



801 North Quincy Street  
Suite 200  
Arlington, VA 22203

PHONE: 703.841.9300 Ext. 260  
EMAIL: [jcarpenter@americanwaterways.com](mailto:jcarpenter@americanwaterways.com)

Jennifer A. Carpenter  
Executive Vice President & Chief Operating Officer

September 23, 2016

Captain Joseph B. Loring  
Chief, Office of Marine Environmental Response Policy  
U.S. Coast Guard  
2703 Martin Luther King Jr. Avenue SE  
Washington, DC 20593-7000

Re: Draft Update to Alternative Planning  
Criteria (APC) National Guidelines  
(Docket Number USCG-2016-0437)

Dear Captain Loring:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO members account for approximately 80 percent of the barge tonnage and two-thirds of the towing vessel horsepower in this critical industry segment, moving cargoes essential to the American economy on the inland rivers, the Atlantic, Pacific and Gulf coasts, and the Great Lakes. Tugboats also provide essential services, including shipdocking, tanker escort and bunkering, in ports and harbors around the country. On behalf of AWO's members, thank you for the opportunity to comment on the U.S. Coast Guard's draft update to the Alternative Planning Criteria (APC) National Guidelines.

AWO is committed to being a leader in marine safety, security and environmental stewardship, and to working in partnership with the Coast Guard to advance these shared objectives. We continually seek to manifest this commitment through the development and continuous improvement of the AWO Responsible Carrier Program (RCP), the safety management system with which all AWO members must comply as a condition of association membership; our active engagement in the Coast Guard-AWO Safety Partnership, which has sponsored more than 40 Quality Action Teams and other cooperative efforts to improve industry safety since its inception 20 years ago; and our constructive engagement in the regulatory development and policy-making process to assist the Coast Guard in producing sound, effective regulations and standards affecting our industry, including the recently finalized towing vessel inspection regulations under 46 CFR Subchapter M.

AWO members are proud to be part of an industry that is the safest and most efficient of any surface transportation mode, and are dedicated to building on the natural advantages of marine transportation to achieve the goal of zero harm to human life, to the environment and to property as we transport the nation's waterborne commerce. Since the enactment of the Oil

Pollution Act of 1990, our industry, with the active partnership of the Coast Guard, Congress and our industry's shipper-customers, has been engaged on a safety journey marked by private sector leadership – the AWO RCP, the Coast Guard-AWO Safety Partnership, rigorous customer vetting of companies and vessels – and responsible public policy-making, from OPA 90 to Subchapter M. That journey has produced meaningful results: a 2012 Coast Guard Report to Congress credited the combination of these private and public sector initiatives with producing a dramatic decline in oil spills over the previous two decades, directly attributing a 1997 downward shift in oil spill volumes to the implementation of the RCP. Through the Safety Partnership, the Coast Guard and AWO have continued to explore ways to further reduce oil spills, most recently, in 2015, by developing a compendium of best practices to prevent non-casualty operational oil spills from towing vessels.

We have particular interest in the updated APC Guidelines because AWO is the administrator of an APC for emergency towing for inland tank barges and towing vessels over 400 GRT operating within the Eighth Coast Guard District and limited areas within the Ninth Coast Guard District, which has functioned successfully since its initial acceptance in 2010. In addition, AWO members who operate tank barges in western Alaska utilize the Alaska Petroleum Distributors and Transporters (APD&T) APC for oil spill response planning and equipment requirements, which was initially accepted in 1993 and since that time has demonstrably reduced the incidence and environmental impact of oil spills in that region. We offer the following comments and suggested revisions to the draft APC Guidelines.

#### Request for Public Meeting in the Eighth Coast Guard District

AWO appreciates the Coast Guard's effort to ensure adequate consultation with stakeholders on the draft update to the APC Guidelines by extending the comment period and by holding a public meeting in the 17<sup>th</sup> Coast Guard District. AWO understands that the Coast Guard has also made presentations to industry in the 14<sup>th</sup> Coast Guard District. **Due to the potential for the draft update to impact the inland vessel owners and operators who utilize the AWO APC, AWO respectfully requests that the Coast Guard hold a public meeting in the Eighth Coast Guard District to provide the affected community with an opportunity to discuss the APC Guidelines with the agency.**

#### AWO APC for Emergency Towing in the Eighth and Ninth Coast Guard Districts

The AWO APC is premised on the longstanding and successful mutual assistance approach to emergency response that is a hallmark of the tugboat, towboat and barge industry. "For decades, inland towing vessel operators have consistently and effectively relied on the assistance of others in the industry in responding to collisions, groundings, loss of steering or power, barge breakaways and other vessel emergencies," the AWO APC begins.

When the Coast Guard published its requirements at 33 CFR 155.4030(e) for vessel owners and operators to identify emergency towing resources in their vessel response plans (VRPs) in 2008, AWO recognized that the regulations were written without an understanding of inland tank barge and towing vessel operations. As stated in the AWO APC, the requirements for

vessel owners and operators to “identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessel(s)” that are “capable of operating in environments where the winds are up to 40 knots” are inappropriate for inland operations for several reasons, including the facts that: an inland towing vessel of at least 800 horsepower, the smallest towing vessel in routine service on the inland waterways, is capable of pushing the largest inland tank barge, loaded with cargo, or of assisting a towing vessel over 400 GRT; bollard pull is not relevant to inland towing vessels engaged in emergency towing, which do not pull, but rather push, the barges that they tow and are not equipped with towing bits or winches; and inland towing vessels are capable of operation without regard to wind velocity. Moreover, there are no towing vessels stationed on the inland waterways for the purpose of emergency towing, and it is neither possible nor desirable to create a fleet of stand-by vessels. However, this is not a problem because, as the AWO APC concludes, “the density of inland towing vessel operations within COTP zones in the Eighth Coast Guard District, and specified areas of the Ninth Coast Guard District, is sufficient to ensure availability of emergency towing vessels to respond on a mutual assistance basis.”

Due to the inappropriateness of 33 CFR 155.4030(e) for inland operations and the infeasibility of compliance, AWO is concerned by language in the draft update to the APC Guidelines that indicates that the Coast Guard considers compliance with the national planning criteria (NPC) to be the eventual goal in all regions and for all response resources. Most notably, in draft Section 9, Discussion, the Coast Guard writes, “The intent of an APC is to identify and address resource and capability gaps until private industry response resources are sufficiently built up to meet the NPC.” Later in the same section, the Coast Guard writes that “the ultimate goal is to ensure full compliance with the NPC.”

AWO respectfully disagrees that the intent of an APC is to serve as a stop-gap measure until full compliance with the NPC may be achieved. 33 CFR 155.1065(f) states, “When the owner or operator of a vessel believes that national planning criteria contained elsewhere in this part are inappropriate to the vessel for the areas in which it is intended to operate, the owner or operator may request acceptance of an alternative planning criteria by the Coast Guard.” The regulations there and at 33 CFR 155.5067 do not specify that APCs are only acceptable in areas where the NPC cannot be met, and only until the NPC can be met. A vessel owner or operator can request Coast Guard consideration of an APC under any set of circumstances in which he or she believes that the NPC are inappropriate.

In the case of the Western Rivers, AWO does not believe that attempting to achieve full compliance with the NPC by working to establish a fleet of dedicated vessels stationed throughout the system for the purposes of providing emergency towing is necessary or desirable. In addition to the impracticability of funding and building such a fleet, the success of the AWO APC has demonstrated that the mutual assistance approach to emergency towing is working in this geographic area. This is a situation, and not the only one, in which an APC provides a framework for achieving response preparedness and capability objectives that is equivalent to, but more appropriate to the operating environment than, the NPC. This equivalence is alternative compliance, not inferior compliance.

This is not to suggest AWO believes that an APC should remain static. We are committed to the continuous improvement of our APC and are engaged in an ongoing dialogue with APC users and with the Coast Guard to ensure and enhance its effectiveness. On an annual basis, we request input from our members on their experiences exercising and activating the APC so that lessons learned can inform our discussions with the Coast Guard and help us ensure that the APC continues to provide a level of response readiness and capability equivalent to the NPC. However, we do not believe that the approach outlined in our APC is a “short-term” or “temporary” one. We believe it is a practical and effective long-term solution that is a better fit for the inland operational environment than the NPC.

**AWO urges the Coast Guard to amend the APC Guidelines to better reflect the underlying regulations by making it clear that a vessel owner or operator or an APC administrator can request Coast Guard acceptance of an APC whenever he or she believes that the NPC are inappropriate or infeasible, and to better address operational realities by acknowledging that, in some regions and for some response resources, APCs are a long-term, not a short-term, solution. To help achieve this, we strongly recommend that the Coast Guard delete the first sentence of Section 9 and eliminate the reference to the “ultimate goal” later in the same section.**

For the same reasons, AWO recommends that the Coast Guard modify other references in the APC Guidelines to gap-closing between the APC and the NPC. For example, the draft Section 7, Definitions, defines an APC’s strategic plan as “a formal statement of long-term NPC compliance goals, reasons they are attainable and plans for reaching them.” As previously discussed, when it comes to the AWO APC, we do not believe that the NPC are attainable or that attempting to reach them would be beneficial, which is why we have worked to establish the APC. **AWO suggests that the strategic plan be redefined as “a formal statement of long-term NPC compliance goals or a formal statement of equivalence with the NPC and goals to continuously improve the APC, where compliance with the NPC is not practicable.” AWO recommends that the Coast Guard adjust its references to the strategic plan in the APC Guidelines and its enclosures accordingly.**

Two other examples are found in draft Section 10(e), APC Conditions of Acceptance. 10(e)(1) states, “APC requests must also identify progressive measures to increase response capabilities in the geographic area to eventually reduce or eliminate the gap(s).” **AWO suggests that this sentence be changed to read, “APC requests must also identify ways in which response capabilities will be increased to reduce or eliminate the gaps, where compliance with the NPC is the APC’s strategic goal, or in which prevention and/or response measures will be continuously improved, where compliance with the NPC is not practicable.”** 10(e)(5) states that the Coast Guard may consider periods of acceptance shorter than five years based on three criteria, including “inability to achieve prescribed milestones mentioned in the strategic plan and show measurable progress towards reducing identified gaps.” **AWO recommends striking this criterion.**

In draft Section 3 of both enclosures 1 and 2 to the APC Guidelines, the Coast Guard writes that “where response coverage gaps exist, the Coast Guard considers an APC a temporary

solution until either the gaps are closed or are formally accepted by regional Area Committees within the Area Contingency Plan as ‘permanent’ when coupled with adequate prevention and mitigation strategies.” **AWO urges the Coast Guard to delete this sentence from both enclosures.** In addition to our previously stated concerns with describing APCs as temporary and with requiring gap-closing between the APC and NPC, we do not believe that Area Committees are an appropriate forum for the review of APC requests — particularly for national APCs, which, in the case of the AWO APC, includes five EPA regions. The consideration of APC requests by Area Committees could lead to a patchwork of differing or conflicting requirements from region to region. AWO appreciates the Coast Guard’s consideration of a process by which some response resource “gaps” may be accepted as permanent, although we do not believe that Area Committees are well positioned to manage it. AWO would be very interested in exploring this issue further with the Coast Guard.

Briefly, AWO notes the following changes to the information that must be included in APC requests outlined by the APC Guidelines that present an administrative burden for the AWO APC due to its scope:

- AWO has attached to the AWO APC a list of inland towing companies that have indicated their willingness to provide emergency towing services, and has previously provided the Coast Guard with letters of agreement from each of these companies. According to draft Section 10(b)(1), “The [APC] request must clearly state the size of the fleet, vessel type(s), and corresponding VRP control number(s).” While it is easier for AWO to maintain a list of towing vessels operated by companies participating in the AWO APC than it is for our members to list all such vessels in their response plans, our members would need to provide us with an updated list of their vessels and corresponding VRP control numbers. Given the hundreds of vessels covered by the AWO APC and the dynamism of the fleet, this is a very significant information submission effort, and one that AWO does not believe is justified.
- In 2013, after the publication of the non-tank vessel response plan final rule, AWO amended the APC so that it could be used by AWO members operating towing vessels over 400 GRT in addition to those operating tank barges. According to draft Section 10(b)(3), “tank vessel and nontank vessel APCs must be submitted separately, or if in the same request package, clearly separated into separate appendices.” Again, AWO does not believe that this requirement is justified for the AWO APC, given that the NPC requirements for tank and non-tank vessels do not differ.

#### APD&T APC

AWO strongly supports the comments submitted by Dan Nutt on behalf of the APD&T operators, with which many of the comments that we have offered are aligned. Western Alaska is a unique operating environment in which the lack of available infrastructure, and the impossibility of constructing it, would seem to be exactly the type of situation that the Coast Guard developed the APC concept to address. The AWO member companies that are engaged in trade in Alaska, including seven of the 10 APD&T signatories, play a crucial role in the

regional economy by providing many remote and native Alaskan communities with fuel, food and consumer goods and by supporting key Alaskan industries such as fishing, mining, and oil and gas exploration. Their vessels provide transportation services and industrial support to areas where road or rail transportation is impossible, air transportation is cost-prohibitive, and deep-draft vessels cannot safely transit.

The Alaskans who rely on APD&T operators for their fuel must ultimately absorb the costs of transporting that fuel, including regulatory compliance costs, in the prices they pay to the fuel's distributor. For this reason, AWO reiterates Mr. Nutt's recommendation in reference to draft Section 10(e)(1), which reads, "The Coast Guard will not accept APC requests for areas in which the NPC [...] can be met." As previously stated, AWO does not believe that this is consistent with the regulations at 33 CFR 155.1065(f) and 155.5067. Further, taken together with the rest of the APC Guidelines, and in particular draft Section 10(b)(2), it is AWO's interpretation that the Coast Guard intends to compel a vessel response plan holder to utilize an oil spill removal organization (OSRO) that has been classified for a given COTP zone or segment thereof in which he or she operates – even if the plan holder utilizes a Coast Guard-accepted APC that can cover the geographic area at issue – based only on the OSRO's stated equipment inventory or classification, and with no consideration for the suitability of its resources. AWO has significant concerns with this approach, under which an AWO member operating in western Alaska could be required to join an OSRO in Dutch Harbor, an OSRO in Cook Inlet, and an OSRO on the North Slope, in addition to maintaining the APD&T APC for coverage of its operations in all other areas of Alaska. This has the potential to make fuel transportation by barge prohibitively expensive for Alaskans who have few, if any, other options. **AWO requests that the Coast Guard remove the provisions in the APC Guidelines that prohibit the consideration of an APC that covers a geographic area in which the NPC may be met.**

AWO would also like to amplify Mr. Nutt's comments related to the requirements contained in draft Section 1 of both enclosures 1 and 2 to the APC Guidelines, which specify that vessel owners and operators must contract with resource providers to meet applicable NPC requirements based on the distance of the vessel's trackline from the U.S. boundary line. This could have deleterious consequences for vessel safety if vessel owners and operators choose to alter their vessels' routes to ensure that they remain outside of the stated lines of demarcation. It is also contrary to the spirit and intent of the APD&T operators' cooperative work with the Coast Guard over the past 23 years to achieve an acceptable level of preparedness in all areas in which they operate. **AWO recommends that the Coast Guard delete draft Section 1(b) from both enclosures.**

###

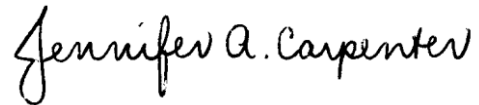
Docket Number USCG-2016-0437

September 23, 2016

Page 7

Thank you for the opportunity to comment on the draft update to the APC Guidelines. We would be pleased to discuss these comments further or provide additional assistance as the Coast Guard sees fit, and we look forward to working with the Coast Guard to facilitate a public meeting in the Eighth Coast Guard District.

Sincerely,

A handwritten signature in black ink that reads "Jennifer A. Carpenter". The signature is written in a cursive style with a large initial "J" and a distinct "A".

Jennifer A. Carpenter