MEMORANDUM OF AGREEMENT
ON
OIL POLLUTION PREVENTION AND RESPONSE
BETWEEN
THE COMMANDER, THIRTEENTH COAST GUARD DISTRICT
AND
THE STATE OF WASHINGTON

WHEREAS, Congress enacted the Oil Pollution Act of 1990 (OPA 90), supplementing existing Federal statutes, to enhance protection of the waters and shorelines of the United States from oil pollution, to improve planning for and conducting of effective and immediate response in the event of an oil spill, and to ensure responsible parties are liable for and able to provide compensation for harm caused by oil spills; and

WHEREAS, in a number of enactments, including OPA 90, Congress chose not to preempt the various States from adopting certain laws to protect waters within their jurisdiction from oil pollution, concurrent with regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, the State of Washington has enacted oil and hazardous substance spill prevention, preparedness and response laws (codified in chapters 88.40, 88.46, 90.48 and 90.56 of the Revised Code of Washington), hereinafter referred to as the Washington Laws, to protect the waters of the State from oil pollution through prevention of and response to spills, and to plan for effective and immediate response, removal, abatement, and cleanup in the event of an oil spill or substantial threat of an oil spill; and

WHEREAS, the Director of Ecology, subject to direction from the Governor, has the primary State authority to administer and implement the Washington Laws regarding the prevention and investigation of any oil discharge or substantial threat of a discharge; and to coordinate with the U.S. Coast Guard removal, abatement, response, containment and cleanup efforts of any oil spill in State waters as State On Scene Coordinator (SOSC); and

WHEREAS, the Commander, Thirteenth Coast Guard District is the senior Coast Guard officer within the State of Washington, and the Coast Guard is the Federal authority under the Oil Pollution Act of 1990 and other Federal laws with respect to oil spill prevention, pollution planning and response in waters subject to the jurisdiction of the United States in and outside the State of Washington for matters including, but not limited to, vessel design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, manning, and casualty reporting; and

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

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

WHEREAS, the Parties recognize that cooperation between them in the implementation and exercise of their respective statutory and regulatory authority is essential to ensure effectiveness and minimize duplication of effort; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner, the effect will be an enhanced oil spill prevention and response effort in the State of Washington.

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

I
PARTIES

The Parties to this Memorandum of Agreement are the Thirteenth U.S. Coast Guard District ("Coast Guard") and the State of Washington ("State").

II
PURPOSE OF THE AGREEMENT

The purpose of this Memorandum of Agreement (MOA) is to recognize each Party's respective authorities and roles regarding oil spill prevention, preparedness, and response, and to provide means to achieve a coordinated and efficient working relationship so as to avoid conflict and minimize duplication of effort. The scope of the MOA applies to all oil spill incidents, including substantial threats of an oil spill, on the navigable waters of the United States which are within or may impact the State waters of Washington; 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 applicable Federal and State law.

State Waters: For purposes of this MOA, the term "State waters" shall mean those navigable waters of the United States which lie within the jurisdiction of the State of Washington and over which the Coast Guard has concurrent Federal authority for oil spill prevention and response.

Vessel: The term "vessel(s)" shall mean all tank ships and tank barges, and commercial non-tank ships of 300 gross tons or more. This definition is not intended to limit actions of the Parties under this Agreement relative to smaller vessels where such actions are required under applicable statute to ensure the protection of State waters from pollution.

Facility: The term "facility(ies)" shall mean any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near State waters that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing or transporting oil in bulk. A facility does not include any: railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of the State; underground storage tank; motor vehicle

motor fuel outlet; exempt agricultural activity; or marine fuel outlet that only dispenses fuel to vessels with a fuel capacity of less than 250 barrels. This definition is not intended to limit actions of the Parties under this Agreement relative to other oil-handling activities where such actions are required under applicable statute to ensure the protection of State waters from pollution.

Near Miss: The term "near miss(es)" shall mean an incident where a person or persons successfully takes action of a non-routine nature on a vessel or at a facility to avoid an accident, or harm to public health and safety or the environment.

IV
INFORMATION SHARING

The exchange of information between the Parties relative to historic pollution events and current risks is necessary to evaluate and enhance appropriate prevention and response systems. Both Parties maintain information systems that capture both historical and real-time data. Each Party requires credible data for both long-term risk management decisions and to make accurate and timely decisions to prevent and/or respond to oil pollution. Therefore, the Parties agree to share data generated to support their respective risk management programs. Oil spill risk data will be shared in a manner that conserves agency resources, promotes workforce efficiencies, and provides accessibility to both Parties subject to the requirements of applicable law, regulation, and policy. The Parties will develop a protocol to govern access to and use of each other's data.

A. The Coast Guard agrees to share with the State of Washington information concerning the following types of incidents occurring in State waters, or that may impact State waters: vessel propulsion and/or steering losses, vessel collisions and allisions, vessel groundings, and vessel or facility fires and explosions, vessel structural failures, near misses and other incidents resulting in an oil spill, or that pose a substantial threat of an oil spill, or a substantial threat to the public health and safety.

B. 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.

C. The Parties agree to coordinate media relations for events in which both parties are involved so as to avoid conflicts that create public confusion; otherwise each will refer the media to the other party for information under that party's purview.

V
PREVENTION OF OIL SPILLS

A. Cooperative Implementation: To the extent permitted under applicable laws, the Parties agree to identify opportunities for innovative coordination of vessel and facility oil spill prevention programs, policies, and procedures. Both Parties recognize the importance of encouraging inter-agency familiarization and cross-training and agree to identify and optimize opportunities to train and work together.

B. State augmentation of Coast Guard Oil Spill Prevention Programs: The Parties agree to form an interagency task force to evaluate areas in which State inspection resources can augment certain Coast Guard oil spill prevention programs.

C. Vessel Inspections: The Parties acknowledge their common interest in managing and reducing the risks posed by substandard vessel operations and shipping practices. To better leverage limited resources, the Parties will develop a protocol that identifies inspection activities for which State augmentation is most appropriate and not in conflict with Federal law or regulation. The protocol will also address the comparison and coordination of screening tools, coordination of inspection activities, sharing of inspection information when appropriate, and the sharing of deficiency information, in particular situations or circumstances involving a vessel's condition or equipment that may significantly increase the potential for unauthorized oil discharge or create an unusual or unacceptable risk to public health and safety or the environment.

D. Oil Transfer Operations: Monitoring oil transfer operations is an effective pollution prevention measure. The Parties agree to develop a protocol for oil transfer monitoring coordination.

1. The Parties will coordinate to monitor oil transfer operations, including, but not limited to, dockside transfers at facilities, and lightering and bunkering operations. During oil transfer operations, pollution prevention and pollution response equipment may be examined. The Parties agree to coordinate scheduling of oil transfer monitoring operations to avoid redundant oversight and minimize disruptions to industry. Each Party will advise the other of violations observed.

2. The Parties agree to make oil transfer monitoring records available to each other and to cooperatively review monitoring results, subject to applicable laws, regulations, and procedures.

E. Facility Inspections: Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and response regulations. The State has statutory responsibility for both offshore and onshore facilities and their operation within the State. Included in this responsibility is the requirement to establish regulations and inspection programs governing oil transfers at facilities. This includes regulation and inspection of oil transfer operations between facilities and tank vessels. The Parties agree to develop a protocol to coordinate their respective facility inspection programs.

1. 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 when appropriate.

2. Ecology will promptly inform the cognizant MSO, and the Coast Guard will promptly inform Ecology, of any situation or circumstance relative to facilities on or near State waters 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, and/or the environment.

F. Public Information/Education: The Parties agree that public education in the area of pollution prevention, which includes oil, hazardous substances, garbage, and sewage is a high priority and that they will jointly and independently seek opportunities to conduct pollution prevention public awareness and education programs. Public information and education will be cooperatively developed and implemented targeting marinas, small oil transfer facilities, small fishing vessels, and recreational vessels to reduce pollution from oil, hazardous substances, garbage, and sewage. Existing groups with a focus on preventing pollution from small vessels and facilities will be utilized to the maximum extent possible.

G. Harbor Safety Committees: The Parties recognize that harbor safety committees and similar stakeholder groups provide a forum for the exchange of information, for the capture and promotion of best industry practices and standards of care, and for development of recommendations to the Coast

Guard and the State for rulemaking consideration with respect to improving marine safety and environmental protection. The Parties agree to promote the establishment of harbor safety committees for appropriate areas within State waters. The Parties further agree to participate in those committees to the extent permitted by law, regulation, and policy.

H. Risk Management Planning: The Parties recognize that the best means of pollution prevention is to ensure that systems used to transport, process, store, and handle oil and hazardous materials are as safe and effective as possible. To this end, the Parties agree to jointly sponsor forums, evaluations, and studies to identify safety and pollution risks, specific mitigation measures, and implementation authority and schedules, to the extent allowed by their respective laws, regulations, and resources.

VI
PREPAREDNESS FOR OIL SPILLS

The National Contingency Plan (NCP) establishes the response organization within the United States and requires tiered contingency planning efforts. The Northwest Area Contingency Plan (NWACP) is the primary guidance document for responses in Washington State waters.

A. Planning Documents

1. National Oil and Hazardous Substances Pollution Contingency Plan ("National Contingency Plan - NCP"): The Environmental Protection Agency (EPA) is the lead agency in drafting, and the Coast Guard and EPA are jointly responsible for implementing, the NCP which governs actions concerning spill response and cleanup for Federal, State, local agencies, responsible parties, clean-up contractors and others participating in such actions in United States waters.

The State will work with the Coast Guard to ensure State plans and policies for marine environmental protection are consistent with the NCP.

2. Northwest Area Contingency Plan (NWACP): 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; describe procedures for the use of alternative technologies; and describe how the Area Contingency Plan integrates with other plans. Through the Area Contingency Plans, municipal and county governments are also included in oil spill response planning. The objective is to create consistency between the local, State, and national contingency plans.

a. The Parties agree to consult with each other to enhance contingency planning and to ensure that the NWACP and NCP are consonant and uniform, subject to the requirements of existing law.

b. The Parties agree to continue working to resolve alternative technology spill mitigation/remediation issues, including use of dispersants and in-situ burning.

3. Facility Oil Spill Response/Contingency Plans: Facility 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 with the Department of

Transportation (DOT), Minerals Management Service (MMS), and the Environmental Protection Agency (EPA) in assessing facility contingency plans.

a. Subject to the requirements of applicable law, regulations and policy, the Parties agree to develop a protocol to enhance the coordinated review and approval of facility contingency plans.

b. The Coast Guard and the State will cooperate to ensure that requirements for facility contingency plans are compatible. The Parties will work together to determine the feasibility of the Coast Guard accepting State review and approval of facility contingency plans, subject to Coast Guard oversight.

4. Vessel Oil Spill Response/Contingency Plans: Vessel Plans are required by both Federal and State law. These plans describe vessel capabilities to prevent and respond to pollution emergencies. The Parties will cooperate to ensure that requirements for vessel contingency plans are compatible and do not conflict.

B. Government Committees

The National Contingency Plan directs the organization of government committees to prevent and respond to pollution emergencies.

1. Regional Response Team (RRT): The Region X - Regional Response Team is established as a coordinating committee by the NCP and includes the State along with the Federal agencies that have pollution prevention and response responsibilities.

The Parties agree to jointly participate as members of the RRT. RRT participation includes both attending regularly scheduled meetings and responding during incident-specific RRT activation.

2. Northwest Area Committee (NWAC): Area Committees were established by OPA 90 to maximize State and local participation in contingency planning.

The Parties agree to coordinate local response planning by jointly participating in the Northwest Area Committee planning process. Both Parties are strongly committed to participating in NWACP development and in conducting exercises and drills, consistent with the provisions of the NCP and the NWACP.

3. Canada/United States Pact (CANUSPAC) Joint Response Team: The CANUSPAC Joint Response Team is established in accordance with the NCP to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Canada in the Pacific Northwest.

The State will participate with the Coast Guard in the development and maintenance of plans and standard operating procedures for coordinating pollution response in the waterways shared with Canada. During an incident-specific activation or exercise of the CANUSPAC Joint Response Team, the State will be represented by the State On-Scene Coordinator.

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, familiar working relationship during oil spill incidents.

1. The Parties agree to develop a protocol to govern the planning, scheduling, design, conduct, and evaluation of exercises through the Northwest Area Committee process. In this context, the Parties recognize the role of the National Strike Force Coordination Center, as the focal point for exercise strategy for all elements of the National Response System, in scheduling, designing, executing, evaluating, and providing feedback on all National Response System PREP exercises in conjunction with the appropriate RRT and Area Committees.

2. The Parties agree to make available, as time and resources permit, any published reports as required by OPA 90 and State statutes concerning evaluations of drills and recommended changes to the NCP and NWACP.

D. Certification of Oil Spill Removal Organizations: Both Parties evaluate, categorize, and certify oil spill removal organizations in accordance with their respective laws and regulations and will cooperate to the maximum extent practicable in doing so.

VII
RESPONSE TO OIL SPILLS

Federal law established the Coast Guard as the primary Federal agency tasked with responding to oil spills on the navigable waters of the United States. In such cases, the Federal On Scene Coordinator (FOSC) is the pre-designated official responsible for directing response actions. The FOSC may direct or monitor all Federal, State, and private actions in response to an oil spill or a potential oil spill in State waters. The Parties will respond to marine oil spills as required by and in accordance with the National Contingency Plan (NCP) and the Northwest Area Contingency Plan (NWACP). State law established Ecology as the primary State agency tasked with responding to oil spills on State waters.

A. Notification: The Parties agree to provide the earliest possible notification of discharges of oil and hazardous substances and imminent threats of such discharges, consistent with the overriding need to take effective initial incident response actions. Notification shall be in accordance with applicable law, regulations and policies, including the NCP and the NWACP. In order to provide a single point of contact for the FOSC in the event of a marine oil spill, the Washington Military Department's Division of Emergency Management will serve as the State point of contact.

B. Incident Command System (ICS)/Unified Command (UC): The Incident Command System/Unified Command Structure establishes functional responsibilities, lines of communication, information sharing, and control for the conduct of an oil spill response operation.

1. The Parties agree to work together within the framework of their respective authorities to ensure a coordinated, efficient, and effective effort in response to oil spills.

2. The Parties agree to implement ICS/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, avoid duplication, and take advantage of resource availability. The FOSC may request the State to undertake response actions on a case-by-case basis.

3. Response Decisions: The FOSC will coordinate with the SOSC in decision-making related to the conduct of oil spill response operations including, but not limited to: salvage, lightering, safe haven and other matters affecting the discharge of spilled oil, its containment or its cleanup in accordance with the NCP and the NWACP.

4. The Parties agree to use the appropriate and necessary elements and processes within the ICS Field Operations Guide (FOG) to form and administer the response management team for response operations in accordance with the NCP and the NWACP.

C. Natural Resource Protection: Both Parties recognize the importance of protecting and preserving natural resources in responding to an oil spill. Both Parties agree that incident specific response strategies and procedures will be established through the ICS/UC, in accordance with applicable laws, regulations, policies, and procedures. The NWACP and associated Geographic Response Plans (GRPs) will be used as the primary guidance documents regarding resource protection.

D. Response Monitoring and Technology: Both Parties agree that the methods used to clean up oil and oily debris shall be in accordance with the principles of the NCP and the NWACP and to the degree determined by the incident specific ICS/UC recognizing that in the ICS/UC, the Parties do not abdicate authority, responsibility, or accountability.

1. Both Parties agree to provide timely input and recommendations to the Unified Command through the ICS, on dispersant usage, in-situ burning, bioremediation, and other non-mechanical cleanup technologies consistent with NWACP protocols.

2. Both Parties agree that decisions to discontinue clean up operations and demobilize response activities shall be made by the FOSC through the ICS/UC in accordance with the NCP and the NWACP. The State retains the right to undertake removal, remedial or mitigating actions beyond the response actions required by the FOSC.

E. ICS Training: Both Parties acknowledge the necessity for increased and ongoing training in ICS procedures to maintain a qualified pool of response personnel.

1. Both Parties agree to establish training criteria appropriate to their agencies.

2. Both Parties agree to pursue joint training opportunities and instruction.

F. Federal and State Oil Spill Response Funding: Access to the Federal Oil Spill Liability Trust Fund and the State Oil Spill Response Fund shall be in accordance with the detailed procedures outlined in the NWACP and other applicable directives.

VIII
INVESTIGATIONS AND ENFORCEMENT

The Coast Guard, under Federal law, and the State, under Washington law, are required to investigate oil spills, and incidents posing substantial threat of an oil spill, to establish cause for remedial action and to support both civil and criminal enforcement. Each Party's investigation also supports data collection and analysis to further enhance marine safety and spill prevention. Therefore, the Parties agree to develop a protocol to better coordinate investigations.

A. Subject to the requirements and limitations of applicable State and Federal law, the Parties agree to cooperate in marine casualty investigations and pollution investigations including, but not limited to, the timely sharing of information.

1. The Parties agree to collaborate as appropriate on investigations of oil spills and other vessel and facility incidents of mutual interest that affect State waters to make best use of limited resources.

2. Each Party recognizes the importance of developing "lessons learned" from investigations of vessel and facility incidents, and recognizes the importance of developing these lessons through collaborative information gathering and analysis.

B. Enforcement action undertaken by each of the Parties must occur independently in accordance with applicable laws and regulations. The Parties agree to inform each other of intended enforcement actions in significant cases of mutual interest.

IX
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. The Commandant of the Coast Guard has the authority to promulgate such regulations. The Commander, Thirteenth Coast Guard District, and the respective Coast Guard Captains of the Port have limited authority to promulgate local regulations. Acting under its inherent regulatory authority and under authority not preempted by Federal law, the State has the authority to promulgate regulations concerning oil spill prevention which do not conflict with, and which are not otherwise preempted, by Federal law. Each party must exercise its own rulemaking responsibilities independently and in accordance with applicable procedures, however, it is the intention of the parties to maintain close communications to avoid regulatory conflicts.

1. The Parties agree to avoid conflicts and inconsistent regulation in rulemaking wherever possible, subject to applicable procedural rules.

2. In addition to the respective Federal and State procedures for announcing the opportunity to comment on proposed 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. Refueling, Bunkering and 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 law and regulations, the State may issue its own regulations relating to these same operations.

X
AGREEMENT

A. This agreement represents a voluntary understanding between the Thirteenth Coast Guard District and the State of Washington.

B. No rights, duties, obligations, or liabilities enforceable by law are created by this agreement.

C. No action based upon this agreement may be brought against the United States or the State of Washington by any person.

D. 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 Washington.

E. In the event that individual and severable portions of this agreement are found to be in conflict with either Federal or State 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.

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

G. Points of Contact:

For the Coast Guard	For the State
Commander (m)	Program Manager, Spills Program
Thirteenth Coast Guard District	Department of Ecology
915 Second Avenue	PO Box 47600
Seattle, WA 98174-1067	Olympia, WA 98504-7600
(206) 220-7210	(360) 407-7450

H. Protocols: Responsibility and authority for developing and implementing protocols to this agreement is hereby delegated to the Chief of the Thirteenth Coast Guard District Marine Safety Division and the Ecology Spill Prevention, Preparedness, and Response Program Manager.

I. Termination: The agreement may be terminated by either party at any time without notice to any person other than the other party.

J. This MOA is effective upon signature and supercedes the MOA signed on April 24, 1995.

FOR THE STATE OF WASHINGTON:

GARY LOCKE
Governor
State of Washington

May 25, 2001

FOR THE UNITED STATES COAST GUARD:

ERROLL M. BROWN
Rear Admiral, USCG
Commander,
Thirteenth Coast Guard District

May 25, 2001