

MEMORANDUM OF AGREEMENT

ON

OIL AND HAZARDOUS SUBSTANCE POLLUTION PREVENTION AND RESPONSE

BETWEEN

THE UNITED STATES COAST GUARD, SEVENTEENTH DISTRICT

AND

THE ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WHEREAS, the United States Coast Guard and the State of Alaska share a common interest and responsibility for protecting the waters of Alaska and have determined that their cooperative response to large oil spills such as the EXXON VALDEZ oil spill has permitted the State and the Coast Guard to leverage available resources, which in turn has led to better protection of our environment; and

WHEREAS, the United States Coast Guard and the State of Alaska find efficiency in government is important to the public they serve and that entering into a Memorandum of Agreement that builds upon present close working relationships and identifies areas for expanded interaction will lead to increased protection of Alaska's marine environment at greater efficiency; and

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90) to protect the waters of the United States from oil pollution and to plan for the effective and immediate response in the event of an oil spill, and the President subsequently designated the Coast Guard as the Federal On-Scene Coordinator (FOSC) within the Alaska coastal zone; and

WHEREAS, Congress has decided in a number of enactments, including OPA 90, not to preempt the various States from regulating certain matters associated with the protection of waters within their jurisdiction from oil pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements regarding oil discharges or other oil pollution within such a state or removal activities in

connection with such a discharge; (2) affect the authority of any state to establish a fund to pay for oil pollution or the substantial threat of oil pollution costs or damages, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose any fine or penalty for violation of law relating to a discharge; and

WHEREAS, the State of Alaska has enacted laws in Title 46 Alaska Statutes to protect the waters of the State from oil pollution and to plan for the effective and immediate response, removal, abatement, and cleanup in the event of an oil spill and to augment State authority for the planning, prevention and response to spills in waters under the jurisdiction of the State, including the inspection of vessels, facilities, and Response Action Contractors, and the authority to conduct oil spill response exercises; and

WHEREAS, the Commissioner of the Alaska Department of Environmental Conservation is designated by Alaska law as the administrator of pollution prevention and response activities and has delegated responsibility for response to oil and hazardous substance releases to the State On-Scene Coordinator (SOSC); and

WHEREAS, the Commissioner of the Alaska Department of Environmental Conservation, subject to the Governor, has the primary State authority to direct prevention, removal, abatement, response containment and cleanup efforts; with regard to all aspects of any oil spill in the marine waters of the State, in accordance with the applicable marine facility or vessel contingency plan, and the *Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases*, hereinafter referred to as the “Unified Plan”; and

WHEREAS, the Commissioner of the Alaska Department of Environmental Conservation has the primary State authority to adopt rules, regulations, and guidelines for reviewing the location, type, character, performance standards, size, and operation of petroleum facilities within the State; and

WHEREAS, the Commander, Seventeenth Coast Guard District is the senior Coast Guard officer within the State of Alaska, exercising Federal authority under the Oil Pollution Act of 1990 and other Federal laws with respect to oil pollution planning and response in waters subject to the jurisdiction of the United States in and outside the State of Alaska and matters dealing with all aspects of marine safety; and

WHEREAS, marine oil spills require a rapid, efficient, and coordinated response and cleanup by Federal and State agencies as well as from responsible parties and private entities to minimize the deleterious effects on human, wildlife, and other natural resources; and

WHEREAS, both the Coast Guard and State recognize the critical roles each plays within their respective areas of authority in preventing oil spills and in planning for and responding to oil spills; and

WHEREAS, the Parties recognize the cooperation between them in the implementation and exercise of their respective statutory authority and regulatory authority is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the parties believe and intend that by acting in a cooperative and

coordinated manner they will significantly enhance their oil spill prevention and response efforts in the State of Alaska;

NOW THEREFORE, the Parties agree, to the extent permitted by law, and consistent with their respective policies and available resources, to cooperate and coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to oil spill planning, prevention and response.

I

PARTIES

The Parties to this Memorandum of Agreement are the Seventeenth Coast Guard District (“Coast Guard”) and the State of Alaska (“State”) Department of Environmental Conservation (“ADEC”).

II

PURPOSE OF THE AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to ensure the Parties exercise their respective authorities regarding oil spill prevention, planning, and response in a manner so as to avoid unnecessary duplication and conflict and to ensure best achievable protection from the impact of pollution incidents within the navigable waters of the United States which are within or may impact the marine waters of the State of Alaska; subject to each Party’s statutory, regulatory, and policy requirements.

III

DEFINITIONS

Except where otherwise specifically defined in the context of its use herein, or where specifically set forth below, terms used in this Memorandum of Agreement (MOA) shall have the meaning as set forth in Federal law and applicable State law.

Specific Definitions:

- A. State Waters and Waters of the U.S.: Federal regulations designate the Coast Guard as the FOSC for oil and hazardous chemical spills within the Alaska coastal zone. The coastal zone is defined as all United States waters subject to the tide; waters of the contiguous zone; waters of the exclusive economic zone; waters containing natural resources belonging to, appertaining to, or under the exclusive management authority of the United States; and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The Environmental Protection Agency (EPA) is the FOSC for all spills within the inland zone. The inland zone is defined as the environment inland of the coastal zone. Precise boundaries separating the coastal zone from the inland zone in Western Alaska are further defined in the EPA (Alaska Operations Office) and USCG (D17) Memorandum of Understanding. The Alaska Department of Environmental Conservation (ADEC) is designated as the SOSC for all State waters. The jurisdictional boundary between these zones is specified in the Unified Plan and a Memorandum of Understanding between the EPA, Alaska Operations Office and the United States Coast Guard Seventeenth District. The term “state waters” shall mean all waters which lie within the jurisdiction of the State of Alaska and over which the Coast Guard has concurrent Federal authority for oil spill response.
- B. The Unified Plan: The Unified Plan fulfills State Master Plan requirements and is an addendum to the State Emergency Response Plan. The Unified Plan and the ten subarea plans also serve as the Federal Regional and Area Contingency Plans for the Federal agencies in Alaska. The ten subarea contingency plans fulfill the State requirements to prepare Regional Master Plans. The Unified Plan provides the response boundaries for both the FOSCs and the SOSCs.
- C. FOSC’s authority to “direct” or monitor all Federal, State, and private actions to remove a discharge (as provided by the Oil Pollution Act (OPA 90)): The FOSC authority to direct the response may involve a range of Federal roles, from functions similar to monitoring (in the case of a discharge where the responsible party is responding appropriately and effectively), to imposing specific procedures and requirements on the response effort and directly supervising the response to an oil spill or a potential oil spill in State waters. Specifically, Title 40, Code of Federal Regulations (CFR), Chapter I, part 300.322 states in part, “... the OSC shall direct all federal, state, or private actions to remove the discharge or mitigate or prevent the threat of such a discharge ... the OSC may act without regard to any other provision of law governing contracting procedures or employment of personnel by the federal government...”

IV

INFORMATION SHARING

The exchange of information between the Federal government and the State relative to past pollution events and current risks is necessary to develop appropriate prevention and response systems. Both Parties maintain information systems that are relevant to both historical and real-time incidents. The Parties will seek to encourage the fullest degree of information sharing from available and pertinent data bases in order to make accurate and timely decisions to prevent and or respond to oil and hazardous substance pollution. Transmissions of information shall be in accordance with procedures adopted by the Parties for that purpose.

- A. The Parties agree, subject to limitations imposed by applicable law and regulation, to expand upon present efforts to share information from relevant studies.
- B. The Seventeenth Coast Guard District will provide timely notification to the State on information it receives of the following events occurring in the navigable waters, or that may impact the State, involving deep draft vessels: the granting of emergency entry into State waters to tank vessels of 150 gross tons and above and other vessels of 400 gross tons and above, disabled vessels in the coastal zone with the potential of drifting into State waters, collision, allision, grounding, fires or explosion, ramming, propulsion or steering loss, near miss, distressed vessels, and other events where oil or hazardous substance pollution or substantial threat of pollution exists. Likewise, the State will ensure that its emergency notification systems report these incidents to the Coast Guard in a timely fashion. With respect to crude oil tankers, non-crude vessels, and other vessels, the Department and the cognizant Captain of the Port shall endeavor to develop information sharing protocols of interest to each party regarding unusual events not addressed above in the interest of enhancing oil spill prevention goals.
- C. The Parties agree to identify and share existing databases, including providing the State direct access to the Coast Guard's Port Safety Information Exchange (PSIX), and pre-arrival notices for vessels over 300GT. In addition, the parties agree to work toward developing risk management programs that provide risk data sharing for vessels and provide for access by both parties to all data, subject to the requirements of applicable law, regulations, and policy, in a manner to conserve and leverage agency resources.
- D. The Parties agree to identify and share existing information on hazardous materials located and being transported throughout Alaska including on navigable waters. Information will be included in periodic updates to state and regional hazards analyses and commodity flow study reports. The parties agree, subject to limitations imposed by applicable laws and regulation, to share information that is based on new technologies as it becomes available.
- E. The Parties agree to share relevant studies, particularly initiatives aimed at reducing human and organizational errors, concerning causes and prevention of incidents and oil spills to the maximum extent permitted by law, regulation, and policy.

OIL SPILL RESPONSE PREPAREDNESS

The National Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The State, consistent with existing statutes and the NCP, defines its response organization through the Unified Plan.

A. Planning Documents:

1. With the objective of cooperatively responding to pollution incidents, the State and the Coast Guard have worked together to develop the Unified Plan. The Unified Plan, which contains information pertinent to all of Alaska, is supplemented by ten subarea contingency plans, each containing region-specific information. These plans are written to meet the requirements for Federal Regional and Area Contingency Plans for Alaska (as required by the National Contingency Plan), as well as State Master Plan and Regional Master Plan requirements (as defined in Alaska Statute 46.04.200 and 46.04.210).
2. The Alaska Unified Plan has established a Unified Command response system that will ensure a cooperative response to pollution incidents, facilitate the leveraging of state and federal resources and ensure consistency between the local, state, and national contingency plans.
3. Regional Contingency Plan: The State of Alaska has been designated a region (Region X) by the National Contingency Plan. The Unified Plan fulfills the requirements of the Regional Contingency Plan, and supersedes the Alaska Region Oil and Hazardous Substance Pollution Contingency Plan.
4. Area Contingency Plan: The Area Committees, established by the President under the authority of the Oil Pollution Act of 1990, are responsible for the development of Area Contingency Plans for those areas under the direction of the Federal On-Scene Coordinator (FOSC). The Area Contingency Plans describe the responsibilities of owners, operators, and Federal, State and local agencies in responding to oil spills or threats of spills, list equipment and personnel available to respond, and describe procedures for the use of dispersants and other non-mechanical spill countermeasures (e.g., in situ burning procedures). The Unified Plan, as supplemented by the ten subarea contingency plans, fulfills the area contingency planning requirements for the Alaska Region.
5. Subarea Contingency Plans: These plans have been jointly developed by the Parties and supplement the Unified Plan. To meet State requirements, these plans (and any revisions) undergo a public review process and are also reviewed by the State Emergency Response Commission and the Alaska Regional Response Team. Included in these plans are jointly developed geographic response strategies (GRS) and potential places of refuge (PPOR) guidelines. Both parties agree to support the development and testing/validation of these strategies and guidelines within resource and budget constraints.

6. Facility Oil Spill Response Plans: Facility Oil Spill Response Plans are required by both federal and state law. These plans describe facility capabilities to prevent and respond to pollution emergencies. The State and the Coast Guard will coordinate the review and approval of facility contingency plans.
 - a. Subject to the requirements of applicable law, regulations and policy, the Parties will develop a system to coordinate, to the extent practicable, the Parties' cooperative review and approval of facility contingency plans. The Parties agree to conduct reviews of these contingency plans in a coordinated and non-duplicative manner as is permitted by applicable laws, regulations and procedures.
 - b. The Parties will cooperate to ensure that requirements for facility response plans are compatible and do not conflict. The Parties will work together to determine the feasibility of the Coast Guard accepting State review of contingency plans, subject to Coast Guard oversight.
7. Oil Spill Response Organizations (OSROs)/Response Action Contractors (RACs): The Parties agree to exchange information on OSROs/RACs and jointly inspect and verify their response capabilities. For those response organizations meeting the Coast Guard's classification requirements, the State may accept Coast Guard OSRO certification as prima facie evidence the organization meets the applicable sections of State laws and regulations.

B. Government Committees: The National Contingency Plan (NCP) directs the organization of government committees to prevent and respond to pollution emergencies. The Parties agree to jointly participate as active members of the below working groups designed to further enhance the Federal, State and local response capabilities to oil and hazardous substance releases.

1. Alaska Regional Response Team: The Alaska Regional Response Team (ARRT) is established as a coordinating committee by the NCP and includes the State along with Federal agencies which have pollution prevention and pollution response responsibilities. The co-chairs for the ARRT are the USCG (USCG Seventeenth District Chief, Plans and Force Readiness Division, D17 (dx)), and the EPA (Alaska Operations Office Region 10.) The ARRT will review and provide comments on the Unified Plan and the subarea plans as part of the overall joint planning process.
2. The three U.S. Coast Guard Federal On-Scene Coordinators (FOSCs), the Seventeenth District Plans and Force Readiness Division, the two EPA FOSCs for Alaska, and the ADEC Program Manager for the Prevention and Emergency Response Program are responsible for the following:
 - a. Guide the subarea committees and expedite the approval process of subarea plans and the Unified Plan to ensure plan consistency;
 - b. Coordinate funding, format, guidance, content and level of detail for the

Unified Plan and the subarea plans;

- c. Discuss and consult on policy issues, maintain and serve as a review body for comments received on the Unified Plan and its revisions;
 - d. Work with Alaska-based federal, state and local officials to enhance oil spill and hazardous substance release contingency planning and to assure pre-planning of joint response efforts;
 - e. Facilitate the Unified Plan and subarea plan linkage with vessel and facility response plans;
 - f. Develop a strategy for coordination and scheduling of the Unified Plan and subarea plan drills to minimize duplication and maximize integration with industry and National Preparedness for Response Exercise Program (NPREP) drills; and
 - g. Provide resolution to disputes involving subarea plans, subarea participants and the Unified Plan.
3. **Russia/United States Joint Response Team:** The Russia/U.S. Joint Response Team (JRT) prepares for and responds to pollution emergencies that may impact the international border area between the United States and Russia in the Bering and Chukchi Seas. The Coast Guard will invite the participation of ADEC in all agreements, plans, drills, and Standard Operating Procedures (SOP) developed to coordinate pollution response with Russia. During an incident-specific activation of the U.S./Russia Joint Marine Contingency Plan and the designated Joint Response Team (JRT), the State will be represented by the State ARRT representative.
 4. **Canadian/U.S. Joint Response Team:** The Canadian/U.S. Joint Response Team (JRT) is established to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Canada on the coast of Alaska at Dixon Entrance, the Beaufort Sea, and on inland rivers. The Coast Guard will invite the participation of ADEC in all agreements, plans, drills, and standard operating procedures (SOP) developed to coordinate pollution response with Canada. During an incident-specific activation of the Canadian/ U.S. Marine Contingency Plan and the designated Joint Response Team (JRT), the State will be represented by the State ARRT representative.

5. **Statewide Hazardous Materials Response Work Group:** This ad hoc working group was formed in 1997 to actively discuss and enhance the statewide hazardous materials response capability. Membership includes Federal, State, Local, and other organizations. Both the Coast Guard and ADEC serve as active members of this work group which meets on a quarterly basis. Topics of interest include recent responses, training and exercises, response equipment, budget, and other pertinent topics.
6. **Other Committees:** Both parties also serve as members of the subarea committees for plan updates, the Spill Tactics for Alaska Responders (STAR) Manual work group, the Alaska Incident Management System (AIMS) work group, as well as other work groups that are activated to promote oil and hazardous substance spill planning, preparedness and response.

C. Drills and Exercises: Drills and exercises are required by both Parties to ensure the readiness and interoperability of pollution response organizations. It is the intention of the Parties to encourage coordination, participation, and cross-training in periodic drills and exercises to facilitate a better understanding of each Party's duties and responsibilities as well as to ensure a combined, effective, and familiar working relationship at oil spill incidents.

1. The Parties agree to interact in the planning, scheduling, design, conduct and evaluation of pollution response exercises as time and resources permit. The Parties will seek to jointly implement the objectives of NPREP with respect to scheduling, designing, executing, and providing feedback regarding exercises. The Parties also agree to conduct joint Incident Command System (ICS) drills to test the Unified Plan and appropriate subarea contingency plans.
2. The Parties agree to jointly evaluate drills and exercises and recommend or require changes to plans, equipment or organizations as appropriate.
3. The Parties recognize that from time to time conflicts may exist in drill objectives due to differences in the state and federal perspectives of how drills fulfill different goals among each respective party. Both Parties will coordinate issues as far in advance as possible to minimize disruption of the drill (e.g., if resource constraints prohibit participation, the affected Party will immediately advise the other Party of their inability to participate in the drill).

D. Public Review Process for Joint Federal/State Plans: The ADEC, Coast Guard and EPA will jointly determine the public review process appropriate for the Unified Plan and each subarea plan, and jointly carry out the activities and interaction needed to gain meaningful public input.

VI

PREVENTION OF OIL SPILLS

- A. Cooperative Implementation:** The Parties are coordinating their efforts to prevent oil spills in the marine environment.

To the extent permitted under applicable laws, the Parties agree to cooperate in the execution of their respective regulatory responsibilities to minimize duplication of effort. The Parties will also seek to identify opportunities for innovative implementation of vessel and facility prevention programs and plans. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response. Both Parties agree to identify and optimize opportunities to train and work together. The Parties agree to seek joint participation in relevant studies and initiatives aimed at reducing human and organizational errors, concerning causes and prevention of incidents and oil spills to the maximum extent permitted by law, regulation, and policy.

- B. Vessel Inspections:** Each Party recognizes they may elect to independently exercise their respective examination responsibilities in accordance with applicable laws, regulations and policies. The Coast Guard conducts inspection programs for the purpose of enforcing both international agreements and domestic law aboard United States and foreign-flagged vessels. The State has authority to conduct inspections for the purpose of ensuring compliance with state laws and regulations and can participate in joint examinations with federal agencies. Further, either Party may evaluate the inspection process and make recommendations for improvement or perform its own inspections in accordance with applicable laws.

1. The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections in such a way that disruption to industry is minimized while efficiency and safety is maximized. To this end, the Parties will endeavor to exchange information and conduct joint inspections or may pursue agreements under which a single inspection may fulfill both state and federal requirements.
2. In implementing any State examination programs, the State agrees to avoid conflicts and unnecessary duplication in reviewing Federal inspection programs by on-going consultation with the Coast Guard.
3. Review of inspection records: The Parties each agree to make inspection records available to the other and to cooperatively review inspection results, subject to applicable laws, regulations, and procedures.
4. The State shall report recognized discrepancies in meeting the requirements of international agreements believed to exist aboard United States and foreign-flagged vessels to the responsible Officer in Charge, Marine Inspection (OCMI).

5. Requirements in State Waters: The Parties will cooperate to establish consistent pollution prevention requirements, and to cooperatively monitor, examine and exchange information relative to those requirements, for vessels to operate in State waters.
6. The State will promptly inform the cognizant OCMI and the Coast Guard will promptly inform the ADEC Industry Preparedness Program's Marine Vessels Section Manager of any situation or circumstance relative to a vessel whose condition or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation. Both Parties also agree to ensure joint notification when an initial report is received from Alyeska SERVS regarding any irregularity or indication of a problem which threatens a tanker or its cargo (including ballast water) as well as situations where a tanker leaves either the U.S. Coast Guard designated Prince William Sound or Valdez Arm traffic lanes (except when an outbound tanker leaves the lanes at the Hinchinbrook Entrance terminus).
7. Both Parties agree to share all applicable information obtained from their respective vessel inspections.

C. Vessel Screening: The Coast Guard, under federal law, through the District Commander and the Captain of the Port (COTP), has the authority to regulate the entry of vessels into the COTP zone, including those determined to be a threat to the environment. The State may establish the means by which it can determine whether tank vessels entering the waters of the State pose a substantial risk of harm to the public health and safety and the environment. When the State determines that a particular vessel or vessels pose a substantial risk, that determination will be forwarded to the cognizant Captain of the Port (COTP). The COTP shall consider that information in making a determination under federal law as to appropriate action to be taken, if any, including possible denial of entry.

D. Tank Vessel Manning: The Coast Guard establishes and enforces requirements for manning, competence, and documentation of personnel aboard vessels.

1. The Coast Guard will consult with the State, to the extent practicable, in its evaluation and implementation of additional requirements for manning, training, and qualification requirements through the manning standards process.
2. The Parties agree to actively promote and coordinate research projects to identify human factors which need to be regulated to prevent pollution incidents.

E. Vessel Transfer Operations: Monitoring tank vessel transfer operations has been identified as an effective pollution prevention action. The Parties will cooperate to monitor transfer operations involving tank vessels (as well as cruise ships, fish processors, fishing vessels, etc.), including, but not limited to, dockside transfer at facilities, lightering and bunkering operations. Each party will advise the other of

violations observed.

F. Facility Inspections: Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and pollution response regulations. The Coast Guard has statutory responsibility for oil transfer facilities from the pier to the first valve in the pipeline coming from the storage tank. The State has statutory responsibility for oil transfer facilities, pipelines, and oil exploration and production facilities and their operation within the State or within State waters. Included in this responsibility is the requirement to establish regulation and inspection programs governing oil transfer facilities. This includes regulation and inspection of oil transfer operations between marine facilities and tank vessels.

1. Facility Inspection: The Parties will coordinate their respective inspection and monitoring activities to the extent practicable to utilize the resources of both Parties efficiently and effectively. Cognizant inspectors from both Parties may carry out inspections and other activities jointly where appropriate.
2. Equipment: The Parties will cooperatively enforce requirements for pollution prevention and pollution response equipment at marine facilities.
3. Manning: The Parties will cooperatively enforce requirements for trained and qualified personnel to be responsible for transfer operations at marine facilities.
4. The State will promptly inform the cognizant Captain of the Port and the Coast Guard will promptly inform ADEC's Industry Preparedness and Pipeline Program Manager of any situation or circumstance relative to facilities whose operation or equipment may significantly increase the potential for an unauthorized discharge or create an unusual or an unacceptable risk to public health and safety, or the safety of navigation within State waters.

G. Waterways Management:

1. Port and Waterways Safety: The Captain of the Port (COTP) is the pre-designated federal official with primary responsibility to exercise control of vessels to ensure the safety and security of ports and waterways. In Alaska, the Coast Guard has three Captains of the Port (COTP): COTP Southeast Alaska, located in Juneau; COTP Prince William Sound, located in Valdez; and COTP Western Alaska, located in Anchorage. Captain of the Port Prince William Sound also operates a Vessel Traffic Service located in Valdez to manage the safe transit of tank vessels and other vessels in Prince William Sound. This VTS' capabilities and range extend out into the Gulf of Alaska and a Global Positioning Device, Automatic Dependent Surveillance System (ADSS), is carried on all tank vessels calling on the Port of Valdez.
 - a. The Parties will jointly notify and provide prompt information on any situation or circumstance relative to vessels whose operation or equipment may significantly increase the potential for an unauthorized discharge or

create an unusual or an unacceptable risk to public health and safety, or the safety of navigation.

- b. The Coast Guard will notify the State of any pending actions that may be taken to diminish the capability of navigable waterways.
 - c. Both parties will coordinate vessel and risk assessment studies to ensure the interests of both parties are addressed.
2. Navigation Safety: Federal law allows for implementation of navigation safety measures such as vessel movement control, aids to navigation and escort vessels as appropriate. Both the Coast Guard and the State require escort vessels be provided for laden tank vessels transiting Prince William Sound. In addition, the State of Alaska requires mandatory pilotage upon the waters of Prince William Sound. AS 08.62.185 states that “(a) any oil tanker, whether enrolled or registered, of 50,000 dead weight tons or greater, shall, when navigating in State water beyond Alaska pilot stations employ a pilot licensed by the State under this chapter. (b) The pilot required in (a) of this section shall control the vessel during all docking operations.”
- a. The Coast Guard agrees to consult, to the extent practicable, with the State in determining the need for implementing additional navigation safety measures.
 - b. Towing Equipment: The Parties agree to review requirements for towing equipment for barges and tank vessels carrying oil in bulk with the purpose of determining whether additional standards for equipment, maintenance, operation, and inspection should be adopted.
 - c. Both parties will coordinate activities with regard to vessel towing packages purchased by the State, and positioned at strategic locations, including Dutch Harbor and Kodiak, and possibly elsewhere in the State. Coast Guard assets may be used to rapidly mobilize the tow packages to stricken vessels/tow vessels to initiate tow operations and prevent vessel groundings in State waters.
3. Aids to Navigation (ATON): The Coast Guard establishes, regulates, and maintains a uniform system of aids to navigation within the United States. The State will assist the Coast Guard in identifying changes, improvements, or repairs that may be required to aids to navigation.

H. Public Information/Education: The Parties agree that public education in areas of pollution prevention, which includes oil and hazardous substances, is a high priority and each agency shall seek opportunities to coordinate pollution prevention public awareness and education programs.

1. Marinas: Public information and education will be developed cooperatively and implemented targeting marina operations to reduce pollution from oil and hazardous substances.
2. Small Oil Transfer Facilities: Public information and education will be developed cooperatively and implemented targeting small oil transfer facilities to reduce pollution from oil and hazardous substances.
3. Recreational Vessels: Public information and education will be cooperatively developed and implemented targeting the recreational boating community to reduce pollution from oil and hazardous substances.

I. Unified Command Website: During major spill responses, a Unified Command website may be activated to keep the general public and stakeholders informed of the situation. Both parties will coordinate with the Responsible Party staff to activate and populate a Unified Command website.

VII

RESPONSE

The Parties have learned from the EXXON VALDEZ oil spill and other major spills that close State and Federal relationships during oil spills are essential to ensuring coordinated, effective multi-agency responses. Federal law establishes the Coast Guard as the primary federal agency tasked with responding to oil spills on navigable waters of the United States. In such cases, the FOSC is the pre-designated official responsible for ensuring appropriate cleanup operations are undertaken by the responsible party or other entities as appropriate. Pursuant to the authorities provided by the Oil Pollution Act (OPA-90) the FOSC may direct or monitor all Federal, State, and private actions to remove a discharge in response to an oil spill or a potential oil spill in State waters. State law designates the ADEC SOSC. The Parties will respond to marine oil spills as required by and in accordance with the National Contingency Plan (NCP) and the Unified Plan. The Coast Guard pre-designated FOSC will consult, as required by OPA 90 and other applicable federal law, with the ADEC SOSC concerning oil spill response activities. SOSCs are responsible for coordinating State oil spill cleanup efforts. The Parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication is undertaken in response to oil spills.

- A. Incident Command System (ICS):** The Incident Command System (ICS) establishes lines of communication, information sharing and control for the conduct of oil spill response operations. This response organization facilitates joint agency responses to oil spills. ICS organization and relationships are outlined in the Unified Plan. This system ensures notification procedures are in place to inform cognizant State agencies when actual or potential spills present a threat to the environment.
1. **Notification:** The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such discharges to each other in accordance with applicable law, regulations and policies and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan and the Unified Plan. In order to provide a single point of contact for the FOSC in the event of a marine oil spill, the area ADEC SOSC will represent all State agencies and will be the primary point of contact.
 2. **Unified Command (UC):** The Parties agree to implement a Unified Command (UC) to ensure coordination of emergency response decision making during a pollution incident. In those circumstances where governmental action is required to develop and direct action to clean up or abate the effects of an oil spill, the Parties agree to consider best utilization of existing resources, avoiding duplication while taking advantage of resource availability. The FOSC may request the State to undertake response actions on a case-by-case basis. If the State assumes responsibility for response activity, the State will conduct those activities as directed by the SOSC (with FOSC oversight), in accordance with the National Contingency and Unified Plans.
 3. **Spill Response Resources:** The SOSC may request access to Federal resources

(e.g., Navy Supervisor of Salvage equipment, other Federal resources) through the FOSC for the purposes of supporting a State-led spill response operation. Similarly, the FOSC may request the use of State resources (e.g., communications, state response vessels, AMHS vessels) to satisfy/augment the federal spill response effort.

4. Response Decisions: The Coast Guard FOSC will consult with the State in making decisions related to the conduct of oil spill response operations including, but not limited to, salvage, towing, lightering, safe haven and other matters affecting the release of spilled oil, its containment or its cleanup.
5. The Parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation. This provision does not preclude the Parties from making independent responses to the media and the public.

B. Natural Resource Protection: Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill event. Both Parties recognize that response strategies identified in State and Federal vessel response plans in conjunction with the procedures set out for the ICS, will be employed in accordance with applicable laws, regulations, policies, and procedures.

C. Response Monitoring and Technology: Both Parties agree that the methods used to clean up oil and oily debris shall, as circumstances permit, be established through the Unified Command (UC). The UC (subject to the FOSC's authority vested in 33 U.S.C. 4201, and the State's authority regarding non-preemption) will decide what level of action is required by the responsible party, and may decide to direct the cleanup operations by the responsible party or assume responsibility for the cleanup operation. The Unified Command shall consider the effectiveness and appropriateness of pre-established clean-up and protection strategies contained in the vessel or facility response plans in making its decision. The Parties agree to serve as advocates of new response technologies including in situ burning, dispersants, bioremediation, chemical beach cleaners and other methods that will enhance spill response capabilities and serve to minimize the impact of oil spills to the environment.

1. Both Parties agree to provide timely input and recommendations to the Coast Guard FOSC and SOSC, through the UC, on dispersant usage, in situ burning, bioremediation, and other non-mechanical cleanup technologies.
2. Both Parties agree that decisions to discontinue cleanup operations and demobilize response activities shall be made through the UC as appropriate. The State retains the authority to undertake remedial or mitigating actions beyond the response actions required by the National Contingency Plan.

VIII

NATIONAL POLLUTION FUNDS CENTER INFORMATION

- A. The Oil Spill Liability Trust Fund (The Fund):** The Fund provides federal funding under certain conditions for oil discharge removal actions. The Fund is available in certain circumstances to compensate the State for costs and damages incurred associated with the response to oil discharges. To the extent allowed, a state may access the Fund under currently published regulations and National Pollution Fund Center (NPFC) procedures.
- B. The National Pollution Fund Center (NPFC):**
1. The NPFC administers the Fund in order to: provide state access to the Fund, conduct cost recovery, accept and process claims, and evaluate requests by Federal trustees to fund initiation of the assessment of natural resource damages. The NPFC also administers Certificates of Financial Responsibility and provides Comprehensive Emergency Response Compensation and Liability Act (CERCLA/Superfund) funding to Coast Guard FOSCs responding to hazardous material incidents.
 2. The State may receive payment from the Fund in the State's role as a response organization engaged in removal activities consistent with the National Contingency Plan, as appropriate claimant for damages, and in the State's role as a natural resource trustee.
 - a. The State may negotiate directly with the NPFC to establish a cooperative agreement to provide access to the Fund under Section 1012(d)(2) of the Oil Pollution Act of 1990 (OPA 90). Any agreement between the State of Alaska and the National Pollution Fund Center shall be attached as an annex to this MOA.
 - b. The NPFC, upon request of the Governor of Alaska and as authorized by the FOSC, may obligate the Fund for payment in an amount not to exceed \$250,000 for removal costs, consistent with the National Contingency Plan (NCP), required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil. The NPFC's Technical Operating Procedures (TOPs) for State access under Section 1012(d)(1) of OPA 90, and the TOPs for resource documentation under OPA 90 are approved guidelines for State use to access the Fund under this section.
 - c. Claims. The Fund may be used for the payment of State claims for uncompensated removal costs determined by the Coast Guard pursuant to the procedures found in 33 CFR Part 136.
 - d. When the State works directly in support of the Coast Guard's FOSC in

performing removal actions, a Pollution Removal Funding Authorization (PRFA) may be provided to the State to establish a contractual relationship and to obligate the Fund.

- e. Natural Resource Damage Assessments. The SOSOC may request access to the Fund for the initiation of an assessment of natural resource damages resulting from a discharge of oil, through a Federal Lead Administrative Trustee in accordance with the procedures established by the NPFC (Section 6002(b) of OPA 90).

IX

ENFORCEMENT

Enforcement action by either Party may include civil and criminal penalties, and adverse actions against Coast Guard issued merchant marine licenses and seamen's documents. Action by either Party may preclude opportunities for future actions by the other Party.

- A. Subject to the requirements and limitations of applicable state and federal law and agency policy, the Parties agree to coordinate marine casualty or incident investigations including, but not limited to: the sharing of information regarding witnesses, reports, analysis, and other available information that may assist in determining the cause of the casualty or incident.

- B. Enforcement action undertaken by each of the Parties must occur independently in accordance with applicable laws and regulations. The Parties agree that to the extent appropriate, they will consult with each other as to intended enforcement action.

- C. When allowable by law and agency policy, the Parties should discuss pending enforcement actions or settlement agreements before they are issued while not compromising the responsibility or obligation of either agency.

RULEMAKING

- A. Issuance of Regulations:** The Oil Pollution Act of 1990 and other federal law provides for the issuance of regulations pertaining to the prevention of oil spills from vessels and facilities. The Commandant of the Coast Guard has the authority to promulgate such regulations. The Commander, Seventeenth Coast Guard District and the respective Captains of the Port have limited authority to promulgate local regulations. Acting under its inherent regulatory authority the State has the authority to promulgate regulations concerning oil spill prevention which do not conflict with or which are not otherwise preempted by federal law. Alaska Statute 46.04.30 requires that operators of self-propelled nontank vessels of more than 400 gross registered tons (GRT) as defined in AS 46.04.900, obtain approval for an Oil Discharge Prevention and Contingency Plan before entering Alaska waters. It is the intention of the Parties to maintain close communications to reduce conflict between each Party's permits, directives, and instructions.
1. The intent of this section is to avoid conflict and inconsistent regulation in rulemaking wherever possible, subject to applicable procedural rules, and to endeavor to provide a coordinated, synergistic response to oil pollution planning and response. It is the intent of the Parties to endeavor under their respective authorities to assure the best achievable protection for the waters of the State.
 2. In addition to the respective federal and state procedures for notice of opportunity to comment and consideration of existing rules, the Parties anticipate that through their participation on committees and day-to-day working communications, the concerns of each will be discussed and given due consideration.
- B. Containment and Cleanup for Refueling, Bunkering, or Lightering Operations:** OPA 90 and other federal laws regulate refueling, bunkering and lightering operations. Federal regulations enforced by the Coast Guard govern these operations. Subject to the requirement that they be consistent with federal regulations, the State may issue its own regulations relating to these same operations.
- C. Tank Vessel Response Equipment Rules:** Federal law governs the standards for response equipment. State law authorizes the adoption of State standards for spill response equipment to be maintained on tank vessels operating in waters of the State. State rules shall not conflict with federal spill response equipment standards but may be more stringent.

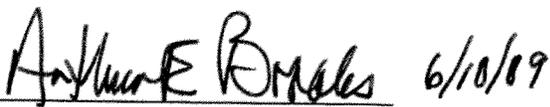
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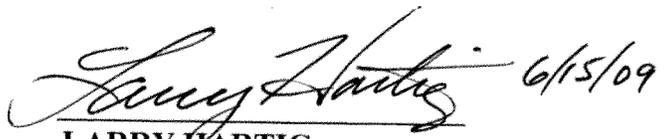
AGREEMENT

- A. This agreement represents a voluntary understanding between the Seventeenth Coast Guard District and the State of Alaska.
- B. The terms of this agreement may be changed at any time without notice to any person other than the other Party.
- C. The agreement may be terminated by either Party at any time without notice to any person other than the other Party.
- D. No rights, duties, obligations, or liabilities enforceable at law are created by this agreement.
- E. No action based upon this agreement may be brought against the United States or the State of Alaska by any person.
- F. This agreement does not alter, modify, abridge, or in any way affect any rights, duties, obligations, or liabilities of any person under the laws of the United States or the State of Alaska.
- G. In the event that individual and severable portions of this agreement are found to be in conflict with either state or federal law, regulations or policies and therefore of no effect, the agreement will remain in effect without those provisions unless either Party notifies the other in writing that the entire agreement is terminated.
- H. Any action to modify, amend or terminate this agreement may only be taken by the Governor of the State of Alaska or the Commander, Seventeenth Coast Guard District or persons to whom this authority is specifically delegated.
- I. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the United States Coast Guard, Department of Homeland Security, or the Alaska Department of Environmental Conservation.

FOR THE UNITED STATES COAST GUARD:

FOR THE STATE OF ALASKA:


ARTHUR E. BROOKS
Rear Admiral, USCG
Commander
Seventeenth Coast Guard District


LARRY HARTIG
Commissioner
State of Alaska
Dept of Environmental Conservation