

**Department of Fish and Wildlife  
Office of Spill Prevention and Response**

## **GUIDANCE DOCUMENT**

**For use in the preparation of  
Contingency Plans**

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### **Wildlife Response Requirements**

**Title 14, CCR 817.04(p)**

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## BACKGROUND

The *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* [the Act; Gov. C. §8670.1 *et seq.*; significantly amended in 2014 by Senate Bill 861 (SB 861)] requires the Administrator for oil spill response, acting at the direction of the Governor, to ensure the State fully and adequately responds to all oil spills in state waters and to represent the State in any coordinated response efforts with the federal government. The goal and purpose of the Act is for the Administrator to provide for the best achievable protection of waters of the state from oil spills. This includes establishing and periodically revising a California Oil Spill Contingency Plan that provides integrated and effective coordination for state agencies to address the results of major oil spills.

The Administrator must implement activities relating to oil spill response, such as emergency drills for preparedness, oil spill containment and cleanup, and financial responsibility. This also specifically includes adopting and implementing regulations governing the adequacy of oil spill contingency plans that must be prepared and implemented by vessels and facilities that could spill oil into state waters.

The Administrator 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. This includes authority over the use of all response methods, such as *in situ* burning, dispersants, and other oil spill cleanup agents in connection with an oil discharge. The Administrator must cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

The Administrator is required to establish a network of rescue and rehabilitation stations for wildlife injured by oil spills in waters of the state, including sea otters and other marine mammals. This network is known as the Oiled Wildlife Care Network (OWCN), and is administered through the Wildlife Health Center at the University of California, Davis. If a plan holder has a spill that injures wildlife, plan holders are encouraged to use a local OWCN facility if there is one in the area.

Owners or operators of facilities that have the potential to spill oil into state waters are required to prepare and submit an oil spill contingency plan (C-plan) to the Office of Spill Prevention and Response (OSPR) for approval. [Ref. CA Government Code §§8670.28, 8670.28.5, 8670.29, 8670.30.5, and 8670.31] Contingency plans are prepared and used for response activities in the event of an oil spill or threatened spill into waters of the state. The Act authorizes the Administrator to require that contingency plans provide for best achievable protection taken and that sufficient response resources are capable of arriving on-scene and equipment deployed within a certain timeframe for effective containment and response.

## DISCLAIMER

The purpose of the guidance document is to assist owner/operators in complying with the oil spill contingency plan (C-plan), drills and exercises, financial responsibility and other requirements established by the Office of Spill Prevention and Response. C-plans are mandated for certain vessels and facilities by the *Lempert-Keene-Seastrand Oil Spill Prevention & Response Act* (the Act; Gov. C. §8670.1 *et seq.*), which was significantly amended in 2014 by Senate Bill 861 (SB 861).

This document does not contain specific requirements, nor does it replace any statutory requirements established by the Act, SB 861 amendments, or regulations promulgated to implement the Act and SB 861 amendments. This guidance document helps explain how to comply with the Act and the implementing regulations. However, all applicable laws and regulations should be read before using this guidance document for the preparation of C-plans.

All guidance documents can be obtained by visiting our website at <http://www.wildlife.ca.gov/OSPR/Preparedness/Inland-Facilities-Contingency-Plan>. Guidance documents may be updated periodically without notice, as necessary, to reflect any changes in applicable laws or regulations. Comments or questions regarding a guidance document should be addressed to the OSPR Branch listed on the specific guidance document.

## **Wildlife Response Requirement**

Wildlife are put at risk or injured when oil is spilled into the environment. Per Title 14, CCR Section 817.04(p), each oil spill contingency plan holder shall have a plan which describes the method of providing care and treatment to oiled wildlife by one of the following approved means:

- (A) Indicate use of the California Oiled Wildlife Care Network (OWCN); or
- (B) Describe procedures that clearly outline how oiled wildlife care will be provided. The equipment and personnel necessary to implement these procedures must be identified and assured by contract for each Response Planning Area covered by the plan. Standards and written protocols used for wildlife care must comply with all applicable State and Federal laws.

## **Federal and State Law Mandates**

Both Federal and State statutes mandate protection, rescue, and rehabilitation of oiled wildlife. In response to the Federal Oil Pollution Act of 1990 (OPA 90), the National Oil and Hazardous Substances Pollution Contingency Plan (“National Contingency Plan” or NCP) stipulates that Area Contingency Plans (ACPs) contain a Fish and Wildlife and Sensitive Environments Plan “in order to provide for coordinated, immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of injury to, fish and wildlife resources and habitat.”

In most respects, the fish and wildlife provisions of the State of California’s Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (OSPRA) (Government Code §§ 8574.7, 8670.37.5) parallel the OPA-90 provisions. The OSPRA provides for development of contingency plans for the protection of fish and wildlife; and subsequent legislation provides for the establishment and funding of the Oiled Wildlife Care Network (OWCN; Government Code § 8670.37.5) as an essential component of California’s wildlife response capability. Facilities within the OWCN are to be established and maintained in a state of preparedness to provide the best achievable treatment for mammals and birds affected by an oil spill in state waters. Both the recovery and care roles for oiled wildlife are typically conducted and managed by the OWCN, which is administered by the UC Davis Wildlife Health Center.

In 2014, Governor Edmund G. Brown signed Senate Bill 861 providing OSPR with regulatory authority to expand California’s oil spill preparedness and response program to cover all surface waters of the state at risk of oil spills from any source, including pipelines, production facilities, and shipments of oil transported by railroads. As a result, the capacity of the OWCN to conduct rescue and rehabilitation of terrestrial and freshwater species has been expanded.

## **Oiled Wildlife Care Network (OWCN)**

The OWCN, a statewide cooperative system of specialized wildlife health centers and organizations set up by statute (Government Code § 8670.37.5), is integral to wildlife response in California. The OWCN is administered by the Wildlife Health Center (WHC) at UC Davis. The WHC has a Memorandum of Understanding with OSPR related to the OWCN for the establishment and equipping of wildlife rescue and rehabilitation stations, and providing services for the rescue and rehabilitation of oiled wildlife. OWCN maintains a corps of veterinarians, paid staff, and professionally-trained volunteers. OWCN has currently enlisted more than 30 academic, private non-profit, and rehabilitation organizations (OWCN Member Organizations) to actively participate during oil spill responses, and includes 12 permanent wildlife care facilities along the California coast for use during a spill. During a spill, if a particular wildlife care facility becomes overwhelmed, additional facilities can be utilized, including a mobile oiled wildlife care trailer complete with oily wash water containment. The Recovery, Field Stabilization, Care & Processing, and Hazing Groups are typically staffed and managed by the OWCN. Through regular training programs, the OWCN maintains a corps of pre-trained HAZWOPER certified volunteers with training in wildlife capture techniques, wildlife field stabilization, and care and processing.

The OWCN, as well as key OWCN rehabilitation partners, holds a Migratory Bird Rehabilitation Permit that allows for personnel (including volunteers) working under OWCN to collect birds during oil spills. This includes dead birds and live oiled birds, as well as live un-oiled birds that may be captured “for the purpose of removing them from imminent danger.” In California, the OWCN’s Migratory Bird Rehabilitation Permit authorizes recovery, temporary possession, transport, and rehabilitation of oiled Threatened and Endangered bird species. To aid in minimizing potential impacts to Threatened and Endangered species that could be encountered during spill response, special protocols should be established. More information on the OWCN can be found at [www.owcn.org](http://www.owcn.org).

### **Identification of a Wildlife Response Organization by the Contingency Plan Holder**

A potential responsible party (contingency plan holder) can and typically does name the OWCN in its contingency plan(s) as its identified wildlife response organization. ***Listing OWCN is free of charge.*** OWCN holds all necessary federal and state permits. If OWCN is listed by the plan holder, and a spill occurs, the plan holder can activate (hire) OWCN by calling the 24/7 Oiled Wildlife Response Hotline at (877) 823-6926 or (877) UCD-OWCN.

If the contingency plan holder chooses to identify a wildlife response organization other than the OWCN, procedures that clearly outline how oiled wildlife care will be provided

must be described. The equipment and personnel necessary to implement these procedures must be identified and assured by contract for each Response Planning Area covered by the plan. Standards and written protocols used for wildlife care must comply with all applicable State and Federal laws.

### **Additional Guidance – ONLY necessary if not listing OWCN**

#### **Compliance with Federal and State Wildlife Regulations**

There are two Federal laws (discussed below) for the protection of wildlife relevant to oil spill response: the Migratory Bird Treaty Act, and the Endangered Species Act. In addition, there is the Bald Eagle Protection Act that protects Bald Eagles and Golden Eagles.

- **Migratory Bird Treaty Act**

The Federal Migratory Bird Treaty Act (MBTA) prohibits anyone without a permit from pursuing, hunting, killing, possessing, or transporting (or attempting to do any of these things) most native birds in the United States. The MBTA applies to live and dead birds, and active nests (nests with eggs or chicks). The trustee agency overseeing the MBTA is the U.S. Fish and Wildlife Service (USFWS).

A Migratory Bird Rehabilitation Permit allows for personnel to collect birds during oil spills. This can include dead birds and live oiled birds, as well as live un-oiled birds that may be captured “for the purpose of removing them from imminent danger.” No federal permit is required for non-lethal deterrence (hazing) of migratory birds. Birds captured or collected must be reported to the USFWS, and any birds listed under the Federal Endangered Species Act must be reported within 24 hours. Disturbance related to spill response activities that would result in loss or abandonment of nests is not covered under the Migratory Bird Rehabilitation Permit; such disturbance should be avoided. The contingency plan holder must obtain a MBTA permit from USFWS if use of OWCN is not listed for Wildlife Response.

- **Federal Endangered Species Act**

The Federal Endangered Species Act (FESA) prohibits take of species listed as Threatened or Endangered under the Act. “Take” under the FESA is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The USFWS oversees permitting authorization issues for the allowed take of listed terrestrial species, non-marine fish, and birds; NMFS oversees permitting authorization of the allowable take of anadromous fishes. The contingency plan holder must obtain a FESA “Take” permit from the USFWS if use of OWCN is not listed for Wildlife Response.

- **State of California Wildlife Regulations**

The California Endangered Species Act prohibits “take” of species listed as Endangered or Threatened by the State, or candidate species for listing. “Take” is defined by the State as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” However, “possession or take of Endangered, Threatened, or candidate species by employees and agents of the Department for scientific, educational and management purposes, and for law enforcement purposes, is not prohibited” (14 CCR § 783.1); thus response activities for these species under the auspices of CDFW are permitted. The contingency plan holder must obtain a permit from CDFW if use of OWCN is not listed for Wildlife Response.

Native wildlife in California are also protected under a variety of other regulations (e.g., DFG code 3500). The OWCN and key OWCN Member Organizations hold Wildlife Rehabilitation Permits issued by the State which allow them to temporarily collect and hold injured (as by oil) wildlife. Non-native restricted species cannot be released or transferred without written permission from DFW (14 CCR s 671).

For the safety of the public as well as wildlife, the California Code of Regulations prohibits members of the public from picking up disabled wildlife in a designated oil/toxic spill area (14 CCR s 679). Specifically, “no person may enter a Department designated oil/toxic spill area for the purpose of picking up disabled wildlife or transport or possess wildlife disabled by an oil spill or other spilled toxic substance unless that person has authorization from the Department.”

- **Hazing Wildlife**

Specialized hazing equipment, hazing techniques, and special hazing considerations for birds are described in detail in the *Bird Hazing Manual: Techniques and Strategies for Dispersing Birds from Spill Sites*, published by OSPR and U.C. Davis (available online at: <http://anrcatalog.ucdavis.edu/pdf/21638.pdf>). Hazing activities must take place only under the authority and oversight of trustee agencies, in coordination with the UC. A FESA Section 7 consultation (or verbal approval) with the USFWS or NFMS will be required to haze federally-listed wildlife species. The recommendation to haze will be guided by site-specific and species-specific factors present at the time of the spill, and availability of proven hazing techniques.

## RESOURCES

**CDFW Wildlife Response Plan for Oil Spills in California** -

<http://www.dfg.ca.gov/ospr/wild-response.aspx>

**Oiled Wildlife Care Network** (referenced on pages 1 and 2) - <http://www.owcn.org>

**Bird Hazing Manual** (referenced on page 3) -

<http://anrcatalog.ucdavis.edu/pdf/21638.pdf>

**Geographical Response Plans** - <http://www.dfg.ca.gov/ospr/>

**Lists of Threatened and Endangered Species Occurring in California** (animals only) -

<http://www.dfg.ca.gov/wildlife/nongame/>

*While the following resources are useful, they do not replace the need for actual wildlife surveys by permitted professional wildlife biologist(s) with the capacity to detect wildlife species of multiple animal groups, e.g., fish, amphibians, reptiles, birds, small mammals, large mammals, etc.*

**ERMA (Emergency Resource Management Application)** is a web-based Geographic Information System (GIS) tool that assists both emergency responders and environmental resource managers in dealing with incidents that may adversely impact the environment

- <http://response.restoration.noaa.gov/maps-and-spatial-data/environmental-response-management-application-erma/southwest-erma.html>

**California Wildlife Habitat Relationship (CWHR) Database** is a predictive model for California's regularly occurring birds, mammals, reptiles and amphibians; and four aquatic habitats – Riverine, Estuarine, Lacustrine, Marine. Queries by location are possible (e.g., county), T&E Status - <http://www.dfg.ca.gov/biogeodata/cwhr/>

**U.S. Fish and Wildlife Service's "IPac"** is a system is designed for public access to information about the natural resources for which the U.S. Fish and Wildlife Service has trust or regulatory responsibility. Examples include Threatened and Endangered species, migratory birds, National Refuge lands, and NWI Wetlands - <http://ecos.fws.gov/ipac/>

**NOAA NMFS' Habitat Protection – Essential fish habitat** includes all types of aquatic habitat—wetlands, seagrasses, rivers—where fish spawn, breed, feed, or grow to maturity. Essential Fish Habitat Mapper is an on-line GIS mapping tool -

<http://www.habitat.noaa.gov/protection/efh/efhmapper/index.html>

**California Natural Diversity Data Base (CNDDDB)** is a program (available by CDFW subscription only) that inventories the status and locations of *some* rare plants and animals in California. **WARNING:** this database is not comprehensive, it represents



positive detections only, i.e., a blank spot on the map does not indicate absence -  
<http://www.dfg.ca.gov/biogeodata/cnddb/>

### Acronyms

[ACP – Area Contingency Plan](#)

[CCR – CA Code of Regulations](#)

[CWHR – CA Wildlife Habitat Relationships](#)

[ERMA – Emergency Response Management Application](#)

[FESA – Federal Endangered Species Act](#)

[HAZWOPER – Hazardous Waste Operations and Emergency Response](#)

[MBTA – Migratory Bird Treaty Act](#)

[NMFS – National Marine Fisheries Service](#)

[NCP – National Contingency Plan](#)

[NOAA – National Oceanic and Atmospheric Administration](#)

[OPA 90 – Oil Pollution Act of 1990](#)

[OSPRA – Oil Spill Prevention and Response Act](#)

[OWCN – Oiled Wildlife Care Network](#)

[UC – Unified Command](#)

[UC Davis WHC – University of California, Davis, Wildlife Health Center](#)

[USFWS – United States Fish and Wildlife Service](#)