



United States Department of the Interior

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



December 3, 1993

Mr. Ed Levine
Scientific Support Coordinator
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Hazardous Materials Response and Assessment Division
Scientific Support Branch
Building 11, Box 2
Governors Island, NY 10004

Dear Mr. Levine:

The U.S. Fish and Wildlife Service (Service) has reviewed the information provided in your October 20, 1993, correspondence regarding the ongoing informal Section 7 consultation on the Region II Memorandum Of Understanding (MOU) for Pre-Authorization of Chemical Countermeasures by the U.S. Coast Guard Federal On Scene Coordinator. The October 20, 1993, correspondence was provided to evaluate potential impacts on the Federally listed Piping Plover and Roseate Tern, as requested in our May 3, 1993, letter to the Captain of the Port of New York.

The following comments pertaining to endangered species under our jurisdiction are provided pursuant to the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). This response does not preclude additional Service comments under other legislation.

The MOU has also been modified to incorporate language stating that trial application will not take place in an area where it has been determined that threatened or endangered species are known to be present. Also, an exclusion zone (zone 3) has been added to the MOU which precludes the pre-authorized use of chemical countermeasures in Atlantic Ocean waters within one half mile from the barrier islands off the New Jersey Coast and the south shore of Long Island.

Although not included in the "locations" section of your October 20, 1993, letter, the "feeding habits" section does acknowledge that the Piping Plover nests on beaches at Sandy Hook and Mantoloking, New Jersey. The Sandy Hook nesting area includes the ocean and bay sides at the tip of the peninsula. We, therefore, recommend that the exclusion zone (zone 3) be modified to encompass waters within one half mile of the tip at Sandy Hook, including the bay side waters adjacent to the U.S. Coast Guard Station.

Based on our evaluation of the information provided, and with incorporation of the above measures, we have determined that the proposed Memorandum Of Understanding (MOU) for Pre-Authorization of Chemical Countermeasures would not be likely to adversely affect the Federally listed Piping Plover or Roseate Tern. Therefore, no Biological Assessment or further Section 7 consultation under the Endangered Species Act is required with the Service at this time. Should the scope or procedures covered in the MOU change, if chemical countermeasures other than Corexit 9527 become available

and likely to be used as discussed below, or if additional information on listed or proposed species becomes available, this determination may be reconsidered.

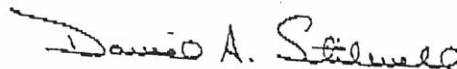
While the MOU provides pre-approval for the use of any chemical countermeasures listed in the National Oil and Hazardous Substances Contingency Plan (NCP) Product Schedule, Corexit 9527 is the only dispersant currently available for use under the proposed MOU. The U.S. Coast Guard, in the March 24, 1993, letter from the Captain of the Port of New York, has acknowledged that should any additional chemical countermeasures become available and likely to be used, they would be evaluated to determine the potential for any adverse effects on threatened or endangered species. The results of that evaluation should be provided to the this office to determine the need for further Section 7 consultation prior to their use under this MOU.

In addition, we understand you have determined that the possible use of Elastol is not likely to adversely effect listed or proposed species and that Section 7 consultation on its use is not necessary. Details on the basis of that determination should be provided to this office for our review and concurrence prior to its use under the MOU.

We believe that additional data on any use of chemical countermeasures would assist in future evaluations regarding threatened or endangered species. We, therefore, recommend that monitoring plans for trial and operational use should be established and implemented to determine and document the biological effects and the movement and fate of chemical countermeasures used.

We appreciate your assistance and cooperation in the protection of threatened and endangered species, and look forward to future coordination on matters pertaining to this MOU. Should you have any questions regarding these comments, please contact Mark Clough of my staff at (607) 753-9334.

Sincerely,



David A. Stilwell
Acting Field Supervisor

cc: U.S. Coast Guard, Governors Island, NY (Capt. Thomas H. Gilmour)
DOI, Boston, MA (William Patterson)
DOI, Philadelphia, PA (Don Henne)