

## TO ALL OWNERS AND MEMBERS

18 October 2013

Dear Sirs

### **US Vessel Response Plans: Salvage and Marine Fire-fighting Requirements Final Rule: 30 September 2013. Deadline for implementation: 30 January 2014**

This circular applies to owners of tank and non-tank vessels calling at US ports.

#### **Agreements with Salvors and Oil Spill Response Organisations**

Owners and members are referred to the club's circular dated 3 October 2013 (linked [here](#)) in which owners/members were advised that non-tank vessel owners are required to submit Vessel Response Plans (VRPs) to the US Coast Guard (USCG) by 30 January 2014.

For the purposes of these plans, non-tank vessel owners are required to pre-contract with Qualified Individuals (QIs), Oil Spill Response Organisations (OSROs), dispersant service providers, and salvors. This circular addresses the requirements for contracts with salvors.

A separate circular will be published at the beginning of next month addressing the requirements to pre-contract with OSROs. The publication of the US non-tank final rule has prompted a review of the arrangements most clubs have with the major OSROs which are also the main dispersant service providers. For the time being, owners/members are advised that they should not enter into any arrangements with these OSROs as it is possible that the current arrangements with the clubs will not continue..

#### **Non-tank vessels - Salvage funding agreements**

Non-tank vessel owners with a fuel and cargo capacity of 2,500 barrels or greater to carry oil (as defined) are required to enter into funding agreements with salvors and marine firefighters. The requirements for this category of vessels are almost identical to those for tank vessels. Owners/members are therefore referred to the club's circular dated 19 June 2009 (linked [here](#)) relating to tank vessels for full details of the requirements. The funding agreements of five salvors have been reviewed and found to conform with the International Group (IG) Guidelines on VRPs. The conforming agreements are listed overleaf, along with the footers which will appear on them for identification purposes. For ease of reference the IG Salvage Guidelines are attached as Annex 1.

- Donjon-Smit – (Tanker and Non-Tank) Version A - October 4, 2013
- Resolve Salvage & Fire (Americas) Inc – Version 3 – 1 October 2013
- Marine Response Alliance LLC – Version 16 October 2013
- Svitzer – USA Companies Version October 1, 2013
- Svitzer – INTL Companies Version October 1, 2013
- T&T Salvage LLC – USA Owner (Tanker and Nontank) Version – 4 October 2013
- T&T Salvage LLC - Non-US Owner (Tanker and Nontank) Version – 4 October 2013

Non-tank vessel owners with a fuel and cargo capacity of less than 2,500 barrels, but greater than or equal to 250 barrels, are only required to identify resource providers in their VRPs and have the agreement of the salvor to list them in their plans rather than enter into a full funding agreement. The following agreements have been reviewed and found to conform with the IG Salvage Guidelines on VRPs.

- Donjon-Smit – Consent Agreement for VRPs – October 4, 2013
- Marine Response Alliance LLC – MPA OPA 90 & CA Certificate of Coverage (Version 2013)
- Resolve Salvage & Fire (Americas) Inc – RMG OPA 90 Certificate of Coverage 01 October 2013
- Svitzer Written Consent – Version Oct 2013
- T&T Salvage LLC - OPA 90 Written Consent – 4 October 2013

Owners/members should note that, unlike the position with regard to OSROs which are classified by the USCG, it is the responsibility of the shipowner 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 2. In connection with the coming into force of the salvage and fire-fighting requirements for non-tank vessels, the USCG is revising its Frequently Asked Questions (FAQs) and the new FAQs are expected to be published in approximately two weeks. In the meantime owners/members may find it helpful to consider the tank vessel FAQs which can be accessed by using the following link: [www.uscg.mil/vrp](http://www.uscg.mil/vrp)

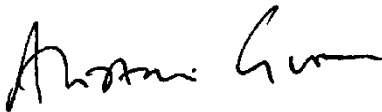
### **Tank Vessels - Salvage funding agreements**

As a consequence of the requirements for non-tank vessel owners to enter into funding agreements with salvors and marine fire-fighters, the salvors have amended their funding agreements (as listed above) to cover both tank and non-tank vessels. In future, tank vessel owners entering into funding agreements with these salvors should use these new funding agreements. However, there is no necessity for tank owners to replace their existing funding agreements.

Owners/members are advised to consult their property underwriters with regard to selection of any particular contract/funding agreement and to satisfy themselves that the salvors with whom they plan to contract are able to provide resources meeting the 15 criteria in all the geographic areas of the United States which their ships will visit. Owners/members should also note that if the Salvage funding agreements conform with the IG Salvage Guidelines this does not mean that the rates are acceptable as they have not been reviewed. The rates are a matter for discussion with property underwriters.

All clubs in the International Group of P&I Clubs will be issuing similar circulars.

Yours faithfully ..



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## ANNEX 1

**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 based on 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 subcontractors 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 firefighters are adequate.****Fifteen 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 fire-fighting 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 ongoing 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 upfront 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.