



Oil Spill Planning under Endangered Species Act

Inter-agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities Under the National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act

I. INTRODUCTION

A. Parties. The Parties to this agreement are the U.S. Coast Guard (USCG), the U.S. Environmental Protection Agency (USEPA), the Department of Interior (DOI) Office of Environmental Policy and Compliance, the U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration's (NOAA's) - National Marine Fisheries Service (NMFS) and National Ocean Service.

B. The parties have conducted an Endangered Species Act (ESA) Section 7(a)(1) review of the National Contingency Plan (NCP) and associated oil spill response activities. Section 7(a)(1) of the Endangered Species Act requires all Federal agencies to review their programs and utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of listed species. As a result of this review, this agreement was developed to establish a general framework for cooperation and participation among the parties in the exercise of their spill planning and response responsibilities. Following the procedures in this agreement will streamline the ESA Section 7(a)(2) consultation process, better provide for the conservation of listed species, and improve the oil spill planning and response procedures delineated in the NCP.

II. PURPOSE

A. This agreement will be used at the local level primarily to identify and incorporate plans and procedures to protect proposed and listed species and proposed and designated critical habitat (hereinafter referred to as listed species and critical habitat respectively) during spill planning and response activities. Proactive regional planning may also address candidate species.

B. This agreement coordinates the consultation requirements specified in the ESA regulations, 50 CFR 402, with the pollution response responsibilities outlined in the NCP, 40 CFR 300. It addresses three areas of oil spill response activities: pre-spill planning activities, spill response event activities, and post-spill activities. The agreement clearly identifies the roles and responsibilities of each agency under each activity. By working proactively before a spill to identify potential effects of oil spill response activities on listed species and their habitat, and jointly developing response plans and countermeasures (response strategies) to minimize or avoid adverse effects, impacts to listed species and critical habitat should be reduced or avoided completely. Should a spill occur, response plans and countermeasures will be used to implement response actions in a manner that reduces or eliminates impacts to species and their habitat. In the event that oil spill response actions result in effects on listed species or their habitat, the agreement clearly states what information is necessary to initiate emergency consultation, and the steps for completing formal consultation, if necessary, after the case is closed. However, the goal is to engage in informal consultation wherever possible during planning and response. This could avoid adverse effects to listed species and critical habitat during oil spill response activities, and therefore potentially avoid formal consultation altogether after the oil spill response activities are completed.

C. The primary objective of the agreement is to emphasize that with adequate planning and ongoing, active involvement by all participants, impacts to listed species and critical habitat and the resulting need to conduct subsequent ESA Section 7(a)(2) consultations will be minimized or obviated.

III. LEGAL AUTHORITIES

A. The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1251 et seq., provides a means to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The National Contingency Plan (NCP), 40 CFR Part 300, prepared in accordance with the FWPCA, assigns duties to Federal agencies to protect the public health and welfare, including fish, wildlife, natural resources and the public. The NCP designates the Federal On Scene Coordinator (FOSC) as the person responsible for coordinating an oil spill response.

B. The Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. §1531 et seq., provides a means to protect threatened and endangered species and the ecosystems upon which they depend. The ESA requires that Federal agencies insure that the actions they authorize, fund, or carry out do not jeopardize listed species or adversely modify their designated critical habitat. Regulations for conducting Section 7 consultation are set forth in 50 CFR Part 402.

IV. DEFINITIONS

The following definitions apply to this agreement and are taken from the definitions contained in both the NCP and the March 1998 USFWS & NMFS Endangered Species Consultation Handbook. For definitions of terms not listed below, refer to the USFWS & NMFS Endangered Species Consultation Handbook and the NCP as appropriate.

Area Committee - the entity appointed by the President consisting of members from qualified personnel of Federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President. The chairs of the Area Committee are the USCG for coastal and Great Lakes plans, and the USEPA for inland plans.

Area Contingency Plan (ACP) - the plan prepared by an Area Committee that is developed to be implemented in conjunction with the NCP and Regional Contingency Plan (RCP), in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President. A detailed annex containing a Fish and Wildlife and Sensitive Environments Plan prepared in consultation with the USFWS, NOAA, and other interested natural resource management agencies should be incorporated into each ACP.

Biological Assessment - information prepared by or under the direction of the Federal action agency (USCG or USEPA) regarding: (1) listed and proposed species and designated critical habitat that may be affected by proposed actions; and, (2) the evaluation of potential effects of the proposed actions on such species and habitat.

Biological Opinion - document which includes: (1) the opinion of the USFWS or NMFS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat. This document may also contain an incidental take statement, if appropriate, that exempts the Federal actions from the ESA Section 9 take prohibitions.

Candidate species - plant and animal taxa considered for possible addition to the List of Threatened and Endangered Species.

Critical habitat - areas designated by the USFWS and NMFS pursuant to Section 4 of the ESA for the purposes of identifying areas essential for the conservation of a threatened or endangered species and which may require special management considerations.

Emergency Consultation - an expedited consultation process that takes place during an emergency (natural disaster or other calamity) (50 CFR 402.05). The consultation may be initiated informally. The

emergency continues to exist until the removal operations are completed and the case is closed in accordance with 40 CFR 300.320(b). The FOSC will continue to conduct emergency consultations, if needed, until the emergency is over and the case is closed. Formal, or informal, consultation is initiated after the emergency is over, at which time the USFWS and/or NMFS evaluates the nature of the emergency actions, the justification for the expedited consultation, and any impacts to listed species and their habitats.

Federal On Scene Coordinator (FOSC) - the Federal official predesignated by USEPA or the USCG to coordinate and direct responses under the FWPCA.

Formal Consultation - a process between USFWS or NMFS and the Federal action agency (USCG or USEPA) that: (1) determines whether a proposed Federal action is likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat; (2) begins with a Federal agency's written request and submission of a complete Section 7 consultation initiation package; and (3) concludes with the issuance of a biological opinion and incidental take statement, as appropriate, by either of the Services. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat. See: informal consultation).

Incidental Take - take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by a Federal agency or applicant.

Informal Consultation - an optional process that includes all discussions and correspondence between the USFWS or NMFS and the Federal agency (USCG or USEPA) or designated non-Federal representative, prior to formal consultation, to determine whether a proposed Federal action may affect listed species or critical habitat. This process allows the Federal agency to utilize the Services' expertise to evaluate the agency's assessment of potential effects or to suggest possible modifications to the proposed action, which could avoid potential adverse effects. If a proposed Federal action may affect a listed species or designated critical habitat, formal consultation is required (except when the Services concur, in writing, that a proposed action "is not likely to adversely affect" listed species or designated critical habitat).

Listed Species - for the purposes of this MOA, any species of fish, wildlife or plant, which has been determined or proposed to be endangered or threatened under Section 4 of the ESA. However, the inclusion of proposed species in this MOA does not alter the legal requirements of the ESA or add additional legal responsibilities for any agency or service.

National Contingency Plan (NCP) - National Oil and Hazardous Substances Pollution Contingency Plan. The NCP is a national plan that provides the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants and contaminants. The NCP is set forth in 40 CFR 300.

National Response Team (NRT) - a national team, defined under the NCP, responsible for national planning and coordination for oil spill response, consisting of representatives from agencies named in 40 CFR 300.175 (b).

Regional Response Team (RRT) - a regional team of agency representatives that acts in two modes: the standing RRT and incident specific RRT. The Co-chairs are the USCG and USEPA. The standing team is comprised of designated representatives from each participating Federal agency, state governments and local governments (as agreed upon by the states). Incident-specific teams are formed from the standing team when activated for a response. The role of the standing RRT includes establishing regional communications and procedures, planning, coordination, training, evaluation, preparedness and related matters on a region-wide basis. It also includes assisting Area Committees in coordinating these functions in areas within their specific regions. The role and composition of the incident-specific team is determined by the operational requirements of the response. During an incident, it is chaired by the agency providing the FOSC.

Services - Term used to refer to both the USFWS and NMFS.

V. PROCEDURES

Oil spill planning and response procedures are outlined in the NCP. Following the details included in this agreement will facilitate compliance with the ESA, improve the oil spill planning and response process, and ensure continued inter-agency cooperation to protect listed species and critical habitat before a spill event and during response actions.

A. PRE-SPILL PLANNING

(1) Area Contingency Plans themselves will not result in effects to listed species; however, actions implemented under the plans may. It is essential that the Area Committee/RRT engage with USFWS and NMFS during the ACP planning process while developing or modifying the ACP and response strategies. This informal consultation can be used to determine the presence of listed species or critical habitat, and the effects of countermeasures, and to ensure that measures to reduce or avoid impacts to listed species and critical habitats during oil spill response activities are developed. By consulting on the anticipated effects prior to implementing response actions, decisions can be made rapidly during the spill, harm from response actions can be minimized, and implementation of response strategies specifically designed to protect listed species and critical habitat can be achieved.

(2) The pre-spill planning process is shown as a flow chart in Appendix A. The Area Committee Chair or RRT Co-chair will request, in writing, that endangered species expertise and a species list be provided by the Services. The request should also describe the area and include a general description of the countermeasures being considered and the planning process to be used (e.g., a workgroup). In order to document the request for consultation and planning involvement, the request shall be sent to both NOAA and USFWS. To obtain NMFS assistance, a request should be sent to the DOC RRT representative, with a copy to the NOAA Scientific Support Coordinator (SSC) and the NMFS Regional Field Office. For USFWS support, a request should be sent to the local USFWS field office(s), with a copy to the USFWS Regional Response Coordinator (RRC) at the appropriate USFWS Regional Office(s) and the DOI RRT representative. It is the responsibility of the USFWS RRC, acting through the Ecological Services Assistant Regional Director, and the NOAA SSC to act as a liaison between the respective Service and the Area Committee/RRT. USFWS and NMFS will verbally respond to the request within 30 days of receipt and provide a written response within 60 days. The response should include designation of a listed species expert to assist the Area Committee/RRT.

(3) If listed species or critical habitat are present in the planning area being considered, the Area Committee/RRT should use a planning process that ensures engagement between USCG/USEPA and Service experts. This process shall ensure that the appropriate participants jointly gather and analyze the information needed to complete the Planning Template in Appendix C. This planning process constitutes informal consultation. The goals of this planning process are to reduce the potential for oil spill response activities to adversely affect listed species and critical habitat and to gather information on sensitive areas, points of contact, and other information needed for the ACP. Methods should be developed to minimize adverse effects and the plan should be modified accordingly. If sources of potential adverse effects are removed, the Services will provide a concurrence letter and Section 7(a)(2) requirements will be deemed to have been met.

(4) If, after the process in Appendix C has been followed, it cannot be determined that adverse effects will not occur during a response action, the Services' representatives to the Area Committee/RRT workgroup will utilize the information gathered in Appendix C to complete formal consultation. This will be a programmatic consultation that generally addresses oil spill response activities at issue in the plan area. At times when specific information is available about certain oil spill response methods and listed species and habitat, it may be possible to pre-approve particular activities that may be implemented in the event there is insufficient time to initiate emergency consultation; thus providing for immediate oil spill response actions. When this occurs, the pre-approval will specify under what conditions and how such activities may be implemented. The pre-approval will also specify the manner in which emergency consultation will be completed, fulfilling Section 7(a)(2) requirements.

(5) All parties recognize that development and modification of the ACP is an ongoing process. Changes, including modifications to response actions or changes to the species list, should be addressed regularly through a dynamic planning process. The Services should contact the Area Committee/RRT or workgroup if they become aware of newly listed species that may be affected by planned response activities. The Area Committee/RRT should likewise notify the Services of changes to planned response activities. The Area Committee/RRT or workgroup should evaluate any changes and assess the need for additional consultation as needed.

B. OIL SPILL RESPONSE

During an oil spill event affecting listed species and/or critical habitat, emergency consultations under the ESA are implemented (50 CFR 402.05) for oil spill response actions. Emergency consultation may be conducted informally through the procedures that follow (See Appendix A). Emergency consultation procedures allow the FOSC to incorporate listed species concerns into response actions during an emergency. "Response" is defined in this agreement as the actions taken by the FOSC in accordance with the NCP. The FOSC conducts response operations in accordance with the NCP and agreement established in the ACP.

(1) As per the NCP and ACP, the FOSC will notify the RRT representatives of DOI and DOC through the established notification process regardless of whether listed species or critical habitat is present. Upon notification, the DOC and DOI representatives shall contact the SSC and RRC, respectively, or other appropriate Service contacts as provided in internal DOC or DOI plans, guidance, or other documents. If established in the ACP, the FOSC may also contact the Service regional or field offices directly. The notification process should be developed during the pre-spill planning process and should be clearly delineated in the ACP. If listed species and/or critical habitat are present or could be present, the FOSC shall initiate emergency consultation by contacting the Services. The NOAA SSC and RRC shall coordinate appropriate listed species expertise. This may require timely on-scene expertise from the Services' local field offices. These Service representatives may be asked by the FOSC to participate within the FOSC's Incident Command System and provide information to the FOSC.

(2) The ACP, including any agreed upon references cited in the ACP, should form the basis for immediate information on response actions. As part of emergency consultation, the Services shall provide the FOSC with any timely recommendations to avoid and/or minimize impacts to listed species and critical habitat. The NOAA SSC should also be involved in these communications as appropriate. If incidental take is anticipated, and if no means of reducing or avoiding this take are apparent, the FOSC should also be advised and the incidental take documented. The FOSC makes the final determination of appropriate actions.

(3) It is the responsibility of both the FOSC and the Services' listed species representatives to maintain a record of written and oral communications during the oil spill response. The checklist contained in Appendix B is information required to initiate a formal consultation in those instances where listed species and/or critical habitat have been affected by response actions. If it is anticipated that listed species and/or habitat may be affected, the FOSC may request that the USFWS and/or NMFS representative to the Incident Command System oversee and be responsible for the gathering of the required information in Appendix B while the response is still ongoing. The FOSC may also choose to designate another individual to be responsible for collecting the information. Although in some instances the drafting of information for Appendix B may be completed after field removal operations have ceased, it is anticipated that collection of the information should be complete before the case is officially closed and that no further studies will be necessary.

(4) It is the responsibility of the FOSC to notify the Service representative in the Incident Command System in the event that the response situation changes due to response operations, seasonal variance (e.g., bird migration), weather, extended operations, or some other circumstance. If there is no Service representative in the incident command system, the FOSC will ensure that the NOAA SSC and/or DOI representative to the RRT, remains apprised of the situation. The Services should be aware of changes in response operations, while the FOSC should be notified of seasonal variances, or other natural occurrences affecting the resource. The Services will continue to offer recommendations, taking into account any changes, to avoid jeopardizing the continued existence of listed species or adversely modifying critical habitat, and to minimize the take of

listed species.

C. POST RESPONSE

If listed species or critical habitat have been adversely affected by oil spill response activities, a formal consultation is required, as appropriate. The FOSC will initiate consultation on the effect of oil spill response activities (not the spill itself) after the case is closed. Every effort shall be made to ensure that relevant information generated as part of the consultation process is made available for use in the NRDA process. (Note: Natural Resource Damage Assessment (NRDA) activities are separate from this consultation.)

(1) After the FOSC determines that removal operations are complete in accordance with 40 CFR 300.320(b), the impacts of the response activities on listed species and critical habitat will be jointly evaluated by the FOSC and the Services.

(2) If listed species or critical habitat were adversely affected by oil spill response activities, the FOSC will follow the procedural requirements of 50 CFR 402.05(b) (see Appendix A). The document developed by following Appendix B, information required to initiate a formal consultation following an emergency, should be included with a cover letter to the Services requesting consultation and signed by the FOSC. The FOSC will work with the Services and the NOAA SSC to ensure that Appendix B is complete. This document comprises the FOSC's formal request for consultation.

(3) The Services normally issue a biological opinion within 135 days of receipt of the Section 7 consultation request. When a longer period is necessary, and all agencies agree, the consultation period may be extended. The final biological opinion will be prepared by the Services and provided to the FOSC, USFWS RRC, NOAA SSC, DOI and DOC RRT members, and the Area Committee Chair/RRT Co-chairs so that recommendations can be implemented to further minimize and/or avoid effects to listed species and critical habitat from future oil spill response actions. The result of the consultation should be entered into the Lessons Learned system by the FOSC so changes can be made to the ACP for the benefit of future oil spill response actions. If such changes to the ACP substantially modify the anticipated effects to listed species or critical habitat, the Services should appropriately document the anticipated changes in future effects.

VI. Points of Contact. The following are the points of contact for each party:

USCG: Chief, Office of Response, Coast Guard Headquarters (G-MOR), (202) 267-0516.

USEPA: Oil Program Center, U.S. Environmental Protection Agency, (703) 603-8823.

NMFS: Division Chief, Office of Protected Resources, (301) 713-1401.

USFWS: National Spill Response Coordinator, U.S. Fish and Wildlife Service, Division of Environmental Quality, (703) 358-2148.

NOAA: Director, Office of Response and Restoration, (301) 713-2989 x101.

DOI: Office of Environmental Policy and Compliance, (202) 208-6304.

VII. Funding and Resources. Nothing in this agreement shall be construed as obligating any of the parties to the expenditure of funds in excess of appropriations authorized by law or otherwise commit any of the parties to actions for which it lacks statutory authority. It is understood that the level of resources to be expended under this agreement will be consistent with the level of resources available to the parties to support such efforts.

VIII. Effective Date. The terms of this agreement are effective upon signature by all parties.

IX. Modification. This agreement may be modified upon the mutual written consent of the parties.

X. Termination. The terms of this agreement, as modified, with the consent of all parties, will remain in effect until terminated. Any party upon 60 days written notice to the other parties may terminate their involvement in this agreement.

Approved By: Date:

Commandant

U.S. Coast Guard

Administrator

U.S. Environmental Protection Agency

Director

U.S. Fish and Wildlife Service

Assistant Administrator for Fisheries

National Oceanic and Atmospheric Administration

Assistant Administrator

National Ocean Service

Director

Office of Environmental Policy and Compliance

Department of the Interior

APPENDIX B

INFORMATION CHECKLIST IN ANTICIPATION OF FORMAL CONSULTATION

As soon as practicable after the emergency is under control, which occurs when the case is closed, the FOSC initiates consultation (either formal or informal, as appropriate) with the Services if listed species and/or critical habitat have been affected. The FOSC should ensure that the following checklist is completed before the case is closed. After the case is closed, this information along with a cover letter requesting consultation will be sent to the Services.

1. Provide a description of the emergency (the oil spill response).
2. Provide an evaluation of the emergency response actions and their impacts on listed species and their habitats, including documentation of how the Services' recommendations were implemented, and the results of implementation in minimizing take.
3. Provide a comparison of the emergency response actions as described in #2 above with the pre-planned countermeasures and information in the ACP.

APPENDIX C

PLANNING TEMPLATE

One of the goals of the Area Contingency Plan (ACP) planning process is to develop strategies or actions that reduce the potential for planned oil spill response activities to adversely affect listed species and designated critical habitat. The planning process may also develop strategies that purposefully protect these resources. The following template is recommended for use by a working group of both Service and Area Committee/RRT representatives to develop a document that 1) is used to complete consultation pursuant to Section 7 (a)(2) of the Endangered Species Act of 1973, as amended, and 2) produces information to be included in the appropriate sections of the ACP. To streamline the consultation process, the various sections of this document could be drafted during the planning process and used to develop or modify the ACP. This development process will assist all parties in gaining a thorough understanding of the actions under review and provide opportunities for any Section 7 consultation related issues to be raised and addressed in the planning process, rather than during the oil spill response action.

This template is intended to guide the thought process of creating consultation documents and incorporates content requirements set forth in 50 CFR 402.12 as well as information pertinent to the National Contingency Plan requirements under the Fish and Wildlife Annex; not every item will be applicable to every situation.

Introduction

This section generally should be completed in one, or possibly two paragraphs.

- General overview of the response strategy including: (1) a brief description - one to two sentences; (2) background, history, etc. as appropriate; (3) purpose of the response strategy; (4) identification of the species and designated critical habitat that may be affected (for consultations that will address large numbers of species, it may be desirable to present this list in the form of a table either attached or presented in another section. Also, if species that may potentially occur in the area are not included in this document, explain why).

This should be developed jointly by the action agency and the Services.

Description of the Proposed Response Strategy

- Provide a description of the response strategy being considered. This is likely to be a detailed description taken substantially from the ACP. It should include how the response action will be implemented, including equipment and methods. Examples include use of dispersants to avoid shoreline impacts, and deployment of booms to protect sensitive areas. Include all known aspects of the action, such as time frames, why the action is appropriate, indirect effects, etc. An example of an indirect effect may be hauling boom, or driving vehicles through a sensitive dune area to gain access to a spill site.

This should be developed by the action agency with the assistance of the Services.

- Provide a description of specific area that may be affected by the response strategy (i.e. Sample Bay,

100 mile section of outer coastline, etc.). Include some measure of the area potentially impacted (i.e., "This plan addresses oil spill response activities that may be conducted out two miles from the coast throughout the 100 mile coastline area encompassed by this ACP"). If different activities are being proposed in different areas, identify this. The team should discuss the appropriateness of presenting this information in terms of the activities that will be conducted within each area, or the areas where each activity will be conducted. For example, "Dispersants may be applied throughout the 10 mile coastline length of Area A and the 25 mile coastline length of Area B." Maps may be useful.

This should be developed mainly by the action agency; however, modifications may be made with the assistance of the Services.

- Identify how to quickly obtain species/habitat information during a spill (i.e. first refer to ACP and site summary sheet, call State FWS, check website, etc.).

This should be developed jointly by the action agency and the Services.

- Identify Service points of contact to be notified during a spill. Establish spill parameters for notification as necessary. These should be included in emergency notification numbers as well as on any site summary sheets, in geographic response plans, etc. (i.e. "Notify regional biologist Smith at ###-#### if there is a 50 gallon or more release in Sample Bay").

This should be developed jointly by the action agency and the Services.

Description of the Affected Environment

- Describe the listed species and designated critical habitat areas that may be affected by the action in terms of overall range and population status. Include the number and location of known subpopulations within and adjacent to the action area (i.e., identify the areas known to be used by the species and, if appropriate, identify the specific times periods of use, such as February - April). Discuss the action area in relation to the distribution of the entire population (e.g., edge of the range, center of population abundance, key reproductive area, etc.). Present views of recognized experts on the species, if appropriate.

This should be provided by the Services.

- Ensure that these sensitive areas are referenced in the ACP (i.e. via ESI maps, specially generated GIS maps, site summary sheets, or other digitized format, etc.).

This should be completed by the action agency.

- Provide biological data on listed species: historical use, presence, and potential use of habitat areas within the action area. Literature and other documents containing such information may be incorporated by reference. Provide species observation information, and recent results of species surveys, including, if appropriate, a description of methods, time of year surveys were performed, level of effort, and confidence intervals. Again, literature and other documents containing such information may be incorporated by reference. Maps may be useful to depict this information.

The Services should assist in developing this information. In many instances the Services will be able to supply this information from their records.

- Discuss other designated sensitive areas, both adjacent to and within the proposed action area. These include National Wildlife Refuges, National Marine Sanctuaries, etc.

This should be developed jointly by the action agency and the Services.

Analysis of the Effects of the Action

- Describe all effects of the response strategy relative to the listed species of concern and its habitat, including designated critical habitat. This should include direct, indirect, beneficial, and cumulative effects as well as effects from interrelated and interdependent actions, if any.

This should be developed jointly by the action agency and the Services.

- Describe any measures that may avoid or lessen adverse effects as well as any measures that will enhance the species' present condition. If appropriate, delineate the locations of such measures. A discussion of environmental "tradeoffs" (including no action) may be appropriate. For example, "Dispersants may be toxic to the listed aquatic species when used in concentrations above 70%; however, oil coming ashore and smothering the listed species in tidal marshes is of greater concern due to the extremely poor conservation status of this species" Reference any already completed relevant reports, studies, biological assessments, etc.

This should be developed jointly by the action agency and the Services.

Modification to Strategy (as needed)

If necessary, after joint analysis of the information, the action or strategy may be modified.

- Describe the new strategy or action. For example, "Dispersants will not be used in concentrations above X% or in areas less than three feet deep. They may be used in Area A and Area B. A Service rep from Regional field office B will be contacted during an oil spill response during the months of February - April in Area B."

This should be developed jointly by the action agency and the Services.

Documentation

This template is a guide to help you through the planning process, however, when sections are written out as the process is completed, the final document serves the same purpose as a biological assessment. It may be used to complete consultation pursuant to Section 7 of the ESA.

- The document should be maintained on file by the Services and may be referred to during an oil spill response.
- The Area Committee/RRT will ensure that this document becomes part of the ACP as appropriate such as:
 - - Included as an appendix to the Dispersant or In Situ Burn Operations Plan;
 - - Included as a reference document in the appropriate section of the ACP;
 - - Include relevant information in sections of the ACP such as Notifications, Site Summary Sheets, Geographic Response Plans, GIS maps, etc.
- The document should include points of contact from both the action agency and the Services.

APPENDIX D**SAMPLE POLLUTION REMOVAL FUND AUTHORIZATION (PRFA) LANGUAGE***

This Statement of Work (SOW) language is intended as sample language only. The language can be tailored to ensure that the FOSC is provided with the resources needed to meet the desired activities or functions required. Accordingly, more precise or succinct language may be used.

PRFA SOW additional/optional work elements to meet the FOSC's ESA mandated activities associated with

removal actions:

To arrange for, and as appropriate coordinate with, the resources needed to meet the conference and consultation requirements of the ESA.

Specific activities anticipated under this requirement include:

- (a) Providing the expertise needed to make sensitive removal decisions which could potentially impact on listed species or critical habitats associated with this incident;
- (b) Gathering and documenting the information needed to provide input into the aforementioned decisions and to document the resulting impact of removal actions; and
- (c) As required, preparing the consultations required of the FOSC for the Service(s).

Funding under this agreement is provided for:

- (a) Salaries, travel and per diem;
- (b) Appropriate charges for use of equipment or facilities;
- (c) Any actual expenses for goods and/or services reasonably obtained in order to provide the agreed upon support to the FOSC removal activities (including contracts.)

* Developed by the National Pollution Funds Center

Federal Region III Regional Response Team's Regional Contingency Plan Draft Revised: August 20, 2001.

(ESAmain)

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