

STATEMENT OF REAR ADMIRAL A. E. HENN
U. S. COAST GUARD
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
HOUSE OF REPRESENTATIVES
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Good morning, Mr. Chairman and distinguished members of the subcommittee. I am Rear Admiral Gene Henn, Chief of the Coast Guard's Office of Marine Safety, Security, and Environmental Protection. I appreciate this opportunity to bring you up to date on the recent Shetland Islands Oil Spill and to discuss some of the issues it raises as they relate to the Oil Pollution Act of 1990 (OPA 90). I would also like to update you on various OPA 90 accomplishments and additional measures which are underway to curb marine pollution.

BRAER SPILL

In the early morning hours of January 5, 1993, the Liberian tankship BRAER lost power in gale force winds while navigating the passage between Fair Isle and Shetland Isle in the North Sea. The British Coast Guard was alerted, and evacuated most of the 34-man crew by helicopter. Ship's engineers remained aboard and worked over the next five hours attempting to repair the machinery, thought to have failed from fuel contamination. Tug assistance from the major oil terminal at Sullom Voe, only 40 miles to the north, was impeded by heavy weather.

After drifting almost six hours, the BRAER grounded at Garths Ness, a rocky headland near the southwestern tip of the Shetland Islands. Powerful winds and heavy seas continued to buffet the tanker for several days until it broke up. The tanker lost virtually all of its 24 million gallons of North Sea light crude oil, over twice the amount spilled by the EXXON VALDEZ, in an ecologically sensitive area.

Extremely poor weather and sea conditions prevented initial response efforts, while at the same time they helped to disperse the oil. On January 6, the United Kingdom (U.K.) Department of Transport dropped 100 metric tons of chemical dispersants onto the spill to help break up the oil and mix it into the water column. (The effectiveness of the chemical dispersants has been debated.) As weather and seas permitted, response crews deployed containment boom to protect some shoreline areas. Since it involved relatively light oil, the spill tended to disperse and evaporate more readily, and will continue to break up through the normally stormy winter in the area.

The BRAER was a single hulled tankship, 17 yrs old, current in its classification society inspection. At the time of the casualty, the BRAER was enroute Quebec, Canada from a North Sea oil port in Norway, using a common navigational route for such vessels.

A United States offer to provide technical, operational, and research assistance was made on January 11, 1993, but it was declined by the U.K. Government.

While regrettable, the T/V BRAER incident provides us with a sobering opportunity to examine our own marine environmental protection program -- its strengths and weaknesses, and the progress we have made since EXXON VALDEZ. I must note at the outset, however, that the transportation of oil has inherent risks, and no currently feasible system of environmental protection will provide a 100% safeguard against accidents.

A wide array of issues were raised by the incident, but I'd like to begin with those most closely related to the casualty itself.

PREVENTION ISSUES

LOSS OF POWER

The BRAER's loss of power for 5½ hours before grounding on the rocks captured public attention and highlighted frustration with the variety of risks involved in transporting oil. Despite the vast breadth of legislation and international attention on the heels of the EXXON VALDEZ spill, major accidents continue, and in fact propulsion failures were not addressed specifically in OPA 90.

Oil spill prevention is complex and multifaceted. Solutions are necessarily aimed at different fronts -- structural integrity, crew competence, operational procedures, maintenance, navigational controls, technology, and financial responsibility; all are aimed at reducing risk. While propulsion failure isn't a new problem, we've collectively made substantial headway. Our data on U.S. waters shows that between 1981 and 1991, thirty-two tankships suffered propulsion failures. Of those, six ultimately went aground. None spilled oil.

Could it happen here? Unfortunately, we're no less vulnerable than Scotland or any other coastal nation. Transportation of oil involves inherent risk to some degree, but we have many regulatory systems in place to reduce the risks. We are aggressively implementing our myriad new taskings from OPA 90, and we continue to evaluate risks -- both circumstantial and causal -- to further identify weak points and options for improving the U.S. spill prevention infrastructure.

ABANDONMENT

One of the more widely reported aspects of the BRAER spill was the Captain's order to abandon ship an hour before tugs arrived. Without a crew aboard the BRAER, tugs were unable to get lines on the tanker to arrest its drift toward the rocks.

Speculation in hindsight is rampant, but I wouldn't be too quick to second-guess the Captain's judgment in such a situation.

Dozens of human lives were at stake. While I am awed by the magnitude of the oil spill and its potentially severe effects on the environment, we simply don't use human life as currency for preventing environmental damage.

ESCORTS

The BRAER's loss of power and abandonment before tugs could arrive also highlight the issue of escorts for tank ships. The purpose of escort tugs is primarily to provide a backup in the event of mechanical problems such as the BRAER encountered or as a check against navigational error. This is an issue most recently dealt with legislatively by OPA 90. Section 4116(c) of the Act required us to issue regulations defining certain areas where single-hulled tankers larger than 5,000 gross tons transporting oil in bulk would be required to be escorted by two towing vessels. Three areas -- Prince William Sound, Alaska; Rosario Strait and Puget Sound, Washington -- were specified in the law. We published a Notice of Proposed Rulemaking on July 7, 1992 (57 FR 30058). The response to this Notice has highlighted the complexity of the escort issue. We must balance the large capital and operational costs with the benefits. Associated complexities include the need to develop relevant and feasible horsepower standards and the need to consider new escort propulsion technologies. These issues and others arising from response to the Notice are currently being studied.

The reality is that the BRAER incident occurred outside the type of confined and heavily traveled waters for which OPA 90 specified escort requirements. We expect, however, to learn much from the rulemaking regarding the costs, benefits, and feasibility of tanker escorts. As we gain experience from implementation of the current mandates, we will have a clearer view of the applicability of such provisions to vessels in more open waters.

TANKER FREE ZONES

The proximity of the BRAER incident to the oil terminal at Sullom Voe naturally drew attention to the voluntary 10-mile tanker free zone which has been in effect around the Shetland Islands since the terminal was opened in 1979. The Shetland Islands Council recently proposed to the International Maritime Organization (IMO) that an area to be avoided be established in the vicinity, and IMO has endorsed this proposal. In the case of the BRAER casualty, however, the ship was reportedly navigating beyond this 10-mile tanker free zone.

Domestically, and at Congress' direction (Section 4111(b)(7) of OPA 90), the Coast Guard is evaluating whether certain areas within U.S. navigable waters and the 200-mile Exclusive Economic Zone should be designated, in which tanker operation would be limited or prohibited. We're working quickly, and we're anxious to conclude the study and implement its findings. It is a significant undertaking, however, and we must carefully balance a

variety of national needs and interests. The report will be delivered to Congress as geographic segments are completed, with final delivery of all segments by 1995.

VESSEL TRAFFIC SERVICES (VTS)

One of the paradoxes of the BRAER casualty was its proximity to Sullom Voe, which offers a widely acclaimed Vessel Traffic Service (VTS) System for the port and terminal area just 40 miles to the north. At about 20 miles offshore, the BRAER was outside the range and the jurisdiction of the VTS.

We don't know if VTS would have helped avert the oil spill. How might a VTS have helped? A VTS might have reduced the time required to detect and respond to the loss of propulsion. It would not have prevented the engineering failure.

Domestically, we have completed the OPA 90 mandated study of VTS for U.S. ports. That study has given us a much improved perspective of our own VTS needs and has positioned us for a dramatic expansion in VTS installations.

Since the passage of OPA 90, the Coast Guard has reactivated VTS New York and expanded service in other areas. New VTS's are being established in New Orleans, Los Angeles/Long Beach, and other critical ports. Rulemaking is underway to make participation in these VTS's mandatory, consistent with the provisions of OPA 90.

Internationally, the IMO is considering alternatives for mandatory offshore reporting in circumstances other than port entry. It is anticipated that this reporting would be linked to established VTS systems. The Coast Guard will remain actively involved in these negotiations.

DOUBLE HULLS

The BRAER was a single hull vessel and its loss calls to mind the intense debate, both domestically and internationally during recent years, on the benefits of tankers with double hulls. Most recently, the Department of Transportation submitted to Congress an in-depth report, commissioned by the Coast Guard and conducted by the National Academy of Sciences, on alternatives to double hulls. The key conclusions of the report were that there is currently no other design which offers equivalent protection, but that continued evaluation of new technologies was warranted. The outcome of these debates has forever changed the face of tanker construction, and it has left us with margins of environmental protection that are orders of magnitude greater than we knew a few short years ago. Domestic regulations require double hulls for new tankers built after June 30, 1990. These regulations also require existing single hull tankers to be retrofitted with double hulls starting in 1995. International regulations will require double hulls on new tankers starting in July 1993 and will require existing single hull tankers to be retrofitted or retired not more than 30 years after delivery. Despite this extraordinary progress, the BRAER brings home the realization

that no improvement in the prevention arena is a cure-all. A double hull would not have helped prevent the BRAER spill.

PREPAREDNESS ISSUES

RESPONSE PLANS

I am not fully familiar with the BRAER's level of preparedness to respond to its own spill. I can, however, describe the preparedness regime in which we would find ourselves if a BRAER incident occurred in our waters. I'll begin with the benefits of the OPA 90 mandated vessel response plan.

As you know, the stringent vessel response planning requirements of OPA 90 become effective on February 18, 1993. Under those requirements, a tanker which was involved in such an incident in navigable waters of the U.S. would have in place an extensive response plan designed to ensure effective response to loss of its entire cargo in adverse weather. Key among the many required provisions of the plan would be the identification, and contract (or other approved means) to ensure the availability, of private personnel and equipment necessary to remove a worst case discharge, or threat of discharge, to the maximum extent practicable. Coupled with this provision, the plan would also identify a qualified individual fully authorized by the owner to implement removal actions. I cannot emphasize enough that a major benefit of the new vessel plan requirements is that they require owners to think through their response activities in

advance, and we have learned throughout the years that planning is more important than the plan. I am convinced that compliance with these provisions will immeasurably improve the quickness and efficiency of response along our shores, and will constitute a major step toward protecting our marine environment. As you know, publication of the interim final regulations implementing these planning requirements is scheduled for February 5, 1993. In an effort to ease the burden attendant with preparing these plans, and to compensate for the delay in publishing the regulations, we have provided the industry with extensive written guidance in the form of Navigation and Vessel Inspection Circular Number 8-92.

I would be remiss if I did not note here that a foreign flag tanker in transit passage in our Exclusive Economic Zone would not be subject to this rule unless the tanker had previously been in a U.S. port and had contemplated the transit.

Also relevant to vessel response plans, I cannot help pausing to note that the "worst case discharge", (i.e., discharge in adverse weather conditions of a vessel's entire cargo), which has been widely criticized as an unreasonable planning standard, is exemplified by the BRAER spill.

Finally, on this subject, I would like to note that we played an integral part in negotiating the international standard for response plans that is now articulated in Regulation 26 of Annex

I of International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). In addition to tankers over 150 gross tons, this requirement will apply to cargo vessels over 400 gross tons.

ON BOARD RESPONSE EQUIPMENT

Another preparedness issue which is somewhat tangential to the loss of the BRAER is the carriage of on board response equipment. This has been a subject of ongoing debate during the rulemaking arising from Section 4202(a)(6) of OPA 90. Our Notice of Proposed Rulemaking proposed a requirement for the carriage of an emergency towing package which may, in the future, help to prevent such accidents as the BRAER grounding. The circumstances surrounding the BRAER spill suggest that on board oil containment boom or skimmers would not have been of value. The BRAER incident therefore tends to validate the posture the Coast Guard has so far taken on shipboard equipment. The comment period on this rulemaking is closed and development of the final rule is underway. There continues to be much debate regarding the safety, effectiveness and feasibility of tanker-deployed equipment. In the long run, this is an area that is technology sensitive and is likely to need periodic reexamination.

AREA CONTINGENCY PLANS

I cannot leave the assessment of our preparedness for a BRAER-like incident without touching on the status of the Area Contingency Plans that were mandated by OPA 90. These plans will form the shoreside complement to the vessel response plans. They will provide the mechanism for the necessary coordination among Federal, State, and local agencies during a spill response. The plans will be significant enhancements over existing local contingency plans, but their greatest advantage comes from the fact that they will be developed by Area Committees made up of relevant Federal, State, and local agencies, and will involve local industry, environmental groups and academics. This Area Committee/Area Plan concept, by broadening the planning process, will establish response relationships and enhance coordination during the stress of actual response. We are well along with the large task of realizing these genuine benefits. July 1993 has been set as the target date to have all Area Plans in place. I am absolutely convinced that a BRAER-type spill occurring under an OPA 90 preparedness regime, from the vessel side and shoreside, will be handled with an efficiency never before seen.

RESPONSE ISSUES

DISPERSANTS

The BRAER incident has not raised a broad array of response issues. The severity of the weather precluded any immediate containment efforts and limited the response to application of

dispersants. While the severity of the weather limits human response, it does expedite natural dispersion of the oil. There has been much debate on the effectiveness of the dispersants used in the BRAER incident but it would not be productive for me to enter that debate. I would like to emphasize that should a BRAER incident occur off our coast, our National Response System, as detailed in the National Contingency Plan and implemented by the Area Contingency Plans, provides for structured, planned, knowledgeable decision-making to ensure effective use of dispersants in appropriate circumstances.

RESPONSE CAPABILITY

An incident of the BRAER's magnitude makes us reflect on our own response capabilities. The Coast Guard's National Strike Force, whose mission is to provide specialized equipment and technical support for major incidents, has been greatly enhanced through OPA 90. A third strike team was commissioned at Fort Dix, New Jersey and the National Strike Force Coordination Center (NSFCC) was established at Elizabeth City, North Carolina to oversee strike team operations, training, and equipage. In addition, the NSFCC will oversee the expanded new Federal, State and private exercise programs of OPA 90.

We have dramatically boosted our response capability by purchasing extensive OPA 90-authorized response equipment for prepositioning at various sites around the country. We are beginning to deliver this equipment to 19 major sites and expect

to have it all delivered by May 1994. In addition, we have supplied each of our Captains of the Ports with significant "first response" equipment for their use during more routine spills. This equipment has already been effectively used in response. OPA 90 clearly promotes growth in the private sector's ability to provide its own response equipment. While there is a long way to go, the evolution of organizations such as the Marine Spill Response Corporation and the National Response Corporation are strong indicators that OPA 90 is having the desired effect.

For response to truly major incidents, we have developed a special organizational concept which we call the Spills of National Significance protocol. This protocol would draw on existing federal resources, and, within the context of the National Contingency Plan, would restructure them to better deal with spills that overwhelm the resources of the spill area.

Supported by OPA 90, research and development into new response technologies continue, and it is now better coordinated (through the Interagency Coordinating Committee on Oil Pollution Research) to promote efficient use of research and development funds.

FINANCIAL RESPONSIBILITY

The ability to pay for the damages caused by oil spills is always an issue in cases of the magnitude of the BRAER. Under the liability regime established by OPA 90, a vessel the size of the BRAER would have had to demonstrate financial responsibility nearly seven times greater than that required under the existing international liability regime. Much of the international shipping community has stated that it is not prepared to comply with the OPA 90 financial responsibility provisions. This has delayed the development of realistic and functional financial responsibility implementing regulations while we diligently seek resolution. I can assure you we are sparing no effort to bring this difficult issue to closure with the issuance of appropriate regulations. In the meantime, some comfort can be taken in the fact that nearly all tankers currently serving the United States carry at least \$500 million in pollution liability coverage, which exceeds the OPA 90 limits.

ADDITIONAL MEASURES

While not particularly related to the Shetland Islands spill, I would like to give you a brief look at some other key initiatives that are planned or underway to reduce the risks of further environmental damage.

We have been an active proponent of, and will be an active participant in, the International Maritime Organization's new Subcommittee on Flag State Implementation. Among the primary issues on the Subcommittee's agenda is the establishment of guidelines and standards for flag states, classification societies, and organizations acting on behalf of flag states. These standards will do much to raise existing substandard performance in ensuring compliance with international pollution conventions.

Domestically, we have regulatory initiatives to close gaps in the coverage between Federal and state pilotage provisions in New York, Los Angeles/Long Beach, and Barbers Point, HI. In addition, we are working with the National Academy of Science's Marine Board in their study of pilotage issues.

The Marine Board, with funding assistance from the Coast Guard, is studying the status of salvage capabilities in U.S. waters. This study will provide key information to assess gaps in salvage coverage and to seek means to compensate for those gaps.

SUMMARY

I have touched on a number of current marine environmental protection issues and initiatives directly or indirectly related to OPA 90. Incidents such as the BRAER grounding give us all a chance to reflect on where we are, how far we have come and where

we have yet to go in protecting America's marine environment. Overall, we are doing very well. I believe OPA 90 has brought us unprecedented progress on the road to environmental protection in the two and a half years since its enactment and our posture in both prevention and response capability has been significantly enhanced. That progress could not have been achieved without the combined and aggressive efforts of the public, industry, and the environmental community, working with us in the framework set by Congress. We, of course, have more to do and we look forward to the continued joint efforts between government, industry and the public in achieving full implementation of OPA 90.

I would be pleased to answer any questions you may have.

