

BY MAURICIO GARRIDO, PRESIDENT, AMERICAN SALVAGE ASSOCIATION

NEW WAVE OF REGULATIONS ON **HORIZON**

The *Exxon Valdez* gave us OPA 90 and rules for tank vessel response plans. *New Carissa* placed the spotlight on ships carrying large quantities of bunker fuel, and a similar statute for "nontank vessels" was passed. Now the *Deepwater Horizon* has generated public and congressional frustration and ire that will likely initiate a new wave of reactive regulations.

The salvage and firefighting regulations have had a long and tortuous journey. OPA 90 resulted in rules for tankships and barges that, while highly detailed for oil spill cleanup, required only the naming of salvage and marine firefighting companies in response plans. These responders, while critical to preventing and mitigating a vessel oil spill, simply had to be listed in a plan with no requisite qualifications or contracts. Companies, regardless of their location and with virtually no salvage or firefighting expertise, were listed in plans for tank vessels operating anywhere in U.S. waters. For freighters, passenger ships and other nontank ships, often carrying more oil as bunker fuel than some tank barge cargoes, there were no requirements for response plans.

Change came in 1997. The process to develop an effective and timely salvage and firefighting regulatory structure commenced with a U.S. Coast Guard-sponsored meeting of shippers, salvors, and other stakeholders. In May 2002, the proposed tank vessel salvage and marine firefighting regulations were "on

the street" followed by a series of public meetings. New Year's Eve 2008, the long-awaited final rules were out after extensive industry comment.

In 2004, Congress recognized the pollution threat from nontank ships and enacted a statute requiring regulations, within one year, for response plans for such ships over 400 gross tons. Being virtually impossible to implement a regulation in that time frame, the Coast Guard published a Navigation and Inspection Circular (NVIC), as interim guidance, followed by proposed regulations in 2009.

These regulatory initiatives, however, have been protracted by any standard and a tremendous challenge to both the Coast Guard and marine industry. 9/11, and the resultant federal emphasis on maritime security, diverted Coast Guard resources and slowed the process. Ironically, the *Deepwater Horizon* accident may cause even further delay. The tank vessel industry has strongly urged that the regulations for both tank vessels and nontank vessels be promulgated concurrently to "level the playing field." The multifaceted and diverse business of salvage and firefighting has been reflected by the necessity for a relatively complex set of rules covering different scenarios and geographic areas. These regulations have been difficult for rule makers to draft and for the marine industry to sort out.

Where do we stand today? While the final tank vessel rules are published, the date for vessel response plans sub-

mission has been delayed (originally June 1, 2010, it is now February 22, 2011). The nontank vessel proposed rule public comment period closed November 2009 and the rules are still under review. Most regulations are followed by policy and guidance that is typically published as a Coast Guard NVIC. Such guidance, especially needed for these tank vessel rules, has itself been bogged down in the bureaucracy. To its great credit, in the absence of a NVIC the Coast Guard has published on its Homeport webpage answers to "Frequently Asked Questions" and also a document presenting the regulations in a simpler format. These initiatives have certainly helped.

The intent of the regulations is clear: to encourage pre-planning and enhance overall response readiness while minimizing delay. The *Deepwater Horizon* incident will certainly reemphasize the merits of this "ready to respond" philosophy and the fact that during an emergency having the right resources is a win-win for all sides.

Hopefully the regulatory process will be finalized, and good public policy will be in place to ensure effective salvage and firefighting response to casualties in our waters. **ML**

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