



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Chesapeake Bay Field Office

177 Admiral Cochrane Drive

Annapolis, MD 21401

September 11, 1997

James M. Obernesser
Commander, U.S. Coast Guard
Chief, Area Marine Response Branch
4331 Crawford Street
Portsmouth, VA 23704-5004

Re: Section 7 Consultation on Federal
Region III MOU for Preapproved
Use of In-Situ Burning

Dear Commander Obernesser:

This letter is in response to your June 12, 1996, request to the U.S. Fish and Wildlife Service Chesapeake Bay Field Office for informal Section 7 consultation as provided by the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), regarding the implementation of the proposed April 17, 1997, Federal Region III Memorandum of Understanding for Preapproved Use of In-Situ Burning by the USCG Federal On-Scene Coordinator (FOSC) in response to coastal oil discharges. (These comments do not represent any position the U.S. Department of Interior may adopt concerning possible injury to natural resources under the Department's trusteeship.)

It is our understanding that the proposed MOU provides procedures to be followed for obtaining an expedited decision regarding the use of in-situ burning in responding to oil discharges in portions of designated zones within the Areas of Responsibility for the USCG for Philadelphia, Baltimore, and Hampton Roads within Federal Region III.

Species Considered

Based on the Region III In-Situ Burning Authorization Zones Figure 1 and supporting text provided in the draft MOU, the Service has determined that a number of federally listed endangered or threatened species under Service jurisdiction may occur within or adjacent to the zones where in-situ burning may be implemented. The endangered species include the Peregrine falcon (*Falco peregrinus anatum*). The threatened species include the Piping Plover (*Charadrius melodus*), Bald eagle (*Haliaeetus leucocephalus*), Northeastern beach tiger beetle (*Cincindela dorsalis dorsalis*), and Sensitive joint vetch (*Aeschynomene virginica*).

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In addition, Delmarva fox squirrel (*Sciurus niger cinereus*) and Swamp pink (*Helonia bullata*) are an endangered mammal and threatened plant species, respectively, that occur along coastal areas adjacent to the zones where in-situ burning may be implemented. The Delmarva fox squirrel occurs in mature hardwood forest stands along streams and bays, whereas Swamp pink is found in palustrine forested wetland habitat. Based on the available information on life histories, habitat preferences, and diets, the Service has concluded that these two species are unlikely to be exposed to waterborne contaminants that would be regulated by the subject MOU. The Delmarva fox squirrel and Swamp pink do not occur near bodies of water large enough to be considered suitable for in-situ burning and therefore, will not likely be adversely affected by the proposed MOU.

Of the species listed above, the bald eagle, peregrine falcon, piping plover, northeastern tiger beetle, and sensitive joint vetch will be consulted on regarding the proposed MOU. There is no critical habitat listed for these species in the proposed area.

Other Federally Listed Species

The following marine/estuarine species are known to occur in waters off the Maryland, Delaware, and Virginia coast where in-situ burning may be used:

Shortnose sturgeon (*Acipenser brevirostrum*)
Green turtle (*Chelonia mydas*)
Hawksbill turtle (*Eretmochelys imbricata*)
Atlantic ridley sea turtle (*Lepidochelys kempi*)
Leatherback sea turtle (*Dermochelys coriacea*)
Loggerhead sea turtle (*Caretta caretta*)
Blue whale (*Balaenoptera musculus*)
Finback whale (*Balaenoptera physalus*)
Humpback whale (*Megaptera novaeangliae*)
Right whale (*Balaena glacialis*)
Sei whale (*Balaenoptera borealis*)
Sperm whale (*Physeter macrocephalus*)

These species fall under the primary jurisdiction of the National Marine Fisheries Service (NMFS) while in aquatic habitats, whereas the Service has jurisdiction of some of these species (e.g., sea turtles) while on land. With the exception of limited nesting by loggerhead sea turtles on the Atlantic coast of Virginia south of the Chesapeake Bay, sea turtle use in the area under review is limited to aquatic habitats. Because the above species may be found in the areas directly affected by in-situ burning in the designated zones, consultation should be initiated with NMFS.

MOU Zone A (Preauthorization)

As you are aware, a draft Service policy on the use of in-situ burning during oil spill response in the Service's Northeast Region (Region 5) was developed as a result of requests from the Department of Interior Regional Environmental Officers, Regional Response Teams (I, II, III), and the USCG to evaluate the potential effects of in-situ burning, and comment on desired monitoring required for continued evaluation of the alternative response technique. We have enclosed a copy of the Service's Region 5 Draft Policy on In-Situ Burning Preapproval for your information.

We find that rapid removal and dispersal of floating oil from surface, marine waters in the Preauthorization for Open-Water Burning Zone (Zone A) (seaward 3 nautical miles from the Territorial Sea Baseline), will lessen the likelihood that the spilled oil will reach the near shore and coastal waters which these species utilize or inhabit. Therefore, we find that implementation of the policy is more likely to be of benefit to threatened and endangered species under Service jurisdiction than the alternative prospect of oil stranding on coastal beaches and estuaries. We find that the five threatened and endangered species under the jurisdiction of the Service in the Zone A are not likely to be adversely affected by the use of in-situ burning: piping plover, bald eagle, northeastern beach tiger beetle, sensitive joint vetch, and peregrine falcon provided that the established MOU protocols for Zone A are instituted.

MOU Zone B (Waters Requiring Case-by-Case Approval)

As recognized in the proposed MOU and supported by the Regional Service draft policy, we will not accede to preapproval of in-situ burning in the B Zone. Requests for in-situ burning in waters within 3 nautical miles of the baseline and other areas set forth in the text of the MOU will be evaluated by the Service on a case-by-case basis prior to burning. This approach is prudent and is not likely to result in avoidable adverse effects to endangered species. This concurrence is based on our understanding that the established MOU protocols are followed.

MOU Zone R (Restricted)

As recognized in the proposed MOU and supported by the Regional Service draft policy, we will not accede to preapproval of in-situ burning in the R Zone. We understand that no in-situ burning operations will be conducted in the R Zone unless (a) in-situ burning is necessary to prevent a clear, immediate, and extreme risk to human health or safety; or (b) an emergency modification of this agreement is made on an incident-specific bases. Therefore, requests for in-situ burning in waters within restricted areas designated by the RRT or the Area Committees will be evaluated by the Service on an emergency consultation basis. Emergency consultation procedures are appropriate when a situation involves an act of God, disasters, casualties, national defense or security emergencies, etc., and includes response activities that must be taken to prevent imminent loss of human life or property. This concurrence is based on our understanding that the established MOU protocols are followed.

Therefore, the Service finds that the implementation of the June 12, 1997 draft MOU is not likely to adversely affect any listed threatened or endangered species for which the Service has jurisdiction pursuant to the ESA of 1973. However, if new information becomes available that the proposed MOU may affect these listed species, consultation must be reinitiated.

Species of Special Consideration

We would like to take this opportunity to provide the USCG with a discussion of two listed species and their habitats that may be adversely affected by in-situ burning in Zones B and R (where concurrence is required for operational use.) Due to the Service's heightened concern regarding in-situ burning in these zones, the following section is intended to assist the USCG in understanding future Service requests in the event concurrence is requested.

Although in-situ burning can remove a large volume of oil from the water surface, the Service understands that some oil will not be consumed, varying with the type of oil and layer thickness. Therefore, some provisions will be necessary for cleanup of the unburned product remaining after combustion. In this situation, there is an additional potential for an undefined level of near-shoreline and shoreline impacts (even with a successful in-situ burn). In addition to requesting implementation of efforts necessary to minimize adverse effects for the specific species detailed below, the Service may request that a biological sampling and monitoring plan be implemented, if appropriate, in the event that in-situ burning is used. Measures such as toxicity bioassays, toxic residues (e.g., PAH, TPH) in surface waters and sediments, temperature, dissolved oxygen and other parameters would provide additional ecological impact data on in-situ burning.

Northeastern Beach Tiger Beetle

The Northeastern beach tiger beetle larvae burrow directly on the beach, in and above the intertidal zone of Chesapeake Bay beaches (includes some near the mouth of the bay). The beetles have a full two year life cycle, overwintering twice as larvae, pupating at the bottoms of their burrows, and emerging as winged adults during their third summer. Adults emerge from early June through August, with peak abundance in mid July. Primary prey items include small amphipods, flies, and other beach arthropods. Adults have also been observed scavenging on dead amphipods, crabs, and fish along coastal beaches.

Major threats include increased human activity (e.g., human traffic) and associated development in the beach areas where the beetles reside in addition to water pollution, dredged material placement, and oil spills. The larvae are particularly vulnerable to direct crushing or repeated compaction of their burrows since they occur in a relatively narrow band within the upper intertidal to high drift zone and persist for two years as a burrow dependent juvenile. In addition, because early developmental stages are more sensitive to toxicants than adults, the tiger beetle larvae area at greatest risk of encountering oil/residue mixture concentrations sufficient to have adverse effects.

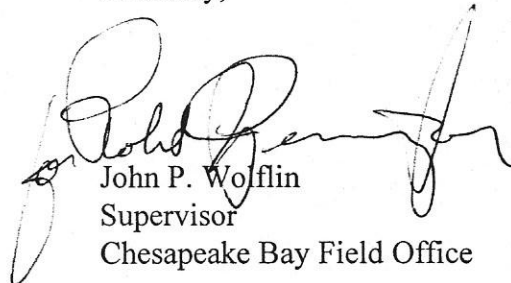
Because the Northeastern beach tiger beetle's entire life cycle takes place on or immediately adjacent to intertidal bay beach habitats, they would be extremely vulnerable to oil spills or oil/residue mixtures that coat the intertidal or supratidal zone within the Chesapeake Bay. In addition, human activity on the beach area where they reside, such as foot traffic, would provide an additional threat to the species. For this reason, we request that the USCG alert the Virginia Field Office (804-693-6694) immediately of any potential spill response related human and/or in-situ burning activity in the vicinity of the Virginia beaches at Cape Charles, located at the mouth of the Chesapeake Bay.

Piping Plover

Significant use of Atlantic coastal areas of Delaware, Maryland, and Virginia by piping plover occurs from March through September. This includes mating, nesting, and brood-rearing. Nests are usually found only a few meters behind the mean high tide line. Adult and juvenile piping plovers spend much of their time foraging in the intertidal zone of beaches and along sand and mud flats. Diets consist of invertebrates, including marine worms, beetles, crustaceans, and small mollusks making the birds and their invertebrate prey base especially vulnerable to the effects of oil or oil/residue mixtures washed into these areas. Therefore, we request that the USCG contact the Service immediately of any potential spill response related human and/or in-situ burning activity in the vicinity of all beaches along the Atlantic coast of Delaware, Maryland, and Virginia during the months when piping plovers are present (March - September).

Thank you for your cooperation. If you have any further questions or need additional information, please feel free to contact Keren Giovengo of my staff at (410)573-4538.

Sincerely,



John P. Wolflin
Supervisor
Chesapeake Bay Field Office

Enclosures

cc:

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