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Supreme Court Decides *Exxon Valdez* Case

Decision Limits Punitive Damages in Maritime Cases

On June 25, the Supreme Court issued its long-awaited decision in the *Exxon Valdez* case arising out of the 1989 oil spill in Prince William Sound, AK. Exxon Shipping Company brought the appeal to the Supreme Court following lengthy proceedings in lower federal courts. AWO had joined with a number of other maritime organizations in an *amicus curiae* brief in support of the Exxon appeal and seeking clarification of several issues related to punitive damages.

The lawsuit against Exxon, which began in 1993 by various parties injured as a result of the Prince William Sound spill, had resulted in the largest ever punitive damages awarded by a U.S. Court. The U.S. District Court, after a jury trial, awarded plaintiffs over \$500 million in compensatory damages and \$5 billion in punitive damages. A subsequent review by the U.S. Court of Appeals for the Ninth Circuit reduced the punitive damages award to \$2.5 billion.

Exxon appealed to the Supreme Court on three issues. The first was whether a company could be held liable at all for punitive damages for acts committed by its agent – the so-called “vicarious”

liability. The second question was whether punitive damages are implicitly barred by federal statutes. Finally, Exxon claimed that the \$2.5 billion in punitive damages was excessive.

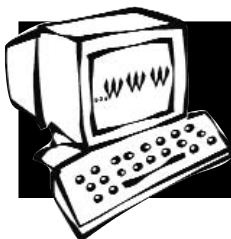


On the first question – punitive damages for “vicarious” liability – the Court was evenly divided and did not reach a decision on this question. Justice

Alito recused himself from this case because he has personal holdings of Exxon stock. The Supreme Court’s failure to reach a decision on this point does not change the Ninth Circuit opinion allowing punitive damages for cases in that circuit, but there is a conflict on this issue among the various federal circuit courts that will need to be resolved in the future.

The Court did conclude that federal statutes as they existed at the time of the *Exxon Valdez* spill did not bar punitive damages awards in maritime pollution cases. It is important to note, however, that the Court was not considering the Oil Pollution Act of 1990 (OPA 90) in its opinion because that statute was enacted after the *Exxon Valdez* spill. At least one federal circuit court has held that the regulatory scheme of OPA 90 is so comprehensive that it does not permit punitive damages under general maritime law.

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Supreme Court Decides *Exxon Valdez* Case

(continued from page 1)



The Supreme Court did find that the punitive damages awarded against Exxon Shipping Company were excessive as a matter of maritime common law. The Court went on to rule that under general maritime law, punitive damages should not exceed the amount of compensatory damages awarded. The Court stated that the maximum punitive damages in this case should be no more than \$507.5 million – the amount of compensatory damages awarded – and not the \$2.5 billion awarded by the Ninth Circuit. The case was sent back to the Ninth Circuit for action consistent with the Supreme Court opinion, including reduction of the punitive damages award.

If you have questions about the *Exxon Valdez* case or the Supreme Court ruling, please contact Boyd Hollingsworth at (703) 841-9300, extension 258, or via email at bhollingsworth@vesselalliance.com.

Coast Guard Proposes to Withdraw TLPM Regulations

On June 30, the U.S. Coast Guard proposed to withdraw its regulations for Tank Level or Pressure Monitoring (TLPM) devices on single-hull tankers and tank barges due to the absence of available cost-effective TLPM technology. The Coast Guard was originally required by the Oil Pollution Act of 1990 to establish minimum standards for TLPM devices and requirements for their use. While the Coast Guard published a final rule with stringent TLPM standards in 2002, it suspended implementation of the requirements because devices meeting the standards did not exist. The suspension has twice been extended, most recently via a May 5 notice (see May 9 *AWO Letter*) that suspended implementation of the requirements until May 2011.

Upon publication of that rule, AWO organized a coalition of domestic and international tank vessel owners to support a legislative change that would pave the way for the Coast Guard to rescind the TLPM regulations. In 2004, Congress passed legislation that gave the Coast Guard discretion not to require TLPM devices, and also directed the Coast Guard to conduct a

study on alternatives to such devices. The 2005 study found that “the ratio of cost versus effectiveness for TLPM devices is greater than it was when the

original regulations were published in 2002,” and that alternatives to TLPM devices would be no more effective or cost-effective than the devices themselves.

Based on that study, and on the absence of new information to indicate that reliable

and cost-effective TLPM devices are now available, the agency is now proposing to withdraw the rule. Comments are due August 29; AWO plans to submit comments strongly supporting the Coast Guard’s action and encourages member companies operating tank barges to do the same. To read the rule, click [here](#). For more information, please contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.



Welcome, New Carrier Member!

Talen’s Maine & Fuel
P.O. Box 1040
Lake Arthur, LA 70549

Rep: Chris Scalisi
Corporate Environmental,
Health and Safety
Compliance Manager

AWO Testifies at EPA Public Meetings, Requests Feedback on Draft NPDES Permit

On June 24 and 26, AWO testified at public meetings held by the Environmental Protection Agency (EPA) to educate the public, and solicit feedback, on the recently-proposed National Pollutant Discharge Elimination System (NPDES) general permit for ballast water and other vessel discharges. Testifying for AWO at the June 24 meeting in Portland, OR, was Jason Lewis, AWO Vice President - Pacific Region; testifying for AWO at the June 26 meeting in Chicago, IL, was Del Wilkins, Canal Barge Company.



Testimony by Mr. Lewis and Mr. Wilkins focused on the broader issue of the NPDES permitting program being the wrong place to regulate vessel discharges because the program was designed for stationary, not mobile, sources. AWO's testimony also acknowledged the fact that a federal court had issued an order vacating EPA's longstanding exemption of

vessels from the NPDES permitting program, and that EPA was involuntarily developing NPDES regulations for vessels while appealing the decision.

In order to develop specific comments on the proposed permit to present at a July 21 public hearing in Washington, D.C., and to

submit in writing to the docket by the August 1 deadline, AWO sent a detailed summary of the rule to its members via email on June 30, with a request to send feedback to AWO by July 11.

To view the NPRM, please click [here](#). To view the permit, please click [here](#). To view the permit fact sheet, please click [here](#). If you have comments, questions, or points that should be included in AWO's comments, please contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.

Important Dates and Reminders

..... at a glance

For more information, please contact Hermoine Wellman at (703) 841-9300, extension 291, unless otherwise noted.

July 17-18: Southern Region Summer Meeting, Grand Hotel Resort, Point Clear, AL

July 23-24: Interregion Safety Committee Summer Meeting, Sheraton Westport Plaza Hotel, St. Louis, MO

August 13-14: Midwest and Ohio Valley Regions Joint Summer Meeting, The Palmer House Hilton, Chicago, IL

August 20-21: Atlantic Region Summer Meeting, The Seamen's Church Institute, New York, NY

September 11: Pacific Region Summer Meeting, Salty's on Alki, Seattle, WA

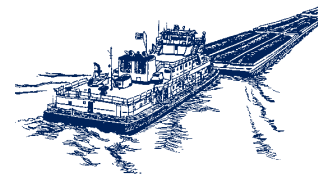
TWIC Enrollment Update

TWIC enrollment will begin at the following ports:

- **July 8:** Dutch Harbor, AK
- **July 9:** Evansville, IN
- **July 10:** Lafayette, LA
- **July 15:** Ketchikan, AK
- **July 16:** Eureka, CA
- **July 23:** Riverhead, NY
- **July 30:** Lindenhurst, NY
- **August 13:** Stockton, CA

For the complete up-to-date TWIC Quarterly Deployment Plan, please click [here](#).


Coast Guard to Enforce Non-Tank Vessel Response Plan Regulations



On June 23, the U.S. Coast Guard published a notice stating that, on August 22, it would begin enforcing the requirement for owners/operators of nontank vessels to submit a nontank vessel response plan. The rule applies to all nontank self-propelled vessels over 400 gross tons operating in U.S. waters, including towing vessels.

While the Coast Guard and Maritime Transportation Act of 2004 required the Coast Guard to complete a rulemaking for these response plans, the Coast Guard was unable to do so by the August 2005 deadline. Therefore, it published Navigation and Vessel Inspection Circular 01-05 to provide interim guidance to non-tank vessel operators affected by the new requirement, and thousands of owners/operators have since submitted response plans for their affected vessels voluntarily. In the wake of the 2007 *Cosco Busan* oil spill, Congress strongly urged the Coast Guard to complete

this rulemaking, despite the current Coast Guard rulemaking backlog. While the rulemaking is still underway, the Coast Guard will begin enforcing the requirement by checking vessels for response plans before they enter U.S. ports, focusing on those vessels measuring more than 1,600 tons due to their heightened oil pollution risk.

Comments on the Coast Guard notice are due July 23. To read the notice, please click [here](#). For a copy of NVIC 01-05, which contains specific guidance on how to prepare and submit a nontank vessel response plan, click [here](#). For more information, please contact Jennifer Carpenter or Mary McCarthy at (703) 841-9300, extensions 260 or 254, respectively, or via email at jcarpenter@vesselalliance.com or mmccarthy@vesselalliance.com.

House Appropriations Committee Moves FY09 Energy and Water Bill Inclusion in Continuing Resolution Seen as Likely

On June 24, the House Appropriations Committee voted to report the Energy and Water Development Appropriations bill for Fiscal Year 2009 (FY09) which begins on October. Among other matters, the bill provides the funding for the U.S. Army Corps of Engineers and its various programs. The Committee included \$33.3 billion in the bill – \$2 billion more than requested by President Bush and \$2.4 billion more than was appropriated for FY08.

The Corps of Engineers received a total of \$5.3 billion in the House bill, \$600 million more than the administration's request but \$250 million less than last year's bill. The Construction General account received \$2.07 billion for FY09, \$600 million more than the President requested, but \$219 million below the level made available in FY08. Overall, capital improvement and major rehabilitation projects

received a total of \$309 million for FY09, compared to \$419 million for FY08. A smaller amount of funding would come from the Inland Waterways Trust Fund under the bill reported by the House Appropriations Committee. The committee "suspended" withdrawals from the Trust Fund to pay for half of major rehabilitation projects, even though those projects

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Congress to Adjourn for Independence Day

On June 27, Congress adjourned for the Fourth of July recess period. Prior to adjourning, the House and Senate reached agreement on a Supplemental Appropriations bill for Fiscal Year 2008. The bill provides \$165 billion for military funding in Iraq and Afghanistan.

The measure also includes \$21.1 billion in domestic spending, including \$2.7 billion to address the Midwest flooding,



\$5.8 billion for levee construction in New Orleans, and \$300 million in operation and maintenance funding for the U.S. Army Corps of Engineers.

Congress is scheduled to reconvene on July 7, and is scheduled to recess again on August 8 for the August summer recess and the Democratic and Republican Presidential conventions.

House Appropriations Committee Moves FY09 Energy & Water Bill

(continued from page 4)

were funded at full capability levels. Major rehabilitation projects are not required by law to have the same 50/50 cost share that is required for capital improvement projects, although the practice in recent years has been to provide 50 percent of major rehabilitation costs from the Trust Fund.

The committee expressed concern about Inland Waterway Trust Fund revenues, and suggested that the administration work with authorizing committees to address the revenue issue. The Committee also expressed its opposition to any change in the cost share formula and said that once the Trust Fund revenue issue was addressed, that it would return to the 50/50 cost share for capital improvement and major rehabilitation projects.

Consideration of the Energy and Water Development bill by the full House has not been scheduled. The Senate Appropriations Subcommittee is scheduled to consider its version of the Energy and Water Development legislation on July 10, but final action on the bill is uncertain. It is widely expected that most FY09 appropriations bills will not be enacted into law before the beginning of the fiscal year on October 1, and that funding will be through a “continuing resolution” providing moneys for most federal agencies into the fall or perhaps into next year.

If you have questions about the Energy and Water Development appropriations bill, please contact Boyd Hollingsworth at (703) 841-9300, extension 258, or bhollingsworth@vesselalliance.com.

CEMS Training Opportunities

The Crew Endurance Management System (CEMS) is a system for managing risk factors in maritime work environments that can lead to human error and performance slumps. The Coast Guard and AWO have been working together to help companies implement the principles of CEMS. In this space, AWO will publish details of CEMS training opportunities around the country. For further information on CEMS training opportunities, please contact LCDR Vivianne Louie, U.S. Coast Guard, at (202) 372-1358.

DATE	LOCATION	CONTACT
July 15-16	Salyers Solutions, LLC Norfolk, VA	Jo Ann Salyers (Instructor) (504) 236-4962 salyers_solutions@hughes.net
August 7-8	Salyers Solutions, LLC New Orleans, LA	Jo Ann Salyers (Instructor) (504) 236-4962 salyers_solutions@hughes.net

Order Your Lifelines Brochures!

AWO urges recreational boaters to use special caution when operating around commercial vessels and to educate themselves on the constraints under which those vessels operate. This awareness can arm recreational boaters with the best protection against danger and could save lives.

AWO’s popular brochure, entitled “Lifelines: Safety Tips That Could Save Your Life,” delivers important safety tips to recreational boaters in an easy-to-read, user friendly format. Have you ordered your brochures yet?

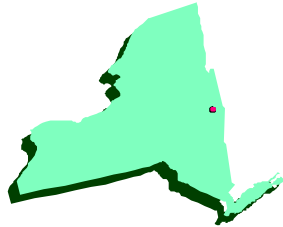


To request copies of the brochure, please email your request to Susan Miller, AWO Government Affairs Assistant, at smiller@vesselalliance.com. This brochure is free; however, there is a cost for shipping. Order your brochures today!

Atlantic Region

NY State Legislature Passes PBT Exemption

At the end of the New York Legislative session on June 24, the bill exempting tugboat companies from paying the petroleum business tax (PBT) was voted through the legislature overwhelmingly. It passed the Senate (S. 6852a) by a vote of 61 to 1 and the Assembly (A. 10044a) by a vote of 137 to 3.



Both bills are identical and reflect technical changes that were reviewed by the Department of Taxation and Finance before each house voted on the bills. The changes address and correct concerns outlined in the Spitzer Administration veto from last year.

The newly-passed bill's Senate sponsor, Senator Andrew Lanza (R-Staten Island), will decide when the bill is sent to Governor Patterson for his consideration, which is not expected to occur until the end of the summer. The Assembly sponsor, Assemblyman Michael Cusick (D-Richmond), continues to promote the legislation with Democratic Governor David Patterson, who is a former state senator. AWO sent a letter from New York tugboat operators to the Governor on July 3 explaining how the PBT hurts the New York economy and is unfair to local tugboat and barge operators.

For more information, please contact Chris Coakley at (703) 841-9300, extension 297, or via email at ccoakley@vesselalliance.com.

AWO Member to Address EPA Faster Freight - Cleaner Air Conference

On July 9, as part of the EPA-sponsored Faster Freight - Cleaner Air (FFCA) East Coast conference in New York, NY, at the Javits Convention Center, AWO Member Susan Hayman of Foss Maritime will serve as a panelist at the conference's marine breakout session. Ms. Hayman will deliver a presentation on the first hybrid ship assist tugboat. The Faster Freight - Cleaner Air East Coast conference showcases multi-modal resources to improve operations and reduce air emissions from the goods movement industry while creating healthy communities. For more information on this event, please contact Chris Coakley at (703) 841-9300, extension 297, or via email at ccoakley@vesselalliance.com; or click [here](#).



EPA Incorporates AWO Member Comments into No Discharge Area Petition for Boston Harbor

On July 6, AWO submitted comments to the Environmental Protection Agency (EPA) No Discharge Area (NDA) petition from the Commonwealth of Massachusetts for Boston Harbor. In its comments, AWO cited the Massachusetts Office of Coastal Zone Management (CZM) for its successful effort to contact local AWO



members to consider the capabilities of pumpout boats operated by both the City of Boston and the AWO member companies themselves. CZM was responsive to AWO member requests for where adequate pumpout facilities should be located. In the Commonwealth of Massachusetts petition, two AWO members are listed as offering commercial pumpouts in Boston Harbor: Boston Towing & Transportation and Constellation Maritime Company. As a result of early outreach by AWO to CZM, the Massachusetts petition represents the first time a state has reasonably considered the operational realities for pumping effluent from tugboats and ATBs and incorporated those realities into a common-sense NDA petition. For more information about NDAs or the recent comments, please contact Chris Coakley at (703) 841-9300, extension 297, or via email at ccoakley@vesselalliance.com.

Atlantic Region

Atlantic RQSC Addresses Hurricane Planning, Casualty Data

The Atlantic Regional Quality Steering Committee (ARQSC) met on June 3 in Portsmouth, VA. In this highly productive meeting, AWO and the U.S. Coast Guard addressed safety and operational concerns related to the 2008 Atlantic Region hurricane season, navigation channel encroachments in the Coast Guard Fifth and Seventh Districts, industry/agency communication and casualty data analysis. The meeting was well attended by the Coast Guard, AWO and guests from the Norfolk District Army Corps of Engineers.

With respect to 2008 hurricane season preparation and communication, the committee approved the Coast Guard-AWO Outreach Contacts List and agreed that AWO would participate in Coast Guard District-level hurricane stakeholder conference calls when appropriate during the hurricane season. These calls will mirror the Seventh District hurricane exercise outreach by including phone conferences and email distribution of a port conditions PowerPoint slide when available. The committee also agreed to incorporate Atlantic Region port

authorities and terminals in hurricane season communications to ensure consistency and cooperation during hurricane response and recovery procedures.

With assistance from the Norfolk District Army Corps of Engineers Regulatory Branch, the ARQSC discussed navigational channel encroachments (particularly at bridge approaches and narrow channels) that impede safe navigation in already-congested commercial waterways. In order to address this safety challenge, the committee will reach out to the appropriate senior South Atlantic and North Atlantic Army Corps Division leadership to seek non-regulatory improvements to the permit review process, harbor line and setback policies. AWO has also contacted the Army Corps of Engineers headquarters to request Army Corps participation in the RQSC and received a favorable response. The successful inclusion of the Army Corps of Engineers into the RQSC will provide the committee the opportunity to thoughtfully address the cycle of decreased dredging and increased navigational encroachments

which reduces commercial traffic and safety on the waterways.

During the meeting, the committee reviewed the newly-revised Fifth District Waterways Management Web site that reflects input recommended by the Port Coordination Quality Action Team (QAT). The active site represents a template for other Districts to provide all waterways users with essential, easily-accessible information on waterways conditions and contacts. The committee directed the Port Coordination QAT to finalize its report emphasizing how to sustain the management of District-wide information in an online format that provides waterways stakeholders with aggregate information that is unclassified, user-friendly, current and reliable.

The committee instructed the Casualty and Fatality Data Analysis QAT to move forward with the methodology proposed by LCDRs Scott Higman and Chris O'Neal to analyze Coast Guard Marine Information for Safety and Law Enforcement (MISLE) incident data. AWO members will utilize the AWO Coastal Safety Committees to gather lessons learned on incidents which will be incorporated into an industry/agency analysis by the QAT. The Coast Guard will provide updated Coast Guard-AWO Safety Partnership statistics on Atlantic Region incidents prior to the next QAT meeting. The QAT plans to complete its report by the next meeting of the Atlantic RQSC, tentatively scheduled to occur in St. Louis on November 12. For further information on the work of the ARQSC or its QATs, please contact Chris Coakley at (703) 841-9300, extension 297, or via email at ccoakley@vesselalliance.com.

Atlantic Region Summer Meeting to Be Held at Seamen's Church Institute

Please mark your calendars for the Atlantic Region Summer Meeting on August 20-21 in New York at the Seamen's Church Institute. The meeting will address the emerging issues of air emissions and ballast water management, as well as existing changes in security policies and the ongoing development of towing vessel inspection regulation. The meeting will begin on Thursday, August 21 at 8:00 a.m. and will conclude at noon. There will be a social dinner on Wednesday evening, August 20 at 6:00 p.m. at a local restaurant. The cost of the dinner will be shared among all dinner attendees. If you have questions, please contact Hermoine Wellman at (703) 841-9300, extension 291, or hwellman@vesselalliance.com.



Pacific Region

Comments on Minor Amendments to California Harbor Craft Regulation Solicited

The California Air Resources Board (CARB) officially opened the 15-day comment period on three amendments to the harbor craft regulation that impact the tugboat and barge industry. The amendments are as follows:



2010. The phased compliance schedule will require that a portion of the fleet be repowered each year and that all repowers be completed by 2013. This would allow up to four years for the repowers to be completed.

Vessel Owners or Operators with Multiple Vessels Requiring Repower in Either 2009 or 2010

The original proposal provides a one-year compliance extension for vessel owners or operators with multiple vessels requiring engine compliance in a single year. The amendment will include a phased compliance schedule to be provided for owners and operators with multiple vessels requiring compliance in either 2009 or

Vessel Owners or Operators Compliance Reporting

The original proposal contained language requiring each owner or operator to submit a Compliance Plan to the Executive Officer by February 28, 2009, that described in detail the plans to meet the requirements of the regulation. The amendment will require that the report be submitted by February 28 of the compliance year.

“Engine’s Model Year + 5” Method of Determining Engine’s Model Year

The amendment will remove the +5 method of determining an engine’s model year from vessels located in the South Coast Air Quality Management District.

AWO submitted comments on the amendments on July 3. AWO’s comments refer to its previously-submitted comments on October 24 and point out that CARB has still not addressed industry concerns. AWO has been informed that the amendments will be adopted into the harbor craft regulation as written or with only small technical changes.

For more information, please contact Jason Lewis at (206) 245-5758, or via email at jlewis@vesselalliance.com.

Midcontinent Office

Secretary Woodley Signs MRRIC Charter

On July 1, U.S. Army Corps of Engineers Assistant Secretary of Civil Works John Paul Woodley (right) signed the Missouri River Recovery Implementation Committee (MRRIC) charter. The group will hold its first meeting by October 1. The group’s mandate is to advise federal agencies on how to recover threatened and endangered species in the Missouri River basin. MRRIC members will provide recommendations that will consider all uses of the river. Information on how to apply for the group will be available in the next 30 days.



Pacific Region***Pacific Region Summer Meeting is Fast Approaching***

The Pacific Region Summer Meeting has been scheduled for September 11 from 8:00 a.m. to noon with registration starting at 7:30 a.m. The meeting will be held at Salty's on Alki Restaurant, 1936 Harbor Avenue SW, Seattle, WA. Issues that are critical to both the regional and national tugboat, towboat and barge industry will be discussed. Watch for future articles that will include guest speakers and more specific agenda items. This is going to be an informative and interesting meeting that you won't want to miss! For more information, please contact Jason Lewis at (206) 245-5758, or via email at jlewis@vesselalliance.com.

Midcontinent Office**New Commander Arrives at Sector Lower Mississippi**

On June 20, CAPT Mike Gardiner assumed command of Sector Lower Mississippi from CDR P.J. Maguire. CAPT Gardiner previously served on the Western Rivers as Executive Officer of Marine Safety Office in Memphis, TN, and as Alternate Captain of the Port and Acting Officer in Charge. RADM Joel Whitehead, Eighth District Commander, has worked within the Coast Guard to ensure that new commanding officers on the Western Rivers have previous brown water experience.



CAPT Gardiner was most recently the Deputy Commander of Sector New York, the Coast Guard's largest operational field command on the East Coast. He has also served in Alaska from 1991 to 1998 in a variety of positions and in 2001 as the Chief, Marine Safety Analysis and Policy Branch in Cleveland, OH, for the Ninth District.

Sector Lower Mississippi, commissioned in 2005 in Memphis, TN, encompasses over 2,200 miles of the Western Rivers, including two major rivers and six tributaries. The sector has 154 active duty personnel and 50 reservists.

CDR Maguire will be the new Chief of Prevention for District Eleven in the San Francisco Bay area.

Midcontinent Office**AWO Comments on Coast Guard's Proposed Temporary RNA on Chicago Sanitary and Ship Canal**

On June 27, AWO submitted comments to the U.S. Coast Guard in response to its proposal to establish a temporary regulated navigation area (RNA) for the Chicago Sanitary and Ship Canal near Romeoville, IL, from June 30 to August 15. The RNA, which would affect all vessels transiting through the electrical dispersal Barrier IIA area, will allow the U.S. Army Corps of Engineers to repair Barrier I electrodes that are designed to prevent the movement of invasive species. Red-flagged tows will also be required to use a bow boat as they transit the area.



In its comments, AWO requested three changes and/or clarifications to the RNA:

- 1) A decrease in the period of activation to 30 days;
- 2) Outreach by the Coast Guard and Corps to the maritime industry on the availability, requirements, and process for using bow boats; and,
- 3) Clarification that the previous RNA would once again be effective when this RNA expires.

For more information, please contact Lynn Muench or Mary McCarthy at (314) 446-6464 or (703) 841-9300, extension 254, respectively, or via email at lmuench@vesselalliance.com or mmccarthy@vesselalliance.com.