



**Memorandum of Understanding
On
California Offshore Oil Spill Planning, Preparedness, and Response
Between the
Bureau of Safety and Environmental Enforcement – U.S. Department of the Interior,
and
California
Department of Fish & Wildlife
Office of Spill Prevention & Response**

I. Purpose

This Memorandum of Understanding (MOU) is designed to promote consistency in the oversight of offshore facilities handling, storing, or transporting oil or gas located in State waters of California seaward of the coast line by the State of California (hereinafter “the State”) and the Bureau of Safety and Environmental Enforcement (BSEE) (separately “Party,” together “Parties”) with respect to offshore facility oil spill planning, preparedness, and response. In accordance with this MOU, the Parties will coordinate to implement requirements related to offshore facility oil spill planning, preparedness, and response in order to minimize duplication of effort and aid the Parties in the successful completion of their respective missions and responsibilities.

To the extent permitted under applicable authorities, the Parties agree to cooperate in the execution of their respective regulatory responsibilities, and to identify opportunities for innovative and effective implementation of oil spill planning, preparedness, and response oversight. Each Party must exercise its own rulemaking responsibilities independently and in accordance with applicable laws and procedures, though the Parties will coordinate to the extent practicable on rulemaking initiatives.

The goal of this MOU is to promote oil spill response planning and preparedness, maximize oil spill response efficiency, and promote protection of human health and the environment by:

- Fostering communication and cooperation between the Parties,
- Promoting compliance with applicable regulations,
- Optimizing use of expertise and resources,
- Coordinating efforts with respect to oil spill planning, preparedness, and response, and
- Coordinating oversight and regulatory enforcement actions.

II. Scope

This MOU covers coordination of oil spill planning, preparedness, and response activities related to offshore facilities handling, storing, or transporting oil or gas located in State waters seaward of the coast line. This MOU will guide the Parties in coordinating their respective regulatory activities with respect to such covered facilities. For the purposes of this MOU, the phrase “waters seaward of the coast line” is defined as being on “lands beneath navigable waters” seaward of the “coast line” as those terms are defined in the Submerged Lands Act at 43 U.S.C. § 1301(a) and (c). The term “covered facilities” means an offshore facility located in State waters seaward of the coast line that handles, stores, or transports oil or gas and is regulated by both BSEE and the State.

III. Statutory and Regulatory Authority

The State enters this agreement under the authority of California Government Code § 8670.7. The Administrator of the Office of Spill Prevention and Response (OSPR), Department of Fish & Wildlife, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in waters of the State, in accordance with any applicable facility or vessel contingency plan and the California Oil Spill Contingency Plan. The OSPR Administrator is required to cooperate with any Federal on-scene coordinator, as specified in the National Contingency Plan. The OSPR Administrator must also represent California in any coordinated oil spill response efforts with the federal government. (CA Gov. C. § 8670.5). OSPR’s regulations are found at Title 14, California Code of Regulations (C.C.R.), §§ 790 *et seq.*

BSEE enters this agreement under the authority of Section 311 of the Federal Water Pollution Control Act, known as the Clean Water Act, 33 U.S.C. § 1321, and the related authority delegated in Executive Order 12777, as amended, and U.S. Department of the Interior Secretary’s Order 3299, as amended. Applicable BSEE regulations are found in 30 C.F.R. part 254. Additional applicable regulations regarding the National Contingency Plan are in 40 C.F.R. part 300.

BSEE implements certain oil spill planning, preparedness, and response authority over covered facilities, including, but not limited to, developing regulations governing oil spill response planning requirements, conducting oil spill response equipment inspections, initiating oil spill response exercises, enforcing regulatory requirements, and conducting research.

IV. Procedures and Responsibilities

The Parties agree to the following procedures and responsibilities, pursuant to the authorities cited above.

A. Oil Spill Response Planning

Pursuant to State law, owners and operators of facilities that handle, store, or transport oil or gas, as defined in California Government Code § 8670.3, must submit an oil spill contingency plan to the OSPR Administrator for substantive review and approval. (CA Gov. C. § 8670.29) Additionally, the Geologic Energy Management Division and the State Lands Commission

regulate the leasing, operation, and abandonment of oil exploration and production activities and facilities in State waters. These requirements apply to offshore exploration and production facilities in State waters.

Pursuant to federal law, owners and operators of offshore facilities that handle, store, or transport oil or gas, as defined in 30 C.F.R. § 254.6, must submit an oil spill response plan to BSEE for review and approval.

Covered facility owners and operators must comply with both State and federal oil spill response plan (hereinafter “OSRP”) requirements, as applicable.

To the extent permitted by law, the Parties agree to exchange, upon request, copies of all pertinent submittals and correspondence pertaining to the review of and action on OSRPs for covered facilities. Additionally, the Parties will exchange information regarding abandoned covered facilities, including information pertaining to the owners and operators of such facilities immediately prior to abandonment, to maintain awareness for spill preparedness and response.

B. Oil Spill Response Exercises

Both Parties require owners or operators (hereinafter, “operators”) of covered facilities to conduct exercises to ensure their oil spill response capability and readiness. The Parties agree to cooperate in scheduling, planning, conducting, and evaluating such exercises, including operator-initiated exercises, equipment deployment drills, and government-initiated exercises. BSEE will implement the objectives of the National Preparedness and Response Exercise Program (NPREP) that serve as a guide for conducting exercises.¹ OSPR will implement the drills and exercise objectives, as described in OSPR’s regulations, which are applicable to offshore facilities and which build upon the objectives of the NPREP. (14 C.C.R. § 820.01)

The Parties will share notifications of exercises received from operators and their contractors. The Parties will exchange industry and Party evaluations of the exercises.

With respect to regulatory requirements for oil spill response exercises, the Parties recognize that BSEE may allow credit for exercises, which may also satisfy State regulatory requirements, pursuant to 30 C.F.R. § 254.42. Similarly, the State may allow credit for exercises that meet federal requirements pursuant to 14 C.C.R. § 820.01.

In the event either Party recommends or requires an OSRP revision based on an evaluation of an exercise, the Party recommending or requiring such revision will notify the other Party, and the Parties may jointly coordinate prior to notifying the operator.

C. Oil Spill Response Equipment Inspections

¹ The NPREP was developed to establish a workable exercise program which meets the intent of section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), amending section 311(j) of the Clean Water Act (CWA), by adding a new subsection for spill response preparedness (33 U.S.C. § 1321(j)(7)). NPREP 2016 (81 FR 21362) is the current version, as of the signing of this MOU.

Each Party recognizes that it may independently execute its respective oil spill response equipment inspection responsibilities in accordance with applicable statutes and regulations. Both Parties administer oil spill response equipment inspection programs for covered facilities for the purpose of ensuring compliance with the statutes and regulations that they implement.

The Parties will coordinate their respective oil spill response equipment inspection activities where practicable, and work to conduct inspections that minimize disruption to industry, while maximizing efficiency and safety. To this end, the Parties will endeavor to exchange information prior to conducting independent oil spill response equipment inspections or prior to conducting joint inspections. Each Party will provide the other with the opportunity to participate in oil spill response equipment inspections and will exchange or jointly prepare inspection reports.

The Parties also agree to cooperatively review inspection results, as permitted by applicable statutes and regulations. If, during the review of oil spill response equipment, a Party determines that the condition of the equipment is such that the operator may be unable to carry out its OSRP responsibilities, the reviewing Party will promptly inform the other and the Parties may coordinate their response to the operator.

D. Incident Response

The Parties agree to promptly coordinate any oil spill incident response efforts. The Parties agree to provide assistance upon request for incident response.

The Parties will promptly inform each other of any circumstance where an operator's failure to comply with applicable statutes and regulations significantly increases the potential for an unauthorized discharge or creates an unusual or an unacceptable risk to public health, safety, or the environment.

E. Enforcement

Each Party recognizes that it may independently enforce applicable statutes and regulations within its respective jurisdiction.

Enforcement action undertaken by either of the Parties will occur independently in accordance with applicable laws and regulations. The Parties agree that, to the extent they reasonably can, they will consult with each other, and share information as appropriate, as to intended enforcement actions.

F. Information Sharing

To aid in the completion of their respective missions, the Parties will promote electronic information sharing, subject to any applicable legal requirements. The Parties will endeavor to develop and accept, to the extent practicable, electronic means of reporting information required by regulation.

Both Parties will work to ensure the permissible sharing of lease, pipeline right-of-way, drilling, production well, platform, and permit information for covered facilities to help facilitate implementation of the Parties' respective missions. In California, the Geologic Energy Management Division and the State Lands Commission regulate the leasing, operation, and abandonment of oil exploration and production activities and facilities in State waters.

Both Parties agree to follow all applicable legal authorities regarding the disclosure of agency records, including authorities that provide exemptions from the generally applicable duty that requires the government to disclose records to the public. The receiving Party may notify the other Party of receipt of any external requests implicating materials exchanged pursuant to this MOU, such as requests under the Freedom of Information Act (FOIA) or the California Public Records Act. The Party to whom the request was directed will refer the request to the agency or agencies from which the record(s) originated and consult with the agency or agencies having a stake in the information contained in such record(s). Nothing herein may be construed to require any Party to take any action inconsistent with any Federal or State law and its implementing rules and regulations.

G. Research

To leverage research opportunities and to aid in the completion of their missions, the Parties are committed to collaborating on research projects whenever possible. BSEE conducts research through the Oil Spill Preparedness Division – Response Research Branch. OSPR primarily conducts research through the California Oil Spill Study and Evaluation Program (COSSEP). The Parties will cooperate in the coordination and implementation of research and other informational programs of mutual benefit to both agencies. Subject to applicable legal authorities, cooperation may include granting access to and sharing of data, providing joint funding for research programs of mutual interest, and co-developing various analytical methodologies.

H. Exchange of Services and Personnel

The Parties will endeavor to make personnel available to support mutual work objectives, workshops, conferences, seminars, training opportunities, work teams, exercises, inspections, and enforcement. Exchanges of services and personnel will generally be non-reimbursable and subject to applicable statutes and regulations.

V. General Provisions

1. Nothing in this MOU alters, amends, or affects in any way the statutory or regulatory authority of the respective Parties or other agencies.
2. Nothing in this MOU limits informal consultations not otherwise mentioned in this agreement.
3. This MOU is to be executed in full compliance with all applicable laws.
4. Nothing in this MOU may be construed to obligate or commit funds or serve as the basis for a transfer of funds. Nothing in this agreement may be construed to obligate the Parties to any current or future expenditure of resources in advance or in excess of the availability of appropriations from Congress. Nor does this agreement obligate the Parties to spend funds on any particular project or purpose, even if the funds are available.

5. This MOU is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or Party against the United States, the State of California, or their respective agencies, officers, or any other person.

VI. Affected Documents

Upon the effective date of this MOU, the agreement previously entered into between the Minerals Management Service and OSPR entitled, "MOA on Oil Pollution Prevention and Response" and executed/amended on April 24, 1995, is hereby terminated and is hereinafter void.

This provision applies only to the agreement specifically listed above.

VII. Amendments

This MOU may be amended by mutual agreement of the Parties. Amendments to the MOU will be in writing and require the approval of the BSEE Director and the OSPR Administrator.

VIII. Review and Termination

The Parties agree to review this agreement at least every five (5) years. Either Party may terminate this MOU unilaterally through provision of a 30-day advance written notice to the other Party. This MOU will remain in full force and effect until one or both of the Parties terminate this agreement in writing.

IX. Administration and Designated Representatives

This MOU will be administered by BSEE's Oil Spill Preparedness Division (OSPD) and the OSPR Administrator.

Each Party will identify in writing a Designated Representative, or their designee, who will keep the other Party informed, in a timely manner, of issues, response plan submittals, and policy determinations that are relevant to oil spill planning, preparedness, and response for covered facilities. The Designated Representatives will facilitate the coordination of joint events under this MOU. For OSPR, the Administrator is responsible for identifying its Designated Representative. For BSEE, the Director is responsible for identifying its Designated Representative.

The attachment entitled, "Designated Representatives Addendum," lists the initial respective Designated Representatives and Points of Contact for implementation of this MOU. Each Designated Representative will maintain an accurate and updated list of Points of Contact for its respective agency and will notify its counterpart Designated Representative of any changes in agency representatives within a reasonable amount of time, not to exceed 30 calendar days from the date the change became effective. These Designated Representatives and Points of Contact may be updated as needed by mutual written agreement and will be entitled, "Updated Designated Representatives Addendum." Any updates to the Designated Representatives Addendum will not constitute material changes to this MOU and will become an addendum to

the attachment and incorporated herein for all purposes. The version date should be included on any updated addendum.

The Parties will review their internal procedures and, where appropriate, revise them to accommodate the provisions of this MOU. The Designated Representatives will be responsible for ensuring that this review takes place, that their respective agency is aware of the terms and conditions of this MOU, and that the MOU is appropriately implemented.

X. Effective Date

This MOU is effective upon acceptance by both Parties as indicated by the signatures below.

**SCOTT
MABRY**

Digitally signed by SCOTT
MABRY
Date: 2022.03.22 14:10:55
-04'00'

**Cullen,
Thomas@Wildlife**

Digitally signed by Cullen,
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Date: 2022.03.22 14:18:28 -07'00'

Date: _____

Scott Mabry
Acting Director
Bureau of Safety and Environmental
Enforcement
U.S. Department of the Interior

Date: _____

Thomas M. Cullen Jr.
Administrator
Office of Spill Prevention & Response
California Department of Fish & Wildlife

ATTACHMENT: Designated Representatives Addendum

Designated Representatives:

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