



June 28, 2023

Lieutenant Commander Adriana Gaenzle
US Coast Guard
Submitted via Regulations.gov

RE: Docket No. USCG–2022–0702, Request for Information on Coast Guard Vessel Response Plan and Maritime Oil-Spill Response Plan Advisory Group (MORPAG)

Dear Lieutenant Commander Gaenzle:

Thank you for the opportunity to provide comments on the Vessel Response Plan (VRP) program and the Maritime Oil-Spill Response Plan Advisory Group (MORPAG) process and recommendations. The undersigned groups engage in issues related to marine conservation policy in the Arctic, including increasing vessel traffic in the U.S. Bering, Chukchi and Beaufort seas. This region has tremendous ecological significance and is vital for the food security and subsistence way of life practiced by Tribes in the region for millennia. The region is undergoing significant, rapid changes—including warming, diminishing seasonal sea ice and increasing vessel traffic. As vessel traffic increases through these waters, the risk of oil spills also increases. The burden of that risk falls on the Tribes, wildlife, and communities of the region. In this ecosystem, an oil spill would be an existential threat. Our comments seek to prevent that threat.

While we realize the MORPAG process was national in scope, our comments focus on the U.S. Bering, Chukchi and Beaufort seas, drawing on our decades of combined experience with shipping, marine conservation, subsistence, and Tribal issues and with direct involvement with the Arctic and Western Alaska Area Committee. We have provided extensive comments to the USCG in the past regarding Alternative Planning Criteria (APC) for VRP planholders in the Arctic and Western Alaska Area. With these comments, we continue to deliver input to the Coast Guard that prioritizes the well-being of Tribes and wildlife in the region, protection of the marine environment, and transparency of approach.

1. Ensure clarity regarding the relationship between the APC issue broadly and the forthcoming Western Alaska oil spill planning criteria program

We recognize that the USCG has been grappling with APC implementation in Alaska for non-tank vessels for almost a decade. As described in the *Federal Register* notice, the MORPAG process gave considerable

attention to this issue, raising concerns and identifying several recommendations specific to APC implementation. Meanwhile, the Don Young Coast Guard Authorization Act was enacted, requiring the USCG to develop oil spill planning criteria specific to “Western Alaska.”

There is significant potential for confusion regarding the geographic areas affected by current APC policy, the MORPAG recommendations (which reference area committees), and the forthcoming Western Alaska planning criteria program. These relevant geographies are the: Captain of the Port Zones (Western Alaska/Prince William Sound), Area Committees (Arctic and Western Alaska/Prince William Sound), the reference in new statute to the potential to further divide the Western Alaska Captain of the Port Zone for the purpose of that program, and the “geographic zones” referenced in the current Arctic and Western Alaska Area Contingency Plan and defined in state regulations (18 AAC 75.495). Meanwhile, the new statute specifically excludes some vessels in the Prince William Sound Captain of the Port Zone and vessels in Cook Inlet.

We take this opportunity to emphasize that it will be of the utmost importance that future USCG communications clarify the relationship between the Western Alaska oil spill planning criteria program and any updated guidance regarding APCs or VRPs nationally that may result from the MORPAG process. Put simply, regulators, planholders, oil spill response organizations, Tribes and other interested parties need to know which rules will apply in which geographic regions of Alaska.

2. Developing the Western Alaska spill response criteria must include consultation and outreach that goes well beyond that implemented in the MORPAG process

As described in the *Federal Register* notice, the MORPAG process included engagement sessions in Alaska (along with Guam and Hawaii) to provide a status update the effort. Several of our organizations participated in the meeting in Anchorage, Alaska in September 2021 as part of the MORPAG process. This meeting included only representatives from the non-profit sector, and very clearly did not afford an opportunity for input. In fact, no public opportunity for input has taken place until the *Federal Register* notice from March 30, 2023. By contrast, new statutory language requires consultation with, “the Federal agencies, State and local governments, Tribes (as defined in section 323 of title 14, United States Code), the owners and operators that would be subject to such planning criteria, oil spill removal organizations, Alaska Native organizations, and environmental nongovernmental organizations.”¹ We emphasize the important difference between providing a *status update*, as in the MORPAG process, and *consultation*, as required to establish the new Western Alaska oil spill planning criteria. Robust consultation should be the goal.

Any future outreach efforts related to planning criteria or APCs should extend beyond formal comment periods, as required by Executive Order 13175 of November 6, 2000² and as reaffirmed by President Biden.³ The Coast Guard and other federal agencies should include Tribes and Alaska Native organizations

¹ James M. Inhofe National Defense Authorization Act, Pub. L. No. 117-263, § 11309(b)(2)(B), 136 Stat. 2395, 4085 (Dec. 23, 2022).

² William Clinton, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000).

³ Joseph Biden, Memorandum for the Heads of Executive Departments and Agencies (Jan. 26, 2021) (noting that “It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.”).

as partners throughout all stages of decision-making and fully integrate their participation in the implementation of the decisions that are made. Further, the MORPAG process has resulted in the recommendation to charter another group, which would no doubt also benefit from input from affected parties.

In addition to ensuring the clarity highlighted in our comment #1, above, we urge the USCG to be mindful that future outreach and consultation efforts should be timely, clear in their intent and application, comprehensive in the diverse groups affected (with emphasis on consultation with Tribes and Alaska Native organizations) and avoid duplicating effort from those whose input is sought.

3. Spill prevention must remain the top priority

We regret that prevention is not addressed in the MORPAG recommendations. The regulations being examined exist within 33 C.F.R. Part 155, “Pollution Prevention Regulations for Vessels,”—so the Coast Guard certainly has authority to consider prevention measures within them. Even under optimal conditions, oil spill response is not very effective. Challenging conditions are common off the coast of Alaska, and are seldom optimal. Furthermore, in Alaska’s unique situation, where coastal Tribal food and cultural security are intertwined with a healthy environment, prevention should be further encouraged in these measures. This is important, particularly given the acknowledged constraints on any effective response in parts of the region furthest from response hubs with concentrated resources.

Meeting National Planning Criteria under the VRP program as written in regulation in the U.S. Bering, Chukchi, and Beaufort Seas would require a large volume of response equipment⁴ but do very little to prevent a spill. We understand that the inclusion of prevention measures in APCs has posed a challenge due to the lack of clear standards in the VRP regulation for the inclusion of prevention or APCs in general. Whether under an APC or via the Western Alaska response planning criteria, it has long been recognized that securing vessel commitments to follow voluntary international routing measures and real-time monitoring of vessels are among the critical prevention strategies for this large region.

Going forward, if APCs are to continue to be part of the response planning landscape in the region, the consideration of “equivalence” must include not just “planning, response, or pollution mitigation strategies” as stated in the *Federal Register* notice, but spill *prevention* as well. These elements should also be given significant attention within the Western Alaska planning criteria program as well.

4. Do not rely solely on the VRP program to deliver an effective prevention and response system for the Bering, Chukchi, and Beaufort seas region

Spill response planning in the U.S. Bering, Chukchi, and Beaufort seas is vastly challenged by distance, weather, ice conditions, and available infrastructure. Risk also stems from the consistent presence of large, unregulated ships: both those in innocent passage (as acknowledged in the *Federal Register* notice) and the increasing traffic on the Russian side of the Bering Strait.

The VRP regulations, whether implemented through an APC or otherwise, rely on the *regulated* vessel traffic to pay for the response system positioned to respond. While this is an appropriate implementation

⁴ Response resources required for both a tank and non-tank vessels was analyzed for the Aleutian Islands region; see: Aleutian Islands Risk Assessment, 2013. Regulatory resource study. Report to the Advisory Panel. These results would be amplified significantly for the entire U.S. Bering, Chukchi and Beaufort seas.

of the polluter-pays principle, the relatively small – if growing – number of vessel transits north of the Aleutian Islands means the cost to build and sustain a robust prevention and response system falls on a small number of vessel operators. This imbalance has existed under the APCs and may be perpetuated going forward depending on how the Captain of the Port Zone is divided for the purposes of the Western Alaska response planning criteria program.

Due to the unique presence of risk from unregulated vessels, the small number of regulated vessels, and the incredible sensitivity of the region, the development of a local first responder system is critical. Equipping communities with response equipment and ongoing training (e.g., boom deployment, HAZWOPER, etc.) provides the best chance of success in protecting coastal areas that may be “remote” to spill response assets centralized in Cook Inlet/Kodiak/Dutch Harbor but are familiar to those who make their lives and livelihoods there.

Tribes and coastal communities live on the front lines of Arctic vessel traffic. They will be first responders to any oil spill and must be trained and equipped as such to begin the work of containing and cleaning the spill as quickly and effectively as possible. Set-aside federal funding must be made available for this purpose, as well as guaranteed earnings (salary) for response time clean-up. The training must occur regularly, and the equipment must be suitable for the year-round conditions found in Alaska waters and must be deployable by the vessels already used by Tribes and coastal communities.

Training and equipping Tribes to respond to oil spills is a matter of environmental and cultural justice. Tribes have developed a vast and complex understanding of the marine environment, including ocean currents, wildlife migrations, tidal effects, as well as ice, wind, and weather conditions.⁵ This Traditional Knowledge is born from thousands of years of stewarding these waters to feed generations of families from its abundance of fish, birds, and marine mammals. This subsistence is the foundation of Alaska Native culture, and oil spills loom as an existential threat to that foundation.

Building and maintaining this coastal response network creates a year-round response capacity in places where planes and vessels may be many hours away on a good day or days away in inclement weather. There have been some welcome efforts in this regard from the State of Alaska, USCG, and oil spill removal organizations (OSROs), but a commitment to a sustained program of training and equipping Tribes and communities is needed. This cannot be delivered through VRP program compliance alone. We urge the USCG to carry this message forward in both the development of the Western Alaska planning criteria program and any deliberations following on the MORPAG process that may relate to Alaska.

5. Enhance response by maximizing training and appropriate equipment for the response system in the U.S. Bering, Chukchi, and Beaufort seas

Again, acknowledging the convergence of the MORPAG’s effort to advance APC implementation and the forthcoming Western Alaska spill response preparedness program, we provide a final recommendation for the USCG’s consideration in either or both processes as they proceed.

As noted above, instead of building massive equipment stockpiles, spill prevention along with training and equipping Tribal and community responders in the region takes on heightened importance in the U.S. Bering, Chukchi, and Beaufort seas. In addition, we suggest that extra effort is warranted to ensure that what resources are in place can be activated and deployed as effectively and promptly as possible. This

⁵ [OceanCurrents-book-for-web.pdf \(kawerak.org\)](#)

should include: (1) at least one announced and one unannounced exercise annually for any OSROs approved for the region, and (2) ensuring that equipment being used is suited to the both the varied operating environments⁶, including the presence of sea ice at various stages, and the oils/fuels carried on vessels in the region. As noted in the PREP Guidelines, these two functions go hand in hand.⁷ It is equally important that lessons learned from any exercises conducted are incorporated into the appropriate plan documents.

As always, thank you for your dedication to keeping our national waters—and Alaska waters in particular—safe.

Sincerely,

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⁶ <https://www.ppralaska.com/products>

⁷ Dep't of Homeland Security, Env't'l Prot. Agency, Dep't of Transp., Dep't of the Interior. 2016 NATIONAL PREPAREDNESS FOR RESPONSE EXERCISE PROGRAM (PREP) GUIDELINES (2016.1) at 2-5.