

Phase II report

Tanker Safety Expert Panel finalizes all-encompassing review of Canada's spill response regime

Upon review of the Phase II report of the Tanker Safety Expert Panel — *Requirements for the Arctic and for Hazardous and Noxious Substances Nationally* — one might come to the following conclusions. First, there's not much missing. The three-man panel consisting of Captain Gordon Houston, Mr. Richard Gaudreau and Dr. Michael Sinclair, has drafted an all-encompassing, comprehensive review of prevention, preparedness and response requirements for ship-source spills in the Canadian Arctic and of hazardous and noxious substances (HNS) in Canadian waters. They are to be complimented on an outstanding job. The second conclusion is that, for the most part, Canada is starting with a near blank slate in developing programs and policies that would address both areas of focus.

One additional observation: With an overall price tag for Phase I implementation estimated to be in excess of \$100 million, Phase II would be significantly higher. Significantly. When *BC Shipping News* met with Captain Houston to gain insight into the efforts of the Panel, he did not hazard a guess as to the cost but noted that "you're basically starting from scratch so yes, much higher." He softened the remark by adding that recommendations for the Arctic could be spread over a number of years in tandem with the increase in commercial activities.

Follow up to Phase I

The Panel's first report — *A Review of Canada's Ship-source Oil Spill Preparedness and Response Regime* — offered 45 recommendations to the Federal Government covering areas of prevention, preparedness and response; strengthening the polluter pay principle; leadership and stewardship; communication and engagement; and continuous improvement. While the Panel concluded that "the overall preparedness and response regime is fundamentally sound," the report noted that the last comprehensive review of Canada's spill response regime was 20 years ago with the Brander-Smith Report and that, since that time, resource extraction, port activity and shipping traffic volumes had increased; new technologies and best practices in the field of oil spill response had been developed; and that the review would "set Canada on a course of continuous improvement."

Of the 45 recommendations, the Federal Government accepted 44. The remaining recommendation — that of disbanding Regional Advisory Councils — was rejected, however, the Review had called for its dissolution because it had the impossible task of educating the public and providing advice to government without having any funding in place to do so. That may have changed as Houston believes that a budget has been established for RACs. So in a way, the result is better than the recommendation.

Houston notes that the secretariat who assisted that Panel during their review has morphed into an implementation team and are busy engaging and assisting various government departments. Indeed, many of the recommendations are already being acted upon — to name just two, four pilot regions have been established for Area Response Planning and the Canadian Coast Guard has already proven (with the *MV Marathassa* spill) that they are more than capable of mounting a response using an Incident Command System.

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Phase II at a glance

As per its title, the Phase II report deals with Canada's prevention, preparedness and response requirements for ship-source spills in the Canadian Arctic; and prevention, preparedness and response requirements for ship-source releases of hazardous and noxious substances (HNS) in Canadian waters. It was a pleasant surprise to see that the Panel had elected to include a third section entitled Marine Casualty Management.

The Tanker Safety Expert Panel



Captain Gordon Houston is the former President and CEO of the Vancouver Fraser Port Authority. After a seagoing career spanning three decades, Captain Houston was Harbour Master for the Prince Rupert Port Corporation before joining the Vancouver Port Authority where he held a variety of positions, culminating in his appointment as President and CEO.



Dr. Michael Sinclair is the former Director of the Bedford Institute of Oceanography in Dartmouth, NS. He holds a Ph.D. in Oceanography from the University of California's Scripps Institution of Oceanography. In 2000, Dr. Sinclair was appointed Director of the Bedford Institute and Regional Director of Science, Maritimes Region, for the Department of Fisheries and Oceans.



Richard Gaudreau practised law from 1969 until the end of 2012. His experience includes all activities related to maritime and admiralty law as well as international trade. He has vast experience before Canadian and Québec courts and was an active member of the National Coalition on the Coast Guard Recovery Program and the Canadian Bar Association.

SPILL RESPONSE

In total, the Panel made 43 recommendations — 25 for the Arctic, 17 for HNS, and just one for Section 3. Arctic recommendations were based on an understanding that changes were occurring to sea ice patterns with a resulting increase in economic development activities. With this increased activity, improvements to prevention, preparedness and response need to keep pace. Recommendations are generally split into two categories — one for updating and aligning regulations to reflect international standards and to provide guidance and oversight for ship operators; the other to focus on response operations, risk assessments and activities that would strengthen navigation aids and other preventative measures as well as preparedness and response resources.

In covering HNS, the Panel recommended that a national preparedness and response program should be aligned with international regimes (“but should also integrate additional elements to address current and future Canadian realities”), and specifically, that Canada should accede to the *HNS Protocol* of the IMO’s *International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention)*. Given that there is currently no HNS regime in Canada, the Panel’s recommendations outline a path to a program that would establish such parameters as training and exercises, identification of response resources, contingency planning and access to technical expertise.

The remaining section — Marine Casualty Management — had only one

recommendation: “The Government of Canada should improve the timeliness of decision-making for marine casualties by establishing a centralized marine casualty decision-making authority acting in the public interest, similar to those authorities established in the United Kingdom and Australia.”

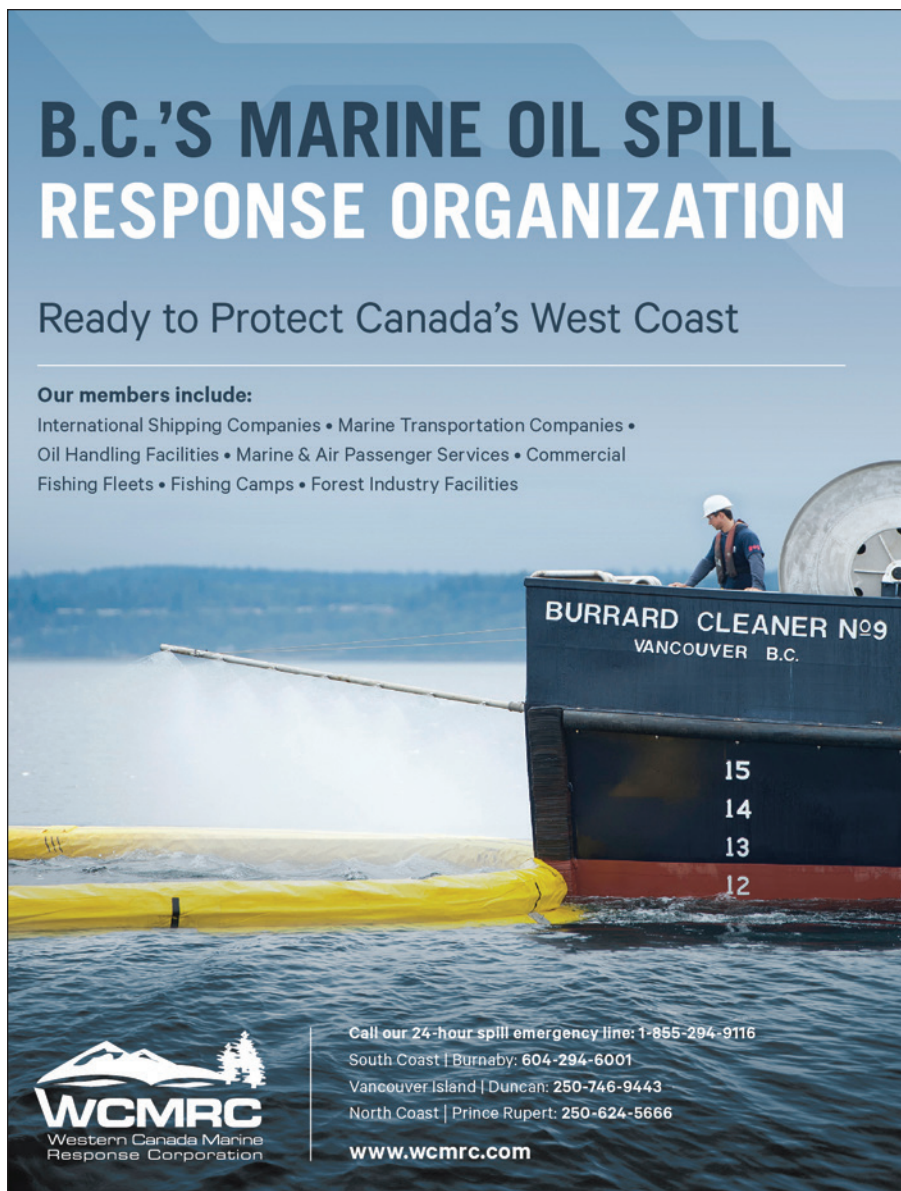
Section 3 first

When it came to Phase II, Captain Houston confirmed that the Panel was given more latitude in their terms of reference and were encouraged to “step outside of their mandate” if it was felt to be important to the overall development of a world-class response regime. Section 3 recommends that Canada establish a position similar to that of the U.K. (i.e., the Secretary of State’s Representative, or SOSREP, who has the power to override any decision related to a marine casualty incident if it is in the public’s interest) or to that of Australia (i.e., the Maritime Emergency Response Commander, or MERCOC, with similar powers).

“We looked at this recommendation from a number of different angles — legal, scientific, etc.,” said Houston, “And we met with Hugh Grant, the current SOSREP in the U.K., and became convinced that it was a good recommendation.” Given the similarities in governance with overlapping regional and federal authorities, the Panel felt that the Australian MERCOC model would be a better fit for Canada.

Houston described a hypothetical scenario in which a stalemate occurs in the process of a spill response. “Those in disagreement will start deferring to their bosses for a decision and eventually it will become a political football while the spill spreads further,” he said. “In these instances, time is of the essence. You need someone that can act in the public’s interest and ensure that decisions can be made and carried out quickly and effectively.” Houston further noted that coastal European countries are considering similar positions with some, such as Denmark, close to implementation.

“The only person the SOSREP answers to is the Secretary of State,” said Houston, “and the only thing the Minister can do is fire the SOSREP. They have a phrase: ‘back him or sack him’ — otherwise the Secretary of State is not allowed to interfere and if the SOSREP deems the public’s interest is not being addressed, he has full authority to step in and direct operations.”



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When meeting with Hugh Grant, the panel heard of an example where the SOSREP used his authority to avoid a significant disaster. A container ship in distress in the English Channel was being refused port of refuge from every country in the world. The vessel started to leak so the SOSREP ordered the vessel to be beached at Lyme Bay, just south of Cornwall. "If it had sunk in the English Channel," Houston said, "it would have had a tremendous impact on the environment and economic activities such as trade, tourism and fishing. So that's when he acts. When the consequences of inaction are a threat to the public interest."

"From my perspective," Houston commented, "this recommendation could provide the best value out of all the recommendations." He was quick to note that his colleagues on the Panel may have different answers to the same question.

The Arctic

In describing the extent of research and review the Panel undertook to reach their recommendations, Captain Houston noted that Canada is one of the leaders in addressing ship-source spills in the Arctic. "Of the Arctic Council (Canada, Denmark, Finland, Iceland, Greenland, Sweden, U.S., and Russia), Denmark, Finland, Greenland and Sweden have done little to address the issue," he said. "The U.S. is more focused on the south except for Valdez and Anchorage where community response models provide a good base for response."

And while there are collaborative agreements in place and a guideline on how a joint spill response regime could work, "the pamphlet is not about how to do it, but rather what could — or should — be done."

And while the recommendations are not listed in terms of priority, Houston felt that the first three — dealing with charting and navigation — would be the key priorities for the Government's initial attention. However, the big problem is the cost. "To do the whole thing by today's modelling standards would be very expensive," said Houston. "The Northern Corridor Initiative is where they should be focussing. A lot of the charts through the Northwest Passage are already updated and it's not the regular commercial traffic that would benefit but rather the voyages of opportunity — environmental or niche cruises as well as regular cruises. Some



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of the charts in that area haven't been looked at since the 18th century."

Other issues — such as proof of competency for Ice Navigators, pilotage requirements, the lack of a Responding Organization (RO) and the availability of response resources — are identified and addressed however Houston expressed concern that adequate resources would be needed to ensure the Canadian Coast Guard — identified as the lead for many of the recommendations — was not restrained in their efforts. "As with other government departments, CCG has seen several cuts to their budget," he said. "They're at the stage now where if they have to respond

to a spill, the costs will come out of the year's budget and it can take two to three years to get it back. It's hampering them."

Before moving away from the subject of the Arctic, Captain Houston had one last comment: "We met with a lot of citizens and a lot of groups during our investigations," he said, "and I don't think there is anywhere in Canada where we saw such a willingness and earnestness to get things done. They were eager to help and offered great support to our work. It was greatly appreciated."

HNS

At the surface, this topic for discussion is short. Aside from some international regulations that provide guidance, there is no marine HNS response regime in place in Canada and we need to start working on one. Simple enough. Yet Houston points out a few realities that will be difficult to resolve.

"The problem is that there are over 6,000 items on the HNS list," Houston said. "Spills will either float, mix or sink or evaporate. HNS rarely floats; heavy metals will sink; gases and some liquids will evaporate but most HNS will mix with the water. The actual bit you can do anything about is really quite small. Once it's diluted in the water, all you can do is monitor to assess the direction of travel and the rate of dilution."

"The other problem is that unless it's carried in bulk, it's going to be very difficult to mount an effective response," Houston said as he explained that if the HNS is carried within a container, on a container ship holding thousands of other containers, and no one knows where the specific container holding the HNS is located, it could potentially be a big problem. If the vessel sinks, hundreds of containers could be floating and responders would have no idea where they had been stowed.

"When Hugh Grant, the current SOSREP, made the decision to beach the container ship in Lyme Bay, they had to take all the containers off one by one because the bills of lading didn't tell them anything. The information is there but not in a format that's useful for a response operation. The bills of lading will say something like '45 containers of Nitric Acid. Weight 450 tonnes' but not where it is stowed. The Stowage Plan will tell you where a container is stowed, but not what is in it. Marrying this information for up to 15,000 containers must be done manually." This is reflected in the Panel's recommendations to Transport Canada and CCG.

Houston further noted that Canada was not alone in trying to resolve this problem. "The *HNS Protocol* within the *OPRC Convention* has very broad terms and a country that wants to accede to it only has to have an HNS response system in place. The actual system is not defined." Noting that only about 12 countries have actually acceded to the Convention, Houston says Canada is ahead in terms of addressing the issues. "Implementation of our recommendations would create a base of a system," he said.

Conclusion

For Houston, effective regimes for both the Arctic and HNS will rely heavily on prevention while preparedness and response capabilities are being developed. And, like the conclusions reached in Phase I, Phase II calls for more resources to allow CCG to take a leadership role in developing an effective regime.

So what now? Now that the Panel has fulfilled their mandate and provided their recommendations, it is up to government to gather feedback, gain consensus on accepted recommendations, and develop plans for implementation. And, oh yeah, allocate a budget. **BCSN**

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