Spill of National Significance

Executive Reference Guide

SONS Communications Coordination Workgroup

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Introduction

According to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), a Spill of National Significance (SONS) is an oil spill that, "due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge."[1]

The explosion of the *Deepwater Horizon* mobile offshore drilling rig off the coast of Louisiana and ensuing loss of well control of Mississippi Canyon Well 252 tragically resulted in the loss of 11 lives and the largest, most complex oil spill response our nation has ever seen (Figure 1). This oil spill resulted in ecological, social, and economic impacts to the rich and diverse ecosystem of the Gulf of Mexico and coastlines of the five Gulf Coast states, necessitating the first declaration of a SONS in U.S. history. Reports published following this incident identified how timely, accurate, coordinated, and transparent messaging across federal agencies is critical throughout a response of this magnitude.

Understanding the applicable authorities and jurisdictions as well as the National Response System (NRS) is key to leading an effective response. The *SONS Executive Reference Guide* is intended to provide an explanation of the key aspects of a SONS response, including how it differs from a response to a natural disaster, which agencies and other parties lead the response, and how it is funded. The guide also provides several pertinent factsheets and supplemental information. This guide can be used to help inform senior government leaders in pre-planning for or the response to a SONS.

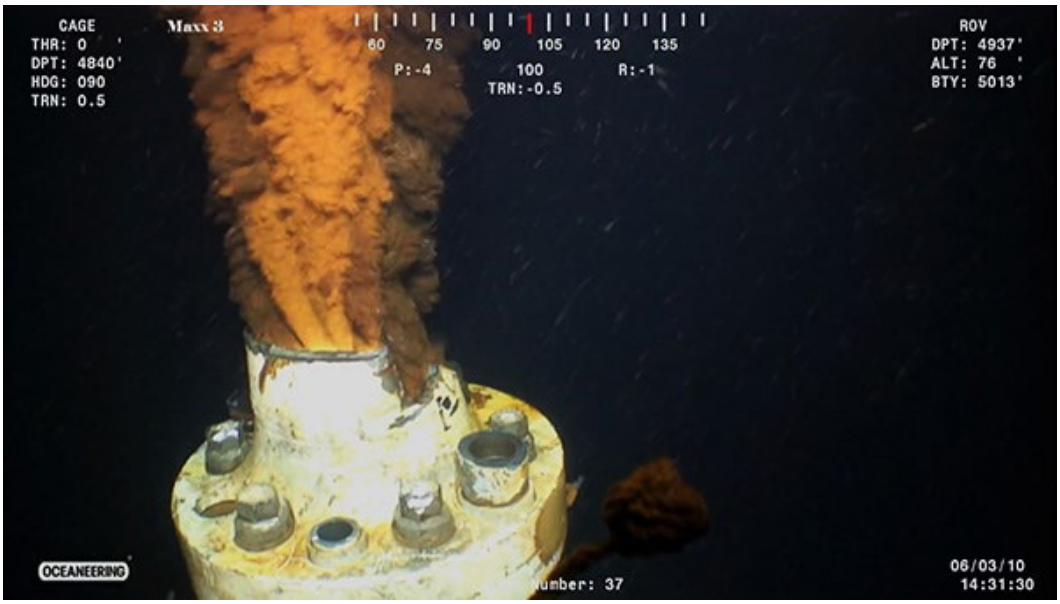

Figure 1: Oil discharging from the Macondo wellhead. Source: (DOE) www-tc.pbs.org/independentlens/blog/wp-content/uploads/2015/04/deepwater-well.jpg

[1] Source: Title 40, Code of Federal Regulations Section 300.5 (40 CFR § 300.5)

Executive Overview

A complex series of frameworks, laws, regulations, and directives govern how the U.S. Government responds to emergencies, disasters, and domestic incidents, including a **Spill of National Significance (SONS)**. A SONS is defined as an oil spill that, "due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge" (40 Code of Federal Regulations (CFR) § 300.5). This section describes the top three considerations if a SONS incident occurs in order to clarify how these interrelated governing policies and best practices come together to effect a response.

1. A SONS Response Is Handled Differently Than a Natural Disaster Response

The modernization of laws and regulations pertaining to oil spill and hazardous substance response was initiated as a result of major oil spill disasters and significant chemical incidents, including the *Torrey Canyon* and *Exxon Valdez* oil spills. In 1967, more than 37 million gallons of crude oil spilled into the waters off of the coast of England after the oil tanker *Torrey Canyon* ran aground; thousands of birds died, pristine beaches were oiled, there was significant economic impact, and the response was rebuked for coordination problems such as no clear lines of authority, no response plans, and no overall strategy. To avoid the problems faced by response officials involved in this incident, the United States developed and published the first National Oil and Hazardous Substances Pollution Contingency Plan (or NCP) in 1968. This version of the NCP provided a coordinated plan for responding to oil spills and hazardous substances releases.

Even though a version of the NCP was in place at the time of the *Exxon Valdez* 10.8 million gallon oil spill in Prince William Sound, Alaska (1989) (Figure 2), Congress responded to that spill by passing the Oil Pollution Act of 1990 (OPA 90).[2] OPA 90 significantly increased requirements for oil spill prevention and response and provided for a more robust federal response to oil spills.[2] CWA 311 gives the

Figure 2: Responder cleaning up oil from the Exxon Valdez spill. Levenson, A. (Photographer). (1989). Time Life Pictures/Getty Images.

[2] Source: 33 U.S.C. § 2701 et seq., and U.S. Coast Guard, (Sep 2011). "On-Scene Coordinator Report: *Deepwater Horizon* Oil Spill."

authority to the Federal On-Scene Coordinator (FOSC) to allow an owner, operator, or other responsible party to participate in the removal actions in accordance with the NCP. A major concept of these oil spill laws is that "the polluter pays and the polluter cleans up" during spill responses.[3] A summary of the most pertinent laws and regulations pertaining to oil spill and hazardous substance preparedness and response is listed in Table 1 below.

Table 1: A Summary of the Laws and Regulations Related to Oil and Hazardous Substance Response [4]

Regulation	Summary
Rivers and Harbors Appropriation Act (1899)	The first national environmental law prohibiting the discharge of refuse matter into the navigable waters or tributaries of the United States without a permit.
National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (first in 1968, latest amendment in 1994)	The purpose is to provide the organizational structure and procedures in preparing for and responding to discharges of oil and releases of hazardous substances. It establishes Federal On-Scene Coordinators from the Environmental Protection Agency (EPA) for the inland zone and from the Coast Guard for the coastal zone. It provides for efficient, coordinated, and effective response to a discharge or release along with national procedures for the use of dispersants and other chemicals. Codified in regulation, the NCP requires the Federal Government to direct all public and private response efforts for certain types of spills; charges Area Committees with developing detailed, location-specific Area Contingency Plans; and requires owners/operators of vessels and certain facilities to prepare their own Vessel Response Plans or Facility Response Plans.
Federal Water Pollution Control Act (FWPCA) (1972), or, the Clean Water Act (CWA) as amended in 1977 (P.L. 95-217)	The goal of this law was to restore and maintain the chemical, physical, and biological integrity of the Nations' waters, with a goal to, among other things, eliminate all discharges of pollutants into federally protected waters by the year 1985. This law prohibits the discharge of oil and hazardous substances in harmful quantities into the navigable waterways of the United States, contiguous shorelines, or the contiguous zone, or which may affect natural resources of the United States; provides federal authority to respond to oil discharges or substantial threats of discharge on the navigable waters; provides for the establishment of a National Response System and preparation of the NCP to guide private parties and federal authorities in removing a discharge; and, authorizes the withholding of a clearance or permit if any owner, operator, or person in charge of a vessel is liable or believed to be liable for a civil penalty under this law.
The Resource Conservation and Recovery Act (RCRA) (1976)	Creates a framework for the proper management of hazardous and non-hazardous solid waste. Sets national goals for: protecting human health and the environment from the potential hazards of waste disposal; conserving energy and natural resources; reducing or eliminating the amount of waste generated; and, ensuring that wastes are managed in a manner that is protective of human health and the environment.

[3] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.
[4] Source: Coast Guard Publication 3-28 (Jun. 2014): Incident Management and Crisis Response.

Regulation	Summary
Clean Water Act (1977)	Passed to amend the FWPCA. Establishes regulations administered by the EPA and the states, the goal of which is to eliminate the pollution of the waters of the United States. Requires the Federal Government to direct all public and private responses for certain spill types; makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is issued; defines harmful and reportable quantities; created the 311(k) Fund (the first Federal Government pollution response and cleanup fund); and created the National Response Center (NRC).
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (1980)	Regulates the notification, response, cleanup, and liability for hazardous substance into the environment. The law created a Superfund that can be used to finance governmental response actions and to reimburse private parties for costs incurred in carrying out the cleanup of hazardous substances (managed by EPA); makes a broad class of parties liable for the costs of responding to a release or threat of release of hazardous substances; requires the spiller to report and clean up the substance any time a reportable quantity of a hazardous substance is released; and, establishes the National Priorities List (which is further defined in federal regulation to assist with determining which sites would have access to the Superfund).
Superfund Amendment and Reauthorization Act (SARA) (1986)	Passed to amend CERCLA. This act establishes requirements for public participation in Superfund response activities and requires the Secretary of Labor to establish safety provisions for employees during hazardous waste operations. Title III of SARA authorized the Emergency Planning and Community Right to Know Act of 1986. The Superfund cannot be used for responses to oil spills.
Oil Pollution Act (OPA) (1990)	Establishes provisions that expanded the Federal Government's ability to prevent and respond to oil spills. This Act: establishes the Oil Spill Liability Trust Fund, financed by a tax on oil; increases penalties, potential liabilities for costs, and damages of the Responsible Party; requires Response Plans from oil terminals and tank vessels; requires double hulls for tank vessels by 2015; and tasks Area Committees consisting of federal, state, and local officials with developing location specific Area Contingency Plans.
Executive Order (EO) 12777 (1991)	The President delegated, without abdication, the implementation of § 311(c) and § 311(e) of the Clean Water Act and the Oil Pollution Act of 1990, to the Administrator of the EPA (for the inland zone), and the Secretary of the Department in which the Coast Guard is operating (in the coastal zone).[5] The President also delegated responsibility for natural resources in EO 12777 to the Federal Trustees designated in the NCP: Secretary of Defense, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, and Secretary of Energy.

The majority of oil spill responses are carried out under the OPA 90 framework and the NCP (further explained in **Tabs 1 and 2**). Under this construct, FOSCs from the Environmental Protection Agency (EPA) (for the inland zone) and the Coast Guard (for the coastal zone) have the

[5] Note: EPA has further re-delegated this authority to the EPA Regional Administrators (RAs). The RAs have re-delegated the authority to the Regional Division Directors that manage the removal programs and, in most cases, have re-delegated the authority directly to the individual OSCs. In addition, these authorities were further delegated to the Coast Guard Commandant and to Coast Guard field commanders serving as FOSC for an oil spill or hazardous substance release (DHS Delegation No 0170.1(II)(72) and 33 CFR 1-01-80).

authority to direct all aspects of a response to an oil discharge, including notification and monitoring of the responsible party's requirements to pay for all actions needed to remove the oil.[6] In addition to paying for the removal actions, the laws require the private sector to plan for and ensure that sufficient resources (equipment and personnel) are available to respond to and mitigate the impacts of oil spills. These same laws require the Federal Government to ensure that owners/ operators have a response plan and adequate resources in place. By design, "oil spill removal capabilities grew and ownership shifted [from the government] to the private sector, which spurred the expansion of Oil Spill Removal Organizations (OSROs) and increased demand upon response equipment manufacturers."[6] Consequently, the Federal Government does not have a significant amount of equipment or personnel to carry out actual oil spill removal activities alone.

The NCP calls for close coordination of federal, state, local, and tribal governments and responsible parties, as part of the NRS, during both the planning for and response to oil spills. During spill incidents, responders are predominately drawn from federal, state, and local environmental management communities; the responsible party's contracted OSROs; and responsible party personnel. Other state and local emergency response personnel may be asked to provide support as needed by the FOSC."[6] Additionally, the NCP allows for the Coast Guard Commandant, or the EPA Administrator to classify a spill as a SONS (in their respective zones) (40 CFR § 300.323(a)).

The involvement of and close coordination between state, local, and tribal governments is also a critical component during other types of domestic incidents and disaster responses such as hurricanes, flooding, severe storms, and tornadoes. However, the laws and national policy for these situations differ from the concepts found in the NCP on several fronts. Although the first presidential disaster declaration occurred in 1953,[7] many of these laws and policies were revised or newly developed during the past two decades. A summary of the most pertinent policies, presidential directives, and laws related to domestic emergencies and natural disasters are described in Table 2 below:

Table 2: A Summary of the Laws and Policies Related to Domestic Incident Management

Policy	Summary
Defense Production Act (1950)	First comprehensive legislation pertaining to federal disaster relief. Gave the President the authority to issue disaster declarations that allowed federal agencies to provide direct assistance to state and local governments. Created a nationwide system of civil defense agencies.[8]
Disaster Relief Act (1974)	Established the process through which the President's declaration of a disaster triggers a system of financial and other assistance by the Federal Government to state and local governments. (Later amended by the Stafford Act.)

[6] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.
[7] Source: Lindsay, B.R., McCarthy, F.X. (2015). "Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress." Congressional Research Service, 7-5700 (R42702). fas.org/sgp/crs/homesec/R42702.pdf
[8] Source: Federal Emergency Management Agency, (2018). "Emergency Management Authorities Review." Accessed on February 26, 2018. https://emilms.fema.gov/IS230c/FEM0101170text.htm

Policy	Summary
The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (1988)	Authorizes the programs and processes by which the Federal Government provides major disaster and emergency assistance to the state, territorial, tribal, and local governments, eligible private nonprofit organizations, and individuals and households affected by a major disaster or emergency. The Stafford Act gives the President the authority to declare that an emergency or a major disaster exists, provided that the governor of the affected state(s) has requested a declaration. Title III authorizes the President to direct any federal agency, with or without reimbursement, to use its available personnel, equipment, supplies, facilities, and other resources in support of state and local disaster assistance efforts. Additionally, the Act originally authorized the Administrator of the Federal Emergency Management Agency (FEMA) to prepare a Federal Response Plan, which was replaced by the National Response Framework.
Homeland Security Act (2002)	Signed into law following the September 11th terrorist attacks, this Act established the U.S. Department of Homeland Security (DHS), created the new cabinet-level position of Secretary of Homeland Security, and set forth the primary mission of the Department. DHS assumed many services and offices previously conducted independently or in other departments such as the Customs Service, the Coast Guard, the Secret Service, and FEMA. This Act also requires the FEMA Administrator to be prepared to carry out "emergency operations to save lives and property through positioning emergency equipment, personnel and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services." Additionally, it charges the FEMA Administrator with assisting the President in carrying out the Stafford Act.
Homeland Security Presidential Directive (HSPD)-5 – Management of Domestic Incidents (2003)	The purpose of this Directive is to enhance the ability of the United States to execute a more coordinated federal response to domestic incidents by establishing a national incident management system. It designates the DHS Secretary as "the Principal Federal Official for domestic incident management" and authorizes the Secretary to coordinate the Federal Government's resources utilized in response or recovery from terrorist attacks, major disasters, or other emergencies under applicable conditions.
Post-Katrina Emergency Management Reform Act (2006)	Revised a number of provisions in the Stafford Act and the Homeland Security Act to strengthen the nation's response to disasters and emergencies.
National Response Framework (NRF) (2008)	Describes the capabilities needed to save lives, protect property and the environment, and meet basic human needs during "all hazards" incidents. All hazards incidents include natural disasters, terrorist attacks, public health emergencies, and oil/chemical incidents. The NRF is considered always active and provides structures, roles, and responsibilities that can be partially or fully implemented in the context of a threat or a hazard, allowing for a scaled response. It recognizes that different types of emergency responses may be led by various federal agencies under assorted federal authorities and regulations. The NRF is based on the use of the National Incident Management System (NIMS) and includes Emergency Support Function (ESF) annexes, as well as support annexes that further describe doctrine for building and delivering core capabilities to the community.

Policy	Summary
National Security Presidential Memorandum (NSPM) – 4, Organization of the National Security Council System (2017)	Outlines the organization of the National Security Council (NSC) system. The document contains headings on the NSC, the NSC Principals Committee, the NSC Deputies Committee, and interagency policy committees.
Presidential Policy Directive (PPD) – 8, National Preparedness (2011)	Directs the development of the National Preparedness System, which outlines a process for the whole community to be prepared for all types of disasters and emergencies, and establishes a national preparedness goal. The National Preparedness System includes a series of National Planning Frameworks related to five mission areas – Prevention, Protection, Response, Recovery, and Mitigation – that integrate planning across all levels of government and the private and nonprofit sectors. The National Planning Frameworks are supported by Federal Interagency Operational Plans (FIOPs), which explain the key roles and responsibilities under each mission area. One of these frameworks is the National Response Framework (NRF).
The Sandy Recovery Improvement Act (SRIA) (2013)	Amended the Stafford Act to improve the Federal Government's response to all hazards events and provided federally recognized tribes the option of directly requesting major disaster and emergency declarations.

The changes to these laws and policies were largely based on lessons learned from more recent devastating incidents such as the September 11th terrorist attacks and Hurricane Katrina (pictured in Figure 3 below). In general, the "bottom-up" response constructs defined in the National Response Framework (NRF) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provide the primary framework for most major domestic incidents (further outlined in **Tabs 3 and 4**).[9] These policies support a system in which the state and local governments direct the emergency response and the Federal Government provides a supporting role. Over the years, the number of disaster declarations has been growing, especially over the past two decades, as shown in Figure 4.[10] As such, the public has become familiar with this system and approach to handling incidents.

Figure 3: View of the flooded homes in New Orleans, LA following Hurricane Katrina. Laforet, V. (Photographer). (2005). Retrieved from *www.thedailybeast.com.*

[9] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.
[10] Source: Lindsay, B.R., McCarthy, F.X. (2015). "Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress." Congressional Research Service, 7-5700 (R42702). fas.org/sgp/crs/homesec/R42702.pdf

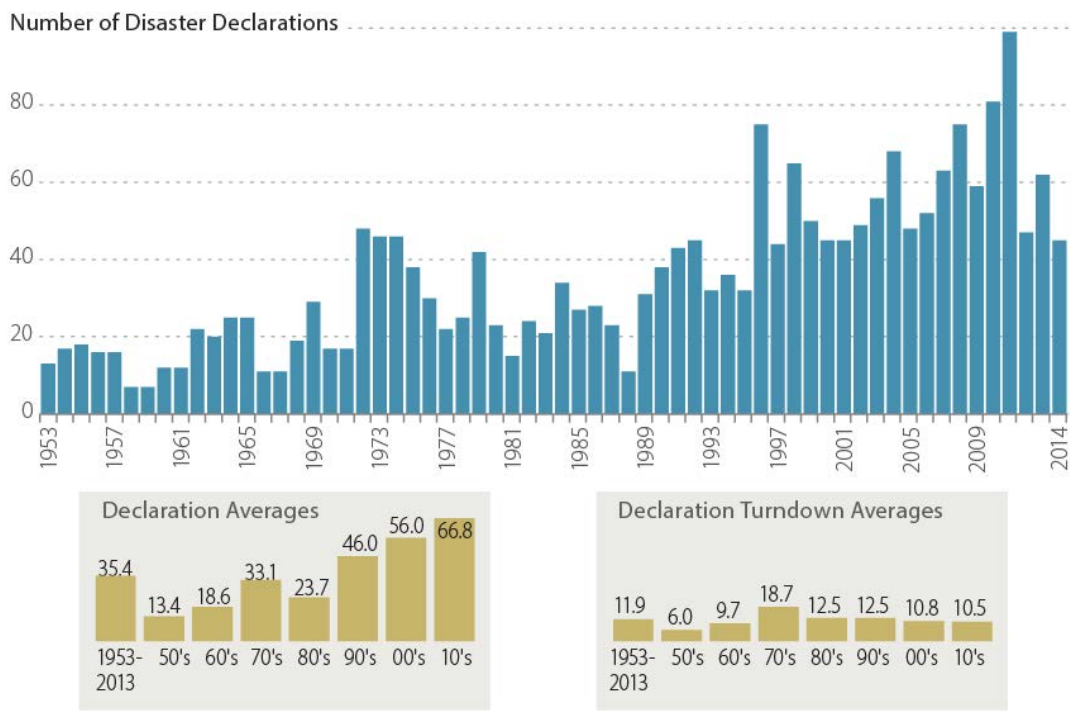

Figure 4: Major Disaster Declarations (1953-2014). Source: Lindsay, B.R., McCarthy, F.X. (2015). "Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for Congress."

Conversely, the public is not as familiar with the unified "top down" leadership approach to managing oil spill and hazardous substance incidents, which remain in effect and are referenced in the domestic emergency response laws and policies. For instance, when the NRF (2008, updated in 2016) was published, it recognized that although the Federal Emergency Management Agency (FEMA) is charged with assisting the President in carrying out the Stafford Act and providing effective support of all Emergency Support Functions (ESFs) (see **Tab 4** and Figure 5), other federal agencies may have a lead or support role in coordinating operations consistent with applicable legal authorities (NRF). The NRF further addresses oil and hazardous materials response under the ESF #10 Annex. The ESF #10 Annex states, "The NCP serves as an operational supplement to the NRF and may be used in conjunction with, or independent from, the Stafford Act."[11] Moreover, under the Stafford Act, ESF

Emergency Support Functions

#1 – Transportation
#2 – Communications
#3 – Public Works and Engineering
#4 – Firefighting
#5 – Information and Planning
#6 – Mass Care, Emergency Assistance, Temporary Housing and Human Services
#7 – Logistics
#8 – Public Health and Medical Services
#9 – Search and Rescue
#10 – Oil and Hazardous Materials Response
#11 – Agriculture and Natural Resources
#12 – Energy
#13 – Public Safety and Security
#15 – External Affairs

Figure 5: Emergency Support Functions.

[11] Source: Federal Emergency Management Agency, (2016). "Emergency Support Function #10 – Oil and Hazardous Materials Response Annex." https://www.fema.gov

#10 may be used to take response actions and respond to environmental contamination beyond what is covered by the NCP.[12]

ESF #10 may be activated as described in the NRF for a Stafford Act Response, at the Secretary of Homeland Security's discretion, and/or in response to a request for federal-to-federal support. However, ESF #10 responses to oil and hazardous materials incidents are generally carried out in accordance with the NCP. Specifically, the response structures and coordination mechanisms outlined in the NCP remain in place during an ESF #10 activation, but coordinate with NRF mechanisms.[13] The main differences between the NCP and NRF/Stafford Act spill response authorities are listed in Table 3 below.

Table 3: Major Differences between the NCP and NRF

NCP	NRF/Stafford Act
The EPA or the Coast Guard is the lead agency for the response.	FEMA is the lead agency for the response.
The Federal Government makes an independent evaluation of the need for federal response.	Requests for federal assistance from state, local, and tribal governments need to be made from the state governor.
The Federal Government may, and in some circumstances must, lead the response.	The Federal Government plays a supporting role to the state, local, tribal, territorial, or insular government.
The Federal Government has tactical, on-scene command authorities.	The arrangements by which departments and agencies participate are defined in the ESF Annexes and are coordinated through pre-scripted mission assignments.[14]
The Federal Government has enforcement authorities over the parties responsible for oil discharges and hazardous substance releases (or substantial threats of discharge/ release), and will seek cost recovery.	The Act does not directly address the liability protections or immunities for responsible parties.
No state cost share for emergency responses.	A state cost share may be required.

These differences between the NCP and NRF did not seem to be commonly known and understood, which may have contributed to some confusion among members of the public as well as leaders within the federal, state, and local governments during the first designated SONS incident: the *Deepwater Horizon* oil spill in the Gulf of Mexico. This incident began on April 20, 2010 with an explosion aboard the Mobile Offshore Drilling Unit *Deepwater Horizon*. The Macondo wellhead, located 5,000 feet deep in the Gulf of Mexico, suffered a blowout and discharged approximately 4.9 million barrels of oil over a course of 87 days. The Coast Guard assumed the role as the lead federal official for oil removal and response operations in the coastal zone in accordance with the NCP. The DHS Secretary declared the incident a SONS on April 29, 2010 and designated a

[12] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.
[13] Note: This practice was reaffirmed during the March 22, 2018 SONS Executive Seminar, a table-top style exercise bringing agency senior leaders and their advisors together from 17 federal departments and agencies. The 2018 SONS Executive Seminar After Action Report outlines this discussion on pgs. 6-8.
[14] Source: Federal Emergency Management Agency, (Jun 2016). "National Response Framework, Third Edition." p. 41. https://www.fema.gov

National Incident Commander (NIC) to assume the lead role of coordinating the affected parties and the public, and coordinating all federal, state, local, and international resources at the national level. [15] BP, as the primary responsible party, provided the resources and capabilities. The governor of Louisiana declared a State of Emergency.

During the complex response that impacted all five of the Gulf Coast states, there was confusion over the responsible party's role in the response and the public expressed concerns over not being able to trust the responsible party in making every effort to carry out the cleanup. [16] Additionally, there may have been some confusion due to the overlapping doctrinal structures in the NCP (articulated in regulation) and in HSPD-5 (articulated in national policy). The NCP allows for the designation of a NIC while HSPD-5 names the DHS Secretary as the Principle Federal Official (PFO) for domestic incident management. Accordingly, it is important for the DHS Secretary and NIC to discuss and get alignment on interagency coordination mechanisms and procedures early on following a SONS declaration.

The need for accurate, timely, and relevant information was also critical to decision-making during the response. The efforts required coordination and information sharing across many federal, state, local, and tribal governments, the responsible party, and response organizations.[15] The vast geographic response area, the lack of appropriate interoperable communications technology, and the limited ability to push real-time data both vertically and laterally throughout the response organization hindered effective communication at times.[15]

Initially, a Joint Information Center (JIC) was established, as is discussed and encouraged (as appropriate) in the NCP[17], to interface with the media and external entities including intergovernmental and community representatives. From April 23 to June 3, 2010, the Coast Guard conducted National Incident Communications Conference Line (NICCL) calls, a key federal incident communication protocol since 2003. As the response grew, so did the need for public affairs experts and external affairs capabilities. To combat some of these challenges, responders adopted a blended NRF ESF #15 and NCP JIC model for the response by May 2010. This allowed for the alignment of outreach to governmental, congressional, media, and stakeholder audiences at all levels.[15] That same month, the DHS Assistant Secretary for Public Affairs (dual-hatted as the ESF #15 Director) published an interagency memorandum to acknowledge that the Oil Spill Liability Trust Fund "will provide financial reimbursement of external and public affairs personnel following the completion of their deployment to support the *Deepwater Horizon* Response mission."[18]

The ability to utilize ESF mechanisms during an NCP response was later memorialized in FEMA's *Oil/Chemical Incident Annex to the Federal Interagency Operational Plan – Response and Recovery* (2016). Overall, the *Oil/Chemical Incident Annex* describes the process and organizational constructs for federal agencies to use when responding to threats or actual oil spills/chemical releases, whether resulting from deliberate acts of terrorism or crime, accidents, or natural disasters.

[15] Source: 33 U.S.C. § 2701 et seq., and U.S. Coast Guard, (Sep 2011). "On-Scene Coordinator Report: *Deepwater Horizon* Oil Spill."
[16] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.
[17] 40 CFR 300.155(a) contains the discussion around why to establish a JIC and what purpose it should serve.
[18] Source: Smith, S. (May 17, 2010). *Deepwater Horizon Response External Affairs Staffing* [Memorandum]. Washington, D.C.: Department of Homeland Security.

Figure 6 provides an outline of the response coordination constructs that may be used to respond to all levels of oil and chemical incidents.

The NCP with ESF Support construct may be used when the impacts of an oil/chemical incident require the addition of significant federal resources outside the usual scope of the NCP. In this situation, the FOSC (or other senior EPA or Coast Guard officials such as the EPA Senior Agency Official or Coast Guard NIC during a SONS incident) may request the DHS Secretary to provide the assistance of other departments and agencies or other federal capabilities.[19] The DHS Secretary may designate a Federal Resource Coordinator (FRC) to coordinate ESFs as necessary to support the lead officials from the EPA or Coast Guard; however, the EPA or Coast Guard will maintain leadership for the federal NCP response and the FRC will report to the lead senior official.[20]

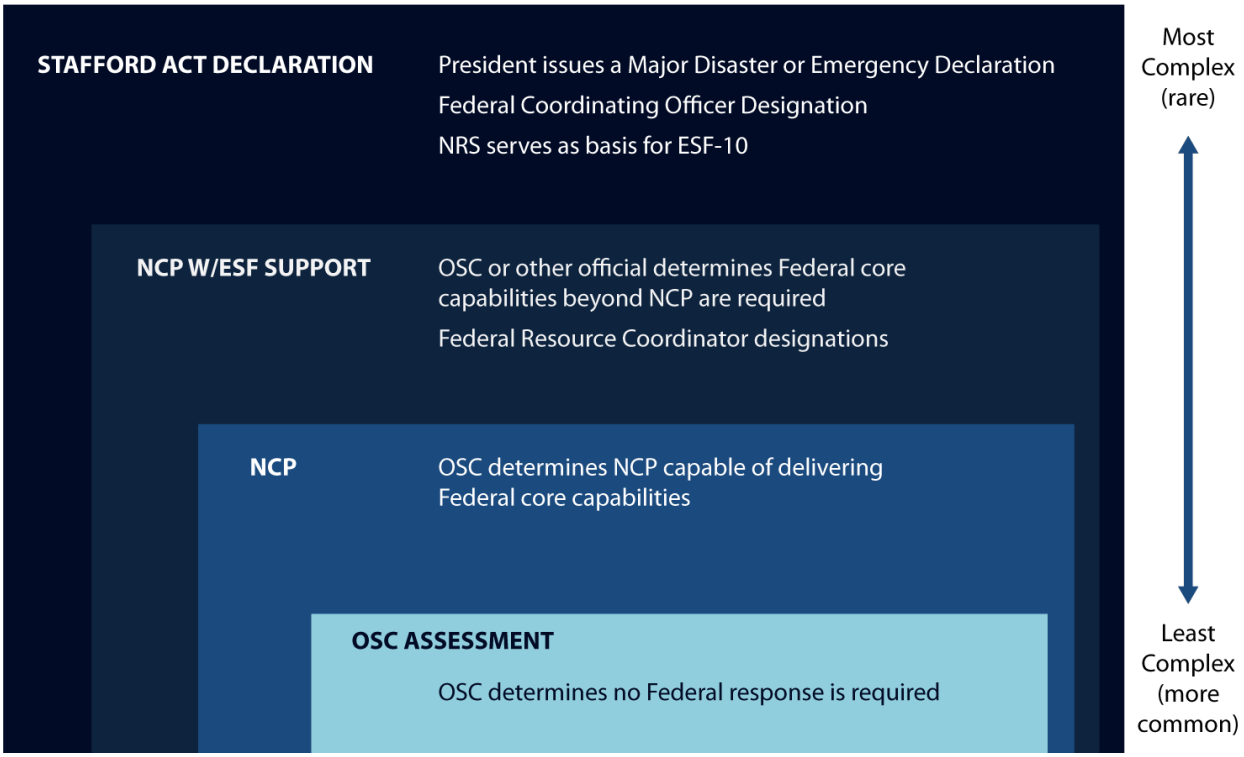

Figure 6: Federal Response Coordination Constructs for Oil/Chemical Incidents. Source: Oil Chemical Incident Annex (2016).

[19] Note: During a SONS response under the NCP, funding for ESF activities would not be provided via the Stafford Act.
[20] Source: Federal Emergency Management Agency, (Jun 2016). "Federal Interagency Operational Plan – Response and Recovery: Oil/Chemical Incident Annex." https://www.fema.gov

2. A SONS Incident Is Coordinated by a Unified Command

During spill responses under the NCP, including the response to a SONS, operations are carried out in accordance with the National Incident Management System (NIMS) and the Incident Command System (ICS). These incident response management systems are also used in all NRF responses.

NIMS was developed to standardize national incident management processes, protocols, and procedures. The concept of NIMS is based on flexibility and standardization. All federal departments are expected to have adopted NIMS.[21] There are six major components to this operational framework:

- **Command and Management**—Includes three key organizational systems: 1) ICS, 2) Multi-agency coordination systems, and 3) Public Information Systems.
- **Preparedness**—Includes planning, training, exercises, interaction, qualification and certification, equipment acquisition and certification, and publication management.
- **Resource Management**—Defines standardized mechanisms and establishes requirements for processes to describe, inventory, mobilize, dispatch, track, and recover resources over the lifecycle of an incident.
- **Communications and Information Management**—Includes communications, information management, and information-sharing support at all levels of incident management.
- **Supporting Technologies**—Includes voice and data communications systems, information management systems (e.g., recordkeeping and resource tracking), and data display systems. Also, specialized technologies that facilitate ongoing operations and incident management activities in situations that call for unique technology-based capabilities.
- **Ongoing Management and Maintenance**—Provides strategic direction and oversight in support of routine review and continual refinement of both the system and its components over the long term.

ICS is a management system for command, control, and coordination of a response, and provides a means to coordinate the efforts of individual agencies as they work together during the response. ICS can be applied to any type or size incident and to planned non-emergency events. Federal departments and agencies are required to use ICS for response to oil and hazardous materials incidents,[22] and many states are adopting ICS as their standard for responding to all types of incidents.

For a response to an oil/chemical incident, ICS brings together the functions of the federal, state, local, and tribal governments, and the responsible party, as appropriate, to achieve an effective and efficient response. Once the information on the spill is received, the EPA or Coast Guard FOSC

[21] Para. 18. Of HSPD-5

[22] Note: The Post-Katrina Emergency Management Reform Act of 2006 envisioned a risk-based, comprehensive emergency management system under the governance of FEMA, through NIMS, to be consistent with HSPD-5 and PPD-8. FEMA defined this system to include ICS through plans and policy documents.

conducts an independent evaluation of the need for a federal response, and may take actions in accordance with existing laws and regulations without a request from the state, local, or tribal governments. [23] However, the FOSC typically coordinates with these entities during the evaluation, and will also notify the affected natural resource trustees of potential or actual damages from the oil discharge or chemical release. The FOSC may allow a responsible party or state, local, or tribal government to conduct the response, with FOSC oversight, or provide them with technical assistance during the response. The FOSC may also use federal and contractor resources to conduct the cleanup, or establish, as needed and appropriate, an on-site Incident Command or Unified Command to manage response actions that minimize the consequences of the incident. The Incident Command position becomes a Unified Command when more than one organization has the authority to respond. During most spill responses under the NCP, the Unified Command typically includes the FOSC, the State On-Scene Coordinator (SOSC), and the responsible party (see Figure 7). While the responsible party is generally included in the Incident Command structure, the FOSC maintains final decision-making authority over the response effort.[23]

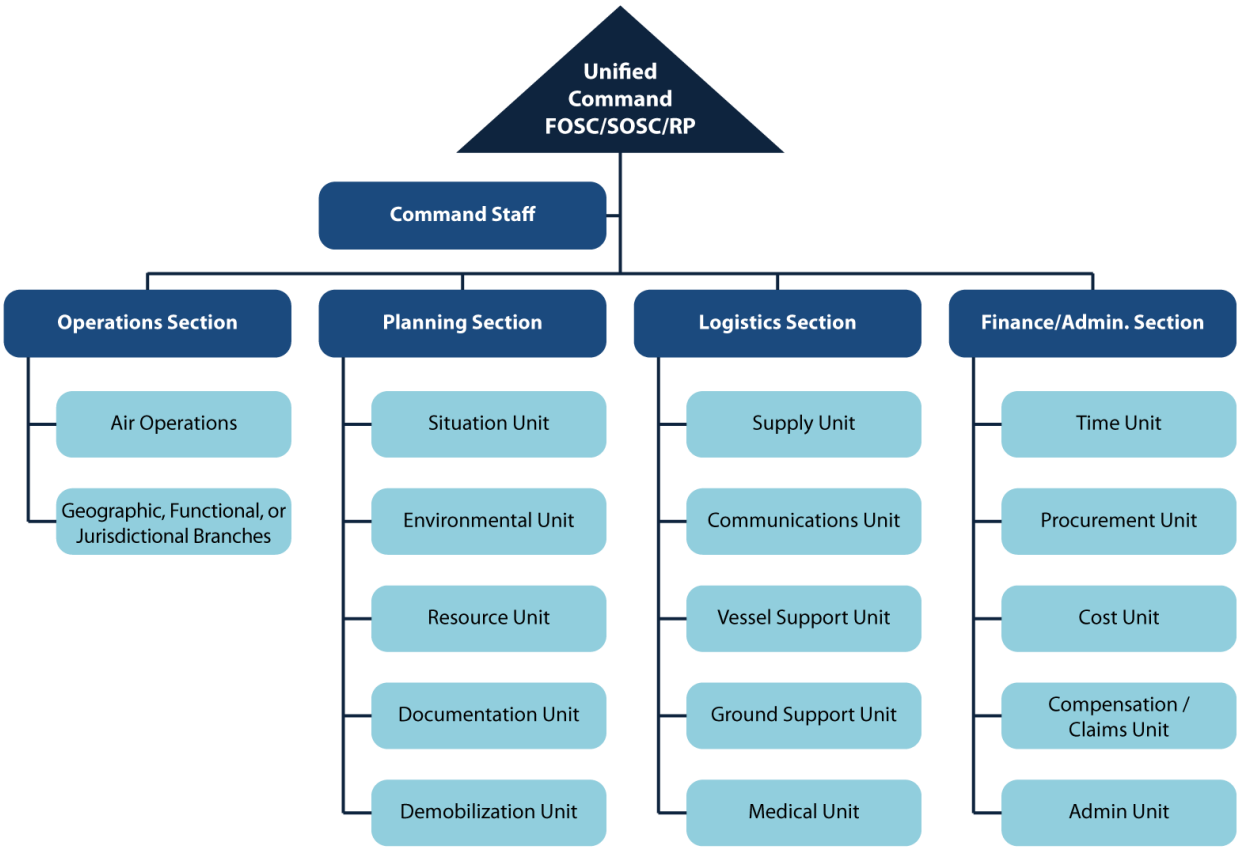

Figure 7: Typical Unified Command System Structure for an NCP response.

[23] Source: Federal Emergency Management Agency, (2018). "Emergency Management Authorities Review." Accessed on February 26, 2018. https://emilms.fema.gov/IS230c/FEM0101170text.htm.

In terms of the response, the responsible party is generally the person, business, or entity that has been identified as owning or operating the vessel or facility that caused the spill. The term does not imply criminal negligence. The responsible party is also held accountable to provide response personnel with relevant information regarding the product through provision of a Safety Data Sheet (SDS) or similar document. Information that the responsible party provides includes details on the product characteristics, which may influence the type of response equipment and procedures used, as well as potential health effects of exposure to the spilled product and safe working procedures when handling it. Information on responsible party liability can be found in 33 United States Code (U.S.C.) § 2702(a).

The NCP defines responsible parties as the following:

- **Vessels**—any person owning, operating, or demise chartering the vessel.
- **Onshore facilities** (other than pipeline)—any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.
- **Offshore facilities** (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. § 1501 et seq.))—the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental Shelf Lands Act (43 U.S.C. §§ 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.
- **Deepwater ports**—the licensee.
- **Pipelines**—any person owning or operating the pipeline.
- **Abandonment**—the person who would have been responsible parties immediately prior to the abandonment of the vessel, onshore facility, deepwater port, pipeline, or offshore facility.

Additionally, the FOSC may call upon the National Response Team (NRT) and Regional Response Teams (RRTs) for support during the response. These are key national and regional multiagency coordination groups led by the EPA and Coast Guard that may provide technical assistance and resource support during an oil/chemical incident response. The NRT is comprised of 15 federal agencies responsible for developing, de-conflicting, and reconciling intergovernmental policy issues that surface during oil spill response (as noted in **Tab 2**). The RRTs are comprised of regional representatives from the 15 NRT member agencies as well as state and tribal governmental representatives. RRTs are responsible for carrying out regional planning and coordination of preparedness and response actions. [24] The NRT oversees the 13 RRTs.

Several of the NRT agencies and designated representatives from states and tribes have specific responsibilities for natural resource protection. These natural resource trustees advise the FOSC

[24] Source: 33 U.S.C. § 2701 et seq., and U.S. Coast Guard, (Sep 2011). "On-Scene Coordinator Report: *Deepwater Horizon* Oil Spill."

on means to minimize damage or injuries to the natural resources; assess damages that occur and the public's lost use of damaged natural resources; and obtain compensation from the responsible party to restore injured natural resources and account for interim losses and services from natural resources that start from the date of the incident. This process is called Natural Resource Damage Assessment and Restoration (NRDAR).

The Federal Government oversees responses to SONS and chemical releases that pose a "substantial threat to public health or welfare." Once a SONS has been designated, the Coast Guard may name a NIC who will assume the role of the FOSC in communicating with affected parties and the public, and coordinating federal, state, local, tribal, and international resources at the national level. The EPA may name a Senior Agency Official (SAO) who assists the designated EPA FOSC with similar functions.

During a SONS, involvement of state, local, and tribal government is critical. State and local government coordination may include the following:

- States may be requested to deploy an SOSC to participate in the Unified Area Command[25] and Unified Commands.
- Unified Commands may establish branches, as appropriate, that take local political subdivisions into consideration and include local government representatives.
- Unified Commands may assign Liaison Officers to local and state elected officials as appropriate.
- The Coast Guard NIC or EPA SAO may conduct regular calls with governors of affected states and include the SOSC.
- The RRTs may support the FOSC in the Unified Area Command and may also provide support to the Unified Commands within their regions.[26]

The U.S. Government has a unique legal and political relationship with federally recognized tribes that arises from executive orders, Indian treaties, statutes, and court decisions. *Executive Order 13175 – Consultation and Coordination with Indian Tribes* requires federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. There is also a Programmatic Agreement for the Protection of Historic Properties that provides guidance on tribal engagement during spill responses.[27] During a SONS response, the FOSC should coordinate tribal input into response activities and initiate regular government-to-government consultations to ensure any impacts to the tribal members or their traditional cultural properties are minimized. [28]

[25] Note: An Area Command (AC) is established to oversee management of multiple incidents or where several Incident Management Teams have been stood up, due to complexities or magnitude of a response. The AC becomes a Unified Area Command (UAC) when more than one agency has jurisdiction, similar to when the Incident Command becomes a Unified Command (UC) at the operational level. The UAC sets overall strategy and priorities, assists with allocating critical resources, and has a managerial role as objectives are carried out.
Source: https://emilms.fema.gov/is775/glossary.htm

[26] Source: Federal Emergency Management Agency, (2018). "Emergency Management Authorities Review." Accessed on February 26, 2018. https://emilms.fema.gov/IS230c/FEM0101170text.htm.

[27] The Programmatic Agreement for the Protection of Historic Properties can be found on the NRT website.

[28] Source: 33 U.S.C. § 2701 et seq., and U.S. Coast Guard, (Sep 2011). "On-Scene Coordinator Report: *Deepwater Horizon* Oil Spill."

3. A SONS Response Will Be Funded by the Responsible Party and the Oil Spill Liability Trust Fund, Not the Stafford Act

OPA 90 provides that a designated responsible party or responsible parties are strictly liable for removal costs and certain damages that result from a discharge or substantial threat of a discharge of oil from a vessel or facility into or upon the navigable waters, adjoining shorelines, or exclusive economic zone of the United States, subject to the limits of liability for the responsible party. Damages include natural resource injuries, loss or injury to real or personal property, loss of profits and earning capacity, loss of subsistence use of natural resources, loss of government revenues, and increased public services expenses of a state or political subdivision. Any person may present a claim to the responsible party for uncompensated removal costs or damages. If the responsible party does not fully remove the spill, or if the spill is so large that it involves government response, then the FOSC responds to the spill, tracking all costs, most of which are paid from by the Oil Spill Liability Trust Fund (OSLTF). The responsible party is later billed for all federal response costs, which include all costs paid from the OSLTF as well as costs incurred by the agencies themselves, such as Coast Guard personnel and equipment.

Responsible party liability for removal costs and damages under OPA 90 may be limited to certain amounts. For example, 83 *Federal Register* (FR) 2540 limits the liability for an offshore facility, except a deepwater port, to the total of all removal costs plus $137.6595 million per incident as of 2018.[29] Pursuant to 33 U.S.C. § 2704(c), the liability for any responsible party may be unlimited if the incident was caused by gross negligence, willful misconduct, or violation of a federal regulation, or if the responsible party fails or refuses: to report an incident that it knows or has reason to know of; to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or, without sufficient cause, to comply with an order. OPA 90 provides for three defenses to liability: act of God, act of war, or the act or omission of a third party.[30]

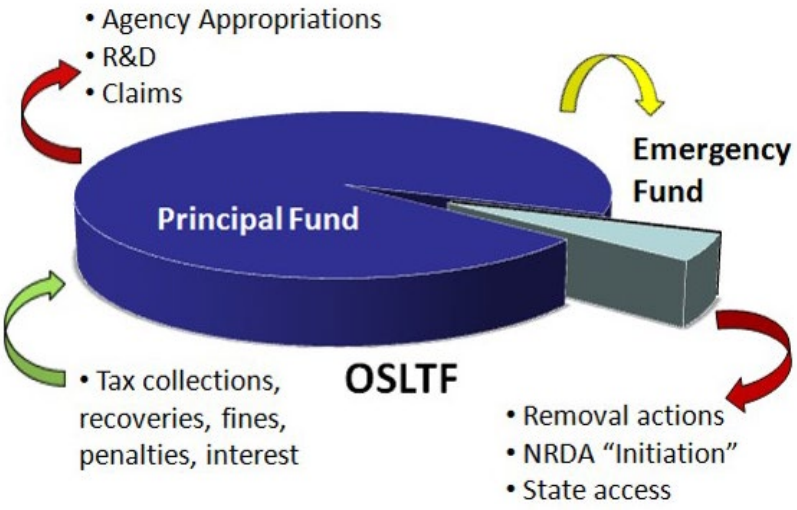

Figure 9: The Oil Spill Liability Trust Fund (OSLTF).

The OSLTF was created under OPA 90. This fund was established to pay for removal costs (e.g., payment to cleanup contractors, equipment, and disposal of recovered oil) and claims resulting from oil spills or substantial threats of oil spills to navigable waters of the United States. The

[29] https://www.govinfo.gov/content/pkg/FR-2018-01-18/pdf/2018-00798.pdf
[30] Source: 33 U.S.C. § 2701 et seq., and U.S. Coast Guard, (Sep 2011). "On-Scene Coordinator Report: *Deepwater Horizon* Oil Spill."

OSLTF is used for costs not directly paid by the responsible party. The fund may also be used to pay for costs associated with response to "mystery spills" when a source has not been identified. The OSLTF is managed by the U.S. Coast Guard's National Pollution Funds Center (NPFC) in Washington, D.C. The OSLTF has two major components: the Principal Fund and the Emergency Fund, as shown in Figure 9.

The **Emergency Fund** is available for FOSCs to respond to oil discharges, or substantial threat of oil discharges, into the navigable waters, adjoining shorelines, and the Exclusive Economic Zone (EEZ) of the United States (shown in Figure 10), and to prevent or mitigate the substantial threat of such a discharge. It is also available for federal natural resource trustees to initiate NRDARs. To ensure rapid, effective response to oil spills, OPA 90 provides that the President has the authority to make available from the OSLTF, without further appropriation, up to $50 million each year for these activities. Funds not used in a fiscal year (FY) are carried over to subsequent FYs and remain available until expended. An additional $100 million annually can be advanced to the Emergency Fund from the Principal Fund if needed and reported to Congress. Amounts paid from the OSLTF for any one incident are limited to $1 billion with no more than $500 million for NRDAR.

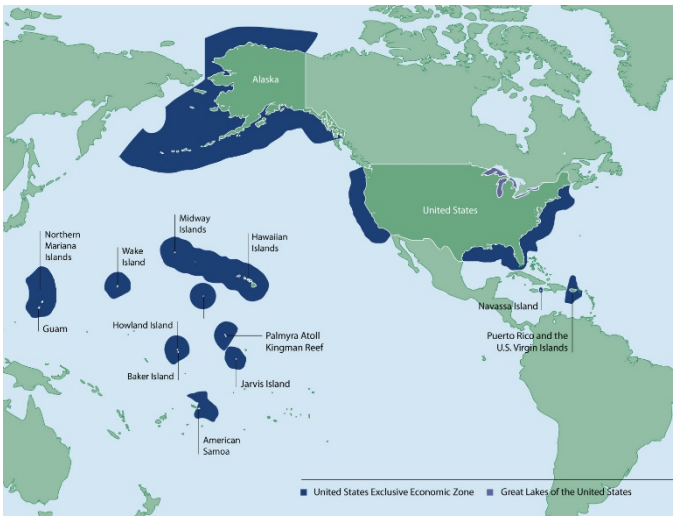

Figure 10: U.S. Exclusive Economic Zone Map

The **Principal Fund** is used to pay claims and to fund appropriations by Congress to administer the provisions of OPA 90. OPA 90 provides that any person or government may present a claim for compensation for removal costs or damages resulting from an oil pollution incident covered by the Act. Generally, claims must be presented to the responsible party before they can be presented to the OSLTF. If the responsible party does not settle a claim within 90 days, the claimant may sue the responsible party in court, or may submit the claim to the NPFC for adjudication. The types of claims that can be presented include:

- Uncompensated removal costs
- Natural resource damages
- Damage to real or personal property
- Loss of profits and earning capacity
- Loss of subsistence use of natural resources
- Loss of government revenues
- Increased cost of public services

- Removal costs and damages incurred by a responsible party exceeding the responsible party's limit of liability

The OSLTF has several sources of revenue including:

- **Barrel tax**—The largest source of revenue is a per barrel tax, collected on petroleum produced in, or imported to, the United States. The original 5-cent per barrel tax was suspended in 1994 but was reinstated in 2006 by the Energy Policy Act. Since then, the tax was increased to 8 cents per barrel and then raised to 9 cents per barrel before ending on December 31, 2017. Congress reinstated the tax at 9 cents per barrel on March 1, 2018 to expire on December 31, 2018.
- **Cost recoveries**—Responsible parties for oil spills are liable for costs and damages. NPFC bills responsible parties for costs expended and amounts collected are deposited into the Fund.
- **Penalties**—In addition to paying for cleanup costs, responsible parties may incur fines and civil penalties under OPA, the Federal Water Pollution Control Act, the Deepwater Port Act, and the Trans-Alaska Pipeline Authorization Act.
- **Interest**—Another recurring source of OSLTF revenue is the interest on the Fund principal from U.S. Treasury investments.

The fund may be accessed by the following personnel:

- **All FOSCs** obtain immediate access to a funding account and ceiling for incident response through a Web application managed by the NPFC.
- **Other federal, state, local, and tribal government agencies** assisting the FOSC get reimbursable funding authority via an FOSC-approved Pollution Removal Funding Authorization (PRFA). The NPFC works with the FOSCs and the agencies to set PRFAs in place.
- **Natural resource trustees** (designated by the President of the United States, state, territorial governor, or tribal governing authority) have several tools for accessing the OSLTF to pay for natural resource assessments and restoration.
- **Claimants** (individuals, corporations, and government entities) can submit claims for uncompensated removal costs and damages caused by the spill to the NPFC if the responsible party does not satisfy their claims. NPFC adjudicates the claims and pays those with merit.

During a SONS incident, the NIC or SAO would not receive a separate project or accounting line for funding NIC/SAO staffing efforts. The NIC/SAO may assume the responsibility of tracking the overall incident spending and requesting the increases in the spending limits for each SONS incident. The costs of the NIC/SAO would be distributed between all efforts under the command of the NIC/SAO.

Depending on the situation, the burn rate for a SONS incident could be millions of dollars per day if the responsible party does not or is unable to accept financial responsibility. If a SONS incident

or several major spills occur toward the end of the FY, the balance in the Emergency Fund may be low, and the ability of the Federal Government to respond may be significantly hampered due to lack of funding. There are some options to address a funding shortfall:

- Activate the authority to apportion an additional $100 million for the Emergency Fund from the Principal Fund of the OSLTF.[31]
- Request emergency legislation to borrow more from the Principal Fund until the next FY's funding is available.

The NPFC would coordinate undertaking either of these options. Additionally, although the United States has entered into several bilateral or multilateral agreements and international conventions for response operations (further described in **Tab 5**), there are currently no bilateral or multilateral *financial* agreements in place. In the 2010 *National Incident Commander's Report: MC252 Deepwater Horizon*, Admiral Allen noted, "There were no protocols for making requests or accepting offers of international assistance, no mechanisms for reimbursing costs or even for determining costs in the first place." [32]

Furthermore, access to funding streams outside of normal operational funding may be necessary for responses to hazardous substance releases. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) established the Superfund, and the Superfund Amendments and Reauthorization Act (SARA) reauthorized the Superfund. The Superfund can be used to finance CERCLA response and remedial actions associated with chemical or hazardous material releases or threatened releases. The Superfund cannot be used for responses to oil spills.

The EPA manages the Superfund, including access to the fund for emergency response. The Superfund pays for emergency response to hazardous substance releases and may be reimbursed later by the responsible parties. The FOSCs have access to the Superfund to pay for activities associated with the emergency response, removal, and disposal of hazardous substances that have been released or have the potential to be released. Similar to the OSLTF, the NIC/SAO does not receive a separate CERCLA project or accounting line for funding NIC/SAO efforts during a SONS.

The primary funding used to support major domestic incidents and natural disasters is from the Disaster Relief Fund, which is accessible via a presidential declaration of a "major disaster" or "emergency" under the Stafford Act. Under the authorities of the Stafford Act, the President may direct any federal agency to:

- Help the affected area (including precautionary evacuations);
- Coordinate all disaster relief assistance;
- Provide technical and advisory assistance (issuing warnings, providing for the public health and safety, and participate in recovery activities);

[31] Note: Section 2752 of OPA 90 details this process. The NPFC initiates the apportionment of additional funds to the OSLTF's Emergency Fund if the balance is getting too low, and is responsible for notifying Congress within 30 days. This apportionment authority can be exercised as necessary, up to a maximum of $100M per fiscal year.
[32] Source: Allen, T.W., (Oct. 1, 2010). National Incident Commander's Report: MC252 Deepwater Horizon.

- Distribute medicine, food and other supplies; and
- Provide accelerating federal assistance when deemed necessary.

The governor of an affected state must first respond to the emergency and implement the state's emergency response plan before requesting a presidential declaration under this act.

The President may also provide accelerated federal assistance when it is necessary. Three types of assistance are authorized by the Stafford Act: Individual Assistance, Hazard Mitigation, and Public Assistance. Funding for public assistance is generally divided into a 75% federal cost share and a 25% state cost share; however, the federal cost share may be raised during a presidential declaration. FEMA coordinates administration of the disaster relief resources and assistance to states, local, tribal, and territorial governmental organizations. These types of assistance are commonly used to respond to all hazards, such as the Butte Wildfires (2018), Hurricanes Harvey, Irma, and Maria (2017), Hurricane Sandy (2012), and Hurricane Katrina (2005).

Tab 1: National Contingency Plan Concepts

National Response System

The National Response System (NRS) is the government's mechanism for emergency response to discharges of oil and the release of chemicals into the navigable waters or environment of the United States and its territories. It is the system for coordinating response actions by all levels of government. The NRS functions through a network of interagency and intergovernmental relationships that were formally established and described in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 Code of Federal Regulations (CFR) § 300). The NCP establishes a tiered organizational structure capable of adapting to the severity of the response. These organizations consist of the National Response Team (NRT), Regional Response Teams (RRT), and Area Committees. The NCP provides the Federal On-Scene Coordinator (FOSC) with the authority to ensure effective and immediate removal of a discharge or substantial threat of a discharge of oil or release or substantial threat of release of hazardous substances. The NCP requires that the FOSC's efforts be coordinated with other appropriate federal, state, local, tribal, and private response agencies and provides for mutual notification among agencies.

National Oil and Hazardous Substances Pollution Contingency Plan

The NCP's purpose is to facilitate the Federal Government's response to both oil discharges and substantial threats of discharges, and hazardous substance releases and substantial threats of releases in the United States and its territories, and to ensure overall coordination in the event of such spills among the hierarchy of responders and contingency plans.

The NCP describes the basic mechanisms and structures by which the Federal Government will plan for, prepare for, and respond to oil discharges or hazardous substance releases. The NCP establishes the NRT and RRTs. Some important operational aspects of the NCP are that it:

- Requires that oil discharges or hazardous substance releases be reported to the National Response Center (NRC), the central clearinghouse for all pollution incident reporting.
- Authorizes the FOSC to direct all federal, state, local, tribal, and private response activities at the site of a discharge.
- Establishes the Unified Command (UC) structure for managing responses.
- Designates the lead agency typically to be either Environmental Protection Agency (EPA) or the U.S. Coast Guard, depending on the location of the spill.

Special Force Components

The special force components are:

- USCG National Strike Force
- USCG District Response Groups
- USCG National Pollution Funds Center
- NOAA Scientific Support Coordinator
- U.S. Navy Supervisor of Salvage and Diving
- EPA Environmental Response Team
- EPA Radiological Emergency Response Team
- EPA Chemical, Biological, Radiological, and Nuclear Consequence Management Advisory Team
- EPA National Criminal Enforcement Response Team

National Response Center

The NRC, located at Coast Guard Headquarters in Washington, D.C., is the national communications center, continuously staffed for handling activities related to response actions. The NRC acts as the single point of contact for all pollution incident reporting, and as the NRT communications center. The NRC receives and immediately relays telephone notices of discharges or releases (or substantial threats of discharges or

releases) to the appropriate FOSC. In addition to gathering and distributing spill data for FOSCs and serving as the communications and operations center for the NRT, the NRC maintains agreements with a variety of federal entities to make additional notifications regarding incidents meeting established trigger criteria.

National Response Team

Per the NCP, the NRT consists of 15 federal agencies with interest and expertise in various aspects of emergency response to discharges of oil or hazardous substances (further explained in **Tab 2**). EPA serves as the NRT Chair, and Coast Guard serves as the NRT Vice-Chair.[33] The NRT is a planning, policy, and coordinating body. It provides national-level guidance outside of periods of emergency response and does not respond directly to an incident. It can provide assistance to an FOSC during an incident, usually in the form of technical advice or access to additional resources and equipment at the national level.

Regional Response Teams

The RRTs are the next organizational level in the NRS. Their purpose is to coordinate, prepare, plan, and respond at the regional level. There are 13 RRTs, one for each of the 10 federal regions, plus one each for Alaska, the Caribbean, and the Pacific Basin (Oceania) (Figure 11). Each team maintains a Regional Contingency Plan (RCP) and both the state government and Federal Government are represented. The RRTs are primarily planning, training, policy, and coordinating bodies. Using the RCPs, the RRTs provide guidance to FOSCs and work to locate assistance requested by the FOSC during an incident. RRTs may also provide assistance to state, local, and tribal governments in preparing, planning, or training for emergency response.

Regional Contingency Plans

In accordance with the NCP, RCPs provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances. The RCP provides a framework through which Area Contingency Plans (ACPs) in that region will be consistent with each other, with the NCP, and with other federal emergency response plans

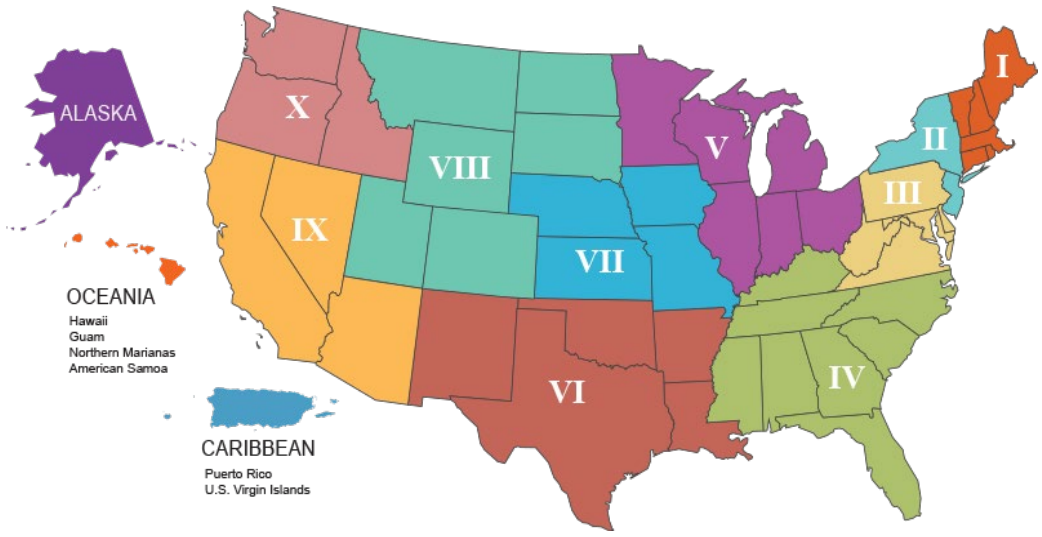

Figure 11: Regional Response Team Areas.

[33] Note: 40 CFR 300.110(b). During periods of activation for emergency response, chair is the agency providing the FOSC

(Figure 12). RCPs take the national concepts for planning and preparedness and narrow them to a specific geographical region for each federal region. RCPs also describe the mechanisms by which the RRT assists FOSCs before a response through planning and training activities, and during a response through organizational and coordination assistance.

Per the NCP, RCPs identify the agreements made for precise boundaries for areas of federal responsibility for FOSC response action between Coast Guard (coastal) and EPA (inland). The inland and coastal zones serve to delineate areas of federal responsibility for response action. However, the EPA and Coast Guard develop regional agreements, identified in RCPs, which specify exact geographic boundary lines for FOSC jurisdictions, and may contain other information such as agreements on mutual assistance or crossovers of jurisdictions.

Area Committees

Under direction of the FOSC, Area Committees are responsible for developing ACPs. These committees are designed for federal, state, local, and tribal agencies to coordinate with each other in carrying out their assigned duties. Area Committees are charged with assuring the pre-planning of joint response efforts, including appropriate procedures for mechanical recovery; dispersants; shoreline cleanup; protection of sensitive environmental areas; and protection, rescue, and rehabilitation of fisheries and wildlife. They are encouraged to invite participants, such as non-government organizations and representatives of private sector, who are not officially members to attend or provide input on specific activities[34]. Area Committees also supply information to the NRT and provide representatives for the various RRTs and the NRT.

Area Contingency Plans

The purpose of ACPs is to create a response structure that facilitates the appropriate scale of response to an incident that can take into account specific area conditions. The ACPs include detailed information about resources (such as equipment and trained response personnel) available from the government agencies in the area. They also describe the roles and responsibilities of each responding agency during a spill incident, and how the agencies will respond if called upon in an emergency. These plans also describe how two or more areas might interact, such as when a

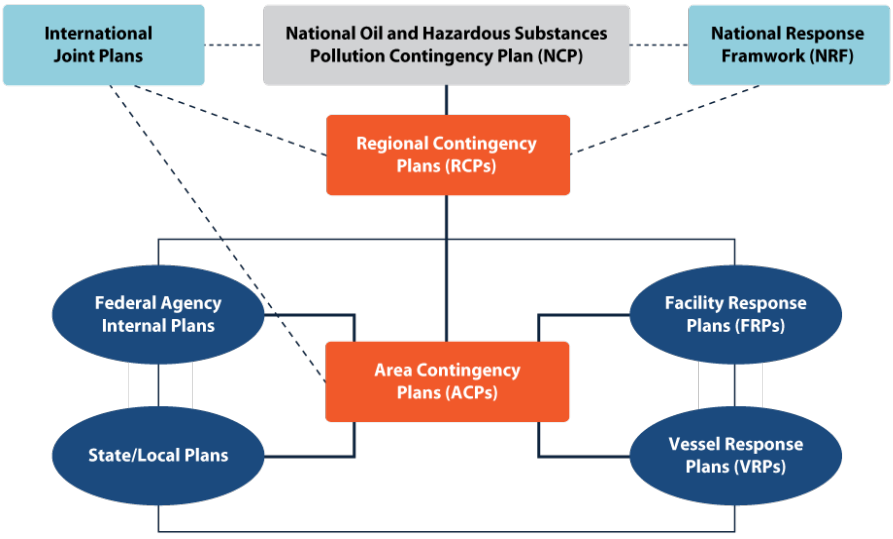

Figure 12: Family of Plans (Source: NRT Outreach Presentation).

[34] https://www.epa.gov/sites/production/files/2018-08/documents/acp_handbook_8-28-18v2.pdf (pg. 13)

spill occurs in a river that flows between areas, to assure that a spill is controlled and cleaned up in a timely and safe manner.

Federal On-Scene Coordinator

The NCP states that the FOSC directs response efforts and coordinates all efforts at the scene of an oil discharge or a hazardous substance release. The FOSC, in conjunction with the other members in a UC, is responsible for the overall management of the incident. The NCP requires the FOSC to direct all federal, state, local, tribal or private actions to remove a discharge in the case of substantial threats to public health and welfare. FOSCs have access to the Oil Spill Liability Trust Fund (OSLTF) for oil spill incidents and the Superfund for hazardous substances incidents enabling them to fund the activities of other agencies and, in the absence of a responsible party, to fund all removal actions.

There shall be only one FOSC at any time during the course of a response operation. If the scope of response operations require the establishment of an Area Command, the FOSC serves as the Unified Area Commander. The Area Command is typically comprised of Incident Commanders (IC) from impacted state(s), the responsible party and appropriate governmental agencies.

Size Classes for Oil Discharges and Hazardous Materials Releases and the Designation of a Spill of National Significance (SONS)

The FOSC is tasked with classifying the size of a spill. The size classes of an oil discharge, as noted below, are provided as guidance to the FOSC and serve as the criteria for the actions. They are not meant to imply associated degrees of hazard to public health or welfare of the United States, nor are they a measure of environmental injury.

Oil spills are classified as coastal and inland:

- Minor discharge means a discharge to the inland waters of less than 1,000 gallons* of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.
- Medium discharge means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.
- Major discharge means a discharge of more than 10,000 gallons of oil to the inland waters or more than 100,000 gallons of oil to the coastal waters.

*Note: There are 42 gallons in one barrel of oil.

Hazardous Materials Releases:

- Minor release means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a minimal threat to public health or welfare of the United States or the environment.
- Medium release means a release not meeting the criteria for classification as a minor or major release.
- Major release means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare of the United States or the environment or results in significant public concern.

Some discharges that are classified as a substantial threat to the public health or welfare of the United States may be further classified as a SONS. The NCP establishes a provision for the Commandant of the Coast Guard to designate an incident within a coastal zone, or the EPA Administrator to designate an incident within the inland zone as a SONS if it is anticipated the response effort needed or the threat to public health and welfare requires extraordinary coordination of federal, state, local and tribal governments and responsible party resources (See 40 CFR §300.323(a) and 300.5 of the NCP).

Once a SONS is designated, the Commandant may designate a National Incident Commander (NIC), or the EPA Administrator may designate a Senior Agency

Official (SAO) as appropriate. The NIC/SAO assists the FOSC in communicating with affected parties and the public, and coordinating federal, state, local, tribal, and international resources at the national level. This strategic coordination will involve, as appropriate, the NRT, RRT, and key members of affected state and local governments.

Groups of Oil

Oils vary based on their viscosity, volatility, and toxicity. When spilled, these oil properties may also impact the environment differently. There are five groups of oil (33 CFR § 155.1020):

- **Group I**: Non-persistent petroleum-based oils. (very light oils, jet fuels, gasoline)
- **Group II**: Petroleum-based oil with specific gravity < 0.85 (diesel, light crudes)
- **Group III**: Petroleum-based oil with specific gravity ≥ 0.85 and < 0.95 (Most crude oils)
- **Group IV**: Petroleum-based oil with specific gravity ≥ 0.95 and ≤ 1.0 (Heavy crude oils, No. 6 Fuel Oil, Bunker C, Diluted bitumen)
- **Group V**: Petroleum-based oil with specific gravity > 1.0 (non-floating oils)

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Tab 2: National Response Team (NRT) Agencies and Capabilities during an Oil/Chemical Incident Response

NRT Agency	Capabilities for response
Department of Agriculture (USDA)	USDA's Forest Service, Agricultural Research Service, and other agencies have personnel, laboratories, and field capabilities to evaluate, monitor, and control situations where natural resources, including soil, water, wildlife, and vegetation, have been impacted by hazardous substances and other natural or manmade emergencies. Further, the Forest Service may offer additional equipment to the response effort.
Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)	NOAA's National Ocean Service (NOS) provides a broad range of scientific, technical, and policy experts to support the response to an incident and inform recovery. NOS services provide valuable information for preparedness, response and recovery, such as GNOME, a software modeling tool used to predict how oil and other pollutants might move and spread on the water, and ERMA, an online mapping tool integrating static and real-time data in an easy-to-use format for environmental responders and decision-makers. NOAA Scientific Support Coordinators (SSCs) provide scientific information and expertise to mitigate the impacts of oil and hazardous substance releases on natural resources in coastal and navigable water areas. NOAA SSCs coordinate and provide expertise in many areas including: environmental chemistry, contaminant transport in air and water, weather forecasts, oceanographic conditions, marine fisheries, marine mammals, hydrographic surveys, geodetic positioning, satellite imagery, and high resolution digital aerial photography. NOAA Fisheries, also known as the National Marine Fisheries Service (NMFS), NMFS is responsible for protecting, restoring, and managing species listed under the Endangered Species Act and Marine Mammal Protection Act, as well as their habitats. NMFS may also provide the FOSC with advice, tools, or scientific information regarding the listed species and designated critical habitat.
Department of Defense (DOD)	For response to contaminant release incidents, DOD's Supervisor of Salvage & Diving, the Army Corps of Engineers, and DOD's Chemical, Biological, Radiological, and Nuclear (CBRN) Response Enterprise, which includes elements of both the active and reserve forces (including the National Guard), have extensive expertise in containment, collection, and mitigation.
Department of Energy (DOE)	DOE's National Nuclear Security Administration is ready to respond to any type of nuclear/radiological accident or incident domestically or internationally, including monitoring, assessment, and working with local, state, and federal agencies and officials to resolve the situation. DOE may also provide air dispersion models through their Interagency Modeling and Atmospheric Assessment Center (IMAAC).

NRT Agency	Capabilities for response
Department of Health and Human Services (HHS)	HHS is responsible for coordinating federal assistance to supplement state, tribal, and local resources in response to a public health and medical disaster, potential or actual incidents requiring a coordinated federal response, and/or during a developing potential health and medical emergency. These services include responding to medical needs associated with mental health, behavioral health, and substance abuse considerations of incident victims and response workers. The Centers for Disease Control and Prevention (CDC)/National Institute for Occupational Safety and Health (NIOSH) provides occupational exposure assessment and mitigation assistance and National Institutes of Health (NIH)/National Institute of Environmental Health Sciences (NIEHS) provide worker health and safety training, and the Agency for Toxic Substances and Disease Registry (ATSDR) maintains a surveillance system to evaluate human health exposures to hazardous substances in emergencies. During an incident, CDC, NIEHS, and ATSDR also advise the Federal On-Scene Coordinator (FOSC) on human health threats and the prevention or mitigation of exposure to hazardous substances. In addition, HHS support includes the Food and Drug Administration (FDA) mandatory safety program for all fish and fishery products. FDA maintains and updates tolerance limits for suggested seafood consumption rates based upon identified compounds of concern.
Department of Homeland Security (DHS)	As provided by the § 311 of the Clean Water Act (CWA), the Secretary of Homeland Security has broad authorities and responsibilities to respond to oil spills, including spills of national significance, in the coastal zone. Additionally, per Homeland Security Presidential Directive-5 (HSPD-5), the Secretary of Homeland Security is also designated as the Principal Federal Official for domestic incident management. These authorities are complementary, since the exercise of CWA authorities ensures an effective and coordinated response under the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300, NCP) and will typically achieve the goals of HSPD-5. Throughout a SONS response, the NIC should confer regularly with the Secretary of Homeland Security to ensure alignment between national goals and objectives, the actions of the federal interagency and the needs of the FOSC in directing the response.
Department of the Interior (DOI)	Through its bureaus and offices, and based on its extensive land and resource management responsibilities, DOI provides scientific expertise to FOSCs to help protect sensitive natural, recreational, and cultural resources and areas. The U.S. Fish and Wildlife Service (USFWS) provides technical expertise to the FOSC to minimize harm to threatened and endangered species, migratory birds, certain marine mammals, freshwater fish, and their supporting habitat. The Bureau of Safety and Environmental Enforcement (BSEE) oversees oil spill planning and preparedness for U.S. facilities located seaward of the Line of Demarcation that handle, store or transport oil. During a spill, BSEE provides the FOSC with subject matter expertise and source control support as needed on regulated offshore facilities. The Bureau of Ocean Energy Management (BOEM) manages the development of the nation's offshore conventional and renewable energy and marine mineral resources. BOEM oversees oil and gas assessments; inventories oil and gas reserves; grants leases, easements, and rights-of-way for renewable energy development activities; and conducts environmental reviews for each major stage of energy development planning. BOEM may be able to provide the FOSC with additional information pertaining to these subjects.

NRT Agency	Capabilities for response
Department of Justice (DOJ)	DOJ, in coordination with legal counsel of the federal agencies and departments involved, provides expert advice on legal questions arising during an incident. DOJ also represents the Federal Government in litigation relating to hazardous substance, oil, chemical, or biological releases. Through the Federal Bureau of Investigation (FBI), DOJ is the lead federal agency for the coordination of law enforcement and investigative activities in response to threats or acts of terrorism.
Department of Labor (DOL)	DOL's Occupational Safety and Health Administration (OSHA) has the responsibility and authority to ensure that response workers are protected and to determine if response sites are in compliance with safety and health standards. In this role, OSHA provides consultation and enforcement, as appropriate, and requires adequate training, controls, and personal protective equipment to ensure that responders are properly protected during a response.
Department of State (DOS)	DOS coordinates international response and notification efforts when discharges or releases may affect international interests, including when they involve foreign flag vessels or threaten impact beyond U.S. jurisdiction. DOS also coordinates requests for response assistance from foreign governments.
Department of Transportation (DOT)	DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) develops and enforces regulations for the safe operation of the nation's 2.6 million mile pipeline transportation system and the nearly one million daily shipments of all hazardous materials (hazmat) by land, sea, and air. PHMSA also provides technical training and support to the planning and response communities, including publication of the DOT Emergency Response Guidebook. DOT's Federal Railroad Administration (FRA) has primary jurisdiction over railroad safety, covering the safety of track, grade crossings, rail equipment, operating practices, and movement of hazmat. DOT's Maritime Administration (MARAD) promotes the use of waterborne transportation and its seamless integration with other segments of the transportation system, working in many areas involving ships and shipping, shipbuilding, port operations, vessel operations, national security, environment, and safety.
Environmental Protection Agency (EPA)	EPA chairs the National Response Team and co-chairs the standing Regional Response Teams with the USCG.[35] EPA provides FOSCs and SSCs for hazardous substance releases and oil discharges in the inland zone as well as Remedial Project Managers for specified long-term remedial activities. EPA also provides expertise on human health and ecological effects of oil discharges or releases of hazardous substances, pollutants, or contaminants; ecological and human health risk assessment; and environmental pollution control techniques. During a spill, EPA can provide the FOSC with subject matter expertise on chemical agents, including authorization of their use as needed. EPA also provides legal expertise on interpretation of environmental statutes. EPA has a number of special teams that can assist FOSCs, including the Environmental Response Team, Chemical, Biological, Radiological, and Nuclear (CBRN) Consequence Management Advisory Team, Radiological Emergency Response Team, and the National Criminal Enforcement Response Team. These Teams have highly trained scientists, engineers, and other technical experts who provide training and specialized assistance in multimedia sampling and analysis, hazards assessment, cleanup techniques, waste management, and environmental crime investigations.

[35] Note: 40 CFR 300.110(b). During periods of activation for emergency response, chair is the agency providing the FOSC

NRT Agency	Capabilities for response
General Services Administration (GSA)	GSA may provide a variety of support to the FOSC including, but not limited to, the following: leasing of facilities, transportation services (air, sea, land), Emergency Lodging Services, and acquisitions support for commodities and supplies, telecommunications services, and other needs as identified.
U.S. Nuclear Regulatory Commission (USNRC)	USNRC regulates civilian nuclear facilities and nuclear materials. USNRC is the lead federal agency during radiological events involving its licensees and provides expertise during other radiological incidents.
Federal Emergency Management Agency (FEMA)	FEMA, a component of DHS, is the lead agency for administering financial and technical assistance during a Presidentially declared disaster or emergency under the Robert T. Stafford Act. FEMA is responsible for providing hazardous materials response guidance and training for emergency first responders.
U.S. Coast Guard (USCG)	The USCG is one of the five armed forces of the United States and the only military organization within DHS. The USCG provides the National Response Team Vice Chair, and co-chairs the standing Regional Response Teams.[36] The USCG staffs the National Response Center (NRC), which is the designated federal point of contact for reporting all oil, chemical, radiological, biological, and etiological discharges into the environment, in the U.S. and its territories. The NRC also takes maritime reports of suspicious activity and security breaches within the waters of the U.S. and its territories. The USCG provides FOSCs and coordinates government and industry activities for oil spills and hazardous substance releases in the coastal zone. In addition to a cadre of Marine Science Technicians, Incident Management Division staffs, and District Response Advisory Team members who are trained in spill response and stationed at units throughout the country, the USCG has a deployable, specialized force called the National Strike Force (NSF). The NSF consists of the National Strike Force Coordination Center (NSFCC), Atlantic Strike Team (AST), Gulf Strike Team (GST), Pacific Strike Team (PST), Coast Guard Incident Management Assist Team (CG-IMAT), and Public Information Assist Team (PIAT) who maintain and rapidly deploy with specialized equipment, incident management skills, and public affairs skills anywhere in the world. The USCG's National Pollution Funds Center (NPFC) provides protection up-front by certifying that certain oil-carrying vessels have the financial ability to pay in the case of an oil spill. When spills do occur, the NPFC provides funding for quick response, compensates claimants for cleanup costs and damages, and takes action to recover costs from responsible parties. Additionally, the USCG maintains continuously manned facilities which can be used for command, control, and surveillance of oil discharges and hazardous substance releases. The USCG offers expertise in domestic and international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities.

[36] Note: 40 CFR 300.110(b). During periods of activation for emergency response, chair is the agency providing the FOSC.

Tab 3: Presidential Policy Directive 8 and the National Response Framework Concepts

Presidential Policy Directive (PPD) – 8

PPD-8 directed the development of the National Preparedness System including National Planning Frameworks, which contain the principles under which the five mission areas (Prevention, Protection, Mitigation, Response, and Recovery) are implemented. The National Planning Frameworks explain the role of each mission area and provide the strategy and doctrine for how the whole community builds, sustains, and delivers the core capabilities to meet the national preparedness goal.[37] The National Planning Frameworks, together with the Federal Interagency Operational Plans (FIOPs), provide comprehensive strategic guidance on how to integrate and deliver core capabilities (Figure 13).[38]

National Response Framework

The National Response Framework (NRF) was developed in compliance with Homeland Security Presidential Directive 5 (HSPD-5): Management of Domestic Incidents. HSPD-5 designates the DHS Secretary as the Principal Federal Official for domestic incident management and authorizes the Secretary to coordinate the Federal Government's resources utilized in response or recovery from terrorist attacks, major disasters, or other emergencies under applicable conditions. The NRF describes the capabilities needed to save lives, protect property and the environment, and meet basic human needs during "all hazards" incidents. All hazards incidents include natural disasters, terrorist attacks, public health emergencies, and oil/chemical incidents. The guiding principles of the NRF include: 1) engaged partnership, 2) tiered response, 3) scalable, flexible, and adaptable operational capabilities, 4) unity of effort through unified command, and 5) readiness to act. The NRF is built on scalable, flexible, and adaptable concepts identified in the National Incident Management System (NIMS). The NRF recognizes that federal responses may be led by various federal agencies, under various federal authorities.

Emergency Support Functions

FEMA relies on the resource capability of partner agencies to respond to a given incident. Emergency Support Functions (ESFs) provide the structure for coordinating interagency support for a federal response to an incident. ESFs are mechanisms for grouping functions to provide federal support to states and federal-to-federal support, for Stafford Act declared disasters and emergencies, and for non-Stafford Act incidents. There are 14 ESFs, and each ESF can provide a different type of federal support during an incident (see **Tab 4**).

ESFs are led by the federal agency with the most expertise or authority in providing that type of support. The lead agency is supported by other federal agencies that also have authorities and expertise in that area. Under the Stafford Act, states or tribes tell FEMA the areas they need help in, and FEMA issues Mission Assignments (MA) to the ESFs needed to provide that help. A MA is a tasking order for a federal agency to conduct the work specified in the tasking, and agencies are reimbursed by FEMA.

ESF #10-Oil & Hazmat Response

When a state or tribe needs help in responding to oil spills and hazardous substance releases that occur as part of a Stafford Act incident, FEMA can mission

[37] Source: FEMA. (Feb. 7, 2018). Core Capabilities. Retrieved from https://www.fema.gov/core-capabilities

[38] Note: This section, and Figure 13 refer to 14 ESF Annexes but Tab 4 lists 15. This is due to a previous removal of ESF#14 which is explained in Tab 4. In addition, a new use for ESF#14 is proposed and is discussed in Tab 4.

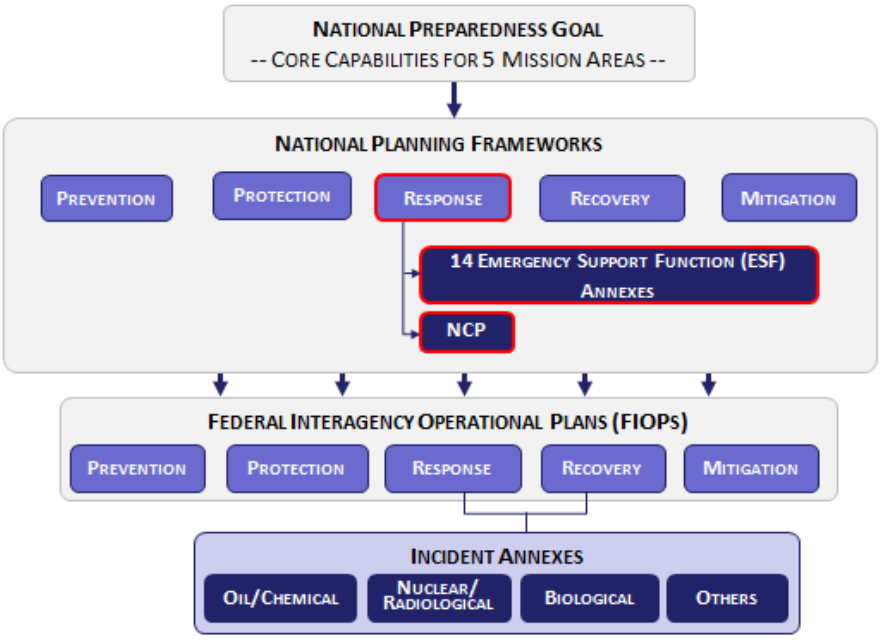

Figure 13: National Planning Frameworks Overview.

assign ESF #10 to provide support. EPA, as the lead agency, uses the resources and structures of the NRS, including support from Coast Guard and other NRT agencies, to respond. During a Stafford Act incident, EPA and Coast Guard still maintain their ability to exercise their independent NCP authorities if needed. Thus, it is possible to have both an ESF #10 and NCP response to a Stafford Act incident.

Federal Interagency Operations Plan – Oil/Chemical Incident Annex

The NRF is supported by the Response FIOP. The Response FIOP focuses on federal response to Stafford Act Disasters.

The Oil/Chemical Incident Annex provides hazard-specific supplemental information to both the Response FIOP and the Prevention FIOP. It describes the process and organizational constructs that will be utilized by federal agencies for responding to threats or actual oil/chemical spills at different levels of complexity. This includes how federal interagency partners will respond to and transition to recovery for oil/chemical incidents under federal authorities in a lead role or in support to state, local, and tribal governments to save lives, protect property and the environment, and meet basic human needs when there is a threat or an actual oil/chemical incident.

The federal response to oil/chemical incidents will be consistent with the inherent authority of the federal agencies in accordance with the NRF. The federal coordination constructs used in oil/chemical incidents are scalable, layered, and inclusive and enable effective coordination of the federal resources required and deployed to an incident. Major factors that help determine which federal construct applies to a given oil/chemical incident, and the need for and level of federal involvement under those constructs, include the following:

- State/local capabilities
- Environmental contamination
- Environmental impact
- Public health impacts
- Property damage
- Lifesaving requirements
- Impacts to Critical Infrastructure/Key Resources
- Economic impacts
- Incidents broader than just an oil spill

The annex is applicable to all federal responses to oil/chemical incidents, regardless of size or complexity, and includes accidental and deliberate releases. This annex does not alter or impede the ability of federal agencies to exercise their authorities or to perform their responsibilities under law. Federal agencies may take appropriate independent emergency actions pursuant to their own statutory authority.

Robert T. Stafford Disaster Relief and Emergency Assistance Act (1988)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) amended the Disaster Relief Act of 1974 and provides the authority for the Federal Government to respond to disasters and emergencies in order to provide assistance to save lives and protect public health, safety, and property.

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies. The President may issue grants to states, upon their request, for the development of plans and programs for disaster preparedness and prevention. The Stafford Act directs the President to ensure that all appropriate federal agencies are prepared to issue disaster warnings to state, local, and tribal officials.

The Stafford Act gives the President the authority to declare that an emergency or a major disaster exists, provided that the governor of the affected state(s) or the Chief Executive of an affected Indian tribal government has requested a declaration. Title III authorizes the President to direct any federal agency, with or without reimbursement, to utilize its available personnel, equipment, supplies, facilities, and other resources in support of state and local disaster assistance efforts.

The President may make contributions to state, local, or tribal governments to help repair or reconstruct public facilities, as well as issue grants to help repair or reconstruct private nonprofit educational, utility, emergency, medical, custodial care, and other essential social service facilities. It also authorizes the President to provide, either by purchase or lease, temporary housing for those who require it as a result of a major disaster.

Section 5170a of the Stafford Act give the President the authority to "direct any federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under federal law" (42 U.S.C. § 5170a(1)) in support of state, and local, response and recovery efforts for emergencies and major disasters. The MA program is the mechanism through which FEMA executes this authority.

While federal assistance may come from FEMA or other federal agencies, FEMA is responsible for coordinating federal assistance to state, local, and tribal entities. FEMA may direct other federal agencies to provide direct federal assistance through MAs. The two types of MAs are Direct Federal Assistance and Federal Operational Support (Table 4).

Type of MA	Federal Agency Task	Type of Assistance	Cost Share
Direct Federal Assistance (DFA)	Providing assistance to affected state, local, and tribal governments after an emergency or major declaration.	Supplemental assistance (i.e., goods and services)	75% (typically. The President may authorize a higher federal cost share for emergency protective measure assistance, including DFA).
Federal Operational Support (FOS)	Providing support necessary for Federal operations during response and recovery.	Deliver/ augment Federal capacity/ capability to execute response and recovery missions.	100%

Table 4: Mission Assignments.

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Tab 4: Emergency Support Functions

(Excerpt from the National Response Framework, 3rd Edition, 2016)

ESF #1—Transportation
ESF Coordinator: Department of Transportation

Key Response Core Capability: Critical Transportation

Coordinates the support of management of transportation systems and infrastructure, the regulation of transportation, management of the Nation's airspace, and ensuring the safety and security of the national transportation system. Functions include but are not limited to:

- Transportation modes management and control
- Transportation safety
- Stabilization and reestablishment of transportation infrastructure
- Movement restrictions
- Damage and impact assessment.

ESF #2—Communications
ESF Coordinator: DHS/Cybersecurity and Communications

Key Response Core Capability: Operational Communications, Infrastructure Systems

Coordinates government and industry efforts for the reestablishment and provision of critical communications infrastructure, facilitates the stabilization of systems and applications from malicious cyber activity, and coordinates communications support to response efforts. Functions include but are not limited to:

- Coordination with telecommunications and information technology industries
- Coordination of the reestablishment and provision of critical communications infrastructure
- Protection, reestablishment, and sustainment of national cyber and information technology resources
- Oversight of communications within the federal response structures
- Facilitation of the stabilization of systems and applications from cyber events.

ESF #3—Public Works and Engineering
ESF Coordinator: DOD/U.S. Army Corps of Engineers

Key Response Core Capabilities: Infrastructure Systems, Critical Transportation, Logistics and Supply Chain Management, Environmental Response/Health and Safety, Fatality Management, Mass Care Services, Mass Search and Rescue Operations

Coordinates the capabilities and resources to facilitate the delivery of services, technical assistance, engineering expertise, construction management, and other support to prepare for, respond to, and/or recover from a disaster or an incident. Functions include but are not limited to:

- Infrastructure protection and emergency repair
- Critical infrastructure reestablishment
- Engineering services and construction management
- Emergency contracting support for lifesaving and life-sustaining services.

ESF #4—Firefighting
ESF Coordinator: USDA/U.S. Forest Service and DHS/FEMA/U.S. Fire Administration

Key Response Core Capabilities: Operational Communications Logistics and Supply Chain Management, Infrastructure Systems On-Scene Security, Protection, and Law Enforcement Public Health, Healthcare, and Emergency Medical Services, Fire Management and Suppression, Situational Assessment

Coordinates the support for the detection and suppression of fires. Functions include but are not limited to:

- Support to wildland, rural, and urban firefighting operations.

ESF #5—Information and Planning
ESF Coordinator: DHS/FEMA

Key Response Core Capabilities: Situational Assessment, Planning, Public Information and Warning

Supports and facilitates multiagency planning and coordination for operations involving incidents requiring federal coordination. Functions include but are not limited to:

- Incident action planning
- Information collection, analysis, and dissemination.

ESF #6—Mass Care, Emergency Assistance, Temporary Housing, and Human Services ESF Coordinator: DHS/FEMA

Key Response Core Capabilities: Mass Care Services, Logistics and Supply Chain Management, Public Health, Healthcare, and Emergency Medical Services, Critical Transportation, Fatality Management Services

Coordinates the delivery of mass care and emergency assistance. Functions include but are not limited to:

- Mass care
- Emergency assistance
- Temporary housing
- Human services.

ESF #7—Logistics
ESF Coordinator: General Services Administration and DHS/FEMA

Key Response Core Capabilities: Logistics and Supply Chain Management, Mass Care Services, Critical Transportation, Infrastructure Systems, Operational Communications

Coordinates comprehensive incident resource planning, management, and sustainment capability to meet the needs of disaster survivors and responders. Functions include but are not limited to:

- Comprehensive, national incident logistics planning, management, and sustainment capability
- Resource support (e.g., facility space, office equipment and supplies, contracting services).

ESF #8—Public Health and Medical Services
ESF Coordinator: Department of Health and Human Services

Key Response Core Capabilities: Public Health, Healthcare, and Emergency Medical Services, Fatality Management Services, Mass Care Services, Critical Transportation, Public Information and Warning, Environmental Response/Health and Safety, Logistics and Supply Chain Management

Coordinates the mechanisms for assistance in response to an actual or potential public health and medical disaster or incident. Functions include but are not limited to:

- Public health
- Medical surge support including patient movement
- Behavioral health services
- Mass fatality management.

ESF #9—Search and Rescue
ESF Coordinator: DHS/FEMA

Key Response Core Capability: Mass Search and Rescue Operations

Coordinates the rapid deployment of search and rescue resources to provide specialized lifesaving assistance. Functions include but are not limited to:

- Structural collapse (urban) search and rescue
- Maritime/coastal/waterborne search and rescue
- Land search and rescue.

ESF #10—Oil and Hazardous Materials Response
ESF Coordinator: Environmental Protection Agency

Key Response Core Capabilities: Environmental Response/Health and Safety, Critical Transportation, Infrastructure Systems, Public Information and Warning

Coordinates support in response to an actual or potential discharge and/or release of oil or hazardous materials. Functions include but are not limited to:

- Environmental assessment of the nature and extent of oil and hazardous materials contamination
- Environmental decontamination and cleanup, including buildings/structures and management of contaminated waste.

ESF #11—Agriculture and Natural Resources
ESF Coordinator: Department of Agriculture

Key Response Core Capabilities:, Mass Care Services, Critical Transportation, Logistics and Supply Chain Management

Coordinates a variety of functions designed to protect the Nation's food supply, respond to plant and animal pest and disease outbreaks, and protect natural and cultural resources. Functions include but are not limited to:

- Nutrition assistance
- Animal and agricultural health issue response
- Technical expertise, coordination, and support of animal and agricultural emergency management
- Meat, poultry, and processed egg products safety and defense
- Natural and cultural resources and historic properties protection.

ESF #12—Energy
ESF Coordinator: Department of Energy

Key Response Core Capabilities: Infrastructure Systems, Logistics and Supply Chain Management, Situational Assessment

Facilitates the reestablishment of damaged energy systems and components and provides technical expertise during an incident involving radiological/nuclear materials. Functions include but are not limited to:

- Energy infrastructure assessment, repair, and reestablishment
- Energy industry utilities coordination
- Energy forecast.

ESF #13—Public Safety and Security
ESF Coordinator: Department of Justice/Bureau of Alcohol, Tobacco, Firearms, and Explosives

Key Response Core Capability: On-Scene Security, Protection, and Law Enforcement

Coordinates the integration of public safety and security capabilities and resources to support the full range of incident management activities. Functions include but are not limited to:

- Facility and resource security
- Security planning and technical resource assistance
- Public safety and security support
- Support to access, traffic, and crowd control.

ESF #14— *(Proposed)*
The NRF is in the process of an update to reconfigure ESF #14

***Proposed Key Response Core Capability*: Leverage existing coordination mechanisms between the government and infrastructure owners/operators**

ESF #14 (Long-Term Community Recovery) was previously superseded by the National Disaster Recovery Framework (NDRF). For guidance on long-term community recovery, please refer to the NDRF.
In the aftermath of the unprecedented 2017 hurricane and wildfire season, the 2017 Hurricane Season FEMA After-Action Report specifically called for a revision of the NRF to emphasize stabilization of critical lifelines and coordination across the critical infrastructure sectors. This update is ongoing as of the release of this document, and the latest information on the NRF update may be found on FEMA's National Planning Frameworks website.

ESF #15—External Affairs ESF Coordinator: DHS
Key Response Core Capability: Public Information and Warning
Coordinates the release of accurate, coordinated, timely, and accessible public information to affected audiences, including the government, media, NGOs, and the private sector. Works closely with state and local officials to ensure outreach to the whole community. Functions include, but are not limited to: ▪ Public affairs and the Joint Information Center ▪ Intergovernmental (local, state, tribal, and territorial) affairs ▪ Congressional affairs ▪ Private sector outreach ▪ All Hazards Emergency Response Operations Tribal.

ESF Member Roles and Responsibilities

ESFs are not solely attributed to any one organization, nor are they mechanisms for executing an agency's statutory authorities. Each ESF is composed of a department or agency that has been designated as the ESF coordinator along with a number of primary and support agencies. Primary agencies are designated on the basis of their authorities, resources, and capabilities. Support agencies are assigned based on resources or capabilities in a given functional area. To the extent possible, resources provided by the ESFs are identified consistently with NIMS resource typing categories.

- **ESF Coordinators**. ESF Coordinators oversee the preparedness activities for a particular ESF and coordinate with its primary and support agencies.
- **Primary Agencies.** ESF primary agencies have significant authorities, roles, resources, and capabilities for a particular function within an ESF.
- **Support Agencies.** ESF support agencies have specific capabilities or resources that support primary agencies in executing the mission of the ESF.

For example, during an ESF #10 activation, the following applies:

ESF Coordinator: EPA

Primary Agencies: EPA and U.S. Coast Guard

Support Agencies: Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, General Services Administration, and Nuclear Regulatory Commission.

Departments and agencies supporting Federal ESFs may be selectively activated by FEMA or as directed by the Secretary of Homeland Security to support response activities for incidents. ESFs may not always be the most appropriate response coordinating structures for non-Stafford Act incidents. For incidents in which there is no Stafford declaration, the department or agency with primary legal authority or the presidentially designated lead Federal agency may activate the coordinating structures as they see fit. In addition to their own structures, departments or agencies responding under their own legal authorities may request the Secretary of Homeland Security to activate relevant ESFs. The Secretary of Homeland Security coordinates with the head of the department or agency with primary legal authority, but retains the authority to activate ESFs or other coordinating structures, as appropriate.

Tab 5: Bilateral and Multilateral Engagements for Marine Environmental Preparedness and Response

International Engagements

International outreach and coordination is a critical component of marine environmental preparedness and response. United States waters may be directly impacted by a spill in another nation's territorial seas or exclusive economic zone, and conversely, a spill in U.S. jurisdictional waters may impact a foreign nation's natural resources. A network of cooperation toward the common goal of preparing for and responding to environmental disasters may be established and maintained through formal and informal engagements. Formal cooperation exists through bilateral or multilateral agreements and international conventions. Informal engagement may take place through operating procedures and information sharing. Collaboration and information sharing with our international partners promotes readiness to respond to environmental incidents and fosters communication that aids in globally enhancing pollution response. The U.S. Coast Guard's (USCG's) international engagements regarding marine environmental preparedness and response are depicted in Figure 14.

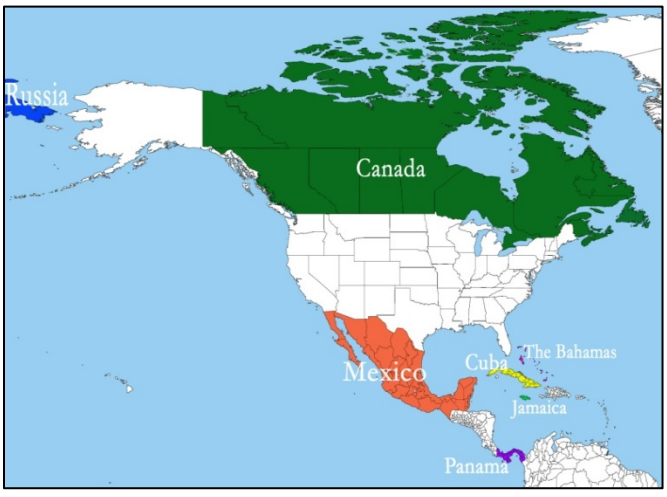

Figure 14: Coast Guard International Engagements

The U.S. Environmental Protection Agency (EPA) also maintains joint contingency plans with Canada and Mexico.

Bilateral Contingency Plans

Canada

The USCG and the Canadian Coast Guard (CCG) have a long history of cooperation in executing our responsibilities to prepare for and respond to oil and hazardous substance events under the auspices of the *Canada-United States Joint Marine Pollution Contingency Plan* (CANUS JCP). The CANUS JCP, updated in 2017, provides the mechanism for coordinating the independent responses of each nation so as to maximize response resources and minimize the damage to the environment and the likelihood of transboundary contamination. The CANUS JCP is comprised of a national-level plan with five regional annexes that facilitate the execution of efficient and effective coordinated response in adjacent waters:

- CANUSLANT: Bay of Fundy/Gulf of Maine (First Coast Guard District)
- CANUSLAK: Great Lakes (Ninth Coast Guard District)
- CANUSPAC: Straits of Juan de Fuca (Thirteenth Coast Guard District)
- CANUSNORTH: Alaska north slope/Canada border (Seventeenth Coast Guard District)
- CANUSDIX: SE Alaska/Canada border (Seventeenth Coast Guard District)

The annexes are managed, exercised, and implemented by USCG District Offices (as noted above) and

Canadian Coast Guard Regions. Exercises are planned jointly and based on current risk analysis and resource availability. One national level exercise is required every five years.[39]

EPA supports a coordinated and integrated federal response to chemical accidents along the inland border by supporting and assisting regional, provincial, state, and local planners and responders through implementation of the *United States-Canada Joint Inland Pollution Contingency Plan Regional Annexes*. The Inland Annexes are:

- CANUSWEST: includes the combined border of the Yukon Territory and British Columbia with U.S. EPA Region 10 (Alaska)
- CANUSWEST – SOUTH: includes the combined inland boundary between British Columbia with U.S. EPA Regions 8 and 10 (Montana, Washington, and Idaho)
- CANUSPLAIN: includes the combined border of Alberta, Saskatchewan, and Manitoba with U.S. EPA Regions 5 and 8 (Minnesota, Montana, and North Dakota)
- CANUSCENT: includes the border of Ontario with U.S. EPA Regions 2 and 5 (New York and Minnesota)
- CANUSQUE: includes the inland boundary of Quebec with U.S. EPA Regions 1 and 2 (New Hampshire, Vermont, Maine, and New York)
- CANUSEAST: includes the inland boundary of New Brunswick with U.S. EPA Region 1 (Maine)

Cuba

In November 2015, the Department of State (DOS) and the Republic of Cuba signed the *Joint Statement between the United States of America and the Republic of Cuba on Cooperation on Environmental Protection* as the first step in a bilateral relationship for environmental cooperation. On 09 January 2017, the *Cooperation Agreement Between the United States of America and the Republic of Cuba on Preparedness For and Response To Pollution Caused by Spills of Hydrocarbons and Other Noxious and Potentially Hazardous Substances in the Gulf of Mexico and the Straits of Florida* was signed. To carry out the requirements of the Agreement, the USCG is in the process of drafting a Joint Contingency Plan for the Republic of Cuba and the United States.

Mexico

The *Joint Contingency Plan Between the United Mexican States and the United States of America Regarding Pollution of the Marine Environment by Discharges of Hydrocarbons or Other Hazardous Substance* (MEXUS Plan), signed in 2000, is the coordinating mechanism that establishes standard operating procedures to coordinate bilateral responses to pollution incidents that occur in, or threaten, coastal waters or areas of the border zones between Mexico and the United States that could affect or threaten the marine environment of both parties.

The MEXUS Plan outlines the joint response system and identifies agencies from both Mexico and the United States that will provide varying levels of support in carrying out the objective and purpose of the Plan. The MEXUS Plan is derived from the obligation set forth in Article I of the *Cooperation Agreement between the United Mexican States and the United States of America Regarding Pollution of the Marine Environment by Discharges of Hydrocarbons or Other Hazardous Substances*,

[39] Section 302.5 of the 2017 CANUS JCP states, "No more than five years should pass between exercises at the national or regional level."

signed in 1980, and was drafted to be consistent with the International Maritime Organization's (IMO) *International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990*, to which both the United States and Mexico are parties.

The MEXUS Plan is supported by two geographically specific annexes – MEXUSGULF and MEXUSPAC. These two annexes allow for the respective USCG Districts and the Mexican Naval Zones to establish standard operating procedures that are more specific in focus to their areas of responsibilities as outlined in the MEXUS Plan. The MEXUSGULF Annex is jointly administered by the USCG Commander, Eighth Coast Guard District and the Mexican Navy Commander, First Naval Zone. The MEXUSPAC is jointly administered by the USCG Commander, Eleventh Coast Guard District and the Mexican Navy Commander, Second Naval Zone. Updates are in-progress for the MEXUS Plan and its Regional Annexes.

EPA supports the *Mexico-United States Joint Contingencies and Emergencies Plan for Preparedness and Response to Events Associated with Chemical Hazardous Substances in the Inland Border Area* (2017). This plan provides a mechanism for cooperation between Mexico and the United States to provide response to inland impacts of oil and chemical hazardous substances.

Additionally, the 1985 Annex II of the *La Paz Agreement* establishes cooperative measures for preparing and responding to oil and hazardous substance incidents along the Mexico-United States inland border. The Joint Response Team (JRT), another *La Paz Agreement* requirement, is also co-chaired by Mexico's Federal Attorney for Environmental Protection (PROFEPA), Protección Civil, and EPA's Office of Emergency Management. Additional JRT partners include representatives from other United States and Mexican federal agencies, including state, tribal and local offices responsible for emergency prevention, preparedness, and response in the border region. The work of the JRT is supported by a notification system for the binational reporting of emergency response incidents, drills, and threats; local Emergency Response Plans developed jointly by sister cities along the border; certified training courses; and analyses of potential risks in the border region.

Russia

The Russian Federation and the United States have shared a cooperative bilateral Agreement on transboundary marine pollution preparedness and response since 1989 (they are also signatories to several multilateral marine pollution agreements). In November 2011, senior leaders from the USCG and the State Marine Pollution Control, Salvage and Rescue Administration (SMPCSRA) of the Russian Federation renewed the *Joint Contingency Plan (RUSUS JCP) of the United States of America and the Russian Federation on Combating Pollution in the Bering and Chukchi Seas*. The Russian Federation's JCP role shifted to the Marine Rescue Service in 2016. In late 2017, the USCG initiated an update to the JCP with the Marine Rescue Service. The RUSUS JCP requires joint planning and trans-boundary exercise efforts to be coordinated by a Joint Planning Group as guided by a nonbinding two-year work plan, which provides for planning and preparedness through meetings and exercises, the coordination of joint pollution responses, and operational communications.

Regional Multilateral Engagements

Arctic

In May 2013, the *Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (MOSPA)* was signed by members of the Arctic Council (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and United States). The MOSPA Agreement consists of a set of legally binding articles followed by nonbinding appendices containing Operational Guidelines. The MOSPA Agreement focuses on a strategic level commitment to cooperate Arctic-wide and builds upon existing bilateral and multilateral agreements in place throughout the Arctic region. The MOSPA Agreement also promotes cooperation and sharing of best practices on research

and development as well as identification of and engagement in joint exercises that demonstrate Arctic response strategy efficacies. The MOSPA Agreement and its Operational Guidelines are exercised every two years, led by the United States in 2016 and again by Finland in 2018.

Caribbean

Cuba offshore drilling in 2011-2012 after the *Deepwater Horizon* incident prompted a new multilateral effort, including Cuba, to address oil spill risks to the United States. This effort produced the *Wider Caribbean Region Multilateral Technical Operating Procedures for Offshore Oil Pollution Response* (MTOP), a nonbinding set of technical procedures. The participating countries are the Bahamas, Cuba, Jamaica, Mexico, and the United States. The intent of MTOP is to support a responder-to-responder network that can work effectively in the event of a large spill. The resulting procedures provide information on offshore response issues and allow operational coordination for joint responses where participating countries' interests could be impacted by an oil spill. Specific 24-hour contact information for notification and coordination of a response is included in these operating procedures. A variety of functional procedures are addressed: Spill monitoring and trajectory; strategic communications; subsea operations; air and vessel coordination operations; chemical dispersant coordination; mechanical recovery; in-situ burning; and response logistics.

Panama

On December 31, 1999, the United States turned over full operation of the Panama Canal to the Government of Panama. Concurrent with the turnover was the expiration of the Memorandum of Understanding between the National Response Team (NRT) and the Panama Canal Commission (PCC). A new memorandum, titled *Agreement Between the United States Department of State, the United States Environmental Protection Agency, the United States Coast Guard, and the Autoridad del Canal de Panamá (Panama Canal Authority) Regarding Assistance with Respect to Certain Environmental Pollution Incidents in the Panama Canal Area* was signed in April of 2002. This 2002 agreement, similar to the previous MOU between the parties, provides procedures and practices to facilitate assistance that may be provided by member agencies of the NRT to assist the Panama Canal Authority (ACP) for incidents involving oil, hazardous substances, or radiological material in the Panama Canal operating area. The Panama Canal Authority may request technical assistance on an incident specific basis from the NRT to supplement their incident response operations; however, there is no requirement for the NRT to provide the requested assistance. If the NRT agrees to provide the requested assistance, ACP submits an Incident Specific Agreement that includes the advance of funds to the NRT member agency providing the assistance.

The Agreement calls for an annual exercise to ensure continuity of communications, planning, and operations. An actual incident that activates the Agreement, however, may be substituted for the annual exercise requirement. Under this Agreement, the United States also advises ACP of training opportunities for planning and response to oil spills, hazardous substance releases, and/or radiological material incidents.

Appendix A: Acronyms & Abbreviations

ACP	Area Contingency Plan
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund
CFR	Code of Federal Regulations
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
EF	Emergency Fund
EOC	Emergency Operations Center
EPA	Environmental Protection Agency
ESF	Emergency Support Function
FIOP	Federal Interagency Operational Plan
FOSC	Federal On-Scene Coordinator
FWPCA	Federal Water Pollution Control Act
HSPD-5	Homeland Security Presidential Directive #5
IAP	Incident Action Plan
ICP	Incident Command Post
ICS	Incident Command System
JOC	Joint Operations Center
NCP	National Oil and Hazardous Substances Pollution Contingency Plan, also known as the National Contingency Plan
NIC	National Incident Commander
NPFC	National Pollution Funds Center
NRF	National Response Framework
NRS	National Response System
NRT	National Response Team
OPA	Oil Pollution Act
OPA 90	Oil Pollution Act of 1990
OSLTF	Oil Spill Liability Trust Fund
PPD	Presidential Policy Directive
PRP	Potentially Responsible Party

RCP	Regional Contingency Plan
RP	Responsible Party
RRT	Regional Response Team
SAO	Senior Agency Official
SONS	Spill of National Significance
SOSC	State On-Scene Coordinator
UC	Unified Command
U.S.C.	United States Code
USCG	U.S. Coast Guard

Appendix B: Key Terms

Clean Water Act (CWA): The CWA, signed into law in 1972, provides the basic statutory authority for pollution prevention, contingency planning, and response activities for pollutants impacting the waters of the United States.

Emergency Support Functions (ESFs): ESFs provide the structure for coordinating federal interagency support for a federal response to an incident. They are mechanisms for grouping functions to provide federal support to states and federal-to-federal support, for declared disasters and emergencies.

Endangered Species Act[40] (as it pertains to Oil Spill Planning and Response) (1973): Under ESA Section 7(a)(2), federal agencies are required to consult on actions that may affect listed species and/or habitat. Similarly, the NCP provides for the Department of Interior (DOI) and Department of Commerce (DOC) to participate in the Area Contingency Plan (ACP) development process, to provide technical expertise to FOSCs during a response, and to facilitate compliance with ESA in both instances.

Federal Interagency Operations Plan (FIOP) Oil/Chemical Incident Annex: The FIOP is a hazard-specific supplement that describes the process and organizational constructs that will be utilized by federal agencies for responding to threats or actual oil spills or chemical release (oil/chemical) incidents. The Oil/Chemical Annex applies to all federal responses to oil/chemical incidents, regardless of size or complexity, and includes accidental and deliberate releases.

Federal On-Scene Coordinator (FOSC): (referred to as "On-Scene Coordinator" [OSC] in the NCP) The FOSC directs response efforts and coordinates all efforts at the scene of a discharge or release. Additionally, the FOSC, in conjunction with the other members in a Unified Command, is responsible for the overall management of the incident.

Homeland Security Presidential Directive #5: HSPD #5 enhances the ability of the United States to execute a more coordinated federal response to domestic incidents by establishing a national incident management system. It designates the DHS Secretary as "the Principal Federal Official for domestic incident management" and authorizes the Secretary to coordinate the Federal Government's resources utilized in response or recovery from terrorist attacks, major disasters, or other emergencies under applicable conditions.

Jones Act (1920): Section 27 of the Merchant Marine Act of 1920 (codified to 46 U.S.C. § 55101 *et seq.*), also known as the Jones Act or Coastwise Trade laws, enhances national security by promoting a healthy U.S. flag fleet. The Jones Act requires that merchandise moving between U.S. ports be carried in a U.S. flagged vessel that was built in the United States and places stringent requirements for the vessel to be owned by American citizens or corporations, see 46 C.F.R. part 67. Stated another way, the Act prohibits foreign-built, foreign-flagged, or foreign-owned vessels from engaging in coastwise trade within the United States. Coastwise trade laws are primarily enforced by the Customs and Border Protection (CBP) agency, see 19 C.F.R. §§ 4.80-4.93.

Only the Secretary of Homeland Security may grant a waiver to the Jones Act. 46 U.S.C. § 501 offers two distinct ways to request a waiver from the Secretary. First, if the Secretary of Defense

[40] 16 U.S.C. § 1531 et seq.

states that a waiver is necessary in the interest of national defense, the Secretary of Homeland Security must grant the waiver. Second, a request may be made to CBP,[41] who in consultation with Maritime Administration (MARAD) will advise the Secretary of Homeland Security whether to grant the waiver in the interest of national defense.

If a waiver is to be requested, the FOSC and Unified Command (UC) should be prepared to address questions surrounding the purpose of the vessel being requested, the intended operating area of the vessel, how the response effort is necessary in the interest of national defense, and if known, the availability of U.S. vessels that can fulfill the same purpose. The FOSC and UC should work closely with their servicing legal office and coordinate with MARAD, DOD, CBP, DOS, and DOE as needed to facilitate the waiver process.

Although it may be a challenge in some oil or hazardous substances incident responses, it remains the responsibility of the FOSC and UC to find and use U.S. flagged vessels or barges to support the collection and storage of oil or hazardous substances from the environment or to provide other needed services of the response. However, there is a provision in the Jones Act which allows the FOSC to engage the service of a foreign flagged oil spill response vessel when U.S. flagged oil spill response vessels are not available to respond in a timely manner.[42] For the foreign-flagged oil spill response vessel to qualify, the country from which the vessel is registered must afford the same privilege to a U.S. flagged vessel. These vessels may only be used on an emergency and temporary basis for the purpose of recovering, transporting, and unloading to a U.S. port oil discharged as a result of an oil spill. In the past the Coast Guard has coordinated with the DOS and MARAD to gather the appropriate information to implement this authority.

Maritime Transportation Security Act (MTSA) (2002)[43]: Designed to protect the nation's ports and waterways from a terrorist attack. The Act seeks to enhance maritime security in a manner that maximizes benefits while minimizing costs. It also improves maritime security for U.S. seaports by means of more security officers, more screening equipment, and the strengthening of security infrastructure at seaports. It requires the cooperation of federal, state, local, tribal, and private law enforcement agencies in case of a terrorist attack. When implemented, this Act should entail greater security requirements for the U.S. and international marine industries.

National Historic Preservation Act (as it pertains to Oil Spill Planning and Response) (1966)[44]: Section 106 provides that federal agencies are to consider the effects of their undertakings on historic properties included, or eligible for inclusion, in the National Register of Historic Places and to afford the Advisor on Historic Preservation a reasonable opportunity to comment on such undertakings. The regulations implementing Section 106 are codified at 36 CFR § 800 (2001).

National Incident Commander (NIC) or Senior Agency Official (SAO): The NIC (from USCG) or SAO (from EPA) is responsible for coordinating national level resource and strategic policy with the White House and DHS leadership to support the FOSC during a SONS.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP): The NCP is the Federal Government's blueprint for responding to both oil spills and hazardous substance

[41] Jones Act waiver requests may be sent to: JonesActWaiverRequest@cbp.dhs.gov
[42] 46 U.S.C. § 55113
[43] 46 U.S.C. Chapter 701.
[44] 54 U.S.C. 300101 et seq.

releases. The NCP is the result of our country's efforts to develop a national response capability and promote overall coordination among the hierarchy of responders and contingency plans. The NCP provides the first comprehensive system of accident reporting, spill containment, and cleanup, and establishes roles and responsibilities of the FOSC, Unified Command, National Response Team, and Regional Response Teams.

National Response Framework (NRF): The NRF establishes a single, comprehensive approach to domestic incident management to prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies. NRF development was mandated by the Homeland Security Act of 2002 and Homeland Security Presidential Directive-5. The NRF integrates the NCP and other national plans.

National Response Team (NRT): The NRT is a multi-agency body having authority under 40 CFR 300.110 for national oil spill and hazardous substance release strategic planning and coordination. The EPA chairs the NRT and the Coast Guard serves as Vice-Chair. For an inland SONS, the EPA is the Incident-Specific Chair of the NRT. For a coastal SONS, the Coast Guard is the Incident-Specific Chair.

Oil Pollution Act of 1990 (OPA 90): OPA 90 was signed into law in 1990 following the *Exxon Valdez* oil spill. OPA 90, which amended the CWA, improved the Federal Government's ability to prevent and provide the money and resources necessary to respond to oil spills. Under OPA 90, the owner or operator of a facility from which oil is discharged (responsible party) is liable for the costs associated with the containment or cleanup and any damages resulting from the spill.

Oil Spill Liability Trust Fund (OSLTF): The OSLTF is administered by the USCG National Pollution Funds Center (NPFC) and can be used to cover removal costs or damages when the responsible party is unknown or refuses to pay. The OSLTF can provide up to $1 billion for any one oil pollution incident, including up to $500 million for Natural Resource Damage Assessments and Restoration (NRDAR). The main uses of OSLTF expenditures are: Federal Government removal actions; payments to federal, state, and tribal trustees to carry out NRDAR; payment of claims for uncompensated removal costs and damages; and specific appropriations.

Ports and Water Safety Act (1972)[45]: Later amended by the Port and Tanker Safety Act of 1978[46], was designed to promote navigation, vessel safety, and protection of the marine environment. Title 33 CFR § 2.05-30 defines waters subject to the jurisdiction of the United States as: (1) navigable waters; (2) other waters on lands owned by the United States; and (3) waters within U.S. territories and possessions of the United States. It authorizes the USCG to establish Vessel Traffic Service/Separation (VTSS) schemes for ports, harbors, and other waters subject to congested vessel traffic. VTSS schemes apply to commercial ships—other than fishing vessels—weighing 300 gross tons (270 gross metric tons) or more.

Regional Response Teams (RRTs): RRTs are responsible for regional planning and coordination of preparedness and response actions including state, local and tribal representation. EPA and U.S. Coast Guard co-chair this group.

Spill of National Significance (SONS): The NCP defines a SONS as a "spill that due to its severity, size, location, actual or potential impact on the public health and welfare of the environment, or the necessary response effort, is so complex it requires extraordinary coordination

[45] 33 U.S.C. §§ 1221 et seq.
[46] Pub. Law 92-340, 86 Stat. 424 (1978)

of local, and responsible party resources to contain and clean up the discharge." The Commandant of the Coast Guard can designate an incident within a coastal zone, or the EPA Administrator within the inland zone, as a SONS if it is anticipated the response effort needed or the threat to public health and welfare requires extraordinary coordination of federal, state, local and tribal governments and responsible party resources (40 CFR § 300.323(a) and § 300.5).

Appendix C: Additional Resources & Web Links

DEPARTMENT OF HOMELAND SECURITY

Presidential Directives

FEMA

National Response Framework

National Preparedness Resource Library

National Incident Management System

Emergency Support Function #10

COAST GUARD

Oil Spill removal Organization Guidelines

NRT

National Response Team

LAWS

Superfund Amendments and Reauthorization Act

Emergency Planning & Community Right-To-Know Act

Clean Water Act

Resource Conservation and Recovery Act

Endangered Species Act

Coastal Zone Management Act

National Coastal Zone Management Program

Occupational Safety and Health Act

Oil Pollution Act

Clean Air Act

Freedom of Information Act

REGULATIONS

National Oil and Hazardous Substances Pollution Contingency Plan

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U.S. Coast Guard - Stop 7516
2703 Martin Luther King Jr. Ave. SE
Washington, DC 20593-7516


SONS
SPILL OF NATIONAL
SIGNIFICANCE