

U.S. Department of  
Homeland Security

United States  
Coast Guard



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21 MAR 2023

COUNTY COUNCIL  
COUNTY OF MAUI  
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This letter is in response to your request for information regarding Maritime Disasters dated March 17<sup>th</sup>, 2023. We hope that these responses help clarify the Coast Guard's authorities, jurisdiction and role when responding to oil discharges and/or hazardous material releases and/or response to vessels in distress. We would like to take this opportunity to strengthen the partnership between the County of Maui and the United States Coast Guard so that we may effectively and rapidly respond to future situations should they occur. Building understanding prior to an incident is pivotal to the success of the response no matter the scale, and your inquiry is extremely welcomed by our leadership and the Coast Guard as we are partners in response and prevention.

**1. What are steps the U.S. Coast Guard ("USCG") has taken to prevent shipwrecks?**

The Coast Guard Maritime Prevention Program prevents personnel casualties and property losses, minimizes security risks, and protects the marine environment. The Coast Guard develops and enforces federal marine safety, security, and environmental regulations. The Coast Guard develops and applies design, construction and equipment standards for vessels; conducts compulsory, as well as voluntary vessel exams and inspections; certifies and licenses U.S. mariners; and promotes best practices by investigating marine casualties and sharing its findings. It provides grants to States to improve recreational boating safety and supports a variety of government and nongovernment boating safety efforts in partnership with other federal agencies, state and local governments, marine industries and associations. The Coast Guard also maintains strong leadership roles in many international maritime organizations.

In accordance with international and domestic statutes, all mariners that serve on a commercial vessel are required to demonstrate proficiency in their assigned duties and hold a credential. The U.S. Coast Guard administers the credentialing program for the United States. Currently there are over 216,000 credentialed mariners and in any given year the Coast Guard issues over 65,000 new credentials.

As a flag state, the Coast Guard is responsible for ensuring that U.S. vessels, engaged in foreign and domestic commercial service, including fishing vessels, are in compliance with U.S. laws and regulations. This includes developing policy, and providing guidance for commercial vessel safety, security and environmental protection compliance, and mariner credentialing with over 41,000 onsite inspections to ensure compliance. The Coast Guard also conducts a robust Port State Control program in accordance with international treaty obligations to ensure that foreign vessels visiting U.S. waters are in compliance with international standards.



Additionally, the Coast Guard is the U.S. representative to the International maritime Organization, the United Nation's body responsible for regulating international shipping.

The Coast Guard administers the Coast Guard Auxiliary, an approximate 30,000 volunteer force that assists in most all programs but is especially focused on Recreational Boating Safety. The Auxiliary augments the work of the regular Coast Guard by performing such duties as air and water patrols, recreational boating instruction, vessel safety checks, and any other duty assigned other than direct law enforcement or defense operations.

The Coast Guard serves as the National Coordinator of the National Recreational Boating Safety (RBS) Program and the Designated Federal Officer of the National Boating Safety Advisory Council. It develops and implements the Strategic Plan of the National Recreational Boating Safety Program, liaising with appropriate international, Federal, State, and Tribal government agencies, as well as national nonprofit organizations, the recreational boating industry and the public, to support national RBS goals.

The Coast Guard administers the Sport Fish Restoration and Boating Trust Fund boating safety grant programs, including managing the approval of State boating law enforcement, public education, undocumented vessel numbering/titling, and marine casualty reporting. It also administers standards development and compliance efforts regarding the manufacturing of recreational boats and associated equipment and the implementation of the Vessel Identification System. Finally, the Coast Guard directly performs over 50,000 recreational boardings and 2,800 recreational vessel boat inspections each year.

The Coast Guard has the authorities to conduct all activities related to marine casualties, pollution investigations, and civil penalties, suspensions, and revocations. It provides statistical services and products which reflect safety trends and patterns in pertinent aspects of marine transportation operations. The Coast Guard supports the development and dissemination of safety recommendations from casualty and pollution investigations to reduce future casualties. It also administers chemical testing regulations for the marine transportation sector, including the maintenance of the Management Information System (MIS) for the collection of chemical and alcohol testing data.

What is a marine casualty? A marine casualty is defined in Title 46 Code of Federal Regulations (CFR), Part 4.03-1. Essentially it is casualty or accident involving a vessel (other than a public vessel), that occurs upon the navigable waters of the United States, its territories or possessions. 46 CFR 4.03-1(b) indicates the term "marine casualty" applies to events caused by or involving a vessel, and it goes on to list specific occurrences or incidents that constitute a marine casualty. Some examples include loss of life, collisions, groundings, loss of propulsion, and incidents involving significant harm to the environment.



## **Reportable Marine Casualties**

46 CFR 4.05-1 contains the requirement for immediate notice to the Coast Guard of certain marine casualties involving vessels.

### § 4.03-1 Marine casualty or accident.

Marine casualty or accident means -

- (a) Any casualty or accident involving any vessel other than a public vessel that -
  - (1) Occurs upon the navigable waters of the United States, its territories or possessions.
  - (2) Involves any United States vessel wherever such casualty or accident occurs; or
  - (3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.
- (b) The term “marine casualty or accident” applies to events caused by or involving a vessel and includes, but is not limited to, the following:
  - (1) Any fall overboard, injury, or loss of life of any person.
  - (2) Any occurrence involving a vessel that results in -
    - (i) Grounding.
    - (ii) Stranding.
    - (iii) Foundering.
    - (iv) Flooding.
    - (v) Collision.
    - (vi) Allision.
    - (vii) Explosion.
    - (viii) Fire.
    - (ix) Reduction or loss of a vessel's electrical power, propulsion, or steering capabilities.
    - (x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo.
    - (xi) Any other circumstance that might affect or impair a vessel's seaworthiness, efficiency, or fitness for service or route; or
    - (xii) Any incident involving significant harm to the environment.
  - (3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.
  - (4) Any incident described in § 4.05-1(a).



§ 4.03-2 Serious marine incident.

The term serious marine incident includes the following events involving a vessel in commercial service:

(a) Any marine casualty or accident as defined in § 4.03-1 which is required by § 4.05-1 to be reported to the Coast Guard and which results in any of the following:

- (1) One or more deaths.
- (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties.
- (3) Damage to property, as defined in § 4.05-1(a)(7) of this part, in excess of \$200,000.
- (4) Actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or
- (5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.

(b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

(c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

Public vessel means a vessel that -

(a) Is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country, except a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department (except a vessel operated by the Coast Guard or Saint Lawrence Seaway Development Corporation); and

(b) Is not engaged in commercial service.

Recreational vessels are excluded from the requirements of 46 CFR 4.05 and fall under the reporting requirements of 33 CFR 173.51. See question below 3 for more.



**2. Please describe the USCG's responsibilities and protocols for responding to shipwrecks. How do these responsibilities and protocols differ from the State of Hawai'i and the County of Maui?**

The Coast Guard is the lead Federal agency for directing the removal and mitigation of oil and hazardous substances from spills and releases in the waters and shorelines of the coastal zone. The Coast Guard accomplishes marine environmental response and preparedness with strategically distributed marine environmental response program elements at the national, regional, and local level. This includes strategic program management and policy support at Coast Guard Headquarters and National Contingency Plan Special Teams, which include the Coast Guard National Strike Force and District Response Advisory Teams, Federal On-Scene Coordinators (FOSCs), FOSC Representatives, and Pollution Responders at Sectors, Marine Safety Units, and Marine Safety Detachments.

Response to Oil Spills occurs in 4 Phases

Phase I - Discovery or notification.

Phase II - Preliminary assessment and initiation of action.

Phase III - Containment, countermeasures, cleanup, and disposal.

Phase IV - Documentation and cost recovery.

The National Response Center (NRC), 800-424-8802 located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges and releases must be made telephonically through a toll-free number or a special local number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). The NRC receives and immediately relays telephone notices of discharges or releases to the appropriate predesignated federal OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC. The NRC evaluates incoming information and immediately advises FEMA of a potential major disaster situation

Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B, and 40 CFR part 302, respectively. Additional Authority is outline in the following links:

40 CFR Part 300 - National Oil and Hazardous Substances Pollution Contingency Plan

<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-300>

40 CFR § 300.120 - On-scene coordinators and remedial project managers:

<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-300/subpart-B/section-300.120>

The State of Hawaii provides a State On-Scene Coordinator to support efforts outlined in the National Contingency Plan. The Hawaii State Department of Health, Hazard Evaluation and Emergency Response Office manages this and can be reached at 808-586-4249.



### **3. Please describe the USCG's timeline when responding to a shipwreck.**

Many incidents start out as an emergency, typically these calls for distress are received via VHF Channel 16, 911 dispatch, or to one of our USCG 24-hour manned Command Centers. Based on the report and nature of distress the Coast Guard will dispatch response assets to rescue, secure or mitigate impact. Many missions our executed simulations following notification and the severity of the situation controls the level of response. For example, while prosecuting a Search and Rescue response the Incident Management team will be notified and begin conducting Phase II - Preliminary assessment and initiation of action, should there be a possibility of discharge or release. Additionally, if the situation involves a marine casualty, then the prevention department will engage with a USCG Investigating Officer to begin an inquiry to cause, frequency of types of the incident and recommendations for legislation on how to prevent such incidents from occurring again.

#### *Reportable Marine Casualties*

46 CFR 4.05-1 contains the requirement for immediate notice to the Coast Guard of certain marine casualties involving vessels.

Paragraph (a) of this subpart states: Immediately after addressing the resultant safety concerns, the owner, agent, master, operator, or persons in charge, shall notify the nearest Sector Office, Marine Inspection Office, or Coast Guard Group Office whenever a vessel is involved in a marine casualty.

In addition to the immediate notice requirement above, a written report is required. According the 46 CFR 4.05-10(a) the owner, agent, master, operator, or person in charge, shall within five days, file a written report of any marine casualty required to be reported under 4.05-1. The written report must be submitted on Form CG2692 (Report of Marine Accident Injury, or Death).

#### *Recreational vessels are excluded from the requirements of 46 CFR 4.05 and fall under the reporting requirements of 33 CFR 173.51.*

##### **§ 173.51 Applicability.**

(a) This subpart applies to each vessel operated on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for vessels owned in the United States that:

- (1) Is operated by its operator for recreational purposes; or
- (2) Is required to be numbered under this part.

(b) This subpart does not apply to a vessel subject to inspection under Title 46 U.S.C. Chapter 33 – Commercial Vessels.



§ 173.53 Immediate notification of death or disappearance.

(a) When, as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel, the operator shall, without delay, by the quickest means available, notify the nearest reporting authority listed in appendix A of this part of:

- (1) The date, time, and exact location of the occurrence;
- (2) The name of each person who died or disappeared;
- (3) The number and name of the vessel; and
- (4) The names and addresses of the owner and operator.

(b) When the operator of a vessel cannot give the notice required by paragraph (a) of this section, each person on board the vessel shall notify the casualty reporting authority or determine that the notice has been given.

§ 173.55 Report of casualty or accident.

(a) The operator of a vessel shall submit the casualty or accident report prescribed in § 173.57 to the reporting authority prescribed in § 173.59 when, as a result of an occurrence that involves the vessel or its equipment:

- (1) A person dies.
- (2) A person is injured and requires medical treatment beyond first aid.
- (3) Damage to vessels and other property totals \$2,000 or more or there is a complete loss of any vessel.
- (4) A person disappears from the vessel under circumstances that indicate death or injury.

(b) A report required by this section must be made:

- (1) Within 48 hours of the occurrence if a person dies within 24 hours of the occurrence.
- (2) Within 48 hours of the occurrence if a person is injured and requires medical treatment beyond first aid, or disappears from a vessel; and
- (3) Within 10 days of the occurrence or death if an earlier report is not required by this paragraph.

A report required by § 173.55 must be submitted to:

- (a) The reporting authority listed in appendix A of this part where the vessel number was issued, or, if the vessel has no number, where the vessel is principally used; or
- (b) The reporting authority where the casualty or accident occurred, if it occurred outside the State where the vessel is numbered or principally used.
- (c) When the operator of a vessel cannot submit the casualty or accident report required by paragraph (a) of this section, the owner shall submit the casualty or accident report.

Appendix A = State where vessel is Registered, and US Coast Guard when vessel is federally registered or International.



#### **4. In the event hazardous fluids are leaked into the ocean, does the USCG have all materials necessary to respond on Maui Island? If no, why not?**

The Incident Management and Preparedness Program establish processes and procedures to ensure effective employment of all Coast Guard resources in coordination with partner responders during significant incidents. Through active outreach to Coast Guard program managers, the Incident Management and Preparedness Program assesses, maintains and improves the knowledge, skills and abilities necessary to ensure consistency within the Service, agency interoperability and support to the National Preparedness and Planning Systems as established by Presidential Policy Directive 8. Program efforts ensure response readiness for all threats and all hazards and include exercises and real-world events that cut across all Coast Guard programs.

In conjunction with State and local responders, trustees, and non-government agencies, we respond to Hazardous Material releases and Oil Spill discharges utilizing the National Contingency Plan outlined in 40 CFR Part 300. Specifically, Coast Guard responders follow the regions Area Contingency Plan.

Location of Online Area Contingency Plan: Current Version 2019.

<https://homeport.uscg.mil/port-directory/honolulu>

Commercial entities maintain response equipment in the port Kahului. The U.S. Coast Guard typically uses National Response Corporation, PENCO, Sea Engineering Corporation, and MSRC, to provide initial response equipment. The Coast Guard has access and contracts with major response companies across America to surge in resources should they be needed.

33 CFR Part 155 outlines the oil or hazardous material pollution prevention regulations for vessels. Based on Cargo and size of vessel. The Coast guard ensures compliance of vessels with these regulations through inspection and annual verification of equipment.

<https://www.ecfr.gov/current/title-33/chapter-I/subchapter-O/part-155>

For commercial and recreational vessels, the response effort falls to the Responsible Party (Owner, Operator, or Vessel Representative). If the Responsible Party fails to take appropriate action, then the United States Coast Guard can issue a Notice of Federal Assumption (NOFA) and take over efforts to mitigate Oil and Hazardous Material threats from the vessel using the Oil Spill Liability Trust Fund or the Comprehensive Environmental Response Compensation and Liabilities Act (CERCLA) Superfund. Once federalized the Coast guard will hire an approved Oil Spill Removal Organization (OSRO) to mitigate the discharge or release in accordance with all Federal and State regulations. To qualify as an Oil Spill Removal Organization, or OSRO, organizations must have the equipment, experience, and expertise to respond effectively to an oil spill incident. OSROs often contract with organizations that handle oil, including those working with tank and non-tank vessels and those in coastal areas.

OSRO Classification List

<https://cgrri.uscg.mil/UserReports/WebClassificationReport.aspx>



Additionally, the Coast Guard maintains a response trailer with 1000ft of boom and adsorbent material on Maui and additional response equipment on Oahu to assist in response efforts if needed. Coast Guard Sector Honolulu and the Area Committee are always updating the Area Contingency Plan and are currently engaged in developing Geographic Response Strategies (GRS) for Maalaea Harbor and Lahaina Harbor. A GRS for Kahului already exists in the ACP.

**5. Please describe the USCG's involvement in responding to vessels operating without insurance and vessels moored illegally, if any?**

*Anchoring/Mooring*

There are 11 Special Anchorage Areas (08 located around the Island of Oahu 02 on Hawai'i and 01 near Kauai) and 05 Anchorage Grounds (04 located around the Island of Oahu and 01 near Kauai) federally recognized in 33 CFR Part 110 anchorage areas within the Hawaiian Islands. There are no Special Anchorage Areas or Anchorage Grounds located around the Island of Maui, Moloka'i, and Lanai. The below link outlines location and what is allowed in these Anchorages.

<https://www.ecfr.gov/current/title-33/chapter-I/subchapter-I/part-109>

Typically mooring of vessels outside of the federally listed areas are governed by State, County or Private entities and are typically managed by the regulatory state/county agency or the Harbor Master.

The Coast Guard has authority to develop Federal regulations governing Regulated Navigation Areas (RNA) and Limited Access Areas, Safety Zones, and Security Zones which is outlined in 33 CFR Part 165. The purpose of these regulations is to:

- (a) Prescribe procedures for establishing different types of limited or controlled access areas and regulated navigation areas.
- (b) Prescribe general regulations for different types of limited or controlled access areas and regulated navigation areas.
- (c) Prescribe specific requirements for established areas.
- (d) List specific areas and their boundaries.

Regulated Navigation Areas and Limited Access Areas (33 CFR Part 165 Subpart B): RNA's are water areas within a defined boundary for which regulations for vessels navigating within the area have been established. The District Commander can issue RNA's to control vessel traffic in a place determined to have hazardous conditions. RNA's usually prescribe what type or size of vessels may enter an area or in what manner they must navigate.

RNA's differ from safety and security zones in two respects. First, only District Commanders are authorized to establish RNA's; Coast Guard Captains of the Port may not. Second, safety and security zones are typically transitory in nature, responsive to a temporary safety or security



concern on the water. They are meant to control access to an area; but they could also be used to control access based on compliance with specified temporary operating conditions within the safety or security zone necessary for the purpose of the zone's creation.

RNA's are usually created where a more permanent solution to a safety or environmental concern is required. They principally regulate the operation of vessels permitted inside the area but may establish control of access to an area if such controlled access is necessary.

**Safety Zones (33 CFR Part 165 Subpart C):** Generally, a safety zone is an area of water and/or land designated for a certain time for safety or environmental purposes. To protect human safety or the environment, a safety zone will limit public access to the area. Except for those situations where a safety zone is needed around an Outer Continental Shelf (OCS) facility, safety zones may not extend beyond the twelve-mile territorial sea. Regulations governing the establishment of safety zones on the OCS are located in 33 CFR Part 147.

**Security Zones (33 CFR Part 165 Subpart D):** Generally, a security zone is an area of water and/or land designated for a certain time to protect vessels, harbors, ports and waterfront facilities from sabotage, damage or injury due to subversive acts, accidents or other causes of a similar nature. To provide protection to a vessel or waterfront facility, a security zone will often surround a vessel or a waterfront facility, preventing other vessels from approaching.

#### COFR Requirements/Role of Guarantor

- (a) Before any vessel larger than 300 gross tons can operate in U.S. waters, the owner/operator must obtain a Certificate of Financial Responsibility (COFR) from the NPFC. This COFR is only issued if the owner/operator provides evidence of financial responsibility to pay for removal costs and damages up to the applicable limit of liability (LOL), which is based on the gross tonnage and type of the vessel (e.g., higher limits apply to tank vessels than cargo vessels).
- (b) Owners/operators are permitted to self-insure their financial responsibility requirements, or they may purchase insurance from an OPA guarantor, which National Pollution Funds Center also certifies, who is contractually obligated to pay for oil spill costs.
- (c) If a spill occurs, OPA guarantors are subject to direct action for payment under OPA--except for incidents caused by Responsible Party (RP) willful misconduct or where OPA defenses, described below, are available to the RP.

#### Responsibility of RP to Respond to a Spill

- (a) When an oil spill occurs, the RP is responsible for complete cleanup of the spill up to its limit of liability.
- (b) If the RP does not fully remove the spill (or if the spill is so large that it involves government response), then the FOSC responds to the spill, tracking all costs, most of which are paid from the OSLTF Emergency Fund.



- (c) The RP is later billed for all Federal response costs, which include all costs paid from the OSLTF as well as costs incurred by the agencies themselves, such as Coast Guard personnel and equipment.
- (d) Responsibility of RP to Settle Claims
- (e) The RP likewise has primary responsibility for handling claims, including advertising, adjudication, and payment. The RP may establish a claims office to serve the affected area for spills with large claims potential.
- (f) If the RP does not fulfill this responsibility, the NPFC performs the claims adjudication function and charges the cost to the RP. The government uses the OSLTF Principal Fund to pay these claims.
- (g) Likewise, if the RP denies a claim, the claimant can then submit it to the NPFC for adjudication. If the NPFC pays the claim, it then bills the cost to the RP.
- (h) More information on Spill Response Funding can be found at the NPFC Website:  
<https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/>

We hope this has provided your committee with a better understanding of response operations and Coast Guard authority. We look forward to further developing this important relationship and your engagement within the Hawaii Area Committee in the future. Please do not hesitate to contact us with any future concerns or for additional clarification at 808-842-2600. We stand ready to support the County, People, and Āina of Maui and Hawaii. Aloha.



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