Bad Law Bad Policy - Tug Master Deemed an OPA 90 "Responsible Party"

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The court in USA v. Ships International Inc., 779 F. Supp. 3d 1235 (W. D. Wash. 2025) has held that the master of tug that had become separated from the tow which then stranded and spilled oil is an OPA 90 "responsible party,"

This designation produced a personal liability for over $14 million in response costs.

Although the opinion is bereft of any background facts explaining why the government chose to pursue the tug's master, the local newspaper the "Point Reyes Light" (May 7, 2025, edition) reporting on the decision stated that neither the tug nor the tow had insurance. The tow was an old fishing vessel destined for a breaker in Mexico when she stranded. The master was the last pocket (deep or otherwise) available to reimburse the government for its expenditures. Neither the opinion nor the news report mentions whether the master has the resources to even begin to satisfy the court's judgment.

OPA includes in the definition of "responsible party" the vessel's "operator." Based on the argument that had prevailed in the earlier case of Green Atlas Shipping v. USA, 306 F. Supp. 2d 974 (D. Or. 2003), the only other decision addressing this question, the master argued that he should not be considered an "operator" because the Coast Guard did not require master's to post certificates of financial responsibility otherwise demanded from those falling under the Act's definition of "responsible party." Despite this prior, and well-reasoned decision, the court held that "operator" meant anyone in control of a vessel, such as her master. The court further stated this definition was not tied to the financial requirements of OPA, and so the master's argument was treated as irrelevant.

This decision is bad law. The point of being designated as a "responsible party" is to assure that the spiller has the financial resources as the Act requires to respond to the liabilities OPA 90 imposes. The Coast Guard by not requiring masters to put up the certificates has implicitly recognized that individuals will not have the resources to do so, thus raising the question in this litigation - what is the point if the master has no money?

The industry is now faced with decisions reaching polar opposite conclusions resulting in a complete lack of guidance to the industry.

While perhaps these two decisions are only from trial, and not appellate courts, and because OPA 90 has produced little litigation during its 36-year life, each decision carries disproportionate weight Hence the concern over the potential impact of Ships International.

Likewise, the decision is bad policy. The exposure of the master's personal assets can only discourage able people from following the sea professionally. And this at the time the federal government is embarking on a major effort to build up the U.S. flag fleet and should be encouraging those embarking on their life's work to go down to the sea in ships.

