

No. 13 2010/2011 - US Vessel Response Plans - Salvage and Marine Firefighting Requirements

August 2010

Dear Sirs

US Vessel Response Plans - Salvage and Marine Firefighting Requirements

Final Rule - 31 December 2008

Deadline for Implementation - 22 February 2011

Salvage Agreements

This Circular Applies To Owners Of Tank Vessels Carrying Oil Calling At US Ports

Members are referred to Notice to Members No. 3 2009/2010 in which attention was drawn to the US Coast Guard (USCG) Final Rule amending the Vessel Response Plan (VRP) Salvage and Marine Firefighting requirements for tank vessels carrying oil (33 CFR part 155). This final rule became effective on 30 January 2009 and states that owners of tank vessels calling at US ports must enter into agreements with salvage and marine firefighting services and list these in the VRPs for such vessels. Owners and operators who are required to have a VRP now have until 22 February 2011 to prepare and submit revised plans that comply with these new salvage and marine firefighting requirements. Such amended plans can be filed from 1 September 2010. It is emphasised that unlike the position with regard to Oil Spill Response Organisations which are classified by the USCG, it is the responsibility of the shipowner or operator to ensure that the salvor and firefighter have capability measured against 15 criteria, and to certify to this effect. The criteria are listed in Annex 1. Owners and salvors have raised a number of questions concerning the Final Rule. The USCG has published FAQs and these are updated from time to time.

Please use the following link and instructions to access the FAQs:-

USCG VRP

- select 'General' under the heading Frequently Asked Questions
- select ****Salvage and Marine Firefighting Frequently Asked Questions** NEW**
- select PDF document: SMFF FAQ (N.B. the latest version as at 18 August is July 09, 2010)

Final Rule

The Final Rule establishes new response times, requirements for each of the required salvage and marine firefighting services, establishes criteria for vetting salvage and marine firefighting service resource providers, and ensures that salvors and marine firefighters are adequate to provide the equipment and manpower needed for responding to incidents up to and including worst case scenarios.

The owner must file for a temporary waiver if the response times cannot be met.

Contract and Funding Agreement

The agreement must be by contract (or other approved means). The contract should expressly provide that the resource provider (Salvor) is capable of, and intends to commit to, meeting the plan requirements. As part of the contract the owners must enter into a written funding agreement. The purpose of a funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations at the time of an incident. The funding agreement must include a statement of how long the agreement remains in effect, and must be provided to the US Coast Guard for VRP approval. The USCG has indicated that it will accept Lloyd's Open Form (LOF) with certain conditions (see Annex 2). In effect this would seem to amount to LOF plus SCOPIC.

Although not primarily a matter relating to P&I cover, the International Group (IG) has drawn up a set of guidelines for evaluating these agreements and these are attached as Annex 3. These relate to such matters as indemnities, control, insurance etc. Against the background of these guidelines the VRP Working Group of the IG has reviewed four Salvor agreements namely those of:

- DonjonSmit – Version 7 June 2010
- MRA – Marine Response Alliance, LLC Dated 2 August 2010
- Resolve - Dated 14 June 2010
- T&T Bisso - OPA 90 Ship Agreement Non-US - 22 April 2010
- T&T Bisso – OPA 90 Ship Agreement US Owners – 15 June 2010

We can confirm that these agreements conform with the guidelines. These salvors have also informed the VRP Working Group that the USCG has reviewed their agreements and stated that they meet the funding agreement requirements. The Salvors have been provided with letters from the USCG to this effect.

In addition the IG has commissioned a comparison of the rates in these agreements. This comparison is attached as Annex 4. These are provided purely for information purposes.

As will be seen the structures of these agreements show considerable variation and therefore the comparison is only illustrative. Members should refer to individual salvors for a comprehensive list of all rates and services.

Members are advised to consult their property underwriters with regard to selection of any particular contract/funding agreement and to check with the salvors that they are able to provide resources meeting the 15 criteria in all the geographic areas of the United States which their ships will visit.

All Clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

For: **West of England Insurance Services (Luxembourg) S.A.**
(As Managers)

A Paulson
Director

Annex 1

33 CFR PART 155.4050 – ENSURING THAT THE SALVORS AND MARINE FIRE FIGHTERS ARE ADEQUATE.

15 criteria

a) You (plan holder) 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 to the maximum extent possible:

- (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 organisations.
 - (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.
- c) A resource provider need not meet all of the selection criteria in order for you to choose them as a provider. The 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.

External firefighting teams means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel.

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.

Resource provider means an entity that provides personnel, equipment, supplies and other capabilities necessary to perform salvage and/or marine firefighting services identified in the response plan, and has been arranged by contract or other approved means. The resource provider must be selected in accordance with § 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 § 155.4045(d), and willing to provide the services needed.

Annex 2

CONTRACTS AND FUNDING AGREEMENTS

SMFF Regulation: Frequently Asked Questions
Extract:

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:

- 1) The LOF is submitted with and identified in the entire agreement 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.
- 3) 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.

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.

Annex 3

INTERNATIONAL GROUP GUIDELINES FOR INSERTION OF SALVOR CONTRACTS IN US VRPS (NOT WRECK REMOVAL)

1. Owner's Representative

The Owner shall have a right to appoint a representative to attend the salvage operation. This representative should be consulted where possible by the salvage master over the conduct of operations and should also sight time records on a daily basis. If there is disagreement over a particular action or charge, the owner's representative should issue a note of protest in order to preserve the record in case of future disputes.

2. Control

Whilst it is recognised that during a salvage operation, the salvage master will have overall control, the agreement should contain a provision requiring the salvors to consult owner or owner's representative during the operation. Similarly owner's representative should be permitted to offer advice to the salvage master/contractor's representative.

3. Funding

The Association will not provide advance funding guarantees.

If SCOPIC is applicable, then SCOPIC terms unamended. If the funding agreement is a simple time and materials this would be a matter for discussion with property underwriters, since P&I cover would not apply. The Owner may want to take the following into consideration:

(i) A fixed limit.

(ii) A fixed time limit for the services, i.e. the letter would guarantee expenses incurred in providing response services up to a fixed period of time as appropriate (e.g. seven days from the incident date) subject to extension by written agreement of the guarantor

(iii) A haul-off clause which provides for the guarantor's liability to be terminated upon 24 hours' notice.

4. Salvage Remuneration

It should be made clear that the contractor and any sub-contractors are not entitled to salvage remuneration over and above that allowed for in the contract and that in the event that the shipowner becomes liable for such remuneration, the contractor will immediately indemnify them.

5. Indemnity

The clauses should be even-handed as regards the liabilities of the shipowner and the contractor and should be based on simple negligence rather than gross negligence. Thus the contractor should be liable for the negligent acts of himself and his employees, etc. and the shipowner should be liable for the negligent acts of the shipowner and his employees, etc. and losses which would not have arisen but for the nature of the spill.

6. Warranties

Agreement should contain warranties that the services and equipment are adequate/fit for the purpose for which it is hired; when contracting for services in the United States of America, the salvor fulfils the 15 criteria set out in 33 CFR 155.4050.

7. Insurance

Care should be taken to ensure that the contractor maintains insurance to respond to his liabilities for the services which he intends to provide.

8. Law and Jurisdiction

England. In certain circumstances another jurisdiction may be appropriate

9. Disputed Invoices

If the contractor inserts payment time limits in his contract, then a provision should be inserted that payment of 80 per cent is made within a certain time limit (approximately 30 days) and the balance when the dispute is settled.

10. Interest

If interest is charged on outstanding balances it is recommended that it is one or two percent above normal commercially available Bank lending rates.

11. Confidentiality

Some contracts contain a confidentiality provision. Any provision inserted should at least ensure that an owner can discuss the contract with his P&I insurer.

Annex 4
Attachment