



Coast Guard

[Docket No. USCG-2023-0824]

Request for Information on the Coast Guard Implementation of a Western Alaska Oil Spill Planning Criteria Program

AGENCY: Coast Guard, DHS.

ACTION: Request for information.

SUMMARY: The Don Young Coast Guard Authorization Act of 2022 mandated the Coast Guard create planning criteria for vessel response plans (VRPs) distinct to the Western Alaska and Prince William Sound Captain of the Port zones. These criteria must include minimum response times, improvements to wildlife response, and consideration of prevention and mitigation measures. The Coast Guard seeks input from the public to establish these VRP planning criteria. The information will assist the Coast Guard in potentially developing a regulatory proposal to support the mandate.

DATES: Comments must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments using the Federal Decision-Making Portal at www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Lieutenant Commander Adriana Gaenzle, U.S. Coast Guard; telephone 202-372-1226, email Adriana.J.Gaenzle@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

The U.S. Coast Guard views public participation as essential to understanding vessel oil spill response planning and capabilities in remote areas of Alaska. The Coast Guard will consider all information and material received during the comment period. If you submit a comment, please include the docket number for this request for information, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Methods for submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG-2023-0824 in the search box, and click “Search.” Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If your material cannot be submitted using www.regulations.gov, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Public comments will be posted in our online docket at www.regulations.gov and can be viewed by following that website’s instructions, provided on its Frequently Asked Questions page. We review all comments received, but we will only post comments that address the topic of this request for information. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

The Coast Guard will not issue a separate response to the comments received but will carefully consider each submission. The Coast Guard may also introduce regulatory changes and update policy related to this topic. If the Coast Guard were to undertake any regulatory or policy changes as a result of comments received, that change would be announced separately.

Personal information. We accept anonymous comments. Comments we post to www.regulations.gov will include any personal information you have provided. For more information about privacy and submissions to the docket in response to this document,

see the Department of Homeland Security's (DHS) eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

II. Abbreviations

APC	Alternative Planning Criteria
CFR	Code of Federal Regulations
CGAA 2022	Don Young Coast Guard Authorization Act of 2022
CG-543	Coast Guard Office of Vessel Activities
CG-MER	Coast Guard Office of Marine Environmental Response Policy
COTP	Captain of the Port
D17	Coast Guard Seventeenth District
GAO	U.S. Government Accountability Office
MORPAG	Maritime Oil-spill Response Plan Advisory Group
MSIB	Marine Safety Information Bulletin
NPC	National Planning Criteria
NSFCC	National Strike Force Coordination Center
NTV	Nontank Vessel
NTV final rule	Nontank Vessel Response Plans and Other Response Plan Requirements final rule
OPA 90	Oil Pollution Act of 1990
OSRO	Oil Spill Removal Organization
RFI	Request for information
VRP	Vessel response plan

III. Purpose

The U.S. Coast Guard is issuing this request for information (RFI) to collect opinions, ideas, recommendations, and concerns related to the Coast Guard's mandate to create planning criteria for vessel response plans (VRPs) distinct to the Western Alaska and Prince William Sound Captain of the Port (COTP) zones. The Coast Guard is tasked with developing planning criteria suitable for operating areas where response capability is currently inadequate.

The Coast Guard will use the public comments received in response to this RFI to better understand industry limitations, environmental concerns, and tribal concerns.

IV. Background

Under title 33 of the Code of Federal Regulations (CFR) sections 155.1015 and 155.5015, VRPs are required to cover all navigable waters of the United States in which a vessel operates. Several areas under U.S. jurisdiction do not have sufficient resources to

meet the national planning criteria (NPC) prescribed under 33 CFR part 155. In remote areas, where adequate response resources are not available, or the available commercial resources do not meet the required planning criteria for where the vessels are operating, a vessel owner or operator may request that the Coast Guard accept an alternative planning criteria (APC).

In August 2009, the Coast Guard Office of Vessel Activities (CG-543) published CG-543 Policy Letter 09-02,¹ “Industry Guidelines for Requesting Alternative Planning Criteria Approval, One Time Waivers and Interim Operating Authorization,” to provide guidance to the maritime industry in applying for an APC pursuant to 33 CFR.1065(f).

On September 30, 2013, the U.S. Coast Guard published the Nontank Vessel Response Plans and Other Response Plan Requirements final rule (hereafter the “NTV final rule”)(78 FR 60124), requiring nontank vessels (NTVs) over 400 gross tons to submit VRPs, which made the NCP in 33 CFR part 155 applicable to thousands of additional vessels across the United States, including geographic areas with limited commercially available response resources. Over time, it became apparent that additional guidance would be useful in addressing compliance issues that had developed from the promulgation of the NTV final rule.

In 2015, Coast Guard Seventeenth District (D17) published a Marine Safety Information Bulletin (MSIB)² that provided guidance for APC submissions and expectations within the Western Alaska, Prince William Sound, and Southeast Alaska COTP zones, with a focus on NTV traffic. D17 received a multitude of comments from various sectors of the maritime industry on the MSIB. After reviewing the comments, the

¹ https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/Policy%20Letters/2009/CG-543_pol09-02.pdf (last accessed November 14, 2023).

² https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2015/008_15_8-26-2015.pdf (last accessed November 14, 2023).

Coast Guard chose to update the national APC guidance rather than singularly focusing on APC guidelines specific to Alaska.

On October 12, 2017, the U.S. Coast Guard Office of Marine Environmental Response Policy (CG-MER) issued CG-MER Policy Letter 01-17, “Alternative Planning Criteria National Guidelines for Vessel Response Plans” to provide consistent guidelines nationally for evaluating proposed APCs, applicable to tank and NTVs. That policy letter was canceled with the publication, on March 15, 2023, of CG-MER Policy Letter 01-17, Change 1,³ “Change 1 to Alternative Planning Criteria National Guidelines for Vessel Response Plans” to reduce the administrative burden on industry and clarify the APC submission process.

From 2019-2020, the U.S. Government Accountability Office (GAO) conducted an audit to review the VRP program. The GAO provided CG-MER with recommendations, including ensuring that resources identified in a VRP are available to respond, and retaining Coast Guard personnel with local knowledge when evaluating APCs. In April of 2020, the U.S. Coast Guard established the Maritime Oil-spill Response Planning Advisory Group (MORPAG) to analyze processes internal to Coast Guard management of VRPs and APCs, and that final report was submitted to CG-MER in March 2023.

In September 2020, the GAO issued their final report analyzing the Coast Guard’s processes for reviewing, evaluating, and approving VRPs. That audit report, “Improved Analysis of Vessel Response Plan Use Could Help Mitigate Marine Pollution Risk,” GAO-20-554, can be found online at <https://www.gao.gov/assets/720/710034.pdf>.

³ [https://homeport.uscg.mil/Lists/Content/Attachments/2781/CG-MER%20Policy%20Letter%2001-17%20Change%201%20-%20Mar%202023%20\(Signed\).pdf](https://homeport.uscg.mil/Lists/Content/Attachments/2781/CG-MER%20Policy%20Letter%2001-17%20Change%201%20-%20Mar%202023%20(Signed).pdf) (last accessed November 15, 2023).

The Don Young Coast Guard Authorization Act of 2022 (CGAA 2022),⁴ passed in December of 2022 (Pub. L. No. 117-263), includes a section designed to address the specific needs of Western Alaska. Section 11309 mandates the Coast Guard create a Western Alaska Oil Spill Planning Criteria Program to include vessel oil spill planning criteria specific to Western Alaska.

On March 30, 2023, the Coast Guard published an RFI seeking public input on the MORPAG recommendations (88 FR 19159)⁵ to improve the VRP program and policies and enhance the Coast Guard's mission in marine environmental protection from oil spills.

In April 2023, CG-MER established the Marine Environmental Response Criteria Action Team (MERCAT) to analyze, develop, and implement Section 11309 of the CGAA 2022, Western Alaska Oil Spill Planning Criteria, as well as reconcile MORPAG recommendations into the VRP program, where appropriate. As outlined in the CGAA 2022, Western Alaska Oil Spill planning criteria should include:

(1) Mechanical oil spill response resources that are required to be located within any part of the area of responsibility of the Western Alaska COTP zone or the Prince William Sound COTP zone for where it has been determined that NPCs are inappropriate for a vessel operating in that area.

(2) Response times for mobilization of oil spill response resources and arrival on the scene of a worst-case discharge or substantial threat of such a discharge.

(3) Pre-identified vessels for oil spill response that are capable of operating in the ocean environment.

⁴ <https://www.govinfo.gov/content/pkg/CRPT-117hrpt282/html/CRPT-117hrpt282.htm> (last accessed November 14, 2023)

⁵ <https://www.federalregister.gov/documents/2023/03/30/2023-06611/request-for-information-on-coast-guard-vessel-response-plan-and-maritime-oil-spill-response-plan>.

- (4) Ensuring the availability of at least one Oil Spill Removal Organization (OSRO) that is classified by the Coast Guard and that:
- (a) Can respond in all operating environments in that area.
 - (b) Controls dedicated and nondedicated oil spill response resources through ownership, contracts, agreements, or other approved means, sufficient—
 - (i) To mobilize and sustain a response to a worst-case discharge of oil and
 - (ii) To contain, recover, and temporarily store discharged oil.
 - (c) Has pre-positioned oil spill response resources in strategic locations throughout the area in a manner that ensures the ability to support response personnel, marine operations, air cargo, or other related logistics infrastructure.
 - (d) Has temporary storage capability using both dedicated and non-dedicated assets located in the area.
 - (e) Has non-mechanical oil spill response resources capable of responding to a discharge of persistent oil and a discharge of nonpersistent oil, whether the discharged oil was carried by a vessel as fuel or cargo; and
 - (f) Has wildlife response resources for primary, secondary, and tertiary responses to support carcass collection, sampling, deterrence, rescue, and rehabilitation of birds, sea turtles, marine mammals, fishery resources, and other wildlife.
- (5) With respect to tank barges carrying non-persistent oil in bulk as cargo, oil spill response resources that are required to be carried on board.
- (6) Specifying a minimum length of time that approval of a VRP using Western Alaska planning criteria is valid.

(7) Managing wildlife protection and rehabilitation, including identified wildlife protection and rehabilitation resources in the area.

Additional considerations for Western Alaska Oil Spill planning criteria may include:

(1) Vessel routing measures consistent with international routing measure deviation protocols.

(2) Maintenance of real-time continuous vessel tracking, monitoring, and engagement protocols with the ability to detect and address vessel operation anomalies.

(3) Creation of subregions where response needs and capabilities may require different planning criteria.

V. Request for Information

The Coast Guard requests relevant comments and information from the public regarding the mandate to create planning criteria unique for VRPs in the Western Alaska COTP zone. We will use feedback provided to develop proposed planning criteria for public comment. We ask that you also keep in mind the Coast Guard's mission to ensure a safe, secure, and resilient marine transportation system that facilitates commerce and protects national security interests. Commenters should feel free to answer as many questions as they would like, but also provide specificity, detail, and the logic behind any finding or numerical estimates. Listed below are questions to guide your responses. We want and encourage your feedback.

(1) Should NPC remain the standard where response capability is sufficient to support a vessels' planning requirements?

(2) What criteria should the Coast Guard use to determine realistic response times for resources, while ensuring an effective response in Western Alaska?

(3) With the potential growth in maritime shipping in the arctic environment, how can the planning criteria be written to ensure response capability increases with the growth and additional risk presented by vessels operating in Western Alaska?

(4) OSRO classification is not determined based on vessels' response requirements, and participation in the OSRO classification program is voluntary. Because of this, VRP compliance cannot be determined through OSRO classification. Should the OSRO classification program be changed so that it directly affects VRP compliance determination?

(5) Should the Coast Guard establish a unique classification scheme for OSROs in Alaska based on the proposed Western Alaska Planning Criteria?

(6) Since NPC is the current planning standard, should the Coast Guard create subregions in Western Alaska to address different planning criteria based on operating environment, traffic patterns, and response capability to ensure NPC remains the standard where it is achievable?

(7) Should the Coast Guard establish subregions to proactively plan for expected vessel traffic increases in certain areas? If so, how should we do this?

(8) How could planning criteria be written for a vessel's destination instead of requiring planning for multiple subregions on a vessel's route?

(9) Some resources that response providers rely on are not owned or controlled by the provider. Some may be used for other purposes or may be resources of opportunity and not always be immediately available to respond. Should regulations require periodic audits of a providers' response resources to ensure the resources identified in a VRP are available and capable of responding within the required time?

(10) How should the criteria be written to ensure an OSRO has wildlife response resources? What types of wildlife response resources would be appropriate, and how would the Coast Guard verify these?

(11) How should the Coast Guard ensure that all stakeholders' and affected parties' concerns have been heard or received? What recommendations do you have to maximize outreach and understanding of any new planning standard?

(12) APC is intended to minimize the impact to maritime commerce where response capabilities in remote areas are insufficient for VRP compliance. In situations where a vessel needs to operate in a remote area and cannot comply with Western Alaska Planning Criteria, should APC be an option for VRP approval, or should the Coast Guard deny a vessel from operating there? Please describe any costs you may incur because of this change.

(13) If the Coast Guard needs to establish one set of Western Alaska Planning Criteria for all areas of the Western Alaska and Prince William Sound COTP zones where NPC cannot be met, given the current variation in response capabilities across these areas, how could the Coast Guard design these planning criteria to ensure that greater response capability is maintained in those areas where it is needed?

(14) Should the criteria require response gear on all tank barges or only tank barges carrying non-persistent oil?

(15) As a tank or NTV owner or operator who owns or operates vessel(s) that carry the types of oil defined in 33 CFR part 155, how would the adoption of the Western Alaska (Western Alaska COTP zone in addition to the Prince William Sound COTP zone) oil spill planning criteria, or the adoption of subregions for planning purposes, impact your business? Please describe in detail the positive (beneficial) or negative (costs) economic impacts this would have on your business.

(16) What would you need to do to meet the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion that you are not already doing under the national planning criteria in 33 CFR part 155? For example, would you need to hire new employees, implement additional training, drills, and exercises, purchase new

equipment, and keep records (time and paperwork costs) to meet the oil spill planning criteria described in the 2022 Coast Guard Authorization Act?

For questions 17-22, please identify if the response is specific to tank, NTV, or both.

(17) If you are a tank or NTV vessel owner, and taking into consideration the current regulations for VRPs for tank and NTV vessels in 33 CFR part 155, what would you specifically need to do to your current VRP to comply with the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion, which includes the surrounding areas, as described in the Coast Guard Authorization Act of 2022? What additional costs would be incurred beyond the existing VRP regulations or under the national planning criteria in 33 CFR part 155?

(18) If you are a small entity (small business, small organization, or small governmental jurisdiction) that owns tank or NTV vessels, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion and the surrounding areas impact your business? Please be specific and describe any positive (beneficial) or negative (costs) impacts this would have on your business or organization.

(19) As a tank or NTV vessel owner or operator, would adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion affect your insurance costs and liability coverage? If so, please be specific and describe any economic impacts this may have.

(20) As a tank or NTV vessel owner or operator, if the planning criteria required in a subregion were more stringent than that of the Western Alaska oil spill planning criteria, what would be the economic impact (costs and benefits, if any) of this difference on your business? Please be specific and describe in detail the nature of this difference on your business.

(21) As a tank or NTV vessel owner or operator, would you need to modify your current response plan, through contract or other means, to ensure the availability of an OSRO to respond to a shoreline oil spill in the Western Alaska area or Western Alaska subregion, as described in the CGAA 2022? Please be specific in your response and state why you believe this may or may not be necessary.

(22) As a tank or NTV vessel owner or operator, what would it cost to develop and submit a new VRP that contains APC as defined in 33 CFR sections 155.1065 and 155.5067 for the Western Alaska oil spill planning criteria or planning criteria for a Western Alaska subregion and the surrounding areas?

(23) If you are a Tribal government, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion and the surrounding areas impact your government? Please describe in detail the positive (beneficial) or negative economic and environmental impacts (costs) this would have on your government.

(24) If you are an OSRO, how would the adoption of the Western Alaska oil spill planning criteria or the adoption of a Western Alaska subregion affect your capability to respond to an oil spill in these areas or subregion? What capital costs would you incur as an OSRO to meet the planning criteria in these areas or subregion as described in the CGAA 2022? Please include the time it would take for additional recordkeeping, if applicable, and the costs associated with any paperwork.

(25) As an OSRO, do you currently have adequate resources (salvage and firefighting equipment, lightering, and so on) and capabilities to respond to an oil spill in the Western Alaska area or Western Alaska subregion as described in the CGAA 2022? With your current resources and capabilities, would you be able to respond to an average most probable discharge, a maximum most probable discharge, or a worst-case discharge of oil, as defined in 33 CFR part 155, in these areas? If not, please describe in detail what

resources you would need to obtain or capabilities you would need to develop to respond to an oil spill in these areas, and the costs associated with these changes.

(26) As an OSRO, would you be able to respond to a discharge of oil with the adoption of the Western Alaska oil spill planning criteria or Western Alaska subregion and the surrounding areas in the response times given in 33 CFR part 155? If not, please describe in detail why these response times would not be achievable in these areas, and what would be the appropriate response times you think would be achievable in these areas. Would pre-positioning of oil spill response resources be necessary for the Western Alaska area or Western Alaska subregion as described in the CGAA 2022? What would be the additional costs to your business/organization for changes in the response times in these areas?

(27) Please specify, as a tank or NTV vessel owner or operator, an OSRO, or any other party that may be affected by the adoption of the Western Alaska oil spill planning criteria or a Western Alaska subregion and the surrounding areas, please describe in detail any other economic impacts, not stated previously, that this change may have on your business beyond the current requirements listed in 33 CFR part 1.

(28) Are there any other positive or negative environmental impacts from this potential action? If so, please provide detail as to how and what would be impacted. To the degree possible, please provide the data, impact assessments, and other pertinent background information necessary to understand and reproduce your results.

Dated: November 28, 2023.

D. S. Tulis,
Director, Emergency Management,
U. S. Coast Guard.