

MEMORANDUM OF UNDERSTANDING
AMONG THE
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE, OFFICE OF SPILL PREVENTION AND RESPONSE,
THE
STATE WATER RESOURCES CONTROL BOARD,
AND THE
REGIONAL WATER QUALITY CONTROL BOARDS
RELATING TO
INCIDENTAL DISCHARGES AND COORDINATION DURING OIL SPILL RESPONSE
(Supersedes 1995 Memorandum of Understanding)

I. INTRODUCTION AND MOU SCOPE

In order to expedite efficient Oil Spill response the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (hereafter referred to as, the “Lempert-Keene Act”) [Gov. Code § 8670.1, et seq. as amended by Stats.1993, c. 736] requires the California Department of Fish and Wildlife’s Office of Spill Prevention and Response (CDFW/OSPR) Administrator to enter into a Memorandum of Understanding (MOU) with the State Water Resources Control Board (State Water Board) Executive Director acting for the State Water Board and California Regional Water Quality Control Boards (Regional Water Boards) (the “Water Boards”) (collectively, the “Parties”) to address discharges, other than dispersants, incidental to or directly associated with the response, containment, and cleanup of an existing or threatened Oil Spill (Incidental Discharges) [Gov. Code § 8670.7(i)]. An MOU pertaining to such Incidental Discharges into Marine Waters was executed by the CDFW/OSPR Administrator and the State Water Board Executive Director in 1995 (1995 MOU).

This MOU supersedes the 1995 MOU to expedite efficient Oil Spill response and address discharges, other than dispersants, that are incidental to, or directly associated with, the response, containment, and cleanup of an existing or threatened Oil Spill into any Waters of the State, defined as any surface water, including saline waters, marine waters, and freshwaters, within the boundaries of the state, but does not include groundwater. [Gov. Code § 8670.3; § 8670.1, et seq. as amended by Stats. 2014, c.35 (S.B.861) §§ 2-4; and § 8670.1, et seq. as amended by Stats. 2014, c. 35 (S.B.861) §§ 5-60.] In addition, this MOU expands the scope of the 1995 MOU to address response coordination utilizing the Standardized Emergency Management System (SEMS), the National Incident Management System (NIMS), and the Incident Command System (ICS) and SEMS/NIMS/ICS training to help ensure the Parties’ response personnel work efficiently and effectively together when responding to an Oil Spill into or threatening Waters of the State. Confidentiality and information sharing pursuant to this MOU are also addressed.

II. BACKGROUND

A. MOUs Pertaining to Oil Spills

i. **Enforcement:**

In 1973, the State Water Board and CDFW¹ (formerly, the “California Department of Fish and Game”) entered into an MOU (1973 MOU) to coordinate their enforcement efforts and penalties with regards to the agencies’ responsibilities under California Harbors and Navigation Code section 151 and California Water Code sections 13304 and 13350. This MOU does not supersede the 1973 MOU.

ii. **Incidental Discharges:**

In 1995, the CDFW/OSPR Administrator and the State Water Board Executive Director (acting for the State Water Board and Regional Water Boards) executed an MOU to address discharges, other than dispersants², incidental to or directly associated with the response, containment, and cleanup of an existing or threatened Oil Spill (Incidental Discharges) into marine waters in accordance with the Lempert-Keene Act. *[Gov. Code § 8670.1, et seq. as amended by Stats.1993, c. 736.]*

Prior to 2014, the Lempert-Keene Act only pertained to existing or threatened Oil Spills into Marine Waters. In 2014, the California Emergency Services Act and the Lempert-Keene Act were amended to address Oil Spills into or threatening Waters of the State defined as any surface water including saline waters, marine waters, and freshwaters, within the boundaries of the State, but does not include groundwater. *[Gov. Code § 8574.1, et seq. as amended by Stats. 2014, c.35 (S.B.861) §§ 2-4; § 8670.1, et seq. as amended by Stats. 2014, c. 35 (S.B.861) §§ 5-60.]* As discussed above, this MOU expands the scope of the 1995 MOU by addressing, among other things, Incidental Discharges associated with inland Oil Spill response actions.

B. Oil Spill Response Coordination

i. **SEMS/NIMS:**

Since 1996, all California State agencies have been required to use SEMS to coordinate emergency and disaster operations. *[Gov. Code § 8607.]* SEMS components include ICS, multi-agency coordination, and mutual aid agreements. In 2003 and 2011, Presidential orders directed Federal agencies to use the NIMS. *[Homeland Security Presidential Directive/HSPD-5; Presidential Policy Directive/PPD-8: National Preparedness.]* NIMS was developed by the United States Department of Homeland Security to ensure

¹ See Attachment 1: “List of Acronyms”

² Use of dispersants is addressed pursuant to Gov. Code §§ 8670.13.1 and 8670.13.2; California Code of Regulations, title 14, §§ 884-886.4.

all levels of government across the nation have the capability to work efficiently and effectively together using the ICS framework. In 2005, Governor Schwarzenegger directed State agencies to incorporate NIMS into SEMS to the extent appropriate. [*California Executive Order S-2-05.*] Accordingly, CDFW/OSPR's Administrator or his/her designee is required to manage Oil Spill incidents consistent with SEMS/NIMS, which include utilization of ICS. The ICS organization consists of five (5) primary management sections: Command, Operations, Planning, Logistics, and Finance/Administration. (See Attachment 2: General ICS Organizational Structure for a Pollution Incident.) CDFW/OSPR and the Water Boards recognize all State agencies are required to use SEMS/NIMS, which utilize ICS to coordinate emergency response operations involving multiple jurisdictions and agencies. [*Gov. Code § 8607; California Executive Order S-2-05.*]

III. PURPOSE

The overall purpose of this MOU is to expedite efficient Oil Spill response through coordination among the Parties' personnel that are involved in the response, containment, and cleanup of existing or threatened Oil Spills into or threatening Waters of the State. This MOU addresses any permits, requirements, or authorizations that are required for discharges, other than dispersants, incidental to or directly associated with the response, containment, and cleanup of an existing or threatened Oil Spill into or threatening Waters of the State in accordance with Government Code section 8670.7(i). It is the intent of this MOU that all Incidental Discharges as defined herein shall occur within or proximate to the Active Skimming Response Area, and any associated deleterious impacts to the environment or to public health and safety shall be minimized.

IV. DEFINITIONS

The Parties agree, for the purposes of this MOU, the definitions in Attachment 3 shall apply to this MOU and are hereby incorporated by this reference.

V. RESPONSIBILITIES AND LEGAL AUTHORITY

A. CDFW/OSPR Administrator

The Administrator has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any Oil Spill into or threatening Waters of the State. [*Gov. Code §§ 8670.62 and 8670.7(a); Fish & G. Code § 5655(d).*]

The Administrator must ensure personnel trained in Oil Spill response and cleanup are onsite to respond to any Oil Spill into or threatening Waters of the State as soon as possible after notice of the discharge. In addition, the Administrator has the primary authority to serve as the State Incident Commander/State On-Scene Coordinator (SOSC) with overall authority for managing and conducting incident operations during the response to an Oil Spill in accordance with the California

State Oil Spill Contingency Plan and consistent with SEMS/NIMS. *[Fish & G. Code § 5655(e); Gov. Code §§ 8607 and 8670.7(a).]* Incident management includes coordination with other appropriate response agencies to ensure all appropriate resources are properly utilized and that this coordinating function is performed in a manner designed to minimize risk to persons and to the environment. *[Fish & G. Code § 5655(e).]*

Additionally, the Administrator has the authority to issue a cleanup and abatement order (CAO) to any person who discharges oil in or threatens Waters of the State. *[Gov. Code § 8670.62.]* Similarly, CDFW may issue a CAO pursuant to Fish and Game Code sections 5655 or 12015 to require petroleum, petroleum products, or deleterious substance or materials to be cleaned up or abated when deposited or discharged in Waters of the State or in a location where it is likely to enter Waters of the State.

B. The Water Boards

The primary responsibility of the Water Boards is to protect the quality of the State's surface, coastal, and groundwater resources for beneficial uses. The Water Boards' water quality authority is derived primarily from the Porter-Cologne Water Quality Control Act. *[Wat. Code §§ 13000, et seq.]* The Water Boards develop policies and plans, issue waste discharge requirements, issue CAOs, take enforcement action against violators, and monitor water quality. The Water Boards have authority to issue CAOs to any person who has discharged waste into Waters of the State or deposited waste that probably will discharge into Waters of the State that creates or threatens to create a condition of pollution or nuisance, and to oversee the cleanup and abatement of such discharges. This authority extends to discharges to the State's groundwater, but is not the subject of this MOU. *[Wat. Code § 13304; Fish & G. Code § 5655(c).]* It is in the public interest for the Water Boards to address concerns regarding an Oil Spill in or threatening Waters of the State through participation in the processes set forth in this MOU.

VI. INCIDENTAL DISCHARGE PERMITTING

The Parties agree, it is in the public interest to expedite efficient oil spill response. The Parties further agree that:

A. National Pollutant Discharge Elimination System (NPDES) Permit Exclusion – Incidental Discharges - Waters of the United States

NPDES permits are not required where the Incidental Discharges to waters of the United States are in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan (NCP)). *[40 C.F.R. § 122.3(d).]*

B. State Requirements: Waste Discharge Requirements and Waivers – Incidental Discharges – Waters of the State of California

- i) The exclusion from Federal NPDES permitting requirements discussed above does not affect the need to obtain waste discharge requirements or a waiver of waste discharge requirements for discharges to Waters of the State, as required by the Porter-Cologne Water Quality Control Act. *[Wat. Code § 13000, et seq.]*
- ii) The State Water Board or a Regional Water Board may waive the requirement to submit a report of waste discharge or to obtain waste discharge requirements if it is in the public interest, as provided in Water Code section 13269. In addition, Water Code section 13269(c) provides a statutory waiver for discharges from certain immediate emergency work that is necessary in a disaster area as the result of a declared state of emergency, following notice to the Regional Water Board. The statutory waiver does not limit the authority of a Regional Water Board to issue waste discharge requirements or to issue a waiver, and the statutory waiver does not apply to the extent it is inconsistent with any other waiver, order, or prohibition issued by the State Water Board or a Regional Water Board.
- iii) Several Regional Water Boards have issued general waivers for waste discharges related to emergencies or disasters, which included Incidental Discharges covered by the 1995 MOU.
- iv) Regional Water Boards that have not issued such waivers agree to consider adopting general waste discharge requirements or waivers to address the Incidental Discharges covered by this MOU to expedite efficient Oil Spill response. The recommended conditions and requirements set forth below (see Paragraph VI.D.) can be included in any general waivers for waste discharges related to emergencies or disasters and, to the extent feasible and appropriate, in any incident-specific waivers or waste discharge requirements issued by a Regional Water Board to address Incidental Discharges.
- v) CDFW/OSPR should, to the extent feasible and appropriate, include the conditions/requirements set forth below (see Paragraph VI.D.) in any cleanup requirements issued pursuant to its authority.
- vi) Regional Water Boards may require monitoring of the decant water or wash wastewater, or other discharges or activities. The Parties recognize that time is of the essence during the emergency response and every effort will be made to avoid any delay waiting for monitoring results and monitoring should not impede appropriate Response Activities.

- vii) No discharge of waste into Waters of the State, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the State are privileges, not rights. *[Wat. Code § 13263(g).]* Nothing in this MOU limits the Water Boards' statutory authority or discretion to issue waivers or waste discharge requirements, or to determine the conditions or requirements thereof.

C. Incidental Discharges Covered by this MOU

The incidental discharges covered by this MOU shall be minimized to the fullest extent practicable and will include the following:

- i) Decanting of Oily Water to the Active Skimming Response Area to conserve vessel oil storage capacity and efficiency during active skimming.
- ii) The release of small volumes of wash wastewater from on-water cleaning of response vessels, equipment, and facilities used in the response.
- iii) Other on-water discharges of oil that are incidental to Response Activities (e.g., discharges involving salvage operations associated with sunken or disabled vessels that pose an imminent threat to Waters of the State).

D. Recommended Conditions/Requirements - Incidental Discharges

i. Decanting During Active Skimming:

- a. Decanted Oily Water shall be discharged within the Active Skimming Response Area where oil concentrations are highest, water depth is sufficient to minimize impacts to shoreline and biota, and active skimming of Oil is ongoing. Decanted Oily Water shall only be discharged into waters that contain higher soluble oil concentrations than the decanted water. The soluble oil concentration may be determined by chemical analysis or by professional judgment. Whenever possible, decanted Oily Water should be discharged in the vicinity of the skimmer intake and the last Oily Water load should be discharged to shore-based Oily Water storage for quantification and disposal. For example, as the skimming vessel retreats from the Active Skimming Response Area, soluble oil concentrations in the waters will generally decrease and Decanting will become less and less appropriate. In this situation, the skimming vessel must return to the Active Skimming Response Area before Decanting.
- b. Decanted Oily Water shall not contain recovered oil thicker than a Sheen.
- c. The volume of decanted Oily Water that is discharged to Waters of the State shall be eliminated or minimized to the fullest extent practicable.

- ii. **On-Water Vessel and Equipment Cleaning during Active Skimming:**
 - a. On-water cleaning of oil from response vessels or response equipment shall occur within an Active Skimming Response Area where water depth is sufficient to minimize impacts to shoreline and/or biota and active skimming of free oil is ongoing. All practicable efforts should be made to collect the removed oil from the vessel hull or equipment for quantification and disposal.
 - b. The volume of wash wastewater shall be eliminated or minimized to the fullest extent practicable.
- iii. **Other On-Water Discharges of oil that are Incidental to Spill Response:**

The volume of any other Incidental Discharges of oil that are incidental to or directly associated with Response Activities (e.g., salvage operations, shall be eliminated or minimized to the fullest extent practicable).

E. Discharges Not Covered by this MOU

Incidental Discharges do not include land-based decanting operations from settling tanks, land-based decontamination procedures or other possible decanting operations, or land-based wash down of response vessels or equipment. If needed during a spill response, these activities will require approval from the Unified Command (UC).

VII. RESPONSE COORDINATION

The Parties agree that:

A. Notifications

- i) The California Governor's Office of Emergency Services (Cal-OES) is responsible for receiving spill notifications and disseminating notice to state and local agencies for consideration and action.
- ii) Water Board personnel will monitor all Cal-OES Spill reports and will, when appropriate, contact the CDFW/OSPR Spill Desk at (916) 341-6957 or via e-mail at spilldesk@wildlife.ca.gov to obtain contact information for the CDFW/OSPR liaison and/or Oil Spill responders to evaluate the need for further Water Board assistance or follow-up. Additionally, depending on Oil Spill size and complexity, when appropriate, CDFW/OSPR staff may contact local Water Board staff directly for assistance or follow-up.

B. Authorities

The Parties acknowledge that response to Oil Spills is governed by SEMS/NIMS, ICS, and the NCP. The U.S. Coast Guard (USCG) and U.S. Environmental Protection Agency (U.S. EPA) "Incident Management Handbooks" (IMHs) are the governing documents for the ICS structure, participation, and decision making. The Parties agree that the IMHs govern how the Water Boards and CDFW/OSPR participate in Oil Spill response and incident management.

C. Roles

During an Oil Spill response, CDFW/OSPR serves as SOSC and personnel typically participate in all sections of the ICS organization: Command, Operations, Planning, Logistics, and Finance/Administration. Representatives of the Water Boards may participate in ICS by working with the Spill Liaison Officer as an Agency Representative and/or participating in the Environmental Unit (EU) as a Technical Specialist within the Planning section, as described below.

D. Type 1 - 3 Spill Incidents (Large Spills)

- i) Water Board personnel responding to a Type 1-3 Spill Incident should initially check in with the Spill Liaison Officer and advise the officer that Water Board personnel are present. After assessing the situation, Water Board personnel should advise the Spill Liaison Officer of the Water Board's role in the Response. Water Board representatives may limit their participation to communications with the Spill Liaison Officer as Agency Representatives or may join the EU within the Planning Section as Technical Specialists.
- ii) In this latter role, the EU leader can request Water Board personnel participation, as appropriate, and obtain technical and regulatory input. Additionally, Water Board personnel will have the opportunity to ensure Response Activities comply with applicable water quality law.
- iii) Water Board personnel assigned to an Oil Spill must have appropriate authority to ensure continuity and efficiency of UC activities.
- iv) The appropriate level of Water Board personnel participation will vary depending on the Spill magnitude, location, and type. Some examples of appropriate participation that may be needed include: 1) assistance with the development of cleanup endpoints; 2) assistance with developing standards for decontamination of both response and private vessels and cleanup equipment; 3) assistance with drafting of any guidance documents related to the Spill, including any work to be completed in the water; 4) formulation and drafting of monitoring plans and sampling and analysis plans; and 5) assistance with identification of biologically sensitive aquatic areas as needed to help prioritize Spill containment efforts.
- v) Water Board personnel may conduct or require sampling to document environmental impacts. Water Board personnel will first coordinate any

necessary sampling through the EU and/or the natural resource damage assessment process consistent with SEMS/NIMS.

- vi) In the event Water Board personnel responding to a Spill do not concur with directions by the UC that trigger requirements of the Water Code or other important issues within the purview of the Water Boards, each Party shall elevate the issue within their respective organization to resolve the issue. The Parties recognize response decisions can be time sensitive and appropriate response activities may continue to proceed under the direction of the UC pursuant to the National Contingency Plan (NCP).

E. Type 4-5 Spill Incidents (Small Spills)

- i) For Type 4-5 Spill Incidents, CDFW/OSPR personnel are required by statute to respond to all Oil Spills into or threatening surface Waters of the State and may independently implement appropriate Oil Spill response and monitoring without further assistance from Water Board Personnel. In such an event, Water Board personnel may coordinate with CDFW/OSPR personnel as appropriate. Water Board personnel often independently oversee non-oil spill response and Oil Spill response activities at facilities where surface Waters of the State have not been impacted, such as an Oil Spill at a refinery to groundwater.
- ii) When a UC has been established by CDFW/OSPR, Water Board personnel may participate in the Response to a small Spill as a Technical Specialist. Generally, the SOSC relies on a team of Technical Specialists to recommend required Response Activities to minimize environmental impacts. The SOSC will recognize and integrate the Water Board Technical Specialist into the Response decision-making process, as appropriate.
- iii) Water Board personnel assigned to an Oil Spill must have appropriate decision-making authority to ensure continuity and efficiency of UC activities.
- iv) The SOSC will consider and incorporate response recommendations from Technical Specialists as is reasonable and practicable. However, all Parties must acknowledge that timeliness is required for effective integration. Either agency may independently require additional response work beyond the Active Response Phase. Water Boards would typically require additional response work through a Cleanup and Abatement Order (see Paragraph VII.F.).
- v) In the event Water Board personnel responding to a Spill do not concur with directions by the UC that trigger requirements of the Water Code or other important issues within the purview of the Water Boards, each Party shall elevate the issue within their respective organization to resolve the issue. The Parties recognize response decisions can be time sensitive and appropriate Response Activities may proceed under the direction of the UC pursuant to the NCP.

F. Water Board Cleanup and Abatement Orders

- i) During or after a response involving the Water Boards and CDFW/OSPR, the Water Board may issue CAOs to direct future cleanup and abatement efforts and to address situations that require immediate Water Board oversight (e.g., soil and groundwater cleanup). In addition, the Federal On-Scene Coordinator (FOSC) and/or SOSC may request the Water Board to issue a CAO during the Active Response Phase to ensure that the Responsible Party (RP) will complete Response Activities effectively, including activities that may continue after the UC/IC is demobilized.
- ii) While the Water Boards have authority to issue or contemplate issuing a CAO during ongoing Response Activities, the issuance of a CAO creates the potential for conflicting direction to those responding to the Oil Spill, as the RP must comply with direction from the FOSC, SOSC, or UC as well as Water Code requirements. Therefore, to avoid giving conflicting direction, the Water Boards will coordinate with the FOSC and the SOSC and raise their concerns through ICS, in accordance with SEMS/NIMS, prior to issuing a CAO regarding an Oil Spill in or threatening Waters of the State.

In the event direction by the FOSC, SOSC, or UC conflicts with the requirements of a CAO, each Party shall elevate the issue within their respective organization to resolve the issue. The Parties recognize response decisions can be time sensitive and appropriate Response Activities may continue to proceed under the direction of the UC pursuant to the NCP.

VIII. TRAINING

The Parties agree:

A. SEMS, NIMS, and ICS – Training and Response Drills & Exercises

- i) The Parties' personnel responding to an Oil Spill in or threatening Waters of the State shall have ICS/SEMS/NIMS training to ensure they can effectively operate within the ICS/UC organization.³
- ii) The Parties' personnel responding to an Oil Spill in or threatening Waters of the State shall be familiar with the IMHs and know their respective roles as described in the IMHs.
- iii) Each Party must determine the level of ICS/SEMS/NIMS training required for its personnel based upon the potential role during Oil Spill response and the type of Spill. Personnel likely to participate in Spill response should have, at a

³ The Cal-OES developed the *California Implementation Guidelines for NIMS*, which provides compliance guidelines for State Agencies, including the Water Boards. This training guidance is available from the Cal-OES website.

minimum, an intermediate level understanding of ICS/SEMS/NIMS (ICS-100, ICS-200, ICS-300, ICS-700, and ICS-800).⁴

- iv) The Parties' personnel who may enter areas that could expose or potentially expose them to health or safety hazards must have hazardous waste operations and emergency response training (HAZWOPER training) in accordance with Occupational Safety and Health Administration (OSHA) and California OSHA requirements. *[See 19 C.F.R. § 1910.120; Cal. Code Regs., tit. 8, § 5192.]* The level of training required depends on potential exposure levels and types of activities personnel potentially engage in during Spill response.
- v) Personnel who have completed ICS/SEMS/NIMS training may participate in appropriate Oil Spill response tabletop exercises or equipment deployment drills.
- vi) During Oil Spill response drills or exercises, CDFW/OSPR personnel typically participate in all sections of the ICS organization: Command, Operations, Planning, Logistics, and Finance/Administration. Representatives of the Water Boards may participate in the ICS by working with the Spill Liaison Officer as an Agency Representative and/or participating in the EU as a Technical Specialist within the Planning section. *[See Response Coordination (Paragraphs VII.B. and VII.C).]*
- vii) Water Board personnel who desire to participate in CDFW/OSPR equipment deployment drills or tabletop exercises may access the CDFW/OSPR drills and exercises [calendar](https://wildlife.ca.gov/OSPR/Contingency/Drills-Exercises-Calendars) (<https://wildlife.ca.gov/OSPR/Contingency/Drills-Exercises-Calendars>). All participants must contact CDFW/OSPR's drills and exercises program personnel in advance to request participation in an upcoming drill or exercise, and to determine whether the drill or exercise can accommodate Water Board personnel and can be designed to include relevant Water Board issues.

⁴ The [ICS/SEMS/NIMS training](https://www.fema.gov/pdf/emergency/nims/nims_training_program.pdf) (https://www.fema.gov/pdf/emergency/nims/nims_training_program.pdf) is currently available on FEMA website.

- viii) Water Board personnel may periodically be invited to attend and give presentations at CDFW/OSPR field response team (FRT) meetings. Similarly, CDFW/OSPR personnel may be invited to attend and give presentations to Water Board personnel. This participation will serve to: 1) better introduce Water Board spill responders to CDFW/OSPR personnel; 2) provide both CDFW/OSPR and Water Board personnel with a formal opportunity to better understand the other's roles and responsibilities with regards to spill response; and 3) allow for the discussion of Oil Spill response coordination successes and areas for improvement.

IX. CONFIDENTIALITY AGREEMENT

A. Non-Waiver

When sharing information concerning a particular Spill incident in furtherance of agency collaboration and coordination pursuant to this response MOU, the Parties do not waive any privilege, protection, immunity or other basis for confidentiality that otherwise applies to the information.

B. Confidentiality:

If the Parties exchange any information with each other that either agency claims is privileged, protected, confidential business information, exempt from disclosure to the public, or subject to any other legal claim of confidentiality, the party sending such information shall, to the extent practicable, identify the sender and shall stamp or otherwise mark each item of such information as "privileged and confidential", provided, however, the failure of the sender to identify a document as privileged and confidential does not make this confidentiality agreement inapplicable or waive any claim of privilege or exemption. Privileged information subject to this confidentiality agreement may include, without limitation, official information, litigation or settlement plans, offers, negotiations, strategy, evidence, and claims. The party receiving such information shall take measures to ensure that the information remains confidential, including but not limited to: (a) maintaining such information in a separate file from non-privileged information; (b) restricting access to any privileged information to the receiving party's attorneys or other legal or technical employees or consultants on a need-to-know basis; (c) requiring the party's employees and consultants to maintain the confidentiality of any privileged information; (d) giving timely notice to the party who provided the information if disclosure of any privileged information is requested by any person or entity that is not a party to this MOU; and (e) asserting the appropriate protections or privilege(s) to decline any requested disclosure of any such information to any person or entity that is not a party to this MOU.

C. Disclosure by Agreement:

The Parties may disclose information to non-parties with the written permission of the authorized representative of the party who provided the information, or as required by court order or as otherwise required by law.

D. Inadvertent Disclosure:

Any inadvertent disclosure by a party that is inconsistent with this Confidentiality Agreement shall not waive the confidentiality of such information.

E. Common Interest Privilege:

The Parties agree and acknowledge that the common interest privilege and confidentiality established by this Confidentiality Agreement is held jointly by CDFW/OSPR, and as applicable, the Water Boards, and that none of them is authorized to waive unilaterally the privilege or other exemption with respect to any information shared pursuant to this Confidentiality Agreement.

F. Necessary Measures:

The Parties shall take all necessary and appropriate measures to ensure that any person who is granted access to any information shared pursuant to this Confidentiality Agreement is familiar with the terms of the Confidentiality Agreement and complies with such terms as they relate to the duties of such person.

G. Public Records Law:

The Parties agree, the State of California is subject to the California Public Records Act [Gov. Code § 6250, *et seq.*] and this Confidentiality Agreement is meant to satisfy the requirements of Government Code section 6254.5(e), which allows public agencies to share information otherwise exempt from disclosure under the California Public Records Act, to agree to treat the disclosed material as confidential, and thus, not waive any exemptions from disclosure listed in Government Code sections 6254 and 6254.7 or other similar provision of law.

H. Termination:

In the event of termination of this MOU, the provisions of the confidentiality requirements in this section shall continue to apply to all information exchanged prior to or during the pendency of this MOU. A Party shall return all copies of privileged information provided pursuant to this Confidentiality Agreement upon request by the Party that provided the information.

X. MISCELLANEOUS

- A.** This MOU may be amended by the CDFW/OSPR Administrator and the State Water Board Executive Director. Notice of any such amendment shall be made to the Regional Water Boards within thirty (30) days from the date of approval by the State Water Board.
- B.** This MOU may be terminated by the CDFW/OSPR Administrator or State Water Board Executive Director upon notice of such termination to the other Party and to the Regional Water Boards.

- C. No rights, duties, obligations, or liabilities enforceable at law are created by this MOU.
- D. Nothing in this MOU alters the statutory or regulatory authority of CDFW/OSPR or the Water Boards, or any other provision of law, nor shall anything in this MOU limit CDFW/OSPR's or the Water Boards' legal authority or responsibilities, or any current or future order, directive, permit, resolution, plan, finding, or agreement.
- E. In the event individual and severable portions of this MOU are found to be in conflict with either State or federal law, regulations or policies, and, therefore, of no effect, the MOU will remain in effect without those provisions unless the CDFW/OSPR Administrator or the State Water Board Executive Director notifies the other in writing that the entire MOU is terminated.

XI. SIGNATURES

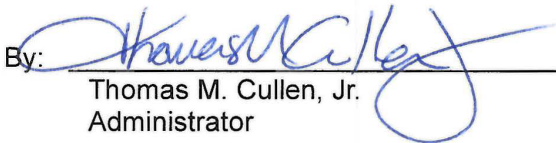
This MOU is not binding in any respect as to any Party until executed by the CDFW/OSPR Administrator and the State Water Board Executive Director. This MOU may be executed in counterparts, and all such counterparts together shall constitute one and the same MOU.

AGREED AND ACCEPTED:

Dated: December 9 2019

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
OFFICE OF SPILL PREVENTION AND RESPONSE**

By: _____


Thomas M. Cullen, Jr.
Administrator

AGREED AND ACCEPTED:

Dated: 11/19 2019

STATE WATER RESOURCES CONTROL BOARD

By: 

Eileen Sobeck
Executive Director

AGREED TO AND RATIFIED BY:

Dated: December 9 2019

REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION – REGION 1



By: _____
Matthias St. John
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: December 4 2019

**REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION – REGION 2**



Digitally signed by Michael
Montgomery
Date: 2019.12.04 09:31:26
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By:

Michael Montgomery
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: December 5 2019

REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION – REGION 3

By:



John M. Robertson
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: 12/13 2019

REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION – REGION 4

By: _____

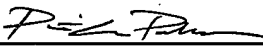


Renee Purdy
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: Jan 13 2020

REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION – REGION 5

By: 
Patrick Pulupa
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: December 12 2019

REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION – REGION 6

By:

Patty Z. Kouyoumdjian

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Executive Officer

AGREED TO AND RATIFIED BY:

Dated: Dec. 5 2019

REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION – REGION 7

By: Paula Rasmussen
Paula Rasmussen
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: November 25 2019

REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION – REGION 8



By: _____

Hope Smythe
Executive Officer

AGREED TO AND RATIFIED BY:

Dated: 10 December 2019

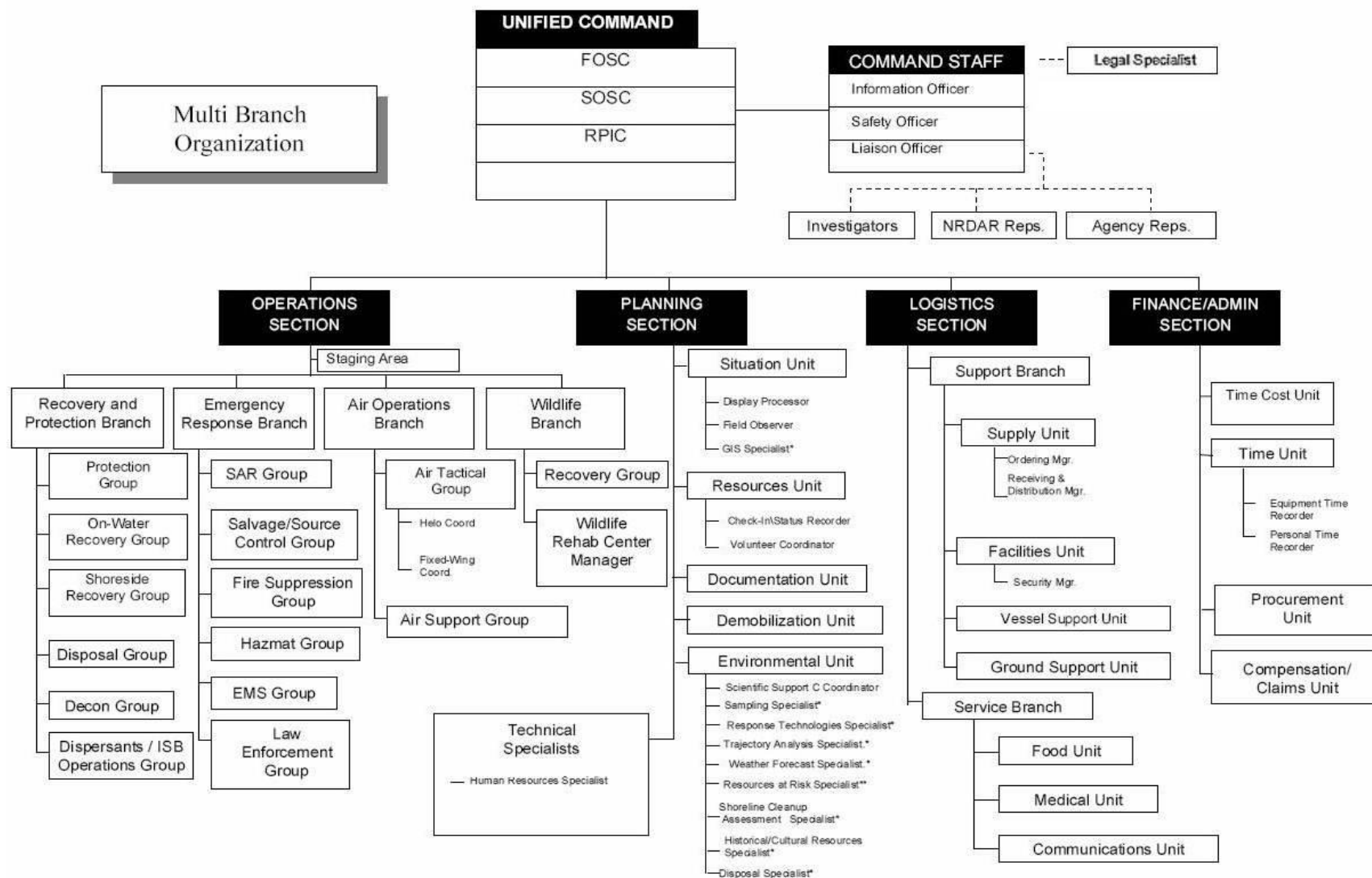
REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION – REGION 9

By: 
David W. Gibson
Executive Officer

LIST OF ACRONYMS

Cal-OES	California – Office of Emergency Services
CAO	Cleanup and Abatement Order
C.F.R.	Code of Federal Regulations
CDFW	California Department of Fish and Wildlife
EU	Environmental Unit
FOSC	Federal On-Scene Coordinator
HAZWOPER	Hazardous Waste Operations and Emergency Response Training
HSPD	Homeland Security Presidential Directive
ICS	Incident Command System
MOU	Memorandum of Understanding
NIMS	National Incident Management System
NCP	National Oil and Hazardous Substances Contingency Plan
NPDES	National Pollutant Discharge Elimination System
NRDAR	Natural Resource Damage Assessment and Restoration
OSHA	Occupational Safety and Health Administration
OSPR	Office of Spill Prevention and Response
RPIC	Responsible Party Incident Commander
SEMS	Standardized Emergency Management System
SOSC	State On-Scene Coordinator
UC	Unified Command

General ICS Organizational Structure for a Pollution Incidents



* Recommended Possible Assignment of Technical Specialists

DEFINITIONS

Active Skimming Response Area: The area of Waters of the State where skimming operations are occurring at the direction of the FOSC and/or the SOSC, through the IC or UC. [See, Response Area definition for distinction.]

Active Response Phase: The Response or Response Activity that occurs until the IC/UC is demobilized.

Administrator: The administrator for Oil Spill response appointed by the Governor. [Gov. Code § 8670.4.]

Agency Representative: The individual assigned to an incident from an assisting or cooperating agency that has been delegated full authority to make decisions on all matters affecting their agency's participation at the incident. Agency Representatives report to the Liaison Officer.

Assets: The response equipment that is inventoried and documented within the ICS and assigned to Groups, units, or teams assigned to perform specific tasks to meet the command objectives of the operational period identified in the Incident Action Plan (IAP).

Branch: The organizational level having functional and/or geographic responsibility for major incident operations. The Branch level is organizationally located between the Section and Division/Group in the Operations Section and between the Section and Units in the Logistics Section. Branches are identified by roman numerals or by functional name (e.g. service, support).

Command: The Incident Commander or UC responsible for coordinating and directing Response Activities. Command staff include a Public Information Officer, Safety Officer, and Liaison Officer who report directly to the Incident Commander.

Decanting: The discharge of Oily Water that has been separated from Oil Spill fluids recovered through skimming operations in Marine or Inland Waters.

Division: The ICS Organization level used to divide an incident into geographical areas of operation. The Division level is established when the number of resources exceeds the span-of-control of the On-Scene Coordinator and is organizationally between the Task Force/Team and the Branch.

Federal On-Scene Coordinator (FOSC): The federal official pre-designated by the U.S. EPA and USCG to coordinate responses under subpart D of the NCP [40 C.F.R., Part 300] or the government official designated to coordinate and direct removal actions.

Finance/Administration: The ICS section responsible for all financial, administrative and cost analysis aspects of the Response.

Group: The organizational level established to divide the incident into functional areas of operation. Groups are composed of resources assembled to perform a special function not necessarily within a single geographic division. An activated Group is located between Branches and Resources in the Operations Section.

Incident Action Plan (IAP): The oral or written plan containing general objectives reflecting the overall strategy for managing an incident. It may include the identification of operational resources and assignments. It may also include attachments that provide direction and important information for management of the incident during one or more operational periods.

Incident Command System (ICS): The standardized on-scene emergency management procedures and structure under SEMS/NIMS established for directing personnel, facilities, equipment, and communications during the response, containment, and cleanup of an Oil Spill. USCG and U.S. EPA “IMHs” are the governing documents for ICS structure, participation, and decision making. (See, Attachment 2: General ICS Organizational Structure for a Pollution Incident.)

Incident Management Handbook (IMH): The IMH is a handbook published by the USCG and the U.S. EPA. It provides guidance to response personnel in the use of ICS during the Response and address ICS structure, participation, and decision making.

Incident Management Team: The Incident Commander, and appropriate Command and General staff, assigned to an incident pursuant to the IMH.

Incidental Discharge: The release of oil and/or Oily Water within the Active Skimming Response Area during and attendant to Oil Spill Response Activities. Incidental Discharges shall be minimized to the fullest extent practicable and include, but are not limited to: 1) the decanting of Oily Water to the Active Skimming Response Area to conserve skimming vessel oil storage capacity and efficiency; 2) the release of small volumes of wash wastewater from on-water cleaning of response vessels, equipment, and facilities used in the response; and 3) discharges from Response Activities associated with sunken or disabled vessels that pose an imminent threat to Waters of the State.

Inland Waters: All Waters of the State other than Marine Waters, but not including groundwater.

Logistics: The ICS section responsible for providing facilities, services and materials in support of Response Activities.

Marine Waters: Those waters subject to tidal influence, and the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

National Incident Management System (NIMS): The system developed by the federal Department of Homeland Security pursuant to Homeland Security Presidential Directive/HSPD-5 to ensure that all levels of government across the nation have the capability to work efficiently and effectively together, using a national approach to domestic incident management. Pursuant to Governor’s Executive Order S-02-05, NIMS has been integrated into the State’s SEMS.

National Pollutant Discharge Elimination System Permit (NPDES Permit): Any permit issued by the State Water Board or a Regional Water Board pursuant to Water Code sections 13370 et seq., as required or authorized by the Federal Clean Water Act. [33 U.S.C. §§ 1251, et seq.]

Oily Water: The water combined with any substance, matter, or medium containing or permeated with any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

Operations: The ICS section responsible for all operations directly applicable to Response Activities.

Parties: CDFW/OSPR, the State Water Board, and Regional Water Boards who ratified this MOU.

Recoverable Oil: Oil that is in a thick enough layer on the water to be recovered by conventional techniques and equipment.

Planning: The ICS section responsible for the collection, evaluation, and dissemination of tactical information related to the incident and for the preparation and documentation of IAPs.

Resources: The personnel and major items of equipment available, or potentially available, for assignment to incident tasks on which status is maintained.

Response or Response Activities: The activities, consistent with the IMH, applicable contingency plan, an IAP or other ICS document developed for a Spill or taken at the direction of the FOSC or the SOSC, through the ICS or UC, in response to an Oil Spill or imminent threat of an Oil Spill in or on State Waters. This includes prevention, response, containment, removal, cleanup, abatement, and mitigation activities and all activities conducted on-water or onshore relating to the separation, recovery, containment, transfer, or treatment of Waters of the State contaminated by oil and/or oily materials.

Response Area: The area of Waters of the State where Response Activities are occurring as defined by the IAP approved by the FOSC and/or the SOSC Coordinator, through the ICS or UC. The Response Area may include adjacent upland areas such as beaches, shoreline, or creek banks that are contaminated and discharging or threatening to discharge Oil to the Waters of the State.

Responsible Party (RP): A “Responsible Party” means any of the following:

- ❖ The owner or transporter of oil, or a person or entity accepting responsibility for the oil.
- ❖ The owner, operator, or lessee of, or a person that charters by demise, a vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
- ❖ Any natural person or any partnership, corporation, a limited liability corporation, trust, or other type of association or entity that violates Fish and Game Code section 5650, including a local, State or Federal entity.

Sheen: A very thin layer of a petroleum product (less than 0.0002 inches or 0.005 mm) floating on the water surface. According to their thickness, sheens vary in color from rainbows, for the thicker layers, to silver/gray for thinner layers, to almost transparent for the thinnest layers.

Spill or Oil Spill: A release of any amount of oil into Waters of the State that is not authorized by a federal, state, or local government entity.

Spill Incident Type: One of five (5) Spill categories used to make decisions about resource requirements, as described in the USCG “*IMH*” (e.g.; 2014 edition, Ch. 24), ranging from a Type 1 incident (the most complex Spill requiring national resources to safely and effectively manage) to a Type 5 incident (a small Spill that can be handled by few personnel).

Spill Incident Types: 1 through 5 may generally be described as follows:

- ❖ **Type 1** - This type of incident is the most complex, requiring national resources to safely and effectively manage and operate the response. The Incident Management Team will usually exceed 1,000 personnel and there is national media interest.
- ❖ **Type 2** - This type of incident response is expected to go into multiple operational periods. The Incident Management Team does not generally exceed 500 personnel. There is multi-agency and regional media interest.
- ❖ **Type 3** - This type of incident response may extend into multiple operational periods. The Incident Management Team is between 50 and 200 personnel and Assets.
- ❖ **Type 4** - Incident Management Team comprised of less than 50 personnel and Assets. The incident is usually limited to one operational period in the control phase.
- ❖ **Type 5** - The incident can be handled with up to six personnel. The incident is contained within the first operational period and often within an hour to a few hours after resources arrive on scene.

Standardized Emergency Management System (SEMS): The statewide system established pursuant to Government Code section 8607, subdivision (a). All State agencies are required to use SEMS to manage emergency operations involving multiple jurisdictions and agencies. SEMS incorporates the functions and principles of ICS, NIMS, Mutual Aid Agreements, the operational area concept, and multi-agency or inter-agency coordination.

Technical Specialist: The personnel with special skills who can be used anywhere within the ICS organization. Technical Specialists may function within the Planning Section or can be assigned wherever their services are required. Technical Specialists may help resolve technical issues within an area of expertise and provide findings to decision makers.

Unified Command (UC): The application of ICS used when there is more than one agency with incident jurisdiction or when incidents cross political jurisdictions. Agencies work in conjunction with another through the designated members of the UC to establish a common set of objectives and strategies and a single IAP. Under the NCP, UC includes the FOSC, SOSC, and an RP Incident Commander. A local government on-scene coordinator may also be included, as appropriate. (See Attachment 2: General ICS Organizational Structure for a Pollution Incident.)

Waste Discharge Requirements: The requirements issued by the State Water Board or Regional Water Boards, pursuant to Water Code section 13260, et seq., regulating the discharge of waste that could affect Waters of the State.

Waters of the State: For the purpose of this MOU, is any surface water (including saline waters, marine waters, and freshwaters) within the boundaries of the State but does not include groundwater. [Gov. Code § 8670.]