1000 Introduction

1100 Introduction and Authority

The Puerto Rico and U.S. Virgin Islands Area Contingency Plan (ACP) is a plan prepared by the Puerto Rico and U.S. Virgin Islands Area Committee (AC) and includes those areas within the jurisdiction of U.S. Coast Guard (USCG) Sector San Juan and the U.S. Environmental Protection Agency (EPA). It is part of a family of plans to be implemented in conjunction with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Caribbean Regional Contingency Plan (RCP), to address removal of oil and hazardous substances. Since September 11, 2001, the ACP's scope has evolved to encompass contingencies involving acts of terrorism, and biological and radiological incidents.

The area contingency planning process is based on the premise that proper planning is essential to a safe and effective response. The AC seeks to enhance the response community's ability to successfully mitigate substantial threats or actual incidents through an effective and coordinated planning process. The purpose of the plan is to define roles, responsibilities, resources and procedures necessary to respond to a myriad of spill response evolutions. The ACP is formatted within an Incident Command System (ICS) framework. This plan is available for download from the USCG Sector San Juan website on CG Homeport and the NRT Sector San Juan ACP website.

It is important to note that the ACP is a plan for use in responding to an incident. Information found in the plan relating to such items as response resources should not be viewed as performance standards. These are planning criteria based on a set of assumptions that may not exist during an actual incident.

1110 Captain of the Port Authority

The functions of designating areas, appointing Area Committee members, determining the information to be included in Area Contingency Plans, and reviewing and approving Area Contingency Plans have been delegated by Executive Order 12777 of 22 October 1991, to the Commandant of the USCG (through the Secretary of the Department of Homeland Security) for the coastal zone, and to the Administrator of the EPA for the inland zone. The term "coastal zone" is defined in the NCP (40 CFR 300.5) to mean all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, and the waters of the Exclusive Economic Zone (EEZ). The USCG has designated areas, those portions of the Captain of the Port (COTP) zones which are within the coastal zone, for which Area Committees will prepare Area Contingency Plans. The COTP zones are described in USCG regulations (33 CFR Part 3).

In 2007, the EPA operating in Puerto Rico and the U.S. Virgin Islands and USCG Sector San Juan agreed to develop jointly, this one plan to address responses to both the coastal and inland zones of Puerto Rico and the U.S. Virgin Islands.

1120 Response System Authority

Section 4202 of the Oil Pollution Act of 1990 (OPA 90) amended Subsection (j) of Section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321 (j)) to address the development of a National Planning and Response System. As part of this system, Area Committees have been established for each area designated by the President. These Area Committees are comprised of qualified personnel from federal, state, and local agencies. This Area Committee, under the direction of the Federal On-Scene Coordinator (FOSC) for the Puerto Rico and U.S. Virgin Islands Area of Responsibility (AOR), is responsible for developing this ACP. This development process includes appointing Area Committee Executive Members, determining information to be included in Area Contingency Plans, and reviewing and approving Area Contingency Plans. The ACP, when implemented in conjunction with the NCP, shall be adequate to remove a worst case discharge of oil or a hazardous substance. In addition, it shall also mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the geographic area. Each Area Committee is responsible for working with state and local officials to pre-plan for joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife. The Puerto Rico and U.S. Virgin Islands Area Committee is also required to work with state and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

1130 Investigative Authority

Several federal, state, and local agencies have a direct role in the enforcement of applicable laws and regulations associated with a discharge, or substantial threat of a discharge, of oil into the navigable waters of the U.S. The investigation into alleged violations of the many applicable laws and regulations require a coordinated effort among these agencies, which include the USCG, the Puerto Rico Environmental Quality Board (EQB), and the U.S. Virgin Islands Department of Planning and Natural Resources (DPNR).

1130.1 The United States Coast Guard Authority

The USCG has enforcement and investigative authority for a significant array of potential federal violations, as well as enforcement actions under applicable international treaties.

Federal laws and regulations associated with a discharge (or substantial threat of a discharge) of oil include applicable components of the Clean Water Act as amended; the Oil Pollution Act of 1990; the Ports and Waterways Act; The Port and Tanker Safety Act; The Act to Prevent Pollution from Ships (1980), as amended; and, Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). In addition, the USCG has authority pursuant to 46 USC 7701 and 46 USC 6101 related to personnel actions (licensed mariners), and marine casualties, respectively. Federal regulations associated with investigative or enforcement interest under these USC's include, though are not limited to: applicable sections of 46 CFR with particular attention to Parts 4, 5, 16; 33 CFR Parts 126, 130, 151, 153-160; and 40 CFR Parts 116, and 117. Potential federal investigative actions associated with a pollution discharge may include, but are not limited to: the collection of statements and evidence to determine the causes of the associated marine casualty, mandatory chemical testing of involved licensed personnel, and the collection of oil samples in the water and on suspect vessels.

1130.2 The Commonwealth of Puerto Rico Authorities

Government Agencies of the Commonwealth of Puerto Rico are assigned responsibilities according to Executive Orders No. 1991-26 and 4916-A, and Commonwealth Laws Numbers 13, 81, and 9 as they pertain to the integration and coordination of oil and hazardous substance releases and environmental emergencies. The Puerto Rico Environmental Quality Board (EQB) is the lead agency representing the Commonwealth of Puerto Rico for all oil spills that threaten Puerto Rico. The EQB is also the lead agency representing the Commonwealth of Puerto Rico for coordinating and providing technical assistance on all hazardous materials releases that threaten Puerto Rico. The PR Fire Department has four hazardous materials response vehicles and is training an emergency response team capable of performing emergency Level "A" entries.

The Department of Natural and Environmental Resources (DNER) also plays a major role in all spills as the natural resource trustee agency, including assessment of damages to natural resources resulting from the incidents. The DNER Ranger Corps serves as the law enforcement arm of the DNER. Its primary function is to enforce all laws applicable to the protection, preservation and conservation of the natural resources and overall environment of Puerto Rico. Because of the potential severity of oil and hazardous substance releases to public health, welfare, and the environment, the Governor and legislative bodies of the Commonwealth recognize the need to encourage cooperation and progressive actions to be taken in such instances that are considered environmental emergencies. All Commonwealth of Puerto Rico agencies will support the Incident Command System Response Organization.

Marine Fires: The Puerto Rico Fire Department is the lead agency within the Unified Command for coordinating the response to all fires within the Commonwealth of Puerto Rico. This includes fires on shore facilities, vessels in port, or anchored in the bays of Puerto Rico. The PR Civil Defense will assist in coordinating Commonwealth resources and ensuring appropriate agencies are notified. When needed or requested, each agency will provide an emergency coordinator on scene, or at a designated area (usually at Civil Defense) to assist the Incident Commander (IC).

PR Fire Fighters do not normally perform shipboard firefighting on a vessel not pier side and not of immediate threat to human life, or the welfare of Puerto Rico. Shipboard fires will be turned over to a salvor, or company specializing in ship fires as soon as possible with continual monitoring by the Fire Department until the threat has been mitigated.

All government agencies of the Commonwealth of Puerto Rico will immediately supply all available support to the Fire Service as needed to mitigate an incident. The PR Civil Defense will assist the Fire Service in coordinating response resources and personnel.

1130.3 U.S. Virgin Islands Authorities

The Virgin Islands Department of Planning and Natural Resources (DPNR), as mandated by Title 12, Chapter 17 of the Virgin Islands Code, is the lead state agency for all oil and hazardous materials spills that threaten the U.S. Virgin Islands. The Division of Environmental Enforcement serves as the law enforcement arm of the DPNR. Its primary function is to enforce all laws applicable to the protection, preservation and conservation of the natural resources and overall environment of the USVI.

For all Spills of National Significance (SONS) and spills requiring the resources of two or more local agencies DPNR and the Virgin Islands Territorial Emergency Management Agency (VITEMA) will participate in the Unified Command System Response Organization. In larger cases where numerous local resources need coordinating, VITEMA will activate its EMERGENCY OPERATIONS AND DISASTER CONTROL PLAN and ensure all needed Virgin Islands Government Agencies are incorporated into the ICS.

Marine Fires: The Virgin Islands' Fire Service is the lead agency for coordinating the response to all fires within the U.S. Virgin Islands. This includes fires on shore facilities, vessels in port, or anchored in the bays of the U.S. Virgin Islands. However, they do not have the personnel resources or equipment to combat a significant marine fire. In the event of a marine fire, the Virgin Islands' Fire Service will provide an IC and all government agencies of the U.S. Virgin Islands will immediately supply all available support to the Fire Service as needed to mitigate the incident.

The VITEMA and the Virgin Islands' Fire Service will work together in coordinating USVI's resources and ensuring appropriate agencies are notified. The USCG will assist the V.I. Fire Service in all fires aboard commercial vessels. When needed or requested, each agency will provide an emergency coordinator on scene, or at a designated area (usually at VITEMA) to assist the IC.

1200 Geographic Boundaries

1210 Area of Responsibility

This section describes the FOSC's AOR, the EPA/USCG jurisdictional boundaries and the associated criteria for assignment of an FOSC, and if necessary, transfers of duties between FOSCs.

The boundary of the Sector San Juan Captain of the Port Zone is referenced in 33 CFR Part 3.35-25 and depicted below (Figure 1-1). The AOR for the USCG and EPA FOSC's in the Caribbean includes all land and water under U.S. jurisdiction, to include the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Navassa Island and all waters within the EEZ. Per the "Policy Guidance for Intervention in Ship-Related Marine Pollution Incidents on the High Seas and on the Navigable Waters of the United States", COMMANDANT INSTRUCTION 16451.5A, the USCG also has the authority to conduct an intervention on the high seas against any vessel that threatens to pollute U.S. waters. The USCG does not have the authority to intervene in the sovereign territory or waters of another country.

The USCG furnishes the Federal On-Scene Coordinator for the coastal zone and the EPA for the inland zone. In Puerto Rico and the U.S. Virgin Islands, the coastal zone generally follows the coastline and includes bays, rivers, estuaries, and inlets. The inland zone generally includes all else. The specific boundaries are outlined in Section 1220 FOSC Boundaries Delineated. As a general rule, the location of the source of the discharge will be the determining factor of which agency provides the FOSC. When the discharge or release occurs and remains within one agency's boundary, it is clear which agency will provide the FOSC. In these cases, when requested by the other agency, each agency will provide support, within the limits of their resources, to the other's FOSC. When a spill occurs in one zone and flows, or threatens to flow, into another, the agency that has jurisdiction over the location where the incident initially occurred will provide the FOSC. This scenario is likely in the near coastal area when a spill occurs in the inland zone (EPA jurisdiction) and flows or migrates through storm drains or ditches into the water seaward of the boundary line (USCG jurisdiction). There are two possibilities in this case: (1) The EPA provides the OSC and the CG assists the EPA with waterside clean-up operations, or (2) By mutual agreement, EPA may transfer OSC responsibilities to the CG. Good communication and coordination between the EPA and CG FOSCs is vital to an effective federal response.

Figure 1-1. The Area of Responsibility for the Sector San Juan COTP and EPA FOSC includes the entire coastal and inland zones for the Commonwealth of Puerto Rico, U.S. Virgin Islands (St. Thomas, St. John, and St. Croix) and Navassa Island. This area includes the Exclusive Economic Zone.

1220 FOSC Boundaries Delineated

The following is a detailed description of the FOSC jurisdictional boundaries for Puerto Rico and the U.S. Virgin Islands.

1220.1 Puerto Rico

The EPA and USCG jurisdictional boundaries are divided mostly by road or thoroughfare, beginning at the intersection of Route 1 and Route 26 in **San Juan**. The boundary runs East on Route 26; then North and East along Route 37, Calle Loiza to Route 187; then East along Route 187, until Route 3 in **Rio Grande**. The jurisdictional boundary then runs along Route 3 eastward to Route 194 in **Fajardo**; then along Route 194 back to Route 3 and then South to **Yabucoa** where the boundary then turns East onto Route 901 to Route 760 and back to Route 3; then West along Route 3 to **Salinas** where the boundary continues West along Route 1 into **Ponce**. In Ponce the boundary continues westward by turning South along Route 2 onto Route 12 South, to Route 123 North, then North on Avenida Hostos, then West onto Route 585 North back to Route 2; then continuing West along Route 2 to **Tallaboa**. In Tallaboa the boundary follows westward along Route 127 onto Route 3336, to Route 335 South to Route 335R to the border of the Guanica National Forest. The boundary then runs westward along the Northern boundary of the National Forest to Route 334 in Guanica then West on Route 334 to Route 116 and continuing westward on Route 116 to Route 325, then West on Route 325 to Route 202, then West on Route 202 becoming Route 324 West, to Route 304 West then back to Route 202, then West on Route 202to Route 303, and then West on Route 303 to Route 301 North to Route 101 then West on Route 101 to Route 307, then West on Route 307 to Route 308, then West on Route 308 to Route 102 then North along Route 102 through **Mayaguez** to Route 64. Follow Route 64 Northwest onto Route 2 North; then onto Route 115 North onto Route 429 and then back to Route 115 North through **Rincon** and then North on Route 441 to Route 439 North back to Route 115 North through **Aguadilla** along the waterfront road of Routes 111, 442, 440 and back to 111 North onto Route 107 North through Air station Borinquen onto Route 110 to Route 4466 to Route 466 North to Route 113 East to Route 2; then along Route 2 East onto Route 4484 and East onto Route 485 onto Route 119 East in Camuy to Route 2; then continue East on Route 2 across the Rio Grande de Arecibo to Route 680 North then Route 6680 East and then East onto Route 2; then continue Route 681 becoming Route 684 to La Boca. The boundary line continues from El Malecon-La Boca across the Rio Grande de Manati and East, 100 meters inland from the shoreline to Route 6684, then East on 6684 to El Alto, to Route 685 (1685) eastward becoming Route 671 (6671) continuing East to Vega Baja to Route 692, then East on Route 692, then following the northern boundary of Pantano Cibuco Natural Reserve back to Route 692 and continuing East to the intersection of Routes 690 and 693, then East on Route 693 to **Dorado**; then in Dorado onto Route 165 East; then East on Route 888, Avenida Las Nereidas, then South along Route 24, through **Catano** back onto Route 165; then East on Route 28 and East on Route 2to Route 1; then North on Route 1 back to the starting point on Route 26.

1220.11 Culebra, Vieques and the Smaller Islands of Puerto Rico

The EPA/USCG jurisdictional boundaries on Culebra and Vieques islands are delineated by an imaginary line that runs 100 meters inland from the water's edge. All of the Commonwealth's smaller islands, such as Mona Island, will be under the jurisdiction of the USCG FOSC.

1220.2 U.S. Virgin Islands

The inland and coastal areas are divided mostly by road or thoroughfare except for St. John.

1220.21 St. Thomas

The boundary begins near Crown Bay at the intersection of Route 30, **Moravian Hwy**. and Route 304 and runs West along Route 304; then North on Route 302, then Westward again on Route 30 along **Brewers Bay Road**; then North and East along Route 301, **West End Road**, Northeastward along Route 33, **Crown Mountain Road** to Route 333; then along Route 333 North on to Route 404; then along Route 37, **Hull Bay Road** and Route 40 to Route 35; then East and North along Route 35 to Route 42, **Mahogany Run Road**; then along Route 42 Eastward along Route 38, **Smith Bay Road** onto Route 32, **Redhook Road**; then Westward along Route 30, **Bovoni Road**, **Frenchman Bay Road** and **Veterans Drive** through Charlotte Amalie back to Route 304. All outlying islands including Water and Hassel Islands fall under the jurisdiction of the USCG FOSC.

1220.22 St. John

The EPA/USCG jurisdictional boundary on St. John is delineated by an imaginary line that runs 100 meters inland from the water's edge.

1220.23 St. Croix

The EPA/USCG jurisdictional boundary on St. Croix begins at Route 64 near the **Airport** and follows westward along **Melvin H. Evans Highway** to Christiansted Bypass, **and Fisher Street** in **Frederiksted**. In Frederiksted the boundary line runs East along Fisher Street and then North along **King Street**; then on to Route 63, Hans Bluff Road to and along **Maroon Ridge** to **Earle Road**, East along Earl Road; then North on Route 69 and East along Route 80, **North Shore Road** to Route 75, **North Side Road**; then East on Route 75 to Route 70, **Watergut Road**. From Watergut Road heading East, head northeast on **King Cross Street**; then northwest on **Strand Street**; then northeast on **Queen Cross Street**; then northwest on **King Street** to Route 66, **Hospital Street**; then from Route 66 along Routes 75 and 82, **East End Road**; then along Route 82 to Route 60, **South shore Road**; then along Route 60 onto Route 624; then South on Route 62, **South shore Road** to the boundary of HESS Oil Refinery (HOVIC).

For the adjacent facilities of **VI Alumina Company** and **HOVIC**, refer to paragraph A-IV-B-2 above. From the Northwest corner of HOVIC the boundary line again begins and runs West along Route 660, **Melvin Evans Hwy**.; then South and West along Route 64 back to the starting point.

1220.3 Navassa Island

Navassa Island falls under the jurisdiction of the USCG FOSC. More contingency planning and response information regarding Navassa Island can be found in Annex I of this plan.

1230 Department of Defense, Department of Energy and Other Federal Agencies

When an incident is on, or the sole source of the release is from, any facility or vessel under the jurisdictional custody, or control of the U.S. Department of Defense (DOD) or U.S. Department of Energy (DOE), then DOD or DOE will provide an FOSC/Remedial Project Manager (RPM) for hazardous substance releases. The USCG/EPA will retain FOSC responsibilities for oil spills. See 40 CFR 300.120 (a) & (b).

1240 Transferring FOSC Responsibility

It may be necessary to transfer USCG or EPA FOSC responsibility from one agency to the other. Examples of when transfers are appropriate are:

(1) When a response changes from an emergency response to a remedial action.

(2) When one FOSC or agency is better suited to coordinate the response to a specific incident. For instance, the EPA may request the USCG FOSC for oil spills near the boundary that will impact navigable waters, or the USCG may request an EPA FOSC on certain hazardous materials cases.

(3) When the FOSC's emergency response workload is beyond his/her capability.

(4) When an FOSC is first on scene at an incident outside of his/her jurisdiction and starts response actions before the pre-designated FOSC arrives.

The request for transfer of FOSC duties and concurrence may be verbal or communicated through e-mail correspondence, but the agreement will be confirmed in writing by using the FOSC Transfer of Duties Template.

On larger cases, both the USCG and EPA FOSC may assist in a unified command regardless of which agency is the designated FOSC. This is encouraged for SONS as defined under the National Response Framework. There will always be a pre-designated FOSC for all cases involving federal resources.

1300 Area Committee

Updated contact list for committee members is located in Section 9200.

1310 Purpose / Objective

The primary role of the Area Committee is to act as a preparedness and planning body. The Puerto Rico and U.S. Virgin Islands Area Committee is composed of experienced natural resource trustee representatives, emergency response representatives, industry representatives, Non-Governmental Organization (NGO) representatives, and federal, state and local government agencies with definitive responsibilities for the area's human health and safety and environmental integrity. Each member is empowered by their own organization to make decisions on behalf of the organization to commit them to carrying out roles and responsibilities as described in this plan. The Area Committee seeks to promote the coordination of federal, state, and municipal efforts to discharges of oil, or releases of hazardous substances from inland or marine sources.

1320 Organization

The pre-designated FOSCs for the Puerto Rico and U.S. Virgin Islands inland and coastal zones and the State On-Scene Coordinators for both Puerto Rico and the U.S. Virgin Islands will serve as Chairmen of the Area Committee. The FOSCs will also serve as the Co-Chairs of the Executive Committee.

1330 Executive Committee

The only designated members of the Puerto Rico and U.S. Virgin Islands Area Committee are the members of its Executive Committee. Executive Committee members shall ensure appropriate representatives from federal and state agencies and other appropriate stakeholders are included in the AC membership.

The Executive Committee is to guide the Area Committee and provide necessary oversight which shall allow for more efficient operation. Executive Committee members will review the ACP and provide guidance on the development of strategic goals for the ACP. In addition, they shall develop and prioritize work lists, and establish and task workgroups as necessary.

The Area Executive Committee is comprised of seven representatives from the following agencies:

- U.S. Coast Guard Sector San Juan
- U.S. Environmental Protection Agency
- Commonwealth of Puerto Rico Environmental Quality Board
- Commonwealth of Puerto Rico Emergency Management Agency
- U.S. Virgin Islands Department of Planning and Natural Resources
- U.S. Virgin Islands Territorial Emergency Management Agency
- National Oceanic and Atmospheric Administration (NOAA) Scientific Support Coordinator (SSC)

1340 Revision and Update Requirements

The ACP shall be revised every three years, in the year following the full scale Preparedness for Response Exercise Program (PREP) Exercise. The ACP shall be reviewed annually. The key areas to focus on during annual updates include: emergency notification lists, response equipment information (type and amount of available equipment), sensitive areas, hazard/risk assessment of the area, response strategies (changes based on new technologies or equipment, etc.), and dispersants approval. All changes approved by the Executive Committee will be submitted to Commander, USCG District Seven for review and will be distributed to the Area Committee via Sector San Juan's website on CG Homeport and the NRT Sector San Juan ACP website.

1400 National Response System

The National Response System is used to routinely and effectively respond to a wide range of oil and hazardous substance releases. It is a multi-layered system of individuals and teams from local, state, and federal agencies, industry, and NGOs that share expertise and resources to ensure that oil spill control and cleanup activities are timely and efficient, and that they minimize threats to human health and the environment.

At the heart of the system is the NCP, which are regulations developed to ensure that the resources and expertise of the federal government are available immediately for oil or hazardous substance releases that are beyond the capabilities of local and state responders. The NCP provides the framework for the National Response System and establishes how it works. (
Figure 1-2. National Response **System**)

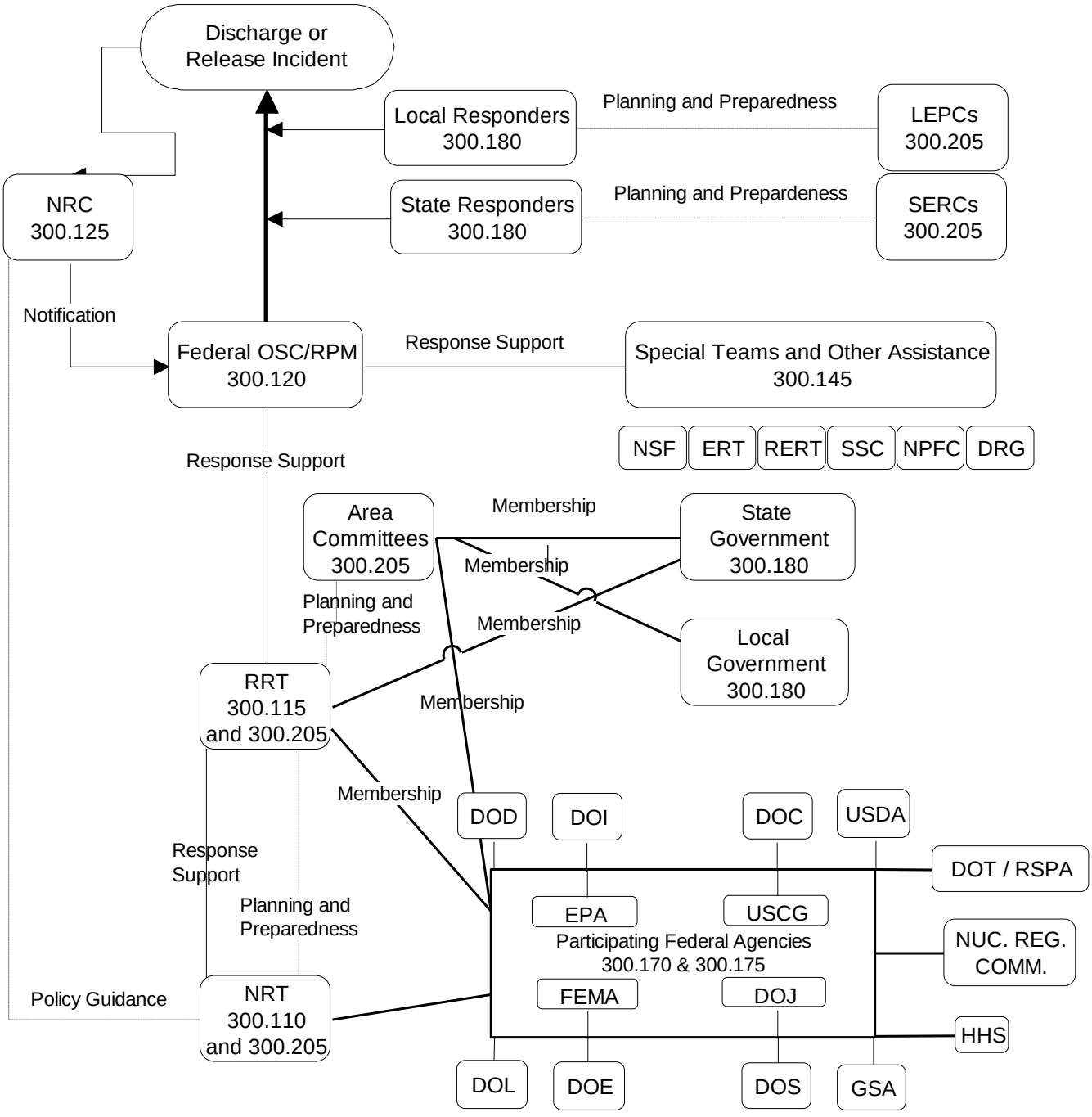


Figure 1-2. National Response System

1410 National Response Policy

Section 4201 of OPA 90 amended Subsection (c) of Section 311 of the Federal Water Pollution Control Act, to require the FOSC to:

"… in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance into or on the navigable waters; on the adjoining shorelines to the navigable waters; into or on the waters of the exclusive economic zone; or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. In carrying out these functions, the FOSC may: remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time; direct or monitor all Federal, State, and private actions to remove a discharge; and recommend to the Commandant that a vessel discharging or threatening to discharge, be removed and, if necessary, destroyed. If the discharge or substantial threat of discharge of oil or hazardous substance is of such size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the FOSC shall direct all federal, state, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge."

1420 National Response Structure

The NRS is a three-tiered response and preparedness mechanism that supports the pre-designated FOSC in coordinating national, regional, and local government agencies; industry, and the responsible party during response operations. The FOSC plans and coordinates response strategies on scene, using the support of the National Response Team (NRT), Regional Response Team (RRT), AC, and responsible parties to supply trained personnel, equipment, and scientific support to complete an immediate and effective response to any oil or hazardous substance discharge.

1420.1 Spill of National Significance (SONS)

A Spill of National Significance is that rare, catastrophic spill event which captures the nation's attention due to its actual damage or significant potential for adverse environmental impact. A SONS is defined as a spill which greatly exceeds the response capability at the local and regional levels, and due to its size, location, and actual or potential for adverse impact on the environment requires extraordinary coordination of federal, state, local, and private resources to contain and clean up. Only the Commandant of the USCG or the Administrator of the EPA can declare a SONS.

Once the Commandant declares a SONS, a FOSC and Incident Area Commander will be designated, an Area Command will be established with all pre-designated ICS Area Command staff personnel on immediate alert, and all other affected departments and agencies will be notified.

When responding to an incident of this type, the USCG will continue to use the ICS as its response management structure, with the addition of a strategic management and support function called the ICS Incident Area Command. The ICS Incident Area Command structure can be used in any incident of regional or national significance, or in any case where the FOSC, Seventh District Commander, or Atlantic Area Commander feels it would be appropriate. Although the general concept for a nationally significant response involves an oil spill, the establishment of an ICS Incident Area Command is appropriate anytime there are large incidents affecting multi-jurisdictional areas.

The Commandant of the USCG alone is empowered to declare a SONS in the coastal zone, taking into account environmental risks, weather conditions, response capabilities, and the amount or potential amount, of product spilled. The USCG Atlantic Area Commander or Seventh District Commander may recommend to the Commandant that a SONS be declared. Factors to be considered in declaring a SONS include:

- Multiple FOSC zones, districts, or international borders effected;
- Significant impact or threat to the public health and welfare, wildlife, population, economy and/or property over a broad geographic area;
- Prolonged period of discharge and/or expected cleanup;
- Significant public concern and demand for action by parties associated with the event;
- The existence of, or the potential for, a high level of political and media interest;
- The actual or potential worst case discharge in the ACP or Oil Spill Response Plan for offshore facilities is met or exceeded;
- Additional ongoing incidents or disasters seriously degrading response capability.

Once the Commandant declares a SONS, the following actions will occur:

- An Incident Area Commander will be designated.
- Other Departments/Agencies will be notified.
- A unified Area Command will be established.
- Pre-designated LANTAREA Incident Area Command staff personnel will be activated.

1430 National Response Team

The NRT's membership consists of 15 federal agencies with responsibilities, interests and expertise in various aspects of emergency response to pollution incidents. The EPA serves as Chairman and the USCG serves as Vice Chairman of the NRT, except when activated for a specific incident. The NRT is primarily a national planning, policy, and coordination body and does not respond directly to incidents. The NRT provides policy guidance prior to an incident and assistance as requested by an FOSC via a RRT during an incident. NRT assistance usually takes the form of technical advice, access to additional resources/equipment, or coordination with other RRTs.

National Response Team Members are as follows:

Environmental Protection Agency (EPA) – Chair
U.S. Coast Guard (USCG) – Vice Chair
Department of Agriculture (USDA)
Department of Commerce (DOC)
Department of Defense (DOD)
Department of Energy (DOE)
Department of Health and Human Services (HHS)
Department of Interior (DOI)
Department of Justice (DOJ)
Department of Labor (DOL)
Department of State (DOS)
Department of Transportation (DOT)
Federal Emergency Management Agency (FEMA)
General Services Administration (GSA)
Nuclear Regulatory Commission

1430.1 Role of Federal Agencies

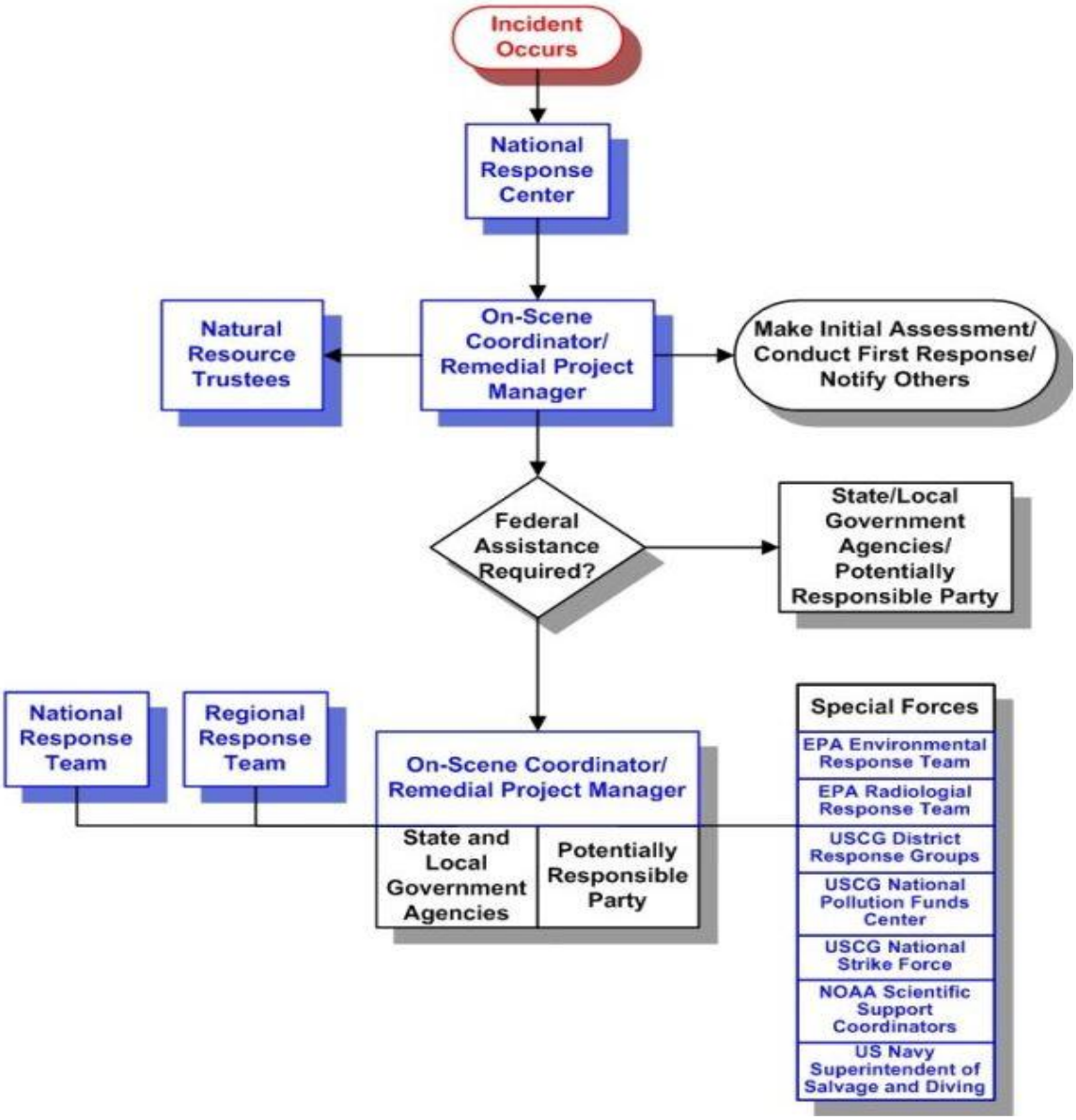
The Homeland Security Act of 2002 established DHS to prevent terrorist attacks within the United States; reduce the vulnerability of the United States to terrorism, natural disasters, and other emergencies; and minimize the damage and assist in the recovery from terrorist attacks, natural disasters, and other emergencies. The act also designates DHS as "a focal point regarding natural and manmade crises and emergency planning." The Secretary of Homeland Security is responsible for coordinating Federal operations within the United States to prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies when any of the following four conditions applies:

- A Federal department or agency acting under its own authority has requested DHS assistance;
- The resources of State authorities are overwhelmed and Federal assistance has been requested under the Stafford Act;

- More than one Federal department or agency has become substantially involved in responding to the incident; or
- The Secretary has been directed to assume incident management responsibilities by the President. Some Federal agencies with jurisdictional authority and responsibility may participate in the Unified Command at the Incident Command Post (ICP).

Several Federal agencies have independent authorities to declare disasters or emergencies within federal lands and properties. These authorities may be exercised concurrently with or become part of a major disaster or emergency declared under the Stafford Act.

Figure 1-3



1430.2 Role of State Agencies

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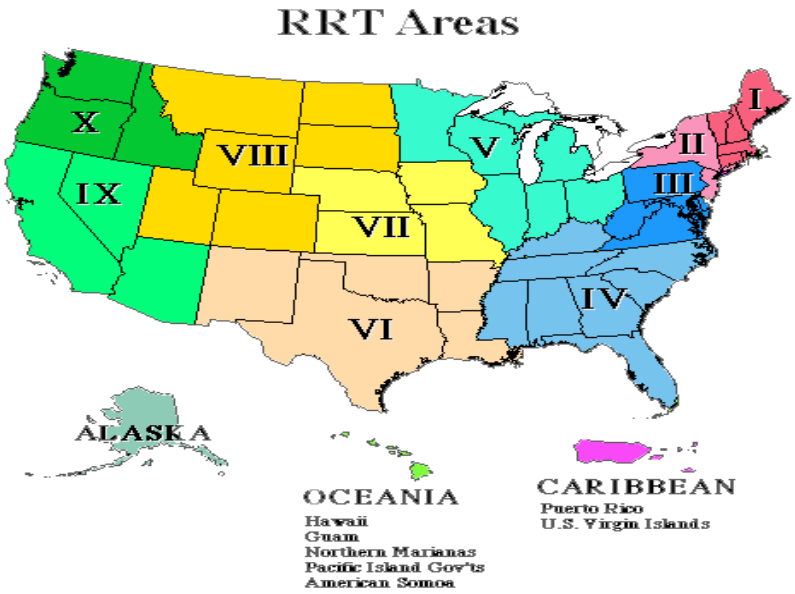
PR Fire Fighters do not normally perform shipboard firefighting on a vessel not pier side and not of immediate threat to human life, or the welfare of Puerto Rico. Shipboard fires will be turned over to a salvor, or company specializing in ship fires as soon as possible with continual monitoring by the Fire Department until the threat has been mitigated.

All government agencies of the Commonwealth of Puerto Rico will immediately supply all available support to the Fire Service as needed to mitigate an incident.

The PR Civil Defense will assist the Fire Service in coordinating response resources and personnel.

1440 Regional Response Team (RRT)

There are 13 RRTs, one for each of the ten federal regions and Alaska, the Caribbean and the Pacific Basin (Figure 1-3). Each RRT has federal and state representation. RRTs develop Regional Contingency Plans that address region-specific issues and provide guidance to the FOSCs for developing their area plans. RRTs also provide one level of review for the ACPs. The RRTs may be activated for specific incidents when requested by the FOSC. If the assistance requested by a FOSC exceeds an RRT's capability, the RRT may request assistance from the NRT.



The applicable RRT for the Puerto Rico and U.S. Virgin Islands AC area of responsibility is the Caribbean Regional Response Team (CRRT). The CRRT is co-chaired by USCG Seventh District and the EPA Region 2 office. The CRRT meets at least two times per year throughout the region. CRRT serves as the regional body for preparedness activities including planning, training and exercising to ensure an effective response to discharges/releases of oil and hazardous substances and for coordination of support and advice during such response actions. It may also be consulted by the FOSC for approval of chemical countermeasures if decision is not pre-approved.

Most RRTs cover two or more FOSC zones. The CRRT is unique because it only covers one FOSC zone. Thus, the regional plan covers the same area as the area plan.

The CRRT should be activated as an intergovernmental coordination team when an actual or potential discharge or release:

1. Exceeds the response capability available to the FOSC in the place where it occurs;
2. Crosses international boundaries;
3. May pose a substantial threat to the public health, welfare, environment, or to regionally significant amounts of property;
4. Otherwise meets the definition of a medium actual coastal discharge (>10,000 gallons) or major potential coastal discharge (>100,000 gallons); or
5. When requested by the FOSC or a RRT representative.

Using the above criteria, any CRRT representative may request either Co-Chair to activate CRRT. The request should be made to the USCG Co-Chair for coastal incidents and to the EPA Co-Chair for inland incidents. The request may be transmitted via telephone or e-mail.

When activated, the RRT may meet or convene by teleconference to provide the following support:

1. Monitor and evaluate reports from the FOSC. The RRT may advise the FOSC on the duration and extent of the federal response and may recommend to the FOSC specific actions in responding to the discharge or release;
2. Request other Federal, State/Commonwealth, or local government, or private agencies to provide resources under their existing authorities to assist the FOSC's response efforts;
3. Help the FOSC prepare information releases for the public and for communications with the NRT;
4. If circumstances warrant, make recommendations to the regional or district head of the agency providing a determination that a different FOSC should be designated; and
5. Submit Pollution Reports (POLREPS) to member agencies and other entities as significant developments occur.

1450 Area Response Structure

The establishment of an ICS Area Command can occur with the District Commander filling the role of Incident Area Commander. This organization would be particularly useful for incidents which are challenging to the local Commanders but do not demand national attention. At this level most billets would be drawn from district level resources, District Response Groups, and aimed at reducing the overhead to be managed by the Incident Commander. Further, Incident Management Teams can be called upon to augment the Incident Commander’s staff.

This ability to project a flexible response facilitates an expanding or contracting response effort, drawing upon one of the strengths of ICS.

The Incident Area Commander will have overall responsibility for the incident strategic management. The Incident Commanders (FOSCs) will be notified of the establishment of an Area Command with the best qualified personnel with respect to their functional areas. The functions of an Area Command require personnel that have experience in, and are qualified to oversee, complex response situations. The Incident Area Command organization operates under the same basic principles as does the Incident Command System, with the organization typically consisting of the Incident Area Commander and Incident Area Command Logistics Chief, Planning Chief, Resources Unit Leader, Situation Unit Leader, Information Officer and Liaison Officer. Flexibility exists to add a Finance Chief and/or a Chief of Staff.

The Incident Area Command has the responsibility to set the overall incident related strategic priorities, to allocate critical resources based on those priorities, to ensure that the incident is properly managed, and to ensure incident objectives are met and do not conflict with each other or with agency policy. When an Incident Area Command is established, Incident Commanders (FOSCs) will report to the Incident Area Commander, with the Incident Area Commander accountable to the Commandant.

However, the Area Command does not replace the on-scene ICS organization(s) or functions. Tactical operations continue to be directed at the on-scene Incident Command level. The Area Command will be established to include representatives of the Affected Party (RP) and affected Federal, State, Local and International interests. Representatives to the Area Command should typically be at the highest executive levels of the RP and responding government agencies. The Area Command structure is intended to enhance the local response organization and will rely on the applicable ACP(s) as the basis for strategic direction of response actions.

1460 Incident Command System

To standardize response management within the marine safety field, the USCG has adopted the National Incident Management System (NIMS) based Incident Command System. Where appropriate, the FOSC shall establish a Unified Command (UC) consisting of the FOSC, the State, and the Responsible Party. The FOSC is responsible for assigning individuals from within the response community (federal, state, local or private), as necessary, to fill the designated positions. It should be noted, however, that one individual may fill several of the designated positions. These assignments will be predicated on the nature of the incident and the need for extensive manning. A major advantage of the ICS organization is that it can be adapted as necessary to best accommodate the incident management team during an incident.

For some incidents only a few of the organization's functional elements may be needed. For larger or more complex responses, additional positions exist within the ICS framework to meet virtually any need.

The ICS organization is built around five major functions that are applied to any incident, large or small. These functions are the Unified Command, and the Operations, Planning, Logistics and Finance Sections. See Figure 1-4. Standard Incident Command System. Refer to the Incident Management Handbook (IMH USCG COMDTPUB P3120.17B) for specific information on all duties and positions.

Fig. 1000-B

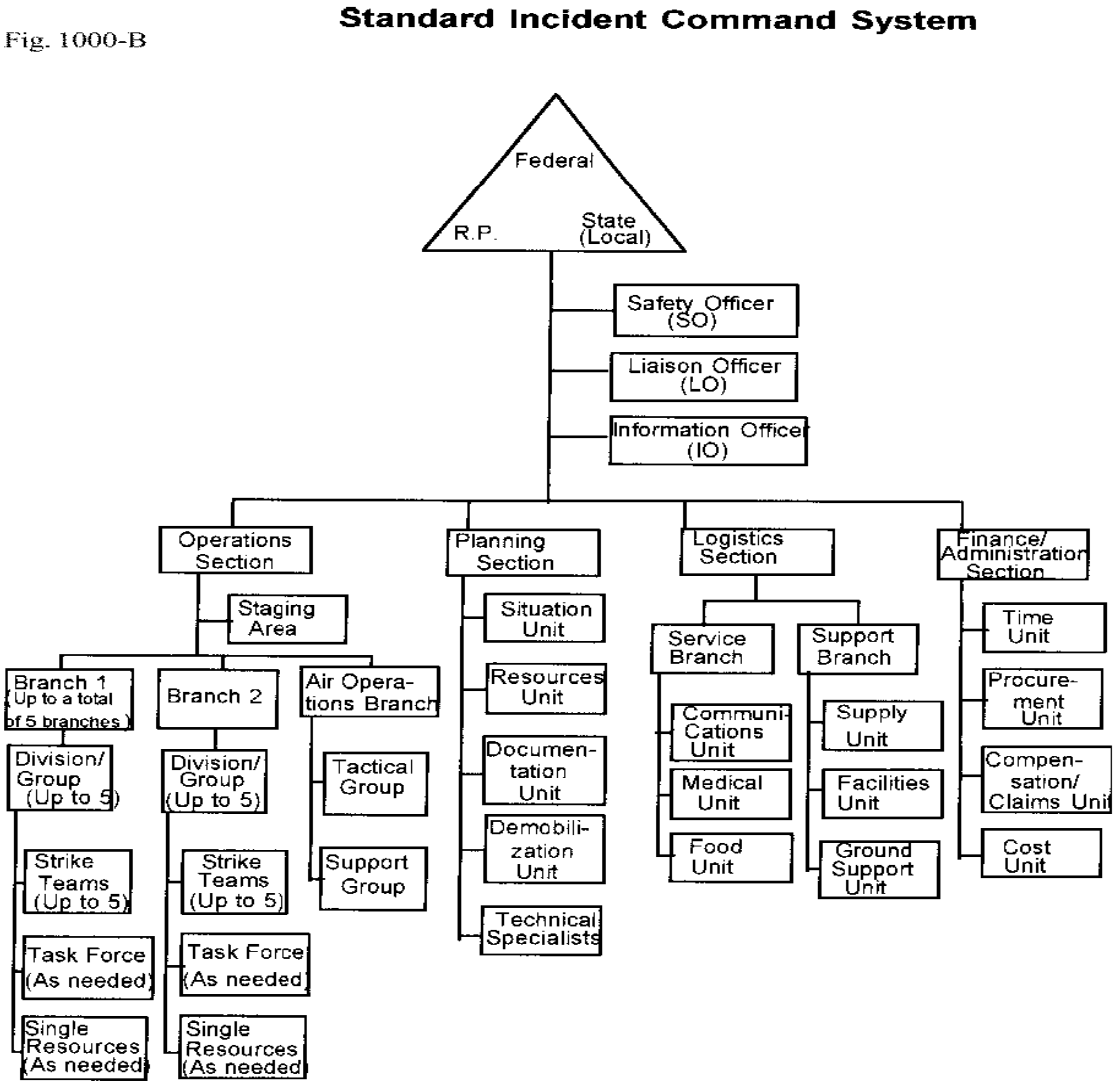


Figure 1-4. Standard Incident Command System

1470 Area Exercise Mechanism

National Preparedness for Response Exercise Program

The guidelines with which to exercise this plan are outlined in the National Preparedness for Response Exercise Program (PREP). PREP was designed to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements.

Commercial vessel and facility response plan holders are required to meet the pollution response exercise requirements under OPA 90. Although participation in the PREP satisfies these requirements, PREP is a strictly voluntary program. Plan holders are not required to follow the PREP guidelines and, if they choose not to, may develop their own exercise program that complies with the regulatory exercise requirements.

Under PREP, the types of exercises that must be conducted to fulfill the requirements of OPA 90 fall within two categories: internal and external exercises.

Internal exercises

Internal exercises are those that are conducted wholly within the plan holder's organization. Internal exercises are designed to examine the various components of the response plan to ensure the plan is adequate to meet the need of the organization for spill response.

Internal exercises and frequency include:

- Qualified individual notification exercises (quarterly);
- Emergency procedures exercises for vessels and barges (quarterly);
- Emergency procedures exercises for facilities (optional) (quarterly);
- Spill management team tabletop exercises (annually);
- Equipment deployment exercises (annually).

External Exercises

External exercises are exercises that extend beyond the internal focus of the plan holder's organization, and involve other members of the response community. The external exercises are designed to examine the response plan and the plan holder's ability to coordinate with the response community in order to conduct an effective response to a pollution incident. External exercises and frequency include area (full-scale) exercises (tri-annually) and government-initiated unannounced exercises (GIUEs) (quarterly).

Exercise Credit for Spill Response

All internal exercises are self-evaluated and self-certified, meaning that the plan holder is responsible for confirming and documenting that the completed exercise was conducted in accordance with PREP guidelines and an examination of the effectiveness of the plan during the exercise was performed.

Responses to actual spills may also be taken as credit for unannounced internal exercises. The plan holder must determine which exercises were completed in the spill response and document the findings. This determination should be based on whether the response effort would meet the objectives of the exercise as listed in the PREP guidelines. To receive credit from the National Schedule Coordination Committee (NSCC) for area exercises conducted as part of an actual spill response, the plan holder must meet the following criteria: (1) the response involved the entire response community; (2) the objectives of the area exercise were met as outlined in the PREP guidelines; (3) the response was evaluated, and (4) the spill response was properly documented and certified.

Proper documentation for self-certification should include, as a minimum, the following information:

- The type of exercise;
- Date and time of the exercise;
- A description of the exercise;
- The objectives met in the exercise;
- The components of the response plan exercised;
- Lessons learned.

This documentation must be in writing and signed by an individual empowered by the plan holder organization.

Area Committee Exercise Development and Participation

The FOSC is responsible for planning, designing, and executing internal exercises to validate the ACP. The FOSC is also responsible to plan, design, and execute external exercises, to include government-led area exercises and GIUEs. The FOSC will be heavily involved in the planning, design, and execution of industry-led area exercises, but the industry sponsor has the lead in this effort.

Members of the Area Committee and response community will be involved in each type of exercise to some degree, varying from the confirmation of a phone number to assisting in the design of the scenario and performing as a controller or evaluator of the exercise.

ACP Improvement

ACP lessons learned from exercises and real events shall be documented in the USCG Contingency Preparedness System. The ACP shall also be revised as necessary to incorporate lessons learned.

1480 National Response Framework

The National Response Framework (NRF) is a guide that details how the nation conducts all-hazards responses from the smallest incident to the largest catastrophe. This document establishes a comprehensive, national, all-hazards approach to domestic incident response. The Framework identifies the key response principles, as well as the roles and structures that organize national responses. It describes how communities, states, the federal government and private-sector and non-governmental partners apply these principles for a coordinated, effective national response. In addition, it describes special circumstances where the federal government exercises a larger role, including incidents where federal interests are involved and catastrophic incidents where a state would require significant support. It lays the groundwork for first responders, decision-makers and supporting entities to provide a unified national response.

In addition to the NRF base document, the Emergency Support Function Annexes and Support Annexes are available on-line at the NRF Resource Center. The annexes are a total of 23 individual documents designed to provide concept of operations, procedures and structures for achieving response directives for all partners in fulfilling their roles under the NRF.

1490 Federal Radiological Emergency Response Plan

The Federal Radiological Emergency Response Plan (FRERP) was integrated into the NRF.

1500 Federal/State/Local Response System

1510 National Response Policy

Section 4201 of OPA 90 amended Subsection (c) of Section 311 of the FWPCA, to require the Federal OSC to “in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance –

(i) Into or on the navigable waters;
(ii) On the adjoining shorelines to the navigable waters;

(iii) Into or on the waters of the exclusive economic zone; or
(iv) That may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States."

In carrying out these functions, the OSC may:

(i) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;
(ii) Direct or monitor all Federal, State, and private actions to remove a discharge; and
(iii) Recommend to the Commandant that a vessel discharging or threatening to discharge, be removed and, if necessary, destroyed.

If the discharge or substantial threat of discharge of oil or hazardous substance is of such size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the FOSC shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

1510.1 Role of the On-Scene Coordinator

FOSC Designation
The Federal on Scene Coordinator (FOSC) is the pre-designated Federal official responsible for ensuring immediate and effective response to a discharge or threatened discharge of oil or a hazardous substance. The USCG designates FOSCs for the U.S. coastal zones, while the EPA designates FOSCs for the U.S. inland zones.

First Federal Official on Scene
The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge or release should coordinate activities under the NCP and is authorized to initiate, in consultation with the FOSC, any necessary actions normally carried out by the FOSC until the arrival of the pre-designated FOSC. This official may initiate federal fund-financed actions only as authorized by the FOSC.

Unified Command
Where appropriate, the FOSC shall establish a unified command consisting of the FOSC, the State on Scene Coordinator, and the Responsible Party Incident Manager. The FOSC is responsible for assigning individuals from within the response community (Federal, State, local or private), as necessary, to fill the designated positions in the NRS incident level response organization. It should be noted, however, that one individual may fill several of the designated positions. These assignments will be predicated on the nature of the spill and the need for extensive manning. These functional responsibilities and position titles, if staffed, are thoroughly described in the functional sections of this plan.

OSC Responsibilities

Initial Response. The FOSC shall, to the extent practicable, and as soon as possible after the incident occurs, collect pertinent facts about the discharge, such as its source and cause; the identification of responsible parties; the nature, amount, and location of discharged materials; the trajectory of discharged materials; whether the discharge is a worst case discharge; the pathways to human and environmental exposure; the potential impact on human health, welfare, safety and the environment; whether the discharge poses a substantial threat to the public health or welfare; the potential impact on natural resources and property which may be affected; priorities for protecting human health and welfare and the environment; and appropriate resource documentation.

Coordination. The FOSC's efforts shall be coordinated with other appropriate Federal, State, local, and private response agencies. An FOSC may designate capable individuals from Federal, State, or local agencies to act as her/his on scene representatives. State and local governments, however, are not authorized to take actions under Subpart D of the NCP that involve expenditures of the Oil Spill Liability Trust Fund (OSLTF) unless an appropriate contract or cooperative agreement has been established.

Regional Response Team (RRT) Utilization. The FOSC should consult with the Caribbean RRT, when necessary, in carrying out the requirements of the NCP and keep the RRT informed of activities under the NCP. The FOSC is responsible for addressing worker health and safety concerns at a response scene.

Public Health Emergencies. In those instances where a possible public health emergency exists, the FOSC should notify the Health and Human Services (HHS) representative to the CRRT. Throughout response actions, the FOSC may call upon the HHS representative for assistance in determining public health threats and call upon the Occupational Safety and Health Administration (OSHA) and HHS for advice on worker health and safety problems.

Natural Resource Trustees. The FOSC shall ensure that the Federal and State trustees for natural resources are promptly notified of discharges. The FOSC shall coordinate all response activities with the affected natural resource trustees and shall conduct an Endangered Species Act consultation with the affected trustees on the appropriate removal action to be taken. Where the FOSC becomes aware that a discharge may affect any endangered or threatened species, or their habitat, the FOSC shall consult with the cognizant trustee for that resource. DOI, DOC, USDA, States, Territories, Indian Tribes, DOD and DOE have trusteeship over lands they respectively manage and the associated resources. DOI, States, and Territories share trusteeship over migratory birds.

States and Territories have trusteeship over resident birds, mammals, reptiles, amphibians, fishes, and lower forms, such as mussels, except where Indian tribes enjoy rights granted by treaty. DOI, DOC, States, and Territories co-share trusteeship over anadromous and catadromous (migratory) fishes. The DOC and states have trusteeship over marine mammals and sea turtles, until the latter come ashore where they fall under DOI and state trusteeship. http://www.epa.gov/superfund/programs/nrd/trust_r.htm

Pollution Report Distribution. The FOSC shall submit pollution reports to the CRRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the CRRT and covered in the Regional Contingency Plan (RCP).

Community Awareness. FOSCs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response, to the extent practicable.

1520 Puerto Rico Response System

Oil Spills: The Puerto Rico EQB is the lead agency representing the Commonwealth of Puerto Rico for all oil spills that threaten Puerto Rico. The Department of Natural and Environmental Resources also plays a major role in all spills as the Commonwealth natural resource trustee agency. All Commonwealth of Puerto Rico agencies will support the Unified Command System Response Organization.

Chemical Spills: EQB is the lead agency representing the Commonwealth of Puerto Rico for coordinating and providing technical assistance on all hazardous materials releases that threaten Puerto Rico. The PR Fire Department has four hazardous materials response vehicles and is training an emergency response team capable of performing emergency Level "A" entries.

Marine Fires: The Puerto Rico Fire Department is the lead agency for coordinating the response to all fires within the Commonwealth of Puerto Rico. This includes fires on shore facilities, vessels in port, or anchored in the bays of Puerto Rico. A Unified Command System as outlined previously will be used.

The PR Fire Department will provide an IC. The PR Civil Defense will assist in coordinating Commonwealth resources and ensuring appropriate agencies are notified. When needed or requested, each agency will provide an emergency coordinator on scene, or at a designated area (usually at Civil Defense) to assist the IC. To avoid overwhelming the IC, the agency indicated in bold print at the top of each column under the different sub-mission areas, (i.e. Fire, Logistics, and Passenger Asst.) will take the lead in coordinating that sub-mission and will represent all the agencies listed below it when reporting to the on scene IC.

1520.1 Puerto Rico Response Policies

Oil Spills: Government Agencies of the Commonwealth of Puerto Rico are assigned responsibilities according to Executive Orders No. 1991-26 and 4916-A, and Commonwealth Laws Numbers 13, 81, and 9 as they pertain to the integration and coordination of oil and hazardous substance releases and environmental emergencies. Because of the potential severity of oil and hazardous substance releases to public health, welfare, and the environment, the Governor and legislative bodies of the Commonwealth recognize the need to encourage cooperation and progressive actions to be taken in such instances that are considered environmental emergencies. Thus, the Commonwealth Agencies' general rules and responsibilities are provided for in this Plan.

Chemical Releases: Same as for oil spills.

Marine Fires: The Commonwealth of Puerto Rico is aware of the unique training and of the specialized equipment needed to combat a marine fire. A specialized shipboard entry team is being developed within the PR Fire Department to respond to fires on vessels. This team, along with whatever Fire Department resources are needed and available, will respond to all marine related fires within Puerto Rico. The PR Fire Fighters do not normally perform shipboard firefighting on a vessel not pier side and not of immediate threat to human life, or the welfare of Puerto Rico. Shipboard fires will be turned over to a salvor, or company specializing in ship fires as soon as possible with continual monitoring by the Fire Department until the threat has been mitigated.

All government agencies of the Commonwealth of Puerto Rico will immediately supply all available support to the Fire Service as needed to mitigate an incident. The PR Civil Defense will assist the Fire Service in coordinating response resources and personnel.

1530 U.S. Virgin Islands Response Systems

Oil Spills: The Virgin Islands DPNR is the lead state agency for all oil and hazardous materials spills that threaten the U.S. Virgin Islands. The VIRGIN ISLANDS CONTINGENCY PLAN FOR THE CONTROL OF OIL AND HAZARDOUS SUBSTANCES is maintained by DPNR. For all SONS and spills requiring the resources of two or more local agencies DPNR and VITEMA will participate in the Unified Command System Response Organization as outlined in Annex B, Appendix II of this plan. In larger cases where numerous local resources need coordinating, VITEMA will activate its EMERGENCY OPERATIONS AND DISASTER CONTROL PLAN and ensure all needed V.I. Government Agencies are incorporated into the Unified Command System.

Chemical Releases: Same as for oil spills.

Marine Fires: The Virgin Islands' Fire Service is the lead agency for coordinating the response to all fires within the U.S. Virgin Islands. This includes fires on shore facilities, vessels in port, or anchored in the bays of the U.S. Virgin Islands.

The Virgin Islands' Fire Service will provide an IC. The Virgin Islands' Fire Service will assist in coordinating USVI's resources and ensuring appropriate agencies are notified. When needed or requested, each agency will provide an emergency coordinator on scene, or at a designated area to assist the IC. To avoid overwhelming the IC, the agency indicated in bold print at the top of each column under the different sub-mission areas, (i.e., Fire, Logistics, and Passenger Asst.) will take the lead in coordinating that sub-mission and will represent all the agencies listed below it when reporting to the on-scene command.

1530.1 U.S. Virgin Islands Response Policies

Oil Spills: The Department of Planning and Natural Resources as mandated by Title 12, Chapter 17 of the Virgin Islands Code has undertaken the handling of all pollutant spills within the U.S. Virgin Islands.

Chemical Releases: Same as for oil spills.

Marine Fires: Marine fires require specialized training and often a large amount of specialized equipment. The land-based firefighters of the V.I. Fire Service do not have the personnel resources or equipment to combat a significant marine fire. All government agencies of the U.S. Virgin Islands will immediately supply all available support to the Fire Service as needed to mitigate an incident. The VITEMA office will assist the Fire Service in coordinating response resources and personnel. The USCG will assist the V.I. Fire Service in all fires aboard commercial vessels.

1540 Responsible Party Obligations

1540.1 Responsible Party Requirements

Under OPA 90, the Responsible Party (RP) has primary responsibility for cleanup of a discharge. The response shall be conducted in accordance with their applicable response plan. Section 4201(a) of OPA 90 states that an owner or operator of a tank vessel or facility participating in removal efforts shall act in accordance with the National Contingency Plan, and the applicable response plan required. Section 4202 of OPA 90 states that these response plans shall:

(i) Be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) Identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) Identify, and ensure by contract or other means approved by the President, the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) Describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) Be updated periodically; and

(vi) Be resubmitted for approval of each significant change."

1540.2 Response Plan Requirements

Each owner or operator of a tank vessel or facility required by OPA 90 to submit a response plan shall do so in accordance with applicable regulations. Facility and tank vessel response plan regulations, including plan requirements, are located in 33 CFR Parts 154 and 155, respectively.

1540.3 Responsible Party's Liability

As defined in OPA90, each Responsible Party for a vessel or a facility from which oil is discharged, or which poses a substantial threat of a discharge, into or upon the navigable waters of the United States or adjoining shorelines or the Exclusive Economic Zone is liable for the removal costs and damages specified in Subsection (b) of Section 1002 of OPA 90. Any removal activity undertaken by a responsible party must be consistent with the provisions of the NCP, the Regional Contingency Plan, the Area Contingency Plan, and the applicable response plan required by OPA 90. If directed by the OSC at any time during removal activities, the Responsible Party must act accordingly.

Each Responsible Party for a vessel or facility from which a hazardous substance is released, or which poses a substantial threat of a release, is liable for removal costs as specified in CERCLA (42USC9601 et seq).

Rights of the Responsible Party

As long as the Responsible Party is taking appropriate action, they may retain their seat within the Unified Command. That is:

- The Responsible Party has the right to be a fully participating member of the Unified Command and is expected to exercise that right;
- The Responsible Party has the right to a timely and accurate cost accounting of reimbursable government expenditures and, when practical, should be approached with all requests to bring government furnished equipment to the scene prior to mobilizing that equipment; and
- The Responsible Party has the right to offer dissenting opinions within the Unified Command.

1600 National Policy and Doctrine

Section 4201 of OPA 90 amended Subsection (c) of Section 311 of the FWPCA, to require the Federal On-Scene Coordinator (FOSC) to "in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance:

- Into or on the navigable waters;
- On the adjoining shorelines to the navigable waters;
- Into or on the waters of the exclusive economic zone; or
- That “may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.";
- Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of discharge, at any time;
- Direct or monitor all Federal, State, and private actions to remove a discharge; and recommend to the Commandant that a vessel discharging or threatening to discharge, be removed and, if necessary, “destroyed."

In carrying out these functions, if the discharge or substantial threat of discharge of oil or hazardous substance is of such size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the FOSC may direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

While guidance for the Area Contingency Plan focuses primarily on oil discharge response at this time, the plan will address response to both oil discharges and hazardous substance releases.

1610 Public vs. Private Resource Utilization

The Oil Pollution Act of 1990 reaffirmed the basic principle that the primary source of an oil spill preparedness and response system in the U.S. should be implemented and maintained by the private sector. It is not the Coast Guard's intent to compete with the commercial oil and hazardous materials pollution response industry. The utilization of government resources in lieu of commercial resources can place the government in a competitive environment. This is not the intent of OPA 90, as it defeats the incentive for commercial enterprise to maintain equipment and trained personnel in a competitive market. The Coast Guard's pre-positioned response equipment and other publicly owned response equipment and other initiatives under the Coast Guard's oil spill response program are only intended to supplement the oil and clean up industry's response program or be used if the commercial industry does not have readily available resources, and only until such time that the Federal On-Scene Coordinator or the Unified Command decides to release the resources.

The FOSC has the authority and responsibility in accordance with the National Contingency Plan to contain, control, and carry out response activities for the removal of a discharge where a substantial threat to public health or welfare exists, or where natural resources are endangered. At the direction and discretion of the FOSC and the Unified Command, when the Responsible Party executes a suitable response, any government equipment deployed should be withdrawn as commercial equipment becomes available and is placed into service.

The FOSC may consider using Coast Guard or other federal/state resources in such instances when the spill has been federalized and/or private sector resources cannot respond to the incident in a timely manner, or there are certain specific resources not available from the private sector.

1620 Best Response Concept

The term "Best Response" means that a response organization will effectively, efficiently, and safely respond to all incidents, minimizing the consequences to save lives, protect public and responder health, safeguard the security of the homeland and protect our infrastructure, environment and economy.

"Best Response" considerations represent a set of general goals for the Unified Command to achieve if they are conducting a comprehensive and effective response.

"Best Response" equals a successful response based upon achievement of certain key success factors (i.e., the things that a response must accomplish to be considered successful). Provided is a list of various "Best Response" goals.

Human Health and Safety

- No public injuries, illness or deaths
- No responder injuries, illness or deaths
- Aggressive responder stress management
- Highly effective family outreach program

Environment

- Sensitive areas protected
- Resource damage minimized

Property

- Infrastructure damage minimized

Economy

- Economic impact minimized

Security

- Highly coordinated law enforcement and emergency management operation

Public Communication

- Conduct Risk Communications
- Accurate and timely information
- Positive media coverage of response
- Positive public perception

Stakeholders Support

- Minimize stakeholder impact
- Stakeholders well informed
- Positive meetings with stakeholders
- Prompt Handling of damage claims

Organization

- Implementation of an effective and efficient ICS organization
- Mobilize and effectively use response resources

When conducting an incident response, Incident Commander's/Unified Command and their Command and General Staff should always consider the "Best Response" concept while managing operational and support/coordination functions.

1630 Cleanup Assessment Protocol (How Clean is Clean)

It is almost impossible to fully prevent shoreline oiling during a spill. The responder's approach to the cleanup of an oiled shoreline is as important as how they approach the containment and protection priorities.
The need for responders and planners to think through cleanup methods in advance of a moving oil slick is critical. Several considerations must be made before a proper cleanup plan can be initiated.

First, the type and quantity of the oil that will likely impact the shore must be determined. Oil types vary greatly and have a major influence on the degree of impact, ease of cleanup, and persistence of the contamination.

For example, lighter fuels (diesel, home heating fuel and light crude oils) will evaporate quickly, but tend to be more toxic and penetrate the shoreline sediments to a greater degree. Heavy oils (Bunker C, #6 fuel and heavy crude oils) are less toxic to shoreline ecosystems and do not penetrate finer sediments, but they are very persistent, difficult to clean, and may smother shoreline organisms.

Second, the type of shoreline that is predicted to be impacted must be identified and mapped. Both state and federal mapping projects have successfully categorized much of the U.S. shoreline in terms of habitat sensitivity to spilled oil. The most widely used characterization scheme for shorelines is the NOAA Environmental Sensitivity Index (ESI). The ESI ranks shorelines in terms of their relative sensitivity to oil spill impacts, predicted rates of removal of stranded oil by processes such as waves and currents which naturally clean the shoreline, and ease of cleanup.

Shoreline types, from least to most sensitive are:

1. Exposed rocky cliffs & seawalls
2. Wave cut rocky platforms
3. Fine to medium-grained sand beaches
4. Coarse-grained sand beaches
5. Mixed sand and gravel beaches
6. Gravel beaches/Rip-rap
7. Exposed tidal areas
8. Sheltered rocky shores/man-made structures
9. Sheltered tidal areas
10. Marshes

Once responders have a clear understanding as to the type and degree of impact and the type of shoreline, they can begin planning an effective cleanup strategy.

The goal of all the methods discussed is to clean only to the level that would speed recovery and allow use of the shoreline. Cleaning strategies that will do greater injury to the resource than the oil itself are rejected.

Within the Unified Command, the Federal and State On-Scene Coordinator(s) along with any other key stakeholders will conduct a joint assessment at the conclusion of cleanup operations to deem the site clean.

1640 Alternative Cleanup Technologies

Subpart J of the NCP (40 CFR 300.900) permits the FOSC, with the concurrence of the EPA representative to CRRT and, as appropriate, the concurrence of the CRRT representatives from the States with jurisdiction over the navigable waters polluted or threatened by the spill, and in consultation with the DOC and DOI natural resource trustees, when practicable, to authorize the use of dispersants, surface collecting agents and biological additives on the oil discharge, provided they are on the NCP Product Schedule.

In addition, the NCP authorizes the FOSC to use any dispersant, surface collecting agent, other chemical agent, burning agent or biological additive (including products not on the NCP Product Schedule) without obtaining the concurrence of the EPA, or the States with jurisdiction, when in the judgment of the FOSC the use of the product is necessary to prevent or substantially reduce a hazard to human life. The following sections address the process of gaining authorization and how to decide when to use and monitor chemical, in-situ burn, and bioremediation countermeasures.

1640.1 Dispersant Pre-Approval/Monitoring/Decision Protocol

Background
Dispersants are specially designed oil spill control products that are composed of detergent-like surfactants in low toxicity solvents. Dispersants do not remove oil from the water, but instead break the oil slick into small droplets, allowing these droplets to disperse into the water to be further broken down by natural processes. Dispersion of oil into the water column occurs naturally in untreated spills; dispersants speed up this process. Dispersants also prevent the oil droplets from coming back together as another surface slick. Dispersed oil is less likely to stick to birds and other animals, shoreline rocks, and vegetation. The effects of the rapidly diluted dispersed oil must be weighed against the effects of that oil if it were allowed to impact the shoreline and wildlife. Dispersant use for spill control is regulated by Subpart J of the NCP (40 CFR 300.900).

NCP Subpart J also requires the EPA to prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the NCP. Dispersants approved for use under this ACP are any of those listed in the NCP Product Schedule (40 CFR 300.910).

Pre-Approval Protocol

As outlined in CRRT's *Use of Dispersants in the Caribbean* policy, CRRT has provided preauthorization in specific zones and expedited approval procedures in other areas for the use of dispersants. This policy divides the AC AOR into three zones:

- Green Zone = preauthorization for dispersant application
- Yellow Zone = waters requiring case-by-case approval
- Red Zone = exclusion zone

In general, pre-authorization exists 0.5 miles seaward of Puerto Rico and 1.0 miles seaward of the U.S. Virgin Islands providing the water depth is at least 60 feet in depth.

Major aspects of the Dispersant Policy are summarized in the following matrix:

Chemical Countermeasures Pre-Approval Policy for CRRT	
Reference: *Use of Dispersants in the Caribbean* Policy	
Green Zone	The Green Zone is defined as any offshore water in which **ALL** of the following three conditions apply: **For Puerto Rico**: 1) the waters are not classified with a "Yellow" or "Red" zone; 2) the waters are at least 0.5 miles seaward of any shoreline; and, 3) the waters are at least 60 feet in depth. **For U.S. Virgin Islands**: 1) the waters are not classified with a "Yellow" or "Red" zone; 2) the waters are at least 1.0 miles seaward of any shoreline; and, 3) the waters are at least 60 feet in depth. Within the Green Zone the decision to apply dispersants rests solely with the pre-designated USCG-OSC, and no further approval, concurrence or consultation on the part of the USCG-OSC with EPA, DOC, DOI or the States is required. All dispersant operations within the Green Zone will be conducted in accordance with the protocols outlined in this policy.
Yellow Zone	The Yellow Zone is defined as any waters within the CRRT which have not been designated as a "Red" zone, and in which **ANY** of the following conditions apply:

	For Puerto Rico: 1) Waters designated as marine reserves, National Marine Sanctuaries, National or State Wildlife Refuges, or proposed or designated Critical Habitats; 2) Waters within 0.5 miles of a shoreline; 3) Waters less than 60 feet in depth; or 4) Waters in mangrove or coastal wetland ecosystems, or directly over coral communities which are in less than 60 feet of water. Coastal wetlands include submerged algal beds and submerged sea grass beds. **For U.S. Virgin Islands**: 1) Waters designated as marine reserves, National Marine Sanctuaries, National or State Wildlife Refuges, or proposed or designated Critical Habitats; 2) Waters within 1.0 miles of a shoreline; 3) Waters less than 60 feet in depth; or 4) Waters in mangrove or coastal wetland ecosystems, or directly over coral communities which are in less than 60 feet of water. Coastal wetlands include submerged algal beds and submerged sea grass beds. If the USCG-OSC believes dispersants should be applied within the Yellow Zone, a request for authorization must be made to the CRRT representatives of the EPA, affected State(s), DOC, and DOI. The information contained on the documentation/application form in the policy must be provided to the CRRT members. The FOSC is only granted authority to conduct dispersant operations in the Yellow Zone when concurrence has been given by EPA and the affected State(s), and after consultation with DOC and DOI. EPA, the State(s), DOC and DOI must respond to the FOSC request for authorization within four (4) hours. If a decision cannot be reached within four hours, the FOSC is to be notified and informed of the delay. Once authorized, application of dispersants within the Yellow Zone will be conducted in accordance with the protocols outlined in Section III.
Red Zone	The Red Zone includes those areas designated by the CRRT where dispersant use is prohibited. No dispersant application operations will be conducted at any time in the Red Zone unless: 1) Dispersant application is necessary to prevent or substantially reduce a hazard to human life; and/or 2) An emergency modification of this Agreement is made on an incident-specific basis.

	The CRRT has not currently designated any waters of Puerto Rico as Red Zones but retains the right to include areas for exclusion in the future. **For the U.S. Virgin Islands the following areas have been designated as Red Zones**: 1) Waters of the Virgin Islands National Park including waters one mile seaward from the park boundary. 2) Waters of the Buck Island Reef National Monument including waters one mile seaward from the park boundary.

IT IS STRESSED THAT USE OF DISPERSANTS IS STRICTLY FORBIDDEN UNLESS AUTHORIZED BY THE FOSC. VIOLATORS ARE SUBJECT TO CIVIL PENALTIES.

THE FOLLOWING REQUIREMENTS APPLY TO THE APPLICATION OF ALL DISPERSANTS UNDER THE PROVISIONS SET FORTH IN THE CRRT POLICY.

1. Dispersants will only be used to mitigate the effects of spilled oil and to protect public health and welfare and the environment.

2. The USCG-OSC will immediately notify EPA, DOC, DOI, and the affected State(s) of the decision to use dispersants under the provisions of this agreement. This initial notification will include, but not necessarily be limited to, the following information:
   a) Date, time, and location of the incident;
   b) Type and amount of oil discharged;
   c) Area affected;
   d) The projected area of impact, and consequences of such impact, if the oil is not dispersed;
   e) Reasons why dispersants or chemical agents have been selected;
   f) Dispersant to be used; and
   g) On-scene weather and forecast.

3. The USCG will make every effort to continuously evaluate the decision to use dispersants by considering the advice of the EPA, DOI, DOC and the affected State(s). The use of dispersants will be discontinued if so requested by the EPA, DOI, DOC or the affected State(s). Such request may be verbal but followed by written documentation.

4. The USCG-OSC shall comply will all Occupational Safety and Health Administration (OSHA) regulations.

5. The USCG-OSC shall make every reasonable effort to provide EPA, DOI, DOC and the affected State(s) the opportunity to observe dispersant application operations. The inability to have or take advantage of the opportunity will not be cause for cessation of application operations.

6. Monitoring will be conducted to evaluate the decision to continue dispersant application and to document results.

7. Prior to commencing application operations, an on-site survey will be conducted, in consultation with natural resource specialists, to determine if any threatened or endangered species are present in the projected application area or otherwise at risk from dispersant operations. Measures will be taken to prevent impacts to wildlife, especially threatened and endangered species. Survey flights in the area of application will be conducted during dispersant operations.

8. When dispersant application is proposed in a Green Zone area that is adjacent to or near an area less than 60 feet in depth, due consideration shall be given to the trajectory of the dispersed oil. If resources in adjacent shallow areas are at risk, consultation with the trustees must be conducted.

9. A dispersant use post-incident report shall be completed by the FOSC within 45 days of dispersant application operations. This report shall include the Documentation/Application Form contained in Appendix IV of the CRRT Dispersant Policy. Recommendations for changes or modifications to this agreement may be presented in the report. This report will be provided to the CRRT.

10. Only those products listed on the EPA nation Contingency Plan's Product Schedule as dispersants will be considered for use under the provisions of this agreement.

11. The dispersant use decision elements contained in Appendix IV shall be reviewed by the FOSC and used to help guide the decision to use or request the use of dispersants.

Monitoring Protocol

RRT III requires that the application of dispersants be monitored while the operation is underway. Region III has adopted Special Monitoring of Advanced Response Technologies (SMART) as the program that will be implemented whenever a dispersant operation is authorized in Region III. SMART establishes monitoring protocols for advanced or optional response technologies used in an oil spill. However, those operations will not be delayed pending availability of personnel or equipment needed to operate SMART.

See Section 1690 for more SMART information and guidance.

Decision Protocol

Below is general decision-making guidance for the use of dispersants. Also refer to Appendix IV of the CRRT's *Dispersants in the Caribbean* policy for additional factors to consider.

Basic Reasoning

Follow the basic sequence of logic to consider using applied technologies during an incident:

- Decide if the applied dispersant application might provide value?
- Decide if the FOSC has the authority to use it within its useful timeframe?
- If so, can it be here in time?
- If so, does it have application requirements that exceed the window of opportunity?
- If not, does it have unacceptable environmental, health and safety risks associated with its use?
- If it has special operational requirements, is there an identified specialist (technical contact) who can provide timely advice on its effective use?

Figure 1-5 provides a flowchart to use when deciding whether to use dispersants or other chemical countermeasures. Below are decision process flow chart definitions to be used with Figure 1-5.

Decision Process Flow Chart Definitions

1**.** U.S. Navigable Waters [taken from 40 CFR part 300 as defined by 40 CFR 110.1 means the waters of the U.S. including the territorial seas. This term includes:

A. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters at are subject to the ebb and flow of the tide;

B. Interstate waters, including interstate wetlands;

C. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, and wetlands, the use degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

1. That is or could be used by interstate or foreign travelers for recreational or other purposes;

2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

3. That is used or could be used for industrial purposes by industries in interstate commerce;

D. All impoundments of waters otherwise defined as navigable waters under this section;

E. Tributaries of waters identified in paragraphs (a) through (d) of this definition, including adjacent wetlands; and

F. Wetlands adjacent to waters identified in paragraphs (a) through (e) of this definition; provided, that waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the US.

2. Operational Monitoring (a.k.a. effectiveness monitoring) is defined by Pond et al., (1997) as monitoring that "provides qualitative information, through visual observations [or other specified method] by trained personnel in real-time, during the actual response, to influence operational decision-making."

Effects monitoring (a.k.a. long-term data gathering) is defined as data that "provides quantitative information on the use of [a product] and the real effects following a spill to influence planning and future research" (Pond et al., 1997). The longer time (weeks, or even months) involved with obtaining results from effects monitoring dictates that sampling should not be used to influence incident-specific decision-making. However, response and trustee agencies should begin gathering effects monitoring data as soon as practicable. Effects monitoring information collection is a long-term process and the results are typically not available in real-time to affect decision-making.

During a response, operational personnel need to be able to ensure the success of a response technique, and in particular, be able to direct, redirect, or discontinue the use of the response technique. Operational monitoring could be as simple as visually monitoring the effectiveness of a particular boom. Is it placed correctly? Is it functioning as expected? Is there any oil remaining to be captured with the particular boom? Or as complete as using Tier 3 SMART protocols for dispersant use or in situ burn monitoring.

3. Applied technologies are defined in this Selection Guide as:

Products	Strategies
• Alternative sorbents • Bioremediation agents • Dispersants	• Fast-water Booming Strategies • Non-floating Oil Strategies • Oil-in-ice Response Strategies

• Elasticity Modifiers** • Emulsion Treating Agents • Fire-fighting Foams* • In situ Burning on Land • In situ Burning in Inland Waters • Shoreline Pre-treatment Agents** • Solidifiers • Surface Collecting Agents** • Surface Washing Agents	• Water Intake Monitoring Strategies • Wildlife Response Strategies

* Not required to be listed on the NCP Product Schedule.

** As of this publication, there were no products listed on the NCP Product Schedule for these product categories.

4. FOSC: "The FOSC may authorize the use of any dispersant … other chemical agent … including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT when, in the judgment of the OSC, the use of the product is necessary to substantially reduce a hazard to human life…" (NCP section 300.910 (d)) Please note that, even though non-listed products can be used, listed products should be used whenever possible.

FOSC Decision-Making Exception

Decisions for public safety issues for fires are under the purview of the lead public emergency response agency. Fire Departments and HAZMAT teams have the authority to "hose down" a spill using a chemical countermeasure if they determine that the spilled oil could cause an explosion and/or threaten human health. However, the use of an applied product, even in a situation designed to prevent or reduce the threat to human health and safety, requires that the lead emergency response agency notify the FOSC of this use.

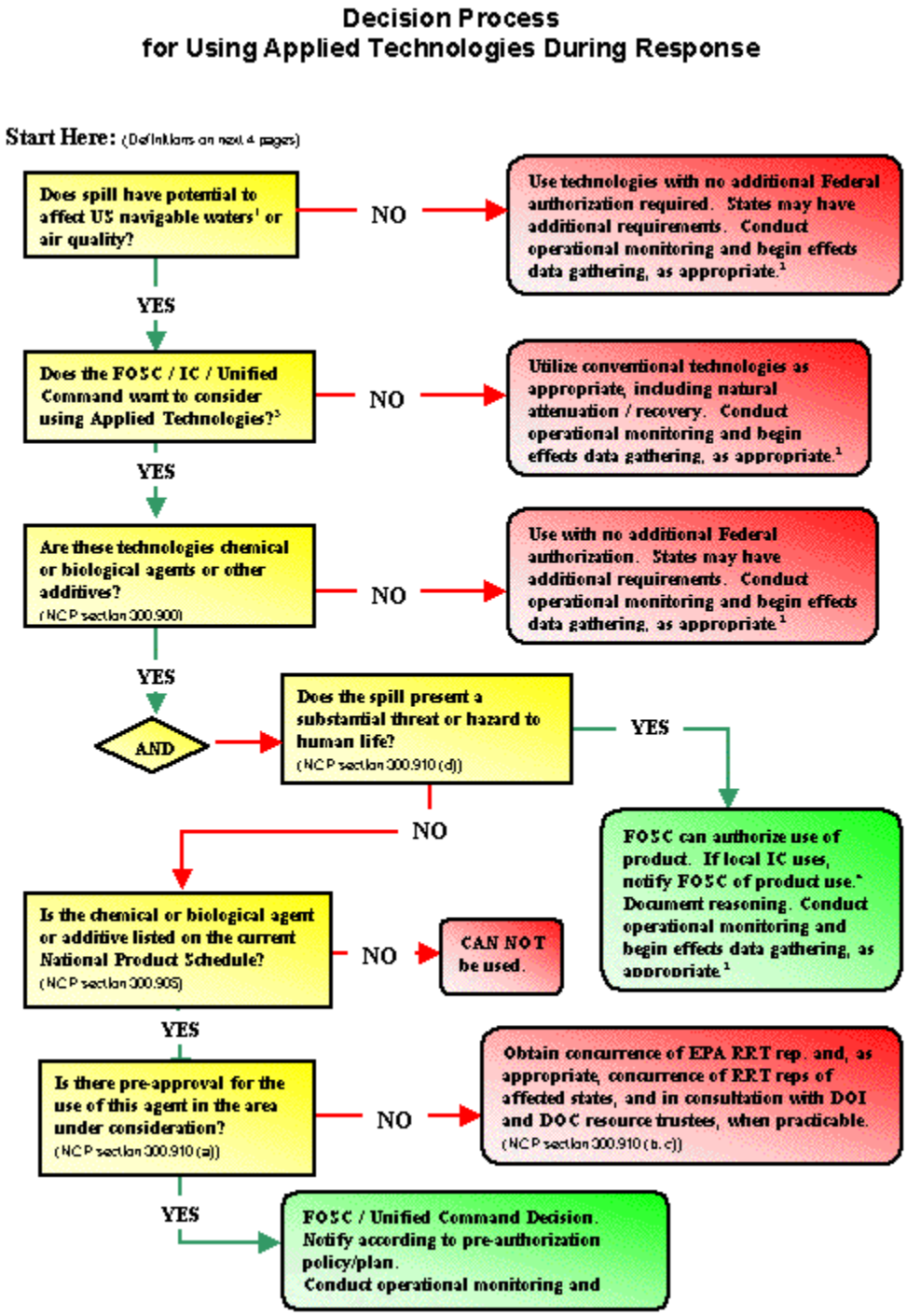


Figure 1-5. Decision Process for Using Applied Technologies during Response

1640.2 In-Situ Burn Approval/Monitoring/Decision Protocol

In-situ burning means the controlled burning of oil "in place." Burning oil will remove larger quantities of oil from the water's surface and in a shorter period of time than any other response countermeasure. However, it will only work when the oil layer is relatively thick (greater than 3 mm) and fresh.

Approval Protocol

The National Contingency Plan, Section 300.910, authorizes the FOSC, with the concurrence of the EPA representative to the CRRT and, as appropriate, the concurrence of the territory representative to the CRRT with jurisdiction over navigable waters threatened by the discharge of oil, and in consultation with the DOC and DOI natural resource trustee, when practicable, to authorize the use of in-situ burning on a case-by-case basis. Refer to Section 4410.34 for additional guidance.

1640.3 Bioremediation Approval/Monitoring/Decision Protocol

Bioremediation is a treatment technology that enhances existing biological processes to accelerate the decomposition of petroleum hydrocarbons and some hazardous wastes. The regional philosophy and authorization process are outlined in Section 4410.33.

Bioremediation must be monitored while the operation is underway through employment of the SMART protocol.

See Section 1680 for more SMART information and guidance.

1650 Fish and Wildlife Acts Compliance

1650.1 Migratory Bird Treaty Act of 1918

The Migratory Bird Treaty Act (MBTA) implemented the 1916 convention between the United States and Great Britain for the protection of birds migrating between the U.S. and Canada. Similar conventions between the United States and Mexico (1936), Japan (1972) and the Union of Soviet Socialists Republics (1976) further expanded the scope of international protection of migratory birds. Each new treaty has been incorporated into the MBTA as an amendment and the provisions of the new treaty are implemented domestically. These four treaties and their enabling legislation established Federal responsibilities for the protection of nearly all species of birds, their eggs and nests. The MBTA made it illegal for people to "take" migratory birds, their eggs, feathers or nests.

"Take" is defined in the MBTA to include by any means or in any manner, any attempt at hunting, pursuing, wounding, killing, possessing or transporting any migratory bird, nest, egg, or part thereof. In total, 836 bird species are protected by the MBTA, 58 of which are currently legally hunted as game birds. A migratory bird is any species or family of birds that live, reproduce or migrate within or across international borders at some point during their annual life cycle.

The U.S. Fish and Wildlife Service (USFWS), Division of Migratory Bird Management, issues permits to qualified applicants for the following types of activities: falconry, raptor propagation, scientific collecting, special purposes (rehabilitation, educational, migratory game bird propagation, and salvage), take of depredating birds, taxidermy, and waterfowl sale and disposal. On November 26, 2003, the USFWS established a new category of migratory bird permit, namely, bird rehabilitation (50 CFR Parts 17, 21 and 22). Rehabilitation permits take the place of the old special use permits for rehabilitation by specifically authorizing migratory bird rehabilitation, including rehabilitation of migratory bird species listed as threatened or endangered under the Endangered Species Act. The new permits, applicable to approximately 2500 bird rehabilitators nationwide (veterinarians are exempt), set specific requirements to take, temporarily posses, or transport any migratory bird for rehabilitation purposes. However, any person who finds a sick, injured, or orphaned migratory bird may, without a permit, take possession of the bird in order to immediately transport it to a permitted rehabilitator. Prior to entering the location of an oil or hazardous material spill, a permitted rehabilitator must obtain authorization from the FOSC and a designated representative of the USFWS. All activities within the location of a spill are subject to the authority of the FOSC. The USFWS may recommend that the FOSC seek the assistance of USDA APHIS Wildlife Services to participate in wildlife recovery and hazing operations. The USFWS is responsible for the disposition of all migratory birds, dead or alive, and for overseeing migratory bird rehabilitation by permitted organizations, such as Tri-State Bird Rescue and Research or International Bird Rescue. Facilities used in migratory bird rehabilitation activities should conform as closely as possible with the facility specifications contained in the USFWS policy Best Practices for Migratory Bird Care during Oil Spill Response. Caging dimensions should follow standards developed by the National Wildlife Rehabilitators Association and the International Wildlife rehabilitation Council (Minimum Standards for Wildlife Rehabilitation, 2000).

1650.2 Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) established a federal responsibility to conserve marine mammals. Management of sea otter, walrus, polar bear, dugong, and manatee is vested with the Department of the Interior's USFWS. The Department of Commerce's NOAA is responsible for managing cetaceans (whales and dolphins) and pinnipeds (seals and sea lions), other than the walrus.

Under the MMPA, it is illegal to harass, hunt, capture or kill, or attempt to harass, hunt, capture or kill any marine mammal. Some marine mammals receive additional protection under the Endangered Species Act.

The NOAA Fisheries Office of Protected Resources works in collaboration with the NOAA Fisheries Regions, Fisheries Science Centers and Partners to develop and implement a variety of programs for the protection, conservation and recovery of the approximately 175 mammal stocks listed under MMPA. The USFWS has similar programs for mammals under its jurisdiction.

1650.3 Endangered Species Act

The Endangered Species Act of 1973 (ESA) (16 USC 1531 et seq) was enacted to conserve and recover threatened and endangered species and the ecosystems upon which they depend. The Act is administered by the USFWS in the Department of the Interior and NOAA's National Marine Fisheries Service (NOAA Fisheries) in the Department of Commerce. Under Section 7 of the ESA, federal agencies must consult with USFWS and NOAA Fisheries on actions they carry out, permit or fund which may affect listed species or designated critical habitat. ESA Section 7 requires that agencies ensure their actions are not likely to jeopardize listed species or destroy or adversely modify their designated critical habitat. During emergencies, such as disasters, casualties, national defense or security emergencies, and response to oil spills, the ESA allows for emergency consultation during the incident, with formal consultation occurring after the incident, if necessary under the 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.

The MOA, signed by the USCG, EPA, NOAA, DOI, FWS, and NOAA Fisheries in July 2001, aligns the ESA consultation requirements with the pollution response responsibilities outlined in the NCP (40 CFR 300). The MOA is intended to be used at the Area Committee level primarily to identify and incorporate plans and procedures to protect listed species and designated critical habitat during pre-spill planning and response activities.

In addition, the Endangered Species Consultation Handbook was developed by its signatory agencies to further facilitate cooperation and understanding between the agencies involved in oil spill planning and response. This cooperation is highly successful when it is established before an incident occurs and needs to continue throughout an incident and the post-incident follow-up and review. By working proactively to identify the potential effects of spill response activities on species and their habitat, and then developing response plans and countermeasures, impacts to listed species and/or critical habitat can be reduced or avoided completely during an incident.

Using the ESA Consultation Handbook, the attached appendixes were developed to assist FOSCs during Emergency Response and Post Response activities.

Regulations regarding ESA consultation are found in 50 CFR 402, located at: http://www.access.gpo.gov/nara/cfr/waisidx_04/50cfr402_04.html.

Additional information on the ESA consultation process can be found on the Caribbean Regional Response Team (CRRT) website.

1650.4 The Magnuson-Stevens Fishery Conservation and Management Act

In 1996, amendments to the Magnuson Act, now the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 et seq.), set forth a number of new mandates for NOAA Fisheries, most of which focused on the identification, establishment and management of Essential Fish Habitat (EFH). EFH can include rivers, estuaries, bays and open ocean (out to 200 miles) that are considered "essential" for the sustainable health of commercial fisheries. Under the Act, federal agencies must consult and submit EFH assessments to NOAA Fisheries regarding potential or actual adverse effects of all actions authorized, funded, or undertaken by the agency that may adversely impact EFH, this includes emergency responses to oil discharges and chemical releases (response actions, not the material spilled). Refer to the Fish and Wildlife Annex for the EFH consultation process and how it applies to the FOSC.

1660 Protection of Historic Properties

On October 15th, 1966, Congress passed 16 USC 470, the National Historic Preservation Act (NHPA), to preserve the historical and cultural foundations of our Nation. Under Section 106 of NHPA, Federal agencies are required to consider the effects of their actions on historic properties and take steps to reduce or eliminate adverse effects.

The Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan (PA) requires consideration of historic properties in pre-planning efforts and emergency response under the NCP.

1660.1 How the PA Applies to the FOSC

The PA provides an alternative to the process in Section 106 of the NHPA to ensure appropriate consideration of historic properties within the context of the NHPA during emergency response to a discharge or a release under the NCP (40 CFR 300). The alternative to following the process in the PA, including the pre-spill planning part of the process, is to follow the complete consultation process in Section 106 of the NHPA.

During pre-spill planning activities, the PA calls for identifying: (1) historic properties listed in, or determined to be eligible for listing in, the National Register of Historic Properties (NR) that might be affected by response to a release or spill; (2) not surveyed areas where there is a high potential for the presence of historic properties; (3) geographic areas or types of areas where historic properties are unlikely to be affected; (4) parties that are to be notified in the event of a spill in a non-excluded area; (5) who will be responsible for providing expertise on historic properties to the FOSCs during emergency response (i.e., the FOSC's Historic Properties Specialist); and developing emergency response strategies to help protect historic properties. This pre-planning has been conducted in conjunction with development of the Geographic Response Strategy.

In Puerto Rico, the State Historic Preservation Officer (SHPO) is located within the Oficina Estatal de Conservación Histórica. Their office is located in San Juan. In the Virgin Islands, the SHPO works within DPNR. They maintain two SHPO offices; one in St. Thomas and one in St. Croix. Contact information for SHPOs is located in Section 9100.

During emergency response, FOSCs are responsible for initiating the agreed-upon mechanism for addressing historic properties, namely activating the SHPO. In turn, the SHPO will: (1) notify and consult with parties identified in pre-incident planning and those applicable entities that are listed in the ACP; (2) assess potential effects of emergency response strategies on historic properties; and (3) recommend to the FOSC response actions to help minimize or eliminate potential impacts to historic properties.

1670 Alternative Response Technology Evaluation System (ARTES)

During an oil or chemical spill, the FOSC, who directs the response, may be asked to consider using a non-conventional alternative countermeasure (a method, device, or product that hasn't typically been used for spill response). To assess whether a proposed countermeasure could be a useful response tool, it is necessary to quickly collect and evaluate the available information about it.

To aid in evaluating non-conventional alternative countermeasures in particular, the Alternative Response Tool Evaluation System (ARTES) was developed. ARTES can also be used to evaluate proposed conventional countermeasures. It is designed to evaluate potential response tools on their technical merits, rather than on economic factors. ARTES is designed to work in concert with the NCP Product Schedule and the Selection Guide for Oil Spill Applied Technologies.

Under ARTES, an Alternative Response Tool Team (ARTT) rapidly evaluates a proposed response tool and provides feedback to the FOSC in the form of a recommendation. The FOSC then can make an informed decision on the use of the proposed tool.

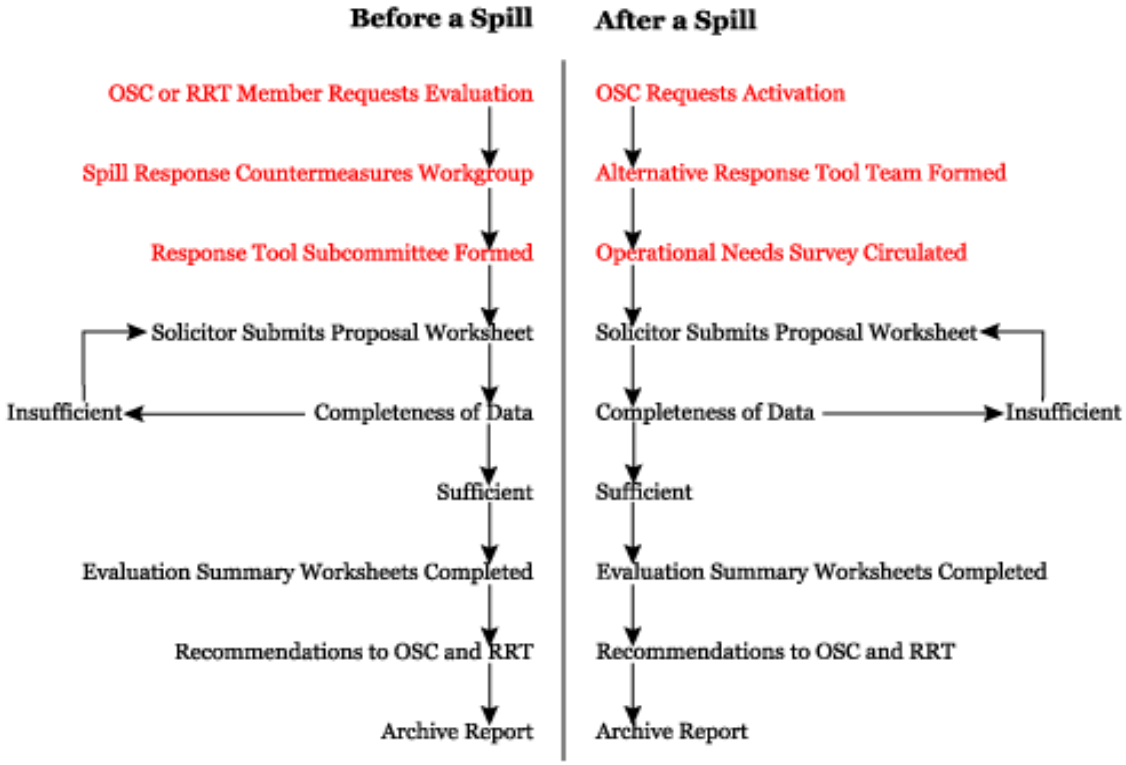


Figure 1-6. ARTES Flowchart: A map of the process

ARTES is designed for two uses:

- To evaluate a product's appropriateness for use during a specific incident, under specific circumstances.
- As a pre-evaluation to identify conditions under which favorable outcomes are anticipated when a product is used.

An advantage of ARTES is that it provides a management system for addressing the numerous proposals submitted by vendors and others during a spill. Subjecting all proposals to the same degree of evaluation also ensures that vendors are considered on a "level playing field."

ARTES can be used before an incident as well as during a response. If a FOSC would like to consider an alternative response tool during pre-spill planning, he or she can use ARTES to evaluate the tool. Over time, the hope is that having a record of proposals on file will enable a FOSC to address alternatives for future needs.

1670.1 Initiation of ARTES Process

There are two ways that the ARTES process can be initiated, generally speaking:

- When no spill response is in progress, a vendor can approach the OSCs (Federal or State) or CRRT members to request that a product be evaluated. It then falls on the FOSC or RRT representative to determine the value of performing an ARTES evaluation on the product. In effect, the FOSC and RRT representative perform first-line screening. If either the FOSC or RRT representative decides that it would be appropriate for a product to be evaluated, he or she then must submit a written request for an ARTES evaluation to the Spill Response Countermeasures Workgroup chairperson at the CRRT.

- During a spill, only the FOSC, the Unified Command, the Planning Section Chief, or the Operations Section Chief can initiate an evaluation. They would do so in response to an identified need and they should complete the Operational Needs Survey.

Either before or during a spill, once a proposed response tool passes this initial screening step, it must be thoroughly evaluated. The vendor needs to provide complete and comprehensive information on the product by filling out the Proposal Worksheet (PWS). The information in the PWS is then reviewed by a Response Tool Subcommittee (during the planning phase) or by the Alternative Response Tool Team (during spill response operations) using the Summary Evaluation Sheet. If the PWS is sufficient, the teams evaluate the data, provide recommendations (either to accept or not accept) to the RRT and FOSC, and the report is then archived.

Completion of an ARTES evaluation does not mean that a product is pre-approved, recommended, licensed, certified, or authorized for use during an incident. Spill response products such as dispersants, shoreline cleaners, and biological agents must conform to Federal regulations meant to protect our water resources and ensure that products used for spill response undergo review and testing before they are approved for use. Approved products are listed on the NCP Product Schedule.

An FOSC need not wait for the ARTES recommendation when deciding whether to use a response tool. ARTES is designed to help, not hinder, the FOSC.

1680 Special Monitoring of Applied Response Technologies (SMART)

SMART establishes a monitoring system for rapid collection and reporting of real-time, scientifically based information, in order to assist the Unified Command with decision-making during in-situ burning or dispersant operations. SMART recommends monitoring methods, equipment, personnel training, and command and control procedures that strike a balance between the operational demand for rapid response and the Unified Command's need for feedback from the field in order to make informed decisions.

SMART is not limited to oil spills. It can be adapted to hazardous substance responses where particulate air emissions should be monitored, and to hydrocarbon-based chemical spills into fresh or marine water. In general, the SMART Protocol includes three tiers:

- Tier 1: Visual Observations
- Tier 2: On-Water Monitoring for Efficacy
- Tier 3: Additional Monitoring

Click here to view the entire SMART Protocol.

1700 Reserved

1800 Reserved

1900 Reserved for Area/District

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