



# Circular

Ref: 14/13

OCTOBER 2013

- Owners of non-tank vessels with oil-carrying capacity of 2,500 barrels or greater must enter into funding agreements with marine salvors and fire-fighting resource providers.
- Owners of non-tank vessels with oil-carrying capacity less than 2,500 barrels but greater than or equal to 250 barrels only required to identify specific agreed resource providers in their vessel response plan (VRP).
- Tank vessel owners who enter into funding agreements with salvors will need to incorporate the new amended agreements into their VRP.
- Annex 1 provides Group guidelines for insertion of salvor contracts into US VRPs.
- Annex 2 provides the criteria for adequacy of salvors & fire-fighters that owners are required to ensure when contracting.
- This circular refers to Circular 12/13
- A separate circular will be issued to address requirements for pre-contracting with oil spill response companies (OSROs).

TO THE MEMBERS

Dear Sirs

## **US VESSEL RESPONSE PLANS - SALVAGE & MARINE FIREFIGHTING 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.

### **Salvage Agreements**

Members are referred to Circular No 12/13 in which members were advised that non-tank vessel owners are required to submit Vessel Response Plans (VRPs) to the Coast Guard by 30th January 2014. For the purposes of these plans, non-tank owners are required to pre-contract with Qualified Individuals (QIs), Oil Spill Response Companies (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, members are advised that they should not enter into any arrangements with these OSROs on the assumption that the current arrangements with the Clubs will 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 fire-fighting resources. The requirements for this category of vessels are almost identical to those for tank vessels. Members are therefore referred to Circular 12/10 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) Salvage Guidelines on Vessel Response Plans. These agreements with footers for identification are listed below. For ease of reference the IG guidelines are attached as Annex 1.

- Donjon-Smit – (Tanker and Non-Tank) Version A - October 4, 2013
- Marine Response Alliance LLV - Version 16 October 2013
- Resolve Salvage & Fire (Americas) Inc –Version 3 – 1 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 such agreements have been reviewed and found to conform with the International Group (IG) Salvage Guidelines on Vessel Response Plans.

- Donjon-Smit – Consent Agreement for Vessel Response Plans – October 4, 2013
- Marine Response Alliance LLV - 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

Members should note that unlike the position with regard to Oil Spill Response Organisations 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 Firefighting requirements for non-tank vessels, the US Coast Guard is revising its “frequently asked questions” (FAQs) and the new FAQs are expected to be published in approximately 2 weeks. In the meantime 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 members to enter into Funding Agreements with salvors and marine firefighting resources, 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 existing Funding Agreements by those cited above.

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. Members should also note that conformity with the IG Salvage Guidelines for Salvor Funding Agreements is not an indication as to the acceptability of rates which have not been reviewed. These are a matter for discussion with hull underwriters.

All clubs in the International Group of P&I Clubs have issued similar circulars.

Yours faithfully

**THOMAS MILLER (BERMUDA) LTD.**

### **CONTACT**

- Members requiring further information should contact their usual underwriting contact

## **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 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 2

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.

## **Annex 2.1**

### **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.