

Spill Management Team Scoping Meeting Summary and Notes

California Department of Fish and Wildlife
Office of Spill Prevention and Response (OSPR)

Background:

On February 13, 21, and 22, 2018, the Office of Spill Prevention and Response (OSPR) held three Scoping Sessions in Sacramento, Los Alamitos, and Bakersfield, respectively, to solicit input from industry and other stakeholders on implementation of the Spill Management Team (SMT) Certification Program required by California Assembly Bill 1197. The sessions were well attended and provided a forum for good information exchange. This document summarizes these sessions, following the agenda and format of the meetings.

I. Presentation Summaries

The presentations provided attendees with overviews of OSPR's plans to implement the SMT Program, as well as the processes established for regulation development and receiving stakeholder input.

Introduction and Overview (Presenter: Ms. Yvonne Najah Addassi, Preparedness Branch Chief)

- The SMT Program will be implemented by OSPR's Preparedness Branch.
- OSPR will draft regulatory language, and will circulate the draft language to scoping session attendees and other interested parties before the formal rule making process commences.
- OSPR will create a SMT-specific webpage, where information related to the new program will be posted, including minutes and PowerPoint slides from these scoping sessions and other meetings.
- In addition to comments received during these scoping sessions, OSPR will accept written comments. OSPR staff is also available to meet with stakeholders outside of these sessions.
- OSPR is hiring a SMT Coordinator in the Preparedness Branch to manage this new program, along with a Supervisor who will manage the SMT Certification Program, the Oil Spill Response Organization (OSRO) rating program, and the Vessel Contingency Plan program.

Regulatory Rule Making Process (Presenter: Mr. Daniel Warren, Regulations Unit)

- The primary goal of the formal rulemaking process is to ensure that stakeholders and the potentially regulated community have the opportunity to review and comment on proposed regulations before they become final.
- OSPR's current working timeline aims to release draft regulatory language for comment by early May, and to review feedback/comments beginning in June 2018. We anticipate that the formal rulemaking process will begin in October/November 2018, when OSPR submits regulations to the Office of Administrative Law (OAL). After the regulations are submitted, OSPR will release the notice of proposed action to the California Regulatory Notice Register, and the 45 day public comment period will commence.
- Once regulations are approved by the OAL, there will be a 30–90 day period before the regulations take effect, depending on the date of filing (for logistical purposes, OSPR has opted to adopt regulations on a quarterly basis, rather than immediately).
- Sign up for updates on OSPR's regulations mailing list, found at <https://www.wildlife.ca.gov/OSPR/Legal>
- Questions regarding regulations process should be directed either to Daniel.Warren@wildlife.ca.gov or to OSPRSMT@wildlife.ca.gov

Question: Since the “formal” regulatory process does not begin until OSPR submits a regulations package to the OAL, will OSPR include the information collected during the Scoping Process as a part of the rulemaking file?

Answer: OSPR will not be including these notes or general information obtained during the Scoping Process in the rulemaking package. The information will, however, be reflected in the Initial Statement of Reasons, which will outline why specific language and standards are proposed. If anyone is interested in specific information, both formal and informal requests may be made through a Public Records Act (PRA) request. OSPR is accepting comments at OSPRSMT@Wildlife.ca.gov

II. Solicitation of Input

This section outlines information that OSPR would like to receive from the regulated community in order to streamline the drafting and adoption of regulations that will enhance and ensure readiness, without unnecessary burden to industry.

General Topics and Questions Posed to the Scoping Meeting Audience

- OSPR wants to understand stakeholders’ concerns and needs. We intend to develop regulations that take into account, and are reasonably consistent with, established industry operational and administrative procedures.
 - What are current SMT contracting practices, and how do companies make decisions around SMT function in preparedness and response?
 - How quickly can a regional or national team be physically present in California?
 - How many Incident Commanders do companies retain, internally or contracted, and how is their availability determined?
 - How do companies conduct training, and how are certifications maintained?
 - Which aspects necessitate flexibility in the certification process?
- What is the potential cost to industry, and what are the likely economic impacts of the proposed regulations?
 - How much do companies spend on their internal SMTs, and how much more will it cost companies to be certified?
 - Which measures might lessen economic impacts to industry and other affected parties?
- We are looking for reasonable solutions, so that OSPR can comply with the statutory requirements of AB 1197 in a way that is not burdensome to the regulated community.
 - What are the planning standards?
 - Are there reasonable grounds for exemptions/partial exemptions that OSPR should consider?

III. Statutory Requirements: Q & A

This section summarizes questions industry posed to OSPR representatives, along with tentative answers and suggestions from the audience. Questions and audience contributions are grouped by topic.

- **OSPR’s Approach to Certifying SMTs**
 - Many internal SMTs cover multiple facilities, and external SMTs contract with many vessels and facilities. Will SMTs need to be certified and drilled for each contingency plan in which they are named, or will a single certification be issued to each SMT company?

- ◆ OSPR currently certifies and drills facilities and vessels by plan, with some exercises including multiple plans, but we are open to considering ways to certify SMTs by company. However, SMTs must demonstrate the ability to meet the requirements for the Contingency Plans in which they are cited, so any scheme to certify by company must take this into account. OSPR is interested in suggestions for other criteria by which to classify SMT certifications. Recommendations put forth by the audience include certification by plan type/tier, response timelines, and geographic areas.
- ◆ The basis for grouping SMT certifications must be compatible with an efficient and effective drilling program; this will be a major consideration in selecting a process by which to group SMT certifications.
- What will be the role of unannounced drills in the certification process? Will SMTs need to pass unannounced drills before they are certified, or to gain certification in different geographic areas?
 - ◆ The statute states that OSPR can call unannounced drills, and we will use them as tools to assess readiness. OSPR does not aim to hold drills arbitrarily or unnecessarily, and we realize that drills can be costly. Unannounced drills may not be required before certification, but certified SMTs should be ready for unannounced drills.
- Facilities commonly employ cascading SMT models including members both internal and external to the facility and/or company. How will combined internal and external SMTs be dealt with in the certification process?
 - ◆ OSPR will need to consider this. We will refer to the process we use for certifying OSROs, since like SMTs, they may be contracted to provide some or all of the response equipment listed in contingency plans. SMTs will not be required to obtain certification to provide more resources than they are contracted to provide.
- The statute defines “spill management team” as “personnel and associated equipment that staff the organizational structure of managing some or all aspects of response, containment, and cleanup of a spill, utilizing an incident command or unified command structure.” How will OSPR interpret this? Companies currently have the flexibility to contract resources on an incident-specific basis, and the interpretation might influence companies’ choices about contracting with SMTs.
 - ◆ The plan should stipulate the SMT to be assembled in the case of a Reasonable Worst Case Spill (RWCS) discharge. Otherwise, companies are free to contract with whichever resources they choose on an incident-specific basis.
 - ◆ Personnel and equipment will be broadly defined, and will include materials needed to fulfill the responsibilities of ICS positions within a response (e.g. computers, transportation equipment).
- **Certification Criteria**
 - **Personnel Requirements:** Current contracts stipulate that SMTs will guarantee a response, not specific numbers/types of people and equipment. Can the SMT regulations be made consistent with these existing practices? If not, which ICS positions will be included in the SMT regulations?
 - ◆ The regulations must be more “specific” based on OAL requirements. OSPR is willing to look at different ways to meet these requirements, but they must be explicit in order to avoid underground regulations.

- ◆ OSPR has not yet determined which ICS positions will be specified in the regulations. The audience suggested stopping at Section Chiefs.
 - ◆ OSPR recognizes the flexibility in SMT structure inherent to NIMS/ICS, and we will consider suggestions from the audience to translate personnel requirements into deliverables such as completion of 201 Briefings.
 - **Timeframe Requirements:** The statute specifies that OSPR’s regulations shall address “timeframes for having personnel on scene.” How will OSPR define “on scene” and the relevant timeframes?
 - ◆ “On scene” may be defined in different ways depending on the incident and plan type, but broadly, the personnel shall have arrived at a location identified to manage the incident by no later than a specific number of hours. This will include completion of any actions necessary for SMT personnel to integrate into the response.
 - ◆ Audience suggestions included specifying timeframes for on-scene arrival by ICS position, distinguishing reactive from proactive timeframes and deliverables, and using an approach similar to shoreline protection tables, whereby the completion of specific actions is required at specific points along a timeline, scaled to plan type/tier and RWCS volume/scenarios.
 - **Training Requirements:** Which types of training will OSPR require of SMT personnel?
 - ◆ OSPR takes a holistic view towards training programs. We are more concerned with verifying that training programs are robust, systematic, and qualify personnel to integrate into a response with local, state, and federal entities, than with selecting specific trainings to require of SMT personnel. We are interested in descriptions of the training programs companies use to determine ICS qualifications, such as Position Qualification Standard (PQS) task books.
 - **Certification by Geographic Area:** Will SMTs be certified statewide, or by geographic area?
 - ◆ OSPR will consider the utility of both approaches. The audience suggested using geographic regions with which industry is already familiar, such as those defined by Area Contingency Plans (ACPs) and Geographic Response Plans (GRPs).
- **Application Process**
 - What is the proposed timeframe for plan submission and approval? Since SMTs are associated with Contingency Plans, will the timeframes for renewal be the same?
 - ◆ OSPR will consider mirroring Contingency Plan or OSRO timeframes, but the statute is not an amendment to the Contingency Plan legislation. The OSRO program allows for temporary ratings to be awarded pending verification, and this is something OSPR will consider for SMTs.
 - Plans are likely to contain proprietary information. Will that information will become publicly available?
 - ◆ Information submitted in plans will be publicly available unless indicated at the time plans are submitted. Information designated as proprietary must be accompanied by supporting information and/or a legal citation. Per the Public Records Act (PRA), OSPR must be able to explain why information is redacted in materials provided to PRA requestors.

- ◆ Industry should provide suggestions to help OSPR develop regulations that prevent unnecessary inclusion of proprietary information in plans, while fulfilling OSPR’s statutory obligation to certify SMTs.

- **Dealing with Failures in Certification and Verification**

- What happens if an internal SMT fails to obtain certification? Will the affected Contingency Plan be revoked, or would plan holders be required to contract with an SMT? If an individual SMT member fails, does the whole SMT fail?
 - ◆ OSPR is considering how to address these issues, and may consider allowing the SMT to re-drill the failed objectives, as OSPR’s Drills and Exercises regulations allow. OSPR will give SMTs a due process that will be detailed in the regulations.
- Will there be recourse if an SMT does not meeting planning standard timeframes during a real incident?
 - ◆ To account for the reality of stochastic events that could impact a response, OSPR may consider including a caveat in the regulations, specifying that planning standards are intended to establish preparedness rather than set a performance standard. Additionally, the regulations will include a process for addressing and appealing failures.
- What are the current critical failures in drills, and will these inform certification and verification criteria?
 - ◆ OSPR can review our drill and spill records to determine critical failures. The audience suggested that these failures should dictate the criteria for personnel, timeframes, and geographic coverage.
 - ◆ OSPR will consider the range of failures by plan holder type and RWCS volume in adopting these criteria.
- Is it possible to pass a drill without the SMT functioning?
 - ◆ Yes, a non-functioning SMT can pass some, but not all, drill objectives. OSPR would be concerned with the implications of the failures for responses to real incidents. The intent of the program is to evaluate whether SMTs can perform as identified in contracts and plans.

- **Miscellaneous**

- Will the SMT regulations be consistent with the 2016 NPREP Guidelines?
 - ◆ OSPR will not require anything that is inconsistent with NPREP, but these regulations will test SMTs, whereas NPREP guidelines are aimed at testing plans.
- Will there be consideration for local, state, and federal responses and transitioning as the response grows?
 - ◆ Oil spill response is governed by OPA 90, and differs from other types of emergency responses directed by the Stafford Act, in which the federal government provides funding for state- and local-led responses. OPA 90 mandates a top-down response funded by the responsible party. Industry invests in response planning and preparedness, and government assets can not be included in Contingency Plans.
- Will OSPR award SMTs credit for exercises conducted outside of California?

- ◆ If the SMT is exercising to California’s standards, OSPR will consider crediting SMTs for out of state exercises. SMTs would need to demonstrate that the response in the out of state location is analogous to how the SMT would respond as stated in a California Contingency Plan.
- Is there a way for SMTs maintain certification status if they are not drilled in association with a Contingency Plan?
 - ◆ OSPR expects that most SMTs will be associated with at least one contingency Plan. However, we anticipate being able to work with external SMTs to renew their certifications if they want to remain eligible to contract in California but are not associated with a current plan.
- **General Suggestions from Audience on the Certification Process**
 - ◆ OSPR should consider self-certification.
 - ◆ SMTs could be certified at OSPR-led Roundtables, then drilled to verify their aptitude. Roundtables could be held every year for small producers.
 - ◆ For SMTs serving vessels, use a previous triennial drill for the initial certification, if previous triennial includes all components for which SMT seeks certification. Verification could occur at the next triennial exercise.
 - ◆ Initial SMT certification could be issued after satisfactory performance at an unannounced drill, then later phases of SMT integration can be verified at an announced drill.
 - ◆ Verification could be scenario driven, and based on the Average Most Probable Discharge (AMPD) rather than the RWCS.
 - ◆ Allow lead time for SMTs to get certified before the regulations are adopted.
 - ◆ Requests for changes to statutory language in regulations:
 - Change “Spill Management Team” to “Incident Management Team.” OSPR will check with Legal on language similar to “for purposes of these regulations, we will reference SMTs as IMTs.”
 - Change “timeframes for having personnel on scene” to “timeframes for specific objectives”