SOSREP:
The United Kingdom's world-leading pollution response regime

By K. Joseph Spears

Having written about pollution response in past issues of *BC Shipping News*, I thought it worthwhile to compare Canada's regime to that of the United Kingdom with a particular emphasis on command and control and casualty intervention. The U.K., an island nation with a long maritime heritage, has some of the world's highest density of commercial marine traffic, especially in the English Channel. It was also the site of the first major tanker incident, the *Torrey Canyon* spill off the south coast of England in 1967 which served as the catalyst for the modern international pollution prevention response and liability and compensation regimes that we see in place today.

Canada's marine pollution response regime was recently considered by the Commissioner of Environment and Sustainable Development, Scott Vaughn, in the Auditor General of Canada report to the House of Commons published in the fall of 2010. Chapter One, "Oil Spills from Ships", raised questions about Canada's ability to handle a major marine tanker pollution incident and made a series of recommendations to improve response by the government of Canada. The report can be found on the Auditor General's website at www.oagbvg.gc.ca.

The Government of Canada has struck an interdepartmental committee to look at the subject and that work is ongoing. The last time Canada's oil pollution response capability was reviewed this comprehensively was in the early 1990s by the Public Review Panel on Tanker Safety and Marine Spills Response Capability, *Protecting Our Waters,* commonly referred to as the Brander-Smith Report.

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Recently, Premier Christy Clark stated publicly that one of the terms of supporting the Enbridge Northern Gateway Project was that there must be a:

"World leading marine oil spill response, prevention and recovery system for B.C.'s coastline and ocean to manage and mitigate the risks and costs of heavy oil pipelines and shipments".

The Province of BC released a technical analysis — *Requirements for British Columbia to Consider Support for Heavy Oil Pipelines* — setting out in detail what a world-leading response would look like. (The document can be found at on the BC Ministry of Environment website at www.env.gov.bc.ca.) That chapter runs 26 pages in length and is a must read for all mariners. British Columbia has been a very active participant in the Pacific States/BC Oil Spill Task Force that was developed after the *Exxon Valdez* oil spill in 1989.

The U.K.'s regime is considered a "world-leading pollution response regime" that is very proactive and brings into play the coastal state's intervention early in any marine casualty so decisions on pollution response can be made in a timely way.

Since 1967, marine tanker pollution incidents, while on a serious decline, have garnered much public attention. Two recent incidents, the *Erika* and *Prestige* off the Spanish coast galvanized action in the EU. (In Canada, we have not had a major pollution incident since the tanker *Kurdistan* broke in two in 1978 in the Strait of Belle Isle.) As a result, the oil spill response has matured and evolved with lessons learned being incorporated into coastal state ocean management regimes and practice. The International Maritime Organization (IMO) has been — and

continues to be — active in this area. From a risk management standpoint — from the perspectives of the vessel owner, their insurer and the coastal state — vigorous action at the prevention and the protection phase is required as a marine casualty develops. Often, the initial steps taken in the first hours will determine the final outcome of the casualty. It should also be noted that as commercial vessel size has grown, so has the fuel bunkers carried by non-tankers so this risk management regime is also applicable to all commercial vessels, not just tankers.

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The United Kingdom takes a much more interventionist approach than Canada. One person is appointed and is delegated all the necessary statutory powers for pollution response and intervention. That person is a knowledgeable mariner who is known as the Secretary of State's representative for Maritime Salvage and Intervention (SOSREP). Since 1999, the SOSREP is tasked to:

"oversee, control and if necessary to intervene and exercise 'ultimate command and control', acting in the overriding interest of the United Kingdom and consolidates operations within U.K. waters involving vessels or fixed platforms where there is a significant risk of pollution".

The SOSREP powers extend marine safety matters to the territorial sea and, in the case of pollution, applies to the outer edge of the exclusive economic zone (EEZ) (200 nautical miles).

The SOSREP position grew out of Lord Donaldson's review on behalf of the U.K. government of the *Sea Empress* incident in 1996. His report (published in 1999) was entitled *Lord Donaldson's Review of Salvage and Intervention and their Command and Control*. He made it clear that when it came to a marine casualty, "salvage by committee", as witnessed during the *Sea Empress* incident, was generally was found to be ineffective and inefficient. It was his opinion that what was needed in such emergencies was a single voice able to make decisions on behalf of the U.K. government and in the overriding public interest. And if necessary, to override any and all other interested parties.

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It is important to note that Lord Donaldson was an experienced maritime counsel with extensive knowledge of marine casualties and was well aware of the competing private and public interests taking place in real-time, involving large sums of money and the requirement to make difficult decisions in a time-sensitive manner.

It could be said that he was well aware of the doctrine that "committees of one are effective". He went on to state: "The SOSREP must be a considerably and preferably charismatic figure" and recognized the importance of the individual and the human element in the casualty intervention. Lord Donaldson made a series of 26 recommendations of which 23 were adopted by the U.K. government.

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His inquiry report was the genesis of the unique SOSREP concept and was an international first. He held that the SOSREP should be free to act on behalf of the Secretary of State independently and without recourse to higher authority. Indeed he could be not more specific:

"We cannot over emphasize that whilst the Chief Executive and Ministers will ultimately be accountable for decisions of the SOSREP, whilst operations are in progress they must either back him or sack him."

From October 1999 to December 2007, there were 672 incidents and 62 directions given by SOSREP. The system has worked and stood the test of time. The regime is a proactive one that allows early intervention leading to effective pollution prevention. It was held that the trigger point for intervention is when there is a significant threat of pollution to the U.K.'s pollution control zone, territorial waters and coastline. The SOSREP takes a proactive approach and interacts with the U.K.'s overall pollution response regime administered by the U.K.'s Department of Transport's Marine Safety Agency and other governmental agencies and has developed a strong working relationship with the public and private sector.

Canada can learn from the United Kingdom example of appointing one person to be in charge during a marine incident. Section 678 of the previous *Canada Shipping Act* gave broad powers to the Minister to take all necessary steps to deal with pollution including destruction of the vessel. Section 678 was used to sink the oil filled bow section of the tanker *Kurdistan* off the Nova Scotia coast by the Royal Canadian Navy. The Canadian Coast Guard, then part of Transport Canada, allowed the vessel's insurers to tow the stern section of the tanker from the Strait of Canso to a dry dock where it was rebuilt and put back in service. These were hard decisions to make at the time and will be even harder to make today. The intervention powers exist in the Canadian legislative regime for pollution prevention in the *Canada Shipping Act, 2001* (parts 8 and 9 and, in particular section 189. Section 189) and the old section 678 has not been used in over 30 years in a major incident.

Canada's present oil pollution prevention regime takes a much more passive approach with the Canadian Coast Guard taking a supervisory role over the vessel owner based on the "polluter pays" principle. There are potential time lags given the number of government agencies involved and competing interests and jurisdictions if the Canadian Coast Guard had to take over from the vessel owner. The key element of the SOSREP system is the triggering of early intervention and monitoring at the prevention and protection stage of pollution response and the overriding goal of protecting the public interest. This clearly recognizes the competing interests.

When it comes to world-leading pollution response, Canada is well advised to look at the U.K.'s SOSREP model of early intervention during marine casualties. This is especially important on the remote British Columbia coastline where there are few resources and very little infrastructure. A unique West Coast SOSREP model can easily interact with the unified incident command system set out in B.C.'s Technical Analysis. The two are not mutually exclusive. We need to have a truth-to-power discussion about Canada's oil pollution response capability for existing marine traffic that cuts across federal, provincial, municipal and First Nations jurisdictions. On Canada's West Coast we need to get this right and be a stronger, more robust and resilient ocean nation for it. "World-leading" means talking to one another.

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