

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE THIRTEENTH COAST GUARD DISTRICT
AND
THE STATE OF WASHINGTON
REGARDING
POLLUTION PREVENTION AND RESPONSE**

I. PARTIES

The Parties to this memorandum of understanding are the Thirteenth Coast Guard District (“Coast Guard”) and the State of Washington (“State”). The Coast Guard and the State are collectively referred to as “the Parties” throughout this understanding.

II. PURPOSE

The purpose of this Memorandum of Understanding (“MOU”) is to build excellent communications, strong regional partnerships, effective public outreach, and broad based public trust by:

- A. Recognizing** each Party’s respective authorities and roles regarding oil and hazardous substance spill prevention, preparedness, and response.
- B. Creating** a proactive partnership through which the Parties will collaborate and support each other in addressing existing and emerging challenges in preventing spills of oil or hazardous substances into waters of the United States.
- C. Identifying** broad areas of responsibility where the Parties can cooperate on matters related to prevention, planning for, and response to oil spills and hazardous substance releases.
- D. Adopting** protocols where appropriate to facilitate accomplishment of this MOU.

III. SCOPE

The scope of the MOU is to address prevention of, preparedness for, and response to oil and hazardous substance spill incidents, on the navigable waters of the United States which are within or may impact State waters.

IV. AUTHORITIES

A. Federal Government

- 1. Oil Spills. The Coast Guard has general authority in the area of oil spill and hazardous substance discharge preparedness, prevention, and response based on the following: Federal Water Pollution Control Act (“FWPCA”), as amended by the Oil Pollution Act of 1990 (“OPA”); the Ports and Waterways Safety Act of 1972 (“PWSA”), as amended by the Port and Tanker Safety Act; 14 U.S.C. § 89(a); and the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).
- 2. Cooperation. 14 U.S.C. § 141 permits the Coast Guard to, when requested, use its personnel and facilities to assist a State in any activity for which Coast Guard personnel and facilities are especially qualified. The Coast Guard may also avail itself of such

officers and employees, advice, information, and facilities of the State as may be helpful in performance of its duties.

B. State of Washington

1. The State has enacted oil and hazardous substances spill prevention, preparedness, and response laws (codified in chapters 88.40, 88.46, 90.48, and 90.56 RCW). The purpose of much of this body of law is to protect the waters, subtidal lands, shorelands, and uplands of the State from oil and hazardous substance pollution through prevention of, and effective planning for response to, spills and to ensure an immediate response, removal, abatement, and cleanup in the event of an oil spill or substantial threat of an oil spill or hazardous material incident.

2. The Director of the Department of Ecology (or his designee) “*is the head of the state incident command system in response to a spill of oil or hazardous substances and shall coordinate the response efforts of all state agencies and local emergency response personnel.*” See RCW 90.56.020.

C. Applicable Contingency Plans

1. National Contingency Plan (“NCP”). The NCP applies to and is in effect for discharges of oil into the navigable waters of the United States, the contiguous zone, or the Exclusive Economic Zone (“EEZ”). It provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances by establishing a national response organization that may be activated in response actions including allocating responsibilities among federal, state, and local governments and describing resources available for response. See 40 C.F.R. § 300.105.

2. Northwest Area Contingency Plan (“NWACP”). The NWACP is a plan prepared by the single Area Committee established within EPA Region 10 for implementation consistent with the NCP to address the removal of a worst-case discharge or prevent substantial threat of discharge from a vessel, offshore facility, or onshore facility. In Washington State the NWACP has been adopted as the Statewide Master Oil and Hazardous Substance Spill Prevention and Contingency Plan. See RCW 90.56.060(1).

D. Agencies, Organizations, and Groups

1. National Response Team (“NRT”). The National Response Team is responsible for national response and preparedness planning, for coordinating regional planning, and for providing policy guidance and support to the Regional Response Teams (“RRT”). The Coast Guard is the vice chair of the National Response Team.

2. Regional Response Team for Region 10 (“RRT-10”). RRT-10 is responsible for regional planning and preparedness activities before response actions are initiated, and for providing advice and support to the On-Scene Coordinators during a response. The RRT-10 includes designated representatives from the Coast Guard and other federal agencies who are members of the NRT and state and local government representatives. The Coast Guard and EPA co-chair the RRT. Tribal Nations are also invited to participate in the RRT. The RRT also reviews and comments on local emergency response plans, evaluates regional and local responses to discharges or releases on a continuing basis, recommends revisions to the NCP, and conducts training and planning.

3. Northwest Area Committee (“NWAC”). The NWAC consists of EPA and USCG Federal On-Scene Coordinators, and representatives of spill response coordination agencies for the states of Washington, Oregon, and Idaho. The NWAC’s role is to develop and maintain the Northwest Area Contingency Plan.

4. Canada/United States-Pacific Joint Response Team (“CANUSPAC/JRT”). The CANUSPAC/JRT has been established in accordance with the NCP and Joint Contingency Plan (“JCP”) to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Canada in the Pacific Northwest. The Coast Guard will work with the state to ensure state’s interests are considered in the development and maintenance of plans and standard operating procedures for coordinating pollution response in the waterways shared with Canada. During an incident-specific activation or exercise of the JRT and the CANUSPAC Annex of the JCP, the State will be represented by its State On-Scene Coordinator.

V. BACKGROUND

A. General Principles

1. There has been a substantial reduction in the occurrence of major oil spills within Washington State waters from marine sources over the past two decades. This reduction is a result of the enactment of the Oil Pollution Act of 1990, and other related federal and state legislation and adoption of implementing regulations, as well as progress through numerous regional joint studies and actions on oil spill risk assessment and risk management.

2. Though the region currently has a robust marine and navigation safety web, continuing efforts are necessary to maintain the integrity of the system, particularly in recognition of projected future increases in maritime commerce.

3. Both Parties acknowledge the critical importance of a safe, secure, and strong marine transportation system for the economic security of the state, region, and nation.

4. Both Parties have the stated goal of achieving zero spills.

5. When marine oil and hazardous material spills occur, a rapid, aggressive, and well-coordinated response and cleanup by the responsible party, federal, state, tribal, and local agencies is necessary to minimize adverse effects on the environment, public health and safety, economy, quality of life, and tribal values. To this end, the Parties acknowledge the importance of effective planning through the NWAC and RRT, and commit to managing significant spills and incidents in a Unified Command using the Incident Command System (“ICS”).

6. The Parties acknowledge the need to be vigilant in their work to prevent spills particularly in light of projected increases in vessel traffic in Washington State waters.

B. Unique Features of Washington State

1. Washington State is one of the most trade-dependent states in the nation. Ports in British Columbia and Washington are conveniently located to provide the shortest *great circle* shipping route to ports in eastern Asia. As such, the state’s waterways are heavily used by diverse vessel traffic, and also include the largest ferry fleet in the nation, military ships, commercial and recreational fishing vessels. Attention to marine safety is also particularly important considering the high value and endangered status of natural

resources in the area, tribal Usual and Accustomed Fishing Areas (“U&As”), and challenging waterway configurations. For example:

- a. Puget Sound ports are located further from the entrance buoy than any other major port in the nation. The trans-boundary waters along the 125-mile long international border shared with Canada are characterized by naturally deep water but often have rocky unforgiving shoals and headlands.
 - b. Columbia River’s major ports are accessed across a breaking bar and vessels must transit between 30 and 110 miles from the entrance along a narrow serpentine, dredged waterway to reach the key port complexes at Kalama, Longview, Portland, and Vancouver.
 - c. Grays Harbor ports are also accessed across a breaking bar and passage through a shallow dredged waterway.
2. As of the date of this understanding, a number of large commercial bulk commodity export and oil transportation projects have been proposed that, if completed, would significantly increase vessel traffic in Puget Sound, the Columbia River, and Grays Harbor.

VI. RESPONSIBILITIES OF THE PARTIES

A. General

1. The Parties declare a commitment to reduce oil spills through a risk-based approach to prevention, preparedness, and response.
2. The Parties agree to coordinate oil and hazardous material discharge preparedness and response activities in State and adjacent waters through the Northwest Area Committee (“NWAC”) in accordance with the Northwest Area Contingency Plan (“NWACP”).
3. The Parties recognize that preventing spills is generally the most cost-effective approach to managing the risk of oil and hazardous material spills.
4. The Parties agree to cooperate and coordinate their efforts related to oil spill prevention, preparedness, and response through the establishment, maintenance, and use of protocols as needed to facilitate accomplishment of this MOU.

B. Prevention of Oil Spills and Hazardous Material Discharges

1. **Cooperative Implementation.** The Parties agree to work together to proactively identify opportunities for innovative coordination of vessel and facility oil spill prevention programs, policies, and procedures. Each party will work within their respective interagency partnerships and relationships to facilitate the accomplishment of the goals of this MOU.
2. **Participation in Risk Assessment.** The Parties agree to work together with other interested parties to assess the risk posed by vessel traffic increases projected to occur in the waters of the Puget Sound basin, the Columbia River, Grays Harbor, and off the coast of the Olympic Peninsula.

C. Oil Spill Preparedness

1. Transboundary Waters. The state's location adjacent to Oregon waters on the Columbia River, Canadian waters in greater Puget Sound, and to offshore Pacific Rim commerce warrants a high level of vigilance and planning to ensure an acceptable level of safety and coordination.
2. Puget Sound Higher Volume Port Area. The Parties agree to work together in the context of the NWAC and the NWACP to evaluate the changes required in response equipment and capabilities for the region following the USCG rulemaking to implement the congressional mandate to expand the area to also include all waters of the Strait of Juan de Fuca west of Port Angeles out to Cape Flattery.
3. Geographic Response Plans ("GRPs"). The Parties agree to continue to make GRPs a high priority and to apply resources necessary to maintain and update the documents.
4. Neah Bay Emergency Response Towing Vessel ("ERTV"). The Parties agree to work together, through the Area Contingency Plan or other mechanisms, to facilitate the employment of the ERTV to assist disabled vessels as required when other commercial towing assets are not immediately available.
5. Drills and Exercises. Both Parties recognize the importance of interagency familiarization and cross-training and acknowledge that Drills and Exercises are required by both Parties, and as such are a critical component of preparedness to ensure the readiness of plan holders and interoperability of pollution response organizations. Therefore, the Parties agree to combine and coordinate drills and exercises whenever possible to maximize the effective use of personnel and resources, both public and private. Further, when possible, the Parties will actively participate in national, regional, and local drills and exercises that relate to response to oil spills in State waters, including joint exercises such as the large National Preparedness for Response Exercise Program ("NPREP") drills.

D. Response to Oil and Hazardous Substance Spills

1. Federal law established the Coast Guard as the primary federal agency tasked with responding to oil and hazardous substances spills on the navigable waters within the coastal zone of the United States. In such cases, the Cognizant Captain of the Port is the pre-designated Federal On-Scene Coordinator ("FOSC") responsible for directing response actions. The FOSC must ensure an effective clean up is conducted and may direct all response efforts and/or coordinate all other efforts for a discharge or release in U.S. waters using the Incident Command System within the Unified Command structure.
2. State law establishes the Washington State Department of Ecology ("Ecology") as the primary State agency tasked with responding to and overseeing the cleanup of oil and hazardous substances spills in State waters. In such cases, the State On-Scene Coordinator ("SOSC") is the pre-designated official responsible for directing State response actions. These State actions may be in conjunction and support of the FOSC or may be independent in waters exclusively under State jurisdiction.

E. Investigations and Enforcement

1. **Federal Investigation Authority.** The Coast Guard has broad authorities to investigate marine casualties on vessels and at waterfront facilities. Further, the Coast Guard has authority to investigate violations of the Federal Water Pollution Control Act (“FWPCA”) and the International Convention for the Prevention of Pollution from Ships (“MARPOL”).

2. **State Investigation Authority.** Ecology also has authority under Washington State law (RCW 90.56.350, .400, .410, and Chapter 70.105D RCW) to investigate spills and substantial threats of spills of oil and hazardous substances to waters of the state. The parties recognize that under the savings clauses of OPA § 1018(a), (c) there is a federal-state balance in maritime matters over which states retain concurrent powers in some areas and over which the federal authority displaces state control in other areas. Ecology will endeavor to exercise its state authority consistent with OPA § 1018(a), (c), 33 U.S.C. § 2718(a), (c), and other applicable federal and state laws.

3. **Cooperation on Investigations.** The Parties agree to cooperate as appropriate on discharges or substantial threats of discharges of mutual interest that occur in State waters and/or could affect natural resources of the State. Currently, and except in the area of recreational boating safety, the Coast Guard may not delegate its authority to conduct marine casualty investigations. However, where practicable, given each Party’s authority and guidance, the Parties agree to cooperate and share information from investigations of incidents involving spills or substantial threats of spills in or near State waters or potentially affecting state resources.

4. **Enforcement.** Enforcement actions are undertaken by each of the Parties independently in accordance with each party’s authorities and applicable laws and regulations. The Parties agree to inform each other of enforcement actions after completion of case investigation and before final action in significant cases of mutual interest.

F. Inspections

1. **Federal Vessel Inspection Authority.** Federal laws give the Coast Guard broad authority to promulgate regulations and conduct inspections on vessels. *See generally* 33 C.F.R. §§ 46, 49.

2. **State Vessel Inspection Authority.** Ecology conducts consensual audits and inspections of tank vessels and operating Prevention Plans for those companies enrolled in the Voluntary Best Achievable Protection (“VBAP”) Program and the Exceptional Compliance Program (“ECOPRO”). In addition, Ecology has responsibility and/or authority to conduct marine oil transfer inspections and vessel screening, as well as boardings and inspections of certain covered commercial vessels. The purpose and goal of these consensual inspection programs is to eliminate substantial risks of harm to public health, safety, and the environment from a discharge of oil or other pollution. *See* RCW 88.46.050, .167; Chapters 317-31, 317-40, 173-184 WAC. The State boards vessels and performs inspections with the consent of the vessel master.

3. **Cooperation.** The Parties agree to coordinate inspection activities, where practicable, for efficient execution of the Parties’ duties provided each Party is acting under its own authorities and that the regulated entity has knowledge of each Party’s

authority to conduct the inspection, including whether the inspection is “mandatory” or “consensual” in nature.

4. **Waterfront and Marine Transportation-Related Facility Inspections.** Fixed and mobile oil handling facility inspections are conducted by both Parties to ensure compliance with their respective pollution prevention and response authorities. The Parties agree to coordinate the review and approvals of required facility manuals and plans, and conduct of inspections of regulated facilities to ensure compliance with respective standards and these required operating publications. Efforts will be made to have physical inspections coincide at the same date for the convenience of the regulated facilities. However, inspections done by each Party will be conducted in accordance with each Party’s own authorities, requirements, and practices.

- G. **Derelict Vessel Removal.** Dozens of derelict or abandoned vessels are present within State waters. These vessels pose a threat to the environment, with many containing oil or hazardous materials, or may become dumping sites for the same. The State of Washington’s Department of Natural Resources (“DNR”) currently administers the state derelict vessel program, which provides funding and expertise to assist public agencies in removing and disposing of derelict vessels. The Parties agree to actively work with DNR to promptly assess and properly remediate the significant environmental risks posed by derelict vessels as funding becomes available.
- H. **Public Information/Education.** The Parties agree that public education in the area of preventing pollution, which includes oil, hazardous substances, garbage, and sewage, is a high priority. In general, public information and education is generally developed under the purview of the NWAC. There may be instances, such as outreach to marinas, small oil transfer facilities, and small vessels, where the Parties may decide to jointly develop outreach and education programs to target those specific entities or groups.
- I. **Information Sharing.** Subject to the requirements of applicable law, regulation, and policy, including the Freedom of Information Act, the Privacy Act, and Washington State’s Public Records Act, the Parties agree to share information to promote effective interagency coordination and conserve resources.
- J. **Media Relations.** The Parties agree to coordinate media relations for events for which both Parties are actively executing a coordinated, on-scene response or when a unified command is established to provide for consistent messaging to avoid public confusion. Otherwise, each will refer the media to the other party for information under that party’s purview.
- K. **Rulemaking.** The Parties may participate in each other’s rulemaking procedures in accordance with each entity’s applicable Administrative Procedure Act (APA).

VII. OTHER PROVISIONS

A. Voluntary Understanding

1. This MOU represents a voluntary understanding between the Thirteenth Coast Guard District and the State of Washington, and supersedes the MOA signed on June 26, 2007.
2. No rights, duties, obligations, or liabilities enforceable by law are created by this understanding.
3. No separate cause of action is created by this understanding that may be brought against the United States or the State of Washington.
4. This understanding does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of Washington.
5. Nothing in this agreement constitutes a legal opinion on the enforceability of state or federal laws related to the topics addressed herein.

B. Severability. In the event that individual and severable portions of this understanding are found to be in conflict with either federal or state law, regulations, or policies, and therefore are of no effect, the understanding will remain in effect without those provisions, unless either Party notifies the other in writing that the entire understanding is terminated.

C. Modification. The terms of this understanding may be changed at any time by agreement of both Parties by a written, signed amendment hereto, with or without notice to any other person. Any action to amend or terminate this understanding may only be taken by the Governor of the State of Washington or the Commander, Thirteenth Coast Guard District, or a person to whom this authority is specifically delegated by them.

D. Termination. This understanding may be terminated by either Party upon 30 days written notice.

E. Points of Contact. Responsibility and authority for implementation of the provisions of this MOU, including the development of any protocols prescribed herein, are assigned to the following organizational elements of each Party:


For the State
Spills Program Manager
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For the Coast Guard
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(206) 220-4662

VIII. SIGNATORIES

FOR THE STATE OF WASHINGTON

FOR THE THIRTEENTH COAST GUARD
DISTRICT


CHRISTINE O. GREGOIRE
Governor
State of Washington


KEITH A. TAYLOR
Rear Admiral, U.S. Coast Guard
Commander, Thirteenth Coast Guard District

Date: 10/26/12

Date: 10/26/2012