



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Chesapeake Bay Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401

January 14, 1997

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

Re: Section 7 Consultation on Federal Region III  
MOU for Pre-Approved Use of Chemical  
Countermeasures

Dear Commander Obernesser:

This letter is in response to your September 24, 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 November 15, 1996, and revised November 22, 1996, Federal Region III Memorandum of Understanding for Pre-Approved Use of Chemical Countermeasures. (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 chemical countermeasures (i.e., dispersants, surface collecting agents, and biological additives) in responding to oil discharges in portions of designated zones in the Captain of the Port Hampton Roads and Captain of the Port Philadelphia geographic areas of responsibility within Federal Region III.

### Species Considered

Based on the Region III Chemical Countermeasures Authorization Zones map and supporting text provided in the draft MOA, 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 dispersants may be applied. The endangered species include the Peregrine falcon (*Falco peregrinus anatum*). The threatened species include the Piping plover (*Charadrius*

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*melodus*), Bald eagle (*Haliaeetus leucocephalus*), Northeastern beach tiger beetle (*Cincindela dorsalis dorsalis*), and Sensitive joint vetch (*Aeschynomene virginica*).

In addition, Delmarva fox squirrel (*Sciurus niger cinereus*) and Swamp pink (*Helonias bullata*) are an endangered mammal and threatened plant species, respectively, that occur along coastal areas adjacent to the zones where dispersants may be applied. The Delmarva fox squirrel occurs in mature hardwood forests stands along streams and bays, whereas Swamp pink is found in palustrine forested wetland habitats. 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 dispersant use 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 dispersants may be used:

Shortnose sturgeon (*Acipenser brevirostrum*)

Green turtle (*Chelonia mydas*)

Hawksbill turtle (*Eretmochelys imbricata*)

Atlantic ridley sea turtle (*Lepidochelys kempfi*)

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 while in aquatic habitats, whereas the Service has jurisdiction of some of these species (i.e., 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 dispersant use in the designated zones, consultation should be initiated with NMFS.

### MOU Zones 1 and A

As you are aware, a policy on the use of chemical dispersants 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 and III), and the USCG to evaluate the potential effects of dispersant application, and comment on desired dispersant monitoring required for continued evaluation of the techniques. We have enclosed a copy of the Service's Region 5 Policy on Oil Spill Dispersant Preapproval for your information. The August 22, 1996 memorandum from the Region 5 Endangered Species Coordinator constitutes the Service's review of the policy for the preapproval of the use of chemical dispersants in oil spill response to ensure compliance with Section 7 of the Endangered Species Act of 1973. A copy is enclosed.

The Regional review found that the following five threatened and endangered species under the jurisdiction of the Service in the Full Preapproval Zone (MOU ZONE 1) and Test Application Preapproval Zone (MOU Zone A) were not likely to be adversely affected by the use of dispersants: piping plover, bald eagle, northeastern beach tiger beetle, sensitive joint vetch, and peregrine falcon. Our field office concurs with this Regional policy determination provided the 6-point Dispersant Monitoring Protocol, Service Region 5 Bioassay Protocol, and physicochemical data collections are instituted at each sampling location and follow the established MOU conditions and restrictions for Zone A.

### MOU Zones 2 and 3

As recognized in the proposed MOU and supported by the Regional Service policy and subsequent Section 7 consultation, we will not accede to pre-approval of dispersant application in the No Preapproval Zones (MOU Zones 2 and 3)(with the exception of trial applications in Zone 2). Requests for dispersant application in waters shallower than 40 feet or less than one nautical mile from shore will be evaluated by the Service on a case-by-case basis prior to application. 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 6-point Dispersant Monitoring Protocol, Service Region 5 Bioassay Protocol, and physicochemical data collections will be instituted at each sampling location and follow the established MOU conditions and restrictions for these zones.

Therefore, the Service finds that the implementation of the November 15, 1996, and amended November 22, 1996, 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 dispersant use in Zones 2 and 3 (where concurrence is required for operational use.) Due to the Service's heightened concern regarding chemical countermeasure use in these zones, the following section is intended to assist the USCG in understanding future Service requests in the event concurrence is requested.

### 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 (i.e., 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 are at greatest risk of encountering dispersant or oil/dispersant 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/dispersant 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 dispersant activity in the vicinity of the Virginia beaches at Cape Charles, located at the mouth of the Chesapeake Bay.

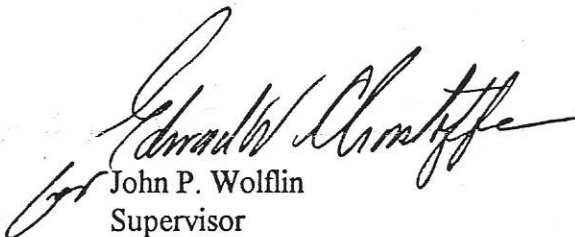
### Piping Plover

Significant use of Atlantic coastal areas of Delaware, Maryland, and Virginia by the 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 molluscs making the birds and their invertebrate prey base especially vulnerable to the effects of oil or oil/dispersant mixtures washed into these areas. Therefore, we request that the USCG alert

the Service immediately of any potential spill response related human and/or dispersant activity in the vicinity of all beaches along the Atlantic coast of Delaware, Maryland, and Virginia during the months when piping plover are nesting.

Thank you for your cooperation. If you have any further questions or need addition 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: D. Henne, REO, Philadelphia, PA  
P. Nickerson, FWS R5, Hadley, MA  
T. Fannin, FWS R5, Hadley, MA  
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