacy of SMFF resources.

- 6. DISCUSSION. The new requirements established in reference (a) will enhance SMFF capability, save lives and property, and help prevent the escalation of potential oil spills to worst case discharge scenarios. Vessel owners or operators are required to establish contracts (or other approved means) and funding agreements with SMFF

resource providers, ensuring that response resources will be available without delay when needed.

Resource planning standards are established by reference (a). These planning standards are to be used in choosing SMFF resources to place under contract for response to an incident involving SMFF risks. Resources are contracted for response to the risks posed by the vessels listed in a particular response plan for the areas in US waters where they operate.

NVIC Attachments 1, 2, and 3 provide a table of acronyms, a glossary, and answers to frequently asked questions about the SMFF Final Rule, respectively. Attachments 4 and 5 are job aids for establishing alternative planning criteria, and for evaluating SMFF services. These reference documents are provided as a resource to SMFF stakeholders.

7. DISCLAIMER. This circular provides guidance to vessel owners and operators for submitting VRP updates required by reference (a). While the guidance contained in this document may assist the industry, the public, the Coast Guard, and other Federal and State regulators in applying statutory and regulatory requirements, the guidance is not a substitute for applicable legal requirements, nor is it a regulation itself. Thus, it is not intended to, nor does it impose legally binding requirements on any party, including the Coast Guard, other agencies, or the regulated community.
8. PAPERWORK REDUCTION ACT. This Circular describes a collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection that does not display a currently valid OMB control number. Submission of a VRP is required by Coast Guard Regulations at 33 CFR Part 155, and the relevant OMB control number is 1625-0066.
9. PLAN SUBMISSION GUIDANCE.
 - a. Existing VRPs – SMFF Updates.

Existing approved VRPs must be updated to comply with the provisions of reference (a) and submitted to the Coast Guard before February 22, 2011. Currently, the VRP update approval process takes up to 30 days. Review times may be extended due to the high volume of submissions that are expected. VRPs with SMFF updates may be submitted to the Coast Guard beginning September 1, 2010.
 - b. Existing VRPs – 5-Year Renewal.

Existing approved VRPs must be revised every five years. VRPs expiring on or after February 22, 2011, should incorporate the provisions of reference (a) in the submitted plan revisions. The 5-year renewal approval process can take approximately 90 days. A VRP sent to the Coast Guard to be reviewed for its 5-year renewal on or after September 1, 2010, should address the provisions of reference (a).

Navigation and Vessel Inspection Circular NVIC No. 2-10

c. New VRPs.

New VRPs should be submitted 60 days in advance of operations in US waters in order to leave adequate time for the new plan approval process. A new VRP sent to the Coast Guard for approval, in which the vessel intends to operate after February 22, 2011, should address the provisions of reference (a). New VRPs with SMFF updates will be accepted for review as early as September 1, 2010.

d. Temporary Waiver Requests.

Vessel owners or operators unable to identify a resource provider who can meet response time requirements of reference (a) may submit a request for the temporary waiver of a specific response time requirement in accordance with 33 CFR 155.4055.

Temporary waiver requests must be submitted to the local Captain of the Port (COTP) 30 days prior to any VRP submission deadlines in order to allow waiver request processing time prior to VRP review. Section 10.d.(2) of this NVIC contains further information on temporary waiver request submissions. Submission deadlines include:

- (1) SMFF updates (February 22, 2011)
- (2) Adding a vessel to an existing approved VRP (30 days in advance of operations)
- (3) First time VRP submission (60 days in advance of operations)
- (4) 5-year revisions (accepted between 180 and 90 days in advance of the plan expiration date)

If you are submitting a waiver request and your vessel is due to call in the United States in less than 30 days from submission of the waiver request, it would be prudent to request interim operating authorization (IOA) in accordance with 33 CFR 155.1025(c)(1) for the VRP until the request has been reviewed. The VRP Program (CG-5431) will issue an IOA for a temporary period of time when it is verified that the vessel owner or operator has submitted a temporary waiver request to the applicable COTP.

e. Alternative Planning Criteria Requests.

A request for alternative planning criteria (APC) may be made when the vessel owner or operator believes that SMFF planning criteria are inappropriate to the vessel for the area(s) in which it is intended to operate. APC requests may be submitted at any time, but it is anticipated that waiver requests will be submitted as the first alternative with regard to SMFF resources, allowing time to work out standard response capability as described in reference (a).

Submission of a request for APC must be made 90 days before the vessel intends to operate under the proposed alternative, and forwarded to the COTP for the geographic area(s) affected. In the case where APC will replace a temporary waiver from SMFF response timeframes, APC requests should be submitted no later than 90 days before the end of the applicable waiver period.

Approved APC requests must be submitted with the VRP and be attached to the applicable Geographic Specific Appendix (GSA).

f. Electronic Plan Submissions.

The Coast Guard has developed an optional Internet-based tool that provides the ability to submit VRPs electronically. The new electronic VRP system includes the required SMFF revisions. Using this system will significantly improve turnaround time for VRP approvals.

For more expedient processing VRPs including revisions, should be submitted electronically by using the VRP electronic submission tool located on the Coast Guard's Homeport website. You may register to use the system by accessing the VRP section of Homeport located on the web at <https://homeport.uscg.mil>. Follow registration instructions after you click the word "Register" in upper right corner of the webpage. The Homeport pathway, Missions>Environmental>Vessel Response Plan Program, will enable you to find updated VRP Program information.

g. Vessel Owner / Operator Certification Statements.

The vessel owner or operator is required to include a certification statement when submitting or amending the VRP in accordance with 33 CFR 155.1065(b).

- (1) Third party plan preparation companies may upload vessel owner or operator certification statements when they submit VRPs electronically.
- (2) Vessel owners or operators may directly verify certification statements when they submit VRPs electronically.
- (3) If VRPs are submitted in paper format, plan submitters should use CG Form "Application for Approval/Revision of Vessel Pollution Response Plans" (CG-6083), which is located on the Coast Guard's Homeport website. This form is used in lieu of a cover letter to make initial application for plan submission and revision. The required certification statements are included within CG-6083.

h. Approval Letters.

When a VRP submission meets Coast Guard review standards, the Coast Guard will issue a letter stating that the VRP has been reviewed and approved to the most current applicable regulations.

10. MAJOR PLAN REVISIONS FOR SMFF COMPLIANCE.

Recommendations for incorporating SMFF updates into the structure of the VRP are included in this section. Contracts and funding agreements, which are submitted along with the VRP, are discussed in section 13 of this NVIC.

a. Shipboard Spill Mitigation Procedures.

In accordance with 33 CFR 155.4035(a), the shipboard spill mitigation procedures section of VRPs prepared according to 33 CFR 155.1035(c) and 1045(c) must be provided to the SMFF resource providers listed in the VRP. No changes to this plan section are mandated by reference (a), just its distribution to the SMFF service providers. The distribution of shipboard spill mitigation procedures should be noted in the plan distribution section of your VRP.

The shipboard spill mitigation procedures section of the VRP may be distributed in electronic format. There is no requirement for a statement of acceptability of this section from the resource providers. By definition, this is a shipboard plan. The purpose of its distribution is to inform SMFF resource providers of how the vessel's crew plans to respond to contingencies aboard the vessel.

b. Shore-Based Response Activities.

SMFF resource providers must be integrated into the response organizations listed in VRPs in accordance with 33 CFR 155.4030(c).

In accordance with 33 CFR 155.4030(d), the information contained in the VRP must be consistent with the applicable ACPs, regional response plans and the National Oil and Hazardous Substances Pollution Contingency Plan (reference (c)). The VRP must indicate how SMFF resource providers will coordinate with other response resource providers, response organizations and Oil Spill Removal Organizations (OSROs). The VRP must indicate how SMFF resource providers will coordinate with public organizations that, by law, provide public assistance during SMFF response.

It is recommended, but not required by reference (a), that the revised shore based response activities section of your VRP be provided to contracted SMFF service providers along with the shipboard spill mitigation procedures as discussed in Section 10.a. of this NVIC.

c. Vessel Specific Appendices (VSA).

In order to identify the proper resources to handle the risks associated with a particular vessel it is recommended that your VSAs provide the following additional vessel information in accordance with 33 CFR 155.4030(e), (f), and (g), and §155.4035(b):

(1) *Towing Capacity Required.*

Identify the proper characteristics, horsepower and bollard pull necessary to tow the vessel, in any condition of loading, in winds up to 40 knots.

(2) *Transfer Capacity Required.*

State the size of the largest oil tank for the vessel.

(3) *Extinguishing Agent Identification.*

State the appropriate firefighting extinguishing agent(s) to be provided by your resource provider to combat a fire involving your vessel's cargo, other contents and superstructure.

(4) *Extinguishing Agent Quantity and Pumping Capacity Requirements.*

If the primary extinguishing agent is foam, sufficient quantities should be available from your resource provider to meet the criteria established in 33 CFR 155.4030(g). Calculate the amount of foam required and the pumping capacity necessary to enable application of at least 0.016 gallons of foam or water per minute per square foot of the deck area of the vessel for twenty minutes. You may use an alternate pumping rate to calculate the quantity of foam for spaces where this rate is not appropriate. The vessel owner or operator should ensure that the type(s) of foam identified are acceptable for use in U.S. waters.

The calculations to determine the primary extinguishing agent quantity and pumping capacity to be made available from the resource provider should be made as follows:

STEP 1. GALLONS PER MINUTE CALCULATION. Multiply the vessel's deck area in square feet times 0.016 gallons per minute (gpm) to yield the required amount of foam to be delivered per minute for this particular vessel.

STEP 2. PRIMARY EXTINGUISHING AGENT QUANTITY REQUIRED. Multiply the gallons per minute required by 20 minutes to calculate the minimum quantity of firefighting foam in gallons to be made available by the resource provider for this vessel.

STEP 3. PUMPING CAPACITY REQUIREMENT. Multiply the quantity of foam required to be delivered in 20 minutes times 3 to find the delivery rate per hour (60 minutes). This is the gallons per hour of external pumping capacity that required for foam delivery to meet the requirements of reference (a) for this vessel.

(5) *Attach Vessel-Specific Pre-Fire Plans to the VRP.*

The marine firefighting pre-fire plan attached to the VRP must meet the requirements of National Fire Protection Association (NFPA) 1405 (2006) Chapter 9. If the vessel's pre-fire plan is one that meets another regulation, such as SOLAS (2009) Chapter II-2, Regulation 15; or international standard, a copy of that specific fire plan must also be given to the resource provider(s) instead of the NFPA 1405 pre-fire plan, and be attached to the VRP. Since

Navigation and Vessel Inspection Circular NVIC No. 2-10

these fire plans are vessel-specific, pre-fire plans should be attached to the corresponding VSA.

It is permissible to attach pre-fire plans to the VRP by means of a CD or by uploading an electronic copy during electronic VRP submission as described in Section 9.f. Marine firefighting pre-fire plans may also be attached to the VRP by reference to a website that is accessible to, and allows the plan to be viewed, printed and downloaded by plan reviewers, response resource providers and other responders.

Distribution of pre-fire plans to marine firefighting resource providers is mandatory and may be accomplished electronically. The distribution of pre-fire plans to primary marine firefighting resource providers should be noted in the distribution section of the VRP. Marine firefighting pre-fire plans must also be distributed to subcontracted marine firefighting organizations. (33 CFR 155.4035)

(6) *Marine Firefighting (MFF) Resource Provider Certifications.*

The vessel owner or operator must obtain written certifications that the marine firefighting resource providers have received the pre-fire plan, find the plan acceptable, and agree to implement it to mitigate a potential or actual fire. See section 13.f.(2) of this NVIC.

d. Geographic Specific Appendices (GSA).

GSAs include COTP zone-specific contracted resource provider information and information about the availability of appropriate resources to meet the requirements of the vessels in the VRP that operate in that COTP zone. GSAs require the inclusion of new information in accordance with 33 CFR 155.4030(a) (b) (e) (f) and (g), §155.4045(a) and (c), and §155.4050. Attachment 5 provides resource information in a format that may be useful for evaluating SMFF resource providers.

Where there are resource gaps, GSAs will also include approved temporary waivers from the timeframe requirements of this rule, and any approved APC measures for the VRP in that COTP zone. See Section 8.d and .e, and Section 10.d.(2) and (3) of this NVIC.

(1) *List of Required SMFF Services (Table 155.4030(b)).*

(a) *List of Contracted SMFF Resource Providers.*

Contracted SMFF resources must be identified in GSAs by service category, including company details, name of contact person, and method of contact. Primary resource provider(s) must be designated for each COTP Zone in which the vessel owner or operator operates. Multiple resource providers may be listed, but one (and only one) primary resource provider must be designated for every SMFF service. One resource

Navigation and Vessel Inspection Circular No. 2-10

provider may be designated for all services in a COTP Zone or any subset of those services. Only resource providers arranged by contract or other approved means may be listed in the plan.

(b) *Resource Provider's Written Consent to be Listed in the VRP.*

Vessel owners or operators must obtain written consent from resource providers to be listed in the VRP, stating that the resource provider agrees to provide the services that are listed in 155.4030 (a) through (h), as applicable, and that these services are capable of arriving within the response times listed in Table 155.4030(b). This consent may be included in the contract or other approved means, or in a separate document. See section 13.f.(1) of this NVIC.

The location of the written consent must be stated in the GSA. It must be on board the vessel or with a qualified individual located in the United States, and available to the USCG for inspection.

Public marine firefighters may only be listed out to the maximum extent of their jurisdiction unless other agreements are in place.

(c) *Required List of Emergency Towing Vessels.*

Vessel owners or operators must identify by name the contracted emergency towing vessels having proper characteristics, horsepower and bollard pull to tow their vessel(s) in any condition of loading, and capable of operating in winds up to 40 knots. These vessels must be able to meet the response timeframes listed in Table 155.4030(b).

The listed emergency towing vessels should be geographically positioned to be readily available to assist a stricken vessel so it can be stabilized, controlled, or removed from a grounded position.

At all times at least one of the identified towing vessels must be available and have the capacity to handle the largest vessel from the fleet plan that trades in a particular COTP Zone.

(d) *Required External Pumping Capability.*

Emergency lightering and external transfer operations require appropriate pumps and sufficient capacity to offload a vessel's largest oil tank in 24 hours of continuous operation. The primary resource provider for emergency lightering and external transfers must be capable of providing the pumps and supporting equipment necessary to offload the largest oil tank identified in the vessels from the plan that will trade in the COTP Zone in 24 hours.

Supporting equipment includes receiving capacity suitable for the type of cargo carried. For instance, a grounded barge carrying heated cargo oil

Navigation and Vessel Inspection Circular NVIC No. 2-10

may need not only adequate pumps, but also an appropriately sized and configured receiving barge in order to conduct emergency lightering. This service must be able to meet the response timeframes identified in Table 155.4030(b).

(e) *Required Firefighting Extinguishing Agent Pumping Capability.*

The primary external fire fighting system resource provider identified in the GSA should be able to provide the extinguishing agent, pumps and supporting equipment necessary to pump the proper extinguishing agent(s) at the calculated delivery rate for the largest vessel from the VRP, and all vessels that will trade in the COTP Zone. The resource provider must be capable of providing these resources within the response timeframes listed in Table 155.4030(b).

(f) *Required Subsurface Product Removal Capability.*

For vessels operating in waters of 40 feet or more, the primary resource provider for subsurface product removal must be able to provide the equipment necessary to provide subsurface product removal capability to the maximum depth the vessel operates in the COTP Zone up to 150 feet, within the response timeframes identified in Table 155.4030(b).

If the operating area of all vessels that are listed in the COTP Zone is never more than 40 feet deep, state in the geographical specific appendix (GSA) that subsurface product removal capability is not required for that reason.

The Army Corps of Engineers maintains inland waterway navigational charts which may be found through their website:

<http://www.agc.army.mil/echarts/inlandnav/>.

(2) *Waivers and resource availability.*

There is a provision for obtaining a temporary waiver of a specific time requirement if the vessel owner or operator is unable to identify a resource provider who can meet the response timeframe. Emergency lightering is not subject to the temporary waiver provisions of this rule. Table 155.4055(g) gives the maximum waiver time periods, in years, for each of the SMFF services.

The information required in a temporary waiver submission includes: COTP Zone; operating environment; salvage or marine firefighting service; response time; reason for inability to meet the time requirements; proposed solution to correct shortfall; time needed to put proposed solution in place; and interim arrangements made to provide the required resources and estimated response times.

COTPs will be the first to evaluate temporary waiver requests from industry when industry indicates that there are insufficient resources, or that available resources are unable to meet the response timeframes for a geographic area.

COTP comments will be sent via the Area and District to Coast Guard Headquarters for final temporary waiver approval or denial. Section 8.d. provides guidance on submission of temporary waiver requests.

Approved temporary waivers from specific SMFF response timeframes should be attached to the GSA. They may be attached by including a copy in the GSA, or by uploading the approval into the electronic VRP submission. There is no provision for automatic renewals of these one-time waivers after the expiration date.

(3) *Alternative planning criteria.*

33 CFR 155.1065(f) allows vessel owners and operators to submit an APC proposal when they believe the national planning criteria contained in Part 155 is inappropriate for the operating area of their vessels. Attachment 4 is a job aid that outlines procedures vessel owners or operators may follow to request acceptance of APC.

Approved APC should be attached to the GSA by including a copy in the GSA, or by reference to the Area Contingency Plan when the APC is applicable to multiple vessels in the COTP zone and made available through that document. Section 9.e. of this NVIC provides additional APC information.

e. Drills and Exercises.

Section 155.4052 describes required SMFF drills and exercises. It is expected that reference (d) will be updated with full descriptions of the SMFF exercise requirements prior to the compliance date for this rule. Compliance with PREP satisfies the drills and exercises component of this rule.

11. RESPONSE TIMEFRAME REQUIREMENTS.

Reference (a) establishes how quickly planned SMFF resources should be capable of arriving on scene. Acceptable resource providers are capable of responding in the response timeframes established in Table 155.4030(b) or contained in approved temporary waivers.

a. Response Timeframes provide Planning Standards.

Appropriate SMFF resources for each of the required SMFF services listed in Table 155.4030(b) should not only be identified, but positioned for timely response to incidents up to and including the worst case discharge. When a contract is in place with a vessel owner or operator, resource providers agree that they are capable of and intend to commit to meeting the planning requirement, including the associated response timeframes. The response timeframes listed in reference (a) are planning criteria, not performance standards. (33 CFR 155.4010)

Navigation and Vessel Inspection Circular NVIC No. 2-10

b. Response Timeframes Vary with Operating Areas.

Reference (a) provides response timeframes for applicable continental United States (CONUS) and outside continental United States (OCONUS) operating areas in Table 155.4030(b).

c. CONUS Operating Areas.

The CONUS nearshore category encompasses *Great Lakes*, the *inland area* and the *nearshore area*, as defined in 33 CFR 155.4025. The CONUS offshore category encompasses the *offshore area* as defined in 33 CFR 155.4025. The regulation definitions of *Great Lakes*, *inland area*, *nearshore area* and *offshore area* operating areas can be found in the Glossary attached to this NVIC. These operating areas apply to both salvage services and marine firefighting services for resource planning purposes.

The *pier* operating area is unique to the SMFF regulation and applies only to MFF services. A discussion of the *pier* operating area is found in Section 10.e, below.

The *open ocean* operating area used in the OSRO classification system (reference (e)) is the area extending from 50 miles to 200 miles offshore. This rule does not establish response timeframe requirements for the *open ocean* operating areas.

d. OCONUS COTP City Operating Areas.

The inner operating area for OCONUS COTP Cities extends from a point in the harbor to 12 miles. The outer operating area for OCONUS COTP Cities extends from 12 miles to 50 miles from the same point in the harbor.

<u>COTP City</u>	<u>COTP Zone</u>
JUNEAU	Southeast Alaska Lat/Long 58.3 N, 134.4 W
VALDEZ	Prince William Sound Lat/Long 61.1 N, 146.37 W
ANCHORAGE	Western Alaska Lat/Long 61-14.30 N, 149-53.40 W
HONOLULU	Hawaii Lat/Long 21-18.4 N, 157-52.4 W
PITI GUÅM	Commonwealth of the Northern Marianas Lat/Long 13-25.21 N, 144-39.48 W
SAN JUAN	Commonwealth of Puerto Rico AND United States Virgin Islands Lat/Long 18-27.35 N, 066-07.00 W

Stakeholders should refer to the applicable ACP for specific OCONUS COTP City operating area information. The ACP may define how the 12 and 50 miles are measured for the COTP Zone: either radiating from the identified point or via a specified track from point to point, which might be more practical when there is a convoluted river within the range.

e. CONUS and OCONUS *Pier* Operating Areas.

The *pier* response operating area is only pertinent for planning MFF response, and not for planning salvage response. The location of the *pier* operating area is the dock, or pier, where the vessel is berthed. For vessels calling at any CONUS pier, or an OCONUS pier within 50 miles of a COTP city, the planholder must list the pier location by facility name or city in the corresponding GSA in accordance with 33 CFR 4040(d)(2).

It is acceptable to plan for MFF resources which can provide timely response to identified shoreline segments instead of specific piers. A 10-mile segment length is recommended. The MFF resources contracted for each segment must be able to meet the response timeframes for *pier* firefighting response for every pier in the defined segment. This resource planning method is intended to facilitate adding additional piers to the VRP.

When a new pier within an approved segment is added as a vessel's port of call, the vessel owner or operator may batch the additional pier identification into a periodic VRP revision, without a requirement to add each new pier to the VRP separately, since appropriate MFF resources have already been identified for the shoreline segment containing the pier.

12. RESOURCE PROVIDER ADEQUACY.

In addition to availability to respond in a timely manner, reference (a) provides criteria for determining the adequacy of SMFF resources. The attachments to this NVIC, including Attachments 3, Frequently Asked Questions, and 5, Evaluation of Salvage & Marine Firefighting Services are intended to aid the vessel owner or operator select adequate resource providers to mitigate the risks associated with their vessel(s).

a. Resource Provider Adequacy Determination.

The vessel owner or operator must determine whether or not a resource provider can adequately provide the needed capabilities. This should include detailed dialogue and investigation by the vessel owner or operator.

b. SMFF Resource Selection Criteria.

The regulation provides 15 primary resource provider selection criteria in 155.4050(b). The vessel owner or operator is responsible to determine and certify the adequacy of the SMFF resource providers cited in their plan based on their

Navigation and Vessel Inspection Circular NVIC No. 2-10

meeting these criteria to the maximum extent possible. See section 12 of this NVIC.

Information about SMFF services found in the ACP or other area and regional plans may provide a link to resource providers' information or documentation with respect to the 15 selection criteria.

13. CONTRACTS WITH FUNDING AGREEMENTS, AND OTHER CERTIFICATIONS.

a. Submission of Contracts and Funding Agreements.

Contracts and funding agreements between vessel owners or operators and resource providers must be submitted along with the VRP, but need not be included as part of the VRP. Contracts and funding agreements may be submitted electronically if the VRP is submitted electronically. Contracts and funding agreements must be signed by both parties at the time of submission.

Contracts and funding agreements between primary resource providers and their subcontractors need not be submitted, but the Coast Guard reserves the right to view them at any time.

b. Contracts or Other Approved Means.

Contracts or other approved means must be any one of the following: a written agreement between a vessel owner or operator and a resource provider stating the resource provider is capable of and intends to commit to meeting the plan requirements; written certification that the required personnel, equipment and capabilities are available and under the vessel owner or operator's direct control, in which case they do not need to contract with a resource provider, or; an alternative approved by the Coast Guard Commandant, Director of Prevention Policy (CG-54) and submitted in accordance with 33 CFR 155.1065(f).

c. Funding agreements.

A funding agreement is an agreement between a resource provider and a planholder that identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the funding agreement. The funding agreement must be signed by both parties at the time it is submitted for approval. The funding agreement must include a statement of how long it remains in effect, and must be provided to the Coast Guard for approval with the VRP. In addition any written funding agreement with a public resource provider must be included in the vessel owner or operator's VRP.

The funding agreement is a component part of the contract or other approved means. It is not synonymous for or a replacement of the contract or other approved means. This funding agreement is to ensure that SMFF responses are not delayed due to funding negotiations.

d. Lloyd's Open Form.

Lloyd's Standard Form of Salvage Agreement (LOF) alone does not meet the funding agreement definition in 33 CFR 155.4025 because it does not contain agreed upon rates for specific equipment and services. The regulatory intent is to prevent any delay in response due to price or other contractual negotiations.

However, the Coast Guard is willing to consider the LOF in lieu of a funding agreement under the following conditions:

- (1) The LOF is submitted with and identified in the entire contract or other approved means between the primary resource provider and the vessel owner or operator; and
- (2) The LOF is signed by both the primary resource provider and the vessel owner or operator at the time it is submitted with the contract or other approved means to the Coast Guard.

If the LOF is submitted as outlined above, the Coast Guard believes that the regulatory intent of preventing any delay in response due to contractual negotiations will be met and we should consider the submission as an acceptable alternative under the contract or other approved means definition contained in 33 CFR 155.4025.

e. Other Standard Salvage Contracting Forms.

The Coast Guard may consider other types of standard salvage contracting forms as an acceptable alternative under the contract or other approved means definition in lieu of a funding agreement if such forms are submitted in a manner similar to that which is described above for the LOF.

f. Other Agreements and Certifications.(1) *Resource Provider's Written Consent to be Listed in the VRP.*

Vessel owners or operators must obtain written consent from the resource provider agreeing to be listed in the VRP. Resource provider consent agreements may be included in the contract or other approved means, or as a separate document. Public marine firefighters may only be listed to the extent of their jurisdiction unless other agreements are in place. See section 9.d.(1)(b) of this NVIC.

(2) *Marine Firefighter Pre-Fire Plan Certification Statements.*

Marine firefighters identified in the VRP must not only be given a copy of the MFF pre-fire plan, but they must certify to the vessel owner or operator in writing that they find the MFF pre-fire plan acceptable and agree to implement it to mitigate a potential or actual fire. The vessel owner or operator must obtain this certification from the MFF resource provider in writing. The certification does not need to be submitted with the VRP, but it should be

Navigation and Vessel Inspection Circular NVIC No. 2-10

available for inspection by the COTP. The planholder may confirm the certification in the VSA.

Plan reviewers, inspectors, exercise evaluators, or incident follow-up teams may elect to verify the distribution of appropriate MFF pre-fire plans to SMFF resource providers as required by the SMFF regulation.

(3) *Vessel Owner/Operator's Certification of Resource Provider Adequacy.*

The vessel owner or operator certifies that the primary resource providers were selected in accordance with reference (a) and found to be adequate for response in the geographical areas for which they are cited in the VRP on the basis of meeting the requirements of 33 CFR 155.4050 to the maximum extent possible.

The vessel owner or operator's certification of SMFF resource provider adequacy may be provided in the form of a letter on the vessel owner or operator's stationery, or through an electronic signature if the VRP is submitted using the Coast Guard electronic VRP submission tool. The GSA should state the location of resource provider adequacy certification statements. Background documentation showing due diligence may be requested by the Coast Guard in the event of an incident or during an inspection. Section 12 provides more guidance on determining resource provider adequacy.

14. DEVIATION FROM THE VRP DURING RESPONSE.

a. Actions in Accordance with the National Contingency Plan.

Section 1144 of the Coast Guard Authorization Act of 1996, otherwise known as the "Chaffee Amendment," amended the Federal Water Pollution Control Act (FWPCA) regarding the use of spill response plans. Under 33 U.S.C. § 1321(c)(3)(B) the "owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects." The Coast Guard interprets this statutory language as applicable to the use of noncontracted resources, and other significant deviations from the plan. The Coast Guard intends to give precedence to the Incident Action Plan as developed by a Unified Command during an actual response over the provisions of the VRP.

b. Federal On-Scene Coordinator Authority.

Federal On-Scene Coordinators (FOSCs) may authorize a deviation from the VRP at their discretion. The FOSC will consider requests to deviate during a response where it would lead to a more expeditious or effective response to the spill or mitigation of its environmental effects. Only under exceptional circumstances will the FOSC authorize deviation from the resource provider listed in the approved VRP.

15. FORMS/REPORTS. The forms referenced in this Instruction are available in USCG Electronic Forms on the Standard Workstation or on the Internet:
<http://www.uscg.mil/forms/>; CG Central at <http://cgweb.comdt.uscg.mil/CGForms>.



KEVIN S. COOK
Rear Admiral, U. S. Coast Guard
Director of Prevention Policy

- Enclosures: (1) Acronyms
(2) Glossary
(3) Frequently Asked Questions
(4) Job Aid – Alternative Planning Criteria
(5) Job Aid – Evaluation of Salvage and Marine Firefighting Services

Navigation and Vessel Inspection Circular NVIC No. 2-10

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Acronyms

If there is a discrepancy between this document and References (a) through (e), the regulations control.

ACP	Area Contingency Plan
APC	Alternative Planning Criteria
AMSP	Area Maritime Security Plan
CFR	Code of Federal Regulations
CONUS	Continental United States
COTP	Captain of the Port
EEZ	Exclusive Economic Zone
FOSC	Federal On-Scene Coordinator
FWPCA	Federal Water Pollution Control Act
GSA	Geographic Specific Appendix
HAZWOPER	Hazardous Waste Operations and Emergency Response
IC	Incident Commander
ICS	Incident Command System
IOA	Interim Operating Authorization
LOF	Lloyd's Open Form
MFF	Marine Firefighting
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NFPA	National Fire Protection Association
NVIC	Navigation and Vessel Inspection Circular
OCONUS	Outside Continental United States
OMB	Office of Management and Budget
OPA 90	Oil Pollution Act of 1990

Enclosure (1) to NVIC 2-10

OSRO	Oil Spill Removal Organization
PREP	National Preparedness for Response Exercise Program
QI	Qualified Individual
RP	Responsible Party
RRI	Response Resource Inventory
SMFF	Salvage and Marine Firefighting
SOLAS	International Convention for the Safety of Life at Sea, 1974
SRP	Salvage Response Plan
SSI	Sensitive Security Information
UC	Unified Command
USC	United States Code
VRP	Vessel Response Plan
VSA	Vessel Specific Appendix

Glossary

If there is a discrepancy between this document and References (a) through (e), the regulations control.

Area Contingency Plan	The plan prepared by an Area Committee in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President of the United States. <i>(Ref. (e))</i>
Assessment of structural stability	Completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for these calculations includes information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts. In addition, the assessment must be consistent with the conditions set forth in 33 CFR 155.240 and 155.245, as applicable. <i>(Ref. (a))</i>
Boundary lines	Lines drawn following the general trend of the seaward, highwater shorelines and lines continuing the general trend of the seaward, highwater shorelines across entrances to small bays, inlets and rivers as defined in 46 CFR 7.5(c). <i>(Ref. (a))</i>
Captain of the Port (COTP) city	The city which is the geographical location of the COTP office. COTP city locations are listed in 33 CFR Part 3. <i>(Ref. (a))</i>
Captain of the Port (COTP) Zone	A zone specified in 33 CFR Part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ). <i>(Ref. (b))</i>
Chaffee Amendment	The Coast Guard Act of 1996: Chaffee Amendment. Section 311(c)(3)(B) of the Federal Water Pollution Control Act (33 USC 1321(c)(3)(B)) was amended by striking "or as directed by the President" and inserting "except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects."
Continental United States (CONUS)	The contiguous 48 States and the District of Columbia. <i>(Ref. (a))</i>
Contract or other approved means	Any one of the following: 1) A written contractual agreement between a vessel owner or operator and resource provider. This agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements.

Enclosure (2) to NVIC 2-10

2) A written certification that the personnel, equipment and capabilities required by the SMFF regulation are available and under the vessel owner or operator's direct control. If the planholder has personnel, equipment and capabilities under their direct control, they need not contract those items with a resource provider.

3) An alternative approved by the Coast Guard (Commandant, Director of Prevention Policy (CG-54)) and submitted in accordance with 33 CFR 155.1065(f).

As part of the contract or other approved means you must develop and sign, with your resource provider, a written funding agreement. This funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The funding agreement must include a statement of how long the agreement remains in effect, and must be provided to the Coast Guard for VRP approval. In addition any written agreement with a public resource provider must be included in the planholder's Vessel Response Plan. *(Ref. (a))*

Diving services support

Divers and their equipment to support salvage operations. This support may include, but not be limited to, underwater repairs, welding, placing lifting slings, or performing damage assessments. *(Ref. (a))*

Emergency lightering

The process of transferring oil between two ships or other floating or land-based receptacles in an emergency situation and may require pumping equipment, transfer hoses, fenders, portable barges, shore-based portable tanks, or other equipment that circumstances may dictate. *(Ref. (a))*

Emergency towing

Also referred to as rescue towing, emergency towing means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be assisted. *(Ref. (a))*

Exclusive Economic Zone (EEZ)

The zone contiguous to the territorial seas of the United States, extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial seas is measured. *(Ref. (e))*

External emergency transfer operations

The use of external pumping equipment placed onboard a vessel to move oil from one tank to another, when the vessel's own transfer equipment is not working. *(Ref. (a))*

External Firefighting teams	Trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel. <i>(Ref. (a))</i>
External vessel firefighting systems	Firefighting resources (personnel and equipment) that are capable of combating a fire from other than onboard the vessel. These resources include, but are not limited to, fire tugs, fire OSVs, portable fire pumps, airplanes, helicopters, or shore-side fire trucks. <i>(Ref. (a))</i>
Funding agreement	A written agreement between a resource provider and a planholder that identifies agreed-upon rates for specific equipment and services to be made available by the resource provider under the agreement. The funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. This agreement must be part of the contract or other approved means and must be submitted for review along with the VRP. <i>(Ref. (a))</i>
Great Lakes	Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas. <i>(Ref. (a))</i>
Hazardous condition	A hazardous condition is defined as any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the U.S. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage. <i>(33 CFR 160.204)</i>
Heavy lift	The use of a salvage crane, A-frames, hydraulic jacks, winches, or other equipment for lifting, righting, or stabilizing a vessel. <i>(Ref. (a))</i>
Inland area	The area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 - 80.850 . The inland area does not include the Great Lakes. <i>(Ref. (a))</i>
Making temporary repairs	Action to temporarily repair a vessel to enable it to safely move to a shipyard or other location for permanent repairs. These services include, but are not limited to, shoring, patching, drill stopping, or structural reinforcement. <i>(Ref. (a))</i>

Enclosure (2) to NVIC 2-10

Marine firefighting	Any firefighting related act undertaken to assist a vessel with a potential or actual fire, to prevent loss of life, damage or destruction of the vessel, or damage to the marine environment. <i>(Ref. (a))</i>
Marine firefighting pre-fire plan	A plan that outlines responsibilities and actions during a marine fire incident. The principle purpose is to explain the resource provider's role, and the support which can be provided, during marine firefighting incidents. Policies, responsibilities and procedures for coordination of on-scene forces are provided in the plan. It should be designed for use in conjunction with other state, regional, and local contingency and resource mobilization plans. <i>(Ref. (a))</i> A vessel fire plan written accordance with National Fire Protection Association (NFPA) 1405, Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapter 9, or one that meets another regulation, such as SOLAS Chapter II-2, Regulation 15, or international standard. <i>(FR 75 Page 36285 dated June 25, 2010.)</i>
Nearshore area	The area extending seaward 12 miles from the boundary lines defined in 46 CFR Part 7, except in the Gulf of Mexico. In the Gulf of Mexico, a nearshore area is one extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in 33 CFR 80.740- 80.850. <i>(Ref. (a))</i>
Non-Persistent or Group I Oil	A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions - -- At least 50 percent of which by volume distills at a temperature of 340°C (645°F); and -- At least 95 percent of which by volume distills at a temperature of 370°C (700°F). <i>(Ref. (b))</i>
Ocean	The open ocean, offshore area, and nearshore area as defined in 33 CFR 155.1020. <i>(Ref. (b))</i>
Offshore area	The area up to 38 nautical miles seaward of the outer boundary of the nearshore area. <i>(Ref. (a))</i>
Oil Spill Removal Organization (OSRO)	Any person or persons who own or otherwise control oil spill removal resources that are designed for, or are capable of, removing oil from the water or shoreline. Control of such resources through means other than ownership includes leasing or subcontracting of equipment or, in the case of trained personnel, by having contracts, evidence of employment, or consulting agreements. OSROs provide response equipment and services, individually or in combination with subcontractors or associated contractors, under contract or other means approved by the President, directly to an

owner or operator of a facility or tank vessel required to have a response plan under 33 USC 1321(j)(5). OSROs must be able to mobilize and deploy equipment or trained personnel and remove, store, and transfer recovered oil. Persons such as sales and marketing organizations (e.g., distributorships and manufacturer's representatives) that warehouse or store equipment for sale are not OSROs. *(Ref. (e))*

On-site fire assessment

A marine firefighting professional is on-scene at a safe distance from the vessel or on the vessel, who can determine the steps needed to control and extinguish a marine fire in accordance with a vessel's stability and structural integrity assessment, if necessary. *(Ref. (a))*

On-site salvage assessment

A salvage professional is on-scene at a safe distance from the vessel or on the vessel, who has the ability to assess the vessel's stability and structural integrity. The data collected during this assessment will be used in the salvage software calculations and to determine the necessary steps to save the vessel. *(Ref. (a))*

Open Ocean

The operating area seaward of the outer boundary of the offshore operating area to the seaward boundary of the EEZ (50-200 miles). *(Ref. (e))*

Operating Area

Rivers or canals, Great Lakes, inland, nearshore, offshore, or open ocean. These terms are used to define the geographic location(s) in which a facility or vessel is handling, storing or transporting oil. *(Ref. (e))*

Operating Environment

Rivers or canals, Great Lakes, inland, or ocean. These terms are used to define the conditions in which response equipment is designed to function. *(Ref. (e))*

Other refloating methods

Those techniques for refloating a vessel aside from using pumps. These services include, but are not limited to, the use of pontoons, air bags, or compressed air. *(Ref. (a))*

Outside continental United States (OCONUS)

Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States. *(Ref. (a))*

Enclosure (2) to NVIC 2-10

Persistent Oil	Petroleum-based oil that does not meet the distillation criteria for non-persistent oil. For the purposes of these guidelines, persistent oils are further classified based on specific gravity as follows: -- Group II: specific gravity less than 0.85 -- Group III: specific gravity between 0.85 and 0.95 -- Group IV: specific gravity 0.95 to 1.0 -- Group V: specific gravity greater than 1.0 (<i>Ref. (e)</i>)
Pre-fire plan	See Marine firefighting pre-fire plan
Primary resource provider	A resource provider listed in the Vessel Response Plan as the principal entity contracted for providing specific salvage and/or marine firefighting services and resources, when multiple resource providers are listed for that service, for each of the COTP Zones in which a vessel operates. The primary resource provider will be the point of contact for the planholder, the Federal On-Scene Coordinator (FOSC), and the Unified Command in matters related to specific resources and services as required in 33 CFR 155.4030(a). (<i>Ref. (a)</i>)
Remote assessment and consultation	Contacting the salvage and/or marine firefighting resource providers, by phone or other means of communications, to discuss and assess the situation. The person contacted must be competent to consult on a determination of the appropriate course of action and initiation of a response plan. (<i>Ref. (a)</i>)
Rescue towing	See Emergency towing.
Resource provider	An entity that provides personnel, equipment, supplies, and other capabilities necessary to perform salvage and/or marine firefighting services identified in the VRP, and has been arranged by contract or other approved means. The resource provider must be selected in accordance with 33 CFR 155.4050. For marine firefighting services, resource providers can include public firefighting resources as long as they are able, in accordance with the requirements of 33 CFR 155.4045(d), and willing to provide the services needed. (<i>Ref. (a)</i>)
Response Resource Inventory (RRI)	The database of oil spill response resources developed by the Coast Guard to meet requirements of OPA 90. (<i>Ref. (e)</i>)
Response Resources	The personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan. (<i>Ref. (a)</i>)

Rivers/canals	Operating area that includes bodies of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that have a project depth of 12 feet or less. <i>(Ref. (e))</i>
Salvage	Any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the maritime environment. <i>(Ref. (a))</i>
Salvage plan	A plan developed to guide salvage operations except those identified as specialized salvage operations. <i>(Ref. (a))</i>
Special salvage operations plan	A salvage plan developed to carry out a specialized salvage operation that includes heavy lift and/or subsurface product removal. <i>(Ref. (a))</i>
Subsurface product removal	The safe removal of oil from a vessel that has sunk or is partially submerged underwater. These actions can include pumping or other means to transfer the oil to a storage device. <i>(Ref. (a))</i>
Underwater vessel and bottom survey	Salvage resources on scene that can perform examination and analysis of the vessel's hull and equipment below the water surface. These resources also include the ability to determine the bottom configuration and type for the body of water. Can be accomplished through the use of equipment such as sonar, magnetometers, remotely operated vehicles, or divers. When divers are used to perform these services, the time requirements for this service apply and not those of diving services support. <i>(Ref. (a))</i>

Enclosure (2) to NVIC 2-10

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Frequently Asked Questions
Updated: September 16, 2010

If there is a discrepancy between this document and References (a) through (e), the regulations control.

CONTENTS:

PLAN SUBMISSION	2
NOTIFICATIONS	3
RESOURCE ACTIVATION	4
SALVAGE & MARINE FIREFIGHTING SERVICES	6
PUBLIC RESOURCES	11
EMERGENCY TOWING.	12
SUBSURFACE PRODUCT RENEWAL	14
ADEQUACY OF RESOURCE PROVIDERS	14
VESSEL SPECIFIC PRE-FIRE PLANS	16
TIMEFRAMES – CONUS & OCONUS OPERATING ENVIRONMENTS	20
GEOGRAPHIC SPECIFIC APPENDICES	23
CONTRACTS AND FUNDING AGREEMENTS	24
AREA CONTINGENCY PLANS	27
WAIVERS	29
DRILLS AND EXERCISES.	30
DEVIATION FROM THE PLAN DURING RESPONSE.	32

The current version of this document may be found on the Coast Guard’s Homeport website. It is located in >Missions > Environmental > Vessel Response Plan Program. Look for “Frequently Asked Questions”, “General”, “Salvage . . .” Relevant documents are available for review or download.

Enclosure (3) to NVIC 2-10

PLAN SUBMISSION

1. When do we need to submit our Salvage & Marine Firefighting (SMFF) Vessel Response Plan VRP updates?

SMFF VRP updates for existing VRPs must be submitted by the regulatory compliance date, February 22, 2011. (*33 CFR Parts 154 and 155 Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions; Final Rule, August 31, 2009*)

VRPs requiring 5-year revisions by the compliance date or afterwards, should be submitted six months in advance of the plan approval anniversary date and include SMFF revisions. (*33 CFR 155.1070(b)*)

VRPs with SMFF updates may be submitted to the Coast Guard beginning on September 1, 2010.

2. When do we need to submit a request for a temporary waiver from a particular response timeframe requirement?

When you are unable to identify a resource provider who can meet the response timeframes in a Captain of the Port (COTP) zone, you must submit a request for a temporary waiver from a specific SMFF response time requirement. SMFF waiver requests must be submitted through the local COTP at least 30 days prior to any plan submission deadlines identified in any subpart of 33 CFR Part 155 in order for your vessel to continue oil transport or transfer operations. (*33 CFR 155.4055(h)*)

In addition to the February 22, 2011, compliance date for the SMFF Final Rule, and the timeframe for 5-year revisions (six months. 33 CFR 155.1070(b)), “any plan submission deadlines identified in any subpart of 33 CFR Part 155” would include the timeframes for a first time plan submission (60 days 33 CFR 1065(a)), or adding a vessel to an existing approved plan (30 days 33 CFR 1070(d)).

Waiver requests are submitted to the local COTP, and are routed via the Areas and District, to the Commandant, Director of Prevention Policy (CG-54) for final approval. When approved, waiver requests should be submitted with the VRP. 33 CFR 155.4055 (*Updated June 4, 2010*)

3. If the waiver request is filed in a timely way and the vessel owner / operator does not receive a response from the Coast Guard before the vessel is due in the COTP Zone, will the vessel be able to operate as proposed in the waiver request?

If you are submitting a waiver request and your vessel is due to call prior to the thirty day submission window closing, it would be prudent to request interim operating authorization (IOA) for the VRP. The VRP Program will issue an IOA for a temporary period of time, as long as the vessel owner / operator has submitted a

request for a waiver from a particular response timeframe to the applicable COTP.
(Updated August 24, 2010)

4. What will the USCG provide the vessel owner / operator to indicate that the plan revision identifying the contracted SMFF resources is approved?

The Coast Guard will issue a letter stating that the plan has been reviewed and approved to the most current applicable regulations. (33 CFR 155.1065)

5. Will a new certification be required from the vessel owner / operator when amending the plans to include the SMFF information?

A new certification statement is required when amending plans to include the SMFF information. (33 CFR 155.1065(b))

The Coast Guard intends to provide an updated VRP application form for these submissions. We recommend that vessel owners/operators use the submission form CG-6083 when submitting requests for new VRP approvals, reviews, and updates. The form is available at www.uscg.mil/forms/CG/CG_6083.pdf.

6. We understand that there is a new electronic planning capability being developed by the Coast Guard that will speed up review times; will we be able to submit our SMFF updates using this system?

When the new electronic VRP system is released, it will include the required SMFF revisions. The Coast Guard's Homeport website describes the system and provides periodic status reports on its development. You may register in advance of its release by accessing the VRP section of Homeport located on the web at <https://homeport.uscg.mil>. Follow this pathway once on the website: Missions>Environmental>Vessel Response Plan Program.

NOTIFICATIONS

1. When do we contact the Coast Guard if the SMFF response is not a pollution case?

While the SMFF final rule does not have a specific notification requirement, most SMFF responses that occur present at least a threat of pollution, thereby causing activation of the VRP.

For those SMFF responses that do not include the threat of an oil or hazardous substances spill, 33 CFR 160.215 requires immediate notification to the Coast Guard (nearest Sector) of a hazardous condition. A hazardous condition is defined as any condition that may adversely affect the safety of any vessel, bridge, structure or shore area or the environmental quality of any port, harbor, or navigable waterway of the U.S. It may, but need not, involve collision, allision, fire, explosion, grounding, leaking, damage, injury or illness of a person aboard, or manning-shortage.

Enclosure (3) to NVIC 2-10

Notification to the Coast Guard of a hazardous condition will not necessarily trigger the activation of the VRP. It will ensure that the nearest Coast Guard Sector is aware of any event or potential event that may require its use. (33 CFR 153.203 & 33 CFR 160.204)

2. What triggers activation of the response resources identified in the VRP? The preamble states that “. . . the response plan is activated once the Master of the vessel has determined that the resources and personnel available onboard cannot meet the needs of an actual or potential incident.”

The VRP must be activated for an oil spill or threat of an oil spill, but any of the following events could trigger a SMFF response, whether or not the VRP is required to be activated:

- a. 33 CFR 160.215 requires the master to immediately notify the nearest Coast Guard unit of a hazardous condition.
 - b. 33 CFR 153.203 requires the Master to immediately notify the National Response Center as soon as they have any knowledge of any discharge of oil or a hazardous substance from a vessel.
 - c. 33 CFR 155.1030, 1035, 1040, 1045 and 1050 give response plan requirements as applicable to the type of vessel, including notifications of discharge or substantial threat of discharge of oil.
3. Please provide specific situations that should or should not trigger activation of the response resources that are planned for in the VRP?

The response resources planned for in the VRP are activated when there is an oil spill. Establishing whether or not the threat of an oil spill exists is a more difficult task. There are many factors to consider. External factors and a reasonable discussion between the Vessel Master or QI and the Coast Guard FOSC covering vessel may lead to a determination as to whether or not the VRP's resources will be activated.

It is not possible to describe specific situations that should or should not trigger VRP activation because there are so many factors to consider. Local Coast Guard COTP may elevate the situation at their discretion depending on the situation. (Updated August 24, 2010)

RESOURCE ACTIVATION

1. What is the role of the QI in an SMFF response?

To clarify the role of the QI in a salvage situation you should look at 33 CFR 155.1026, and also at the document in which the vessel owner / operator designates

the QI and defines his ‘full authority’ to act on the owner’s behalf. ‘Contract or other approved means’ and ‘funding agreement’ definitions in 33CFR 155.4025 should be understood as well.

When salvors and marine firefighters are concerned about the role of the QI in a salvage situation, they should review the QI designation document in the VRP which governs the QI / vessel owner / operator relationship. The vessel owner / operator provides the QI with a document that not only designates the individual or organization as QI, but also specifies the full authority of the QI to activate and engage in contracting with ‘other response related resources’, such as SMFF resources, identified in the plan. The QI is not responsible for “contracting or obligating funds for response resources beyond the full authority contained in their designation from the owner or operator of the vessel.” (*33 CFR 155.1026*)

That said, the QI does not negotiate the SMFF contract with the salvor when the incident occurs. The intent of the SMFF final rule is that the vessel owner / operator submit pre-negotiated SMFF contracts and funding agreements with their updated VRP by February 22, 2011. Then, should an incident occur, the vessel owner / operator and the salvor will already have identified the services and agreed upon fees that will be charged, and the duration of the agreement for services and fees. The Final Rule clearly states, “This funding agreement is to ensure that SMFF responses are not delayed due to funding negotiations.”

While it is a regulatory requirement that the incident begin with a pre-negotiated contract, it is possible under the Chaffee Amendment, to change the form of contract as the response operation continues. The golden rule for the FOSC who will make the determination about allowing contractual substitution or other change is that such change should provide a more expeditious or effective response to the spill or mitigation of its environmental effects. (*Updated August 31, 2010*)

The Coast Guard Authorization Act of 1996 (Pub.L. 104-324): Chaffee Amendment. Section 311(c)(3)(B) of the Federal Water Pollution Control Act (33 USC 1321(c)(3)(B)) was amended by striking “or as directed by the President” and inserting “except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.”

2. Is the QI expected to activate in-place SMFF contracts?

The QI activates the in-place contracts listed in the VRP following notification of a spill or threat of a spill, as appropriate for the reported spill situation. When there is an SMFF situation, the QI is expected to notify the listed primary SMFF resource provider(s). (*33 CFR 155.4030 (a)*)

Enclosure (3) to NVIC 2-10

The provisions of the Chaffee Amendment, which allow deviation from the VRP at the discretion of the Federal On-Scene Coordinator (FOSC), establish a means to deviate from the VRP based on FOSC approval. A QI may work with the FOSC to make alternate arrangements when the named resources are not available to respond or should conditions dictate, at the discretion of the FOSC. An FOSC-approved deviation under the Chaffee Amendment does not excuse or exempt a vessel owner / operator from compliance with the SMFF regulations (i.e., a vessel owner / operator is responsible for determining the adequacy of SMFF resource providers under 33 CFR 155.4050).

SALVAGE AND MARINE FIREFIGHTING SERVICES

1. What is the Coast Guard's expectation concerning the equipment list?

USCG expects the funding agreement submitted with the VRP will identify agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. *(33 CFR 155.4025; 33 CFR Table 155.4030(b))*

The Coast Guard also expects that VRP will name the contracted primary resource provider(s) for all of the SMFF services identified in Table 155.4030(b) and provide means to contact them. *(Updated July 9, 2010)*

2. What resource information must be listed in the Geographic Specific Appendices (GSAs)?

SERVICES:

The 19 SMFF services identified in Table 155.4030(b) must be listed in the GSAs, with primary resource provider and contact information:

SALVAGE:

1. Remote assessment and consultation
2. Begin assessment of structural stability
3. On-site salvage assessment
4. Assessment of structural stability
5. Hull and bottom survey
6. Emergency towing
7. Salvage plan
8. External emergency transfer operations
9. Emergency lightering
10. Other refloating methods
11. Making temporary repairs
12. Diving services support
13. Special salvage operations plan
14. Subsurface product removal
15. Heavy lift

MARINE FIREFIGHTING:

16. Remote assessment and consultation
17. On-site fire assessment
18. External firefighting teams
19. External vessel firefighting systems.

EQUIPMENT:Defined equipment verified by vessel owner / operator determination of adequacy:

The service definitions in 33 CFR 155.4025 provide a description of the types of equipment that are typically used to perform each service. The Coast Guard expects the vessel owner / operator to have ensured to his/her satisfaction that listed service providers are adequate to perform the service as defined, including appropriate resources, both personnel and equipment. The Coast Guard's Homeport website provides a hyper linked version of the job aid for evaluating SMFF services.

At a minimum, the vessel owner / operator must choose a resource provider that meets, to the maximum extent practicable, the selection criteria in 33 CFR 155.4050(b). Section 155.4050 provides a 15 item list of selection criteria. For example, the third item says the resource provider owns or has contracts for equipment needed to perform response services. The fourth item says the resource provider has personnel with documented training certification and degree experience. The fifth says that the resource provider has 24-hour availability of personnel and equipment and history of response times compatible with the time requirements in the regulation. The vessel owner / operator must certify that these (and the other 12 criteria) were considered in selecting their resource provider. The Coast Guard expects that the vessel owner / operator's due diligence efforts will be considered during exercises and pollution incidents.

Specific equipment listing requirements from 33 CFR 155.4030 (e) through (h):

- (e) Emergency towing vessels must be identified (named) in each GSA based on the emergency towing-related characteristics from the Vessel Specific Appendices (VSAs) of the vessels in the VRP using that particular COTP Zone;
- (f) Transfer and lightering pumps must be ensured based on the capacity of the vessel's largest tank. Therefore, each VSA should list the largest tank for that vessel, and each GSA should ensure external pumping resources are adequate to meet the requirements of the (listed) largest tank of all the vessels from the VRP that are calling that COTP Zone;
- (g) Vessel specific firefighting requirements include listing appropriate extinguishing agent types and quantities calculated for each vessel, when the extinguishing agent is foam, and ensuring that appropriate quantities are available in the COTP Zones (listed

Enclosure (3) to NVIC 2-10

in the GSAs) where the vessels trade. Adequate external pumping capacity must also be provided to deliver foam or water when they are the appropriate extinguishing agent for the vessel(s);

(h) Subsurface product removal capability must be available where the vessel transits at water depths of 40 to 150 feet.

The VRP must be consistent with the information contained in applicable Area Contingency Plans (ACPs) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). These plans contain information about the SMFF services and equipment located in a COTP Zone. These resources should correlate with equipment and services listed in your funding agreement and services listed in your plan. Vessel and resource provider interests are encouraged to work with COTPs and Area Committees as they update ACP SMFF appendices.

The responsibility for ensuring adequate resources are contracted for, as spelled out in the rule, lies with the vessel owner / operator. (33 CFR 155.4010) (Updated August 31, 2010)

3. What do you mean by the term structural stability in the definition of “assessment of structural stability”?

The term ‘assessment of structural stability’ in this rule refers to assessment of the damaged vessel’s stability and structural condition, not of the tendency of a structure to return to its original geometry when disturbed from its initial condition. (Updated September 2, 2010)

4. Is information referenced in 33 CFR 155.4030 (h) (ensuring the proper subsurface product removal) and in 33 CFR.4032(b) (worker health and safety) required to be referenced in the plan or is this to be assumed based on the contractual agreement between the planholder and salvage resource?

Subsurface product removal is to be listed in the applicable GSAs along with primary resource provider information, as for all of the other services listed in Table 155.4030(b).

The vessel owner / operator must ensure that their resource providers have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing SMFF services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). Worker health and safety measures are inseparable from the provision of each of the 19 services and must be required of resource providers for all services. Adequacy criterion number 4 requires vessel owners or operators to consider training and education, and number 6 requires vessel owners or operators to consider an on-going continuous training program. The responsibility for ensuring adequate resources are contracted for, as

spelled out in the rule, lies with the vessel owner / operator. (33 CFR 155.4032; 155.4050) (Updated July 9, 2010)

5. What is the expectation when listing the extinguishing agent?

SMFF changes to the VRP are to ensure that the vessel owner / operator identifies and plans for the risks associated with his/her vessel. (155.4030(g) *Ensuring firefighting equipment is compatible with your vessel.*)

The Coast Guard's expectation is that the extinguishing agent(s) indicated in the VRP or VSA will fit the requirements of the vessel. Appropriate extinguishing agent(s) should be determined based on the vessel's cargo, other contents and superstructure. Additionally, the quantity of foam must be calculated for the individual vessel, if foam is the extinguishing agent. The Coast Guard expects the vessel owner / operator to plan the proper extinguishing agent(s) and quantities for each vessel, and list that information in the VSA. This provides a point of information for responders in emergency situations, and is verifiable during VRP review.

The identified extinguishing agents must be made available in appropriate quantities in the COTP Zones where the corresponding vessels trade. The VRP should list the types and quantities of extinguishing agents required for each COTP Zone in the corresponding GSA. (33 CFR 155.4030) (Updated August 31, 2010)

6. What is the correct pumping rate factor to use for calculation extinguishing agent requirements?

The Coast Guard made a typographical error in 33 CFR 155.4030(g). A technical amendment corrected the pumping rate factor from 0.16 gallons per minute per square foot (gpm/ft²) to 0.016 gpm/ft². (*Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments, Final Rule, June 25, 2010*) (Updated August 31, 2010)

7. If the extinguishing agent type and amount is listed in the pre-fire plan, is that acceptable to meet the requirement?

No. The vessel-specific extinguishing agent type and amount must be listed in the VRP, and the required amounts must be identified in the applicable GSAs. It may also be included in the pre-fire plan. (Updated August 31, 2010)

8. What constitutes a "marine firefighting professional" or "salvage professional" for an inland tank barge?

There is no Coast Guard classification system for SMFF resource providers. For an inland tank barge, indeed any vessel, the SMFF professionals selected are those who meet the vessel owner / operator's standards for selection pursuant to the SMFF Final Rule. The vessel owner / operator must determine the adequacy of SMFF resource

Enclosure (3) to NVIC 2-10

providers listed in the VRP based on their assessment of SMFF resources providers' ability to meet the 15 selection criteria found in the SMFF final rule. The selection criteria include consideration of the experience, education and training of personnel selected. The vessel owner / operator must select resource providers on the basis of their meeting these criteria to the maximum extent possible. (33 CFR 155.4050(b))

9. What is the definition of *Assessment of Structural Stability* with regard to inland tank barges?

Assessment of Structural Stability, as defined in 33 CFR 155.4025, means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations should include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts. In addition, the assessment must be consistent with the conditions set forth in 33 CFR 155.240 and 155.245, as applicable.

This question highlights the difference in treatment of tank vessels and offshore barges in 33 CFR 155.240, and inland barges in 33 CFR 155.245, with regard to the assessment of stability and structural integrity. For tank vessels and offshore barges, 33 CFR 155.240 applies, requiring the use of a salvage software program.

33 CFR 155.245 requires inland barge owners or operators to ensure that the vessel plans necessary to perform salvage stability and residual hull strength assessments are maintained at a shore based location and are accessible 24 hours a day.

10. What is the difference between "external firefighting team" and "external vessel firefighting system"?

External firefighting team means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire aboard a vessel, while external firefighting systems mean firefighting resources that are capable of combating a fire from a location off the vessel. External systems may include fire tugs, fire OSVs, portable fire pumps, aviation assets, or shore side fire trucks, for example. (33 CFR 155.4025)

11. How does the equipment for the external firefighting team differ from the equipment for the external firefighting system?

Referencing the definitions provided in 33 CFR 155.4025:

The external firefighting team uses the vessel's equipment, although they may bring their personal fire safety gear with them when they board a vessel; and

The external firefighting system includes personnel and equipment that is brought in to fight the fire, from another location than the vessel on fire.

12. Worker health and safety. Are these items required to be referenced in the plan or is this to be assumed based on the contractual agreement between the planholder and salvage resource?

'Safety is job one.' It is advisable to specify that worker safety and health provisions of 33 CFR 155.1055(c) and 29 CFR 1910.120(q) are met. *(Updated June 4, 2010)*

PUBLIC RESOURCES

1. With regard to the use of public firefighting resources, please confirm that if a public marine firefighting resource meets the necessary criteria (training, experience, etc.) and offers its consent to be listed, it may be so listed in the VRP without the further requirement that it may only be listed if a commercial source is not available.

The regulations generally require a commercial firefighting response, but they do not preclude a public marine firefighter (public service department) being listed in the VRP when that department consents to such listing. *(33 CFR 155.4045)*

While OPA 90 emphasizes the use of private over public response resources, it is up to the vessel owner / operator to find an adequate resource provider who can respond on the vessel owner / operator's behalf. *(33 CFR 155.4050)*

To rely upon public firefighting capability, a vessel owner / operator must have a consent agreement with the public marine firefighters concerned the public marine firefighters' consent to be listed in the VRP, they agree to provide the relevant firefighting services listed in 33 CFR 155.4045, and that these services are capable of arriving within the response times listed in Table 155.4030(b) The consent agreement must be signed by the public marine firefighters and is required to be in writing and available. The consent agreement should also identify available local resources. *(33 CFR 155.4045)*

In approving plans that rely, in whole or in part, on public marine firefighting resources, the Coast Guard will examine the geographical area covered by those resources. To the extent that a vessel transits an area beyond the jurisdiction of public resources and the public marine firefighters do not consent to respond beyond their jurisdictional limits, response planners must rely exclusively upon private resources that are identified in the VRP. *(33 CFR 155.4045) (Updates August 31, 2010)*

2. Very few public firefighters have consented to be listed in VRPs. This means that private resources must be contracted for firefighting response. We are concerned that this will create conflict between public and private firefighters in a response situation. How can we address this situation before an incident occurs?

ACPs address harmonization of response organizations using the Incident Command System (ICS) and Unified Command (UC). Professional marine firefighters are

Enclosure (3) to NVIC 2-10

technical experts in marine firefighting who have vessel specific fire plans at their fingertips, are familiar with ACPs, and are trained in ICS / UC. Public firefighters have a duty to respond, may or may not have marine firefighting training, and are trained in ICS / UC. COTPs should encourage Area Committee participation by both groups. Both groups should participate in training and exercises that include marine firefighting response in order to practice marine firefighting response coordination. (Updated July 9, 2010)

EMERGENCY TOWING

1. Will the Coast Guard enforce the SMFF requirement to provide emergency towing vessels capable of operating in winds of up to 40 knots with the proper characteristics (horsepower and bollard pull) to tow the vessels covered by the VRP?

Vessel owners or operators must identify in their vessel response plans and contract for emergency towing vessels, as described in 33 CFR 155.4025 and §§155.4030(e).

2. The definition of emergency towing leaves several questions unanswered. Would you elaborate?

The definition of emergency towing attempts to capture several concepts in a very few words: “Emergency towing, also referred to as rescue towing, means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be assisted.”

There may be confusion about the concept of *stabilizing* a vessel. This term is used to convey provision of assistance that may prevent a situation from deteriorating further. Sometimes there is very little a towing vessel can do to ensure a vessel remains upright.

The word *ensure* is not meant to mean guarantee, but to convey the ready availability of assets to support operations. Emergency towing vessels do not guarantee that a ship will be removed from a grounded position, but are pre-position assets that are likely to be available for deployment to assist in vessel refloating operations.

Displacement is a more accurate term than tonnage in the context of the amount of bollard pull required in order to tow a vessel. The bollard pull required in order to tow a ship is generally much less than the pull required to refloat a grounded ship. A variety of factors affect the amount of bollard pull necessary to remove a vessel from a grounded position.

An acceptable tug asset must be able to tow the vessel in a 40 knot wind in any condition of loading. (Updated September 1, 2010)

3. Is it necessary to list emergency towing vessels in the VRP by name?

Contracted emergency towing vessels must be identified by name in the VRP. (33 CFR 155.4030(e) and 73 FR 80649, *Final Rule Discussion of Comments and Changes, Section K. Required services, Paragraph 3. Other*)

Emergency towing vessels with the proper characteristics must be identified in the GSAs by name, horsepower, bollard pull, and the ability to work in up to 40-knot winds in any loaded condition. Multiple vessels may be listed for each COTP zone, but a contract or other approved means and funding agreement must be in place for the vessels, indicating that the resource provider is capable and intends to commit to meeting the plan requirements. (33 CFR 155.4010, 4025, and 4030(e))

33 CFR 155.4045 requires that the resource providers listed in your plan have been arranged by contract or other approved means, and that you have obtained their written consent to list them in your plan.

4. The SMFF final rule says that the timeframes are planning, not performance standards. What is the consequence when a towing vessel cannot respond within the response timeframe?

The definition of contract or other approved means says that the agreement between the vessel owner / operator and the resource provider must expressly provide that “the resource provider is capable of, and intends to commit to, meeting the plan requirements.” (33 CFR 155.4025)

The enforcement consequence of failing, in an emergency, to provide adequate towing resources within the resource response timeframe will depend on whether or not the resource provider is capable of and intends to commit to meeting the planning standard. (33 USC 1228, 33 USC 1321)

5. Those towing vessels of suitable bollard pull and ability to work in conditions of up to 40 knot winds are not likely to be free to respond because they are commercially engaged most of the time. They may not be able to respond within the 12 hour nearshore and 18 hour offshore timeframe. How do we comply with this rule?

Multiple vessels may be listed for each COTP zone to provide a range of response options, and a contract or other approved means and funding agreement must be in place for the vessels listed, indicating that the resource provider is capable and intends to commit to meeting the plan requirements. (33 CFR 155.4010, 4025, and 4030(e))

There is a provision for a 3 year temporary waiver for salvage stabilization services when available resources cannot meet the response timeframe in a COTP Zone. If you are unable to find an emergency towing vessel resource provider who is able

Enclosure (3) to NVIC 2-10

meet the 12 and 18 hour timeframes for emergency towing vessels in a particular zone, you may apply for the 3 year temporary waiver. Among other things, your request must include how you intend to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources and their estimated response times. (33 CFR 155.4055)

6. With regard to emergency towing, barges are not self propelled, and are always under the control of a towboat. What does emergency towing constitute for an inland barge, recognizing that there are numerous towboats normally available on short notice on the inland waterways?

Your VRP must identify emergency towing vessels with sufficient capability to be effective in emergency situations. Inland operators may comply by contracting emergency towing vessels according to the established requirements, or submit alternate planning criteria for approval in accordance with 33 CFR 155.1065(f). (33 CFR 155.4030(e))

Owners of inland or coastal barges may, for example, identify emergency towing vessels owned by the vessel owner / operator, or establish reciprocal agreements with other towing companies to make emergency towing vessels available. Such reciprocal arrangements should be formalized by using Alternative Planning Criteria arrangements. (33 CFR 155.1065(f))

SUBSURFACE PRODUCT REMOVAL

1. Do inland tank barges need to contract for subsurface product removal?

33 CFR 155.4030(h) requires contracted subsurface product removal capability if your vessel operates in waters of 40 feet or more, and you must be capable of removing cargo and fuel from your sunken vessel to the maximum depth where your vessel operates, up to 150 feet deep. You should plan for the capability to remove oil from sunken vessels in order to prevent pollution from occurring.

Vessels operating only in waters less than 40 feet deep are not required to contract for subsurface product removal. (Updated July 9, 2010)

ADEQUACY OF RESOURCE PROVIDERS

1. Who is responsible to certify that responders are qualified?

The vessel owner / operator is responsible to certify that responders are qualified to the maximum extent possible. 33 CFR 155.4050 provides 15 criteria on which to base this certification of responder adequacy.

2. Will the Coast Guard verify the adequacy of SMFF resources in the VRP?

The vessel owner / operator bears the burden of vetting the qualifications of a salvage and marine firefighting resource provider and certifies to the Coast Guard that the resource providers are adequate based on the 15 selection criteria identified in the SMFF final rule to the maximum extent possible. The Coast Guard may choose to verify the vessel owner / operator's certification statement in order to confirm that they have vetted the resources listed in the VRP. (33 CFR 155.4050)

3. Will the Coast Guard issue a Salvage and Marine Firefighting classification system like the one in place for Oil Spill Removal Organizations?

There is a fundamental difference between SMFF and OSRO resource identification requirements in that there will be no Coast Guard classification of SMFF resources. The onus is on the vessel owner / operator to certify that the SMFF resource provider meets the 15 selection criteria to the maximum extent possible, as contained in 33 CFR 155.4050.

The vessel owner / operators' certification of the adequacy of SMFF resource providers may be provided in the form of a letter on the vessel owner / operator's stationery, or electronically when using the Coast Guard electronic planning system. The vessel owner / operator may be requested by the Coast Guard to verify how they determined the adequacy of their resource providers in the event of an incident or during an inspection.

Certification statements should not be taken lightly. Within the SMFF Final Rule, the Coast Guard has gone to great lengths to convey that this regulation promulgates a planning standard, not a performance standard. Compliance with the regulations is based upon whether or not a covered response plan ensures that adequate response resources are available.

The vessel owner / operator must do the necessary due diligence to enable him or her to certify that the selection criteria were considered when they choose their resource provider, and that the resource provider is adequate to fill the planning requirement. (33 CFR 155.4050)

4. Will each resource provider be subjected to a vessel owner / operator's due diligence inspection, each with their own unique inspection criteria?

The vessel owner / operator must certify in the plan that the 15 factors were considered in choosing resource providers who meet these criteria to the maximum extent possible. The level of due diligence research conducted may vary from one vessel owner / operator to another. Resource providers may expect to receive many requests for information and be subject to various due diligence inspections as vessel owners or operators verify their resource provider selections. (33 CFR 155.4050)

Enclosure (3) to NVIC 2-10

5. Will a vessel owner / operator assume any liability if its choice of resource provider turns out not to have the proper amount of insurance?

It is the vessel owner / operator's responsibility to determine the adequacy of the responders cited in their plans. (33 CFR 155.4050)

6. It is stated that the plan holder may be asked to prove vetting of salvage resources. We would like to let a certificate of coverage fulfill this requirement which will be available upon request.

The vessel owner / operator must indeed certify in the VRP that the factors listed in 33 CFR 155.4050 were considered in choosing resource providers. Resource providers selected "must be selected on the basis of meeting the criteria to the maximum extent possible."

A prudent vessel owner / operator will perform due diligence research to aid in making his or her resource provider selection(s). It is not acceptable for a VRP to list an inadequate tug in a COTP Zone where an adequate tug exists, for example. Due diligence research would aid in finding appropriate resources for the particular vessels in the VRP. The adequacy criteria provide 15 ways to look at SMFF resource providers. Using these criteria to vet SMFF providers should help to verify whether or not the provider(s) selected have the proper capability to respond to the risks posed by the vessel owner / operator's assets in the places where they trade.

The vessel owner / operator should ensure that the provider meets the criteria as fully as possible. Given the same information, there will be subjective differences in the way vessel owners or operators make their final selection, but that selection should be a considered one. (Updated July 9, 2010)

7. How does the Coast Guard verify that a resource provider can respond in multiple zones?

The Coast Guard may choose to verify a resource provider's capability of and intention to meet plan requirements by post-incident investigations, exercises, inspections, audits, and the waiver request approval process. (Updated August 31, 2010)

VESSEL SPECIFIC PRE-FIRE PLANS

1. The preamble to the Final Rule says that either a pre-fire plan written according to NFPA 1405 OR a SOLAS fire plan may be used to meet the pre-fire plan requirement, while 33 CFR 155.4035(b)(1) specifies that both must be submitted where the vessel has a SOLAS fire plan. Which is correct?

The SOLAS fire plan, including the SOLAS fire control plan, may be submitted in lieu of a pre-fire plan developed according to NFPA 1405.

In the preamble to the Salvage and Marine Firefighting Final Rule, the Coast Guard said, “We added wording to allow SOLAS vessels to use their SOLAS fire plans in lieu of a fire plan developed under NFPA 1405 to § 155.4035(b)(1)” [see 73 FR 80624, first column, first full paragraph]. However, this was inadvertently not added to § 155.4035(b)(1) in the final rule. We have corrected this omission, and at the same time clarified the term “SOLAS fire plan”, as there is no document with that name under the SOLAS regulations. The last sentence of § 155.4035(b)(1) has been changed to read:

“You must prepare a vessel pre-fire plan in accordance with NFPA 1405, Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapter 9 (Incorporation by reference, see § 155.140). If the planholder’s vessel pre-fire plan is one that meets another regulation, such as SOLAS Chapter II– 2, Regulation 15, or international standard, a copy of that specific fire plan must also be given to the resource provider(s) instead of the NFPA 1405 pre-fire plan, and be attached to the VRP.”

(Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments, Final Rule, June 25, 2010)(Updated July 9, 2010)

2. What constitutes a pre-fire plan that will be submitted to marine firefighters?

It is the intention of the Coast Guard to accept a pre-fire plan written according to the National Fire Protection Agency (NFPA) 1405 Guide for Land-Based Firefighters Who Respond to Marine Vessel Fires, Chapter 9, or a SOLAS fire control plan, including supporting documents, as described in SOLAS Chapter II-2, Regulation 15, or an international standard. A copy of the specific plan must also be given to the resource provider(s) instead of the NFPA 1405 pre-fire plan, and be attached to the VRP.

Safety of firefighting personnel is paramount. The marine firefighting resource provider can request supporting documents from the vessel owner / operator to provide any missing information that would make the plan acceptable to them prior to providing written certification. A prudent firefighting response provider may request information on the vessel’s cargo and other pertinent information that SOLAS does not require but NFPA does. *(Updated July 9, 2010)*

3. What sections of the SOLAS standard are a vessel owner / operator required to adhere to in submitting a pre-fire plan to a firefighting resource provider?

A SOLAS fire control plan is only one part of an acceptable pre-fire plan submission submitted to the Coast Guard. The supporting documents discussed in SOLAS Chapter II-2, Regulation 15 must also be submitted if a vessel owner / operator chooses this pre-fire plan submission option. Supporting documents include: training manual(s) which may comprise several volumes; fire alarms; operation and use of

Enclosure (3) to NVIC 2-10

firefighting systems and appliances; the operation and use of fire doors; the operation and use of fire and smoke dampers; and the escape system and appliances. The supporting documentation also provides the crew assignments, fire parties, onboard training and drills and additional requirements for passenger vessels. *(Updated June 4, 2010)*

4. SOLAS fire control plans and their supporting documents may be written in another language. Will this be acceptable for the purposes of the SMFF regulation?

When a SOLAS fire control plan and its supporting documents are used to meet the requirements of this regulation, it is prudent to make the documents available to marine firefighting resources in the English language. *(Updated August 31, 2010)*

5. The SOLAS fire control plan provides no mechanism for advanced calculation to deal with cargo and tank fires, which we think should be included in the pre-fire plan.

VRP updates required by 33 CFR Part 155 require that a tank vessel owner / operator contract for assessment and survey services that include salvage and damage stability calculations, including those needed as a result of any firefighting activities that may take place on the vessel. *(33 CFR 155.4025 Assessment of structural stability)(33 CFR 155.4030(b))(Updated August 31, 2010)*

6. The NFPA 1405 guidelines for a pre-fire plan are oriented toward ocean-going, self-propelled vessels. What are the requirements of a barge pre-fire plan written to NFPA 1405 specifications?

A barge pre-fire plan written to NFPA 1405 specifications may include only those sections of NFPA 1405, Chapter 9 (Planning), that are applicable to barges.

The Coast Guard may accept a pre-fire plan that meets another regulation or an alternative standard for barges that includes a specific fire control plan and supporting documents in lieu of the NFPA 1405 pre-fire plan.

7. SOLAS is an international requirement not applicable to vessels trading solely in the US, such as tank barges. The NFPA 1405 standard is written for application to blue water vessels, not barges. Will the Coast Guard accept a pre-fire plan that is written for barges, but not to NFPA 1405 or SOLAS standards?

The Coast Guard may accept a pre-fire plan that meets another regulation or an international standard that includes a specific fire control plan and supporting documents in lieu of the SOLAS or NFPA 1405 pre-fire plan. *(Updated July 9, 2010)*

8. Will a single marine firefighting pre-plan suffice for a fleet?

If fleet vessels are all sister vessels and substantially the same, a single marine firefighting pre-plan should be sufficient. If the vessels are not sister vessels, or are

sister vessels with substantial differences such as type or location of fire suppression systems, distinct marine firefighting pre-fire plans must be created for each vessel. Safety of firefighting personnel is the bottom line. We do not want a firefighter to be following a plan that does not match the vessel's characteristics. (33 CFR 155.4035) (Updated July 9, 2010)

9. What geographic specific information must be provided in a marine firefighting pre-fire plan?

None. This is a vessel specific pre-fire plan. (33 CFR 155.4035)

10. Is it permissible to incorporate marine firefighting pre-fire plans into the VRP by reference, or does each VRP need to contain that vessel's firefighting plan within it?

The vessel owner / operator must attach vessel pre-fire plans to the VRP in accordance with 33 CFR 4035(b). If the VRP is submitted electronically through the Coast Guard's electronic plan submission system (currently under development), pre-fire plans may be uploaded electronically into the corresponding vessel specific appendices. This will allow access by plan reviewers to conduct pre-fire plan verifications. When the VRP is submitted in paper format, pre-fire plans may be included in the vessel specific appendices in paper format or attached to the plan in the form of a DVD submitted with the plan.

11. Can we provide marine firefighting pre-fire plans to our marine firefighting resources electronically?

It is permissible to transmit marine firefighting pre-fire plans electronically to marine firefighting resource providers.

12. With regard to the certification of pre-fire plans are required in 33 CFR 155.4035(b)(2), what is acceptable for a marine firefighter to certify?

The marine firefighting resource provider must certify in writing to the vessel owner / operator that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire. (33 CFR 155.4035(b)(2))

The purpose of the pre-fire plan acceptance by the marine firefighter is to ensure a coordinated and safe response in the event of a fire incident, not a verification of compliance with the SOLAS standards or any other standard.

When the pre-fire plan does not provide a sufficient level of confidence for the marine firefighting resource provider, it should not be accepted and the marine firefighting resource provider should request any additional information from the vessel owner / operator to make the plan acceptable to them. Only when the marine firefighting resource provider feels that sufficient information is obtained to make the plan acceptable should he or she certify it as acceptable. (Updated July 9, 2010)

Enclosure (3) to NVIC 2-10

13. Commercial firefighting companies may have different standards for certifying pre-fire plans. What is the Coast Guard's stance on that issue?

The purpose of the pre-fire plan acceptance by the marine firefighter is to ensure a coordinated and safe response in the event of a fire incident. The firefighting resource providers should review the pre-fire plan for acceptability (this may be a subjective review that varies from firefighter to firefighter), and seriously consider using the plan well before any incident occurs. The SMFF Final Rule makes certain that plans are given to the firefighting resource providers, and that they review them is evidenced by their written certification statements. *(Updated July 9, 2010)*

14. Can we maintain the marine firefighting resource providers' certification statements regarding the pre-fire plan electronically as long as we provide them to the USCG upon request?

Yes, you can maintain the firefighting resource providers' certification statements electronically, as long as you provide them to the USCG upon request. The certification must state that the marine firefighting resource provider finds the pre-fire plan acceptable and that they agree to implement it to mitigate a potential or actual fire. *(33 CFR 155.4035(b)(2))*

15. Each subcontracted marine firefighting organization must also receive a copy of the pre-fire plan according to 155.4035(b)(3). Are marine firefighting subcontractors required to certify that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire just like the primary marine firefighting resource providers are required to do??

Subcontracted marine firefighting organizations are not required to submit certification statements regarding acceptability and implementation of pre-fire plans. The primary contractor provides certifications and manages subcontractors' activities including implementing the pre-fire plan to mitigate a potential or actual fire.

TIMEFRAMES - CONUS & OCONUS OPERATING ENVIRONMENTS

1. What are the operating environment boundaries to use when planning for SMFF resources capable of responding within response timeframes?

Operating environments are listed in Table 155.4030(b).

- a. The 'Pier' operating environment, applicable to marine firefighting services only, refers to the pier where the vessel is berthed. Many 'piers' are located in very close proximity to each other. To avoid adding unnecessary complexity to the VRP, a vessel owner / operator may group all 'piers' or locations within a 10-mile radius or segment of waterfront, provided that the listed response resource providers for all locations are the same. *(Updated July 9, 2010)*

- b. For vessels calling any CONUS pier or an OCONUS pier within 50 miles of an OCONUS COTP City, the vessel owner / operator must list the pier location by facility name or city in the corresponding GSA. When a vessel owner / operator batches piers into response segments or radii as described above, s/he may batch new pier identifying information into periodic updates, since appropriate marine firefighting resources have already been identified for the pier locations in question. (*Updated July 9, 2010*)
 - c. The CONUS salvage and marine firefighting 'nearshore' operating environment boundaries are described in the table using the definitions of 'nearshore area', 'inland area', and 'Great Lakes' as they appear in 33 CFR 155.4025. (*Updated May 5, 2010*)
 - d. The CONUS salvage and marine firefighting 'offshore' operating environment boundaries are described in the table using the definition of 'offshore area' as it appears in 33 CFR 155.4025. (*Updated May 5, 2010*)
 - e. There is no SMFF operating environment that is equivalent to the 'open ocean' area defined in 33 CFR 155.1020. While there is no prescribed timeframe for locations in the open ocean operating environment, the plan must indicate the expected timeframe for response elements to reach the locations where the vessels trade or transit from the place(s) where the response resources are normally located.
 - f. The OCONUS 'inner' operating environment boundary extends to a 12 mile radius from a point in the harbor of the COTP City, unless this operating area is further refined in the applicable Area Contingency Plan. For example, a meandering river or shipping lane within the 12 mile radius may be measured by distance traveled on water rather than by a simple radius from a point in the harbor if it is so specified in the Area Contingency Plan.
 - g. The OCONUS 'outer' operating environment boundary extends from the 12 mile to the 50 mile radius from a point in the harbor of the COTP City, unless this operating area is further refined in the applicable Area Contingency Plan.
2. Does the regulatory provision for COTP City operating environments, with its 12 and 50 mile limits, apply to both CONUS and OCONUS, or to just OCONUS COTP Zones?

The regulatory provision for COTP City operating environments applies just to OCONUS COTP zones. Response planning within the OCONUS 'inner' and 'outer' operating environments is subject to time requirements imposed by the rule. (33 CFR 155.4030(b))

Enclosure (3) to NVIC 2-10

There is no prescribed timeframe for OCONUS locations outside of the defined OCONUS inner and outer operating environments, but the plan must indicate the expected timeframe for response elements to reach the locations where the vessels trade or transit from the place(s) where the response resources are normally held. (33 CFR 155.4040(d)(6))

3. Has the Coast Guard determined the OCONUS COTP City latitudes /longitude locations used to identify the 12 and 50 mile operating environments?

The following points have been identified.

<u>COTP City</u>	<u>COTP Zone</u>
JUNEAU	Southeast Alaska Lat/Long 58.3 N, 134.4 W
VALDEZ	Prince William Sound Lat/Long 61.1 N, 146.37 W
ANCHORAGE	Western Alaska Lat/Long 61-14.30 N, 149-53.40 W
HONOLULU	Hawaii Lat/Long 21-18.4 N, 157-52.4 W
PITI GUAM	Commonwealth of the Northern Marianas Lat/Long 13-25.21 N, 144-39.48 W
SAN JUAN	Commonwealth of Puerto Rico AND United States Virgin Islands Lat/Long 18-27.35 N, 066-07.00 W

(Updated August 24, 2010)

4. There is no mention of salvage timeframes, only marine firefighting timeframes, in 155.4040(d)(2). This paragraph requires that only the marine firefighting resource can reach the location in the timeframe required. Does this also apply to a salvage resource provider, or was the salvage provider deliberately left off?

As the language of the regulation states, the ‘Pier’ operating environment response time requirement for assessment and fire suppression services applies only to firefighting services. ‘Pier’ timeframe requirements do not apply to salvage services.

5. Table 155.4040(c) provides specific timeframe endpoints which may be impacted by safety or other practical considerations, as for example on-site salvage assessment, which ends “when the salvor is on board the vessel”, or emergency lightering, which

ends when the “equipment is on scene and alongside”. We need further clarification of the timeframe ending requirement.

Timeframes are to be used for planning purposes in order to be sure that the contracted resources are capable of a timely response. The Coast Guard recognizes that there are many factors, including safety considerations, which may delay resource arrival within the timeframe endpoint during response. Be reminded that timeframe endpoints are planning standards and that compliance with these 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 an incident meets specified arrival times or other criteria. *(Updated July, 2010)*

6. Is it correct that “nearshore” and “offshore” mean 12 and 50 miles from any point along the CONUS coasts, respectively? For a good length of each coast, this would define a long transit “as the crow flies” from the nearest port, making the timeframe unrealistic. We realize that the timeframes are planning criteria not performance measures, but a clarification might be helpful to the consideration of the need to request a waiver.

Yes, you are correct that “nearshore” and “offshore” mean 12 and 50 miles from any point along the CONUS coasts, respectively. As you recognize, these are planning criteria, not performance standards. Requesting waivers where these timeframes are not attainable will help manage FOSC expectations as to what is realistically available for response. *(Updated July 9, 2010)*

GEOGRAPHIC SPECIFIC APPENDICES

1. Plan writers hope to cite SMFF services geographically by reference. Will there be a Coast Guard or other publicly accessible library site where resource providers can state or certify to their capabilities regarding Table 155.4030(b) -- Salvage and Marine Firefighting Services, in various specific port areas?

The vessel owner / operator is responsible for determining the adequacy of the resource providers included in their VRPs. ACPs list salvage resources, and Marine Firefighting Plans list MFF resources. The Coast Guard intends to improve resource lists in these plans to assist vessel owners / operators in meeting the requirements of the final SMFF regulations. SMFF resource providers are encouraged to provide their information for services and equipment to Area Committees for use in these plans, and include an internet link to a site where equipment and selection criteria information may be provided to customers and potential customers for the resource provider's services.

The Response Resource Inventory (RRI) (currently under development) is a voluntary database where SMFF resource providers may list equipment. The Coast Guard encourages its use by SMFF resource providers. Use of this inventory will expedite

Enclosure (3) to NVIC 2-10

the plan review process and the temporary waiver approval process. For more information on the RRI please visit the following website:

<<http://www.uscg.mil/hq/nswfweb/nswfcc/ops/ResponseSupport/RRIB/rri.asp>>

(Updated August 31, 2010)

2. Which salvage and marine firefighting equipment requirements are related to vessel specifications rather than geographical operating environment?

Emergency towing vessels, cargo transfer equipment, type and quantity of fire extinguishing agent, and external pumps for extinguishing agent(s) are all resources that must be selected to accommodate vessel specifications. The type of equipment required to remove oil from a submerged vessel is related to the operating area of a vessel. *(33 CFR 155.4030)*

3. Is it the Coast Guard's intent that the first named resource provider in a VRP is the primary resource provider, or that any one of the named resource providers, no matter the order listed, may be designated as the primary resource provider?

Resource providers do not have to be listed in any particular order, but the primary resource provider must be identified as such. *(33 CFR 155.4030(a))* One GSA may name a single primary resource provider for all SMFF services in that GSA, or different primary service providers for select services, some of which providers may be private firefighting entities and not salvors at all. *(33 CFR 155.4030(a))* The vessel owner / operator will select adequate resource providers based on meeting the selection criteria to the maximum extent possible. *(33 CFR 155.4050)*

4. Is the intent that the primary resource provider be the primary provider for each specific service listed in Table 155.4030(b)? Could the intent be that the primary resource provider be the primary provider for a variety of specific services, or perhaps all of the specific services in the table?

Either alternative works. A VRP may list primary resource providers who are responsible for all, or a subset of, the services that are listed in Table 155.4030(b). The identification of the primary resource provider for every salvage and marine firefighting service must be clearly indicated in each GSA. *(33 CFR 155.4030(a))*

CONTRACTS AND FUNDING AGREEMENTS

1. What are CG expectations of the "contract or other approved means" requirement contained in 33 CFR 155.4025?

The contract or agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements. *(33 CFR 155.4025)* While the vessel response plan regulations are considered planning standards, the "contract or other approved means" between a vessel owner / operator and a resource provider is the primary mechanism needed to establish the capability

necessary to meet the planning criteria. In addition, the funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The “contract or other approved means” and funding agreement are necessary to ensure that resources are available and dispatched in a timely manner.

It is important to remember, as stated in the Final Rule Preamble, that this regulation requires that planholders have under contract or other approved means, resource providers capable of, and intending to commit to, meeting the VRP requirements whenever possible. *(33 CFR 155.4010)*

2. What is the consequence if a vessel owner does not have a contract or other approved means with a resource provider?

The Coast Guard, under the authority afforded by section 155.4020(c) and 33 USC 1228, may stop a vessel from operating in the navigable waters of the US and conducting oil transport or transfer operations unless the requirements of this regulation are met. The Coast Guard may also assess penalties against the owner, operator, or person in charge of any vessel, including but not limited to administrative penalties under 33 USC 1321. *(Updated August 31, 2010)*

3. Specifically, what needs to be shown in an acceptable funding agreement?

The definition says that a funding agreement must contain rates for specific equipment and services that are agreed upon:

“A funding agreement is a written agreement between a resource provider and a planholder that identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. The funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. This agreement must be part of the contract or other approved means, and it must be submitted for review along with the VRP.” *(33CFR155.4025)*

In addition, the definition provided for “contract or other approved means” states that, “As part of the contract or other approved means you must develop and sign, with your resource provider, a written funding agreement. This funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The funding agreement must include a statement of how long the agreement remains in effect, and must be provided to the Coast Guard for VRP approval. In addition any written agreement with a public resource provider must be included in the planholder’s Vessel Response Plan (VRP).” *(33CFR155.4025)*

The Coast Guard does not evaluate the dollar value of the agreed rates included in funding agreements, only confirms that the rates for equipment and services to be provided are agreed upon by both parties, and that response will not be delayed due to negotiations. *(Updated July 9, 2010)*

Enclosure (3) to NVIC 2-10

4. Can we use a Lloyd's Open Form in lieu of a funding agreement?

A Lloyd's Standard Form of Salvage Agreement (LOF) alone does not meet the funding agreement definition because it does not contain agreed upon rates for specific equipment and services. The regulatory intent is to prevent any delay in response due to price or other contractual negotiations. The Coast Guard is willing to consider the LOF in lieu of a funding agreement under the following conditions:

- a. The LOF is submitted with and identified in the entire agreement between the primary resource provider and the vessel owner / operator; and
- b. The LOF is signed by both the primary resource provider and the vessel owner / operator at the time it is submitted with the contract or other approved means to the Coast Guard.
- c. If the LOF is submitted as outlined above, the Coast Guard believes that the regulatory intent of preventing any delay in response due to contractual negotiations will be met and we should consider the submission as an acceptable alternative to a funding agreement under the contract or other approved means definition contained in 33 CFR 155.4025.

5. What about using other standard salvage contracting forms?

The Coast Guard may consider other types of standard salvage contracting forms as an acceptable alternative under the contract or other approved means definition in lieu of a funding agreement if such forms are submitted in a manner similar to that which is described above for the LOF.

6. With regard to evidence of funding (for example, a salvor that has a diving company as its subcontractor), will the Coast Guard require the funding agreement between the salvor and diving company to be submitted, or will it suffice to simply certify in the funding agreement between salvor and vessel owner that the salvor has a funding agreement with the diving company?

One funding agreement between the primary resource provider and vessel owner / operator is acceptable. (33 CFR 155.4025) (Updated August 31, 2010)

7. Do the contracts between the primary resource provider and all its subcontractors have to be included as part of the VRP submission for approval, or will it suffice to just include the contract between the primary resource provider and the vessel owner / operator?

To include every subcontract for review creates an unnecessary burden for both the Coast Guard and industry. Only the contract or other approved means and funding agreement with the primary resource provider is required to be submitted to the Coast

Guard. The Coast Guard reserves the right to verify that the subcontracts are in place. The records should be readily accessible when requested by a Coast Guard official. (33 CFR 155.4025)

8. It is not clear whether or not a public sector fire responder will be required to enter into a contract with a planholder, including a funding agreement and consent to be listed, or if just the consent will be sufficient to meet the regulation.

Public marine firefighters may only be listed in a VRP that have been arranged by contract or other approved means in accordance with 33 CFR 155.4045(a).

9. The resource provider is responsible for complying with OSHA regulations for emergency response. What responsibility does the vessel owner / operator have to ensure that resource providers comply with OSHA requirements before and during a response?

A vessel owner / operator can make OSHA compliance a part of the due diligence investigation of potential resource providers. (33 CFR 155.4050 (b)) A vessel owner / operator is responsible for ensuring that its resource providers can appropriately safeguard their workers when providing SMFF services as found in 33 CFR 155.1055(3) and 29 CFR 1910(q). (33 CFR 155.4032(b))

10. Local fire departments indicate that they will respond, but that they do not want to execute an agreement. As a result, private firefighters must be contracted. How does the transition from public to private firefighting resources take place during a response?

The VRP, Area Contingency Plans, Area Maritime Security Plans, Regional Plans, and the National Oil and Hazardous Substances Pollution Contingency Plan all address coordination of the private sector and public agencies during response. (33 CFR 155.4030(d))

Participation in exercises and training in the localities where private firefighting access and assumption of response duties is an issue, will allow response transition concerns to be resolved in a non-threatening situation. (33 CFR 155.4052)

AREA CONTINGENCY PLANS

1. How do Salvage and Marine Firefighting regulations tie in with the Area Maritime Security (AMSP) Salvage Response Plan (SRP) (46 USC 70101 Safe Port Act) and Marine Fire Fighting Contingency Plans (MFFCP) developed in each COTP zone or CG Sector? These plans are said to contain Security Sensitive Information (SSI) so the salvage industry has not seen their contents.

The information in the VRP should align with information in the Area Contingency Plan (ACP) in order to support the National Response Organization. While the AMSP

Enclosure (3) to NVIC 2-10

is not a publically available document, some information in it may be of assistance in supporting the National Response Organization. The COTP can make the AMSP SRP and the MFFCP information available through the ACP. The plan preparer can request that these plans be made available to enable compliance with the requirement that the VRP be consistent with area plans. *(40 CFR Part 300 and 33 CFR 155.4030(d))*

2. What is the mechanism to get private firefighting resources into a response that has already started with public firefighters? Will the Coast Guard facilitate the movement of private marine firefighting resources into the response organization?

SMFF resource providers must be integrated into the response organization described in the shore-based response activities section of the VRP. The VRP describes how SMFF resource providers will coordinate with other response resources, organizations, and OSROs, and how SMFF resource providers will coordinate with public organizations, including public firefighters. *(33 CFR 155.1035(d), 1040(d), 1045(d), and 4030(c))*

The integration of SMFF resource providers into the response organization must be consistent with the information contained in the following: ACPs, Regional Response Plans, and the NCP. *(40 CFR Part 300 & 33 CFR 155.1030(h)(1))*

Participation in area planning committees and response exercises will also help facilitate integrating public and private firefighting resources in the response process when an actual event occurs. *(33 CFR 155.4052) (Updated July 9, 2010)*

3. Does the resource provider have to report to the QI during a response? Can he report directly to the Responsible Party (RP) or Incident Commander (IC)?

The VRP section, *Shorebased Response Activities*, defines the response structure, authorities, and roles for elements of the vessel owner / operator's response team. The SMFF resource provider is part of this response team. The VRP integrates the vessel owner / operator's response organization with the structures and roles identified in the ACPs, and National Oil and Hazardous Substances Pollution Contingency Plan. *(33 CFR 155.1035(d), 1040(d), 1045(d), and 4030(c))*

All elements of the vessel owner / operator's response organization are included under the umbrella of ICS and are subject to the direction of the UC, including SMFF response activities.

The Qualified Individual (QI) is not a position in ICS. The QI initiates a response on behalf of the vessel owner / operator. *(33 CFR 155.1026)* As the representative for the vessel owner / operator, the QI has the authority to proceed to activate and engage in contracting with resources identified in the VRP. The QI may be appointed to a position in the response organization. Ultimately, the VRP reporting structure

between the QI and the resource provider is best determined by the vessel owner / operator for the particular vessel.

WAIVERS

1. What if a vessel owner / operator cannot find adequate emergency towing vessels in a particular area?

The SMFF temporary waiver provision allows for a 3 year suspension of the time requirement for salvage stabilization services. Emergency towing vessels are categorized as a part of salvage stabilization services in Table 155.4030(b). After the 3 year temporary waiver expires, vessels will not be authorized to trade in U.S. waters without meeting the requirement to have rescue towing resources able to meet the timeframe under contract. (33 CFR 155.4020 and 155.4055(g))

2. The temporary waiver categories in Table 155.4055(g) are ambiguous, what service waiver time periods apply to what SMFF services? (Updated September 2, 2010)

For the sake of clarity, all 19 SMFF services are included in this table, with the applicable waiver period in years located to the right. Temporary waivers from timeframe requirements will not be granted for remote assessment and emergency lightering services. The vessel owner / operator estimates heavy lift services timing in each COTP zone based on contracted equipment location so no waiver is required.

SERVICE	Maximum Waiver Time Period (years)
SALVAGE:	
1. Remote assessment and consultation	0
2. Begin assessment of structural stability	1
3. On-site salvage assessment	1
4. Assessment of structural stability	1
5. Hull and bottom survey	2
6. Emergency towing	3
7. Salvage plan	3
8. External emergency transfer operations	3
9. Emergency lightering	0
10. Other refloating methods	3
11. Making temporary repairs	3
12. Diving services support	3
13. Special salvage operations plan	5
14. Subsurface product removal	5
15. Heavy lift	N/A

Enclosure (3) to NVIC 2-10

SERVICE (CONTINUED)	Maximum Waiver Time Period (years)
MARINE FIREFIGHTING:	
16. Remote assessment and consultation	0
17. On-site fire assessment	1
18. External firefighting teams	4
19. External vessel firefighting systems.	4

TABLE 155.4055(g), EXPANDED TO INCLUDE MAXIMUM WAIVER TIME PERIOD INFORMATION FOR ALL 19 SMFF SERVICES

3. What is included in a waiver request?

The regulation has a provision that the vessel owner / operator may request a temporary waiver of one or more specified response time requirements. The waiver request must be specific. It must include the reason why the time requirement cannot be met, how the vessel owner / operator intends to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources in the interim, and their estimated response times. (33 CFR 155.4055)

4. What happens when the waiver period expires and resources are still not available or willing to enter into contracts for emergency towing?

Using 33 CFR 155.4020(c) or 33 USC 1228 as authority, a COTP can prohibit a vessel from operating in the navigable waters of the US or conducting oil transport or transfer operations unless the requirements of this regulation are met. There is no provision for consideration of additional waivers, although alternative planning criteria measures can be proposed in accordance with 33 CFR 155.1065. (Updated August 31, 2010)

NOTE: See PLAN SUBMISSION, Question 2.

When do we need to submit a request for a temporary waiver from a particular timeframe requirement? (Updated June 4, 2010)

DRILLS AND EXERCISES

1. 33 CFR 155.4052(b)(7) states that compliance with the National Preparedness for Response Exercise Program (PREP) Guidelines that expand on drills and exercises for OSROs will satisfy VRP exercise requirements. The PREP Guidelines indicate that the primary purpose of an equipment deployment is to test the providers' ability to operate equipment as well as the suitability of equipment. The PREP Guidelines go on to note that, while planholders should validate plans in the geographic area where the drill is conducted, this is not mandatory. Will it suffice that planholders

and providers conduct equipment deployment exercises in a convenient location and by inviting planholders to witness the exercise for credit?

We expect that the PREP Guidelines will be updated to include the provisions of 33 CFR 155.4052. It is not necessary for vessel owners or operators to be present for the equipment to be exercised, although they may attend. Following the OSRO/PREP exercise model, exercise credit can also be claimed for a response if the objectives are met, the response is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7)) Like OSROs, SMFF resource providers may provide planholders with an annual letter documenting their equipment deployment exercises throughout the year, for which the planholder may claim credit. Records should be retained for 3 years, in accordance with reference (f). (33 CFR 155.1060(f)) (33 CFR 155.4052(b)(7)) (PREP Guidelines, August 2002.)

2. 33 CFR 155.4052 requires that one of the quarterly emergency procedures drills and one of the equipment deployment exercises be unannounced. Since equipment deployment is an annual requirement, we assume this means that the annual equipment deployment must be unannounced.

There must be one unannounced exercise each year, and that exercise may be either one of the quarterly emergency procedures exercises or the annual equipment deployment exercise. If there is a response during the year that requires equipment deployment, the unannounced exercise obligation may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052))

3. May an exercise be held in the same COTP zone every year? Do subcontractors have to be exercised?

You may choose to hold an exercise in a COTP zone every year; however you are required to exercise the entire vessel response plan in a three year period. This would include the COTP zones covered by the plan and the subcontractors included in the plan.

According to PREP guidelines, documentation of incidents can take the place of exercises when the objectives are met, the event is evaluated, and a proper record is generated. Listed resource providers may document their exercise and response activities, and extend credit for those exercises where the objectives were met to their client vessel owners or operators by means of an annual letter. (33 CFR 155.4052) (PREP Guidelines, August 2002.)

4. Can exercises be piggy-backed on those exercises already conducted?

Vessel owners or operators may take credit for exercises conducted in conjunction with other exercises if the objectives are met, the exercise is evaluated, and a proper record is generated. Credit should be taken for an actual spill response when the

Enclosure (3) to NVIC 2-10

objectives are met, the response is evaluated, and a proper record generated. (33 CFR 155.4052) (PREP Guidelines, August 2002.)

5. What constitutes a “remote assessment and consultation exercise”?

The remote assessment and consultation exercise can be a phone call or some other communication to discuss and assess a situation to determine an appropriate course of action. (33 CFR 155.4025, Table 155.4040(c), 33 CFR 155.4052(b)(1)) The exercise may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052)

6. What constitutes an “emergency procedures exercise”?

An emergency procedures exercise is the exercise of shipboard emergency procedures for the vessel crew as described in the *PREP Guidelines*, August 2002, pp 3-8 to 3-9. For unmanned barges, this is an exercise of the barge custodians’ emergency procedures described on pages 3-10 to 3-11. The exercise may be credited if the objectives are met, the exercise is evaluated, and a proper record is generated. (33 CFR 155.4052(b)(7))

7. What constitutes an “exercise of the entire response plan”?

To satisfy the requirement of the triennial exercise of the entire response plan, it is not necessary to exercise the entire plan all at one time. The plan may be exercised in segments over a period of 3 years, as long as each component of the plan is exercised at least once within the 3-year period. The required exercises should be developed to ensure that each component is addressed in the triennial cycle. (PREP Guidelines, August 2002) (33 CFR 155.4052)

8. Is it the Coast Guard’s intent to see the salvor exercised in drills and exercises as much as the OSRO currently is? Or is the one salvage objective in NPREP the extent of what is expected?

Compliance with the National PREP Guidelines will satisfy the VRP exercise requirements. Updates to the PREP Guidelines will reflect the content of 33 CFR 155.4052. Documentation of incidents according to PREP guidelines can take the place of exercise requirements if the objectives are met, the event is evaluated, and a proper record is generated. Listed resource providers may document their exercise and response activities, and extend credit for those exercises where the objectives were met to their client vessel owners or operators by means of an annual letter. (33 CFR 155.4052) (PREP Guidelines, August 2002.)

DEVIATION FROM THE PLAN DURING RESPONSE

1. What is the “exceptional circumstance” definition to be used by the FOSC as relates to these regulations?

The Federal On-Scene Coordinator (FOSC) determines what exceptional circumstance will lead to deviation from the response plan in order to provide for a more expeditious or effective response to the spill or mitigation of its environmental effects. It is up to the individual FOSC to make this determination from his understanding of the facts of the situation. (33 USC 1321(c)(3)(B)), (33 CFR 153.103(n)) and (33 CFR 155.4032))

2. When a major piece of equipment is out of service, is the identification of an alternate resource the Coast Guard's expectation? Salvage equipment is largely dual-purposed, and there is a high probability that this scenario would arise.

It is up to the vessel owner / operator to ensure that the resources listed in their plan are available to respond. (33 CFR 155.4010)

Vessel owners or operators may list more than one resource provider for the required SMFF services in order to plan adequate resources for responding to the risks associated with a vessel, but the primary resource provider must be designated in the GSA. (33 CFR 155.4030) Contracts and funding agreements are required to be in place for all resource providers listed in the plan, both primary and secondary. (33 CFR 155.4045(a))

When an alternate solution is presented during a response, it is up to the discretion of the individual FOSC to determine whether or not to approve the requested deviation based on the FOSC's understanding of the facts of the situation and within the authority granted to the FOSC in accordance with 33 USC 1321(c)(3)(B). (33 CFR 155.4032)

3. With regard to stabilization of vessels and emergency towing, sometimes alternate stabilization strategies are called for during an emergency situation.

The provisions of the Chaffee Amendment offer a means to respond using alternate stabilization strategies based on FOSC approval of a salvage plan developed by the attending salvage master. (33 USC 1321(c)(3)(B))

The Coast Guard Act of 1996: Chaffee Amendment. Section 311(c)(3)(B) of the Federal Water Pollution Control Act (33 USC 1321(c)(3)(B)) was amended by striking "or as directed by the President" and inserting "except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects." (Updated August 24, 2010)

4. With regard to other resource providers not listed in the VRP, what services would require FOSC approval for using an unlisted resource, and what would require only notification?

Enclosure (3) to NVIC 2-10

Deviation from the use of planned SMFF resources requires FOSC approval under the terms of the Chaffee Amendment¹. (*33 CFR 155.4032*) There is no provision for different treatment of select SMFF resources. Vessel owners or operators may list more than one resource provider for the required SMFF services in order to plan adequate resources for responding to the risks associated with a vessel, but the primary resource provider must be designated in the GSA. (*33 CFR 155.4030*)

Job Aid - Alternative Planning Criteria

If there is a discrepancy between this document and references (a) through (e), the regulations control.

This document provides guidance for submission, evaluation, and conditional approval, approval, or denial of Alternate Planning Criteria (APC) requests.

33 CFR 155.1065(f) allows vessel owners and operators to submit an APC proposal when they believe the national planning criteria contained in 33 CFR Part 155 is inappropriate for the operating area of their vessels.

33 CFR Part 155:

Title 33 is the portion of the Code of Federal Regulations that governs Navigation and Navigable Waters within the United States.

Part 155 relates to oil or hazardous material pollution prevention regulations for vessels:

Subpart D – Tank Vessel Response Plans for Oil

Subpart E – Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Subpart F – Vessels Carrying Animal Fats and Vegetable Oils as a Primary Cargo

Subpart G – Vessels Carrying Other Non-Petroleum Oils as a Primary Cargo

Subpart H – (Reserved)

Subpart I – Salvage and Marine Firefighting

Subpart J (pending) – Non-Tank Vessel Response Plans for Oil

33 CFR 155.1065 provides as follows:

155.1065 Procedures for Plan submission, approval, requests for acceptance of alternative planning criteria, and appeal.

When the owner or operator of a vessel believes that national planning criteria contained elsewhere in this part are inappropriate to the vessel for the areas in which it is intended to operate, the owner or operator may request acceptance of alternative planning criteria by the Coast Guard. Submission of a request must be made 90 days before the vessel intends to operate under the proposed alternative and must be forwarded to the COTP for the geographic area(s) affected. Final approval of the APC is granted by Commandant, CG-543.

Enclosure (4) to NVIC 2-10

Guidance for submission of requests for acceptance of an APC proposal.

Your submission must include the following information:

1. Submitter's identifying information including VRP plan number and vessel name(s)
2. Title: Proposed Alternate Planning Criteria for (*SPECIFY REQUIREMENT*).
3. Location: COTP Zone
4. Date vessel intends to operate under the APC: No less than 90 days from Submission Date.
5. Gap Analysis: State the national planning criterion the submitter believes to be inappropriate to the vessel(s), and describe the compliance issue to be resolved.
6. Proposed Alternative: Description of alternate planning criteria.
7. Signature and APC submission date.

Your request may be submitted electronically or mailed to the COTP for the applicable COTP Zone(s).

Guidance for review of requests for acceptance of an Alternate Planning Criteria (APC) proposal.

The COTP should review the proposal and provide comments as to its suitability to purpose and local conditions in the COTP Zone. The APC submission and COTP comments should be forwarded with recommendation to the applicable Coast Guard District. The District should then review, comment and make recommendations prior to submission and forwarding to Commandant, (CG-543) for final determination.

Area Contingency Plans

As a means to enhance transparency and expedite plan review and approval, the COTP and Area Planning Committee may add recommended APC to the Area Contingency Plan. Area Contingency Plans or Regional Contingency Plans, where appropriate, can be used to establish recommended alternate planning criteria in accordance with 40 CFR 300.210, and 33 CFR 155.1030(h).

Job Aid - Evaluation of Salvage & Marine Firefighting Services

If there is a discrepancy between this document and References (a) through (e), the regulations control.

This enclosure is intended to provide a common focus for Vessel Response Plan preparers and evaluators. While the guidance contained in this document may assist industry, the public, the Coast Guard, and other Federal and State regulators in applying statutory and regulatory requirements, the guidance is not a substitute for applicable legal requirements, nor is it a regulation itself. Thus, it is not intended to, nor does it impose legally binding requirements on any party, including the Coast Guard, other agencies, or the regulated community.

Information about each required salvage and marine firefighting service is distilled from 33 CFR Part 155, Subpart I, Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil, Final Rule, and presented in these categories:

SERVICE CATEGORY

1. to 19. SPECIFIC SERVICE

- a. DEFINITION
- b. RESOURCES REQUIRED
- c. TIMEFRAME
- d. TIMEFRAME Beginning
- e. TIMEFRAME End
- f. MAXIMUM SERVICE WAIVER TIME PERIOD (YEARS)

Information summarized by service may be particularly helpful to vessel owner / operators for evaluating potential salvage and marine firefighting service providers, and in applying for temporary waivers of specific response time requirements when you are unable to identify a resource provider who can meet those requirements.

Table 155.4030(b) includes service category and timeframe requirements and is included in this document for easy reference. Resource Provider adequacy selection criteria and information about how and when to request temporary waivers from the timeframe requirements of this rule are also found within this document.

Enclosure (5) to NVIC 2-10

Job Aid - Evaluation of Salvage & Marine Firefighting Services

CONTENTS:

TABLE 155.4030(b)—SERVICES AND RESPONSE TIMEFRAMES.....	3
SELECTION CRITERIA	4
REQUESTS FOR TEMPORARY WAIVERS	6

SALVAGE ASSESSMENT AND SURVEY:

1. Remote assessment and consultation.....	7
2. Begin assessment of structural stability.....	8
3. On-site salvage assessment.....	9
4. Assessment of structural stability.	10
5. Hull and bottom survey.....	11

SALVAGE STABILIZATION SERVICES

6. Emergency Towing.....	12
7. Salvage Plan.....	13
8. External emergency transfer operations.....	14
9. Emergency lightering.	15
10. Other Refloating Methods.....	16
11. Making Temporary Repairs.....	17
12. Diving services support.....	18

SPECIALIZED SALVAGE OPERATIONS

13. Special salvage operations plan.....	19
14. Subsurface product removal.	20
15. Heavy Lift.....	21

MARINE FIREFIGHTING – ASSESSMENT AND PLANNING

16. Remote assessment and consultation.....	22
17. On-site fire assessment.....	23

MARINE FIREFIGHTING – FIRE SUPPRESSION

18. External firefighting teams.....	24
19. External vessel firefighting systems.	25

Service	Location of incident response activity timeframe		
(1) Salvage <i>Assessment & Survey:</i>		CONUS: Nearshore nearshore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS Offshore: offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
1. Remote assessment and consultation		1	1
2. Begin assessment of structural stability		3	3
3. On-site salvage assessment		6	12
4. Assessment of structural stability		12	18
5. Hull and bottom survey		12	18
<i>Stabilization:</i>			
6. Emergency towing		12	18
7. Salvage plan		16	22
8. External emergency transfer operations		18	24
9. Emergency lightering		18	24
10. Other refloating methods		18	24
11. Making temporary repairs		18	24
12. Diving services support		18	24
<i>Specialized Salvage Operations:</i>			
13. Special salvage operations plan		18	24
14. Subsurface product removal		72	84
15. Heavy lift 1		Estimated	Estimated
(2) Marine firefighting <i>Assessment & Planning:</i>	At pier (hours)	CONUS: Nearshore nearshore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS Offshore: offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
16. Remote assessment and consultation	1	1	1
17. On-site fire assessment	2	6	12
<i>Fire Suppression:</i>			
18. External firefighting teams	4	8	12
19. External vessel firefighting systems	4	12	18
1 Heavy lift services are not required to have definite hours for a response time. The planholder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in § 155.4030(b) will apply to these services.			

TABLE 155.4030(b)—SALVAGE AND MARINE FIREFIGHTING SERVICES AND RESPONSE TIMEFRAMES

Enclosure (5) to NVIC 2-10

SELECTION CRITERIA

§ 155.4050 Ensuring that the salvors and marine firefighters are adequate.

- (a) You (vessel owners or operators) are responsible for determining the adequacy of the resource providers you intend to include in your plan.
- (b) When determining adequacy of the resource provider, you must select a resource provider that meets the following selection criteria (see list below) to the maximum extent possible.
- (c) A *resource provider* need not meet all of the selection criteria in order for you to choose them as a provider. They must, however, be selected on the basis of meeting the criteria to the maximum extent possible.
- (d) You must certify in your plan that these factors were considered when you chose your resource provider.
- (1) *Resource provider* is currently working in response service needed.
 - (2) *Resource provider* has documented history of participation in successful salvage and/or marine firefighting operations, including equipment deployment.
 - (3) *Resource provider* owns or has contracts for equipment needed to perform response services.
 - (4) *Resource provider* has personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).
 - (5) *Resource provider* has 24-hour availability of personnel and equipment, and history of response times compatible with the time requirements in the regulation.
 - (6) *Resource provider* has on-going continuous training program. For marine firefighting providers, they meet the training guidelines in NFPA 1001, 1005, 1021, 1405, and 1561 (Incorporation by reference, see § 155.140), show equivalent training, or demonstrate qualification through experience.
 - (7) *Resource provider* has successful record of participation in drills and exercises.
 - (8) *Resource provider* has salvage or marine firefighting plans used and approved during real incidents.
 - (9) *Resource provider* has membership in relevant national and/or international organizations.

- (10) *Resource provider* has insurance that covers the salvage and/or marine firefighting services which they intend to provide.
- (11) *Resource provider* has sufficient up front capital to support an operation.
- (12) *Resource provider* has equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, sea state, and temperature extremes).
- (13) *Resource provider* has the logistical and transportation support capability required to sustain operations for extended periods of time in arduous sea states and conditions.
- (14) *Resource provider* has the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard the health and safety of their workers when providing salvage and marine firefighting services.
- (15) *Resource provider* has familiarity with the salvage and marine firefighting protocol contained in the local ACPs for each COTP area for which they are contracted.

Enclosure (5) to NVIC 2-10

REQUESTS FOR TEMPORARY WAIVERS (33 CFR 155.4055)

If you are unable to identify a resource provider who can meet the response timeframe for a service, you must submit your waiver request to the Commandant, Director of Prevention Policy (CG-54), via the local COTP for final approval. Service waiver time periods are listed in Table 155.4055(g) (below), and are included for each service in the following pages.

SERVICE		Maximum Waiver Time Period (years)
(1)	Remote salvage assessment & consultation	0
(2)	Remote firefighting assessment & consultation	0
(3)	On-site salvage & firefighting assessment	1
(4)	Hull and bottom survey	2
(5)	Salvage stabilization services	3
(6)	Fire suppression services	4
(7)	Specialized salvage operations	5

TABLE 155.4055(g)—SERVICE WAIVER TIME PERIODS

Emergency lightering requirements set forth in § 155.4030(b) will not be subject to the waiver provisions of this subpart.

Your request for a temporary waiver from meeting the timeframes of this rule must be specific as to the COTP zone, the operating environment, the salvage and marine firefighting service, and the response time. You must state the reason why you are unable to meet the time requirements, how you intend to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources and their estimated response times.

The local COTP will evaluate and comment on the waiver before forwarding the waiver request, via the District to the Commandant (CG- 54) for final approval. Commandant, Director of Prevention Policy (CG-54), will only approve waiver requests up to a specified time period, depending on the service addressed in the waiver request, the operating environment, and other relevant factors.

You must submit your temporary waiver request 30 days prior to any plan submission deadlines identified in this or any other subpart of part 155 in order for your vessel to continue oil transport or transfer operations. Regulatory lead times for submission of plans are: Plan Revisions (all types) - 30 Days, Tank and Non-Tank New Plans – 60 Days, Non-Tank Plan Re-certifications and Tank Resubmissions – Six Months.

SALVAGE ASSESSMENT AND SURVEY:**1. Remote assessment and consultation.****a. DEFINITION:**

Remote assessment and consultation means contacting the salvage (and/or marine firefighting) resource providers, by phone or other means of communications to discuss and assess the situation. The person contacted must be competent to consult on a determination of the appropriate course of action and initiation of a response plan. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Salvage resource provider.

Salvage and marine firefighting pre-incident information (33 CFR 155.4035).

c. TIMEFRAME (Table 155.4030(b)):

1 hour Nearshore/Inner.

1 hour Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

33 CFR 155.4040(b). The timeframe starts when anyone in your response organization receives notification of a potential or actual incident.

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the salvor is in voice contact with the Qualified Individual / Master / Operator. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, a response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

0 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE ASSESSMENT AND SURVEY:

2. Begin assessment of structural stability.

a. DEFINITION:

33 CFR 155.4025 defines *assessment of structural stability* as “the completion of a vessel’s stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts. In addition, the assessment must be consistent with the conditions set forth in 33 CFR 155.240 and 155.245 as applicable.”

b. RESOURCES REQUIRED:

On -scene salvage professional.

Salvage and marine firefighting pre-incident information (33 CFR 155.4035).

Salvage software program and personnel.

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

3 hours Nearshore/Inner.

3 hours Offshore/Outer.

d. TIMEFRAME BEGINS WHEN:

33 CFR 155.4040(b). The timeframe starts when anyone in your response organization receives notification of a potential or actual incident.

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when a structural assessment of the vessel has been initiated. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, a response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

1 YEAR (Table 155.4055(g))

SALVAGE ASSESSMENT AND SURVEY:**3. On-site salvage assessment.****a. DEFINITION:**

On-site salvage assessment means that a salvage professional is on scene, at a safe distance from the vessel or on the vessel, who has the ability to assess the vessel's stability and structural integrity. The data collected during this assessment will be used in the salvage software calculations and to determine necessary steps to save the vessel. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

On-scene salvage professional.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

6 hours Nearshore/Inner.

12 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the salvor is on board the vessel. This table provides timeframe endpoint information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

1 YEAR (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE ASSESSMENT AND SURVEY:

4. Assessment of structural stability.

a. DEFINITION:

Assessment of structural stability means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts. In addition, the assessment must be consistent with the conditions set forth in 33 CFR 155.240 and 155.245, as applicable. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

On -scene salvage professional.

Salvage software program and personnel.

Salvage and marine firefighting pre-incident information (33 CFR 155.4035).

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

12 hours Nearshore/Inner.

18 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

33 CFR 155.4040(b). The timeframe starts when anyone in your response organization receives notification of a potential or actual incident.

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the initial analysis is completed. This is a continual process, but at the time specified an analysis needs to be completed. This table provides timeframe endpoint information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

1 YEAR (Table 155.4055(g))

SALVAGE ASSESSMENT AND SURVEY:**5. Hull and bottom survey.****a. DEFINITION:**

Underwater vessel and bottom survey means having salvage resources on scene that can perform examination and analysis of the vessel's hull and equipment below the water surface. These resources also include the ability to determine the bottom configuration and type for the body of water. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

This service can be accomplished through the use of equipment such as sonar, magnetometers, remotely operated vehicles or divers. (33 CFR 155.4025)
Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q) § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

12 hours Nearshore/Inner.

18 hours Offshore/Outer

When divers are used to perform these services, the time requirements for this service apply and not those of diving services support. (33 CFR 155.4025)

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the hull and bottom survey is complete. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

2 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE STABILIZATION SERVICES

6. Emergency Towing.

a. DEFINITION:

Emergency towing, also referred to as rescue towing, means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be assisted. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Vessel characteristics, size and tonnage information from the VRP's Vessel Specific Appendix.

Towing vessels with the proper bollard pull or horsepower compatible with the size and tonnage of the vessel to be assisted and capable of responding in winds up to 40 knots. (33 CFR 155.4030(e))

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

12 hours Nearshore/Inner.

18 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the towing vessel is on-scene. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

SALVAGE STABILIZATION SERVICES**7. Salvage Plan.****a. DEFINITION:**

Salvage plan means a plan developed to guide salvage operations except those identified as specialized salvage operations. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Salvor and planning resources.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

16 hours Nearshore/Inner.

22 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the plan is completed and submitted to the Incident Commander / Unified Command. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE STABILIZATION SERVICES

8. External emergency transfer operations.

a. DEFINITION:

External emergency transfer operations means the use of external pumping equipment placed on board a vessel to move oil from one tank to another, when the vessel's own transfer equipment is not working. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Information – capacity of largest oil tank (VRP – Vessel Specific Appendix)
External pumping equipment that is capable of offloading and transferring the oil from the vessel's largest oil tank in 24-hours of continuous operations. (33 CFR 155.4030(f))
Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the external pumps are on board the vessel. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

SALVAGE STABILIZATION SERVICES**9. Emergency lightering.****a. DEFINITION:**

Emergency lightering is the process of transferring oil between two ships or other floating or land-based receptacles in an emergency situation and may require pumping equipment, transfer hoses, fenders, portable barges, shore based portable tanks, or other equipment that circumstances may dictate. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Information – capacity of largest oil tank (VRP – Vessel Specific Appendix)
External pumping equipment that is capable of offloading the vessel's largest oil tank in 24-hours of continuous operations. (33 CFR 155.4030(f))

Lightering vessel and external storage.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the lightering equipment is on scene and along side. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

0 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE STABILIZATION SERVICES

10. Other Refloating Methods.

a. DEFINITION:

Other refloating methods are those techniques for refloating a vessel aside from using pumps. These services include, but are not limited to, the use of pontoons, air bags or compressed air. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Pontoons, air bags, compressed air or other refloating equipment as required. Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the salvage plan is approved and resources are on the vessel. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

SALVAGE STABILIZATION SERVICES**11. Making Temporary Repairs.****a. DEFINITION:**

Making temporary repairs means action to temporarily repair a vessel to enable it to safely move to a shipyard or other location for permanent repairs. These services include, but are not limited to, shoring, patching, drill stopping, or structural reinforcement. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Shoring, patching, drill stopping, structural reinforcement equipment and/or other equipment as required.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the repair equipment is on board the vessel. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SALVAGE STABILIZATION SERVICES

12. Diving services support.

a. DEFINITION:

Diving services support means divers and their equipment to support salvage operations. This support may include, but not be limited to, underwater repairs, welding, placing lifting slings. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Divers and equipment to support underwater salvage operations such as underwater repairs, welding, placing lifting slings, etc. Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

Ensure divers are qualified to work at depths in waters where your vessel(s) operate.

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the required support equipment and personnel are on the scene.

This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

3 YEARS (Table 155.4055(g))

SPECIALIZED SALVAGE OPERATIONS**13. Special salvage operations plan.****a. DEFINITION:**

Special salvage operations plan means a salvage plan developed to carry out a specialized salvage operation, including heavy lift and/or subsurface product removal. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Salvor and planning resources.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

18 hours Nearshore/Inner.

24 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the plan is completed and submitted to the Incident Commander / Unified Command. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

5 YEARS (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

SPECIALIZED SALVAGE OPERATIONS

14. Subsurface product removal.

a. DEFINITION:

Subsurface product removal means the safe removal of oil from a vessel that has sunk or is partially submerged underwater. These actions can include pumping or other means to transfer the oil to a storage device. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

You must have subsurface product removal capability if your vessel(s) operates in waters of 40 feet or more. Your resource provider must have the capability of removing cargo and fuel from your sunken vessel to a depth equal to the maximum your vessel operates in up to 150 feet. (33 CFR 155.4030(h))
Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

72 hours Nearshore/Inner.

84 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this specific service when the resources are on scene. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

5 YEARS (Table 155.4055(g))

SPECIALIZED SALVAGE OPERATIONS**15. Heavy Lift.****a. DEFINITION:**

Heavy lift means the use of a salvage crane, A-frames, hydraulic jacks, winches, or other equipment for lifting, righting, or stabilizing a vessel. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Salvage cranes, A-frames, hydraulic jacks, winches or other equipment.
Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

ESTIMATED Nearshore/Inner.

ESTIMATED Offshore/Outer

Heavy lift services are not required to have definite hours for a response time. The planholder must still contract for heavy lift services, provide a description of the heavy lift response and an estimated response time when these services are required, however, none of the timeframes listed in the table in § 155.4030(b) will apply to these services.

d. ETA BEGINS WHEN:

Measurement of the estimated time of arrival starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. ETA ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe for this service is an estimated time of arrival. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

The estimated time of arrival for heavy lift equipment is when the service is projected to reach the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

NOT APPLICABLE. (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

MARINE FIREFIGHTING – ASSESSMENT AND PLANNING

16. Remote assessment and consultation.

a. DEFINITION:

Remote assessment and consultation means contacting the (salvage and/or) marine firefighting resource providers, by phone or other means of communications to discuss and assess the situation. The person contacted must be competent to consult on a determination of the appropriate course of action and initiation of a response plan. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Marine firefighting resource provider.

Salvage and marine firefighting pre-incident information. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

1 hour at Pier.

1 hour Nearshore/Inner.

1 hour Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this service_ when the firefighter is in voice contact with the Qualified Individual / Master / Operator. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

0 YEARS (Table 155.4055(g))

MARINE FIREFIGHTING – ASSESSMENT AND PLANNING**17. On-site fire assessment.****a. DEFINITION:**

On-site fire assessment means that a marine firefighting professional is on scene, at a safe distance from the vessel or on the vessel, who can determine the steps needed to control and extinguish a marine fire in accordance with a vessel's stability and structural integrity assessment if necessary. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

On-scene marine firefighting professional.

Salvage and marine firefighting pre-incident information including pre-fire plan. (33 CFR 155.4035)

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

2 hours at Pier. 6 hours Nearshore/Inner. 12 hours Offshore/Outer

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this service when the firefighter representative is on site. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

1 YEAR (Table 155.4055(g))

Enclosure (5) to NVIC 2-10

MARINE FIREFIGHTING – FIRE SUPPRESSION

18. External firefighting teams.

a. DEFINITION:

External firefighting team means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

On board firefighting personnel, aside from the crew.

Salvage and marine firefighting pre-incident information including pre-fire plan (33 CFR 155.4035).

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

4 hours at Pier. 8 hours Nearshore/Inner. 12 hours Offshore/Outer.

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this service when the firefighting team and equipment are on site. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER:

4 YEARS (Table 155.4055(g))

MARINE FIREFIGHTING – FIRE SUPPRESSION**19. External vessel firefighting systems.****a. DEFINITION:**

External vessel firefighting systems mean firefighting resources (personnel and equipment) that are capable of combating a fire from other than on board the vessel. These resources include, but are not limited to, fire tugs, portable fire pumps, airplanes, helicopters, or shore side fire trucks. (33 CFR 155.4025)

b. RESOURCES REQUIRED:

Salvage and marine firefighting pre-incident information including pre-fire plan (33 CFR 155.4035). External firefighting personnel, fire tugs, portable fire pumps, airplanes, helicopters, or shore side fire trucks. (33 CFR 155.4025)

Firefighting equipment must be compatible with the vessel. The VRP must list the proper type and amount of extinguishing agent needed to combat a fire involving the vessel's cargo, other contents, and superstructure. If the primary extinguishing agent is foam or water, the VRP must identify resources that are able to pump, for a minimum of 20 minutes, at least 0.016 gallons per minute per square foot of the deck area of your vessel, or an appropriate rate for spaces that this rate is not suitable for and if needed, an adequate source of foam. These resources described are to be supplied by the resource provider, external to the vessel's own firefighting system. (33 CFR 155.4030(g))

Worker health and safety. Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing salvage and marine firefighting services, as found in 33 CFR 155.1055(e) and 29 CFR 1910.120(q). § (33 CFR 155.4032)

c. TIMEFRAME (Table 155.4030(b)):

4 hours at Pier. 12 hours Nearshore/Inner. 18 hours Offshore/Outer.

d. TIMEFRAME BEGINS WHEN:

The timeframe starts when anyone in your response organization receives notification of a potential or actual incident. (33 CFR 155.4040(b))

e. TIMEFRAME ENDS WHEN:

Table 155.4040(c) indicates that the response timeframe ends for this service when the personnel and equipment are on scene. This table provides information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city. (33 CFR 155.4040(c))

Enclosure (5) to NVIC 2-10

In general, the response timeframe ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 (inner) or 50-mile (outer) point from the COTP city, or a point identified in your response plan for areas OCONUS. (33 CFR 155.4040(b))

f. MAXIMUM WAIVER: 4 YEARS (Table 155.4055(g))