

**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 per cent 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 2

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 fire-fighting 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 fire-fighting 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 fire-fighting 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 fire-fighting services.
 - (15) Resource provider has familiarity with the salvage and marine fire-fighting 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. 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.

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

External vessel fire-fighting systems mean fire-fighting 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 fire-fighting 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 fire-fighting services, resource providers can include public fire-fighting resources as long as they are able, in accordance with the requirements of § 155.4045(d), and willing to provide the services needed.

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.