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

Training, 2002

A word from MOA Sponsors

In this training, you will receive an overview of several Federal documents. Keep in mind that these are merely *overviews*.

Those of you who are intimately familiar with these documents are likely to find that you know much more than is presented.

Those of you who wish to learn more will find the “Where Can I Find More Information?” section useful. This section is located at the end of each chapter.

Introduction

- What is the purpose of this training?
 - Familiarization
 - Help establish procedures to facilitate smooth ESA consultation
 - Identify roles

MOA and Training

- Why is the MOA necessary?
 - Framework
 - Integration
- Why is this training necessary?
 - Encourage communication and cooperation
 - Familiarization

Chapter 1

Memorandum of Agreement

Overview

MOA Overview

- What is the purpose of the MOA?
 - Encourage proactive planning
 - Provide guidance
 - Encourage ESA informal consultations when possible

Key Supporting Documents

- Clean Water Act
 - (33 USC §1321)
- Federal Water Pollution Control Act's National Oil and Hazardous Contingency Plan (National Contingency Plan)
 - (40 CFR Part 300)
- Endangered Species Act
 - (16 USC §1531)

Keep in Mind

- 1) The MOA focuses on the effects of oil spill RESPONSE ACTIVITIES only.
- 2) Be proactive. Establish procedures now that will result in a more effective and/or efficient response and consultation process.
- 3) Focus on cooperation and open communication at every stage in the process.

Chapter 2

National Contingency Plan and National Response System Overview

National Contingency Plan (NCP)

Overview

- What does the NCP do?
 - Implements portions of the Clean Water Act
 - Requires agency representatives to:
 - Prepare for,
 - Respond to, and
 - Remove spills (discharges) in or adjacent to US waters
 - Establishes organizational structure for spill response
 - Establishes procedures for planning and spill response

National Response System (NRS) Overview

- What is the NRS?
 - Organizational structure
 - Coordinates government, public, and private sectors

NRS Components

- National Response Team (NRT)
- Regional Response Teams (RRT)
- Federal On-Scene Coordinators (Federal OSC or FOSC)
- Area Committees
- National Response Center
- Special Teams

Federal On-Scene Coordinators

- Who are Federal OSCs?
 - Pre-designated by Environmental Protection Agency (EPA) or United States Coast Guard (USCG)
- What do Federal OSCs do?
 - Lead or oversee all oil spill response actions
 - Direct oil spill contingency planning according to the NCP

Specialist support to the Federal OSC

- National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinators (SSC)
- EPA Environmental Response Teams (ERT)
- National Strike Force (NSF)
- National and Regional Response Teams (3NRT/RRT)
- US Fish and Wildlife (FWS) Regional Response Coordinator (RRC)
- Other Service representatives (FWS, National Marine Fisheries Service [NMFS])

Trustee Distinction

The NCP requires Federal OSCs to consult with natural resource trustees.

Trustee representatives are not *necessarily* ESA specialists!

Consultation with ESA specialists is necessary for ESA compliance.

Chapter 3

Endangered Species Act Overview

ESA Overview

- What does the Endangered Species Act do?
 - Establishes a conservation program
- Who administers ESA?
 - Department of Interior's US Fish and Wildlife Service (FWS)
 - NOAA's National Marine Fisheries Service (NMFS)

Important ESA Terms

- The Services
 - Refers collectively to Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS)
- Listed Species
 - Any species of fish, wildlife, or plant determined as threatened or endangered under ESA Section 4
- Designated Critical Habitat
 - Habitat on which a listed species relies
- Conservation
 - To use all methods and procedures necessary to bring a species to the point at which measures provided pursuant to the Act are no longer necessary

More Important ESA Terms

- Take
 - To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct
 - Harm can include significant habitat modification or degradation
 - Harass includes activity that significantly disrupts normal behavior patterns (i.e., feeding, nesting, breeding, etc.)

ESA Section 7

- What does ESA Section 7 provide for?
 - Conserving listed species
 - Assisting with species recovery
 - Protecting critical habitat
- A Federal agency should consult with the Services when undertaking any action authorized, funded, or carried out by that agency that may affect listed species or designated critical habitat.

Informal Consultations

- What is an Informal Consultation?
 - May precede Formal Consultation
 - Includes discussions and correspondence
 - Service(s) may provide a **letter of concurrence**

*The MOA encourages using informal consultation
whenever possible*

Formal Consultations

- What is a Formal Consultation?
 - Determine *likely to jeopardize* a listed species or *destroy or adversely modify* critical habitat
 - Biological Opinion
 - May include an incidental take statement

Conference

- What is an ESA Conference?
 - Early interagency cooperation - Informal or Formal discussions
 - Required for proposed projects that are *likely to jeopardize* proposed species or *destroy or adversely modify* proposed critical habitat
 - May be used in the ACP process

Emergency Consultation

- What is an Emergency Consultation?
 - Occur during disasters, casualties, national defense or security emergencies, or oil spills
 - Initiated informally - the Federal OSC or other party in charge contacts the Services for support

Emergency Consultation - continued

- What if the the action may adversely affect listed species or critical habitat?
 - Services provide timely advice to avoid adverse effects
 - If adverse effects are anticipated:
 - Consider alternatives
 - Document actions
 - Formal consult after emergency consult

Consultation Documentation

- Any of the following *may* be produced as a result of the consultation process:
 - Biological Assessment
 - Letters of Concurrence
 - Initiation Package
 - Biological Opinion
 - Incidental Take Statement

Where each of these documents will be used is addressed in subsequent chapters.

Biological Assessment (BA)

- What is a Biological Assessment?
 - Evaluate potential impacts
 - Conclude whether or not formal consultation is required

Letter of Concurrence

- What is a Letter of Concurrence?
 - Letter provided by the Services in response to the Federal OSC's request for concurrence on a “not likely to adversely affect” finding
 - Appendix E of the MOA contains sample letters for requesting concurrence

Initiation Package

- What is an Initiation Package?
 - Information and documents compiled by the Federal agency taking action
 - Submitted to the Services along with a letter requesting a formal consultation with the Services

Initiation Package - continued

- Contains descriptions of:
 - Proposed action
 - Specific area that may be affected by the action
 - Listed species or critical habitat that may be affected
 - How the action may affect listed species or critical habitat and an analysis of cumulative effects
 - Relevant reports
 - Other relevant information on the action, listed species, or critical habitat

Biological Opinion (BO)

- What is a Biological Opinion?
 - Shows jeopardy/no jeopardy determination
 - Prepared by the Services in response to the initiation package
 - Generally completed within 135 days after receiving the initiation package
 - Sometimes accompanied by an Incidental Take Statement

Biological Opinion (BO)

- Contains:
 - Services' opinion whether the Federal action is *likely to jeopardize* the continued existence of listed species, or result in *destruction or adverse modification* of designated critical habitat
 - A summary of the information on which the opinion is based
 - A detailed discussion of the effects of the action on listed species or designated critical habitat

Incidental Take Statement

- What is an Incidental Take Statement?
 - Provided to the Federal action agency (Federal response agency) by the Services *if*:
 - The action is not likely to jeopardize listed species or critical habitat
 - Any take resulting from the action is not the intent of the action
 - The take is the result of an otherwise lawful activity

Incidental Take Statement

- Includes:
 - Amount or extent of anticipated take
 - Methods to reduce take (called Reasonable and Prudent Measures)

How ESA & the NCP relate

- NCP
 - Requires OSCs to work with Natural Resource trustees
 - ESA and MOA encourage support from ESA specialists
- Both response agencies and the Services need to make efforts to include ESA specialists in the response process

Chapter 4

Incident Command System Overview

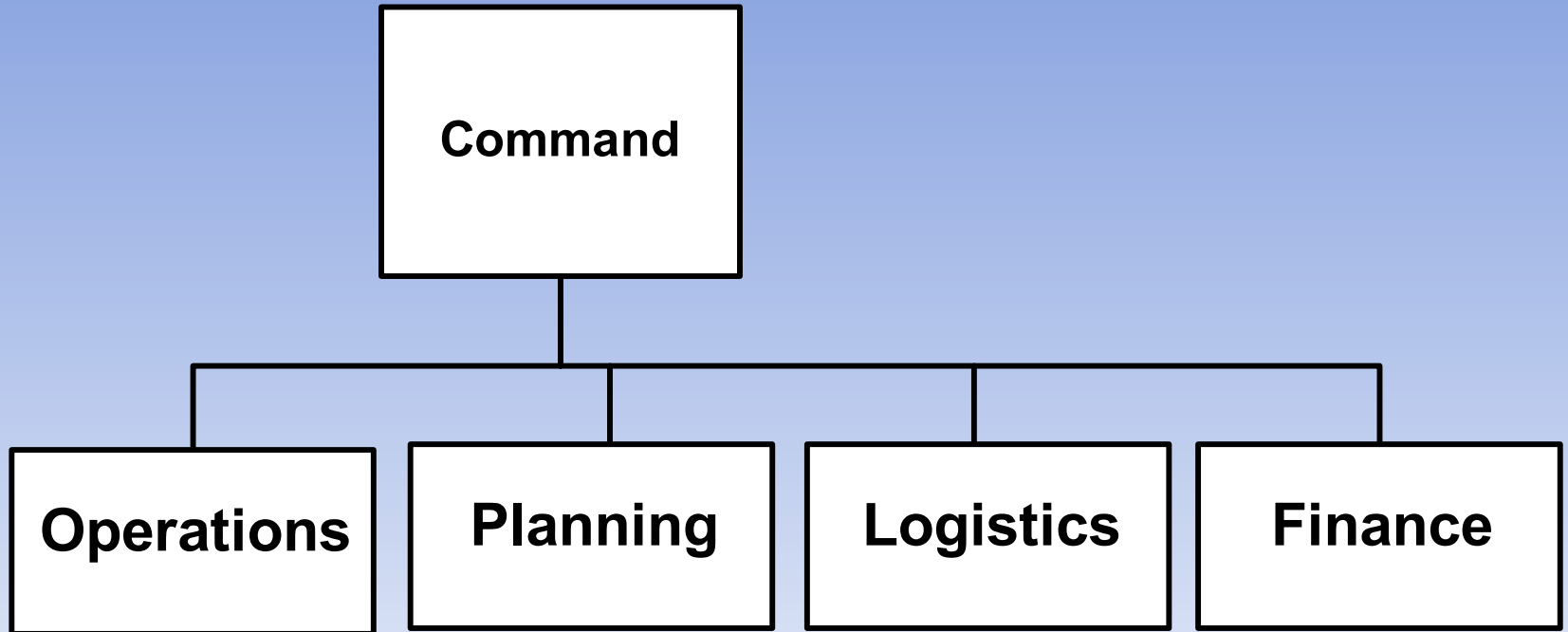
How NRS and ICS relate

- NRS specifies parties that may be involved in spill response
- ICS establishes a framework within which those agencies operate

Incident Command System (ICS) Overview

- What is the ICS?
 - A system for managing spill response operations
 - Mandated for the USCG and used by many other OSC's

Major ICS Components



Command

- What are Command's responsibilities?
 - Sets objectives and priorities
 - Overall responsibility
 - In small spills, is headed by an *Incident Commander* (IC)
 - In large spills, often headed by *Unified Command* (UC)

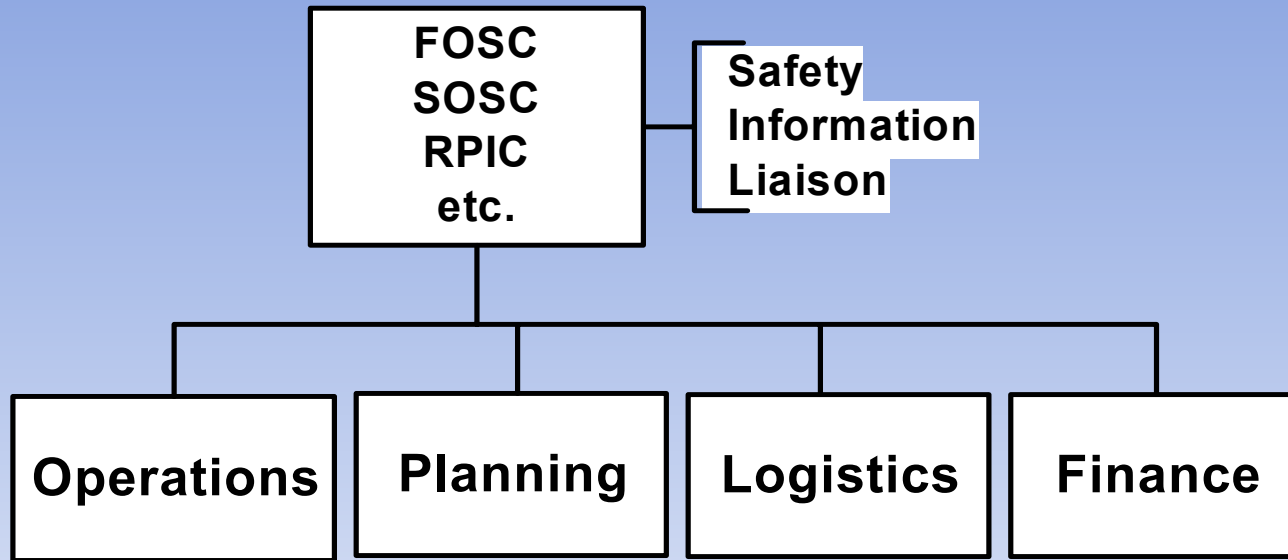
ICS Sections

- Planning
 - Develops incident action plans for each operational period
- Operations
 - Carries out the incident action plan, develops tactical objectives, organization, and directs resources
- Logistics
 - Provides resources and services
- Finance/Administration
 - Tracks costs, procurement, time recording
 - Provides cost analysis

Unified Command

- Composed of several Incident Commanders
- Provides a forum for consensus decision-making
- Used where multiple jurisdictions or interests require representation
- May include:
 - Federal OSC
 - State OSC
 - Local government
 - Tribal representative
 - Responsible Party representative
 - Federal land manager

Unified Command



The Services' role in ICS

- Services' representatives can be:
 - listed species specialists
 - contaminants experts
 - rehabilitation specialists
 - agency representatives

Chapter 5
Area Contingency Plans
Overview

Area Contingency Plan (ACP)

- According to the NCP, an ACP must contain :
 - An area description
 - A detailed description of all oil spill response parties' responsibilities in the NRS
 - A list of equipment
 - A set of procedures for expedited decisions on dispersant use
 - A detailed explanation of how the plan fits into other ACPs, vessel, facility, and other response plans
 - A Fish and Wildlife and Sensitive Environments Annex

Agencies and ACPs

- USCG maintains ACPs for marine spills
- EPA maintains ACPs for inland spills
- Some areas also maintain :
 - Sub-area plans,
 - Geographic response plans, and
 - Regional response plans

*For the purposes of the MOA,
all of the above are considered part of the ACP*

ACP Process

- NCP requirements
 - Coordination with state and local officials
- Federal OSC usually chairs the Area Committee
- Stakeholder participation

ACP's Fish and Wildlife Annex

- A required part of the ACP
- Services contribute significantly with their expertise
- Fish and wildlife information may be incorporated in two ways:
 - Incorporated throughout the document in appropriate sections, or
 - As part of a separate Fish and Wildlife and Sensitive Environments Annex

ACP and ESA

- “Consulting” versus consultation
 - ACP definition versus ESA definition
- The Planning Template (Appendix C) in the MOA can help with documentation

Chapter 6

Pre-Spill Planning

Building on the ACP

- Build on what is already in the ACP
- Pre-spill planning in the MOA and the documentation recommended in the MOA is an extension of the ACP process

Step 1 - Who should be involved?

- USCG and/or EPA
- DOI's OEPC
- NOAA's National Ocean Service (NOS)
- EPA's Environmental Response Team
- FWS and NMFS
- Other Stakeholders

Step 2 - Information Gathering

- Listed Species and Critical Habitat information
- National and Area Contingency Plans
- Other Available Information

Step 3 - Effects on Listed Species and Critical Habitat

- No effect determination
- May effect determination

Step 4 - Choosing Response Measures

- Evaluate response measures
 - Which response measure(s) will avoid or minimize impacts on listed species and critical habitat?
 - Which response measure(s) are preferred?

Keep in mind that the Area Committee and Services *jointly evaluate* tradeoffs and sensitive area priorities

Step 4 - continued

- Determinations

- Not likely to adversely affect means that the Federal OSC should request a letter of concurrence from the Services
- Likely to adversely affect means that the Federal OSC needs to submit an initiation package to the Services requesting Formal Consultation

Completing the planning process and/or the Planning Template should help to avoid potential adverse effects during response actions.

Step 5 - Formal Consultation

- Necessary when adverse effects are likely
- Federal OSC requests formal consultation
- Services respond within 135 days with a Biological Opinion
 - No Jeopardy/adverse modification determination
 - Jeopardy/adverse modification determination

Step 6 - Documentation

- ACP
 - The Federal OSC or another designated member of the Area Committee should document all correspondence with the Services
 - Documents should be incorporated into the ACP or referenced in the ACP
- Services
 - The Services should retain copies of all documentation as well

Planning - A Review

- 1) Incorporate all documents and procedures produced through the Planning Template (or other template) into the ACP.
- 2) Include new data in the ACP.
- 3) Adjust recommended response measures as needed.
- 4) If additional procedures are developed that will improve coordination during an oil spill, include that information in the ACP.

Chapter 7

Emergency Response

Overview

- Emergency Response procedures are organized according to procedures in the NCP and Incident Management Handbook

Every response is different

- Steps in this chapter follow a stylized response

Step 1 - Notification

- Alerting the Federal OSC:
 - NRC
 - Spiller
 - Another agency
 - Witness
- Federal OSC then alerts appropriate agencies and stakeholders

Step 2 - Spill Evaluation

- For any spill, a Federal OSC assesses:
 - Does the area that has been or may be affected by an oil spill contain listed species or critical habitat?
- Obtain this information as quickly as possible during a response if it is not already in the ACP

Step 3 - Decisions on Actions

- Listed species/critical habitat *not* present = No Emergency Consultation
- Listed species/critical habitat present or *could be* present = initiate Emergency Consultation

Steps 3a-d - Responding

- a) Establish a Response Team
- b) Implement ACP
- c) Develop Incident Action Plan
 - Document recommendations
 - Pollution Removal Fund Authorization (PRFA)
- d) Operations Section Implements the Incident Action Plan

Funding Documentation

- Funding another agency to compile the ESA documentation is at the discretion of the Federal OSC
- Pollution Removal Funding Authorization (PRFA)

Step 4 - Closing the Response

- Federal OSC determines the response is complete
- Complete Emergency Checklist (Appendix B) BEFORE the case is closed.
- Emergency Consultation Ends

ESA Documentation

- Federal OSC and the Services are responsible for documenting communications
- Emergency Response Checklist (Appendix B, MOA)

Scenarios

- Review Sample Scenario provided by Instructor

Or

- Develop your own Scenario to include
 - Significant threat to listed species or critical habitat
 - Oil type
 - Spill size
 - Location
 - Date, Time, Weather
 - Nature of the spill
- Questions and discussion questions led by Instructor

Chapter 8

Post-Response

Post-Incident Consultation

- Case is closed (i.e., the spill response concludes) but often consultation continues
- Formal Consultation packet finalized
- Formal consultation is only required IF listed species or critical habitat were affected

Step 1 - Determination

- Federal OSC and Services jointly review and evaluate the effects of the response measures on listed species and critical habitat
- No Impacts
 - Consultation is complete
- Impacts
 - Determine whether or not the impacts were adverse

Step 2 - Finalizing Emergency Consultation Checklist

- Services assist Federal OSC in determining impacts on listed species and critical habitat
- Federal OSC, Services, or other agency as requested during the spill assist Federal OSC by ensuring that all documentation is complete

Step 3 - Formal Consultation

- Services determine whether or not initiation package materials are complete
- Once complete, Services make final determination, 135 days after receipt of initiation package
- Copies of Services' response provided to:
 - Federal OSC
 - FWS RRC
 - Area Committee
 - NOAA SSC
 - DOI and DOC RRT

Step 4 - Assess the Need for Changes

- What worked? Did not work?
- If any new strategies/response measures result, they may be incorporated into the ACP
 - Example: Updating notification strategies; Updating listed species and critical habitat materials, etc.
- Letter of Concurrence
 - Federal OSC may want to consider obtaining a letter of concurrence for newly adopted procedures as in the initial planning stage

Work Full Circle

