

## Ocean Advocates

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United States Senate  
Committee on Commerce, Science  
And Transportation  
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Senator Cantwell and Members of the Committee:

Thank you for the opportunity to provide testimony to you this morning. My name is Fred Felleman. I am the NW Director of Ocean Advocates, a small national non-profit environmental organization specializing in maritime safety. My offices are based in Seattle and San Juan Island. I have a Masters of Science degree from the University of Washington's College of Ocean and Fishery Sciences and have been involved in the study and conservation of our resident killer whale population since 1980. My involvement with oil spills began in 1988 when I moved to Washington DC to help Congressman Lowry develop the legislation creating the Olympic Coast National Marine Sanctuary. Since then I have conducted damage assessment on the Exxon Valdez oil spill and have served on numerous state and federal oil spill committees. Ocean Advocates is also a member of the Shipping Safety Partnership (SSP), a coalition of Alaska Natives, commercial fishermen, recreation, science, and community interests formed in response to the December 6, 2004 grounding of the *Selendang Ayu* in the Aleutian Islands to advance the safety of cargo shipping through the Great Circle route.

There can be no question that a major oil spill would wreck havoc on the biological, economic and cultural environments that are so closely tied to Washington's waters. This is especially true now. The marine environment is showing many signs of stress, from elevated sea surface temperatures region wide, to depleted oxygen levels in Hood Canal, and a lack of upwelling on the outer coast, making the recovery of our remnant populations of herring, salmon and killer whales all the more difficult. A major oil spill would end up being the straw that broke the ecosystem's back, undermining many years and millions of dollars of investment in recovery efforts.

We are encouraged by Senator Cantwell's leadership to help reduce the likelihood of such a fate in the tradition of the late Senator Warren Magnuson. Not only are we pleased by the attention this field hearing brings to an issue that seems to only get addressed when there is oil in the water and dead birds on TV, but we are particularly thankful for the Senator's efforts in drafting the Energy Bill. Three provisions in particular deserve recognition. First, removing the provision that would have opened the Arctic National Wildlife Refuge to oil exploration recognizes that we will not be able to drill our way to energy independence. Second, the inclusion of \$500 million in subsidies

to encourage the development of biofuels makes a substantial contribution to our regional energy needs and will hopefully serve to reduce the amount of tanker traffic calling on our waters in the future. Finally, the introduction of S. 1222, the Oil Spill Liability Trust Fund Maintenance Act, reinstating the 5 cent/barrel fee and raising the cap to \$3 billion is an essential step towards filling the gap in our nation's ability to respond to and prevent oil spills. I will address this latter issue below.

Our concern about oil spills is not theoretical. According to the Department of Ecology there were more than 80 spills exceeding 1,000 gallons in Washington waters between 1986 and 2004. Ocean going vessels are the Nation's primary vehicles of trade. The Strait of Juan de Fuca is the busiest commercial waterway in North America serving both Canada's and the US's busiest ports and is only getting busier as Pacific Rim Trade has eclipsed that with Europe. While the number of oil spills has declined since the passage of OPA '90 the volume of oil spilled varies widely each year depending on whether one large ship has had an accident or not. Therefore, we cannot be lulled into complacency by these spurious statistics. Of particular concern are the 142 tugs with oil barges that passed through the Area To Be Avoided within Olympic Coast National Marine Sanctuary in 2004. While there was a 96.3% overall compliance with the ATBA in 2004 it only takes one laden oil barge to break its tow as recently happened off the Columbia River to cause long term damage. It is also important to note that even ships that comply with the ATBA come within 2 miles of shore as they enter the Strait of Juan de Fuca. It is also worth noting that laden oil barges are allowed to transit nearshore of the inbound shipping lanes but the shoreline of Clallam County at unnecessary risk and setting the tugs up to cut through the ATBA. This practice needs to be reevaluated.

Our ability to respond to even relatively small spills has been called into serious question of late. The responses to both the 4,700 gallon December 2003 Foss spill at Point Wells and the 1,000 gallon October 2004 Dalco Pass spill were lack luster at best. There have also been a series of recent transfer spills at refineries in Ferndale and Tacoma that have unnecessarily spread into the marine environment because vessels are not required to pre-boom before conducting such transfers. It is my understanding that the State of Washington has a task force studying this issue. The State Department of Ecology just released a report documenting that there would not be enough response equipment in the San Juan Islands to respond to a 420,000 gallon spill, despite the fact that some of the State's largest caches of equipment are stored at the four refineries surrounding the islands. This bodes poorly for our state of readiness in more remote locations such as the Olympic Coast where the State's largest spills have occurred in its most pristine and productive environment. In a Congressional field hearing held June 17, 1989, then Ecology Director, Christine Gregoire, said in reference to the 231,000 gallon 1988 *Nestucca* spill that we "stretched our resources to the limits." Unfortunately, very few additional resources have been brought to bear on the problem since 1988 and there has not been a drill in the Olympic Coast Sanctuary evaluating our response capacity in the 10 years since its creation.

Another issue affecting our ability to respond to oil spills has been the unprecedented mergers that have been occurring in the oil and shipping companies as well as their spill

response contractors. We can only speculate on the political impact of the consolidation of the world's largest corporations, but the downsizing that commonly occurs during mergers can reduce the capacity of our spill response contractors. This past year the National Response Corporation bought Foss Environmental and MSRC bought Clean Sound, leaving the State with just two primary spill response contractors.

Rather than react to the growing threat of oil spills posed by increased vessel traffic through our waters with increases in the levels of spill response capability, the Coast Guard has been urging the liberalized use of dispersants and capping our currently inadequate spill response posture. While dispersants have been shown to be effective in reducing impacts to sea birds at the surface in warm waters, no such demonstration has been made in the cold waters that characterize our situation. Furthermore, sinking the oil allows it to be taken up into the food chain that makes near shore applications problematic. Rather than trading off one spill response capacity for another, the Coast Guard should be calling on the maritime industry to expand their ability to respond to spills. This should include additional mechanical on water recovery, dispersants for offshore spills when the sea state makes skimming impractical and dispersants more effective, and *in situ* burning which removes oil from the water at even higher rates than skimming.

Of particular concern is the Coast Guard's assertion of federal preemption in their 2003 Notice of Proposed Rulemaking on Vessel and Facility Response Plans for Oil Removal Equipment Requirements and Alternative Technology Revisions. Unlike the case involving prevention efforts, the State's response authority is not subject to federal preemption and the Coast Guard should not be trying to suggest otherwise.

One promising technology for both preventing and responding to an oil spill is salvage. Salvage includes a wide range of capabilities from rescue towing, fire fighting, and patching to dewatering a sinking ship. Furthermore, salvage tugs can assist in oil spill response efforts and lifesaving exercises. Unfortunately, despite Congress calling for a salvage and firefighting rule in OPA'90, the Coast Guard has yet to complete such a measure. The Coast Guard's added responsibilities for homeland security should not be used as a reason for this delay, but rather as an additional reason for completion given the potential for acts of environmental terrorism or the need to respond to a cruise ships or ferry in distress.

We only have to look at the impact and expense of not having adequate salvage capacity to see how cost effective it is. In 1999 when the *New Carrissa* broke in half off the Oregon coast because there was not adequate tug support available, the resultant oil spill impacted a threatened population of plovers, cost over \$100 million (including fines) and ended with the wreck left on the beach. Similarly the 2004 grounding of the *Selendang Ayu* in the Aluetian Islands has already cost \$100 million dollars and cost is expected to triple while thousands of sea birds and marine mammals have been killed and subsistence lifestyles impacted.

The need to enhance our nation's salvage capacity has been acknowledged for many years, but has taken on particular urgency since September 11th. In 1994 the Marine Board's

Committee on Marine Salvage Issues of the National Research Council wrote, "Congress should update the national salvage policy to ensure that an adequate level of salvage capacity is present in U.S. waters. The policy should clearly delineate the following goals: to protect national security, to minimize or prevent environmental impacts due to pollution from marine casualties, to protect public safety, and to ensure minimal disruption to the U.S. economy resulting from marine casualties in the nation's port and waterways (p.4)."

While the 1989 Exxon Valdez disaster will be forever remembered by the general public for 11 million gallons of oil spilled, among salvors it will be remembered for the vast majority of oil that was safely transferred to another ship. In contrast, the relatively small, New Carissa, that grounded off the Oregon Coast in 1999 is the poster child for what happens when adequate salvage capacity is not readily available.

The Federal On Scene Coordinator (FOOSC) in the New Carissa, Captain Mike Hall, summed up the problem when he stated:

[W]e are essentially an island nation with over 47,000 miles of shoreline approximately 85 percent of all Americans live within 100 miles of these shorelines and 90 percent of all international commerce enters the United States by vessel. One can see from these facts that our nation's ports and waterways are the backbone of the U.S. intermodal transportation system. This system must include a national salvage plan. We need a salvage plan more capable than that demonstrated during the initial stages of the NEW CARISSA casualty. It was my belief on 4 February 1999 and it remains my belief today, that adequate and timely salvage capability would have significantly mitigated this crisis on the coast. There are currently only two salvage vessels on the Pacific coast capable of refloating a large grounded ship, and neither was readily available to respond in this case."

In January 2002, the U.S. Coast Guard and Navy hosted the National Maritime Salvage Conference in Seattle. The Admiralty Counsel to the U.S. Navy Supervisor of Salvage and Diving, Richard Buckingham presented a paper entitled, "Toward a National Salvage Policy." The abstract to his paper states:

The problem of inadequate domestic marine salvage capacity is well documented and recognized by both the government and commercial sectors; furthermore, the situation is not getting any better. Because of the nation's overriding interest in the protecting the environment/economy/marine transportation system (MTS), as well as meeting homeland security needs, we need a cohesive federal national salvage policy. The first step, however, will be identifying a federal agency to take the lead in forging such a policy. Should it be the Coast Guard, the Navy, or perhaps some other agency? Who appears best suited for the role? Once the appropriate agency assumes (or is tasked with) this leadership responsibility, what are some of the likely issues to be initially confronted? Also, this pressing need for a national salvage policy should really be a high profile issue on the agenda of the newly created U.S. Commission on Ocean Policy, as well as a specific focus of the Department of Transportation's MTS policy and SEA-21 maritime infrastructure funding initiatives.

The Marine Board of the National Academy of Sciences wrote to the Ocean Commission in June 2002 on the issue of national salvage capacity. They wrote:

Within the maritime community, as well as government agencies, it is recognized that the nation's domestic salvage capacity is inadequate to meet basic and emergency needs. This inadequacy jeopardizes environmental, transportation and homeland security objectives. There is a need for a cohesive, federal national salvage policy and a designated lead government agency to implement that policy.

While the Coast Guard and Navy try to resolve this longstanding problem, the Makah Tribe have sought to have the U.S. Navy provide one of their uniquely qualified T-ATF tugs for dedicated rescue tug service in and around Neah Bay. The National Research Council found in their 1994 report on Salvage, "Surplus assets, particularly the T-ATF class of ships, if operated by the private sector and strategically deployed, could go a long way to restoring the traditional salvage capacity of the United States, particularly in rescue towing. The operation of these vessels by the private sector would require substantial subsidy, as it has been demonstrated in the United States and elsewhere that salvage revenues cannot cover the costs of operating and maintaining the vessels and their crews. The excess costs could be covered, as they were in the past, through the Salvage Facilities Act, and the plan could be implemented through the arrangements in place for Navy contracting for commercial salvage services." (p.55-56). The Coast Guard's Deepwater Program as well as the environment could be benefited by such Naval assets. Alternatively, the Coast Guard should consider including towing capability in the construction of their deepwater fleet.

The State of Washington has public funding for just three more seasons of the Neah Bay rescue tug. This tug, while having provided a significant amount of additional protection to the Olympic Coast and entrance to the Strait over the past 6 seasons, is still only seasonal and is not equipped for salvage, firefighting or spill response.

Suggested Federal Actions:

- 1) Reinstate the OSLTF and raise the cap to \$3 billion and remove any sunset clause, for the account will be needed as long as there are ships sailing on the sea.
- 2) Create a Cargo account within the OSLTF that would be drawn from when non-tank vessels are the cause of the oil spill.
- 3) Amend OPA '90 making it easier for the OSLTF to be drawn from for preventative measures, not just spill response. Such funds could be used to help station salvage tugs in high-risk, remote places such as Unimak Pass and Neah Bay. Other potential uses of the fund could be for improved vessel tracking technology or additional aids to navigation. Tribal governments should be able to draw from the fund as the EPA and Coast Guard do.

- 4) Have the Coast Guard either include towing capability in their new deepwater fleet or get the Navy to provide their T-ATF Powhatan class tugs to the Coast Guard to improve our Nation's salvage posture and their deepwater capability.
- 5) Conduct review of towboat lanes in Strait of Juan de Fuca and incidents of tugs with tows passing through the ATBA.
- 6) Provide Congressional oversight on the status of the Coast Guard's Salvage and Firefighting rule assuring that it is adequate and completed this year.
- 7) Have the NAS conduct an evaluation of the Coast Guard's Coast benefit analysis methodology. They use factors such as cost per barrel not spilled for prevention studies and cost per barrel recovered for response studies, but neither of these analyses includes the cost to the marine environment and economy when a spill does occur. These selective studies appear to frustrate the goals of NEPA.
- 8) Conduct a no-notice, equipment deployment drill in the Olympic Coast National Marine Sanctuary to evaluate our level of readiness off the coast.

In closing, the late Senator Magnuson oversaw the great transition from when Washington State received its crude oil primarily from Canadian pipelines to US tankers. This change in risk to our waters required proactive leadership that enabled us to maintain a relatively good oil spill record to this date. For example Senator Magnuson made it clear that he wanted to limit the size and amount of tankers transiting through the San Juan Islands and passed several laws fulfilling his vision. The one constant in the maritime world is change and we need constant vigilance to keep up with these changes. We appreciate Senator Cantwell's proactive efforts and look forward to working with her office and this Committee on these matters in the future.

Thank you for the opportunity to present these issues before you and I would be happy to answer any questions.

Sincerely,

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NW Director  
Ocean Advocates