

MEMORANDUM OF UNDERSTANDING

Among

U.S. Coast Guard District 1 (USCG)

and

U.S. Environmental Protection Agency Region II (EPA)

and

U.S. Department of the Interior (DOI)

and

U.S. Department of Commerce/
National Oceanic and Atmospheric Administration (DOC/NOAA)

and

State of New Jersey Department of Environmental Protection
and Energy (NJDEPE)

and

New York State Department of Environmental Conservation (NYSDEC)

PURPOSE

This Memorandum of Understanding (MOU) is designed to implement sections of Subpart J of the National Oil and Hazardous Substances Contingency Plan (NCP) and implement the requirements of 33 USC 1321(j)(4)(C)(v), the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990, that the Area Contingency Plan (ACP) shall "describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants." This MOU provides preauthorization for the use of chemical countermeasures (listed in the NCP Product Schedule) by the USCG On-Scene Coordinator. This pre-approval applies only in designated zones in the Captain of the Port New York (COTP-NY) geographic area of responsibility and the Captain of the Port of Long Island Sound (COTP-LIS) geographic area of responsibility.

This MOU also implements Subpart J (Use of Dispersants and Other Chemicals) and Appendices M and N of the Region II NY/NJ Regional Contingency Plan (RCP).

This MOU will be incorporated into Subpart J of the RCP and preempts any pre-existing MOUs.

AUTHORITY

Section 311(d)(2)(G) of the FWPCA requires that the NCP include a schedule for identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the NCP. These are referred to as "chemical countermeasures" and are listed on the NCP Product Schedule. The responsibility to maintain the NCP Product Schedule was delegated to the Administrator, Environmental Protection Agency, by Executive Order 12777, and is carried out under Subpart J of the NCP.

Subpart J of the NCP provides that the Federal On-Scene Coordinator (FOSC) with the concurrence of the EPA representative to the (RRT) and the States with jurisdiction over the navigable waters threatened by the oil discharge, and in consultation with DOC and DOI natural resource trustees, may authorize the use of chemical and biological countermeasures on oil discharges; provided however, that such chemical and biological countermeasures are listed in the NCP Product Schedule. Subpart J further authorizes agreements for the advance approval of the use of chemical and biological countermeasures listed in the NCP Product Schedule under specific circumstances.

Commandant, United States Coast Guard, has pre-designated the USCG COTP-NY as the FOSC for oil discharges in the COTP-NY zone (as defined in 33 CFR Part 3 and subject to joint response boundary agreements with EPA), and has delegated to the COTP the authority and responsibility for compliance with the FWPCA.

Commandant, United States Coast Guard, has pre-designated the USCG COTP-LIS as the FOSC for oil discharges in the COTP-LIS zone (as defined in 33 CFR Part 3 and subject to joint response boundary agreements with EPA), and has delegated to the COTP the authority and responsibility for compliance with the FWPCA.

The Governor of the State of New Jersey has designated the Commissioner of NJDEPE the authority and responsibility for providing approval for the use of chemical countermeasures for control of oil spills.

The Governor of the State of New York has designated the Commissioner of NYSDEC the authority and responsibility for providing approval for the use of chemical countermeasures for control of oil spills.

The US DOI and DOC/NOAA are designated Federal trustees of certain natural resources under Subpart G of the NCP and are to be consulted regarding the determination to apply chemical countermeasures to oil discharges in U.S. waters.

This MOU constitutes pre-consultation (for DOC/NOAA and DOI) and pre-concurrence (for USCG, EPA, NYSDEC and NJDEPE) for the use of

chemical countermeasures in the preapproved area (Zone 1) and for the trial application in the specific areas designated within Zone 2.

SCOPE

The USCG, EPA, DOI, DOC/NOAA, NJDEPE, and NYSDEC agree that the primary method of cleaning up oil shall be the physical removal of oil from the environment. These agencies recognize that in certain circumstances timely effective physical containment, collection, and removal of the oil may not be possible, and the utilization of chemical countermeasures, alone or in conjunction with other removal methods, may be considered as a means to minimize substantial threat to public health or welfare, or minimize serious environmental damages.

This MOU establishes advance approval under which NCP product schedule chemicals may be used by the FOSC in certain waters of the COTP-NY and COTP-LIS zones (defined in 33 CFR Part 3). The waters of COTP-NY and COTP-LIS are divided into three zones for the purposes of this MOU (see figure 1). The geographic areas and advance approval conditions are as follows:

Zone 1 - Advance Approval Zone

Geographic scope:

Zone 1 is defined as waters under the jurisdiction of COTP-NY and COTP-LIS that lie 3nm and seaward of the Territorial Sea Baseline (as defined in 33 CFR 2.05-10) along the coast of New Jersey (north of the demarcation of the jurisdiction of COTP Philadelphia) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 T to the outermost extent of the Exclusive Economic Zone.

Advance approval for Zone 1:

This MOU provides the FOSC with advance approval to use chemical countermeasures listed in the NCP Product Schedule in Zone 1 following the protocols listed later in this MOU.

Zone 2 - Trial Application Zone

Geographic scope:

Zone 2 is defined as waters under the jurisdiction of COTP-NY and COTP-LIS that lie between 0.5nm and 3nm from the Territorial Sea Baseline along the coast of New Jersey (north of the demarcation of the jurisdiction of COTP-Philadelphia) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 T, exclusive of all bays and coves. In addition, specific water bodies are also included in Zone 2, and are as follows:

Hudson River south of Tappan Zee Bridge
Upper New York Bay
The Narrows
Lower New York Bay

Raritan Bay excluding Spermaceti Cove and not within 0.5 nautical miles of Sandy Hook, New Jersey
Arthur Kill
Newark Bay up to mouths of Passaic and Hackensack Rivers
Kill Van Kull
East River south of Throgs Neck Bridge
Long Island Sound within COTP-NY area of responsibility only, excluding Little Bay, Little Neck Bay, Manhasset Bay, Hempstead Harbor, Eastchester Bay, Pelham Bay and not within 0.5nm of the northern shore of Long Island.

Advance approval for Zone 2:

This MOU provides the FOSC with advance approval to use chemical countermeasures listed in the NCP Product Schedule on a trial basis in Zone 2 following the protocols listed later in this MOU, unless otherwise prohibited in local Area Contingency Plans. The trial application will not take place if threatened or endangered species are known to be present. The trial application will be performed on a portion of the spill covered by less than 1,000 gallons to determine the product's efficacy on the specific oil under the current set of environmental and meteorological conditions. The quantity of chemical countermeasures utilized should not exceed 110 gallons. The trial application may begin prior to the initial request to the RCP concurrence network for operational use of the chemical countermeasures on a greater portion of the spill. This initial application will be supervised by a trained observer (USCG Strike Team, NOAA Scientific Support Coordinator, etc.) and be reported as qualitative observation (pass/fail). Results of the trial will be reported to the RRT as soon as they are available. A positive efficacy trial should not mean that the chemical countermeasure may automatically be extensively applied as there are many other factors to be weighed in the decision process. This trial application is solely for the purpose of determining if the time and effort should be expended to seek further clarification of the incident-specific issues and concurrence for operational use. If the trial application fails to produce significant results the request for further use will not be made.

Zone 3 - Exclusion zone

Geographic Scope:

Zone 3 is defined as the waters under the jurisdiction of COTP-NY and COTP-LIS that lie within 0.5 nm of the Territorial Sea Baseline along the coast of New Jersey (north of the demarcation of the jurisdiction of COTP-Philadelphia) and along the south shore of Long Island (New York) west of a line from Montauk Point Light bearing 132 T, including all bays and coves. Zone 3 also includes the Hudson River north of the Tappan Zee Bridge, and Long Island Sound, with the exception of the COTP-NY portion described in Zone 2.

Advance approval for Zone 3:

No advance approval is given in Zone 3. Use of chemical countermeasures is not recommended in this Zone. Any request for the use of chemical countermeasures must be accepted by the RCP concurrence network and must follow the guides in the RCP and ACP.

PROTOCOLS

As attested by the signatures set forth at the end of this document, the USCG, EPA, DOI, DOC/NOAA, NJDEPE, and NYSDEC agree that the pre-designated FOSC has the authority and may order the use of chemical countermeasures on oil discharges using the guides found in the Subpart J and Appendix M of the Region II RCP and Annex G of the COTP-NY and COTP-LIS ACPs and subject to the following conditions:

1. The decision to use chemical countermeasures within these guidelines rests solely with the pre-designated USCG FOSC.
2. The FOSC may authorize the use of chemical countermeasures on a release or discharge to prevent or substantially reduce the hazard to human life without obtaining concurrences from EPA, affected states, DOI, DOC/NOAA, without following protocols established in this MOU, and without following the guides in the RCP and ACP. If dispersants are used in this manner, notifications to EPA, affected states, DOI and DOC/NOAA shall be made as soon as practicable. Once the risk to human life has subsided, these exceptions no longer apply.
3. In the preapproved area (Zone 1) NCP Product Schedule chemical countermeasures may be used by the FOSC without further concurrence or consultation with the RCP concurrence network.
- 4(a) For a trial application in Zone 2 areas designated under "Scope" of this MOU no further concurrence or consultation prior to a decision to apply chemical countermeasures need be initiated by the FOSC provided the procedures outlined in the "RRT OSC Dispersant Decision Process" in Subpart J of the Regional Contingency Plan have been followed.
- 4(b) For operational use in Zone 2, the FOSC must follow the "RRT OSC Dispersant Decision Process" which includes the concurrence of USCG, EPA, and the affected state(s), and consultation of DOI and DOC/NOAA. The information obtained during the decision process needs to be provided to these agencies.

5. The USCG agrees with EPA, DOI, DOC/NOAA and the states that if a decision has been made to use chemical countermeasures under the provisions of this agreement, the FOSC will immediately notify EPA, DOI, DOC/NOAA and the states of that decision. This initial notification will include, but is not limited to, the following information to the extent available:

Type and amount of oil discharged

Area affected

The projected area of impact of the oil if not dispersed

Reasons why chemical agent has been selected

Type of chemical agent to be used

Application rate and method of application

On-scene weather

6. Only chemical countermeasures listed on the NCP Product Schedule shall be considered for use.
7. If chemical countermeasures are used as described in this MOU or for the protection of human life, a post incident debriefing will take place within 45 days to gather information concerning the effectiveness of chemical agents use and whether any changes to this agreement are necessary. The debriefing will be chaired by the USCG FOSC arranging the time, place, and date of the debrief. The results of the debrief will be included in the FOSC report.
8. Monitoring will be initiated in accordance with the monitoring protocols developed for each of the different zones.

AMENDMENTS

This Memorandum of Understanding may be amended in whole or in part as is mutually agreeable to all parties thereto.

Area Committees may additionally submit for consideration and approval by the RRT concurrence agencies, further defined areas for use/non-use. Approved amendments shall be found in (future) Appendix I of this MOU.

CANCELLATION

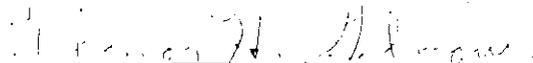
This Memorandum of Understanding may be canceled in whole or in part by any party thereto. Cancellation will take place 30 days following delivery of written notification to each of the agencies participating in this Memorandum of Understanding.

SIGNATURES



Capt. Eric J. Williams III, USCG
Commander (m)
First Coast Guard District
RRT Co-Chair

3/31/94
Date



Capt. Thomas H. Gilmour, USCG
Captain of the Port, New York
Federal On-Scene Coordinator

4/7/94
Date



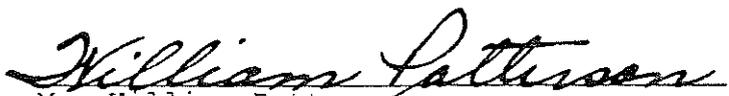
Captain T.W. Allen, USCG
Captain of the Port, Long Island Sound
Federal On-Scene Coordinator

4/6/94
Date



Mr. Richard Salkie
Associate Director for
Removal and Emergency Preparedness Programs
U.S. Environmental Protection Agency, Region II
RRT Co-Chair

4/12/94
Date



Mr. William Patterson
Regional Environmental Officer/Northeast
U.S. Department of Interior
RRT Representative

3/31/94
Date

Diane E. Wehner

Ms. Diane Wehner
NOAA/CRC
U.S. Department of Commerce
RRT Representative

7/1/94
Date

Lance Miller

Mr. Lance Miller
Assistant Commissioner, Site Remediation Emergency
Response Coordinator
Department of Environmental Protection and Energy
State of New Jersey

4/13/94
Date

Thomas Quinn

Mr. Thomas Quinn
Assistant Director, Division of Spills Management
Department of Environmental Conservation
State of New York

4/13/94
Date

U.S. Department
of Transportation

United States
Coast Guard



Commander
First Coast Guard District

408 Atlantic Avenue
Boston, MA 02210-3350
Staff Symbol: (mep)
Phone: 617/223-8586
T.Walker/D1m@cgsmtg.uscg.mil

John HGH
John
John
John

95 APR - 0 10 19

16450
April 4, 1996

Mr. Richard Gimello
Assistant Commissioner,
Site Remediation Emergency Response Coordinator
Department of Environmental Protection
CN 028, 401 East State St.
Trenton, NJ 08625

Dear Mr. Gimello:

The Regional Response Team in Region II (RRT II) unanimously agreed to amend the Memorandum of Understanding concerning Chemical Countermeasure Preauthorization (MOU) at the 7 December 1995 RRT II meeting.

This amendment, included as Enclosure 1, will extend the southern boundary of the MOU from Tom's River, New Jersey to the boundary between Federal Regions II and III. This change eliminates the artificial boundary that coincides with the division between Coast Guard Districts 1 and 5, instead substituting a boundary that is more consistent with the geography of the area.

Based on discussions with the agencies party to the original MOU, we only need your signature and that of Coast Guard Captain of the Port, Philadelphia to put this amendment into effect. Please return the accepted MOU amendment to LCDR Thomas Walker of my staff. Copies will be distributed to all RRT II members.

If you need further information, please contact LCDR Thomas Walker of my staff at the above address or telephone number.

Sincerely,

E. J. Williams III

E. J. WILLIAMS III
Captain, U. S. Coast Guard
Chief, Marine Safety Division
By direction of the Commander,
First Coast Guard District

- Encl: (1) Amendment to Memorandum of Understanding concerning chemical countermeasure preauthorization
(2) Memorandum of Understanding concerning chemical countermeasure preauthorization

Copy: **Bruce Sprague, RRT II EPA Co-Chair**
Andrew Raddant, RRT II DOI Representative
Diane Wehner, RRT II DOC/NOAA Representative
Thomas Quinn, RRT II N.Y. State Representative
U.S. Coast Guard Captain of the Port, Philadelphia
U.S. Coast Guard Fifth District, Marine Safety Division



16450
April 4, 1996

From: Commander, First Coast Guard District
To: Commanding Officer, Marine Safety Office Philadelphia, PA
Via: Commander, Fifth Coast Guard District (m)

Subj: CHEMICAL COUNTERMEASURE PREAUTHORIZATION IN REGION II

1. The Regional Response Team in Region II (RRT II) unanimously agreed to amend an existing Memorandum of Understanding concerning Chemical Countermeasure Preauthorization (MOU) at the 7 December 1995 RRT II meeting.

2. This proposed amendment, included as Enclosure 1, would extend the southern boundary of the MOU from Tom's River, New Jersey to the boundary between Federal Regions II and III. This change would give you, as COTP Philadelphia, preapproval to use chemical countermeasures in this part of your zone, subject to the conditions of the original MOU (see Enclosure 2). This is a beneficial change because it both makes chemical countermeasures a more viable tool for spill response and replaces the artificial D1/D5 boundary with a boundary that is better aligned with the geography of the area.

3. Based on discussions with the agencies party to the original MOU, we only need your signature and that of New Jersey DEP to put this amendment into effect. After signing please forward to the State of New Jersey for their signature.

4. Please contact LCDR Walker of my staff if you have any questions.

A handwritten signature in cursive script, appearing to read "E. J. Williams III".

E. J. WILLIAMS III
By direction

Encl: (1) Amendment to Memorandum of Understanding concerning
chemical countermeasure preauthorization
(2) Memorandum of Understanding concerning chemical
countermeasure preauthorization

Copy: Bruce Sprague, RRT II EPA Co-Chair
Andrew Raddant, RRT II DOI Representative
Diane Wehner, RRT II DOC/NOAA Representative
Thomas Quinn, New York DEC
Richard Gimello, New Jersey DEP

AMENDMENT

RECEIVED
DEPT OF THE INTERIOR
MAY 22 1996
OFFICE OF THE SECRETARY
BOSTON, MA

to

Memorandum Of Understanding

Among

U.S. Coast Guard District 1 (USCG D1)

and

U.S. Coast Guard District 5 (USCG D5)

and

Captain Of The Port Long Island Sound (COTP LIS)

and

Captain Of The Port New York (COTP NY)

and

Captain Of The Port Philadelphia (COTP PHIL)

and

U.S. Environmental Protection Agency Region II (US EPA)

and

U.S. Department of Interior (US DOI)

and

U.S. Department of Commerce /

National Oceanic and Atmospheric Administration (US DOC/NOAA)

and

State of New Jersey Department of Environmental Protection (NJ DEP)

and

New York State Department of Environmental Conservation (NYS DEC)

As unanimously agreed upon at the Regional Response Team II meeting on 7 December, 1995, at the Liberty State Park Environmental Center, in Jersey City, NJ, the above Memorandum Of Understanding (MOU) has been amended to extend the southern boundary of pre-authorization to the boundary between Federal Regions II and III (see revised Figure 1).

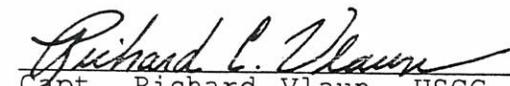
This MOU provides pre-authorization for the use of chemical countermeasures (listed in the NCP Product Schedule) by the USCG On-Scene Coordinator. This pre-approval applies only in designated zones in the Captain Of The Port Long Island Sound, New York, and Philadelphia areas of responsibility.

SIGNATURES



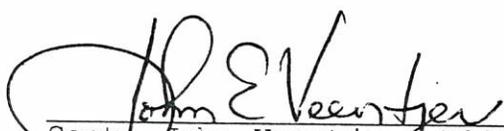
Mr. Richard Gimello
Assistant Commissioner,
Site Remediation Emergency Response Coordinator
Department of Environmental Protection
State of New Jersey

5/10/96
Date



Capt. Richard Vlaun, USCG
Commander (m)
Fifth Coast Guard District
RRT III Co-Chair

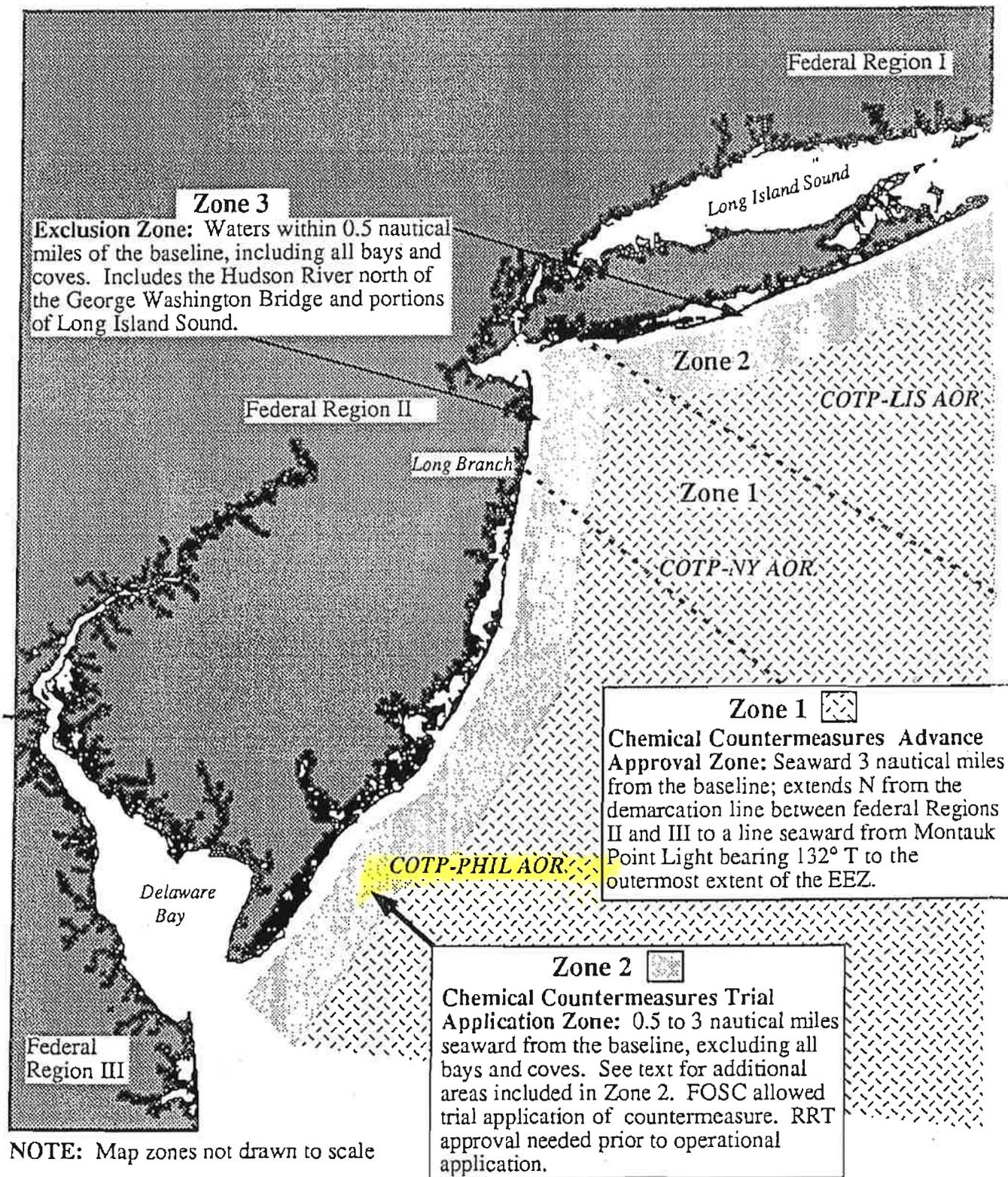
April 17, 1996
Date



Capt. John Veentjer, USCG
Captain of the Port, Philadelphia
Federal On-Scene Coordinator

April 23, 1996
Date

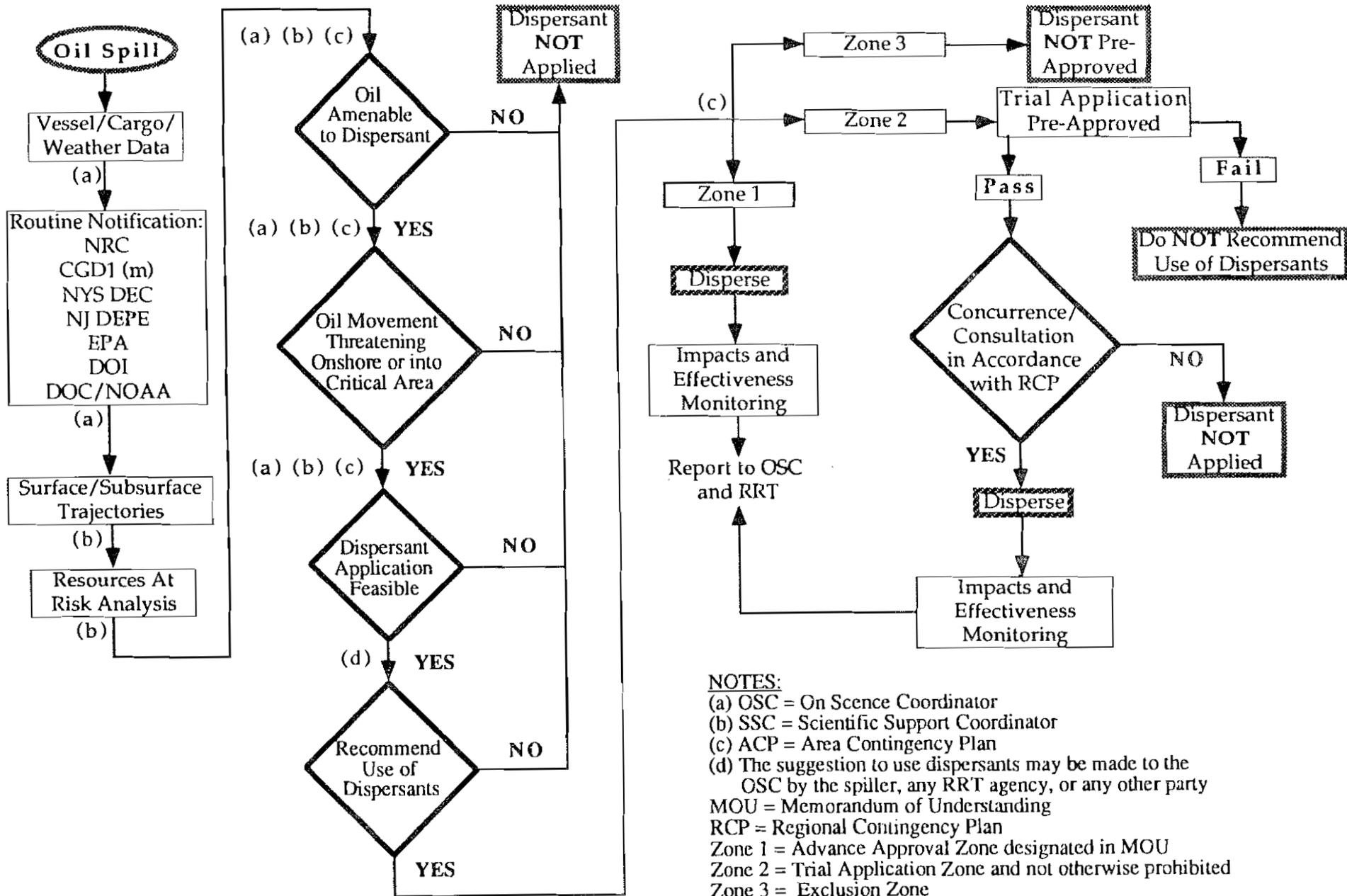
Region II Chemical Countermeasures Application Zones



12 December, 1995 Update

Figure 1

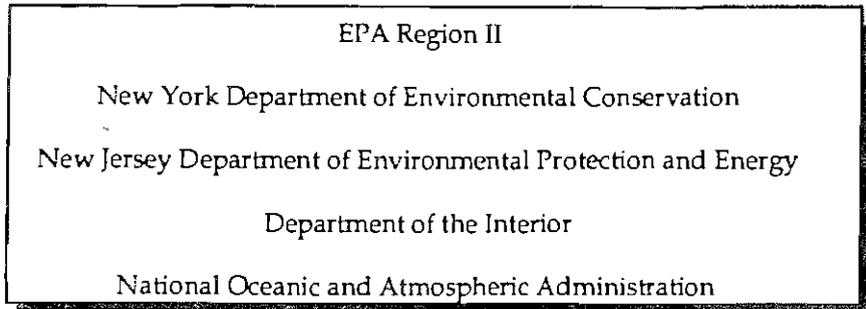
RRT II OSC DISPERSANT DECISION PROCESS



NOTES:

- (a) OSC = On Scene Coordinator
- (b) SSC = Scientific Support Coordinator
- (c) ACP = Area Contingency Plan
- (d) The suggestion to use dispersants may be made to the OSC by the spiller, any RRT agency, or any other party
- MOU = Memorandum of Understanding
- RCP = Regional Contingency Plan
- Zone 1 = Advance Approval Zone designated in MOU
- Zone 2 = Trial Application Zone and not otherwise prohibited
- Zone 3 = Exclusion Zone

Regional Response Team II Concurrence Network for Chemical Countermeasure Use



**Coastal Waters
COTP NY & LIS**

On Scene
Coordinator

Coast Guard District 1 (mep)

Coast Guard District 5 (mep)

**Delaware Bay & Coastal Waters
COTP PHIL**

Long Island Sound

