

U.S. Department
of Transportation

United States
Coast Guard



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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF

REAR ADMIRAL JAMES C. CARD

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

JUNE 4, 1996

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Good morning, Mr. Chairman and distinguished Members of the committee. I am Rear Admiral Jim Card, Chief of Marine Safety and Environmental Protection for the Coast Guard. Accompanying me today is Mr. Dan Sheehan, Director of the National Pollution Funds Center. I want to thank you for allowing me the opportunity to comment on the Oil Spill Prevention and Response Improvement Act (S.1730).

The Coast Guard is in favor of reasonable measures which are intended to prevent oil pollution in the Nation's waters and to ensure that citizens and communities injured by spills are promptly and fully compensated as a result of a spill. The Coast Guard applauds your intentions to enhance environmental protection through additional requirements under OPA 90. However, we are concerned about provisions in the proposed bill, as drafted, that may not achieve the intended results. In order to provide a full review of the bill, I will address each section which concerns the Coast Guard.

Section 101(a)(2): If operational rule is not effective by July 18, 1996, SNPRM becomes effective:

We object to this section. The Coast Guard is making every effort to publish the final rule in July of this year. There

have been about 360 comments on the Supplemental Notice of Proposed Rulemaking (SNPRM), including 22 comments from Members of Congress. The Coast Guard has an 11 person team working on incorporating changes suggested by the industry, public, and our international trading partners. The Coast Guard is working closely with both the Department of Transportation and Office of Management and Budget to facilitate clearance.

Comments on the SNPRM were largely supportive but did offer suggestions for additional improvements. We are working to address comments on two issues in particular: (1) more closely aligning rest hour and work hour requirements with the International Convention for Standards of Training Certification and Watchstanding (STCW) agreement, and (2) resolving concerns about the potential economic impact of the under-keel clearance trip planning requirement.

Section 101(a)(3): If structural rule is not effective by December 18, 1996, NPRM becomes effective:

Requiring the provisions in the Notice of Proposed Rulemaking (NPRM) to be met would not meet the original intent of the Oil Pollution Act of 1990 nor the intent of the proposed bill and may actually disrupt the delivery of oil to localized markets throughout the nation. The provisions in the original 1993 NPRM have been demonstrated to actually increase oil outflow from damaged vessels in certain circumstances. An analysis of protectively located spaces (PL/Spaces), for example, shows that

in collisions or groundings that penetrate cargo tanks, oil outflow will be greater than in vessels without PL/Spaces. At the present time, there is insufficient double hull tonnage to supply all the oil transportation needs in the country. Abrupt withdrawal of existing single hull vessels could result in interruption of oil supplies in localized markets. The Coast Guard is making every effort to finalize action on the structural measures proposal by December of this year.

Section 101(b): Prevention Measures

Section 101(b)(4) of the proposed bill requires one of the following measures for single hull barges over 5,000 GT: (1) crew member on board and an operable anchor, or (2) emergency system on towing vessel to retrieve barge, or (3) comparable alternatives to above.

The Coast Guard does not object to this provision. We assume that most operators will select the second option which requires an emergency system on board the vessel towing the barge to retrieve the barge if the towline parts. Manning of unmanned barges presents a number of complications which we previously have presented to your staff. If the manning option was the only one available it would potentially result in severe market dislocations that could disrupt reliable availability of oil in many parts of the nation. The emergency retrieval system is both technologically and economically feasible. The provision that allows the use of alternatives adds flexibility and provides for future innovations.

Whatever we do to implement this section should be considered as a separate rulemaking. Coupling this with the operational measures rulemaking currently under development would likely delay the operational measures rulemaking.

Section 101(b)(4)(B): Considerations

The Coast Guard objects to this section. Absent any economic constraints, the Coast Guard could require any technologically feasible measure that could halt pollution from single hull vessels. In essence, this would require fitting all existing single hull vessels with double hulls, since retrofitting an existing single hull vessel with a double hull is technologically feasible. We don't believe that tankers in the international fleet would make these changes; hence they would cease trading in the U.S., which could result in interruption of oil supplies in localized markets. In addition, if this language remains, the statute must set aside other provisions of law, such as the Unfunded Mandates Act and the Small Business Regulatory Enforcement Fairness Act. These acts require consideration of economic feasibility.

Section 102: Incentives for oil shippers to convert single hull vessels to double hull vessels

The Coast Guard objects to this section as currently drafted. We agree that the current transportation market does

not provide a financial incentive to convert to double hulls in advance of OPA 90's phaseout schedule. The desirability of providing an incentive for shippers to convert to double hulls before the phaseout schedule in OPA '90 needs to be examined in the context of its overall impact. The proposed legislation language maintains unlimited liability for those that engage in gross negligence or willful misconduct. However, the proposal would provide for limited liability in the case of safety and operating requirement violations, but only for tank vessels with double hulls. This may result in damaged parties attempting "unlimited" recovery from the responsible party by claiming safety and operational violations are in fact either due to gross negligence or willful misconduct. If the legislation contemplates limiting exposure to unlimited liability under certain circumstances, it should do so in a manner that doesn't unintentionally create anomalies in the market place. As drafted, this section could expose operators of double hull tank vessels constructed in the future to unlimited liability for safety, construction and operational violations, while providing limited liability to existing double hulls and those put into service early to retire an existing single hull vessel. The question to be examined is why a double hull vessel in 2010 should have a greater liability exposure than a double hull vessel built in 1999? The legislation also does not limit the liability exemption or set any time limit on the length of the exemption. As double hull vessels age, like any other vessel, they become more prone to failures. With increasing age, the

unlimited liability penalty for violations of safety, structural, and operational violations should become an important motivation for owners and operators to maintain and operate their vessels safely or retire them. This is especially true should the vessel trade hands to an operator who is operating on the margins. It is entirely possible that older exempted vessels could be sold to operators who could view the liability exemption as an invitation to operate them in a less than responsible manner for a period much longer than their normal service life.

Section 103(a) Deadline on issuance of final regulations - navigation safety equipment for towing vessels

The Coast Guard has no objection to this section. The regulations process is on course and we expect to issue these rules in June of this year.

Section 103(b) Consideration of fire suppression equipment in towing safety rulemaking

We support the requirement for fire suppression systems on board towing vessels. However, the Coast Guard recommends that it be separate from the Navigation Rulemaking currently under development. Coupling of Section 103(b), fire suppression systems, to the Navigation Safety Equipment Rule will interrupt the ongoing regulatory process. Incorporation of such a significant and costly measure would, by law, require reopening

of the comment period. Fire suppression systems should be a consideration in the larger issue of fire safety and even the overall issue of vessel safety. The Coast Guard intends to take a holistic, systematic approach to fire safety by assessing the current condition of the marine transportation system and its environment. A systems approach may demonstrate that other measures are more appropriate. As part of the development of any new standard the impact of the human element must be considered.

Section 104(a) Requirement for study of oil spill risks

The Coast Guard has no objection. However, a better approach would be to study the effectiveness of OPA 90 on reducing the risk of spills.

Section 104(c) Lightering operations

The Coast Guard has no objection because adding "economically and technologically feasible" is prudent and is already being done as a matter of course.

Section 201: Access to timely short-term financial assistance for persons injured by oil spills

The Coast Guard objects to this section as currently drafted. While we agree that there is a need for such assistance, we do not see mandatory interim payments as the

solution. Short-term assistance is needed, but there must be safeguards and assurance that the funds are properly expended. Responsible parties and their guarantors are encouraged to consider partial payments when appropriate, as responsible parties and the Oil Spill Liability Trust Fund have done in the past. OPA already gives responsible parties and the Fund the discretion to make partial claims payments. Attorneys for some claimants have recently suggested that a literal reading of OPA 1015(a) precludes partial payments because the payment of compensation to any claimant subrogates the payor to all rights of the claimant. The underlying assumption for this argument is that OPA precludes claimants and payors from executing written assignments or releases for only a part of the claimant's rights. We do not read OPA as foreclosing the right to contract for the subrogation of less rights, but agree that the statute's silence on this point leaves room for argument. S.1730's present amendments to OPA do not alleviate this problem. To clarify that partial releases are permitted, only OPA 1015(a) needs to be amended (we can provide specific language, if the committee wishes). With the clarification to OPA 1015(a), the other amendments may compound any existing confusion. Moreover, only amending OPA 1002(b)(2)(e) on lost profits and earnings to specify for partial payments suggests that such payments are not available for other damages, such as the loss of subsistence use of natural resources.

Section 202: Advance planning and coordination to ensure prompt decisionmaking on reopening and closing of fishing grounds

The Coast Guard agrees that the procedure for closing and reopening fishing grounds should be included in Area Contingency Plans, but recommends that Section 202(a) be amended by inserting after "agencies" the phrase "including the appropriate state agency(s)", at line 9, page 11. This slight addition will foster recognition of the role state agencies play in making these fisheries decisions, especially in state waters.

Section 203(a)&(b): Qualification of major oil spills as major disasters

The Coast Guard objects to this section. Other methods are available to extend such assistance. For example, in the case of major oil spills, the Small Business Administration, under existing law, can provide loans to assist businesses suffering economic injury from the spill.

Section 204: Access to the oil spill liability trust fund for Natural Resource Damages (NRD)

The Coast Guard agrees that additional resources need to be made available to the Trustees in time of emergency, but questions whether access to an already limited emergency response fund is the best solution. We also understand that the

Congressional Budget Office would score this provision as a paygo "loser," for which offsets must be found, because it increases the demands put on the fund.

Section 205(a): Access to funds to mitigate near-term injury

This section would provide a new category to the list of things payable from the Oil Spill Liability Trust Fund. It would provide access for the payment of costs to mitigate near-term ecological injury. This amendment is unnecessary because such measures for the most part can already be taken as removal, which is funded from the emergency portion of the fund. Otherwise, this provision requires a specific appropriation in order to be funded. While the Federal On-scene Coordinator (FOSC) needs to maintain overall control of the removal, this complex issue is better addressed by the federal natural resource trustees who the FOSC turns to for dealing with ecological issues during a cleanup.

Section 205(b)&(c): Access to scientists with relevant expertise - Establishment of a Scientific Support Team

The Coast Guard does not believe that the provisions of sections 205 (b) or (c) of the bill are necessary and therefore objects to their inclusion. The Coast Guard agrees with the intent of sections but, the National Response System already includes provisions for adequate scientific support through the

Area Committee process, the Regional Response Team and the Scientific Support Coordinator.

Access to scientific expertise via the means established in the National Response System, particularly the means by which scientific support is channeled through the Scientific Support Coordinator has been proven to be adequate, efficient and effective for emergency response operational needs.

Section 205(d): Access to useful and necessary information

The Coast Guard objects to Section 205 (d) because it is an unnecessary mandate. The current information sharing design permits inclusion of environmental effects of oils, and mitigation of those effects, to Federal On-Scene Coordinators (FOSCs). Fate and effects information is currently provided to Area Committees and the FOSC by NOAA Scientific Support Coordinators, Coast Guard District Response Advisory Team environmental specialists, and academic/environmental scientists. Members of the National Response Unit also bring their considerable experience to the scene of most medium and major spills and advise the FOSC. The Coast Guards's new Spill Planning, Exercise, and Response System (SPEARS) provides a wealth of fate, effects, and mitigation information to the FOSC.

Section 206: Compliance with response plans

The Coast Guard does not object to the section but feels it is prudent to make the Committee aware of the impacts, both

positive and negative, of the language. The Coast Guard feels that the positive impacts outweigh the negative impacts.

Positive Impacts:

- o Enhances the stature of vessel and facility response plans, ensuring that the Responsible Party (RP) is familiar enough with their plan to know that if they want to deviate they must obtain permission from the FOSC.

- o This further encourages early, critical communication between RPs and the FOSC.

- o Most vessels which require vessel response plans (vessels which carry oil as cargo) visit more than one port (many vessels may visit dozens) in a given year. Consequently, it is not possible for an OSC to be familiar with, or possess, the response plan of every vessel that calls upon, or transits his/her area of responsibility. To comply with the section, however, the OSC must review the plan in order to judge the proposed deviation. This would provide incentive for the RP to provide, and the OSC to review, the plan at the outset of response efforts.

Negative Impacts:

- o The extent of deviation requiring OSC approval is not captured in the amendment. If the intent of this

section is that any variance, however slight, requires OSC determination, the OSC will be mired in time consuming administration and the RP might not respond as efficiently or effectively in fear of violating this section.

o Failure to comply with this provision, even in the best interests of expeditious and effective spill containment and removal, could unnecessarily expose the responsible party to additional liability under sections 1003 or 1004 of OPA 90.

In conclusion, the Coast Guard strongly supports initiatives to protect the environment. As you are aware, we are focusing attention on the role of the human element in marine casualties and welcome like-minded efforts to improve vessel safety and environmental protection.

I previously identified two areas in which I recommended separate rulemakings: 101(b), Prevention Measures; and 101(b), Fire Suppression Equipment. Key members of the Towing Safety Advisory Committee and representatives of the towing industry will hold a special meeting here in Washington, DC on June 13, 1996 to discuss these specific issues, as well as current techniques for surveying the physical condition of barges. We welcome the opportunity to gain their valuable insight as we look to develop effective standards.

While we recognize that there may be areas of OPA which could benefit from further refinement and clarification, we do not believe that S.1730 as presently drafted provides adequate clarification.

As always, it has been a pleasure to appear before you. Thank you for the opportunity to present the Coast Guard's views on federal legislative reforms to prevent oils spills and improve response efforts. I would be pleased to respond to any questions you may have.