



ITOPF feedback to Transport Canada - World Class Tanker Safety System.

June 2013

Introduction:

ITOPF have been asked to provide feedback to Transport Canada as part of a wider review of the Canadian oil spill response regime. As part of this process, a Tanker Safety Expert Panel has been set up to conduct a pan-Canadian, evidence-based review and assessment of Canada's Marine Oil Spill Preparedness and Response Regime, as it applies to oil handling facility and ship-source oil spill preparedness and response. A range of stakeholders have been asked to provide feedback to the Panel on four defined areas related to Canada's spill preparedness: General, Preparedness, Response and Liability, Compensation and Funding. ITOPF's submissions (including the original question) are outlined below.

General

1. Does the current oil spill preparedness and response regime meet today's needs? What about future needs?

Canada has been fortunate enough to have been spared the types of large and demanding oil spills that would truly test its preparedness and response arrangements. Having said that, there are no immediate concerns relating to its non-arctic response arrangements. For Arctic areas the world-wide state-of-the-art, in terms of research, technology and logistics, is progressing and Canada can be a leading country in advancing arctic preparedness.

What elements of the current regime could be improved to make it world class?

There are a number of areas that could be considered for improvement:

- Standards for response capabilities, as dictated in the NCP, might be better tied to defined most likely and worst-case scenarios, rather than fixed-volume scenarios, such as 10,000 MT. The prescriptive approach continues through the various response target values, such

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as the number of metres of shoreline to treat each day or the duration of at-sea recovery operations.

- Response arrangements for the arctic need to be tailored not only to the climate, but also the distances and other logistic challenges. For example, response tiers, equipment stockpiles, response times, etc. should be specific to the Arctic.
- More work should be considered in preparing cost-recovery arrangements, in particular for cross-border incidents.
- Consideration of management and funding of incidents where the ship-owner is unknown/unable to respond, or where the ship-owners liability limitation has been reached

2. Does Canada's current regime, which is based upon a public-private response model in which industry-funded Response Organisations take the lead in preparing for and responding to an oil spill, continue to make sense for Canada?

There is no single, world standard as regards the public-private allocation of responsibilities for response. There are countries which successfully take a strong government-led approach, others which depend heavily on industry resources, and mixed models, such as that used in Canada. There is a strong argument in favour of a capable government presence, as it is in the national interest of each country to maintain the conditions of their waters and shores. For its part, industry can add significant resources when needed. Consequently, the Canadian system of public certification of private OSROs, public oversight of private preparedness/ response, and maintaining public response capability where needed (in particular in the Arctic) largely appears robust. However, it is worth considering additional scenarios including: how the model would work in the event that the polluter is not identified or in cases where claims and compensation limitations are reached, or how the model would be implemented in the event of an incident involving a passing ship.

What changes, if any, would improve the model to world class status?

Interaction between public and private entities (e.g. CCG and OSROs) could be improved through further, targeted joint training and a focus on smooth transitions between the two when appropriate, with clear roles and responsibilities for each.

3. In terms of oil spill preparedness and response, are the current roles and responsibilities for government and industry clear? Are they appropriate?

The NCP summarizes the roles of lead and support agencies in the cases of a variety of spill scenarios. Roles and responsibilities for industry (i.e. "external resources") are not mentioned in sufficient detail.

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What changes would you suggest to improve roles and responsibilities under the current regime?

The roles and responsibilities of industry partners could be elaborated in more detail. Particularly with regard to their role in the command structure of an incident – whether they perform purely a functional/logistic role or whether they input into decision making process.

4. What future trends or emerging developments (for example, new petroleum products, new response techniques or increased vessel traffic) should be taken into account to enhance the current regime to world class status?

Future trends relevant for Canada include:

- Rapid expansion of Arctic trade routes
 - Expansion of shipment of challenging products (e.g. dilbit)
 - Increased media coverage of response techniques (including coverage on social media platforms), whether standard (e.g. dispersants) or alternative (e.g. in-situ burning), is resulting in heightened public interest and thus greater associated pressure on responders to explain and justify their actions.
 - The increase in public perception and awareness of oil pollution incidents and a higher demand for public involvement in response operations.
5. There are currently six Regional Advisory Councils (RAC) and one National Advisory Council (NAC) which provide advice and feedback to the Government of Canada on the current regime. What could be done to improve this feedback mechanism? Are the roles and responsibilities of the RAC and the NAC clear? Is this structure a best practice?

Considering the size and diverse range of physical geography in Canada, a system whereby each region is represented by an Advisory Council and supported by a national mechanism that acts as a forum for discussion and information exchange, appears to be robust. Roles and responsibilities are clear, however further information regarding whether these Advisory Councils sit regularly, within a defined timetable, or only convene in the event of an incident, would be beneficial. The extent of the overlap, if any, with the Regional Environmental Emergencies Team system in Canada would also be useful information to make available in terms of clarity of the wider emergency response system in Canada. With regard to inputs into the RAC's and NAC, ensuring that they avail themselves (or have a mechanism whereby they can avail themselves) of input from industry and other stakeholders as required is an important aspect of avoiding the possibility of them becoming isolated and operating outside of the wider response system in the event of an incident.

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As with similar systems in other countries, the success of such programmes is often reliant on clear, defined roles and responsibilities, and a fit for purpose communications system to ensure the links and information flow from Regional to National and *vice versa*, are maintained

6. Canada's current regime is standardized across the country, with all ports, ship-owners, oil handling facilities and Response Organizations operating under the same legislation, regulations and guidelines. Is this an appropriate model for Canada?

Yes. Canada is a very large country with a variety of challenging environments. While an argument could be made that the various locations need tailored rules, a single model can be valid for the entire country in so far as it allows appropriate levels of flexibility. It is possible to have a nation-wide system of response tailored to the specific circumstances and needs of the location according to, for example, risk and environmental/economic sensitivities.

What improvements could be made to the current model?

As mentioned above, increased flexibility would be beneficial for response preparedness and performance targets. The model could also be more tailored to risk, as opposed to pre-determined performance targets.

7. Does the current preparedness and response regime clearly define how it interacts and links with Canada's liability and compensation regime?

As will be mentioned in more detail later, the interaction between Canada's domestic liability and compensation regime, and the international regime under CLC (Civil Liability Convention) and the Fund Convention is clear. However, further clarity with regard to the process in place when the polluter's limited liability is reached would be beneficial.

As regards the interaction between the preparedness/ response regime with this national/ international compensation regime, there is a system in place in the CCG track costs and submit claims. While we do not have any information on the capabilities of this interaction when tested in a major incident, experience around the world has shown that preparedness levels amongst responders for the financial aspects of their work are generally less than optimal.

What changes, if any, would improve the current framework to world-class status?

Drills and exercises could be more inclusive of the finance teams that will be involved in spill response. Ensure smooth transition when limitation

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has been reached recognising that contracts, OSRO's and response will need to transfer from industry to Government.

Canada currently has two regimes for marine oil pollution: one for ship-source oil pollution and one for oil pollution from oil exploration activities and offshore platforms. What are the benefits to having two separate regimes?

While the oil involved in both may be the same, oil exploration and oil shipment are two entirely separate commercial operations with largely different players. In addition, exploration is in fixed locations, shipping by its very nature is global. The risk profiles differ as do ownership, responsibility, and the ability to act/react locally. Oil companies are typically the best placed to respond to incidents at their installations, as they have the manpower, the expertise, and the logistical support. Ship crews have exceptionally limited resources in any one location. The benefit of separate systems is, therefore, that the inherent strengths and weaknesses of the two separate commercial activities can be harnessed/addressed so as to provide an optimal solution to any incident. In other words, offshore industry is supported in its preparedness to its own spills and shipping is provided turn-key response capability for its incidents.

What are the risks to having two separate regimes?

The risks of maintaining two separate systems are:

- Duplication of effort (e.g. in R&D, stockpiles, maintaining oversight capability)
- Increased confusion in claims process in so far as claimants maybe faced with one or the other of two different compensation regimes, whether the oil comes from the facility or, for example, the ship loading at that same facility
- Gaps in standards – it is possible that the state-of-the-art improves in one regime which is not matched in the other.

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Preparedness

1. Are the preparedness requirements for ports, ship-owners, oil handling facilities and Response Organizations adequate?

As mentioned above, the requirements for response organisations in Canada appear to be rather prescriptive, for example, their operational parameters are governed by spill volumes and response times. Without looking at the specific adequacy of the numbers currently used as targets in the Canadian system, an argument could be made that using identical stated target values, regardless of the circumstances surrounding the incident, distracts responders from assessing their actual capability in the time of a spill. Responders may inadvertently focus on the target values, as opposed to implementing a response commensurate with the size and identified risk of the incident.

What changes, if any, would improve the system to make it world-class?

It is a good idea to have response organisation certification linked to different tiers, but an argument could be made that spill volume is not the best measure of incident severity. The industry-standard use of three tiers based on the capability of responders and the perceived risk (in terms of oil volume and type, sensitive resources, responder capability, weather conditions etc.) of a potential incident may be more beneficial for Canada.

2. Does research and development play a strong enough role in the current regime? Who should be responsible for funding and conducting research and development related to the oil spills?

It is understood that there are efforts to expand R&D in Canada, in particular, for special questions such as heavy oils (e.g. dilbit) and research into response mechanisms and processes in other countries around the world, with a view to potentially enhancing the Canadian system. Given that the providers of funding (in any situation) will have a key role in determining the topics researched, it is a good idea to ensure that funding for projects comes from a variety of sources. This will help achieve a better mix of R&D projects overall.

3. Is there a need for a greater degree of coordination between government departments, between different levels of government (federal, provincial, municipal and international) and between government and the industry in respect to training, exercises and research and development? What could be done to make the coordination of these activities more effective? What steps should be taken?

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It seems (viewed from the outside), that there is a significant amount of training and exercise going on in the various spill-related organisations in Canada. It is not clear, however, to what degree there is overlap between the training courses across organisations, for example joint training between the different government functions and industry that will have to work together closely in the event of an incident.

4. How should risk information related to the potential for an oil spill and its possible impacts be used to inform the elements of the regime? What other information should be taken into consideration when government and industry formulate their preparedness and response plans?

Clearly, risk information should be shared amongst all participants. In some cases while there is some hesitancy on sharing risk information because of perceived commercial, political or other sensitivity.

We believe that risk information should be the basis for the scaling of preparedness (i.e. risk-based planning). The risk information should encompass all relevant sensitivity for the particular location and form the framework around which the desired response preparedness is defined.

5. What other preparedness requirements should be incorporated into the regime?

Preparedness requirements must also take into consideration the likely characteristics/ nature/ possible origin of the spill (e.g. a fixed installation vs. a shipping channel) and clear roles, responsibilities and decision making pathways for whomever is responsible in each eventuality.

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Response

1. What could be done to make the response to oil spills more effective and efficient?

This is a question that many people ask around the world. Interestingly, the assumption is often that more equipment and resources should be stockpiled and held in readiness in order to improve response effectiveness. Experience continues to confirm, however, that the limiting resource is generally effective and efficient decision making and leadership and communications. It is our firm belief that training and exercise along with clear definitions of roles and responsibilities are significant areas for investment, in all countries. In addition to this, an important aspect of training and exercising is that there is a recognised mechanism to ensure knowledge, skills and experience are internally transferred from more experienced to less experienced members of staff. This way 'corporate knowledge' is maintained in the event of personnel changes and consistency in delivery is strengthened.

2. Is there adequate oversight of the Response Organizations under the current regulatory framework? Are the current *Response Organizations Standards* adequate? What, if any, changes should be made? Is the certification process for Response Organizations adequate and is there sufficient expertise present during this process?

The Response Organisation System appears robust. While OSRO certification and oversight in Canada appears to be less detailed and perhaps stringent than in the neighbouring US, its OSRO system is still more advanced than in practically all other countries. A delicate balance must be achieved between being detailed and being overly prescriptive in requirements and standards for OSROs.

3. Is the current regulated response capacity of 10,000 tonnes sufficient or should it be increased? What could be done to improve on this current model for regulated response capacity?

As mentioned above, a risk-based approach would, in our opinion, be a more appropriate method of determining response capability in Canadian waters. The question if the 10,000 MT figure is sufficient or should be increased can only be adequately answered by a location-specific risk assessment.

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4. What could be done to increase the capacity to respond to spills of unconventional oil products (e.g. diluted bitumen)?
 - More R&D and knowledge transfer (internally and from/with other countries) into the fate and behaviour of unconventional oils.
 - More R&D and knowledge transfer (internally and from/with other countries) on adapting equipment/ resources for specific unconventional oils as identified in specific risk assessments
 - Appropriate training for non-standard oils
 - Including the logistics of dealing with unconventional oils, in particular waste management, in contingency planning.
 - Consider whether there is sufficient knowledge of oceanographic processes and how they would affect unconventional oil products. For example, subsurface current movements in perceived high risk areas.

5. What role should the Canadian Coast Guard take during the response to an oil spill?

Traditionally there have been strong arguments in favour of government-led response in oil spill incidents, in particular because a government will have the ultimate responsibility for its citizens and resources to undertake the most appropriate response. Likewise, they will be best placed to stand in readiness for incidents involving vessels with no local affiliation or resources, in particular in remote areas where commercial solutions (e.g. stockpiles) are not viable, or spills from mystery sources. Having said that, Canada has over the years divested some responsibilities to external commercial entities (e.g. OSROs). For this reason, it is very important that the CCG maintain an active interest in the certification and general oversight of these responders. This continues during the time of an incident, when the CCG should play a key role in overseeing response decision making. In some cases (e.g. mystery spills) the CCG should be ready to manage the incident completely on its own and in cases where the ship-owners liability is reached. An additional factor for consideration is that with the expansion of offshore oil exploration and production and associated vessel traffic off the Atlantic coast and the expanding market in the Arctic; it is important that the Coastguard maintain an awareness and local knowledge of the coastal resources, business, logistics etc. throughout Canada. The alternative, resources and personnel becoming centralised, may lead to a loss of this valuable site specific knowledge.

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6. What improvements could be made to better integrate government and non-government stakeholders into the overall management of a response?

As general public concern grows on environmental issues, there is a universal growth in stakeholder activity, knowledge and awareness. In the case of oil spills this is an important aspect that should be dealt with extensively in the contingency planning phase, in particular as regards priority setting, however it should fall within the parameters of technical input, as opposed to political decision making or professional management. Stakeholder involvement in the management of actual response should be carefully considered and managed to maximise potential stakeholder input without adversely affecting decision making. An additional point that may warrant further consideration, is the integration of French and English speaking Canadians in training and exercises, and ensuring that there is a clear communication mechanism in the event of a language barrier.

In addition, in terms of integration and maximising available resources throughout Canada, it is worth considering the extent of the language barrier and whether it may be an issue between English and French speaking personnel. This may be more relevant in joint training exercises between Atlantic and Pacific regions and integration throughout Canada between regional and national systems.

7. Is there a role for other parties to play in the response to an oil spill, particularly in more remote areas of the country? What factors would need to be considered if there is an increased role for them?

There is a general rise in the use of volunteers and the pros and cons of this should be carefully considered in the contingency planning stages. Further to this, in remote areas and in difficult climatic conditions it may be helpful to utilise the knowledge and expertise of local people. In some cases local parties make a willing and appropriate labour force that offer great advantages over bringing in workers from far afield. In all cases, good management and field direction are imperative for an effective and efficient response. The potential for utilising military resources, in terms of heavy lift cargo aircraft, building field landing strips, field logistics etc., could be an effective use of resources in an Arctic response and is worth considering within contingency plans.

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8. The current response regime is based around mechanical recovery. Are there alternate response techniques that should be considered in addition to mechanical recovery for spill response? What are the pros and cons of these alternative mechanisms? How could these additional methods be included into the current regime?

There are many countries around the world, including for example the UK, that base their response regime around dispersants. In certain circumstances, including some scenarios that exist in Canadian waters, dispersants can offer a more rapid and effective response than mechanical recovery. An example of this is the seabird resources off Newfoundland and the surrounding region; where effective dispersant application could greatly reduce the potential impacts of floating oil, in comparison to mechanical recovery, on seabird populations. As was seen in the US in the Deepwater Horizon incident, there may also be some scope for *in situ* burning. Any response technique will have its pros and cons – these can only really be evaluated based on the local climatic/oceanographic conditions, the local environmental sensitivities, the characteristics of the products likely to be spilled, and the way that they are spilled (e.g. volumes, rates, duration, depths, etc.). It may be that some techniques can be excluded outright in some locations; other locations may be best served by keeping in readiness the equipment/ resources/ manpower for various techniques. Stakeholder engagement in workshops/training sessions would be one way to open up discussions regarding alternative techniques and consider the relative pros and cons based on specific scenarios.

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Liability, Compensation and Funding

1. How should a world-class oil spill preparedness and response regime be funded?

Canada has established a response funding model that combines full membership in the international compensation regime (e.g. CLC. Fund Convention, Bunkers Convention) with its own national funding regime. Having the Ship-Source Oil Pollution Fund (SOPF) acts as a back-up in cases not governed by the international conventions, in particular for non-tankers and non-persistent oils. It further provides reassurance and can be used to minimise delays in response and/or reimbursement.

Funding for preparedness is a different question because it generally cannot be allocated across spill incidents. However, with Canada's ship-owner funded Response Organisations, a funding system is in place which covers a great share of the preparedness needs vis-a-vis shipping. Clearly, preparedness for small ships and remote locations experiencing low traffic volumes may not be adequately serviced by this regime. The most effective method of establishing world-class preparedness is through combined industry/government funding, training and personnel capacity building.

2. Is the current fee structure fair, reasonable and transparent, and does it meet the current regime's requirements?

Insufficient knowledge to comment.

3. Canada's liability and compensation regime provides coverage for the costs associated with responding to an oil spill from a ship. Are there specific costs where the coverage for responding to an oil spill is potentially not adequate? Are there current limitations on the coverage that may impact a response to a spill?

The benefit of the SOPF is that it picks up for non-tanker incidents where the CLC and the Fund Convention have no jurisdiction. In addition to this, the Bunker Convention has overcome an additional potential gap in funding came into force, this was a serious gap in response funding in many countries. Now that this convention is in place, the principle issue for non-tanker incidents is the sufficiency of the funds available. For Canada this is an issue that is greatly moderated by the presence of the SOPF.

The majority of the Conventions governing compensation from ships provide for the ship-owner to limit liability, apart from under exceptional circumstances. Therefore, if this right to limit is respected during an

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incident, it is possible that the compensation available from the ship-owner will be reached; quite quickly in the case of a small ship. Therefore, a mechanism for the government to 'take over' the actual response, including contracts with OSROs etc., will need to be in place and the transition from ship-owner led to government led response will need to occur seamlessly if the response is to proceed without interruption. It is worth recalling that the Fund Secretariat (Fund Convention) cannot sign contracts and operates on a 'pay to be paid' principle.

4. There exist several models for funding the preparedness costs to an oil spill as well as providing access to emergency funds during an ongoing response. Would the dedication of a set amount of emergency funds similar to what is in place in the United States be an improvement to the capability to effectively manage a large spill? What improvements should be made?

Access to emergency funds can help with cash flow. However, there remains a need to apply principles of reasonableness if full recovery of these funds is expected. The US system for giving states access to Federal funds for emergency removal, mitigation, or prevention of a discharge is primarily a cash-flow management tool. It should not be mistaken for a funding mechanism *per se*. Other countries face the same issues and deal with them in different ways.

5. Could the Ship-Source Oil Pollution Fund be used more effectively for the purposes of preparedness and response?

Adjustments could be made to improve SOPF processes, but it is difficult to envision using SOPF funds for preparedness *per se*. This is because of the background under which the funds were levied in the first place as well as the unlimited number of preparedness projects that could be carried out. There may be a benefit to a percentage of the SOPF contributing towards joint industry/government training/workshops or contingency planning.

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