

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE DEPARTMENT OF HOMELAND SECURITY UNITED STATES COAST GUARD,  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
AND  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE WILDLIFE SERVICES  
REGARDING  
WILDLIFE RESPONSE ACTIVITIES DURING OIL OR HAZARDOUS SUBSTANCE  
POLLUTION INCIDENTS**

**ARTICLE 1  
PARTIES**

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the UNITED STATES COAST GUARD, hereinafter referred to as the USCG, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, hereinafter referred to as the EPA, and UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE-WILDLIFE SERVICES, hereinafter referred to as APHIS-WS.

**ARTICLE 2  
AUTHORITIES**

The Coast Guard enters into this agreement under the authority of: 14 U.S.C. § 93(a)(20); 14 U.S.C. § 141; Federal Water Pollution Control Act, National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300; CERCLA, 42 U.S.C. § 9601-9675, Executive Order 12580, as amended and Executive Order 12777 as amended.

EPA enters into this MOU pursuant to: the NCP, 40 CFR Part 300; CWA, 33 U.S.C. § 1321; CERCLA, 42 U.S.C. § 9601-9675; Executive Order 12580, as amended, and Executive Order 12777, as amended.

APHIS-WS, enter into this MOU pursuant to: 7 U.S.C § 426, 426(b), 426 (c); NCP, 40 CFR Part 300.110; CWA, 33 U.S.C. § 1321; CERCLA, 42 U.S.C. § 9601-9675 and 44 CFR Part 206.

In addition, this MOU is consistent with the following Acts, Executive Orders, and administrative plans:

- Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. §§ 668-668d)
- Endangered Species Act of 1973 (16 U.S.C. §§ 1531-1544)
- Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701-1785)
- Fish and Wildlife Act of 1956 (16 U.S.C. § 742a et seq.)

- Fish and Wildlife Conservation Act of 1980 (16 U.S.C. § 2901-2911)
- Migratory Bird Treaty Act of 1918 (16 U.S.C. § 703-712)
- Multiple-Use Sustained-Yield Act [of 1960] (16 U.S.C. §§ 528-531)
- National Environmental Policy Act of 1969 (42 U.S.C. § 4321-4370d)
- Responsibilities of Federal Agencies to Protect Migratory Birds, Executive Order No.13186, signed 2001, 66 Fed. Reg. 3853 (Jan. 17, 2001)
- Fish and Wildlife Coordination Act
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- National Oil and Hazardous Substances Pollution Contingency Plan (NCP)
- National Response Framework (NRF)
- National Incident Management System (NIMS)

### USCG and EPA

USCG and EPA provide federal on-scene coordinators (OSCs) to respond to discharges of oil and releases of hazardous substances, pollutants and contaminants under Section 311 of the Clean Water Act (CWA) as amended by the Oil Pollution Act of 1990 (OPA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The EPA provides federal OSCs for responses in the inland zone, and USCG provides federal OSCs for responses in the coastal zone. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) found in 40 CFR Part 300 describes federal OSC authorities and responsibilities in detail.

### APHIS-WS

APHIS-WS has statutory authority under the Act of March 2, 1931 (46 Stat.1468; 7 U.S.C. 426-426b), as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions while conducting a program of wildlife damage management, involving mammal and bird species that are reservoirs for zoonotic diseases or animal species that are injurious and/or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and human health and safety. Additionally 40CFR300.175 (6) (iv) specifies APHIS can respond in emergency situations to regulate movement of diseased or infected organisms, including animals. APHIS-WS has statutory authority to assist the federal OSC during response in supporting government oversight and management of wildlife response strategies. Specifically, to address wildlife issues that threaten the Nation's agricultural and natural resources, human health and safety, and/or property. APHIS-WS also has expertise with the humane capture, handling, hazing, and transport of wildlife impacted by an oil or hazardous substance pollution incident. However, APHIS is not staffed or funded to execute this activity as part of its statutory mission. Therefore, APHIS-WS would require funding from the federal OSC to execute this activity if called upon to do so during an incident.

### ARTICLE 3 PURPOSE

The purpose of this MOU is (1) to enhance cooperation, efficiency and effectiveness of wildlife response activities during oil or hazardous substance pollution incidents; (2) to strengthen the cooperative approach to oil or hazardous substance pollution response through exchange of information and mutual program support; (3) to recognize working relationships with relevant Federal agencies; and (4) formally acknowledge that APHIS-WS, as a Federal agency, has specialized tools and procedures, along with trained staff, and can provide assistance to capture, handle, haze, and transport wildlife during incidents involving oil or hazardous substance pollution response.

### ARTICLE 4 RESPONSIBILITIES

TO IMPLEMENT THE FOREGOING, the parties intend the following when a spill requires a wildlife response:

USCG intends:

1. To fulfill its mission of coordinating emergency preparedness and response to actual, or substantial threat of, oil discharges and hazardous substance release, as appropriate, include APHIS-WS in efforts to improve and implement the NCP and NRF procedures related to wildlife response.
2. To advise all of its District Commanders, predesignated federal OSCs, and Regional Response Team (RRT) members of the terms of this MOU.
3. To request APHIS-WS when needed to support oversight and management of wildlife response strategies at one or more incident command posts during an event. In such instance the APHIS-WS personnel will be working under their own authorities and funding.
4. To issue a Statement of Work (SOW) under a Pollution Removal Funding Authorization (PRFA), when deemed appropriate by the federal OSC, utilizing the Oil Spill Liability Trust Fund (OSLTF) or other appropriate funding authority when APHIS-WS is requested to provide additional expertise in the field engaging in the humane capture, handling, hazing, transport and so forth of wildlife impacted by an oil or hazardous substance pollution incident. A PRFA specifies a definite budgetary ceiling and a definite period of performance for accomplishing the SOW. The PRFA's SOW, budget, and period of performance may only be amended upon the express authorization of the federal OSC and documented on a PRFA Amendment signed by the federal OSC. Funding may be provided for services consistent with the NCP

and requested by the federal OSC. Cost documentation must meet National Pollution Funds Center (NPFC) standards for reimbursement. Cost documentation will be submitted in accordance with the time frames specified in the PRFA.

5. To assure appropriate language as jointly agreed to and provided by APHIS-WS is included in coastal Area Contingency Plans in regards to the number of trained APHIS-WS personnel and accompanying equipment available to support responses as described in paragraphs 3 and 4 above.
6. To notify APHIS-WS of potentially relevant oil spill and hazardous substance response training and exercises at the national, state, regional and local level.
7. To notify APHIS-WS as soon as possible of requested assistance following an incident with details generally coordinated via the Wildlife Branch within the Incident Command System (ICS).

EPA intends:

1. To fulfill its mission of coordinating emergency preparedness and response to potential or actual substantial oil discharges and hazardous substance releases as appropriate, and include APHIS-WS in ongoing efforts to improve and implement the NCP and NRF procedures related to wildlife response.
2. To advise all of its predesignated federal OSCs, National Response Team (NRT) and Regional Response Team (RRT) members of the terms of this MOU.
3. To issue a Statement of Work under a Pollution Removal Funding Authorization (PRFA), when deemed appropriate by the federal OSC utilizing the Oil Spill Liability Trust Fund (OSLTF), or an Interagency Agreement (IA) utilizing CERCLA funds when deemed appropriate by the federal OSC or the EPA, when APHIS-WS is requested to provide additional expertise in the field engaging in the humane capture, handling, hazing, transport and so forth of wildlife impacted by an oil or hazardous substance pollution incident.
4. A PRFA and IA specifies a definite budgetary ceiling and a definite period of performance for accomplishing the SOW. The Statement of Work, budget, and period of performance may only be amended upon the express authorization of the federal OSC and documented on an Amendment signed by the federal OSC. Funding may be provided for services consistent with the NCP and requested by the federal OSC, or in the case of CERCLA

- funded response, when requested by the federal OSC and approved by the EPA or lead agency. Cost documentation must meet National Pollution Funds Center (NPFC) standards for OSLTF reimbursement and EPA standards for CERCLA reimbursement. When requesting reimbursement from OSTLF or CERCLA, cost documentation will be submitted in accordance with the time frames specified in the PRFA or the IA, respectively.
5. To assure appropriate language is included in inland Area Contingency Plans in regards to the number of trained APHIS-WS personnel and accompanying equipment that are listed.
  6. To notify APHIS-WS of potentially relevant oil spill and hazardous substance response training at the national, state, regional, and local level.
  7. To notify APHIS-WS as soon as possible of requested assistance following an incident with details generally coordinated via the Wildlife Branch within the Incident Command System (ICS).

APHIS-WS intends:

1. To provide appropriate language for inclusion in Area and Regional Contingency plans in regards to the number of trained APHIS-WS personnel and accompanying equipment available to support response in accordance with the provisions of this MOA.
2. To provide or furnish USCG and EPA OSCs with technical expertise in accordance with its own authorities and funding.
3. To provide assistance via PRFA or IA request with respect to wildlife capture, handling, transport and hazing techniques to prevent wildlife from becoming oiled or contaminated by a hazardous substance in accordance with the provisions and procedures outlined in applicable Area and Regional Contingency Plans.
4. To provide assistance to the EPA via an Interagency Agreement, during a CERCLA funded response, with respect to wildlife capture, handling, transport and hazing techniques to prevent wildlife from becoming contaminated by a hazardous substance, or prevent the spread of contaminated wildlife to non-impacted areas, in accordance with the provisions and procedures outlined in the SOW as well as applicable Area and Regional Contingency Plans.

5. To meet the site-specific financial management and record keeping responsibilities by organizing and retaining in a site file documentation of costs by site and activity (e.g., vouchers, billing statements, evidence of payment, audit reports).
6. To participate in and support the Incident Command System (ICS) response organization (e.g., Operations and/or Planning Section) as determined appropriate by the federal OSC/Unified Command to provide for the coordination and management of APHIS-WS staff in accordance with the provisions and procedures outlined in applicable Area and Regional Contingency Plans and spill specific Incident Action Plans and Wildlife supplements.
7. To disseminate information as directed by the federal OSC or UC, generally via the Wildlife Branch of the ICS, in accordance with the provisions and procedures outlined in applicable Area and Regional Contingency Plans.
8. To ensure APHIS-WS staff participating in response have appropriate Hazardous Waste Operations and Emergency Response (HAZWOPER) training to support the mission.
9. To participate, as available, in preparedness and planning activities, such as, RRT meetings, area committee meetings and National, Regional, State and local exercises.
10. To notify appropriate Federal, state, local, and tribal agencies prior to conducting wildlife response activities.
11. To comply with fiscal management and performance requirements and to provide the federal OSC with supporting expenditure and program management documentation related to fiscal compliance and program performance management in a format that is acceptable to USCG or EPA.
12. To complete required documentation and reports generally via the Wildlife Branch of the ICS, in a timely manner as mutually determined for a specific spill or release response.

## ARTICLE 5 OTHER PROVISIONS

USCG, EPA and APHIS-WS mutually understand that:

1. This MOU instrument in no way restricts USCG, EPA or APHIS-WS from participating in similar activities with other public or private agencies, organizations, and individuals. Similarly, nothing in this MOU is intended to modify in any manner the present cooperative programs of each agency with States, other public agencies, or educational institutions.
2. In collaborative activities and programs, USCG, EPA and APHIS-WS should recognize cooperative efforts by endeavoring to display each other's logos in a manner that is approved by the principal contacts of each party in accordance with agency procedures.
3. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA and USCG and APHIS-WS in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates EPA, USCG, or APHIS-WS to make any specific request for services to any agency, to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any transaction involving transfers of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.
4. Nothing in this MOU is intended to conflict with current law or regulation or directives under which USCG, EPA, and APHIS-WS operate. If a term of this memorandum is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full effect.
5. When APHIS-WS is deployed to support a federal response which is directed by USCG or EPA, participants will operate under the ultimate direction of the federal OSC and all wildlife oil spill or hazardous substance response activities will be coordinated with the appropriate Federal, state, local and tribal agencies.
6. Each Party plans to participate in an open exchange of relevant information, as permitted by law (including funding opportunities), which furthers the mission of each organization.

7. Each Party to this MOU is separate and independent from one another. As, such, each organization will retain its own identity in providing services, and is responsible for establishing its own policies.

## ARTICLE 6 POINTS OF CONTACT

The principal contacts for this agreement are:

USCG  
Mary E. Landry, USCG  
Commandant  
Director of Incident Management and Preparedness Policy  
U.S. Coast Guard  
2100 Second Street SW, Stop 7363  
Washington, DC 20593-7363  
Phone: 202-372-2234

EPA  
Lawrence M. Stanton  
Director, Office of Emergency Management  
Office of Solid Waste and Emergency Response  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
Phone: 202-564-8600

APHIS- WS  
William H. Clay  
Deputy Administrator  
USDA, Animal & Plant Health Inspection Service, Wildlife Services  
1400 Independence Avenue, SW  
Room 1624 South Agriculture Building  
Washington, D.C. 20250-3402  
Phone: 202-799-7095



ARTICLE 7  
STATEMENT OF NO FINANCIAL OBLIGATION

Nothing in this MOU, in and of itself, obligates the Parties to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. The Parties agree not to submit a claim for compensation for services rendered in connection with any activities it carries out in furtherance of this MOU. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfers of funds or items of value are not authorized under this MOU.

ARTICLE 8  
LIMITATIONS OF COMMITMENT

This MOU and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that EPA, USCG, and APHIS-WS intend that if any monies allocated for purposes covered by this MOU that such monies be expended in accordance with its terms and the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If fiscal resources are to transfer, a separate agreement must be developed by the parties.

ARTICLE 9  
CONGRESSIONAL RESTRICTION

Under 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of the MOU or to any benefit to arise there from.

ARTICLE 10  
LIABILITIES

APHIS-WS will hold the Parties to the Agreement harmless from any liability arising from the negligent act or omission of the APHIS-WS officer or employee acting within the scope of his or her employment to the extent compensation is available pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. 2671 et seq., except to the extent that aforesaid liability arises from the negligent acts or omissions of the Parties to the Agreement, its employees, agents or subcontractor, and employees or agents of the subcontractor(s). Such relief shall be provided pursuant to the procedures set for in the FTCA and applicable regulations.

ARTICLE 11  
REPORTING AND DOCUMENTATION

This MOU does not require follow-up reports or documentation of actions taken.

ARTICLE 12  
AMENDMENTS

This MOU may be amended at any time by mutual agreement of the parties in writing.

ARTICLE 13  
TERMINATION

This MOU may be terminated by any signatory party upon sixty (60) days written notice to the other party.

ARTICLE 14  
NO PRIVATE RIGHT OF ACTION

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this agreement, against USCG or APHIS-WS or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of EPA, USCG, and APHIS-WS.

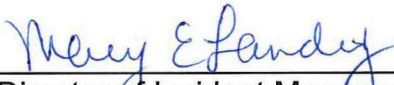
ARTICLE 15  
EFFECTIVE DATE AND DURATION

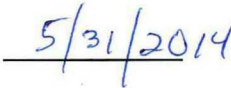
This MOU will be in effect upon date of final signature and will continue until it is terminated by written agreement of the parties. Ending date must not exceed 5 years from date of final signature. This MOU may be extended upon written request of the USCG, EPA, or APHIS-WS and the subsequent written concurrence of the other(s).

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last written date below.

APPROVED BY:

DATE:

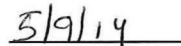
  
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Director of Incident Management and  
Preparedness Policy  
(CG-5RI)  
U.S. Coast Guard

  
\_\_\_\_\_  
5/31/2014

  
\_\_\_\_\_  
Deputy Administrator  
U.S. Department of Agriculture, Animal  
and Plant Health Inspection Service,  
Wildlife Services

  
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6/27/14

  
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Director, Office of Emergency Management  
Office of Solid Waste and Emergency Response  
US Environmental Protection Agency

  
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5/9/14