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Salvage and Firefighting Delayed Again

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The Coast Guard has done it again. For the fourth time in nine years, it has suspended the requirement that owners and operators of vessels required to have oil spill response plans include in those plans arrangements for salvage and firefighting resources to be deployed to a port nearest to the vessel's operating area within 24 hours of notification or discovery of an oil discharge from the ship. The excuses for these multiple delays are getting lame.

Oil spill response plans are required by the Oil Pollution Act of 1990 (OPA 90). Originally, the requirement only applied to tank vessels and certain facilities. The response plans are required to identify and ensure the availability of private personnel and equipment to respond to the discharge or substantial threat of a discharge (including a discharge resulting from fire or explosion). In 2004, Congress amended OPA 90 to extend the response plan requirement to nontank vessels of 400 gross tons or greater. In 2006, Congress made a technical amendment to the nontank vessel provision and extended that response plan requirement to nontank vessels operating in waters within twelve miles of the US coast.

The oil spill response plan regulations were first promulgated as interim rules in 1993. The salvage and firefighting provision stated:

The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the following resources:

- (i) A salvage company with expertise and equipment.*
- (ii) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel will operate.*

The salvage and firefighting requirement has not been substantively altered since its promulgation in 1993.

Because the salvage and firefighting resources in the United States in 1993 were not considered adequate and to establish a goal toward which the marine industry should strive, the interim rule included the following provision:

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To meet this requirement in a response plan submitted for reapproval on or after February 18, 1998, the identified resources must be capable of being deployed to the port nearest to the area that the vessel operates within 24 hours of notification.

In the preamble to the interim rule, it stated: “The Coast Guard has determined that delaying this requirement until 1998 [five years after promulgation] provides sufficient time for the industry to assess the existing capability fully and to take steps to address any shortfalls.”

On August 5, 1997, the Coast Guard and the Maritime Association of the Port of New York and New Jersey co-hosted a workshop in Alexandria, Virginia. The purpose of the workshop was to solicit comments on potential changes to the salvage and firefighting requirements. At the completion of the workshop, volunteers were sought to serve on various working groups to develop specific proposals for various aspects of the salvage and firefighting requirements. Unfortunately, the Coast Guard proceeded no further in this direction and never established the planned workgroups. Instead, in early 1998, the Coast Guard issued the first of its suspensions of the salvage and firefighting 24-hour requirements. By this action the requirement was deferred for three years – until February 12, 2001. The rationale proffered for the delay was the “widespread misunderstanding and confusion regarding the regulatory language, which will make implementation of this requirement difficult.”

In early 2001, the salvage and firefighting 24-hour requirements were suspended again – until February 12, 2004. The rationale proffered for the second delay was that the agency needed additional time to complete the rulemaking and to prepare an initial regulatory flexibility analysis due to the expected economic impact on small businesses.

The regulatory assessment was completed in early 2002 and a proposed amendment to the salvage and firefighting requirements was published on May 10, 2002. Rather than the all-encompassing requirement of the original interim rule, the proposal separated salvage and firefighting response into various constituent parts and established response times for each part. The response times also varied, based on whether the incident occurred in the nearshore area (within 12 miles of the port) or in the offshore area (between 12 and 50 miles of the port). No specific response times would be denominated for casualties occurring in remote areas. Also, no specific response times would be denominated for tank vessels carrying Group V oils (those oils heavier than water). The proposal called for vessel response plans to be revised to conform to the new salvage and firefighting requirements within six months after promulgation of the final rule. In conjunction with this proposal, public meetings were held in Texas City, Philadelphia, Seattle, and Louisville.

In early 2004, the salvage and firefighting 24-hour requirements were suspended again – until February 12, 2007. The Coast Guard explained that, during the previous three years, it had to redirect the majority of its regulatory resources to issue security-related regulations. Now that the security regulations have been issued, it expected to be able to devote time to this project.

In November 2005, the Coast Guard completed its draft Programmatic Environmental Assessment (PEA) on the proposed salvage and firefighting requirements. The draft PEA, which was made available for public comment in early 2006, stated that the Coast Guard expected benefits from the proposal to include improved communication and notification, spill response planning and preparedness, personnel availability and training, consistency with national and regional response plans, and more rapid and effective responses. These benefits were expected to translate into reduced vessel damage and cargo loss, preventing approximately 87,282 barrels of oil from being spilled into the water through 2030.

Most recently, on February 9, 2007, the Coast Guard has again suspended the salvage and firefighting requirements – until February 12, 2009 (only two years this time). The rationale here is that the agency needs the time to begin to prepare an updated regulatory assessment.

The time for dithering has long since passed. Action is necessary to fill the salvage and firefighting gap first identified in 1993 and still existing today. I propose that the Coast Guard immediately rescind its suspension of the second step of the original salvage and firefighting regulations and make those provisions effective six months following such rescission. Such action will end the protracted delays surrounding this important enhancement to the emergency preparedness situation in the US maritime sector.