

25 August 2010

TO ALL MEMBERS

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 Circular No. 5:390 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 owner 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 I. 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:-

www.uscg.mil/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 25 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, 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 can not be met.

P.T.O.

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 USCG 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, and insurance. 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.

Yours faithfully
A BILBROUGH & CO LTD
(MANAGERS)

All Clubs in the International Group are issuing similar circulars.

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. 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 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.

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.

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 - IG Rate Comparison
TECHNICAL COMPARISON OF CONTRACT TERMS

DONJON-SMIT - Version 7 June 2010

(1) Category 1 - vessel adrift

TOWHIRE

SCOPIC rates with 20% uplift, out-of-pocket expenses at cost plus 15%

1.5 times retail price cap included, and 50% standby rate if not used

New York Arbitration

(2) Category 2 - lightly aground

WRECKHIRE

SCOPIC rates with 50% uplift, out-of-pocket expenses at cost plus 15%

1.5 times retail price cap included, and 50% standby rate if not used

New York Arbitration

(3) Category 3 - major casualty

LOF2000 with SCOPIC incorporated

[If Clause invoked] SCOPIC rates and uplift (25%)

1.5 times retail price cap included, and 50% standby rate if not used

English law, Lloyd's arbitration

Owners' right to appoint an owners' representative is included.

Insurance terms are included.

MARINE RESPONSE ALLIANCE - Dated 2 August 2010

In-house tariffs with a range of rates depending on which entity is brought in.

The entities are:

- Marine Pollution Control Corp. for Emergency Lightering
- Marine Hazard Response for Firefighting
- Titan Salvage LLC for Marine Salvage Operations with Crowley Maritime Services tug rates

The rates are the various in-house tariffs with no caps and no standby rates.

New York Arbitration

Owners' right to appoint an owners' representative is included.

Insurance terms are included.

RESOLVE - Dated 14 June 2010

LOF2000 with SCOPIC incorporated. London Arbitration.

If SCOPIC rates and out-of-pocket expenses up to USD 750,000 in total, then to be reimbursed at SCOPIC rates.

First 24 hours, 50% uplift

Subsequent days at 25% uplift

1.5 times retail price cap included, and 50% standby rate if not used

Payment terms 15 days

Interest 1.5% per month

English law and jurisdiction

Owners' right to appoint an owners' representative is included.

Insurance terms are included.

T&T BISSO

Non US version - 22 April 2010

US version -15 June 2010

In-house standard tariff

No cap, no standby rates

Out-of-pocket expenses at cost plus 15%

No salvage

Payment terms 30 days

Interest Bank rate plus 2%

Non US (English law, Arbitration London)

US (US Maritime law/State of Texas, Arbitration Houston, Texas)

Owners' right to appoint an owners' representative is included.

Insurance terms are included.

All rates are in USD (In most cases per calendar day)

Rate comparison is based on SCOPIC tariff rate categories. Note that the SCOPIC tariff rates are currently under review.

	DONJON-SMIT			MRA [Marine Response Alliance]	RESOLVE		T&T BISSO
	[SCOPIC tariff plus 20 per cent]	[SCOPIC tariff plus 50 per cent]	[SCOPIC tariff plus 25 per cent]	[In-house standard tariffs]	[SCOPIC tariff plus 50 per cent]	[SCOPIC tariff plus 25 per cent]	[In-house standard tariffs]
	Cat 1*	Cat 2**	Cat 3***		1st 24 hours	subsequent	
personnel							
office administration	1386	1732.5	1443.75	2212 to 2875	1732.5	1443.75	2500
salvage master	2082	2602.5	2168.75	2100	2602.5	2168.75	2100
naval architect or salvage officer/engineer	1728	2160	1800	2100	2160	1800	2100
assistant salvage officer/engineer	1386	1732.5	1443.75	1450	1732.5	1443.75	1800
diving supervisor	1386	1732.5	1443.75	1800	1732.5	1443.75	1800
HSE qualified diver excluding saturation or mixed gas diver (rate to be agreed)	1248	1560	1300	1500	1560	1300	1500
salvage foreman	1038	1297.5	1081.25	1800	1297.5	1081.25	1800
riggers, fitters, equipment operators	831.6	1039.5	866.25	1260 to 1500	1039.5	866.25	1500
specialist advisors - fire fighters, chemicals, pollution control	1386	1732.5	1443.75	1450 to 14062	1732.5	1443.75	2500
tugs and other craft							
bhp to 5000 [per bhp]	3	3.75	3.125	SCOPIC rates plus 50% to 65%	3.75	3.125	
bhp 5001 to 12000 [per bhp]	2.25	2.8125	2.34375		2.8125	2.34375	
bhp 12001 to 20000 [per bhp]	1.5	1.875	1.5625		1.875	1.5625	
bhp over 20000 [per bhp]	0.75	0.9375	0.78125		0.9375	0.78125	
if fi-fi 0.5 add	750	937.5	781.25		937.5	781.25	
if fi-fi 1.0 add	1500	1875	1562.5		1875	1562.5	
if ice class add	1500	1875	1562.5		1875	1562.5	
launch etc less than 500 bhp [per bhp]	4.5	5.625	4.6875		5.625	4.6875	
generators							
up to 50 kW	82.8	103.5	86.25	115	103.5	86.25	200
51 to 120 kW	172.8	216	180	300	216	180	400
121 to 300 kW	276	345	287.5	400	345	287.5	
over 301 kW	483.6	604.5	503.75	500	604.5	503.75	
portable IG systems							
1000 cu.m. per hour	1656	2070	1725		2070	1725	
1500 cu.m. per hour	1932	2415	2012.5		2415	2012.5	
[T&T BISSO 2000 cu.m. per hour]							5000
compressors							
high pressure	138	172.5	143.75	225	172.5	143.75	100
185 cfm	207.6	259.5	216.25	450	259.5	216.25	200
600 cfm	345.6	432	360	800	432	360	450
1200 cfm	552	690	575	650	690	575	750
air manifold	14.4	18	15		18	15	
blower 1500 cu.m. per min	1173.6	1467	1222.5		1467	1222.5	

DONJON-SMIT categories

*Cat 1 drifting, no immediate danger

**Cat 2 Lightly aground, no immediate danger

***Cat 3 major casualty, imminent danger

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	Cat 1*	Cat 2**	Cat 3***		1st 24 hours	subsequent	
pumping equipment							
air							
2 in	103.2	129	107.5	95 to 105	129	107.5	125
diesel							
2 in	69.6	87	72.5	125 to 169	87	72.5	
4 in	124.8	156	130	150 to 241	156	130	200
6 in	165.6	207	172.5	430	207	172.5	400
electrical submersible							
2 in	69.6	87	72.5		87	72.5	
4 in	207.6	259.5	216.25		259.5	216.25	400
6 in	828	1035	862.5	900	1035	862.5	600
hydraulic							
6 in	828	1035	862.5		1035	862.5	3500
8 in	1380	1725	1437.5		1725	1437.5	
hoses							
air							
3/4in per 30m or 120ft	27.6	34.5	28.75	36	34.5	28.75	10
2in per 30m or 120ft	55.2	69	57.5	72	69	57.5	30
layflat							
2in per 6m or 20ft	14.4	18	15	3	18	15	
4in per 6m or 20ft	20.4	25.5	21.25		25.5	21.25	50
6in per 6m or 20ft	27.6	34.5	28.75		34.5	28.75	50
rigid							
2in per 6m or 20ft	20.4	25.5	21.25	17	25.5	21.25	
4in per 6m or 20ft	27.6	34.5	28.75	35	34.5	28.75	
6in per 6m or 20ft	34.8	43.5	36.25	45	43.5	36.25	
8in per 6m or 20ft	42	52.5	43.75	29	52.5	43.75	
fenders							
yokohama							
1m x 2m	103.2	129	107.5		129	107.5	600
2.5m x 5.5m	207.6	259.5	216.25		259.5	216.25	
3.5 x 6.5m	345.6	432	360		432	360	750
low pressure inflatable							
3m	97.2	121.5	101.25		121.5	101.25	
6m	97.2	121.5	101.25		121.5	101.25	
9m	207.6	259.5	216.25		259.5	216.25	
12m	345.6	432	360		432	360	
16m	345.6	432	360		432	360	
welding and cutting equipment							
bolt gun	414	517.5	431.25		517.5	431.25	
gas detector	138	172.5	143.75		172.5	143.75	150
hot tap machine	1380	1725	1437.5	1150 to 1443	1725	1437.5	1225
oxy-acetylene surface cutting	34.8	43.5	36.25	175	43.5	36.25	50
underwater cutting	69.6	87	72.5		87	72.5	200
underwater welding	69.6	87	72.5	50	87	72.5	200
250 amp welder	207.6	259.5	216.25	200	259.5	216.25	200
400 amp welder	276	345	287.5	250	345	287.5	325

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	Cat 1*	Cat 2**	Cat 3***		1st 24 hours	subsequent	
pollution control equipment							
oil boom 24in per 10m	42	52.5	43.75	75	52.5	43.75	
36in per 10m	138	172.5	143.75		172.5	143.75	
48in per 10m	268.8	336	280	20.6	336	280	
lighting systems							
lighting string per 50ft	34.8	43.5	36.25	7.5	43.5	36.25	50
light tower	69.6	87	72.5	175	87	72.5	150
underwater lighting system 1000 watts	103.2	129	107.5	115	129	107.5	
winches							
up to 20 tonnes including 50m of wire	276	345	287.5	450	345	287.5	
storage equipment							
12ft container	34.8	43.5	36.25		43.5	36.25	
20ft container	55.2	69	57.5		69	57.5	200
miscellaneous equipment							
air bags less than 5 tons lift	55.2	69	57.5	115	69	57.5	50
airbags 5 to 15 tons lift	276	345	287.5	250	345	287.5	
air lift 4in	138	172.5	143.75	115	172.5	143.75	
6in	276	345	287.5	145	345	287.5	
8in	414	517.5	431.25	175	517.5	431.25	
air tugger up to 3 tons	103.2	129	107.5	275	129	107.5	350
ballast/fuel oil storage bins 50,000 litres	138	172.5	143.75		172.5	143.75	
chain saw	27.6	34.5	28.75	15	34.5	28.75	
damage stability computer and software	345.6	432	360	390	432	360	
echo sounder portable	34.8	43.5	36.25		43.5	36.25	
extension ladder	27.6	34.5	28.75		34.5	28.75	
hydraulic jack up to 120 tons	103.2	129	107.5		129	107.5	
hydraulic powerpack 75kW	103.2	129	107.5		129	107.5	
pressure washer water	345.6	432	360	521	432	360	
pressure washer steam	621.6	777	647.5	475	777	647.5	
rigging package heavy	552	690	575		690	575	
rigging package light	276	345	287.5		345	287.5	
rock drill	69.6	87	72.5	75	87	72.5	
rock splitter	552	690	575	475	690	575	
steel saw	27.6	34.5	28.75	30	34.5	28.75	
tirfors up to 5 tons	14.4	18	15		18	15	
thermal imaging cameras	345.6	432	360		432	360	2500
tool package per set	241.2	301.5	251.25	225	301.5	251.25	350
ventilation package	27.6	34.5	28.75		34.5	28.75	
VHF radio	27.6	34.5	28.75	89 to 145	18	15	
Z boat including outboard up to 14 ft	276	345	287.5	250	345	287.5	
Z boat including outboard over 14 ft	483.6	604.5	503.75	550	604.5	503.75	

DONJON-SMIT categories

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	Cat 1*	Cat 2**	Cat 3***		1st 24 hours	subsequent	
shackles							
up to 50 tonnes	14.4	18	15	25	18	15	25
51 to 120 tonnes	27.6	34.5	28.75	35	34.5	28.75	40
121 to 200 tonnes	42	52.5	43.75		52.5	43.75	60
over 200 tonnes	69.6	87	72.5	50	87	72.5	80
distribution boards							
up to 50kW	82.8	103.5	86.25		103.5	86.25	
51 to 120kW	172.8	216	180		216	180	
121 to 300kW	276	345	287.5		345	287.5	
over 301kW	483.6	604.5	503.75		604.5	503.75	
protective clothing							
breathing gear	69.6	87	72.5		87	72.5	150
hazardous environment suit	138	172.5	143.75		172.5	143.75	300
diving equipment							
decompression chamber 2 man incl compressor	690	862.5	718.75	300	862.5	718.75	600
decompression chamber 4 man incl compressor	966	1207.5	1006.25		1207.5	1006.25	
hot water diving assembly	345.6	432	360	250	432	360	200
underwater magnets	27.6	34.5	28.75		34.5	28.75	
underwater drill	27.6	34.5	28.75		34.5	28.75	
shallow water diving spread	310.8	388.5	323.75	287.5	388.5	323.75	1500
Out of Pocket Expenses at cost plus	15pct	15pct	15pct	15pct	25pct	25pct	15pct
Contract	LOF with SCOPIC	LOF with SCOPIC	LOF with SCOPIC	Various	LOF with SCOPIC	LOF with SCOPIC	in-house form
Payment terms					15 days	15 days	30 days
Interest					1.5pct per month	1.5pct per month	Bank rate + 2pct

DONJON-SMIT categories

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**Cat 2 Lightly aground, no immediate danger

***Cat 3 major casualty, imminent danger