

Memorandum Of Understanding

Among
U.S. Coast Guard District 1 (USCGD1)
and
U.S. Coast Guard District 5 (USCGD5)
and
U.S. Environmental Protection Agency Region II (EPA)
and
U.S. Department of the Interior (DOI)
and
U.S. Department of Commerce /
National Oceanic and Atmospheric Administration (DOC/NOAA)
and
State of New Jersey Department of Environmental Protection (NJ DEP)
and
New York State Department of Environmental Conservation (NYS DEC)

PURPOSE

This Memorandum of Understanding (MOU) is designed to implement sections of Subpart J of the National Oil and Hazardous Substances Contingency Plan (NCP) and the requirements of 33 CFR 1321 (j) (4) (C) (v), the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act (OPA) of 1990. This MOU provides pre-authorization for use of in-situ burning by the USCG Federal On-Scene Coordinator (OSC) in response to coastal oil discharges within the jurisdiction of the Region II Regional Response Team (RRT).

This MOU will be incorporated into Subpart J of the Regional Contingency Plan (RCP).

AUTHORITY

Subpart J of the NCP specifies that RRT's shall address, as part of their planning activities, the desirability of using appropriate burning agents, and that Regional Contingency Plans shall, as appropriate, include applicable pre-authorization plans and address the specific contexts in which such products should and should not be used.

Subpart J also provides that the OSC, with the concurrence of the EPA representative to the RRT, and the States with jurisdiction over the navigable waters threatened by the oil discharge, and in consultation with the DOC and DOI natural resource trustees, may authorize the use of burning agents on a case-by-case basis.

Commandant, United States Coast Guard, has pre-designated the USCG Captains Of The Port (COTPs) as the OSCs for coastal oil discharges (as defined in 33 CFR Part 3 and subject to joint response boundary agreements with EPA), and has delegated to the COTP the authority and responsibility for compliance with the FWPCA and its amendments.

The Governor of the State of New Jersey has designated the Commissioner of the Department of Environmental Protection (NJ DEP) the authority and responsibility to approve for the use of in-situ burning for the control of oil spills.

The Governor of the State of New York has designated the Commissioner of the Department of Environmental Conservation (NYS DEC) the authority and responsibility to approve for the use of in-situ burning for the control of oil spills.

The DOI and DOC/NOAA are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding the determination to burn oil in-situ in United States waters.

This MOU constitutes pre-concurrence for USCG, EPA, NYS DEC, NJ DEP, DOC/NOAA, and DOI for the use of in-situ burning in the pre-approved area ("A" zone), and in the conditionally pre-approved area ("B" zone) when wind conditions are favorable.

SCOPE

The USCG, EPA, DOI, DOC/NOAA and the states of New Jersey and New York agree that the primary method of controlling discharged oil shall be the physical removal of the oil from the environment. These agencies recognize that in certain circumstances timely effective physical containment, collection, and removal of the oil may not be possible, and that the utilization of in-situ burning, alone or in conjunction with mechanical removal methods and/or chemical countermeasures, may be considered as a means to minimize substantial threat to public health or welfare, or minimize serious environmental damages.

This MOU establishes the pre-authorized plans for in-situ burning to be used by the OSC in certain waters under the jurisdiction of RRT II. These waters include the Areas of Responsibility (AORs) for the COTPs for Long Island Sound (COTP-LIS), New York (ACT-NY), and Philadelphia (COTP-PHIL). The geographic areas and conditions are as follows (see Figure 1):

1) "A" Zones - Pre-authorization for Open-Water Burning

Geographic Scope:

Zone "A" is defined as waters under the jurisdiction of RRT II and not classified as "B", "C", or "E" zones, that lie 6 nautical miles (nm) and seaward of the Territorial Sea Baseline (as defined in 33 CFR 2.05-10) along the coast of New Jersey (north of the demarcation between Federal Region II and Region III) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 degrees True to the outermost extent of the Exclusive Economic Zone (EEZ).

Advance Approval for Zone "A":

Within Zone "A", the decision to use in-situ burning rests solely with the OSC. No further concurrence or consultation on the part of the OSC is required with EPA, DOC/NOAA, DOI, or the states of New York or New Jersey. However, if threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations.

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to conduct burning within the "A" zone via each agency's respective RRT representative.

2) "B" Zones - Pre-authorization with Favorable Wind Conditions

Geographic Scope:

Zone "B" is defined as waters under the jurisdiction of RRT II and not classified as "A", "C", or "E" zones, that lie between 3 nm and 6 nm from the Territorial Sea Baseline along the coast of New Jersey (north of the demarcation between Federal Region II and Region III) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 degrees True.

Advance Approval for Zone "B":

Within Zone "B", the decision to use in-situ burning rests solely with the OSC if and only if the prevailing wind direction is decidedly seaward and is expected to remain in the seaward direction throughout the duration of the planned in-situ burning operations. If this is the case, no further concurrence or consultation on the part of the OSC is required with EPA, DOC/NOAA, DOI, or the states of New York or New Jersey. If the prevailing wind direction is not decidedly seaward, the OSC is required to follow standard consultation and concurrence procedures. In either case, if threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations (see Figure 2).

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to conduct burning within the "B" zone via RRT representatives.

3) "C" Zones - Waters Requiring Case-by-Case Approval

Geographic Scope:

Zone "C" is defined as waters under the jurisdiction of RRT II and not classified as "A", "B", or "E" zones, that 1) lie within state territorial boundaries, 2) are designated as marine reserves, National Marine Sanctuaries, National or State Wildlife Refuges, units of the National Park Service, or proposed or designated Critical Habitats, or 3) are considered coastal wetlands, including submerged algal beds and submerged seagrass beds.

If the OSC feels that in-situ burning within the "C" zone would be beneficial, a request for authorization must be submitted to EPA, USCG, DOC/NOAA, DOI, and the states of New York and/or New Jersey, along with the information specified in the checklist in Appendix II. The OSC is granted authority to conduct in-situ burning in "C" zones only after consultation with DOC/NOAA and DOI, and only after concurrence is given by EPA and the affected states. The EPA, USCG, DOC/NOAA, DOI and the affected state(s) will respond to the OSC's request for burning in Zone "C" within four hours of receipt of the information specified in the checklist in Appendix II.

The USCG will immediately notify EPA, DOC/NOAA, DOI, and the states of New York and/or New Jersey of a decision to initiate an approved burn within the "C" zone via each agency's respective RRT representatives.

4) "E" Zones - Exclusion Zones

Geographic Scope:

An "E" zone is defined as an area under the jurisdiction of RRT II and not classified as an "A", "B", or "C" zone, that has been designated by the USCG, EPA, DOC/NOAA, DOI and the states of New York and New Jersey, or the Area Committees as an exclusion zone. These areas will be identified and listed in the appropriate Area Contingency Plans and as attachments to this MOU in the Regional Contingency Plan.

No in-situ burning operations will be conducted in an "E" zone unless 1) in-situ burning is necessary to prevent a clear, immediate, and extreme risk to human health or safety, or 2) an emergency modification of this agreement is made on an incident-specific basis.

PROTOCOLS

As attested by the signatures set forth at the end of this document, the USCG, EPA, DOI, DOC/NOAA, NJ DEP , and NYS DEC agree that the predesignated OSC has the authority and may order the use of in-situ burning on oil discharges using the guidelines found in Subpart J and Appendix M of the Region II RCP and Annex G of the COTP-LIS, ACT-NY, and COTP-PHIL Area Contingency Plans (ACPs) subject to the following conditions:

1. The decision to use in-situ burning on a discharge of oil in accordance with this Agreement rests solely with the pre-designated OSC. This responsibility may not be delegated.
2. The OSC may authorize the use of in-situ burning on a discharge of oil to prevent or substantially reduce the hazard to human life without obtaining concurrence from EPA or the affected states, without following protocols established in this MOU, and without following the guidelines in the RCP and ACPs. If in-situ burning is used in this manner, notification of EPA, USCG, DOC/NOAA, DOI and the affected state(s) shall be made as soon as practicable. Once the risk to human life has subsided, these exceptions no longer apply.

The following protocols assume that risk to human life is not a factor:

3. Prior to any in-situ burn operations, the OSC will review the decision diagram contained in Appendix I.
4. The USCG agrees with EPA, DOI, DOC/NOAA, and the states that if a decision has been made to use in-situ burning under the provisions of this agreement, the OSC will immediately notify EPA, DOI, DOC/NOAA and the states of that decision. This initial notification will include, but is not limited to, the following information to the extent available:
 - Type and amount of oil discharged
 - Area affected
 - The projected area of impact of the oil if not burned
 - Reasons why in-situ burning has been selected as a mitigation technique
 - On-scene weather

5. The checklist form in Appendix II shall be completed for all burns and provided to EPA, USCG, DOC/NOAA, DOI, and the affected state(s) in a timely manner for documentation and informational purposes. If the Responsible Party (RP) requests the use of in-situ burning, members of this organization will be responsible for completing the checklist in Appendix II. If the RP is unknown and the request to burn is made by another party, the OSC will be responsible for completing this checklist.

6. Burning will be conducted by trained professionals using recognized techniques and technology. Burning will be conducted in a way that allows for safe and effective control of the burn to the maximum extent feasible, including the ability to rapidly stop the burn if necessary. Containment and control using fire-resistant boom is recognized as the preferred method of burning. All practical efforts to limit the potential for igniting the source or adjacent, uncontained, or uncontrollable slicks will be made.

7. In-situ burning is advised only when the meteorological and sea conditions are operationally favorable for a successful burn. The OSC will give due consideration to the direction of the wind and the possibility of the wind blowing precipitate over population centers or sensitive resources onshore. A safety margin of 45 degrees of arc on either side of predicted wind vectors should be considered for shifts in wind direction (see Figure 2 for Zone "B" requirements). If conditions change to exceed the safety margins during a burn in Zone B the burn will be extinguished.

8. Health and Safety Concerns -

(a) OPERATORS: Assuring workers' health and safety is the responsibility of employers and the OSC who must comply with all Occupational Health and Safety Administration (OSHA) regulations. Prior to any in-situ burn operations, a site safety plan must be prepared.

(b) PUBLIC: Burning should be stopped if it becomes an unacceptable health risk to the general public. If at any time during burning operations exposure limits are observed to exceed federal air quality standards in nearby populated areas, the OSC will require the operations to be immediately cease. The Level of Concern (LOC) for particulates for the general public in Region II is 150 ug/m³ (PM-10) averaged over one hour. Public advisories may be required prior to initiating a burn.

9. In-situ burning will be conducted in accordance with any consultations approved by the U.S. Fish and Wildlife Service and the NOAA National Marine Fisheries Service under Section 7 of the Endangered Species Act. If threatened or endangered species are present in the burn area, then the trustee agency must be consulted prior to initiating burning operations. Measures will be taken to prevent risk to any wildlife, especially endangered or threatened species. Examples of potential protection methods may include moving the location of the burn to an area where listed species are not present, temporary employment of hazing techniques, if effective, and physical removal of listed species individuals under the authority of the trustee agency. If the risk to endangered or threatened species cannot be eliminated or reduced sufficiently, the burn will not be conducted unless a threat to human life exists.

10. The OSC will make every reasonable effort to continuously evaluate the decision to burn, and allow RRT agencies and the affected states the opportunity for comment. Cognizant representatives from trustee agencies, the potentially impacted state(s), and EPA, will have the responsibility and authority to decide when a burn should be discontinued. Those cognizant representatives, who should be identified by their respective agencies prior to commencement of a burn, must have the verbal authority to call for the burn to be discontinued, since production of a written request in the midst of an operational burn would most likely be impractical. The reason and justification for their request, however, should be subsequently documented and submitted to the OSC for the record. Requests to discontinue a burn, when submitted by agencies with trustee authority, will be immediate grounds for discontinuance of burn operations.

11. Monitors representing the USCG, EPA, federal trustee agencies, the affected states, OSHA, and the responsible party will have the opportunity to monitor in-situ burning operations, when feasible:

(a) Monitoring to establish "continue / discontinue" data for input to the OSC will be conducted in accordance with protocols outlined in Appendix III. Unless smoke plumes are predicted to cross over populated or environmentally sensitive areas, an inability to conduct monitoring operations will not be automatic grounds for discontinuing or prohibiting in-situ burn operations. Real-time PM-10 monitoring will be initiated when trajectories indicate potential movement toward populated or environmentally sensitive areas, and will be in place prior to the start of burn operations to gather baseline data.

(b) All burns must incorporate constant visual observations to monitor smoke plume behavior. A trial burn may be conducted to better estimate plume behavior prior to operational burning. The OSC, EPA, DOC/NOAA, DOI, and the affected state(s) should determine under what conditions the burn should be stopped if the plume contacts or threatens to contact the ground in populated or environmentally sensitive areas.

12. Mechanical recovery equipment shall be mobilized on-scene when feasible for backup and complimentary response capability. Provisions should be made for collection of burn residue following the burn(s).

13. If in-situ burning is used, a post incident debriefing will take place within 45 days to gather information concerning its effectiveness and to determine whether any changes to this agreement are necessary. The debriefing will be chaired by the OSC by arranging the time, place, and date of the debrief. The results of the debrief will be included in the OSC report.

AMENDMENTS

This Memorandum of Understanding may be amended in writing in whole or in part as is mutually agreeable to all parties thereto.

Area Committees may submit further defined areas for use/non-use of in-situ burning for consideration and approval by the USCG, EPA, DOC/NOAA, DOI and the states of New York and New Jersey. Approved amendments shall be found in Appendix I of this MOU.

CANCELLATION

This Memorandum of Understanding may be canceled in whole or in part by any party thereto. Cancellation will take place 30 days following delivery of written notification to each of the agencies participating in this Memorandum of Understanding.

APPENDICES

- I. OSC ISB Decision Diagram
- II. ISB Evaluation Checklist
- III. ISB Monitoring Protocols

SIGNATURES

Erie J. Williams III

Captain Erie J. Williams III, USCG
Division Chief
Marine Safety Division
First Coast Guard District
RRT 2 Co-Chair

Sept 17, 1996

Date

Anthony Regalado

Captain Anthony Regalado, USCG
Division Chief
Marine Safety Division
Area/Fifth Coast Guard District
RRT 3 Co-Chair

Sept 18, 1996

Date

Peter K. Mitchell

Captain Peter K. Mitchell, USCG
Captain Of The Port Long Island Sound
Federal On-Scene Coordinator

Oct 8, 1996

Date

Richard C. Vlaun

Captain Richard Vlaun, USCG
Captain Of The Port New York
Federal On-Scene Coordinator

Sept 30, 1996

Date

John E. Veentjer

Captain John Veentjer, USCG
Captain Of The Port Philadelphia
Federal On-Scene Coordinator

Sept 18, 1996

Date

Bruce Sprague
Mr. Bruce Sprague
Response and Prevention Branch
U.S. Environmental Protection Agency, Region II
RRT 2 Co-Chair

9/27/96
Date

Andrew Raddant
Mr. Andrew Raddant
Regional Environmental Officer / Northeast
U.S. Department of Interior
RRT Representative

12/2/96
Date

Gerry Wheaton
Cdr. Gerry Wheaton
DOC/NOAA
U.S. Department of Commerce
RRT Representative

9/19/96
Date

Richard Gimello
Mr. Richard Gimello
Assistant Commissioner, Site Remediation
Emergency Response Coordinator
Department of Environmental Protection
State of New Jersey

12/11/96
Date

Thomas Quinn
Mr. Thomas Quinn
Director, Division of Spills Management
Department of Environmental Conservation
State of New York

9 Oct 96
Date

Region II In-Situ Burning Authorization Zones

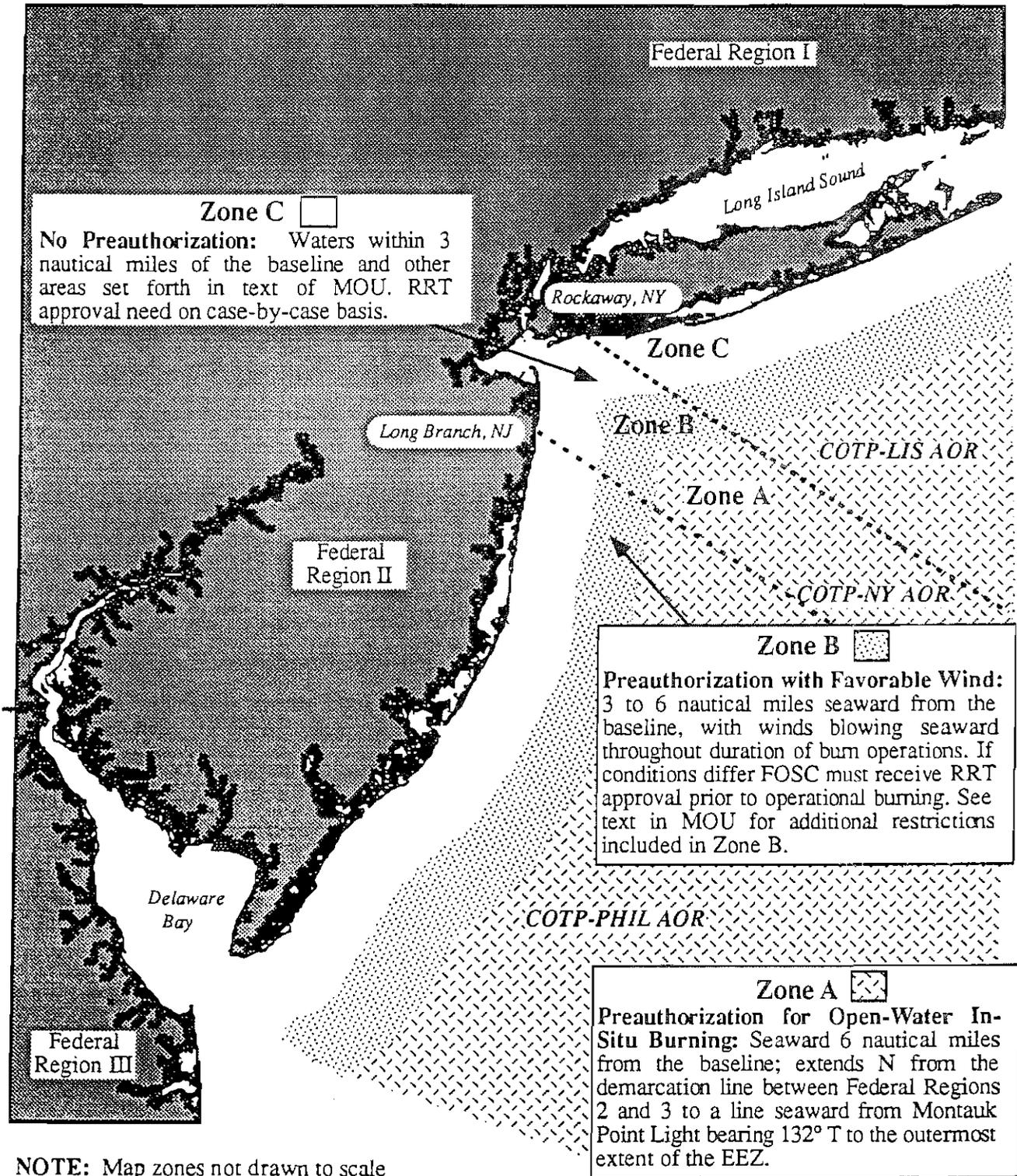


Figure 1

Memorandum of Understanding concerning Preauthorization of In-Situ Burning in federal Region II.

Schematic Illustration of Zone B In-Situ Burn Requirements

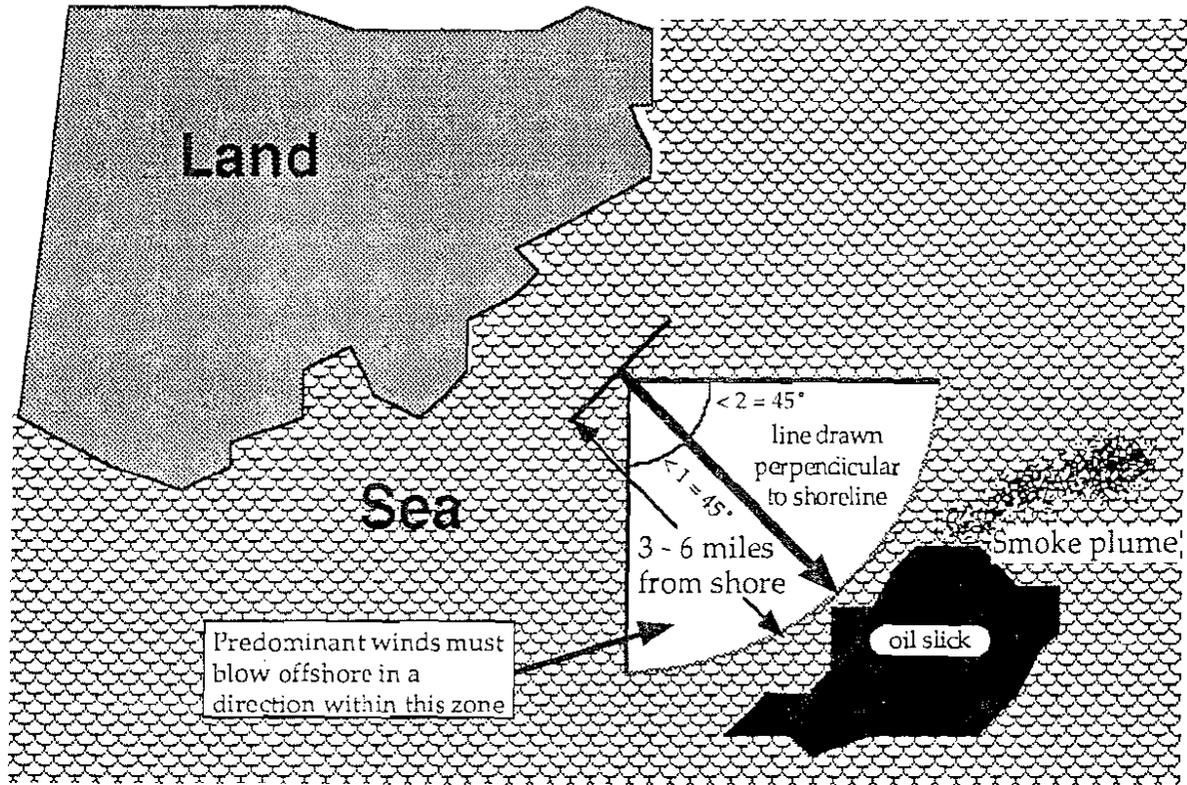


Figure 2

In-Situ Burn Unified Command Decision Verification Checklist

Purpose and Summary:

The following checklist, created with input from the Region II RRT, provides a summary of important information to be considered by the Unified Command, consisting of the federal On-Scene Coordinator (OSC), state On-Scene Coordinator (SOSC), and responsible party representative (RP) when planning for the use of in-situ burning in response to an oil spill in marine waters of Region II. The document is intended to allow Unified Command verification of a decision, rather than an information distribution sheet or an approval form.

Each section of the checklist provides a series of "limiting factors" questions for each of the decision points on the Region II In-Situ Burning Decision Flowchart. Some sections also contain a "worksheet" for important information that may be necessary to answer limiting factor questions; the user is encouraged to attach forms that already contain this information if they are readily available.

Questions in the limiting factors section that are answered with a "Yes/Optimal" support the decision to conduct an in-situ burn. However, spill response involves numerous tradeoffs, and any less-than-ideal conditions that are represented by a "No/Sub-Optimal" answer may be balanced by other benefits of in-situ burning in a given situation. Not every question of the worksheet must be answered. It is acceptable for the Unified Command to make a decision based on incomplete information, provided the information gaps are understood and considered.

In Situ Burn Decision:

Federal On-Scene Coordinator Decision: Approve	Signature: _____
State On-Scene Coordinator Decision: _Concur	Signature: _____
Responsible Party Decision: _Concur	Signature: _____

Under Region II MOU, additional consultation or concurrence is required in Zone C (or Zone B if winds are not from the pre-approved directions).

Agency/Contact	Concurrence/consultation	Time/Date	Method(verbal, written)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Points of Contact for checklist:	Name	Position	Telephone
Federal	_____	_____	_____
State:	_____	_____	_____
Responsible Party:	_____	_____	_____
Scientific team:	_____	_____	_____
Other: _____	Other: _____	_____	_____
_____	Other: _____	_____	_____
_____	_____	_____	_____

FIELDS MAY BE LEFT BLANK, LIMITING FACTORS DO NOT PRECLUDE BURNING. PLEASE REFER TO DOCUMENT SUMMARY AND PURPOSE.

Incident information (To be completed by Requesting Party)

Incident Name	
Current date/time	
Anticipated burn date/time	
Location of spill (descriptive)	
Location of burn (descriptive)	

Spill Location/Trajectory (To be completed by Scientific Support Team)

Trajectory (Graphic Attached)	___ Yes No
-or- Text:	
Overflight Map (Graphic Attached)	___ Yes No
-or- Text:	

To be completed by OSC representative:

Consultations/Concurrence based on location of approval area of burn		Yes	No	Comments
Zone A – 6 miles offshore:	FOSC approval of burn?			
Zone B – 3 to 6 miles offshore with decidedly offshore wind:	FOSC approval of burn?			
Zone C – Less than 3 miles offshore:	FOSC approval of burn?			
	EPA RRT co-chair concur with burn?			
	State(s) RRT representative concur with burn?			
	Consultation with DOI RRT representative?			
	Consultation with NOAA RRT representative?			
	Region I/III consultation/concurrence if burn to impact neighboring Region?			
Notifications planned as described in MOU (EPA, DOI, NOAA, State(s))?				
Attachments/Additional Information:				

FIELDS MAY BE LEFT BLANK, LIMITING FACTORS DO NOT PRECLUDE BURNING. PLEASE REFER TO DOCUMENT SUMMARY AND PURPOSE.

To be completed by Scientific Support Team:

	Optimal Condition	Sub-Optimal Condition	
Oil Burnability	Yes or Probable	No or Unlikely	Comments
Anticipate oil to remain ignitable (fresh, not highly emulsified)?			
Attachments/Additional Information:			

To be completed by Scientific Support Team:

	Optimal Condition	Sub-Optimal Condition	
Weather/Sea Conditions	Yes or Probable	No or Unlikely	Comments
Weather forecast precipitation-free (affects ignition)?			
Winds/forecast winds less than 25 knots?			
Visibility sufficient for burn operations/observations (greater than 500 feet vertical, 1/2 mile horizontal)?			
Wave heights/predicted wave heights less than 2-3 feet?			
Attachments/Additional Information:			

To be completed by Requesting Party:

	Optimal Condition	Sub-Optimal Condition	
Operational feasibility	Yes or Probable	No or Unlikely	Comments
Is an operational plan written or in process? (if available, attach)			
Is needed air support available?			
Are personnel properly trained, equipped with safety gear, and covered by a site safety plan?			
Are all necessary communications possible (i.e. between aircraft, vessels, and control base in an open water burn)?			
Can all necessary equipment be mobilized during window of opportunity (i.e. fire boom, igniter, tow boats, residue collection equipment)?			
Can undesirable secondary fires be avoided?			
Can burn be safely extinguished or controlled?			
Can aircraft pilots and mariners be adequately notified, as necessary?			
Is equipment and personnel available for residue recovery?			
If ignition from a helicopter, FAA approved equipment?			
Attachments/Additional Information:			

FIELDS MAY BE LEFT BLANK, LIMITING FACTORS DO NOT PRECLUDE BURNING. PLEASE REFER TO DOCUMENT SUMMARY AND PURPOSE.

To be completed by OSC/SOSC staff in consultation with meteorologists/modelers as appropriate:

	Optimal Condition	Sub-Optimal Condition	
Human and Environmental Impacts	Yes or Probable	No or Unlikely	Comments
Public exposure to PM-10 (particulates <10µm) not expected to exceed 150 µg/m ³ averaged over 1 hour as a result of burn? (current NRT planning guideline)			
Can burning be conducted at a safe distance from other response operations, and public, recreational and commercial activities?			
Is particulate (hour-averaged PM-10) monitoring available?			
Can public be adequately notified of burn?			
Trustees consulted if endangered species in immediate burn area?			
Attachments/Additional Information:			

Public Health/Plume Worksheet (Open Water and Inshore):

Distance / direction to nearest population relative to burn: _____ miles to the _____ (direction)
 Distance / direction to nearest downwind population: _____ miles to the _____ (direction)
 Forecast wind speed / direction (24 hour): _____ mph from the _____ (direction)
 Forecast wind speed / direction (48 hour): _____ mph from the _____ (direction)

Estimated plume trajectory (text or attached graphic): _____

Other comments/issues: _____

FIELDS MAY BE LEFT BLANK, LIMITING FACTORS DO NOT PRECLUDE BURNING. PLEASE REFER TO DOCUMENT SUMMARY AND PURPOSE.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 Luker Road
Cortland, New York 13045

April 5, 1996

Mr. Ed Levine
Scientific Support Coordinator
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Building 110, Box 2
Governors Island, NY 10004-5000

Dear Mr. Levine:

The U.S. Fish and Wildlife Service (Service) has reviewed the draft Biological Assessment (BA) of Effects on Listed Species of Regional Response Team II Memorandum of Understanding (MOU) for Preauthorization of In-Situ Burning of Oil Spills, dated December 4, 1995. The geographic area addressed in the MOU covers four zones located along and offshore from the south shore of Long Island and the coast of New Jersey as described in the draft BA.

Based on our review of the information provided, we concur with the determination that the proposed MOU preauthorizing in-situ burning as an oil spill response technique in designated zones is not likely to adversely affect Federally listed species under our jurisdiction. As described in the draft BA, the proposed MOU provides for further consultation with the Service under specified circumstances prior to conducting in-situ burning. Therefore, except as prescribed in the draft BA and MOU, no further Section 7 consultation under the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) is required with the Service. Should the proposed action change, or if additional information on listed or proposed species becomes available, this determination may be reconsidered.

The above comments pertaining to endangered species under our jurisdiction are provided pursuant to the Endangered Species Act.

If you have any questions regarding these comments, please contact Mark Clough at (607) 753-9334.

Sincerely,

Sherry W. Morgan
Field Supervisor

cc: REO, Boston, MA
NJFO
LIFO



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930

SEP 10 1996

Captain Eric Williams, USCG
Co-Chair Area II Regional Response Team
1st US Coast Guard District
Commander (M)
408 Atlantic Avenue
Boston, MA 02210-2209

Dear Captain Williams:

The Area II Regional Response Team has drafted a Memorandum of Understanding (MOU) for expedited procedures for using in-situ burning as an oil spill countermeasure within marine waters roughly from Montauk, New York to Cape May, New Jersey. Because several species listed as endangered or threatened under the Endangered Species Act (ESA) may occur in the waters described by the MOU, you and the NOAA Scientific Support Coordinator have initiated consultation with the National Marine Fisheries Service (NMFS), pursuant to Section 7 of the ESA, regarding the MOU and potential effects on the listed species. Consultation has included informal talks with NMFS staff, as well as the submission of a biological assessment. Based upon this previous correspondence and the discussion that follows, NMFS concurs that in-situ burning: 1) may mitigate many of the potential adverse effects of spilled oil and 2) is not likely to worsen any of the adverse effects of exposure to the oil and oil fractions. Therefore, NMFS concludes that the MOU and the expedited procedures authorized under the MOU are not likely to adversely affect the ESA-listed species under NMFS jurisdiction.

The following species listed as endangered or threatened under the ESA may occur in the waters described by the MOU:

<u>Species</u>	<u>Listing Status</u>
Blue whale (<i>Balaenoptera musculus</i>)	Endangered
Fin whale (<i>Balaenoptera physalus</i>)	Endangered
Humpback whale (<i>Megaptera novaengliae</i>)	Endangered
Northern right whale (<i>Eubalaena glacialis</i>)	Endangered
Sei whale (<i>Balaenoptera borealis</i>)	Endangered
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered
Green sea turtle (<i>Chelonia mydas</i>)	Endangered
Kemp's ridley sea turtle (<i>Lepidochelys kempii</i>)	Endangered
Leatherback sea turtle (<i>Dermochelys coriacea</i>)	Endangered
Loggerhead sea turtle (<i>Caretta caretta</i>)	Threatened
Shortnose sturgeon (<i>Acipenser brevirostrum</i>)	Endangered



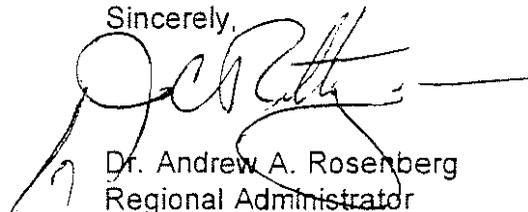
Also, bottlenose dolphin (*Tursiops truncatus*) and harbor porpoise (*Phocoena phocoena*), which are common in the area, have been proposed for listing under the ESA.

The decision of whether or not to conduct in-situ burning presupposes that oil has been spilled in the marine environment. Noting the statement in the biological assessment that "mechanical removal [of spilled oil] will remain the predominant response tool," NMFS acknowledges that under some conditions collection and removal of oil may not be sufficiently effective or timely to protect marine resources, and responders must rely on innovative countermeasures. In-situ burning can effectively and quickly remove spilled oil from the surface of the water and thereby reduce the potential of listed species directly contacting the oil. Burning would take place only within a fireproof boom, and therefore marine effects are likely to be local. In-situ burning can eliminate most of the volatile fractions of the oil which would be toxic if inhaled by mammals and sea turtles. Most of heat generated by a burn will go up into the atmosphere and only the top few centimeters of the water column will be warmed above the ambient water temperature. Burn residue generally floats and can be retrieved. Listed species may come in contact with residue which is not retrieved. The effects of the contact are unknown; however, since the volume of oil product in the water is so greatly reduced by the burn, the potential for exposure is likewise substantially reduced.

Though this consultation fulfills your responsibilities pursuant to Section 7 of the ESA, the MOU states that spill responders will consult with NMFS should ESA-listed species be observed in the immediate area where a burn will be conducted. NMFS supports that provision (paragraph 9) of the MOU and insists that you contact the agency should ESA-listed species under NMFS jurisdiction be observed. Also, spill responders should be advised that members of the Northeast Marine Mammal Stranding Network are authorized by NMFS to deter, handle, and remove listed species that have become oiled or are at risk of entering the spill and burn area. The enclosed list of contacts for the stranding network may be added to Area Contingency Plans.

In summary, NMFS concurs with the biological assessment's conclusion that the MOU for in-situ burning of spilled oil and the procedures authorized under the MOU are not likely to adversely affect endangered and threatened species under the jurisdiction of NMFS that may occur in the area. Should a need to change the MOU arise or should new information become available that changes the basis for this determination, this consultation should be reinitiated. If you have any questions about this consultation or about the protected species in the region, please contact Daniel Morris or Doug Beach at (508) 281-9328.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Rosenberg", is written over a horizontal line. The signature is fluid and cursive.

Dr. Andrew A. Rosenberg
Regional Administrator

Enclosure

cc: F/PR -- Ziobro
SSC -- Levine
SSC -- Lehmann

File: 1514-05(A) USCG-Oil-RRTII

Northeast Marine Mammal Stranding Network
*Letterholders and Affiliates, January 18, 1996

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