

APPENDIX E TO PART 300—OIL SPILL  
RESPONSE

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*1.0 Introduction.*

*1.1 Background.* The Oil Pollution Act of 1990 (OPA) amends the Federal Water Pollution Control Act (FWPCA), commonly referred to as the Clean Water Act (CWA), to require the revision of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In revising the NCP, the need to separate the response requirements for oil discharges and release of hazardous substances, pollutants, and contaminants became evident.

*1.2 Purpose/objective.* This document compiles general oil discharge response requirements into one appendix to aid participants and responders under the national response system (NRS). This appendix provides the organizational structure and procedures to prepare for and respond to oil discharges. Nothing in this appendix alters the meaning or policy stated in other sections or subparts of the NCP.

*1.3 Scope.*

(a) This appendix applies to discharges of oil into or upon the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, or waters of the exclusive economic zone, or which may affect the natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(b) This appendix is designed to facilitate efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It addresses:

(1) The national response organization that may be activated in response actions, the responsibilities among the federal, state, and local governments, and the resources that are available for response.

(2) The establishment of regional and area contingency plans.

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA.

(4) Listing of federal trustees for natural resources for purposes of the CWA.

(5) Procedures for the participation of other persons in response actions.

(6) Procedures for compiling and making available cost documentation for response actions.

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(c) In implementing the NCP provisions compiled in this appendix, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP to the greatest extent possible. The Department of State shall be consulted, as appropriate, prior to taking action that may affect its activities.

*1.4 Abbreviations.* This section of the appendix provides abbreviations relating to oil.

(a) Department and Agency Title Abbreviations:

ATSDR—Agency for Toxic Substances and Disease Registry  
 CDC—Centers for Disease Control  
 DOC—Department of Commerce  
 DOD—Department of Defense  
 DOE—Department of Energy  
 DOI—Department of Interior  
 DOJ—Department of Justice  
 DOL—Department of Labor  
 DOS—Department of State  
 DOT—Department of Transportation  
 EPA—Environmental Protection Agency  
 FEMA—Federal Emergency Management Agency  
 GSA—General Services Administration  
 HHS—Department of Health and Human Services  
 NIOSH—National Institute for Occupational Safety and Health  
 NOAA—National Oceanic and Atmospheric Administration  
 OSHA—Occupational Safety and Health Administration  
 RSPA—Research and Special Programs Administration  
 USCG—United States Coast Guard

USDA—United States Department of Agriculture

NOTE: Reference is made in the NCP to both the Nuclear Regulatory Commission and the National Response Center. In order to avoid confusion, the NCP will spell out Nuclear Regulatory Commission and use the abbreviation “NRC” only with respect to the National Response Center.

(b) Operational Abbreviations:

AC—Area Committee  
 ACP—Area Contingency Plan  
 DRAT—District Response Advisory Team  
 DRG—District Response Group  
 ERT—Environmental Response Team  
 ESF—Emergency Support Functions  
 FCO—Federal Coordinating Officer  
 FRERP—Federal Radiological Emergency Response Plan  
 FRP—Federal Response Plan  
 LEPC—Local Emergency Planning Committee  
 NCP—National Contingency Plan  
 NPFCC—National Pollution Funds Center  
 NRC—National Response Center  
 NRS—National Response System  
 NRT—National Response Team  
 NSF—National Strike Force  
 NSFCC—National Strike Force Coordination Center  
 OSC—On-Scene Coordinator  
 OSLTF—Oil Spill Liability Trust Fund  
 POLREP—Pollution Report  
 PIAT—Public Information Assist Team  
 RCP—Regional Contingency Plan  
 RERT—Radiological Emergency Response Team  
 RRT—Regional Response Team  
 SERC—State Emergency Response Commission  
 SONS—Spill of National Significance  
 SSC—Scientific Support Coordinator  
 SUPSALV—United States Navy Supervisor of Salvage  
 USFWS—United States Fish and Wildlife Service

*1.5 Definitions.* Terms not defined in this section have the meaning given by CERCLA, the OPA, or the CWA. This appendix restates the NCP definitions relating to oil.

*Activation* means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

*Area Committee (AC)* as provided for by CWA sections 311(a)(18) and (j)(4), means the entity appointed by the President consisting of members from qualified personnel of federal, state, and local agencies with responsibilities that include preparing an area contingency plan for an area designated by the President.

*Area contingency plan (ACP)* as defined by CWA sections 311(a)(19) and (j)(4) means the plan prepared by an Area Committee that is developed to be implemented in conjunction

with the NCP and RCP, in part to address removal of a worst case discharge and to mitigate or prevent a substantial threat of such a discharge from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President.

*Bioremediation agents* means microbiological cultures, enzyme additives, or nutrient additives that are deliberately introduced into an oil discharge and that will significantly increase the rate of biodegradation to mitigate the effects of the discharge.

*Burning agents* means those additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

*CERCLA* is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

*Chemical agents* means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or the removal of the oil pollutant from the water. Chemical agents include biological additives, dispersants, sinking agents, miscellaneous oil spill control agents, and burning agents, but do not include solvents.

*Claim* in the case of a discharge under CWA means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident.

*Claimant* as defined by section 1001 of the OPA means any person or government who presents a claim for compensation under Title I of the OPA.

*Clean natural seawater* means that the source of this seawater must not be heavily contaminated with industrial or other types of effluent.

*Coastal waters* for the purpose of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

*Coastal zone* as defined for the purpose of the NCP, means all United States waters subject to the tide, United States waters of the Great Lakes, specified ports and harbors on inland rivers, waters of the contiguous zone, other waters of the high seas subject to the NCP, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

*Coast Guard District Response Group (DRG)* as provided for by CWA sections 311(a)(20)

and (j)(3), means the entity established by the Secretary of the department in which the USCG is operating within each USCG district and shall consist of: the combined USCG personnel and equipment, including firefighting equipment, of each port within the district; additional prepositioned response equipment; and a district response advisory team.

*Contiguous zone* means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

*Damages* as defined by section 1001 of the OPA means damages specified in section 1002(b) of the Act, and includes the cost of assessing these damages.

*Discharge* as defined by section 311(a)(2) of the CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, but excludes discharges in compliance with a permit under section 402 of the CWA, discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit, or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems. For purposes of the NCP, discharge also means substantial threat of discharge.

*Dispersants* means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

*Exclusive economic zone* as defined in OPA section 1001, means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

*Facility* as defined by section 1001 of the OPA means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

*Federal Response Plan (FRP)* means the agreement signed by 25 federal departments and agencies in April 1987 and developed

under the authorities of the Earthquake Hazards Reduction Act of 1977 and the Disaster Relief Act of 1974, as amended by the Stafford Disaster Relief Act of 1988.

*First federal official* means the first federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under the NCP and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC.

*Indian tribe* as defined in OPA section 1001, means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the Tribe.

*Inland waters* for the purposes of classifying the size of discharges, means those waters of the United States in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

*Inland zone* means the environment inland of the coastal zone excluding the Great Lakes, and specified ports and harbors on inland rivers. The term inland zone delineates an area of federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in federal regional contingency plans.

*Lead administrative trustee* means a natural resource trustee who is designated on an incident-by-incident basis for the purpose of preassessment and damage assessment and chosen by the other trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication during response operations between the OSC and the other natural resource trustees conducting activities associated with damage assessment and is responsible for applying to the OSC for access to response operations resources on behalf of all trustees for initiation of damage assessment.

*Lead agency* means the agency that provides the OSC to plan and implement response actions under the NCP.

*Miscellaneous oil spill control agent* is any product, other than a dispersant, sinking agent, surface washing agent, surface collecting agent, bioremediation agent, burning agent, or sorbent that can be used to enhance oil spill cleanup, removal, treatment, or mitigation.

*National Pollution Funds Center* (NPFC) means the entity established by the Secretary of Transportation whose function is the administration of the Oil Spill Liability Trust Fund (OSLTF). Among the NPFC's duties are: providing appropriate access to the OSLTF for federal agencies and states for re-

moval actions and for federal trustees to initiate the assessment of natural resource damages; providing appropriate access to the OSLTF for claims; and coordinating cost recovery efforts.

*National Response System* (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the NRT, RRTs, OSC, Area Committees, and Special Teams and related support entities.

*National Strike Force* (NSF) is a special team established by the USCG, including the three USCG Strike Teams, the Public Information Assist Team (PIAT), and the National Strike Force Coordination Center. The NSF is available to assist OSCs in their preparedness and response duties.

*National Strike Force Coordination Center* (NSFCC), authorized as the National Response Unit by CWA section 311(a)(23) and (j)(2), means the entity established by the Secretary of the department in which the USCG is operating at Elizabeth City, North Carolina, with responsibilities that include administration of the USCG Strike Teams, maintenance of response equipment inventories and logistic networks, and conducting a national exercise program.

*Natural resources* means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

*Navigable waters* as defined by 40 CFR 110.1 means the waters of the United States, including the territorial seas. The 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 that 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, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are 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; and

(3) That are 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 United States.

(g) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

*Offshore facility* as defined by section 311(a)(11) of the CWA means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

*Oil* as defined by section 311(a)(1) of the CWA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil, as defined by section 1001 of the OPA means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

*Oil Spill Liability Trust Fund* means the fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

*On-scene coordinator* (OSC) means the federal official pre-designated by the EPA or the USCG to coordinate and direct response under subpart D.

*Onshore facility* as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

*On-site* means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a response action.

*Person* as defined by section 1001 of the OPA, means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

*Public vessel* as defined by section 311(a)(4) of the CWA, means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

*Remove or removal* as defined by section 311(a)(8) of the CWA, refers to containment and removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare (including, but not limited to, fish, shellfish, wildlife, public and private property, and shorelines and beaches) or to the environment. For the purpose of the NCP, the term also includes monitoring of action to remove a discharge.

*Removal costs* as defined by section 1001 of the OPA means the costs of removal that are incurred after a discharge of oil has occurred, or in any case in which there is a substantial threat of a discharge of oil the costs to prevent, minimize, or mitigate oil pollution from such an incident.

*Responsible party* as defined by section 1001 of the OPA means the following:

(a) *Vessels*—In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) *Onshore Facilities*—In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) *Offshore Facilities*—In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301–1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) *Deepwater Ports*—In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), the licensee.

(e) Pipelines—In the case of a pipeline, any person owning or operating the pipeline.

(f) Abandonment—In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the person who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

*Sinking agents* means those additives applied to oil discharges to sink floating pollutants below the water surface.

*Size classes of discharges* refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in subpart D. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental injury. Any oil discharge that poses a substantial threat to public health or welfare or the environment or results in significant public concern shall be classified as a major discharge regardless of the following quantitative measures:

(a) Minor discharge means a discharge in inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

*Sorbents* means essentially inert and insoluble materials that are used to remove oil and hazardous substances from water through adsorption, in which the oil or hazardous substance is attracted to the sorbent surface and then adheres to it, absorption, in which the oil or hazardous substance penetrates the pores of the sorbent material, or a combination of the two. Sorbents are generally manufactured in particulate form for spreading over an oil slick or as sheets, rolls, pillows, or booms. The sorbent material may consist of, but is not limited to, the following materials:

- (a) Organic products—
  - (1) Peat moss or straw;
  - (2) Cellulose fibers or cork;
  - (3) Corn cobs;
  - (4) Chicken or duck feathers.
- (b) Mineral compounds—
  - (1) Volcanic ash or perlite;
  - (2) Vermiculite or zeolite.
- (c) Synthetic products—
  - (1) Polypropylene;
  - (2) Polyethylene;
  - (3) Polyurethane;
  - (4) Polyester.

*Specified ports and harbors* means those ports and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as

predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in federal regional contingency plans and area contingency plans.

*Spill of national significance* (SONS) means a spill which due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and cleanup the discharge.

*State* means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. For purposes of the NCP, the term includes Indian tribes as defined in the NCP except where specifically noted.

*Surface collecting agents* means those chemical agents that form a surface film to control the layer thickness of oil.

*Surface washing agent* is any product that removes oil from solid surfaces, such as beaches and rocks, through a detergency mechanism and does not involve dispersing or solubilizing the oil into the water column.

*Tank vessel* as defined by section 1001 of OPA means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that: (1) is a vessel of the United States; (2) operates on the navigable waters; or (3) transfers oil or hazardous material in a place subject to the jurisdiction of the United States.

*Threat of discharge*, see definition for discharge.

*Trustee* means an official of a federal natural resources management agency designated in subpart G of the NCP or a designated state official or Indian tribe or, in the case of discharges covered by the OPA, a foreign government official, who may pursue claims for damages under section 1006 of the OPA.

*United States* when used in relation to section 311(a)(5) of the CWA, mean the states, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, and the Pacific Island Governments.

*Vessel* as defined by section 311(a)(3) of the CWA means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.

*Volunteer* means any individual accepted to perform services by the lead agency which has authority to accept volunteer services

(for examples, see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute and the NCP.

*Worst case discharge* as defined by section 311(a)(24) of the CWA means, in the case of a vessel, a discharge in adverse weather conditions of its entire cargo, and in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions.

#### 2.0 National response system.

**2.1 Overview.** The national response system (NRS) is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS is composed of the National Response Team (NRT), Regional Response Teams (RRTs), On-scene coordinator (OSC), Area Committees, and Special Teams and related support entities. The NRS functions as an incident command system (ICS) under the direction of the OSC. Typical of an ICS, the NRS is capable of expanding or contracting to accommodate the response effort required by the size or complexity of the discharge.

**2.2 Priorities.** (a) Safety of human life must be given the highest priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next priority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begins as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

**2.3 Responsibility.** (a) The predesignated OSC has the responsibility to direct response actions and coordinate all other response efforts at the scene of an oil discharge or threatened discharge. The OSC monitors or directs all federal, state, local, and private removal actions, or arranges for the removal of an actual or threatened oil discharge, removing and if necessary, requesting authority to destroy a vessel. Additionally, the CWA requires the OSC to direct all federal, state, local, and private removal actions to any incident that poses a substantial threat to the public health or welfare.

(b) Cleanup responsibility for an oil discharge immediately falls on the responsible party, unless the discharge poses a substantial threat to public health or welfare. In a large percentage of oil discharges, the responsible party shall conduct the cleanup. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated.

(1) If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(2) If the Administrator of EPA or the Secretary of the department in which the USCG is operating determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States (including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States), the Administrator or Secretary may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA including administrative orders, that may be necessary to protect the public health or welfare.

(3) The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(c) In those incidents where a discharge or threat of discharge poses a substantial threat to the public health or welfare of the

United States, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. The OSC shall also request immediate activation of the RRT.

(d) During responses to any discharge the OSC may request advice or support from the Special Teams and any local support units identified by the Area Committee. Examples include scientific advice from the Scientific Support Coordinator (SSC), technical guidance or prepositioned equipment from the District Response Group (DRG), or public information assistance from the National Strike Force (NSF).

(e) When an oil discharge exceeds the response capability of the region in which it occurs, transects regional boundaries, or involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to the natural resources, the NRT should be activated as an emergency response team. If appropriate the RRT Chairman may contact the NRT Chairman and request the NRT activation.

### 3.0 *Components of national response system and responsibilities.*

The NRS is the mechanism for coordinating response actions by all levels of government in support of the OSC. The NRS organization is divided into national, regional, and area levels. The national level comprises the NRT, the National Strike Force Coordination Center (NSFCC), and the National Response Center (NRC). The regional level is comprised of the RRT. The area level is made up of the OSC, Special Teams, and Area Committees. The basic framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC retains authority.

#### 3.1 *National.*

3.1.1 *National response team.* (a) National planning and coordination is accomplished through the NRT. The NRT consists of representatives from the USCG, EPA, Federal Emergency Management Agency (FEMA),

Department of Defense (DOD), Department of Energy (DOE), Department of Agriculture (DOA), Department of Commerce (DOC), Department of Health and Human Services (HHS), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of Transportation (DOT), Department of State (DOS), Nuclear Regulatory Commission, and General Services Administration (GSA). Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. The NRT will consider requests for membership on the NRT from other agencies. Other agencies may request membership by forwarding such requests to the chair of the NRT (see Figure 1).

(b) The chair of the NRT shall be the representative of the EPA and the vice chair shall be the representative of the USCG, with the exception of periods of activation because of response action. During activation, the chair shall be the member agency providing the OSC. The vice chair shall maintain records of NRT activities along with national, regional, and area plans for response actions.

(c) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

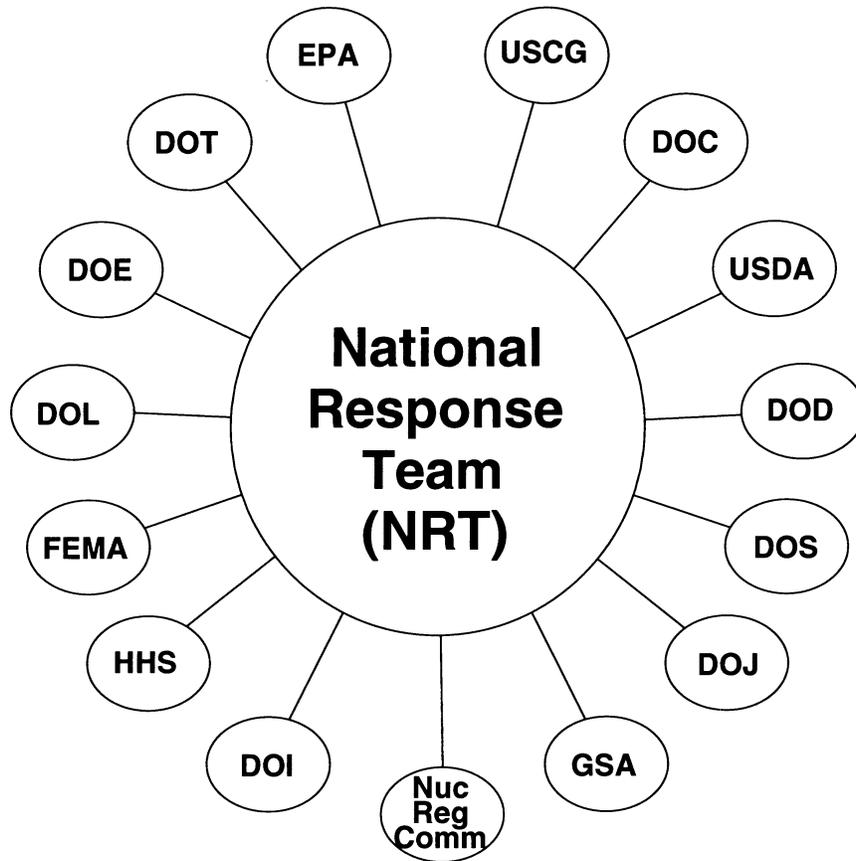
(d) The NRT may establish such bylaws, procedures, and committees as it deems appropriate to further the purposes for which it is established.

(e) The NRT shall evaluate methods of responding to discharges, shall recommend any changes needed in the response organization, and shall recommend to the Administrator of EPA changes to the NCP designed to improve the effectiveness of the national response system, including drafting of regulatory language.

(f) The NRT shall provide policy and program direction to the RRTs.

(g) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

Figure 1



(h) Direct planning and preparedness responsibilities of the NRT include:

(1) Maintaining national preparedness to respond to a major discharge of oil that is beyond regional capabilities;

(2) Monitoring incoming reports from all RRTs and activating for a response action, when necessary;

(3) Coordinating a national program to assist member agencies in preparedness planning and response, and enhancing coordination of member agency preparedness programs;

(4) Developing procedures, in coordination with the NSFCC, as appropriate, to ensure the coordination of federal, state, and local governments, and private response to oil discharges;

(5) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination, avoid duplication of effort, and facilitate research in support of response activities;

(6) Developing recommendations for response training and for enhancing the coordination of available resources among agencies with training responsibilities under the NCP;

(7) Reviewing regional responses to oil discharges, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations; and

(8) Assisting in developing a national exercise program, in coordination with the

NSFCC to ensure preparedness and coordination nationwide.

(i) The NRT shall consider matters referred to it for advice or resolution by an RRT.

(j) The NRT should be activated as an emergency response team:

(1) When an oil discharge:

(A) Exceeds the response capability of the region in which it occurs;

(B) Transects regional boundaries; or

(C) Involves a substantial threat to the public health or welfare, substantial amounts of property, or substantial threats to natural resources;

(2) If requested by any NRT member.

(k) When activated for a response action, the NRT will meet at the call of the chair and may:

(1) Monitor and evaluate reports from the OSC and recommend to the OSC, through the RRT, actions to combat the discharge;

(2) Request other federal, state and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge, or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

**3.1.2 National response center.** (a) The NRC, located at USCG Headquarters, is the national communications center, continuously manned for handling activities related to response actions, including those involving discharges of oil. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. Notice of discharges must be made by telephone through a toll free number or a special number (Telecommunication Device for the Deaf (TDD) and collect calls accepted). Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The telephone report is distributed to any interested NRT member agency or federal entity that has established a written agreement or understanding with the NRC.

(b) The Commandant, USCG, in conjunction with other NRT agencies, provides the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR part 153, subpart B. Notification will be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424-8802 or (202) 267-2675. All notices of discharges received at the NRC will be relayed immediately by telephone to the OSC.

**3.1.3 National strike force coordination center.** NSFCC, located in Elizabeth City, North Carolina, may assist the OSC by providing information on available spill removal resources, personnel, and equipment. The NSFCC can provide the following support to the OSC:

(a) Technical assistance, equipment, and other resources to augment the OSC staff during spill response;

(b) Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

(c) Review of the area contingency plan, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

(d) Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

(e) Coordination and evaluation of pollution response exercises; and

(f) Inspection of district prepositioned pollution response equipment.

**3.2 Regional.** (a) Regional planning and coordination of preparedness and response actions is accomplished through the RRT. In the case of a discharge of oil, preparedness activities shall be carried out in conjunction with Area Committees as appropriate. The RRT agency membership parallels that of the NRT, but also includes state and local representation. The RRT provides: (1) the appropriate regional mechanism for development and coordination of preparedness activities before a response action is taken and for coordination of assistance and advice to the OSC during such response actions; and (2) guidance to Area Committees, as appropriate, to ensure inter-area consistency and consistency of individual ACPs with the RCP and NCP.

(b) The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating federal agency, state governments, and local governments (as agreed upon by the states); and incident-specific teams formed from the standing team when the RRT is activated for a response. On incident-specific teams, participation by the RRT member agencies will relate to the technical nature of the incident and its geographic location.

(1) The standing team's jurisdiction corresponds to the standard federal regions, except for Alaska, Oceania in the Pacific, and the Caribbean area, each of which has a separate standing RRT. The role of the standing RRT includes communications systems and procedures, planning, coordination, training, evaluation, preparedness, and related matters on a regionwide basis. It also includes coordination of Area Committees for these functions in areas within their respective regions, as appropriate.

(2) The role of the incident-specific team is determined by the operational requirements of the response to a specific discharge. Appropriate levels of activation and/or notification of the incident-specific RRT, including

participation by state and local governments, shall be determined by the designated RRT chair for the incident, based on the RCP. The incident-specific RRT supports the designated OSC. The designated OSC manages response efforts and coordinates all other efforts at the scene of a discharge.

(c) The representatives of EPA and the USCG shall act as co-chairs of the RRTs except when the RRT is activated. When the RRT is activated for response actions, the chair is the member agency providing the OSC.

(d) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard federal regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard federal region. Participating states may also designate one member and at least one alternate member to the RRT. Indian tribal governments may arrange with the RRT for representation appropriate to their geographical location. All agencies and states may also provide additional representatives as observers to meetings of the RRT.

(e) RRT members should designate representatives and alternates from their agencies as resource personnel for RRT activities, including RRT work planning, and membership on incident-specific teams in support of the OSCs.

(f) Federal RRT members or their representatives should provide OSCs with assistance from their respective federal agencies commensurate with agency responsibilities, resources, and capabilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the RCP and ACP.

(g) RRT members should nominate appropriately qualified representatives from their agencies to work with OSCs in developing and maintaining ACPs.

(h) Affected states are encouraged to participate actively in all RRT activities. Each state Governor is requested to assign an office or agency to represent the state on the appropriate RRT; to designate representatives to work with the RRT in developing RCPs; to plan for, make available, and coordinate state resources for use in response actions; and to serve as the contact point for coordination of response with local government agencies, whether or not represented on the RRT. The state's RRT representative should keep the State Emergency Response Commission (SERC) apprised of RRT activities and coordinate RRT activities with the SERC. Local governments are invited to participate in activities on the appropriate RRT as provided by state law or as arranged by the state's representative. Indian tribes are also invited to participate in such activities.

(i) The standing RRT shall recommend changes in the regional response organization as needed, revise the RCP as needed, evaluate the preparedness of the participating agencies and the effectiveness of ACPs for the federal response to discharges, and provide technical assistance for preparedness to the response community. The RRT should:

(1) Review and comment, to the extent practicable, on local emergency response plans or other issues related to the preparation, implementation, or exercise of such plans upon request of a local emergency planning committee;

(2) Evaluate regional and local responses to discharges on a continuing basis, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations, and recommend improvements;

(3) Recommend revisions of the NCP to the RRT, based on observations of response operations;

(4) Review OSC actions to ensure that RCPs and ACPs are effective;

(5) Encourage the state and local response community to improve its preparedness for response;

(6) In coordination with the Area Committee and in accordance with any applicable laws, regulations, or requirements, conduct advance planning for use of dispersants, surface washing agents, surface collecting agents, burning agents, bioremediation agents, or other chemical agents in accordance with subpart J of this part;

(7) Be prepared to provide response resources to major discharges or releases outside the region;

(8) Conduct or participate in training and exercises as necessary to encourage preparedness activities of the response community within the region;

(9) Meet at least semiannually to review response actions carried out during the preceding period, consider changes in RCPs, and recommend changes in ACPs;

(10) Provide letter reports on RRT activities to the NRT twice a year, no later than January 31 and July 31; and

(11) Ensure maximum participation in the national exercise program for announced and unannounced exercises.

(j)(1) The RRT may be activated by the chair as an incident-specific response team when a discharge:

(A) Exceeds the response capability available to the OSC in the place where it occurs;

(B) Transects state boundaries;

(C) May pose a substantial threat to the public health or welfare, or to regionally significant amounts of property; or

(D) Is a worst case discharge, as defined in section 1.5 of this appendix.

(2) The RRT shall be activated during any discharge upon a request from the OSC, or

from any RRT representative, to the chair of the RRT. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or may need to have available only those member agencies of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives will meet at the call of the chair and may:

(A) Monitor and evaluate reports from the OSC, advise the OSC on the duration and extent of response, and recommend to the OSC specific actions to respond to the discharge;

(B) Request other federal, state, or local governments, or private agencies, to provide resources under their existing authorities to respond to a discharge or to monitor response operations;

(C) Help the OSC prepare information releases for the public and for communication with the NRT;

(D) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC that a different OSC should be designated; and

(E) Submit pollution reports to the NRC as significant developments occur.

(5) RCPs shall specify detailed criteria for activation of RRTs.

(6) At the regional level, a Regional Response Center (RRC) may provide facilities and personnel for communications, information storage, and other requirements for coordinating response. The location of each RRC should be provided in the RCP.

(7) When the RRT is activated, affected states may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any federal member of the RRT.

(8) The RRT can be deactivated when the incident-specific RRT chair determines that the OSC no longer requires RRT assistance.

(9) Notification of the RRT may be appropriate when full activation is not necessary, with systematic communication of pollution reports or other means to keep RRT members informed as to actions of potential concern to a particular agency, or to assist in later RRT evaluation of regionwide response effectiveness.

(k) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the NCP, or a disagreement on discretionary actions among RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice.

### 3.3 Area.

3.3.1 *On-scene coordinator.* The OSC is the federal official predesignated by EPA or the USCG to coordinate and direct federal responses under subpart D of the NCP. The USCG shall provide OSCs for oil discharges, including discharges from facilities and vessels under the jurisdiction of another federal agency, within or threatening the coastal zone. EPA shall provide OSCs for discharges into or threatening the inland zone. In carrying out a response, the OSC may direct or monitor all federal, state, and private actions to remove a discharge. In contingency planning and removal, the OSC coordinates, directs, and reviews the work of other agencies, Area Committees, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead agency-approved plans applicable to the response.

3.3.2 *Area committees.* (a) Area Committees shall be responsible for: (1) preparing an ACP for their areas; (2) working with appropriate federal, state, and local officials to enhance the contingency planning of those officials and to assure pre-planning of 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; and (3) working with appropriate federal, state, and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(b) The OSC is responsible for overseeing development of the ACP in the area of the OSC's responsibility. The ACP, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate and prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

3.3.3 *Special teams.* (a) Special teams include: NOAA/EPA's SSCs; EPA's Environmental Response Team (ERT); and USCG's NSF; DRGs; and NPFC (see Figure 2).

(b) SSCs may be designated by the OSC as the principal advisors for scientific issues, communication with the scientific community, and coordination of requests for assistance from state and federal agencies regarding scientific studies. The SSC strives for a consensus on scientific issues affecting the response, but ensures that differing opinions within the community are communicated to the OSC.

(1) Generally, SSCs are provided by NOAA in the coastal zones, and by EPA in the inland zone. OSC requests for SSC support may be made directly to the SSC assigned to the area or to the agency member of the RRT. NOAA SSCs may also be requested through

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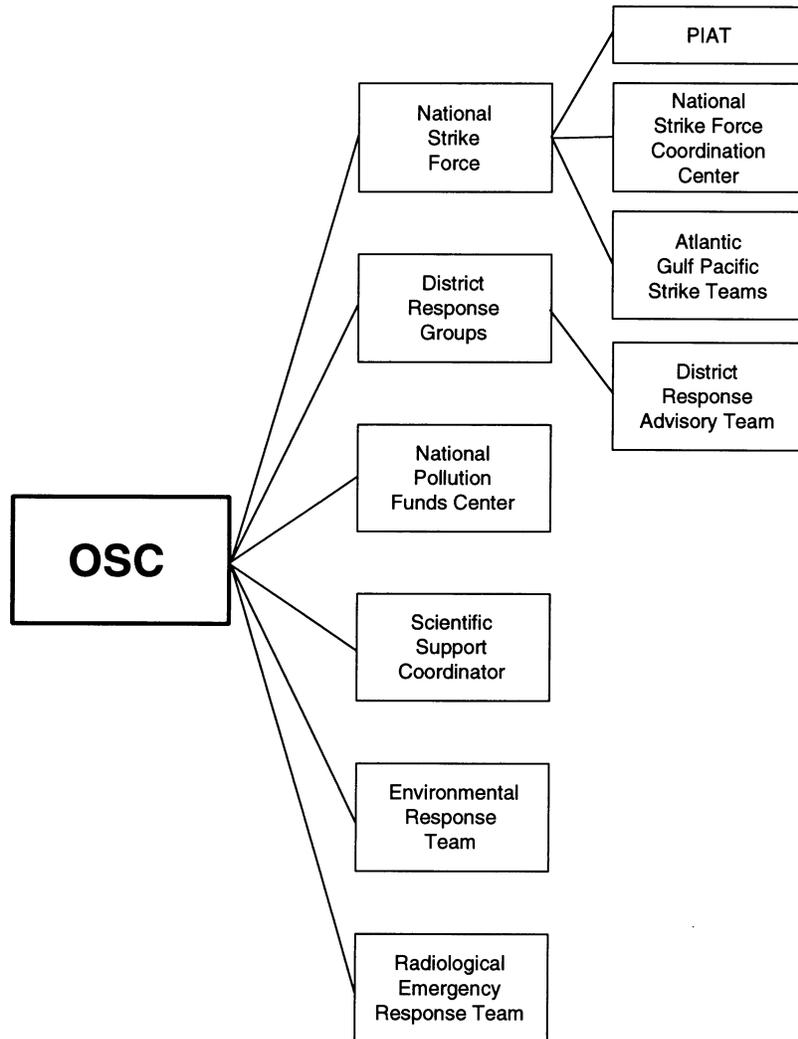
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NOAA's SSC program office in Seattle, WA. NOAA SSCs are assigned to USCG Districts and are supported by a scientific support team that includes expertise in environmental chemistry, oil slick tracking, pollut-

ant transport modeling, natural resources at risk, environmental tradeoffs of countermeasures and cleanup, and information management.

*Figure 2*

**National Response System Special Teams**



(2) During a response, the SSC serves on the federal OSC's staff and may, at the request of the OSC, lead the scientific team and be responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature and location of the incident, the SSC integrates expertise from governmental agencies, universities, community representatives, and industry to assist the OSC in evaluating the hazards and potential effects of releases and in developing response strategies.

(3) At the request of the OSC, the SSC may facilitate the OSC's work with the lead administrative trustee for natural resources to ensure coordination between damage assessment data collection efforts and data collected in support of response operations.

(4) SSCs support the RRTs and the Area Committees in preparing regional and area contingency plans and in conducting spill training and exercises. For area plans, the SSC provides leadership for the synthesis and integration of environmental information required for spill response decisions in support of the OSC.

(c)(1) SUPSALV has an extensive salvage/search and recovery equipment inventory with the requisite knowledge and expertise to support these operations, including specialized salvage, firefighting, and petroleum, oil and lubricants offloading capability.

(2) When possible, SUPSALV will provide equipment for training exercises in support of national and regional contingency planning objectives.

(3) The OSC/RPM may request assistance directly from SUPSALV. Formal requests are routed through the Chief of Naval Operations (N312).

(d) The ERT is established by the EPA in accordance with its disaster and emergency responsibilities. The ERT has expertise in treatment technology, biology, chemistry, hydrology, geology and engineering.

(1) The ERT can provide access to special decontamination equipment and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material. The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(2) OSC or RRT requests for ERT support should be made to the EPA representative on the RRT; EPA Headquarters, Director, Emergency Response Division; or the appropriate EPA regional emergency coordinator.

(e) The NSF is a special team established by the USCG, including the three USCG

Strike Teams, the Public Information Assist Team (PIAT), and the NSFCC. The NSF is available to assist OSCs in their preparedness and response duties.

(1) The three Strike Teams (Atlantic, Gulf, and Pacific) provide trained personnel and specialized equipment to assist the OSC in training for spill response, stabilizing and containing the spill, and in monitoring or directing the response actions of the responsible parties and/or contractors. The OSC has a specific team designated for initial contact and may contact that team directly for any assistance.

(2) The NSFCC can provide the following support to the OSC:

—Technical assistance, equipment and other resources to augment the OSC staff during spill response;

—Assistance in coordinating the use of private and public resources in support of the OSC during a response to or a threat of a worst case discharge of oil;

—Review of the ACP, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

—Assistance in locating spill response resources for both response and planning, using the NSFCC's national and international computerized inventory of spill response resources;

—Coordination and evaluation of pollution response exercises; and

—Inspection of district prepositioned pollution response equipment.

(3) PIAT is an element of the NSFCC staff which is available to assist OSCs to meet the demands for public information during a response or exercise. Its use is encouraged any time the OSC requires outside public affairs support. Requests for PIAT assistance may be made through the NSFCC or NRC.

(f)(1) The DRG assists the OSC by providing technical assistance, personnel, and equipment, including pre-positioned equipment. Each DRG consists of all Coast Guard personnel and equipment, including marine firefighting equipment, in its district, additional pre-positioned equipment, and a District Response Advisory Team (DRAT) that is available to provide support to the OSC in the event that a spill exceeds local response capabilities. Each DRG:

(A) Shall provide technical assistance, equipment, and other resources as available when requested by an OSC through the USCG representative to the RRT;

(B) Shall ensure maintenance of all USCG response equipment within its district;

(C) May provide technical assistance in the preparation of the ACP; and

(D) Shall review each of those plans that affect its area of geographic responsibility.

(2) In deciding where to locate personnel and pre-positioned equipment, the USCG shall give priority emphasis to:

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(A) The availability of facilities for loading and unloading heavy or bulky equipment by barge;

(B) The proximity to an airport capable of supporting large military transport aircraft;

(C) The flight time to provide response to oil spills in all areas of the Coast Guard district with the potential for marine casualties;

(D) The availability of trained local personnel capable of responding in an oil spill emergency; and

(E) Areas where large quantities of petroleum products are transported.

(g) The NPFCA is responsible for implementing those portions of Title I of the OPA that have been delegated to the Secretary of the department in which the Coast Guard is operating. The NPFCA is responsible for addressing funding issues arising from discharges and threats of discharges of oil. The NPFCA:

(1) Issues Certificates of Financial Responsibility to owners and operators of vessels to pay for costs and damages that are incurred by their vessels as a result of oil discharges;

(2) Provides funding for various response organizations for timely abatement and removal actions related to oil discharges;

(3) Provides equitable compensation to claimants who sustain costs and damages from oil discharges when the responsible party fails to do so;

(4) Recovers monies from persons liable for costs and damages resulting from oil discharges to the full extent of liability under the law; and

(5) Provides funds to initiate natural resources damage assessment.

(h) The organizational concepts of the national response system discussed above are depicted in Figure 3.

### 4.0 Preparedness activities.

*4.1 Federal contingency plans.* This section summarizes emergency preparedness activities relating to discharges of oil and describes the three levels of contingency planning under the national response system.

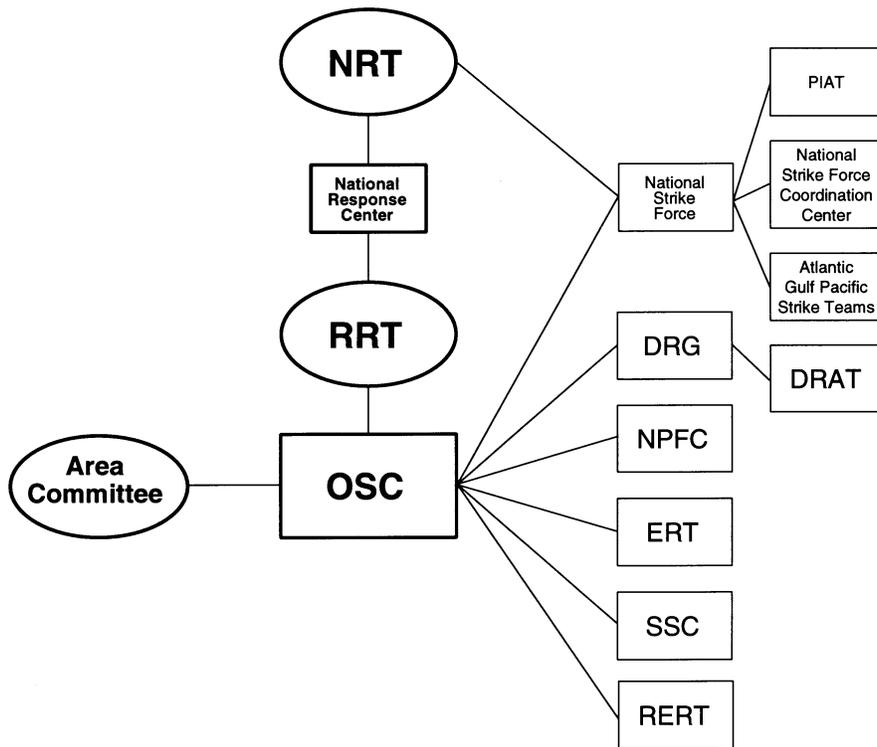
*4.1.1 National contingency plan.* (a) The NCP provides for efficient, coordinated, and effective response to discharges of oil in accordance with the authorities of the CWA. It provides for:

(1) The national response organization that may be activated in response actions and specifies responsibilities among the federal, state, and local governments and describes resources that are available for response;

(2) The establishment of requirements for federal, regional, and area contingency plans;

(3) Procedures for undertaking removal actions pursuant to section 311 of the CWA;

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(4) Procedures for involving state governments in the initiation, development, selection, and implementation of response actions;

(5) Listing of federal trustees for natural resources for purposes of the CWA;

(6) Procedures for the participation of other persons in response actions; and

(7) National procedures for the use of dispersants and other chemicals in removals under the CWA.

(b) In implementing the NCP, consideration shall be given to international assistance plans and agreements, security regulations and responsibilities based on international agreements, federal statutes, and executive orders. Actions taken pursuant to the provisions of any applicable international joint contingency plans shall be consistent with the NCP, to the greatest extent possible. The Department of State shall

be consulted, as appropriate, prior to taking action which may affect its activities.

*4.1.2 Regional contingency plans.* The RRTs, working with the states, shall develop federal RCPs for each standard federal region, Alaska, Oceania in the Pacific, and the Caribbean to coordinate timely, effective response by various federal agencies and other organizations to discharges of oil. RCPs shall, as appropriate, include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, RCPs shall follow the format of the NCP and be coordinated with state emergency response plans, ACPs, and Title III local emergency response plans. Such coordination should be accomplished by working with the SERCs in the region covered by the RCP. RCPs shall contain lines of demarcation between the inland and coastal zones,

as mutually agreed upon by the USCG and the EPA.

**4.1.3 Area contingency plans.** (a) Under the direction of an OSC and subject to approval by the lead agency, each Area Committee, in consultation with the appropriate RRTs, DRGs, the NSFCC, SSCs, Local Emergency Planning Committees (LEPCs), and SERCs, shall develop an ACP for its designated area. This plan, when implemented in conjunction with other provisions of the NCP, shall be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area.

(b) The areas of responsibility may include several Title III local planning districts, or parts of such districts. In developing the ACP, the OSC shall coordinate with affected SERCs and LEPCs. The ACP shall provide for a well coordinated response that is integrated and compatible to the greatest extent possible with all appropriate response plans of state, local, and non-federal entities, and especially with Title III local emergency response plans.

(c) The ACP shall include the following:

(1) A description of the area covered by the plan, including the areas of special economic or environmental importance that might be impacted by a discharge;

(2) A description in detail of the responsibilities of an owner or operator and of federal, state, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(3) A list of equipment (including fire-fighting equipment), dispersants, or other mitigating substances and devices, and personnel available to an owner or operator and federal, state, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge (this may be provided in an appendix or by reference to other relevant emergency plans (e.g., state or LEPC plans), which may include such equipment lists);

(4) A description of procedures to be followed for obtaining an expedited decision regarding the use of dispersants; and

(5) A detailed description of how the plan is integrated into other ACPs and tank vessel, offshore facility, and onshore facility response plans approved by the President, and into operating procedures of the NSFCC.

**4.1.4 Fish and Wildlife and sensitive environments plan annex.** (a) In order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat, Area Committees shall incorporate into each ACP a detailed annex containing a Fish and Wildlife and Sensitive Environments Plan that is consistent with the RCP and NCP. The annex

shall be prepared in consultation with the U.S. Fish and Wildlife Service (FWS) and NOAA and other interested natural resource management agencies and parties. It shall address fish and wildlife resources and their habitat, and shall include other areas considered sensitive environments in a separate section of the annex, based upon Area Committee recommendations. The annex shall provide the necessary information and procedures to immediately and effectively respond to discharges that may adversely affect fish and wildlife and their habitat and sensitive environments, including provisions for a response to a worst case discharge. Such information shall include the identification of appropriate agencies and their responsibilities, procedures to notify these agencies following a discharge or threat of a discharge; protocols for obtaining required fish and wildlife permits and other necessary permits, and provisions to ensure compatibility of annex-related activities with removal operations.

(b) The annex shall:

(1) Identify and establish priorities for fish and wildlife resources and their habitats and other important sensitive areas requiring protection from any direct or indirect effects from discharges that may occur. These effects include, but are not limited to, any seasonal or historical use, as well as all critical, special, significant or otherwise designated protected areas.

(2) Provide a mechanism to be used during a spill response for timely identification of protection priorities of those fish and wildlife resources and habitats and sensitive environmental areas that may be threatened or injured by a discharge. These include as appropriate, not only marine and freshwater species, habitats, and their food sources, but also terrestrial wildlife and their habitats that may be affected directly by onshore oil or indirectly by oil-related factors, such as loss or contamination of forage. The mechanism shall also provide for expeditious evaluation and appropriate consultations on the effects to fish and wildlife, their habitat, and other sensitive environments from the application of chemical countermeasures or other countermeasures not addressed under paragraph (3) of this section.

(3) Identify potential environmental effects on fish and wildlife, their habitat, and other sensitive environments resulting from removal actions or countermeasures, including the option of no removal. Based on this evaluation of potential environmental effects, the annex should establish priorities for application of countermeasure and removal actions to habitats within the geographic region of the ACP. The annex should establish methods to minimize the identified effects on fish and wildlife because of response activities, including, but not limited to, disturbance of sensitive areas and habitats; illegal or inadvertent taking or disturbance of

fish and wildlife or specimens by response personnel; and fish and wildlife, their habitat, and environmentally sensitive areas coming in contact with various cleaning or bioremediation agents. Furthermore, the annex should identify the areas where the movement of oiled debris may pose a risk to resident, transient, or migratory fish and wildlife, and other sensitive environments and should discuss measures to be considered for removing such oiled debris in a timely fashion to reduce such risk.

(4) Provide for pre-approval of application of specific countermeasures or removal actions that, if expeditiously applied, will minimize adverse spill-induced impacts to fish and wildlife resources, their habitat, and other sensitive environments. Such pre-approval plans must be consistent with paragraphs (2) and (3) of this section and subpart J requirements of the NCP, and must have the concurrence of the natural resource trustees.

(5) Provide monitoring plan(s) to evaluate the effectiveness of different countermeasures or removal actions in protecting the environment. Monitoring should include “set-aside” or “control” areas, where no mitigative actions are taken.

(6) Identify and plan for the acquisition and utilization of necessary response capabilities for protection, rescue, and rehabilitation of fish and wildlife resources and habitat. This may include appropriately permitted private organizations and individuals with appropriate expertise and experience. The suitable organizations should be identified in cooperation with natural resource law enforcement agencies. Such capabilities shall include, but not be limited to, identification of facilities and equipment necessary for deterring sensitive fish and wildlife from entering oiled areas, and for capturing, holding, cleaning, and releasing injured wildlife. Plans for the provision of such capabilities shall ensure that there is no interference with other OSC removal operations.

(7) Identify appropriate federal and state agency contacts and alternates responsible for coordination of fish and wildlife rescue and rehabilitation and protection of sensitive environments; identify and provide for required fish and wildlife handling and rehabilitation permits necessary under federal and state laws; and provide guidance on the implementation of law enforcement requirements included under current federal and state laws and corresponding regulations. Requirements include, but are not limited to procedures regarding the capture, transport, rehabilitation, release of wildlife exposed to or threatened by oil, and disposal of contaminated carcasses of wildlife.

(8) Identify and secure the means for providing, if needed, the minimum required Occupational Safety and Health Administra-

tion (OSHA) training for volunteers, including those who assist with injured wildlife.

(9) Evaluate the compatibility between this annex and non-federal response plans (including those of vessels, facilities and pipelines) on issues affecting fish and wildlife, their habitat, and sensitive environments.

#### 4.2 OPA facility and vessel response plans

This section describes and cross-references the regulations that implement section 311(j)(5) of the CWA. A tank vessel, as defined under section 2101 of title 46, U.S. Code, an offshore facility, and an onshore facility that, because of its location, could reasonably expect to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or exclusive economic zone must prepare and submit a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. These response plans are required to be consistent with applicable Area Contingency Plans. These regulations are codified as follows:

(a) For tank vessels, these regulations are codified in 33 CFR part 155;

(b) For offshore facilities, these regulations are codified in 30 CFR part 254;

(c) For non-transportation related onshore facilities, these regulations are codified in 40 CFR part 112.20;

(d) For transportation-related onshore facilities, these regulations are codified in 33 CFR part 154;

(e) For pipeline facilities, these regulations are codified in 49 CFR part 194; and

(f) For rolling stock, these regulations are codified in 49 CFR part 106 et al.

#### 4.3 Relation to others plans.

4.3.1 *Federal response plans.* In the event of a declaration of a major disaster by the President, the FEMA may activate the Federal Response Plan (FRP). A Federal Coordinating Officer (FCO), designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as Emergency Support Functions (ESFs). EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC should coordinate response

activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

**4.3.2 Tank Vessel and Facility Response Plans.** (a) Under CWA section 311(j)(5), tank vessels, offshore facilities, and certain on-shore facilities are required to prepare and submit response plans for review and approval by the President for the carriage, storage, and transportation of oil and hazardous substances. Separate regulations published by the appropriate federal agencies provide for required response plan development and/or approval.

(b) These plans shall be developed to coordinate responsible party actions with the OSC and the ACP response strategies, for response to oil discharges within the inland and coastal zones of the United States.

#### *4.4 Pre-approval authority.*

(a) RRTs and Area Committees shall address, as part of their planning activities, the desirability of using appropriate dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule, and the desirability of using appropriate burning agents. RCPs and ACPs shall, as appropriate, include applicable preauthorization plans and address the specific contexts in which such products should and should not be used. In meeting the provisions of this paragraph, preauthorization plans may address factors such as the potential sources and types of oil that might be spilled, the existence and location of environmentally sensitive resources that might be impacted by spilled oil, available product and storage locations, available equipment and adequately trained operators, and the available means to monitor product application and effectiveness. The RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees shall review and either approve, disapprove, or approve with modification the preauthorization plans developed by Area Committees, as appropriate. Approved preauthorization plans shall be included in the appropriate RCPs and ACPs. If the RRT representatives from EPA and the states with jurisdiction over the waters of the area to which a preauthorization plan applies and the DOC and DOI natural resource trustees approve in advance the use of certain products under specified circumstances as described in the preauthorization plan, the OSC may authorize the use of the products without obtaining the specific concurrences described in paragraphs (b) and (c) of this section.

(b) For spill situations that are not addressed by the preauthorization plans devel-

oped pursuant to paragraph (a) of this section, the OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents on the oil discharge, provided that the products are listed on the NCP Product Schedule.

(c) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(d) The OSC may authorize the use of any dispersant, surface washing agent, surface collecting agent, other chemical agent, burning agent, bioremediation agent, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT and, as appropriate, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. Whenever the OSC authorizes the use of a product pursuant to this paragraph, the OSC is to inform the EPA RRT representative and, as appropriate, the RRT representatives from the affected states and, when practicable, the DOC/DOI natural resource trustees of the use of a product, including products not on the Schedule, as soon as possible. Once the threat to human life has subsided, the continued use of a product shall be in accordance with paragraphs (a), (b), and (c) of this section.

(e) Sinking agents shall not be authorized for application to oil discharges.

(f) When developing preauthorization plans, RRTs may require the performance of supplementary toxicity and effectiveness testing of products, in addition to the test methods specified in §300.915 and described in appendix C to part 300, due to existing site-specific or area-specific concerns.

**4.5 Area response drills.** The OSC periodically shall conduct drills of removal capability (including fish and wildlife response), without prior notice, in areas for which ACPs are required and under relevant tank vessel and facility response plans.

5.0 *Response operations.*

(a) The OSC shall direct response efforts and coordinate all other efforts at the scene of a discharge. As part of the planning and preparation for response, OSCs shall be predesignated by the regional or district head of the lead agency.

(b) The first federal official affiliated with an NRT member agency to arrive at the scene of a discharge should coordinate activities under the NCP and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate federal OSLTF-financed actions only as authorized by the OSC or, if the OSC is unavailable, the authorized representative of the lead agency.

(c) The OSC shall, to the extent practicable, 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 probable direction and time of travel 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, and 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 cost documentation.

(d) The OSC's efforts shall be coordinated with other appropriate federal, state, local, and private response agencies. OSCs may designate capable persons from federal, state, or local agencies to act as their 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 OSLTF unless an appropriate contract or cooperative agreement has been established.

(e) The OSC should consult regularly with the RRT and NSFCC, as appropriate, in carrying out the NCP and keep the RRT and NSFCC, as appropriate, informed of activities under the NCP.

(f) The OSC should evaluate incoming information and immediately advise FEMA of potential major disaster situations.

(g) The OSC is responsible for addressing worker health and safety concerns at a response scene.

(h) In those instances where a possible public health emergency exists, the OSC should notify the HHS representative to the RRT. Throughout response actions, the OSC may call upon the OSHA and HHS representative for assistance on worker health and safety issues.

(i) All federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances, pollutants, or contaminants from vessels and facilities under their jurisdiction. All federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with the NCP and applicable federal regulations and guidelines.

(j)(1) The OSC shall ensure that the natural resource trustees are promptly notified of discharges.

(2) The OSC shall coordinate all response activities with the affected natural resource trustees and shall consult with the affected trustees on the appropriate removal action to be taken.

(3) Where the OSC becomes aware that a discharge may affect any endangered or threatened species, or their habitat, the OSC shall consult with DOI, DOC/NOAA, and, if appropriate, the cognizant federal land managing agency.

(k) The OSC shall submit pollution reports (POLREPs) to the RRT and other appropriate agencies as significant developments occur during response actions, through communications networks or procedures agreed to by the RRT and covered in the RCP.

(l) The OSC 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.

5.1 *Phase I—Discovery or notification.* (a) A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of a vessel or facility, in accordance with statutory requirements;

(2) Deliberate search by patrols;

(3) Random or incidental observation by government agencies or the public; or

(4) Other sources.

(b) Any person in charge of a vessel or a facility shall, as soon as he or she has knowledge of any discharge from such vessel or facility in violation of section 311(b)(3) of the CWA, immediately notify the NRC. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, DC, telephone (800) 424-8802 or (202) 267-2675. If direct reporting to the NRC is not practicable, reports may be made to the USCG or EPA predesignated OSC for the geographic area where the discharge occurs. The EPA predesignated OSC may also be contacted through the regional 24-hour emergency response telephone number. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit. In any event, such person in charge of the vessel or facility shall notify the NRC as soon as possible.

(c) Any other person shall, as appropriate, notify the NRC of a discharge of oil.

(d) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall ensure notification of the appropriate state agency of any state which is, or may reasonably be expected to be, affected by the discharge. The OSC shall then proceed with the following phases as outlined in the RCP and ACP.

*5.2 Phase II—Preliminary assessment and initiation of action*

(a) The OSC is responsible for promptly initiating a preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health or welfare or the environment;

(2) Assess the feasibility of removal; and

(3) To the extent practicable, identify potentially responsible parties.

(c) Where practicable, the framework for the response management structure is a system (e.g., a unified command system), that brings together the functions of the federal government, the state government, and the responsible party to achieve an effective and efficient response, where the OSC maintains authority.

(d) Except in a case when the OSC is required to direct the response to a discharge that may pose a substantial threat to the public health or welfare (including, but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the OSC may allow the responsible party to voluntarily and promptly perform removal actions, provided the OSC determines such actions will ensure an effective and immediate removal of the discharge or mitigation or prevention of a substantial threat of a discharge. If the responsible party does conduct the removal, the OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC should, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not respond properly, the OSC shall take appropriate response actions and should notify the responsible party of the potential liability for federal response costs incurred by the OSC pursuant to the OPA and CWA. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(1) In carrying out a response under this section, the OSC may:

(A) Remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(B) Direct or monitor all federal, state, and private actions to remove a discharge; and

(C) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) If the discharge results in 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 OSC must direct all response efforts, as provided in section 5.3.4 of this appendix. The OSC should declare as expeditiously as practicable to spill response participants that the federal government will direct the response. The OSC may act without regard to any other provision of the law governing contracting procedures or employment of personnel by the federal government in removing or arranging for the removal of such a discharge.

(e) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected. The trustees also will assure that the OSC is informed of their activities in natural resource damage assessment that may affect response operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC. When circumstances permit, the OSC shall share the use of non-monetary response resources (i.e., personnel and equipment) with the trustees, provided trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

*5.3 Patterns of response.*

*5.3.1 Determinations to initiate response and special conditions.*

(a) In accordance with the CWA, the Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to act for the

United States to take response measures deemed necessary to protect the public health or welfare or environment from discharges of oil.

(b) The Administrator of EPA or the Secretary of the department in which the USCG is operating, as appropriate, is authorized to initiate and, in the case of a discharge posing a substantial threat to public health or welfare is required to initiate and direct, appropriate response activities when the Administrator or Secretary determines that any oil is discharged or there is a substantial threat of such discharge from any vessel or offshore or onshore facility into or on the navigable waters of the United States, 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 exclusive management authority of the United States.

(c) In addition to any actions taken by a state or local government, the Administrator of EPA or the Secretary of the department in which the USCG is operating may request the U.S. Attorney General to secure the relief from any person, including the owner or operator of the vessel or facility necessary to abate a threat or, after notice to the affected state, take any other action authorized by section 311 of the CWA, including issuing administrative orders, that may be necessary to protect the public health or welfare, if the Administrator or Secretary determines that there may be an imminent and substantial threat to the public health or welfare or the environment of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitats, and other living and non-living natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil from any vessel or offshore or onshore facility into or upon the navigable waters of the United States.

(d) Response actions to remove discharges originating from operations conducted subject to the Outer Continental Shelf Lands Act shall be in accordance with the NCP.

(e) Where appropriate, when a discharge involves radioactive materials, the lead or support federal agency shall act consistent with the notification and assistance procedures described in the appropriate Federal Radiological Plan. For the purpose of the NCP, the Federal Radiological Emergency Response Plan (FRERP) (50 FR 46542, November 8, 1985) is the appropriate plan. Most radiological discharges and releases do not result in FRERP activation and should be handled in accordance with the NCP. However, releases from nuclear incidents subject to requirements for financial protection established by the Nuclear Regulatory Commission under the Price-Anderson amendments (section

170) of the Atomic Energy Act are specifically excluded from CERCLA and NCP requirements.

(f) Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and FEMA Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents (January 8, 1981).

(g) If the situation is beyond the capability of state and local governments and the statutory authority of federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the Governor and declare a major disaster or emergency and appoint a FCO to coordinate all federal disaster assistance activities. In such cases, the OSC would continue to carry out OSC responsibilities under the NCP, but would coordinate those activities with the FCO to ensure consistency with other federal disaster assistance activities.

(h) In the event of a declaration of a major disaster by the President, FEMA may activate the FRP. An FCO, designated by the President, may implement the FRP and coordinate and direct emergency assistance and disaster relief of impacted individuals, business, and public services under the Robert T. Stafford Disaster Relief Act. Delivery of federal assistance is facilitated through twelve functional annexes to the FRP known as ESFs. EPA coordinates activities under ESF #10—Hazardous Materials, which addresses preparedness and response to hazardous materials and oil incidents caused by a natural disaster or other catastrophic event. In such cases, the OSC/RPM should coordinate response activities with the FCO, through the incident-specific ESF #10 Chair, to ensure consistency with federal disaster assistance activities.

*5.3.2 General pattern of response.* (a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(2) Officially classify the size (*i.e.*, minor, medium, major) and type (*i.e.*, substantial threat to the public health or welfare, worst case discharge) of the discharge and determine the course of action to be followed to ensure effective and immediate removal, mitigation, or prevention of the discharge. Some discharges that are classified as a substantial threat to the public health or welfare may be further classified as a spill of national significance by the Administrator of EPA or the Commandant of the USCG. The appropriate course of action may be prescribed in 5.3.4, 5.3.5, and 5.3.6 of this appendix.

(A) When the reported discharge is an actual or potential major discharge, the OSC shall immediately notify the RRT and the NRC.

(B) When the investigation shows that an actual or potential medium discharge exists, the OSC shall recommend activation of the RRT, if appropriate.

(C) When the investigation shows that an actual or potential minor discharge exists, the OSC shall monitor the situation to ensure that proper removal action is being taken.

(3) If the OSC determines that effective and immediate removal, mitigation, or prevention of a discharge can be achieved by private party efforts, and where the discharge does not pose a substantial threat to the public health or welfare, determine whether the responsible party or other person is properly carrying out removal. Removal is being done properly when:

(A) The responsible party is applying the resources called for in its response plan to effectively and immediately remove, minimize, or mitigate threat(s) to public health and welfare and the environment; and

(B) The removal efforts are in accordance with applicable regulations, including the NCP. Even if the OSC supplements responsible party resources with government resources, the spill response will not be considered improper, unless specifically determined by the OSC.

(4) Where appropriate, determine whether a state or political subdivision thereof has the capability to carry out any or all removal actions. If so, the OSC may arrange funding to support these actions.

(5) Ensure prompt notification of the trustees of affected natural resources in accordance with the applicable RCP and ACP.

(b) Removal shall be considered complete when so determined by the OSC in consultation with the Governor or Governors of the affected states. When the OSC considers removal complete, OSLTF removal funding shall end. This determination shall not preclude additional removal actions under applicable state law.

**5.3.3 Containment, countermeasures, and cleanup.** (a) Defensive actions shall begin as soon as possible to prevent, minimize, or mitigate threat(s) to the public health or welfare or the environment. Actions may include but are not limited to: analyzing water samples to determine the source and spread of the oil; controlling the source of discharge; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil and to protect natural resources and sensitive ecosystems; measuring and sampling; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with subpart J of part 300 of the NCP to restrain the spread of

the oil and mitigate its effects. The ACP should be consulted for procedures to be followed for obtaining an expedited decision regarding the use of dispersants and other products listed on the NCP Product Schedule.

(b) As appropriate, actions shall be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods shall be the most consistent with protecting public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and Area Committee guidelines may identify the disposal options available during an oil spill response and may describe what disposal requirements are mandatory or may not be waived by the OSC. ACP guidelines should address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g. recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses; procedures for obtaining waivers, exemptions, or authorizations associated with handling or transporting waste materials. The ACPs may identify a hierarchy of preferences for disposal alternatives, with recycling (reprocessing) being the most preferred, and other alternatives preferred based on priorities for health or the environment.

**5.3.4 Response to a substantial threat to the public health or welfare.** (a) The OSC shall determine whether a discharge results in a substantial threat to public health or welfare (including, but not limited to, fish, shellfish, wildlife, other natural resources, the public and private beaches, and shorelines of the United States). Factors to be considered by the OSC in making this determination include, but are not limited to, the size of the discharge, the character of the discharge, and the nature of the threat to public health or welfare. Upon obtaining such information, the OSC shall conduct an evaluation of the threat posed, based on the OSC's experience in assessing other discharges and consultation with senior lead agency officials and readily available authorities on issues outside the OSC's technical expertise.

(b) If the investigation by the OSC shows that the discharge poses or may present a substantial threat to public health or welfare, the OSC shall direct all federal, state, or private actions to remove the discharge or to mitigate or prevent the threat of such a discharge, as appropriate. In directing the response in such cases, the OSC may act without regard to any other provision of law

governing contracting procedures or employment of personnel by the federal government to:

(1) Remove or arrange for the removal of the discharge;

(2) Mitigate or prevent the substantial threat of the discharge; and

(3) Remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(c) In the case of a substantial threat to the public health or welfare, the OSC shall:

(1) Assess opportunities for the use of various special teams and other assistance, including the use of the services of the NSFCC, as appropriate;

(2) Request immediate activation of the RRT; and

(3) Take whatever additional response actions are deemed appropriate, including but not limited to implementation of the ACP or relevant tank vessel or facility response plan.

(d) When requested by the OSC, the lead agency or RRT shall dispatch appropriate personnel to the scene of the discharge to assist the OSC. This assistance may include technical support in the agency's areas of expertise and disseminating information to the public. The lead agency shall ensure that a contracting officer is available on scene, at the request of the OSC.

*5.3.5 Enhanced activities during a spill of national significance.* (a) A discharge may be classified as an SONS by the Administrator of EPA for discharges occurring in the inland zone and the Commandant of the USCG for discharges occurring in the coastal zone.

(b) For an SONS in the inland zone, the EPA Administrator may name a senior Agency official to assist the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

(c) For an SONS in the coastal zone, the USCG Commandant may name a National Incident Commander (NIC) who will assume the role of the OSC in: (1) Communicating with affected parties and the public; and (2) coordinating federal, state, local, and international resources at the national level. This strategic coordination shall involve, as appropriate, the NRT, RRT(s), the Governor(s) of affected state(s), and the mayor(s) or other chief executive(s) of local government(s).

*5.3.6 Response to worst case discharges.* (a) If the investigation by the OSC shows that a discharge is a worst case discharge as defined in the ACP, or there is a substantial threat of such a discharge, the OSC shall:

(1) Notify the NSFCC;

(2) Require, where applicable, implementation of the worst case portion of an approved tank vessel or facility response plan;

(3) Implement the worst case portion of the ACP, if appropriate; and

(4) Take whatever additional response actions are deemed appropriate.

(b) Under the direction of the OSC, the NSFCC shall coordinate use of private and public personnel and equipment, including strike teams, to remove a worst case discharge and mitigate or prevent a substantial threat of such a discharge.

*5.3.7 Multi-regional responses.* (a) If a discharge moves from the area covered by one ACP or RCP into another area, the authority for response actions should likewise shift. If a discharge affects areas covered by two or more ACPs or RCPs, the response mechanisms of each applicable plan may be activated. In this case, response actions of all regions concerned shall be fully coordinated as detailed in the RCPs and ACPs.

(b) There shall be only one OSC at any time during the course of a response operation. Should a discharge affect two or more areas, EPA, the USCG, DOD, DOE, or other lead agency, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat, in determining which agency should provide the OSC. The RRT shall designate the OSC if the RRT member agencies who have response authority within the affected areas are unable to agree on the designation. The NRT shall designate the OSC if members of one RRT or two adjacent RRTs are unable to agree on the designation.

*5.3.8 Worker health and safety.* (a) Response actions under the NCP shall comply with the provisions for response action worker safety and health in 29 CFR 1910.120. The national response system meets the requirements of 29 CFR 1910.120 concerning use of an incident command system.

(b) In a response action taken by a responsible party, the responsible party must assure that an occupational safety and health program consistent with 29 CFR 1910.120 is made available for the protection of workers at the response site.

(c) In a response taken under the NCP by a lead agency, an occupational safety and health program should be made available for the protection of workers at the response site, consistent with, and to the extent required by, 29 CFR 1910.120. Contracts relating to a response action under the NCP should contain assurances that the contractor at the response site will comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 (OSH Act) and state laws with plans approved under section 18 of the OSH Act.

(d) When a state, or political subdivision of a state, without an OSHA-approved state plan is the lead agency for response, the state or political subdivision must comply

with standards in 40 CFR part 311, promulgated by the EPA pursuant to section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

(e) Requirements, standards, and regulations of the OSH Act and of state OSH laws not directly referenced in paragraphs (a) through (d) of this section, must be complied with where applicable. Federal OSH Act requirements include, among other things, Construction Standards (29 CFR part 1926), General Industry Standards (29 CFR part 1910), and the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under the NCP constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

#### 5.4 Disposal

Oil recovered in cleanup operations shall be disposed of in accordance with the RCP, ACP, and any applicable laws, regulations, or requirements. RRT and ACP guidelines may identify the disposal plans to be followed during an oil spill response and may address: the sampling, testing, and classifying of recovered oil and oiled debris; the segregation and stockpiling of recovered oil and oiled debris; prior state disposal approvals and permits; and the routes; methods (e.g., recycle/reuse, on-site burning, incineration, landfilling, etc.); and sites for the disposal of collected oil, oiled debris, and animal carcasses.

#### 5.5 Natural Resource Trustees

**5.5.1 Damage assessment.** (a) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 1006 of the OPA, take the following actions as appropriate:

(1) Conduct a preliminary survey of the area affected by the discharge to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(2) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(3) Carry out damage assessments; or

(4) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(b) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant

to section 1006 of the OPA, are to take the following actions:

(1) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(2) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(c)(1) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(2) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(3) The OSC deploys federal response resources, including but not limited to aircraft, vessels, and booms to contain and remove discharged oil. When circumstances permit, the OSC shall share the use of federal response resources with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning;

(2) Participating in negotiations between the United States and potentially responsible parties (PRPs) to obtain PRP-financed

or PRP-conducted assessments and restorations for injured resources or protection for threatened resources and to agree to covenants not to sue, where appropriate; and

(3) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 311(f)(5) of the CWA or section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge; or

(2) Requesting that the lead agency remove, or arrange for the removal of any oil from a contaminated medium pursuant to section 311 of the CWA.

**5.5.2 Lead administrative trustee.** The lead administrative trustee is a natural resource trustee who is designated on an incident-by-incident basis and chosen by the other trustees whose natural resources are affected by the incident. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee is also responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

**5.5.3 OSC coordination.** (a) The OSC shall ensure that the natural resource trustees are promptly notified in the event of any discharge of oil, to the maximum extent practicable, as provided in the Fish and Wildlife and Sensitive Environments Plan annex to the ACP for the area in which the discharge occurs. The OSC and the trustees shall coordinate assessments, evaluations, investigations, and planning with respect to appropriate removal actions. The OSC shall consult with the affected trustees on the appropriate removal action to be taken.

(b) The trustees will provide timely advice concerning recommended actions with regard to trustee resources that are potentially affected. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques, and in predesignating shoreline types and areas in ACPs.

(c) The trustees also will assure that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations.

**5.5.4 Dissemination of information.** (a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their

concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility by establishing, as appropriate, a Joint Information Center bringing together resources from federal and state agencies and the responsible party.

(b) An on-scene news office may be established to coordinate media relations and to issue official federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All federal news releases or statements by participating agencies should be cleared through the OSC. Information dissemination relating to natural resource damage assessment activities shall be coordinated through the lead administrative trustee. The designated lead administrative trustee may assist the OSC by disseminating information on issues relating to damage assessment activities. Following termination of the removal activity, information dissemination on damage assessment activities shall be through the lead administrative trustee.

**5.5.5 Responsibilities of trustees.** (a) Where there are multiple trustees, because of coexisting or contiguous natural resources or concurrent jurisdictions, they should coordinate and cooperate in carrying out these responsibilities.

(b) Trustees are responsible for designating to the RRTs and the Area Committees, for inclusion in the RCP and the ACP, appropriate contacts to receive notifications from the OSCs of discharges.

(c)(1) Upon notification or discovery of injury to, destruction of, loss of, or threat to natural resources, trustees may, pursuant to section 311(f)(5) of the CWA, take the following or other actions as appropriate:

(A) Conduct a preliminary survey of the area affected by the discharge or release to determine if trust resources under their jurisdiction are, or potentially may be, affected;

(B) Cooperate with the OSC in coordinating assessments, investigations, and planning;

(C) Carry out damage assessments; or

(D) Devise and carry out a plan for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources. In assessing damages to natural resources, the federal, state, and Indian tribe trustees have the option of following the procedures for natural resource damage assessments located at 43 CFR part 11.

(2) Upon notification or discovery of injury to, destruction of, loss of, or loss of use of, natural resources, or the potential for such, resulting from a discharge of oil occurring after August 18, 1990, the trustees, pursuant to section 1006 of the OPA, are to take the following actions:

(A) In accordance with OPA section 1006(c), determine the need for assessment of natural resource damages, collect data necessary for a potential damage assessment, and, where appropriate, assess damages to natural resources under their trusteeship; and

(B) As appropriate, and subject to the public participation requirements of OPA section 1006(c), develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship;

(3)(A) The trustees, consistent with procedures specified in the Fish and Wildlife and Sensitive Environments Annex to the Area Contingency Plan, shall provide timely advice on recommended actions concerning trustee resources that are potentially affected by a discharge of oil. This may include providing assistance to the OSC in identifying/recommending pre-approved response techniques and in predesignating shoreline types and areas in ACPs.

(B) The trustees shall assure, through the lead administrative trustee, that the OSC is informed of their activities regarding natural resource damage assessment that may affect response operations in order to assure coordination and minimize any interference with such operations. The trustees shall assure, through the lead administrative trustee, that all data from the natural resource damage assessment activities that may support more effective operational decisions are provided in a timely manner to the OSC.

(C) When circumstances permit, the OSC shall share the use of federal response resources (including but not limited to aircraft, vessels, and booms to contain and remove discharged oil) with the trustees, providing trustee activities do not interfere with response actions. The lead administrative trustee facilitates effective and efficient communication between the OSC and the other trustees during response operations and is responsible for applying to the OSC for non-monetary federal response resources on behalf of all trustees. The lead administrative trustee also is responsible for applying to the National Pollution Funds Center for funding for initiation of damage assessment for injuries to natural resources.

(d) The authority of federal trustees includes, but is not limited to the following actions:

(1) Requesting that the Attorney General seek compensation from the responsible parties for the damages assessed and for the costs of an assessment and of restoration planning; and

(2) Initiating damage assessments, as provided in OPA section 6002.

(e) Actions which may be taken by any trustee pursuant to section 1006 of the OPA include, but are not limited to, any of the following:

(1) Requesting that an authorized agency issue an administrative order or pursue injunctive relief against the parties responsible for the discharge or release; or

(2) Requesting that the lead agency remove, or arrange for the removal of, or provide for remedial action with respect to, any oil from a contaminated medium pursuant to section 311 of CWA.

#### 5.6 Oil spill liability trust fund.

5.6.1 *Funding.* (a) The OSLTF is available under certain circumstances to fund removal of oil performed under section 311 of the CWA. Those circumstances and the procedures for accessing the OSLTF are described in 33 CFR subchapter M. The responsible party is liable for costs of federal removal and damages in accordance with section 311(f) of the CWA, section 1002 of the OPA, and other federal laws.

(b) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(c) The funding of a response to a discharge from a federally owned, operated, or supervised facility or vessel is the responsibility of the owning, operating, or supervising agency if it is a responsible party.

(d) The following agencies have funds available for certain discharge removal actions:

(1) DOD has two specific sources of funds that may be applicable to an oil discharge under appropriate circumstances. This does not consider military resources that might be made available under specific conditions.

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy (USN) may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(2) Pursuant to Title I of the OPA, the state or states affected by a discharge of oil may act where necessary to remove such discharge. Pursuant to 33 CFR subchapter M, states may be reimbursed from the OSLTF for the reasonable costs incurred in such a removal.

5.6.2 *Claims.* (a) Claims are authorized to be presented to the OSLTF under section 1013 of the OPA of 1990, for certain uncompensated removal costs or uncompensated damages resulting from the discharge, or

substantial threat of discharge, of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States.

(b) Anyone desiring to file a claim against the OSLTF may obtain general information on the procedure for filing a claim from the Director, National Pollution Funds Center, Suite 1000, 4200 Wilson Boulevard, Arlington, Virginia, 22203-1804, (703) 235-4756.

#### 5.7 Documentation and Cost Recovery.

(a) All OSLTF users need to collect and maintain documentation to support all actions taken under the CWA. In general, documentation shall be sufficient to support full cost recovery for resources utilized and shall identify the source and circumstances of the incident, the responsible party or parties, and impacts and potential impacts to public health and welfare and the environment. Documentation procedures are contained in 33 CFR subchapter M.

(b) When appropriate, documentation shall also be collected for scientific understanding of the environment and for research and development of improved response methods and technology. Funding for these actions is restricted by section 6002 of the OPA.

(c) As requested by the NRT or RRT, the OSC shall submit to the NRT or RRT a complete report on the removal operation and the actions taken. The OSC report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered. The RRT shall review the OSC report with its comments or recommendations within 30 days after the RRT has received the OSC report.

(d) OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information shall be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources. The OSC shall make available to the trustees of affected natural resources information and documentation in the OSC's possession that can assist the trustees in the determination of actual or potential natural resource injuries.

(e) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

#### 5.8 National response priorities

(a) Safety of human life must be given the top priority during every response action. This includes any search and rescue efforts in the general proximity of the discharge and the insurance of safety of response personnel.

(b) Stabilizing the situation to preclude the event from worsening is the next pri-

ority. All efforts must be focused on saving a vessel that has been involved in a grounding, collision, fire, or explosion, so that it does not compound the problem. Comparable measures should be taken to stabilize a situation involving a facility, pipeline, or other source of pollution. Stabilizing the situation includes securing the source of the spill and/or removing the remaining oil from the container (vessel, tank, or pipeline) to prevent additional oil spillage, to reduce the need for follow-up response action, and to minimize adverse impact to the environment.

(c) The response must use all necessary containment and removal tactics in a coordinated manner to ensure a timely, effective response that minimizes adverse impact to the environment.

(d) All parts of this national response strategy should be addressed concurrently, but safety and stabilization are the highest priorities. The OSC should not delay containment and removal decisions unnecessarily and should take actions to minimize adverse impact to the environment that begin as soon as a discharge occurs, as well as actions to minimize further adverse environmental impact from additional discharges.

(e) The priorities set forth in this section are broad in nature, and should not be interpreted to preclude the consideration of other priorities that may arise on a site-specific basis.

#### 6.0 Response coordination

6.1 *Nongovernmental participation.* (a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in the RCP and ACP. Those entities required to develop tank vessel and facility response plans under CWA section 311(j) must be able to respond to a worst case discharge to the maximum extent practicable, and should commit sufficient resources to implement other aspects of those plans.

(b) The technical and scientific information generated by the local community, along with information from federal, state, and local governments, should be used to assist the OSC in devising response strategies where effective standard techniques are unavailable. Such information and strategies will be incorporated into the ACP, as appropriate. The SSC may act as liaison between the OSC and such interested organizations.

(c) ACPs shall establish procedures to allow for well organized, worthwhile, and safe use of volunteers, including compliance with requirements regarding worker health and safety. ACPs should provide for the direction of volunteers by the OSC or by other federal, state, or local officials knowledgeable in contingency operations and capable of providing leadership. ACPs also should

identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d) Nongovernmental participation must be in compliance with the requirements of subpart H of the NCP if any recovery of costs will be sought.

#### 6.2 *Natural resource trustees.*

6.2.1 *Federal agencies.* (a) The President is required to designate in the NCP those federal officials who are to act on behalf of the public as trustees for natural resources. These designated federal officials shall act pursuant to section 1006 of the OPA. "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled (hereinafter referred to as "managed or controlled") by the United States, including the resources of the exclusive economic zone.

(b) The following individuals shall be the designated trustee(s) for general categories of natural resources, including their supporting ecosystems. They are authorized to act pursuant to section 1006 of the OPA when there is injury to, destruction of, loss of, or threat to natural resources, including their supporting ecosystems as a result of a discharge of oil. Notwithstanding the other designations in this section, the Secretaries of Commerce and the Interior shall act as trustees of those resources subject to their respective management or control.

(1) The Secretary of Commerce shall act as trustee for natural resources managed or controlled by DOC and for natural resources managed or controlled by other federal agencies and that are found in, under, or using waters navigable by deep draft vessels, tidally influenced waters or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf. However, before the Secretary takes an action with respect to an affected resource under the management or control of another federal agency, he shall, whenever practicable, seek to obtain concurrence of that other federal agency. Examples of the Secretary's trusteeship include the following natural resources and their supporting ecosystems: marine fishery resources; anadromous fish; endangered species and marine mammals; and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

(2) The Secretary of the Interior shall act as trustee for natural resources managed or controlled by DOI. Examples of the Sec-

retary's trusteeship include the following natural resources and their supporting ecosystems: migratory birds; anadromous fish; endangered species and marine mammals; federally owned minerals; and certain federally managed water resources. The Secretary of the Interior shall also be trustee for those natural resources for which an Indian tribe would otherwise act as trustee in those cases where the United States acts on behalf of the Indian tribe.

(3) Secretary for the land managing agency. For natural resources located on, over, or under land administered by the United States, the trustee shall be the head of the department in which the land managing agency is found. The trustees for the principal federal land managing agencies are the Secretaries of DOI, USDA, DOD, and DOE.

(4) Head of Authorized Agencies. For natural resources located within the United States but not otherwise described in this section, the trustee is the head of the federal agency or agencies authorized to manage or control those resources.

6.2.2 *State.* (a) State trustees shall act on behalf of the public as trustees for natural resources, including their supporting ecosystems, within the boundary of a state or belonging to, managed by, controlled by, or appertaining to such state. For the purposes of section 6.1, the definition of the term "state" does not include Indian tribes.

(b) The Governor of a state is encouraged to designate a lead state trustee to coordinate all state trustee responsibilities with other trustee agencies and with response activities of the RRT and OSC. The state's lead trustee would designate a representative to serve as a contact with the OSC. This individual should have ready access to appropriate state officials with environmental protection, emergency response, and natural resource responsibilities. The EPA Administrator or USCG Commandant or their designees may appoint the lead state trustee as a member of the Area Committee. Response strategies should be coordinated between the state and other trustees and the OSC for specific natural resource locations in an inland or coastal zone, and should be included in the Fish and Wildlife and Sensitive Environments Plan annex of the ACP.

6.2.3 *Indian tribes.* The tribal chairmen (or heads of the governing bodies) of Indian tribes, as defined in section 1.5, or a person designated by the tribal officials, shall act on behalf of the Indian tribes as trustees for the natural resources, including their supporting ecosystems, belonging to, managed by, controlled by, or appertaining to such Indian tribe, or held in trust for the benefit of such Indian tribe, or belonging to a member of such Indian tribe, if such resources are subject to a trust restriction on alienation. When the tribal chairman or head of the tribal governing body designates another

person as trustee, the tribal chairman or head of the tribal governing body shall notify the President of such designation.

**6.2.4 Foreign trustees.** Pursuant to section 1006 of the OPA, foreign trustees shall act on behalf of the head of a foreign government as trustees for natural resources belonging to, managed by, controlled by, or appertaining to such foreign government.

### 6.3 Federal agencies.

(a) Federal agencies listed in this appendix have duties established by statute, executive order, or Presidential directive which may apply to federal response actions following, or in prevention of, the discharge of oil. Some of these agencies also have duties relating to the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources injured or lost as a result of such discharge. The NRT, RRT, and Area Committee organizational structure, and the NCP, RCPs, and ACPs provide for agencies to coordinate with each other in carrying out these duties.

(b) Federal agencies may be called upon by an OSC during response planning and implementation to provide assistance in their respective areas of expertise, consistent with the agencies' capabilities and authorities.

(c) In addition to their general responsibilities, federal agencies should:

(1) Make necessary information available to the Secretary of the NRT, RRTs, Area Committees, and OSCs;

(2) Provide representatives to the NRT and RRTs and otherwise assist RRTs and OSCs, as necessary, in formulating RCPs and ACPs; and

(3) Inform the NRT, RRTs, and Area Committees consistent with national security considerations, of changes in the availability of resources that would affect the operations implemented under the NCP.

(d) All federal agencies must report discharges of oil, as required in 40 CFR part 110, from vessels or facilities under their jurisdiction or control to the NRC.

### 6.4 Other Federal agencies.

**6.4.1 Department of Commerce.** (a) The DOC, through NOAA, provides scientific support for response and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of oil through trajectory modeling, and information on the sensitivity of coastal environments to oil and associated cleanup and mitigation methods; provides expertise on living marine resources and their habitats, including endangered species, marine mammals and National Marine Sanctuary ecosystems; and provides information on actual and predicted meteorological, hydrological, ice, and oceanographic conditions for ma-

rine, coastal, and inland waters, and tide and circulation data for coastal and territorial waters and for the Great Lakes. In addition to this expertise, NOAA provides SSCs in the coastal zone, as described under section 3.3.3 of this appendix, Special teams.

**6.4.2 Department of Justice.** The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

**6.4.3 Department of Defense.** The DOD has responsibility to take all action necessary with respect to discharges where either the discharge is on, or the sole source of a discharge is from, any facility or vessel under the jurisdiction, custody, or control of DOD. In addition to those capabilities provided by SUPSALV, DOD may also, consistent with its operational requirements and upon request of the OSC, provide locally deployed USN oil spill response equipment and provide assistance to other federal agencies upon request. The following two branches of DOD have particularly relevant expertise:

(a) The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administrative services for other federal agencies.

(b) The U.S. Navy Supervisor of Salvage (SUPSLAV) is the branch of the service within DOD most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open-sea pollution incidents.

**6.4.4 Department of Health and Human Services.** (a) The HHS assists with the assessment, preservation, and protection of human health and helps ensure the availability of essential human services. HHS provides technical and nontechnical assistance in the form of advice, guidance, and resources to other federal agencies as well as state and local governments.

(b) The principal HHS response comes from the U.S. Public Health Service and is coordinated from the Office of the Assistant Secretary for Health, and various Public Health Service regional offices. Within the Public Health Service, the primary response to a

hazardous materials emergency comes from the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control (CDC). Both ATSDR and CDC have a 24-hour emergency response capability wherein scientific and technical personnel are available to provide technical assistance to the lead federal agency and state and local response agencies on human health threat assessment and analysis, and exposure prevention and mitigation. Such assistance is used for situations requiring evacuation of affected areas, human exposure to hazardous materials, and technical advice on mitigation and prevention. CDC takes the lead during petroleum releases regulated under the CWA and OPA while ATSDR takes the lead during chemical releases under CERCLA. Both agencies are mutually supportive.

(c) Other Public Health Service agencies involved in support during hazardous materials incidents either directly or through ATSDR/CDC include the Food and Drug Administration, the Health Resources and Services Administration, the Indian Health Service, and the National Institutes of Health.

(d) Statutory authority for HHS/National Institutes for Environmental Health Sciences (NIEHS) involvement in hazardous materials accident prevention is non-regulatory in nature and focused on two primary areas for preventing community and worker exposure to hazardous materials releases: (1) worker safety training and (2) basic research activities. Under section 126 of the SARA, NIEHS is given statutory authority for supporting development of curricula and model training programs for waste workers and chemical emergency responders. Under section 118(b) of the Hazardous Materials Transportation and Uniform Safety Act, NIEHS also administers the Hazmat Employee Training Program to prepare curricula and training for hazardous materials transportation workers. In the basic research arena, NIEHS is authorized under section 311 of SARA to conduct a hazardous substance basic research and training program to evaluate toxic effects and assess human health risks from accidental releases of hazardous materials. Under Title IX, section 901(h) of the Clean Air Act Amendments, NIEHS also is authorized to conduct basic research on air pollutants, as well as train physicians in environmental health. Federal research and training in hazardous materials release prevention represents an important non-regulatory activity and supplements ongoing private sector programs.

*6.4.5 Department of the Interior.* The DOI may be contacted through Regional Environmental Officers, who are the designated members of RRTs. Department land managers have jurisdiction over the national park system, national wildlife refuges and

fish hatcheries, the public lands, and certain water projects in western states. In addition, bureaus and offices have relevant expertise as follows:

(a) United States Fish and Wildlife Service and other Bureaus: Anadromous and certain other fishes and wildlife, including endangered and threatened species, migratory birds, and certain marine mammals; waters and wetlands; and effects on natural resources.

(b) The National Biological Survey performs research in support of biological resource management; inventories, monitors, and reports on the status and trends in the Nation's biotic resources; and transfers the information gained in research and monitoring to resource managers and others concerned with the care, use, and conservation of the Nation's natural resources. The National Biological Survey has laboratory/research facilities.

(c) Geological Survey: Geology, hydrology (ground water and surface water), and natural hazards.

(d) Bureau of Land Management: Minerals, soils, vegetation, wildlife, habitat, archaeology, and wilderness.

(e) Minerals Management Service: Oversight of offshore oil and gas exploration and production facilities and associated pipeline facilities under the Outer Continental Shelf Lands Act and the CWA; oil spill response technology research; and establishing oil discharge contingency planning requirements for offshore facilities.

(f) Bureau of Mines: Analysis and identification of inorganic hazardous substances and technical expertise in metals and metallurgy relevant to site cleanup.

(g) Office of Surface Mining: Coal mine wastes and land reclamation.

(h) National Park Service: General biological, natural, and cultural resource managers to evaluate, measure, monitor, and contain threats to park system lands and resources; archaeological and historical expertise in protection, preservation, evaluation, impact mitigation, and restoration of cultural resources; emergency personnel.

(i) Bureau of Reclamation: Operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs.

(j) Bureau of Indian Affairs: Coordination of activities affecting Indian lands; assistance in identifying Indian tribal government officials.

(k) Office of Territorial Affairs: Assistance in implementing the NCP in American Samoa, Guam, the Pacific Island Governments, the Northern Mariana Islands, and the Virgin Islands.

*6.4.6 Department of Justice.* The DOJ can provide expert advice on complicated legal questions arising from discharges, and federal agency responses. In addition, the DOJ represents the federal government, including

its agencies, in litigation relating to such discharges. Other legal issues or questions shall be directed to the federal agency counsel for the agency providing the OSC for the response.

**6.4.7 Department of Labor.** The DOL, through OSHA and the states operating plans approved under section 18 of the OSH Act, has authority to conduct safety and health inspections of hazardous waste sites to assure that employees are being protected and to determine if the site is in compliance with:

(a) Safety and health standards and regulations promulgated by OSHA (or the states) in accordance with section 126 of SARA and all other applicable standards; and

(b) Regulations promulgated under the OSH Act and its general duty clause. OSHA inspections may be self-generated, consistent with its program operations and objectives, or may be conducted in response to requests from EPA or another lead agency, or in response to accidents or employee complaints. On request, OSHA shall provide advice and consultation to EPA and other NRT/RRT agencies as well as to the OSC regarding hazards to persons engaged in response activities. OSHA may also take any other action necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at these sites may be referred to the OSHA Regional Office.

**6.4.8 Federal Emergency Management Agency.** FEMA provides guidance, policy and program advice, and technical assistance in hazardous materials, chemical, and radiological emergency preparedness activities (including planning, training, and exercising). FEMA's primary point of contact for administering financial and technical assistance to state and local governments to support their efforts to develop and maintain an effective emergency management and response capability is the Preparedness, Training, and Exercises Directorate.

**6.4.9 Department of Energy.** The DOE generally provides designated OSCs that are responsible for taking all response actions with respect to releases where either the release is on, or the sole source of the release is from, any facility or vessel under its jurisdiction, custody, or control, including vessels bareboat-chartered and operated. In addition, under the FRERP, DOE provides advice and assistance to other OSCs/RPMs for emergency actions essential for the control of immediate radiological hazards. Incidents that qualify for DOE radiological advice and assistance are those believed to involve source, by-product, or special nuclear material or other ionizing radiation sources, including radium, and other naturally occurring radionuclides, as well as particle accelerators. Assistance is available through di-

rect contact with the appropriate DOE Radiological Assistance Program Regional Office.

**6.4.10 Department of State.** The DOS will lead in the development of international joint contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, DOS will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

**6.4.11 General Services Administration.** The GSA provides logistic and telecommunications support to federal agencies. During an emergency situation, GSA quickly responds to aid state and local governments as directed by other Federal Agencies. The type of support provided might include leasing and furnishing office space, setting up telecommunications and transportation services, and advisory assistance.

**6.4.12 Department of Transportation.** DOT provides response expertise pertaining to transportation of oil by all modes of transportation. DOT, through RSPA, establishes oil discharge contingency planning requirements for pipelines, transport by rail and containers or bulk transport of oil.

#### 6.5 States and local participation in response.

(a) Each state Governor is requested to designate one state office/representative to represent the state on the appropriate RRT. The state's office/representative may participate fully in all activities of the appropriate RRT. Each state Governor is also requested to designate a lead state agency that shall direct state-lead response operations. This agency is responsible for designating the OSC for state-lead response actions, and coordinating/communicating with any other state agencies, as appropriate. Local governments are invited to participate in activities on the appropriate RRT as may be provided by state law or arranged by the state's representative. Indian tribes wishing to participate should assign one person or office to represent the tribal government on the appropriate RRT.

(b) Appropriate state and local officials (including Indian tribes) shall participate as part of the response structure as provided in the ACP.

(c) In addition to meeting the requirements for local emergency plans under SARA section 303, state and local government agencies are encouraged to include contingency planning for responses, consistent with the NCP, RCP, and ACP in all emergency and disaster planning.

(d) For facilities not addressed under the CWA for oil discharges, states are encouraged to undertake response actions themselves or to use their authorities to compel

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potentially responsible parties to undertake response actions.

(e) Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect the public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures.

[59 FR 47473, Sept. 15, 1994]

### PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

Sec.

- 302.1 Applicability.
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AUTHORITY: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

SOURCE: 50 FR 13474, Apr. 4, 1985, unless otherwise noted.

#### § 302.1 Applicability.

This regulation designates under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“the Act”) those substances in the statutes referred to in section 101(14) of the Act, identifies reportable quantities for these substances, and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act.

#### § 302.2 [Reserved]

#### § 302.3 Definitions.

As used in this part, all terms shall have the meaning set forth below:

*The Act*, *CERCLA*, or *Superfund* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510);

*Administrator* means the Administrator of the United States Environmental Protection Agency (“EPA”);

*Animal waste* means manure (feces, urine, and other excrement produced by livestock), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other typical materials found with animal waste.

*Consumer product* shall have the meaning stated in 15 U.S.C. 2052;

*Environment* means (1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

*Facility* means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (2) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

*Farm* means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, \$1,000 or more of agricultural products during a year.

*Hazardous substance* means any substance designated pursuant to 40 CFR part 302;

*Hazardous waste* shall have the meaning provided in 40 CFR 261.3;

*Navigable waters* or *navigable waters of the United States* means waters of the United States, including the territorial seas;

*Offshore facility* means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of