Regional Citizens' Advisory Council

The Observer

A quarterly publication of the Regional Citizens' Advisory Council of Prince William Sound

Volume 2, No. 3/July 1992

Proposed regs to implement stricter laws of federal Oil Pollution Act of 1990

The U.S. Coast Guard is seeking public comment on a proposed rule to implement certain provisions of the landmark Oil Pollution Act of 1990 (OPA 90). OPA 90 set new more stringent standards for oil spill prevention and response planning for vessels carrying crude oil and other petroleum products. The law requires owners and operators of certain vessels to submit individual response plans for approval. The proposed rule drafted by the Coast Guard is designed to implement the OPA 90 requirements for vessel response plans, including additional requirements for certain vessels operating in Prince William Sound.

The proposed rule spells out what must be included in vessel spill response plans. The requirements vary, depending on where the vessel operates, the type of cargo carried, port of call, and environmental considerations, such as weather.

Vessel owners and operators must identify and ensure the availability of resources needed to respond to three categories of spill: the average most probable discharge; the maximum most probable discharge; and, to the maximum extent practicable, the worst case discharge. The proposed rule sets time frames for when response resources (people and equipment) must be on the scene; lays out the procedures for calculating what response resources are needed; and defines some of the additional protections for Prince William Sound, as mandated by OPA 90.

The proposed rule reflects the work of a committee organized by the Coast Guard to help it resolve some of the complex and controversial

Continued on Page 3

This issue of "The Observer" is devoted to the proposed rule on vessel plan requirements.

Coast Guard gets kudos for regulations

The proposed rule detailing how vessel owners must plan for responding to oil spills is generating praise from public interest groups that worked on the proposed rule, including the Regional Citizens' Advisory Council.

"While we are making some specific recommendations for changes, overall the proposed rule should greatly improve the way oil spills are responded to in this country and the Coast Guard deserves credit for the work they put into this," RCAC President Scott Sterling said. Sterling cited four key strengths in the proposed rule.

- The format provides comprehensive pre-spill planning and training and nationwide uniformity for plans. Uniformity will ensure consistent review by the Coast Guard and a general standard of quality. The uniform format also facilitates use of the plan by all responders.
- The rule goes a long way toward addressing any size spill from a vessel, by requiring plans to address three levels of spill magnitude: worst case discharge, average most probable discharge and maximum most probable discharge.
- The rule will significantly increase the amount of functioning spill response capability readily available, by requiring vessel owners and operators to contract with response contractors or cooperatives for equipment, personnel and storage capacity.
- The rule explains specifically the process

Continued on Page 3

Comment deadline Aug. 3

The RCAC is preparing detailed comments on the U.S. Coast Guard's proposed rule establishing requirements for oil tank vessel response planning. While the RCAC's comments represent the interests of its member communities and organizations, the Coast Guard should also hear from informed citizens.

This proposed rule will have a direct impact on the safety and security of communities affected by the Exxon Valdez oil spill. Citizens are encouraged to learn more about the proposed rule and submit their own comments.

The deadline for public comments on the proposed rule is August 3, 1992. Comments should be sent to:

Executive Secretary, Marine Safety Council
(G-LRA-2/3406) (CGD 91-034)
U.S. Coast Guard Headquarters
2100 Second Street SW
Washington, D.C. 20593-0001

Comments may also be relayed to the Coast Guard through the RCAC, 601 W. Fifth Ave., Suite 500, Anchorage, Alaska 99501-2254.

RCAC suggests changes to proposed rule

Incident command

The proposed rule requires that vessel owners have in their response plans an identified organization structure to manage the response effort. The structure must contain certain elements essential to management of a response operation. The proposed rule does not require use of the National Interagency Incident Management System (NIIMS) incident command system (ICS).

For other types of disasters, most government agencies and community emergency services use the NIIMS ICS. It provides maximum coordination of federal, state and local resources.

***RCAC recommendation**: Require NIIMS ICS in vessel response plans. The effectiveness of response to a very large spill depends on the ability of different agencies, responders and the spiller to work together. An effective response, especially to a large spill, would be better served if all responders are trained in and work under the same incident command system.*

Close-to-shore response

An effective oil spill response must include a well-planned and executed response to each of the following phases: On-scene, open water, close-to-shore and shoreline protection.

The proposed rule contains no provisions or requirements for a close-to-shore response plan for removal of spilled oil that has drifted from the scene of the spill and threatens coastal resources. This phase of response is critical to coastal users as it is the final opportunity to remove oil before it impacts the shore. The State of Alaska requires a nearshore response plan and one was recently completed by Exxon, Arco, BP and Chevron.

***RCAC recommendation**: Require close-to-shore response and set clear criteria. RCAC suggests, for higher volume ports, oil spill removal capability of 20,000 barrels per day on vessels operating in 12 feet of water or less.*

Designation of Prince William Sound

One of the main factors for determining the equipment requirements for spill response planning is where a vessel operates: open ocean, river, Great Lakes and inland. Prince William Sound is categorized as inland waters. Equipment design or operating criteria are proposed for booms and oil recovery devices for each of the four areas above. These criteria are based primarily on significant wave heights.

***RCAC recommendation**: Because of the extreme sea conditions, RCAC should be designated "ocean," for purposes of rating recovery equipment.*

Fire fighting capabilities

The law specifically requires vessel response plans to include fire fighting capability. While the proposed rule does require vessel owners or operators to contract for fire fighting resources, it sets no specifications for what appropriate resources would be or how quickly they must arrive on-scene.

***RCAC recommendation**: Develop specific criteria, including arrangements needed to get equipment on-scene within 12 hours.*

Oil Spill Removal Organization

Section 5005 of the Oil Pollution Act of 1990 requires an oil spill removal organization be established for Prince William Sound. The organization is to train local residents and individuals engaged in cultivation or production of fish or fish products. The proposed rule refers to this organization but includes no specific criteria or definition.

***RCAC recommendation:** RCAC is reserving comment on this issue, pending a determination of the feasibility of a single oil spill removal organization capable of addressing all spill response needs in Prince William Sound.*

RCAC in review process

The regional citizen advisory councils were established under a section of OPA 90, the "Oil Terminal and Oil Tanker Environmental Monitoring Act of 1990." The proposed rule makes no provision for advisory council involvement in review of vessel response plans, even though OPA 90 specifically calls for it.

***RCAC recommendation:** The rule should stipulate that where a presidentially-certified regional citizen advisory program exists, its review and comments should be part of the approval process.*

Pre-positioned response equipment

The proposed rule would require Alyeska to have only 31 percent of the response capability it presently lists in the Prince William Sound Tanker Spill Prevention and Response Plan. Nor does the proposed rule require a close-to-shore response plan and equipment.

***RCAC recommendation**: Raise the recovery capability requirement to 200,000 barrels per day in Prince William Sound, to match Alyeska's current capability. Require a close-to-shore plan and set criteria such that vessels of opportunity from the local communities are trained and equipped to remove at least 20,000 barrels per day.*

Implications for non-crude carriers in PWS a concern

The Regional Citizens' Advisory Council (RCAC) disagrees with an interpretation by the U.S. Coast Guard that could result in stringent response requirements for fuel barges operating in Prince William Sound communities.

The Oil Pollution Act of 1990 (OPA 90) provides an additional layer of response requirements, over and above what is required elsewhere in the country, for tank vessels operating in Prince William Sound. The Coast Guard has said it doesn't have authority to reduce the requirements for smaller tank vessels such as coastal fuel barges.

While other sections of the proposed rule do make a distinction between crude and non-crude carriers, this section does not. That means fuel barges could be required to comply with all of the extra requirements designed for TAPS trade tankers.

In its formal comments to the Coast Guard, the RCAC argues that it was not Congress' intent to apply the extra requirements to non-crude carriers operating in Prince William Sound.

"A review of the record and our own participation in the development of OPA 90 leads us to disagree with the U.S. Coast Guard about the application of those requirements. We don't believe it was the intent of Congress to apply them to non-crude vessels," the RCAC said.

"RCAC was formed to address the threat to the environment of the TAPS trade and does not support the application of either Sec. 5005 of OPA 90, nor Subpart E of the proposed rule, to non-crude carriers operating in Prince William Sound," the statement said.

Response requirement caps set too low

A table in the proposed rule sets caps on how much response equipment vessel owners and operators must contract for in advance, to ensure they are prepared for a worst case discharge of oil. The RCAC agrees with the concept of caps, but believes the caps are too low.

For example, the proposed caps would not provide enough equipment and personnel to respond to a spill of 11 million gallons, the size of the Exxon Valdez.

The caps are expressed in barrels per day, which translates into the equipment and manpower that must be contracted to be ready to respond for that vessel. It is important to remember that these are planning standards, not performance standards.

For Prince William Sound, the RCAC recommends the cap be set no lower than 200,000 barrels per day for TAPS trade crude oil tankers. Caps for all other waters nationwide should be doubled.

The proposed rule for vessel response plans lays out a methodology for vessel owners and operators to calculate the response resources they must arrange for in advance. The methodology takes into account factors such as how much and what type of oil is carried, whether oil is the vessel's primary or secondary cargo, where the vessel operates and potential risk to the environment. RCAC believes the methodology is sound.

Based on the calculations alone, a vessel owner would need to ensure the availability of a certain amount of resources in order to respond to a spill of the vessel's entire cargo. But another section of the proposed rule puts a ceiling, or caps, on how much resources must be contracted in advance. The caps fall significantly below what the calculations alone would require, meaning the vessel owner doesn't have to line up as much resources.

Caps on response capability stem from wording in the Oil Pollution Act of 1990, which requires tank vessel owners and operators to "identify and insure by contract or other means . . .the availability of private personnel and equipment necessary to remove to the maximum extent practicable . . ." a spill of the vessel's entire cargo in adverse weather.

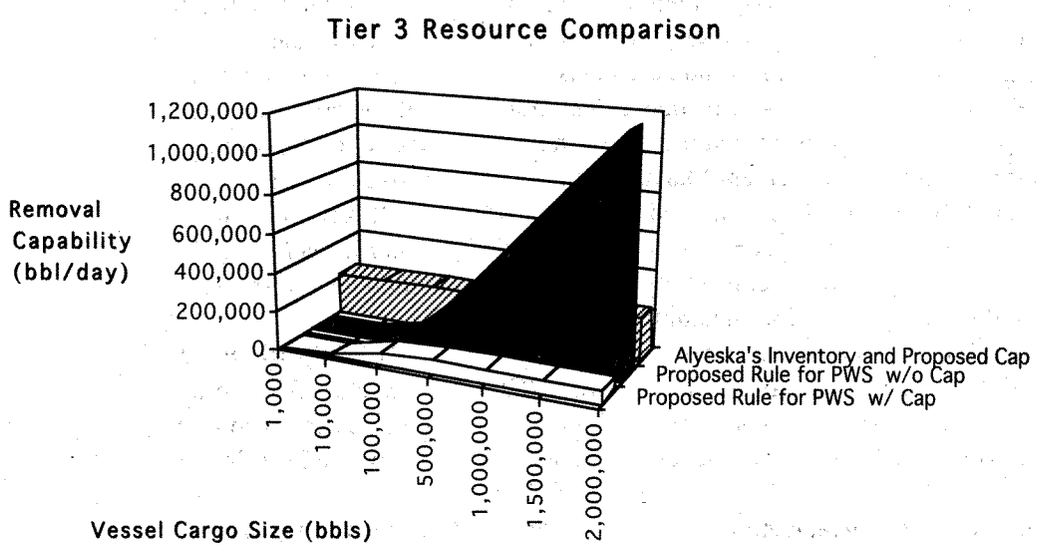
The operative words are "to the maximum extent practicable." That phrase is implicit recognition that it may not be possible or practicable to line up all the resources necessary to clean up a spill of a vessel's entire cargo in adverse weather.

In setting the caps, the Coast Guard reasoned that "it is not practicable to require vessel owners and operators to contract in advance for every response resource that exists in a given area."

The RCAC disagrees. "Whatever resources are going to be needed should be contracted for in advance," the council said. The RCAC also disagreed with the Coast Guard's assessment of resources that will be available nationally in 1993, when vessel response plans must be submitted.

The RCAC points out that in less than three years, Alyeska Pipeline Service Company was able to assemble, from existing manufacturers, five times the response resources the proposed rule would require for a higher volume port. Oil spill equipment manufacturers have said they can produce the response resources necessary to double the caps,the RCAC said.

Alyeska currently has more than 200,000 barrels per day of removal capability. The proposed rule would require removal capability of only 70,000 barrels per day.



This graph shows the effect of the cap on required recovery capability for vessels operating in Prince William Sound. Alyeska's current inventory is enough to recover 225,000 barrels a day. The proposed rule, without the cap, would require recovery capability of more than 1.5 million barrels a day. The cap reduces the requirement to 70,000 barrels a day. "Tier 3" refers to the response resources the plan must provide to be on-scene within 36 hours of notification that a spill has occurred.

Coast Guard praised

Continued from Page 1

vessel owners or operators are to follow in planning for a worst case discharge. The process determines the amount of equipment needed, based on planning standards for defined amounts of equipment to be at the scene and arrive on scene within 12-hour increments.

"This methodology is logical, sound and simple to follow," Sterling said. "It will result in more spill response equipment nationwide, more accurate assessments of what that equipment can do and more rapid on-scene arrival of response equipment."

Regs to implement OPA 90 requirements

Continued from Page 1

issues involved. The Oil Spill Response Plan Negotiated Rulemaking Committee, of which RCAC was a member, met every other week, January through March, in Washington, D.C. Most of the 26 committee members were industry representatives, although there were a few other citizen group and state representatives. The issues on which the committee reached consensus were written into the proposed rule.

The federal rule will set the minimum standards that state regulations have to meet. Once the federal rule is in place, state regulations must be at least as stringent. A strong federal rule will ensure better response capabilities.

Written comments on the proposed rule must be submitted by August 3.

Fishing vessels

One section in the proposed rule (155.1045) deals specifically with the planning requirements for vessels that carry oil as secondary cargo. Those reuirements would apply to fishing vessels and tenders that carry fuel for transfer to other vessels..

Consensus process used to help write rule

A relatively new tool that relies on consensus building among widely varied parties was called up to help the U.S. Coast Guard write the proposed rule for vessel response plans. A negotiating committee of industry, state and public interest representatives was established under provisions of the Negotiated Rulemaking Act of 1990. The committee met up to four days, every other week, from early January to late March.

The committee, formally called the Oil Spill Response Plan Negotiated Rulemaking Committee, was established by the Coast Guard to address five specific issues related to vessel response plans: a definition of "maximum extent practicable," definition of "adverse weather" for purposes of determining recovery capacity of removal equipment; applicability of requirements to various categories of vessels that carry oil in bulk as cargo; contractor certification; and carriage of discharge removal equipment.

The last two issues – contractor certification and carriage of discharge removal equipment – will be addressed in separate rulemaking processes.

The Regional Citizens' Advisory Council of Prince William Sound (RCAC) and Cook Inlet (CIRCAC) had representatives on the committee. The Prince William Sound RCAC was represented by Tim Robertson of Seldovia, a former board member and chairman of the RCAC Oil Spill Prevention and Response Committee.

Twenty six organizations participated in the committee process, including the Coast Guard. Although the committee was heavily weighted with industry groups, RCAC and CIRCAC joined with several other non-industry members to form a public interest caucus. Robertson said alliances did not always follow strict lines of industry vs. non-industry.

The consensus process meant that any one committee member could strike down a point by veto. Despite that high standard, the committee did reach consensus on a wide range of issues. The committee's consensus points included:

- Definition of adverse weather
- Identification of higher volume port areas, areas where greater response capability is needed
- Average most probable discharge
- Maximum most probable discharge
- Distinction between persistent and non-persistent oils
- Distinction based on a vessel's primary purpose; requirements are less stringent for vessels carrying oil as secondary cargo because those vessels usually pose far less risk to the environment than vessels that carry oil as primary cargo
- Geographic areas of operation - Requirements vary based on where a vessel operates (ocean, inland, rivers, Great Lakes)
- Require lightering equipment be identified, with availability ensured by contract or other means
- Inclusion of requirements to address response to spills of less than the entire cargo (average most probable and maximum most probable)
- Cap on the amount of response resources a vessel owner or operator must contract for in advance to respond to a worst case discharge (see related article, page 1); and a set of factors the Coast Guard was to consider in setting the caps
- Ratcheted increases in the caps at five-year intervals
- Tiered deadlines for on-scene response capability, with more rapid response required in high volume port areas
- Method for evaluating the effective daily recovery rate for an oil recovery device

Points of consensus, like the rest of the proposed rule, are subject to public comment and review. Committee protocols preclude groups – such as RCAC – represented in the negotiating committee from making negative comments about aspects of the proposed rule that reflect committee consensus. However, the rule against negative comments does not apply to RCAC's member organizations.

Special attention given to Prince William Sound

The Oil Pollution Act of 1990 (OPA 90) gives special attention to Prince William Sound, by establishing additional requirements over and beyond those that apply to tanker vessels operating in other ports.

The additional requirements are in Sec. 5005 of OPA 90; the Coast Guard chose not to have the Negotiated Rulemaking Committee address them.

The additional requirements are establishment of an oil spill removal organization; pre-positioned response equipment; escort vessels; response training for residents; periodic inspection, testing and certification of response equipment; and drills to test personnel and equipment.

Oil spill removal organization

Under OPA 90, response plans for all tank vessels operating in Prince William Sound must identify an oil spill removal organization to perform response activities and train residents in Valdez, Tatitlek, Cordova, Whittier, Chenega, five fish hatcheries (Armin Koering, Main Bay, Wally Norenberg, Cannery Creek and Solomon Gulch) and other locations determined by the captain of the port.

The oil spill removal organization must consist of sufficient trained personnel to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater. The organization must also identify the organizational structure used to manage response actions.

Drill procedures

Response plans must include two drills a year for the oil spill removal organization, to ensure effective performance of prepositioned equipment and trained personnel. Drills must be both announced and unannounced, and test either the entire appendix or individual components. The proposed rule also calls for specific testing, inspection and certification of spill response equipment.

Pre-positioned response equipment & response times

Tanker vessels operating in Prince William Sound must pre-position response equipment at strategic locations. Response plans call for faster on-scene time, as well. On-water recovery equipment and storage capacity must be at the scene of a spill within six hours, compared to 12 hours in other ports. Plans must provide for recovery capability of 50,000 barrels a day on-scene within 24 hours.

Pre-positioning response equipment increases recovery capability in the first 36 hours to 70,000 barrels a day, which is required by OPA 90. In other higher volume ports, the on-scene recovery capacity is 40,000 barrels a day within 60 hours. Lightering resources must be capable of arriving on-scene within six hours of notification.

Regional Citizens' Advisory Council

Headquarters:
601 W. Fifth Ave. Suite 500
Anchorage, Alaska 99501-2254
Phone: 907/277-7222
FAX: 907/277-4523

TOEM & POVTS Committees:
Royal Center, 310 Egan St., Rm. 210
P.O. Box 3470
Valdez, Alaska 99686
Phone: 907/835-5957 FAX: 907/835-5926