

**MEMORANDUM OF AGREEMENT
ON
POLLUTION PREVENTION AND RESPONSE
BETWEEN
THE EIGHTH COAST GUARD DISTRICT
AND
THE TEXAS GENERAL LAND OFFICE**

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

WHEREAS, Congress 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 pollution, which matters are also subject to regulation by the Coast Guard under OPA 90 and other statutes; and

WHEREAS, Congress explicitly provided that the provisions of OPA 90 do not: (1) preempt or affect the authority of any state to impose additional liability or requirements respecting discharges of oil within a state or removal activities in connection with such discharges; (2) affect the authority of any state to establish or continue a fund, any purpose of which is to pay for costs or damages from oil pollution or the substantial threat of oil pollution, or to require any person to contribute to such a fund; or (3) affect the authority of any state to impose a fine or penalty for violation of state law relating to a discharge; and

WHEREAS, the Oil Spill Prevention and Response Act of 1991 (Chapter 40, Texas Natural Resources Code) (OSPRA) designates the Texas General Land Office (TGLO) as the state's lead agency in preventing and responding to coastal oil spills, and OSPRA is to support and complement OPA 90 and be interpreted and implemented in a manner consistent with other federal law; and

WHEREAS, the National Contingency Plan (NCP) for cleanup of oil and hazardous substance spills and discharges includes provisions relating to responsibilities of state agencies that have been designated as natural resource trustees, and the TGLO has been designated as one of the three state trustees for damage assessment and restoration of the state's natural resources which may be affected by a spill, discharge or release of oil; and

WHEREAS, the Commander, Eighth Coast Guard District is the senior Coast Guard officer exercising federal authority within the State of Texas under OPA 90 and other federal laws with respect to pollution planning and response in waters subject to the jurisdiction of the United States, in and outside the State of Texas, and matters dealing with areas of vessel manning and safety equipment; and

WHEREAS, oil spills occurring in the coastal environment require a rapid, efficient, and coordinated response and cleanup by federal, state, and local agencies as well as from private entities to minimize the deleterious effects on people living in the coastal area, wildlife, and other natural resources; and

WHEREAS, the Coast Guard and TGLO recognize the critical roles each has within its respective areas of authority in preventing pollution and in planning for and responding to spills; and

WHEREAS, the Coast Guard and TGLO recognize that cooperation between them in the implementation and exercise of their respective statutory and regulatory authorities is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the Coast Guard and TGLO believe and intend that by acting in a cooperative and coordinated manner, the effect will be an enhanced pollution prevention and response effort in the State of Texas;

NOW, THEREFORE, the Coast Guard and TGLO agree, to the extent permitted by law, and as 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 pollution prevention and response.

I.

PARTIES

The Parties to this Memorandum of Agreement (MOA) are the Eighth Coast Guard District ("Coast Guard") and the TGLO.

II.

PURPOSE OF THE AGREEMENT

The purpose of this MOA is to ensure the Parties exercise their respective authorities regarding pollution prevention, planning, and response in a manner that avoids unnecessary duplication and conflict and ensures best achievable protection from the impact of pollution incidents in the navigable waters of the United States which are also within or may impact the coastal waters of the State of Texas. This MOA is 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 MOA shall have the meaning as set forth in federal law and applicable state law.

A. Specific Definitions

1. **AREA CONTINGENCY PLAN (ACP)** – A plan prepared by the area committee to conduct coordinated responses to oil and hazardous material incidents in specific locations, taking into account unique environmental, sociological and economic concerns. Area committees are comprised of qualified personnel from federal, state, and local agencies.
2. **CAPTAIN OF THE PORT (COTP)** – COTP's and their representatives enforce within their respective areas port safety and security and marine environmental protection regulations including, without limitation, regulations for the protection and security of vessels, harbors, and waterfront facilities; anchorages; security of vessels; waterfront facilities; security zones; safety zones; regulated navigation areas; deepwater ports; water pollution; and port and waterways safety.
3. **COASTAL PROTECTION FUND** – The fund established under OSPRA to be used by the Commissioner of the TGLO for carrying out the purposes of OSPRA.
4. **COASTAL WATERS** – The waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.
5. **DISCHARGE** – Any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil into coastal or offshore waters, including the substantial threat of any of these actions that may cause oil to be discharged into coastal or offshore waters. Discharges authorized or permitted by a state or federal permit are excluded from this definition.
6. **FACILITY** – Any pipeline, structure, equipment, or device used for handling oil, including, but not limited to: underground and aboveground tanks; impoundments; mobile or portable drilling or workover rigs and barge-mounted drilling or workover rigs operating in coastal waters; motor vehicles and rolling stock; portable fueling facilities located offshore or adjacent to coastal waters; or any place where a discharge of oil from the facility could enter or pose an imminent threat to coastal and offshore

waters. Mobile or portable units, other than vessels, generally are considered facilities only when they are fixed in location and operating in coastal waters.

7. **FEDERAL ON-SCENE COORDINATOR (FOSC)** – The federal official predesignated by the Environmental Protection Agency (EPA) or the Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal actions under subpart E, of the NCP.
8. **NAVIGABLE WATERS** – Means:
 - a. territorial seas of the United States;
 - b. internal waters of the United States that are subject to tidal influence; and
 - c. internal waters of the United States not subject to tidal influence that:
 - i. are or have been used or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or manmade obstructions that require portage; or
 - ii. a governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, highway for substantial interstate or foreign commerce; and
 - d. all other waters over which the federal government may exercise constitutional authority.
9. **OIL SPILL LIABILITY TRUST FUND** – The fund established by Section 9509 of the Internal Revenue Code of 1986 and amended by OPA 90.
10. **OIL SPILL PREVENTION AND RESPONSE ACT (OSPRA)** – Subtitle C, Title II, Texas Natural Resources Code, Chapter 40.
11. **OIL POLLUTION ACT OF 1990 (OPA 90)** – Public Law 101-380 as passed by the 101st Congress.

12. **POLLUTION** – An alteration of the physical, chemical, thermal, or biological quality of, or the contamination of, any surface or subsurface water, or the land adjacent to or submerged under the water, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.
13. **PREPAREDNESS FOR RESPONSE EXERCISE PROGRAM (PREP)** – The national program established under Section 4202(a) of OPA 90 to develop a mechanism for compliance with exercise and drill requirements of the Coast Guard, (EPA), Department of Transportation (DOT), and Minerals Management Service (MMS).
14. **PREVENTION** – Operational or mechanical measures taken in advance to minimize the risk of a discharge.
15. **REGIONAL RESPONSE TEAM (RRT)** – The EPA Region VI multi-agency team established to assist the FOSC with technical advice and planning for oil and hazardous substances discharges. This team also approves, on a case-by-case basis, use of biological and chemical agents as spill response tools.
16. **SHORELINE CLEANUP ASSESSMENT TEAM (SCAT)** – The mission of this team is to conduct interagency assessments of the geological and biological impact of oil spills on coastal environments in order to establish rapid concurrence on the most effective and environmentally safe cleanup methods. Its mission is to facilitate a productive and cooperative work effort aimed at mapping the distribution of spilled oil, identifying interagency coastal resource concerns and recommendations, and developing a recommended cleanup strategy based on interagency concurrence.
17. **STATE COASTAL DISCHARGE CONTINGENCY PLAN** – The contingency plan mandated by OSPRA and contained within the State of Texas Oil Spill Contingency Plan. The State of Texas Oil Spill Contingency Plan is designed to strengthen and improve the response mechanism for discharges or spills of oil within the territorial limits of the state. Primary emphasis has been placed on spills which require immediate removal actions under the state's supervision in accordance with OSPRA and OPA 90.
18. **STATE ON-SCENE COORDINATOR (SOSC)** – The state official designated by OSPRA to coordinate and direct removal actions.
19. **STATE WATERS** – Those navigable waters of the United States which lie within the jurisdiction of the State of Texas and over which the Coast Guard has concurrent federal authority for oil spill response. Federal regulations designate the Coast Guard as the FOSC within the Texas coastal zone while the EPA is the FOSC for oil spills within

the inland zone. The jurisdictional boundary between the zones is specified in the EPA's Region VI Regional Response Team Contingency Plan.

20. UNIFIED COMMAND – The method designated by the NCP for all agencies or individuals who have jurisdictional responsibility, and in some cases those who have functional responsibility at the incident, to contribute to a determination of the overall objectives of responding to the incident and selecting a strategy to achieve those objectives.

IV.

INFORMATION SHARING

The exchange of information between the Parties relative to historic pollution events and current risks is necessary to develop appropriate prevention and response systems. The Parties maintain information systems that are relevant to both historical and real-time incidents. The Parties require the fullest degree of information sharing from available and pertinent data bases to make accurate and timely decisions to prevent and/or respond to pollution or threats of pollution. The Parties will transmit information to each other in accordance with procedures adopted for that purpose.

- A. **Action:** The Parties agree, subject to limitations imposed by applicable law and regulations, to share information to the maximum extent possible.
- B. **Action:** The Coast Guard COTP's will inform the TGLO as soon as possible—by calling the 24-hour spill reporting number (800/832-8224) or the appropriate regional office—of the following incidents if they affect or threaten to impact state waters: disablings, collisions, groundings, explosions, rammings, allisions, distressed vessels, and other events involving facilities, pipelines, platforms, and rolling stock when oil pollution or the substantial threat of oil pollution results. If the TGLO learns of an incident before the Coast Guard, the TGLO will ensure that its emergency notification systems report these incidents to the appropriate COTP.
- C. **Action:** The Parties agree to identify and share existing data bases, including the Coast Guard's Marine Safety Information System (MSIS), and the TGLO Oil Spill Data System (OSDS) and work toward developing risk management programs that provide risk data-sharing for vessels and facilities and 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. The TGLO agrees that requests for the above information will come from the TGLO's Austin headquarters. The TGLO's Austin headquarters will serve as the Coast Guard's point of contact for transfer of information and requests for information.

V.

POLLUTION RESPONSE PREPAREDNESS

The NCP establishes the response organization within the United States and requires tiered contingency planning efforts. The TGLO, consistent with the NCP, defines its response organization through the State Emergency Management Plan and annexes.

A. Planning Documents

The following planning documents are critical for successfully preventing and responding to oil spills. The Parties will cooperate to the maximum extent possible in preparing the plans and amending them when necessary.

1. NCP

The Coast Guard and EPA are jointly responsible for implementing the NCP, which governs actions concerning spill response and cleanup for federal, state, and local agencies, responsible parties, clean-up contractors and others participating in such actions in United States waters. The TGLO is responsible under OSPRA for developing guidance for a coordinated and efficient response to discharges or threatened discharges of oil, outlining procedures for regional response capabilities, designating priority areas, and providing a mechanism for exercises and drills for responding to discharges.

Action: The TGLO and Coast Guard OSC's will ensure state policies for coastal environmental protection are consistent with the NCP.

2. ACP's

The Area Committees, established by the President under the authority of OPA 90, are responsible for the development of ACP's for those areas under the direction of the FOSC. The ACP's describe the responsibilities of owners, operators and federal, state, and local agencies in responding to spills or threats of spills, list equipment and personnel available to respond, describe response procedures, and describe how the ACP integrates with other plans. The TGLO will serve on each Area Plan Executive Steering Committee to ensure state planning priorities are incorporated into the ACP.

a. **Action:** The Parties agree to consult with each other to enhance contingency planning and to ensure that the ACP's are user friendly and electronically available on the Internet.

b. **Action:** The Parties agree to work toward the creation of a single ACP for Texas with regional-specific annexes. The Parties also agree to schedule an

annual meeting of all three ACP Executive Steering Groups.

3. Facility Response Plans (FRP's)

FRP's, which are required by both federal law and OSPRA, describe facility capabilities to prevent and respond to oil spills. The Parties will coordinate the assessment of FRP's to the maximum extent possible. The TGLO agrees to notify the Coast Guard of discrepancies found during inspections of facilities required to have an FRP.

- a. **Action:** Subject to the requirements of applicable law, regulations and policy, the Parties will develop a system to coordinate, to the maximum extent possible, the Parties' cooperative review and approval of FRP's. The Parties will conduct reviews of FRP's in as much of a coordinated and non-duplicative manner as permitted by applicable laws, regulations, and procedures.
- b. **Action:** The Parties will cooperate to ensure that requirements for FRP's are comparable and do not conflict.
- c. **Action:** The TGLO requires response plans from some facilities that are not subject to the Coast Guard's FRP regulations. The TGLO agrees to provide inspection and spill information from these facilities to the Coast Guard upon request. The Coast Guard agrees to provide facility information to the TGLO upon request.

4. Vessel Response Plans (VRP's)

VRP's, which are required by federal law and OSPRA, describe vessel capabilities to prevent and respond to pollution emergencies.

- a. **Action:** Coast Guard approval of VRP's will normally satisfy TGLO requirements, but the TGLO may evaluate plans submitted to the TGLO by the Coast Guard to verify information in the plans. If warranted, such evaluations will be done cooperatively with the cognizant COTP. The TGLO will inform the Coast Guard of findings from these evaluations. The Parties also agree to work together in assisting a vessel operator to bring a VRP into compliance if a vessel enters a Texas port with an inadequate plan.
- b. **Action:** The TGLO requires VRP's from some vessel owners and operators that are not subject to the Coast Guard's VRP regulations. The TGLO agrees to make information on these plans available to the Coast Guard upon request.
- c. **Action:** The Parties should cooperate to ensure that requirements for VRP's are comparable to the maximum extent possible.

B. Government Committees

The NCP requires government committees to be established to prevent and respond to pollution emergencies.

1. RRT.

The EPA Region VI RRT has been established as a coordinating committee by _____ the NCP. The RRT includes the TGLO and federal agencies with pollution prevention and response responsibilities.

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

2. Area Committees

Area Committees were established by OPA 90 to maximize state and local participation in contingency planning.

Action: The Parties agree to coordinate local response planning by jointly participating in the Area Committee planning process. Both Parties are strongly committed to participating in ACP development and the use of the Area Committees in conducting exercises and drills, consistent with the provisions of the NCP and state policies.

3. The United States of America and The Republic of Mexico, Standard Operating Procedures for Joint Spill Response (JRT SOP):

The JRT SOP was established to prepare for and respond to pollution emergencies that may impact the international border area between the United States and Mexico in the Gulf of Mexico.

Action: The Coast Guard will keep the TGLO informed of and where possible provide a mechanism for participation in, all agreements, plans, and standard operating procedures developed to coordinate pollution response with Mexico. During an incident-specific mobilization, the TGLO will be notified.

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 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 at oil spill incidents.

1. **Action:** COTP's and TGLO Regional Directors agree to meet annually to plan, schedule, design, conduct and evaluate drills and exercises as provided for in the PREP. In this context, the Parties recognize the role that the National Strike Force Coordination Center, as the focal point for exercise strategy for all elements of the National Response System, will schedule, design, execute, evaluate and provide feedback on all government-led National Response System exercises in conjunction with the appropriate RRT and Area Committees.
2. **Action:** The Parties agree to inform each other of equipment-deployment exercises as soon as possible.
3. **Action:** The Parties agree to make available, as time and resources permit, any published annual reports as required by OPA 90 and OSPRA concerning evaluations of drills and recommended changes to the NCP and/or the appropriate ACP.

D. Certification of Oil Spill Response Organizations (OSRO's)

Both Parties evaluate, categorize, and certify OSRO's, and coordination of these activities is in the best interest of the Parties.

1. **Action:** Although the Parties maintain separate OSRO certification programs, they will cooperate to the maximum extent practicable to evaluate, categorize, and certify OSRO's. The Parties will conduct joint reviews of the organizations as necessary.
2. **Action:** The TGLO will accept to the maximum extent practicable the federal compliance documents for federal certification and shall prepare supplementary forms for compliance with state regulations.

VI.

PREVENTION OF OIL SPILLS

A. Bilge Water Reclamation Facilities (BWRF's)

The TGLO has constructed and maintains a series of BWRF's along the Texas Coast to provide free disposal of oily bilge water to commercial fishing and recreational boat owners.

Action: The location of BWRF's will be chosen by the TGLO in consultation with the Coast Guard. The Parties agree to work together to develop an alternative compliance procedure for operating and maintaining these facilities that will provide an equivalent level of safety and protection from oil pollution as provided by the regulations in 33 CFR Part 154 concerning transfer of oil or hazardous materials in bulk.

B. Cooperative Implementation

The Parties will coordinate their efforts to prevent oil spills in the marine environment.

Action: 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, and to identify opportunities for innovative risk-reduction measures. Both Parties recognize the importance of encouraging cross-training in each other's regulations and rules including the areas of inspection and response. Each Party must exercise its own rulemaking procedures. The TGLO acknowledges that federal inspection requirements associated with vessel safety are not subject to supplemental state regulation.

C. Vessel Inspections

Each Party recognizes that the other must independently exercise its respective inspection responsibilities in accordance with applicable law, regulations, and policies. The Coast Guard conducts inspection programs for the purpose of enforcing international agreements and domestic law aboard United States and foreign-flagged vessels. The TGLO has the authority to conduct vessel inspections to determine discharge prevention and response capabilities, or for any other purpose authorized by OSPRA.

1. **Action:** The Parties agree to work together to avoid inconsistent requirements and to find ways to conduct vessel inspections so disruption to the industry is minimized and efficiency and safety maximized.
2. **Action:** In implementing any state inspection program, the TGLO agrees to avoid conflicts and unnecessary duplication in reviewing federal inspection programs by on-going consultation with the Coast Guard.
3. **Action:** The Parties agree to make inspection records available to each other and to review inspection results cooperatively, subject to applicable laws, regulations, and procedures.
4. **Action:** The TGLO will report to the responsible Officer in Charge, Marine Inspections (OCMI) discrepancies in meeting the requirements of international agreements for United States and foreign-flagged vessels.

5. **Action:** For vessels operating in state waters, the Parties will cooperate to the maximum extent possible to establish consistent pollution prevention requirements, and to monitor, examine and exchange information cooperatively relative to those requirements.
6. **Action:** The TGLO will promptly inform the cognizant OCMI and the cognizant OCMI will promptly inform the TGLO 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 unacceptable risk to public health and safety, or the safety of navigation within state waters.
7. **Action:** The Parties agree to share all applicable information obtained from their respective vessel inspections and examinations to the maximum extent possible.

D. Denial of Entry and Departure

The Coast Guard, under federal law, through the District Commander and the COTP, has the authority to regulate the entry and departure of vessels, including those determined to be a threat to the environment.

Action: When the TGLO determines that a particular vessel or vessels pose a substantial risk of polluting state waters, that determination will be forwarded to the cognizant COTP. The COTP shall consider that information in making a determination under federal law as to appropriate action to be taken, if any, including the possibility of denial of entry or departure; however, that determination shall not limit the TGLO's authority under OSPRA.

E. Vessel Equipment

Both Parties conduct vessel inspections to ensure compliance with regulatory requirements for pollution prevention and pollution response equipment.

Action: The Parties will cooperatively inspect pollution prevention and pollution response equipment aboard vessels and report noncompliance to each other.

F. Vessel Transfer Operations

The Parties agree that monitoring vessel transfer operations is an effective tool for preventing pollution.

1. **Action:** The Parties will cooperate to monitor transfer operations aboard vessels, including, but not limited to, dockside transfers at facilities, and lightering and bunkering

operations. The Coast Guard, acting through the Marine Safety Offices (MSO's), and the TGLO agree to cooperate in the scheduling of monitoring vessel transfer operations to make best use of limited resources and avoid redundant oversight and disruptions to industry. Each Party will advise the other of violations observed for enforcement.

2. **Action:** The Parties will cooperatively monitor and examine pollution prevention and response equipment during transfer operations and advise each other of violations observed.
3. **Action:** The Parties agree to make transfer-monitoring records available to each other and to review monitoring results cooperatively, subject to applicable laws, regulations, and procedures.

G. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL)

MARPOL is an international agreement implemented to reduce pollution from vessels.

Action: The Parties will cooperate in the enforcement of MARPOL requirements. The Coast Guard will keep the TGLO informed of new MARPOL regulations, and both Parties will work together to develop disposal services adequate to support port operations.

H. Facility Inspections

Facility inspections are conducted by both Parties to ensure compliance with pollution prevention and response regulations.

1. **Action:** The Parties will coordinate their respective inspection and monitoring activities to the extent practicable to utilize the resources of both Parties efficiently and effectively. Inspectors representing both Parties may carry out inspections and other activities jointly where appropriate.
2. **Action:** The Parties may cooperatively enforce requirements for pollution prevention and response equipment at marine facilities.
3. **Action:** The Parties will cooperatively enforce requirements for trained and qualified personnel to be responsible for operations at marine facilities.
4. **Action:** The Parties will work together to ensure adequate facilities are available to receive garbage, sewage, and oily wastes from vessels.
5. **Action:** The Parties will promptly inform each other of any situation or circumstance not related to routine practices and operations relative to facilities whose operation or

equipment may significantly increase the potential for an unauthorized discharge or create an unusual or unacceptable risk to public health and safety, or the safety of navigation within state waters.

6. **Action:** The Parties agree to share facility inspection database information to the maximum extent possible.

I. Waterways Management

1. Port and Waterways Safety

The COTP is the predesignated federal official with primary responsibility to exercise control of vessels to ensure the safety and security of ports and waterways.

Action: The Coast Guard will inform the TGLO of proposed changes to navigation areas and the TGLO will inform the Coast Guard of any significant studies or actions that may warrant a change in navigation or a regulated navigation area.

2. Aids to Navigation (ATON)

The Coast Guard establishes, regulates, and maintains a uniform system of ATON within the United States.

Action: The TGLO will notify the Coast Guard of problems with ATON and will recommend changes or improvements to ATON for the consideration of the Coast Guard.

J. Public Information/Education

The Parties agree that public education on pollution prevention, including pollution from oil, garbage, and sewage, is a high priority, and each agency will seek opportunities to coordinate and distribute educational programs on pollution prevention and public awareness.

Action: Public information and educational materials will be developed cooperatively and distributed appropriately to target marina operations, small-oil transfer facilities, and the recreational boating community in an effort to reduce pollution from oil, garbage, and sewage.

VII.

RESPONSE

Federal law established the Coast Guard and EPA as the primary federal agencies with responsibility for responding to spills into United States waters. In such cases, the FOSC is the predesignated official responsible for response operations. The FOSC may direct or monitor the responses by federal, state, and private parties to a spill or potential spill in state waters. The Parties will respond to coastal oil spills as required by and in accordance with the NCP. The FOSC will consult with the appropriate SOSC concerning response activities

Action: The Parties agree to work together within the framework of their respective authorities to ensure a coordinated spill response with a minimum of duplication.

A. Unified Command System (UCS)

The Unified Command System (UCS) establishes lines of communication, information sharing, and control for conducting an oil spill response operation. This system ensures that notification procedures have been established and that appropriate state agencies are informed when an actual or threatened spill may impact state waters.

1. **Action:** The Parties agree to provide the earliest possible notification of discharges of oil and imminent threats of such discharges to each other in accordance with applicable law, regulations, and policies consistent with the NCP.
2. **Action:** The Parties agree to implement a UCS 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 use existing resources in a manner that avoids duplication while taking advantage of resource availability. The FOSC may request the TGLO to undertake response actions on a case-by-case basis, utilizing the UCS to determine the capability of response. If the TGLO assumes responsibility for response activity, it will conduct those activities in accordance with the NCP and the appropriate ACP, to the extent allowed by state law.
3. **Action:** The FOSC will coordinate with the TGLO in decision making relating to the conduct of oil spill response operations including, but not limited to: salvage, fire-fighting, lightering, decanting, safe haven, and other matters affecting the discharge of spilled oil and its containment, cleanup, or disposal.

4. **Action:** The TGLO agrees to provide planning information, local expertise, trajectory modeling, real-time current information, and mapping data to support the response activities within the UCS.
5. **Action:** The Parties agree to share equipment resources to the maximum extent possible during spill responses, including aircraft, vessels, command posts, remote sensing equipment, and analytical instrumentation.
6. **Action:** 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 public.
7. **Action:** The Parties agree, to the extent possible, that a joint command post will be established. Since the location of a command post is a crucial element of the response and the effectiveness of a response may hinge on where the command post is located, the Parties agree through the area planning process to designate sites in advance where it would be desirable to locate a joint command post. These sites will be identified in the appropriate area plan.

B. Natural Resource Protection

Both Parties recognize the importance of protecting and preserving natural resources in responding to a pollution event. Both Parties agree that response strategies and procedures will be established through the UCS, in accordance with applicable laws, regulations and policies, and procedures. The Coast Guard recognizes the TGLO as a designated trustee for natural resource damage assessments (NRDA) and will coordinate response activities to take the NRDA process into account.

C. Response Monitoring and Technology

The Parties agree that the methods used to clean up pollutants shall be established through the UCS. The UCS will be used to determine what type of response activity is required of the responsible party, to direct the clean up operations by the responsible party, or to decide that the responsible party should be relieved of responsibility for the clean-up operation.

1. **Action:** The Parties agree to provide timely input and recommendations to the FOSC through the UCS, to the extent practicable, on chemical countermeasures such as dispersant usage, in-situ burning, bioremediation other non-mechanical cleanup technologies.
2. **Action:** The Parties agree that decisions to discontinue clean up operations and demobilize response activities shall be made through the UCS. The TGLO retains the authority to undertake additional removal or mitigating actions beyond the response actions required by the NCP.

3. **Action:** When appropriate, the Parties agree to consider the use of SCAT and will consider the team's recommendations made through the UCS.

VIII.

ENFORCEMENT

Enforcement action by either Party may include civil and criminal penalties, and the Coast Guard can take action to revoke Coast Guard-issued merchant marine licenses and seamen's documents. Enforcement actions by either Party may preclude opportunities for future actions by the other Party.

1. **Action:** Subject to the requirements and limitations of applicable state and federal law and agency policy, the Parties agree to coordinate investigations including the timely sharing of information regarding witnesses, reports, and analyses.
2. **Action:** Although each Party can initiate independent enforcement actions, in accordance with applicable laws and regulations, the Parties agree that to the extent possible they will consult and cooperate with each other on planned enforcement actions.

IX.

RULEMAKING

A. Promulgating Regulations

OPA 90 and other federal laws provide for promulgating 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, Eighth Coast Guard District and the respective COTP's have limited authority to promulgate local regulations. Acting under regulatory authority not preempted by federal law, the TGLO has the authority to promulgate regulations concerning oil spill prevention which do not conflict with and which are not otherwise preempted by federal law. The Parties intend to maintain close communications to reduce conflict between each Party's permits, directives, and instructions.

1. **Action:** 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 coordinated pollution prevention and response. The Parties will endeavor to use their respective authorities to assure the best achievable protection for the waters of the State of Texas and the United States.

2. **Action:** In addition to the respective federal and state procedures for notice of opportunity to comment and consideration of existing or 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.
3. **Action:** To the extent allowed by federal and state law, the Parties agree to provide a mechanism for preproposal review of regulations and guidelines as they are developed. Through preproposal review, the Parties will seek to eliminate duplicative efforts and conflicting requirements. The Parties will identify rules and regulations that may be conflicting and attempt to resolve any differences.

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 TGLO may promulgate its own regulations concerning 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 state waters. The TGLO will coordinate the development of regulations with the Coast Guard to ensure new regulations will be consistent with federal spill response equipment standards.

X.

MISCELLANEOUS

This agreement represents a voluntary understanding between the Commander, Eighth Coast Guard District and the Commissioner of the Texas General Land Office.

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.

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

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

No legal action or claim based upon this agreement may be brought against the United States, U. S. Coast Guard, or the State of Texas by any person.

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 Texas.

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.

Any action to modify, amend or terminate this agreement may only be taken by the Commissioner of the Texas General Land Office or the Commander, Eighth Coast Guard District or persons to whom this authority is specifically delegated by them.

FOR THE TEXAS GENERAL LAND OFFICE

FOR THE UNITED STATES COAST
GUARD



Commissioner David Dewhurst
Texas General Land Office



Rear Admiral Paul J. Pluta
Commander, Eighth Coast Guard District

Signed: November 8, 1999