docket for this rulemaking and considered.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or other relevant publications.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on April 11, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2012.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2012–7325 Filed 3–26–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket No. USCG–2011–0430, Formerly CGD 90–068]

RIN 1625–AA02, Formerly 2115–AD66

Discharge Removal Equipment for Vessels Carrying Oil

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent to finalize with request for comments.

SUMMARY: The Coast Guard is advising the public of its intent to finalize regulations previously published as an interim final rule on December 22, 1993. The interim final rule was published to reduce the risk of oil spills, improve vessel oil spill response capabilities, and minimize the impact of oil spills on the environment, but certain portions of the interim final rule were never published as a final rule. Because of the lapse in time since the interim final rule's publication, the Coast Guard is seeking comments from the public before finalizing those portions of the interim final rule.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0430 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. David Du Pont, Office of Standards Evaluation and Development (CG–523), U.S. Coast Guard; telephone 202–372–1497, email *David.A.DuPont@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0430), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notice'' and insert ''USCG–2011–0430'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the final rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0430'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 26, 2012 using one of the four methods specified under the **ADDRESSES** section above. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. Such a notice will also include contact information for requests regarding facilities or services for individuals with disabilities or special assistance at the public meeting.

II. Abbreviations

CFR Code of Federal Regulations
COI Certificate of Inspection
DRE Discharge removal equipment
EA Environmental Assessment
FONSI Finding of No Significant Impact
FR Federal Register
IFR Interim final rule
IMO International Maritime Organization
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f)
NOI Notice of intent
OPA 90 Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 484, August 18, 1990)
OSRO Oil spill removal organization
OSRV Oil spill response vessel
RE Regulatory Evaluation (aka Regulatory Assessment)
§ Section symbol
U.S.C. United States Code

III. Basis and Purpose

A. Statutory and Regulatory History

Section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380; 104 Stat. 484; August 18, 1990) amended section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) by, among other things, adding a new paragraph (6) to require vessels operating on the navigable waters of the United States and carrying oil or a hazardous substance in bulk as cargo to carry appropriate discharge removal equipment (DRE) on board.

On August 30, 1991, the Coast Guard published an advance notice of proposed rulemaking to solicit information to assist the Coast Guard in development of proposed rules that implement the OPA 90 mandate for DRE.[1] On September 29, 1992, the Coast Guard published a notice of proposed rulemaking that proposed to establish DRE regulations.[2] On December 22, 1993 the Coast Guard published an interim final rule (IFR) that established DRE requirements for on-deck spills, and also required vessels to install spill prevention coamings, to install emergency towing arrangements, and to have a prearranged capability to calculate damage stability in the event of a casualty.[3]

In addition to the above documents, the Coast Guard has published several DRE-related notices and technical amendments throughout the course of this rulemaking. The complete regulatory history of the DRE rulemaking is summarized below.

Document type	Federal Register cite	Date published	Comments
Advance notice of proposed rulemaking	56 FR 43534	8/30/1991	Requested comments and information to help develop response plans for all vessels carrying oil as cargo and carriage and inspection of discharge-removal equipment.

[1] 56 FR 43534 (Aug. 30, 1991).

[2] 57 FR 44912 (Sept. 29, 1992).

[3] 58 FR 67988 (Dec. 22, 1993).

Document type	Federal Register cite	Date published	Comments
Notice of intent to form a negotiated rulemaking committee.	56 FR 58202	11/18/1991	Consideration was given to establishing a negotiated rulemaking committee to develop part of the regulations to be issued under OPA 90.
Notice of intent to form a negotiated rulemaking committee; supplemental notice and clarification.	56 FR 60949	11/29/1991	Clarified list of groups that would be affected by the rulemaking.
Notice of meeting of negotiated rulemaking committee on oil spill response plans.	56 FR 66611	12/24/1991	Announced first public meeting of committee to be January 8–10, 1992.
Notice of meetings of negotiated rulemaking committee on oil spill response plans and finalization of committee membership.	57 FR 1890	1/16/1992	A schedule of four committee meetings was released; a previously scheduled meeting was cancelled and two additions were made to the list of committee participants.
Notice of additional meetings of the Oil Spill Response Plan Negotiated Committee.	57 FR 9402	3/18/1992	Announced the addition of a committee meeting on March 26, 1992.
Notice of proposed rulemaking	57 FR 44912	9/29/1992	Proposed requirement for vessels carrying oil in bulk as cargo.
Proposed rule; extension of comment period	57 FR 48489	10/26/1992	Extended comment period ended November 16, 1992.
IFR	58 FR 67988	12/22/1993	Established requirements for vessels carrying oil in bulk as cargo; also required vessels to have pre-arranged capability to calculate damage stability in case of a casualty. Rule also sought further comments and information on emerging technology to help prevent, contain, or remove oil discharges from vessels. Comment period ended February 22, 1994. IFR effective on January 21, 1994.
IFR correction	59 FR 3749	1/26/1994	Four corrections made to IFR (58 FR 67988).

B. Why is this notice of intent necessary?

The Coast Guard is advising the public of our intent to finalize regulations previously published as an IFR on December 22, 1993. The IFR was never published as a final rule. Because of the lapse in time since the IFR's publication, the Coast Guard is seeking comments from the public before issuing a final rule.

IV. Summary of Regulations in the IFR

Below is a list of the sections in Title 33 of the Code of Federal Regulations (CFR) part 155 that were amended or added by the DRE IFR.

Section No.	Title	Amendment
§ 155.140	Incorporation by reference	Revised paragraph (a); in paragraph (b), added an entry for International Maritime Organization (IMO) Resolution A.535(13).
§ 155.200	Definitions	Added new section to subpart B.
§ 155.205	Discharge removal equipment for vessels 400 feet or greater in length.	Added new section to subpart B.
§ 155.210	Discharge removal equipment for vessels less than 400 feet in length.	Added new section to subpart B.
§ 155.215	Discharge removal equipment for inland oil barges	Added new section to subpart B.
§ 155.220	Discharge removal equipment for vessels carrying oil as secondary cargo.	Added new section to subpart B.
§ 155.225	Internal cargo transfer capability	Added new section to subpart B.
§ 155.230	Emergency towing capability for oil barges	Added new section to subpart B.
§ 155.235	Emergency towing capability for oil tankers	Added new section to subpart B.
§ 155.240	Damage stability information for oil tankers and offshore oil barges.	Added new section to subpart B.
§ 155.245	Damage stability information for inland oil barges	Added new section to subpart B.
§ 155.310	Containment of oil and hazardous material cargo discharges.	Revised the section heading and the introductory text to paragraph (b); added paragraphs (c) and (d).

V. Subsequent Changes to the IFR Regulations

Since the publication of the IFR, a number of separate rulemaking projects and technical amendments have modified the sections amended or added by the IFR. These subsequent amendments were finalized after notice in the **Federal Register** and an opportunity for public comment. Accordingly, these subsequent amendments are not the subject of this notice of intent (NOI). The subject of this NOI is limited to those portions of the IFR that have not yet been finalized.

A summary of the subsequent amendments follows.

Section No.	Source(s) of amendment	Description of change
§ 155.140	CGD 96–026, 61 FR 33666, June 28, 1996; CGD 95–028, 62 FR 51194, Sept. 30, 1997; USCG–1998–4443, 63 FR 71763, Dec. 30, 1998; USCG–1999–5151, 64 FR 67176, Dec. 1, 1999; USCG–2008–0179, 73 FR 35015, June 19, 2008; USCG–1998–3417, 73 FR 80648, Dec. 31, 2008, as amended by USCG–2001–8661, 74 FR 45026, Aug. 31, 2009; USCG–2010–0351, 75 FR 36285, June 25, 2010.	Periodically updated CG and other addresses, replaced emergency towing arrangement guidelines for tankers in 1997, revised format of section in 2008.
§ 155.200	USCG–2001–9046, 67 FR 58524, Sept. 17, 2002; 73 FR 79316, Dec. 29, 2008.	Added definition in 2002, then removed same definition in 2008.
§ 155.205	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.210	USCG–1998–3799, 64 FR 3553, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.215	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.220	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.225	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.230	USCG–1998–4443, 65 FR 31811, May 19, 2000, as amended by USCG–2001–8661, 74 FR 45026, Aug. 31, 2009; USCG–2010–0351, 75 FR 36285, June 25, 2010.	Replaced section in 2000, renamed to emergency control systems for tank barges.
§ 155.235	CGD 95–028, 62 FR 51194, Sept. 30, 1997; USCG–2001–8661, 74 FR 45026, Aug. 31, 2009.	Replaced section in 1997 and again in 2009. Revised into one paragraph stating emergency towing arrangements must be on both ends of oil tankers not less than 20,000 deadweight tons (dwt). Referenced more recent IMO Maritime Safety Committee resolution.
§ 155.240	USCG–1998–3799, 63 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed; and, in paragraph (d), redesignated paragraphs (i), (ii), and (iii) as paragraphs (1), (2) and (3) respectively.
§ 155.245	USCG–1998–3799, 63 FR 35531, June 30, 1998	Removed compliance date that had passed.
§ 155.310	USCG–1998–3799, 63 FR 35531, June 30, 1998	Removed compliance date that had passed.

VI. Discussion of Comments

The Coast Guard received 38 comment letters in response to the IFR, with about 60 individual comments. No public meeting was requested and none was held. The comments are grouped below into comments related to specific 33 CFR part 155 DRE sections and general comments to the IFR.

A. Comments on Specific Sections in the IFR

Sections 155.205, 155.210, 155.215, and 155.220—Carriage of Discharge Removal Equipment for On-Deck, Oil-Cargo Spills

The Coast Guard received a number of comments on the carriage of DRE for on-deck oil-cargo spills.

Several commenters suggested changes to the quantities of oil specified in paragraph (a) of §§ 155.205, 155.210, 155.215, and 155.220, stating that the equipment and supplies must be capable of containing and removing oil (e.g., 12 barrels of oil for vessels 400 feet or greater in length). Two comments stated that the quantities specified in the IFR were too small, one that the quantities were too large, and one that they were reasonable.

We believe that the quantities specified strike an appropriate balance for the categories of vessels specified, and that the distribution of comments received supports that view.

Two comments stated that paragraphs (b)(1) and (b)(2) of §§ 155.205, 155.210, 155.215, and 155.220 should state the specific quantity of sorbent and hand tools required. These sections presently require that the equipment and supplies be ''appropriate'' for the containment and removal of the amount of oil specified.

We decided not to require carriage of specific quantities of sorbents and hand tools because vessel owners or operators are best able to determine the quantity necessary given variability in cargo carriage, operational practices and environment, and other factors.

One comment stated that the IFR did not define the term ''contract.''

We disagree. The term ''contract or other approved means'' is defined in 33 CFR 155.1020.

Three comments stated that inland oil barges engaged in transfer operations between the barge and another vessel should not rely on the other vessel to provide the required DRE.

We agree. The optional provision to allow inland oil barges to rely on other means for the required DRE applies only to transfer facilities in which the barge owner or operator has made prearrangements through a contract or other approved means. Inland oil barges must maintain their own DRE when involved in bunkering operations.

Several comments stated that the exclusive transportation of certain cargoes, such as animal fats and vegetable oils or Grade D and E products (see 46 CFR 30.10–15), have a reduced risk and should be regulated differently.

We see the merit of this argument and will consider revisions to these sections. We seek comments on which specific cargoes fall into the reduced risk category and in particular how the risk is reduced.

Sections 155.230 and 155.235—Emergency Towing Capability

The Coast Guard received a number of comments on emergency towing capability. Most of the comments related to tankers, whereas three related to barges.

Regarding barges, § 155.230 (originally titled ''Emergency towing capability for oil barges'') was replaced by a separate rulemaking (Emergency Control Measures for Tank Barges, 65 FR 31811, May 19, 2000) which became effective on December 11, 2000. Because § 155.230 was completely replaced by that final rule after the public had an opportunity to comment, we seek no further comments on that section.

Similarly for tankers, § 155.235 was replaced, on two separate occasions, by two separate rulemakings. The first rulemaking, titled ''Harmonization With International Safety Standards'' (62 FR 51194, September 30, 1997), became effective on October 30, 1997. The second rulemaking, titled ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions'' (74 FR 45026, August 31, 2009), became effective on September 30, 2009. Because § 155.235 was completely replaced by two final rules after the public had an opportunity to comment,

we seek no further comments on that section.

Sections 155.240 and 155.245—Damage Stability Information

The Coast Guard received a number of comments on damage stability information.

One commenter stated that, for inland oil barges, the Coast Guard should allow damage stability information to be maintained in computerized form instead of paper form.

Nothing in the current regulation prohibits this. Section 155.245 requires that the plans for an inland tank barge be readily available for use in salvage, stability, and residual strength calculations. However, the regulation does not specify the form of the plans (e.g., paper or electronic). As currently written, there is nothing in the regulation that requires—or precludes—the plans being in either form; operators may use whichever is most convenient.

Two commenters stated that the damage stability information requirement for oil tankers should only apply to larger oil tankers.

We disagree. The ability to perform stability and strength calculations as quickly as possible is appropriate for all 46 CFR Subchapter D tank vessels (ships and barges) on ocean and coastwise routes—regardless of vessel size—to minimize the risk of subsequent spills during the salvage response.

Section 155.240 requires owners or operators of 46 CFR Subchapter D tank vessels to ensure that they have pre-arranged, prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. Pre-loading vessel information into computer programs allows for faster analytic support in casualty situations. This is because time is of the essence in these circumstances, especially for offshore locations where tidal levels or sea conditions can change significantly in short order. This rationale applies to oil tankers, regardless of vessel size.

One commenter stated that the Coast Guard went beyond the recommendation of the regulatory negotiation committee (Committee) by requiring that computerized damage stability information for oil tankers be kept on shore.

The Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*) permits an agency to establish a negotiated rulemaking committee to negotiate and develop a proposed rule. Nothing in the Negotiated Rulemaking Act requires an agency to adopt a negotiated rulemaking committee's recommendation as a final rule.

The DRE NPRM referred to the Committee recommendation that an owner or operator of a tanker, offshore tank barge, or coastal tank barge have prearranged, prompt access to computerized on-board or shore-based damage stability and residual structural strength calculation programs. 57 FR 44916.

Based on subsequent analysis, the Coast Guard determined that computerized damage stability information should be specifically available ashore. This is to ensure that information is available if the information aboard the vessel is destroyed or inaccessible. The Coast Guard included this requirement in the IFR and intends to finalize this requirement in the final rule. Additionally, a requirement for computerized shore-based damage stability information is also found in the Tank Vessel Response Plans for Oil regulations (see 33 CFR 155.1035(c)(11)(ii) and 155.1040(c)(10)(ii)).

Section 155.310—Deck Edge Coamings for On-Deck Spills

The Coast Guard received a number of comments on deck edge coamings for on-deck spills.

One commenter stated that the term ''peripheral coamings'' in § 155.310(c) may be misinterpreted and be applied to areas beyond the cargo deck area.

We have reviewed the use of the term ''peripheral coamings'' and believe that § 155.310(c) clearly delineates the boundaries of the required coamings.

Two commenters stated that coamings may present a safety hazard for vessels operating for prolonged periods in freezing weather.

We agree in part. The Coast Guard recognizes the special difficulties and hazards posed by the buildup of ice through prolonged periods of operation in freezing weather. Depending upon the particulars of a vessel, the owner or operator may find the need to request an exemption from these requirements under 33 CFR 155.130.

One commenter stated that the requirement to install coamings should apply only to vessels that carry oil and not to those that are certificated to carry both oil and hazardous materials, but actually carry only hazardous materials.

We disagree. If a vessel is certificated to carry oil, the vessel must be outfitted to meet all of the requirements for the carriage of oil.

One commenter stated that the coaming-containment capacity should be raised. Another two commenters stated that the containment capacity should be lowered for certain vessels.

We believe that the coaming containment capacities specified strike an appropriate balance between the size of a vessel and the areas of operation, and that the distribution of comments received supports that view.

One commenter stated that alternatives to peripheral coamings should be allowed on tank vessels carrying animal fats, vegetable oils, or non-persistent oils, but offered no specific alternative.

Absent a specific alternative to evaluate, we disagree and believe that peripheral coamings are an appropriate element of the pollution prevention regime for preventing on-deck spills of any oil type from reaching the marine environment.

B. General Comments

On-Water Containment and Removal Equipment

The IFR asked for additional information on major spill prevention and response equipment, such as booms, skimmers, and temporary storage devices designed to be carried on board vessels. It specifically requested information on the appropriateness of this equipment, on the technological and economic feasibility of requiring this equipment, and on the compatibility of this equipment with safe vessel operation.

We received 18 responses to this request. Ten responses were in support of the carriage of major equipment on board vessels, and eight responses were against the concept. Of the ten responses in support, eight were from vessel-based equipment developers. Of the eight responses in opposition, all were vessel operators or organizations that represented vessel operators.

Section 310 of the Coast Guard Authorization Act of 1993 (Pub. L. 103–206) required the Secretary of Transportation [4] to review and evaluate these technologies, and to submit a report to Congress with recommendations on the feasibility and environmental benefits of requiring tank vessels to carry oil spill prevention and response equipment. The DRE IFR provided a means to obtain that information.

On September 8, 1998, the Coast Guard issued a report to Congress, titled ''Feasibility and Environmental Benefits Associated with Requiring Oil Spill Response Equipment on Tank Vessels.'' A copy of that report is available in the docket where indicated under the

[4] Prior to February 25, 2003, the Coast Guard was part of the Department of Transportation. Since that time, the Coast Guard has been part of the Department of Homeland Security.

''Public Participation and Request for Comments'' section of this notice.

In that report the Coast Guard concluded that while it may be technologically feasible to carry and deploy oil spill response equipment aboard a tank vessel without risking the safety of the crew, the practical limitations of the equipment in oil spill response make it economically, environmentally, and technologically unfeasible to require tank vessels to carry the equipment. The Coast Guard further concluded, in consideration of the practical limitations on the equipment's effectiveness in spill response, that vessel-based equipment should not be required for tank vessels and, if carried, should not be credited against their required response capabilities given those limitations.

We continue to believe that shore-based response equipment is the preferred method for responding to actual or potential on-water oil spills. We do not believe that tank vessels should be required to carry major prevention and response equipment.

Spill-Tracking Devices

We received three comments on devices for tracking the movement of spills. Two commenters stated that the carriage of some form of spill tracking device should be required. One commenter stated that, if a spill tracking device were required, a national or international standard should be adopted first so that a vessel need carry only one type of device throughout its operating area.

Since the IFR was published, oil spill tracking requirements for tank vessels have changed. In the rulemaking titled ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions'' (74 FR 45026, August 31, 2009), owners and operators of tank vessels operating in oceans and coastal waters must identify in their response plans, and ensure availability through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities (see 33 CFR 155.1050(l)).

We believe that this response plan requirement is sufficient in the area of oil spill tracking, and therefore seek no further comments on this topic.

Preemption

Two commenters stated that the Coast Guard lacks the authority under OPA 90 to preempt more stringent state requirements related to DRE.

We disagree. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). Here, the Coast Guard is promulgating regulations to require discharge removal equipment for vessels operating on the navigable waters of the U.S. and that are carrying oil in bulk as cargo or cargo residue, which will improve safety. Because States may not promulgate rules within this category, preemption is not an issue.

Oil Spill Response Vessels

One commenter stated that we should clarify whether this rule applies to a dedicated oil spill response vessel (OSRV).

We wish to clarify that this rule does not apply to a dedicated OSRV when conducting response operations in the response area.

Inland Oil Barges on Limited Offshore Routes

One comment stated that the rule should allow barges operating offshore under a special Certificate of Inspection (COI) endorsement for limited offshore/coastwise routes during fair weather to be equipped under the inland oil barge requirements in § 155.215.

We agree, and note that this suggestion is similar to the requirements for emergency control measures for tank barges added on May 19, 2000. The current regulations provide that if a tank barge has its COI limited to not exceed the restrictions in §§ 155.230(a)(1) (territorial sea) or 155.230(a)(2) (Great Lakes), then it may be equipped under the inland oil barge requirements in § 155.215.

VII. Supporting Analyses

Additionally, in this NOI we seek comments in two other areas. First, we seek comments on the Regulatory Assessment. Second, we seek comments on the Environment section.

A. Regulatory Assessment

The IFR was accompanied by a Regulatory Evaluation (RE) (a copy is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this notice). Due to the amount of time that has passed since the IFR and RE were published, we seek current information related to the cost of compliance with certain sections of the DRE requirements. Please note that we are not seeking comments concerned with emergency towing equipment cost data or other portions of the IFR that have since been finalized through other rulemakings after the public has had an opportunity to comment.

The table below shows the elements on which we are seeking comment, the units in which we measure them, the relevant chapter of the IFR's RE, and the Coast Guard's estimate of the cost.

DRE COST DATA TABLE

Element	Units	IFR RE basis	USCG estimate of cost per unit
Coaming	$/Linear feet	Chapter 4	$20–25
55 gal Drum containing oil products/sorbents	55 gallon drum	Chapter 4	200
Flex bin 1 yard box (4 55 gallon drum)	55 gallon drum	Chapter 4	460
Bulk double bagged oil/sorbents $260/ton	ton	Chapter 4	260
Containment Boom	Linear feet	Chapter 5	15–35
Storage	Cubic feet	Chapter 5	5
20-foot Work Boat	$/boat	Chapter 5	40,000
Work Boat Home Support Equipment	$/boat	Chapter 5	35,000
Training	$/vessel/year	Chapter 5	500
Maintenance and Repair		Chapter 5	
Tanker's Storage Shed	$/year	Chapter 5	300–1,600

DRE COST DATA TABLE—Continued

Element	Units	IFR RE basis	USCG estimate of cost per unit
Barge's Storage Shed	$/year	Chapter 5	200–1,300
Boat	$/year	Chapter 5	5,000
Source Control Equipment		Chapter 6	
Submersible Pumping Kit	$/kit	Chapter 6	141,000

Additionally, we seek comment on the following items:

(1) Please describe your implementation of DRE and how you have invested in the following:

(a) Operational deck spill capability;

(b) Warehouse equipment capability; and

(c) Source control equipment.

(2) Have you needed to use the equipment referenced in question (1) in any operational situation? If so—

(a) Please describe the situation;

(b) What issues did you encounter in that implementation?; and

(c) What recommendations do you have in improving that implementation?

(3) Please describe the maintenance requirements associated with the equipment referenced in question (1).

(4) What issues have you encountered in implementing the IFR?

(5) How long did it take you to implement the IFR?

(6) Are you a small business, according to the North American Industry Classification System (NAICS) codes?

(7) What issues did you encounter with regard to similar rules regarding the implementation of the other OPA 90 requirements and the implementation of the DRE IFR?

(a) Were there issues with complementary implementation?

(b) Were there issues with cross-purpose implementation?

(8) How do you work together with the oil spill removal organizations (OSROs), in planning for, or responding to, an incident?

(9) What is the vessel type (i.e. tanker, offshore barge, etc.) and size (i.e. length of vessel) for the data above?

To facilitate public input, we have placed in the docket a questionnaire labeled ''Discharge Removal Equipment (DRE) Cost Data Template.'' We request that individuals or organizations with knowledge of the cost of compliance use the template to provide input via the docket. However, you are not required to use this format when submitting comments.

B. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this notice. This rule involves regulations concerning the equipping of vessels. In addition, it implements a Congressional mandate (section 4202(a) of OPA 90). We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

At the IFR stage, an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) were placed in the docket for this rulemaking. No comments were received on the EA or the FONSI.

VIII. Intent To Finalize; Request for Comments

The Coast Guard invites further comments regarding the finalization of the IFR provisions that have not yet been finalized. Specifically, we seek comments on three topics—

- DRE requirements (except for §§ 155.140, 155.230 and 155.235 as these sections were superseded by subsequent rulemakings);
- Regulatory Assessment; and
- Environmental Impact.

Written comments and responses will be added to the docket for this rulemaking (USCG–2011–0430). Upon close of the comment period, the Coast Guard will consider all comments received before finalizing the DRE rulemaking.

Dated: February 22, 2012.

J. G. Lantz,

Director of Commercial, Regulations and Standards.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0040: 4500030114]

RIN 1018–AX75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the July 27, 2011, proposed designation of critical habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis, a draft environmental assessment, and an amended required determinations section of the proposal. We also propose to revise critical habitat unit boundaries for *Ipomopsis polyantha* units 2 and 4, and for *Phacelia submutica* units 6, 7, and 9. Finally, we announce some potential additional areas being considered for exclusion from critical habitat for *Penstemon debilis* unit 3. We are reopening the comment period for the proposal to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis (DEA), and draft environmental assessment (Draft EA), and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.