

MEMORANDUM OF UNDERSTANDING
RELATING TO THE OILED WILDLIFE CARE NETWORK
BETWEEN
THE CALIFORNIA DEPARTMENT OF FISH AND GAME
OFFICE OF OIL SPILL PREVENTION AND RESPONSE
AND THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
ON BEHALF OF THE WILDLIFE HEALTH CENTER
SCHOOL OF VETERINARY MEDICINE
UNIVERSITY OF CALIFORNIA, DAVIS

97-11485V

WHEREAS, the Administrator of the Office of Oil Spill Prevention and Response (OSPR), acting through the Department of Fish and Game (DFG), is the state trustee agency for marine fish and wildlife resources and their habitats; and

WHEREAS, the Administrator must ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations; and

WHEREAS, the Administrator must certify that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any oil spill that may occur in marine waters for which the Responsible Party (RP) cannot be identified or is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner; and

WHEREAS, the Administrator must establish and equip rescue and rehabilitation facilities for sea birds, sea otters and other marine wildlife in specific coastal areas of the state and maintain such facilities in a state of preparedness to provide the best achievable treatment for wildlife affected by an oil spill in marine waters; and

WHEREAS, review of coastal protection recommends utilizing and enhancing existing marine wildlife care providers in order to accommodate a potentially large number of oiled wildlife, in order to serve and promote the public interest, and in order to meet the legislative mandate to rescue and rehabilitate oiled marine wildlife; and

WHEREAS, the Administrator may offer training in response and cleanup efforts, including wildlife rehabilitation, provided such training follows the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board; and

WHEREAS, the Administrator must conduct studies and evaluations necessary for improving oil spill response, containment, cleanup, and oil spill wildlife rehabilitation in marine waters; and

WHEREAS, for the fiscal year beginning July 1, 1998, and as long as directed by the Governor, the Administrator shall submit for appropriation, through the Governor's budget, an amount up to one million three hundred thousand dollars (\$1,300,000), of the interest earned on the funds deposited into the Oil Spill Response Trust Fund, for the purpose of equipping, operating, and maintaining the network of oiled wildlife rescue and rehabilitation stations established pursuant to Section 8670.37.5 (AB1549 (1995)) and for support of technology development and research related to oiled wildlife care. Through the budget process, the Legislature shall review and consider this and subsequent appropriations.

WHEREAS, at the Administrator's request, the funds made available by the legislature for

oiled wildlife care may be directly appropriated to a suitable program for wildlife health and rehabilitation within a school of veterinary medicine within this state. The Administrator shall annually review and approve the proposed uses of any funds so appropriated.

WHEREAS, the Administrator may enter into agreements with nonprofit organizations to establish and equip oiled wildlife rescue and rehabilitation facilities for spill response activities, and allow such organizations to participate in the OSPR's Oiled Wildlife Care Network (OWCN); and

NOW, THEREFORE, the Administrator and the Wildlife Health Center - School of Veterinary Medicine (hereinafter the "Parties") agree, to the extent permitted by law, to the following Memorandum of Understanding relating to participation in and administration of the OSPR's Oiled Wildlife Care Network.

PURPOSE

This Memorandum of Understanding (hereinafter "MOU") is entered into by and between the Administrator of the OSPR (hereinafter the "Administrator") and The Regents of The University of California, on behalf of the Wildlife Health Center - School of Veterinary Medicine (hereinafter the "WHC") to provide administrative, planning and management support to the OWCN: support for all necessary personnel including the OWCN Director, administrative and management support to the Director, administration of a competitive grant program, network communications, participant training, protocol development, planning and fiscal management, operations and maintenance of newly constructed facilities, supplies and equipment (including supplying and equipping network participants), equipment installation and maintenance, and any other functions related to OWCN administration as the Administrator deems those activities necessary to implement the Lempert-Keene-Seastrand Oil Spill Prevention Act.

I. DEFINITIONS

The Parties agree that for the purposes of this MOU, the following definitions will apply:

- a. Administrator: The Administrator of the OSPR or his/her designee.
- b. Administration: For the purpose of this MOU, the administrative staff at the WHC is responsible for the following: direction of the OWCN (Director); supervision of training programs for the OWCN; assisting the OSPR in long & short term planning for continued OWCN development and activities; providing administrative support to the Program Director, Network Advisory Board, Scientific Advisory Committee, OWCN Members and OWCN Participants; administration of the OWCN Competitive Grant program; preparing and distributing newsletters, development and provision of long and short term budget management, maintaining a database of OWCN volunteers, coordination and maintenance of an electronic network between OWCN facilities; supporting ongoing protocol development for oiled wildlife care; maintaining supplies and equipment for oil spill response at participating facilities; assuring that hazardous material safety training (HAZWOPER) of participants is provided when necessary; purchasing equipment for newly constructed facilities; operations and maintenance of newly constructed OWCN facilities and any other functions related to OWCN administration where the Administrator deems it necessary to implement the Lempert-Keene-Seastrand Oil Spill Prevention Act.

c. Dean: The Dean of the School of Veterinary Medicine (SVM) at the University of California, Davis.

d. Incident Command System (ICS): The management structure established for controlling personnel, facilities, equipment, and communications during the response, containment, and cleanup of an oil spill event.

e. Marine Wildlife Rehabilitation Facility (Facility): A site operating under appropriate federal, state, county, or local licensing and permitting requirements where activities are undertaken to restore to a condition of good health, for the purpose of release to the wild, marine wildlife occurring naturally and not normally domesticated in this state.

f. Network Advisory Board (Board): An advisory board consisting of representatives of the oil industry, oil transportation industry, wildlife rehabilitation organizations, academia, and other research institutions. One representative shall be from a veterinary school within the state of California, and the United States Fish and Wildlife Service and the National Marine Fisheries Service shall be invited to participate as ex officio members. Membership to be appointed by the Administrator. The Advisory Board will provide recommendations regarding the operations and maintenance of the OWCN to the Administrator of the OSPR.

g. Oil Spill Contingency Plans: Plans used for the response effort in the event of a discharge of oil into the marine waters of the state. Such plans include the State Oil Spill Contingency Plan, the National Contingency Plan, the applicable Area Plan, and an approved or effective oil spill contingency plan prepared by a RP.

h. Oil Spill Response Trust Fund: The fund established under California Government Code section 8670.48 to provide for, among other matters, the costs of response, containment, and cleanup of oil spills into marine waters, including wildlife rehabilitation, and the interest from which provides for establishing, equipping, operating, and maintaining rescue and rehabilitation facilities for oiled marine wildlife.

i. Oiled Wildlife Care Network (OWCN): A statewide network of oiled wildlife rescue and rehabilitation facilities and personnel, established by the OSPR with the assistance of the WHC at the University of California, Davis, whose participants have agreed to provide rescue and rehabilitation services for marine wildlife impacted by discharges of oil.

j. Oiled Wildlife Care Network Participant (Participant): A Participant is a wildlife rescue and rehabilitation facility or organization, which has entered into an MOU with the OWCN to provide rescue and rehabilitation services for marine wildlife impacted by discharges of oil.

k. Program Director (Director): A wildlife veterinarian employed by the WHC, who shall function as agent of the Administrator and provide those oiled wildlife coordination and management services detailed in this agreement. The Administrator shall approve the qualification and experience of the Director prior to his or her final appointment or employment by WHC.

l. Responsible Party (RP): For the purposes of this MOU only, Responsible Party means the owner or transporter of oil, a person or entity accepting responsibility for the oil, or the owner, operator, lessee, or person or entity accepting responsibility for any vessel, pipeline, or marine facility involved in the oiling of marine wildlife.

m. Scientific Advisory Committee: A committee of scientifically-qualified individuals from academia, the oil industry, rehabilitation organizations, and other research institutions. The Scientific Advisory Committee will evaluate the scientific merit and quality of research and technology development proposals competing for grant funds. Membership to be appointed by the Administrator.

n. Unified Command: The collective decision-making body of the ICS, typically consisting of the federal on-scene coordinator, the Administrator, and a RP for the oil spill.

o. Wildlife Health Center (WHC): The center within the School of Veterinary Medicine at the University of California, Davis, that will contract with the OSPR for the operation of the OWCN in accordance with Chapter 940 of AB 1549 (1995).

p. Agent or Agency: For the purposes of this MOU, Agent or Agency shall be limited to the WHC acting in its capacity as an organization which:

- (1) establishes and equips wildlife rescue and rehabilitation stations pursuant to authority found at Government Code section 8670.37.5; and
- (2) in the event of a spill, provides services, to rescue and rehabilitate oiled wildlife, to the Administrator pursuant to Government Code section 8670.37.5(f).

No other actions of the WHC are within the scope of agency contemplated by this MOU. All personnel of the WHC, including the Director, are not agents of the Administrator except when expending funds for or providing the services identified herein.

II. RESPONSE

a. In the event of any oil spill that impacts or threatens to impact the marine waters of the state, the WHC will provide to the Administrator, upon request, the OWCN Director and administration and coordination of all available trained OWCN personnel to provide services for the rescue, medical treatment, and rehabilitation of oiled marine wildlife. Services provided by the WHC may require sending administrative staff to the spill for on-site coordination.

b. In providing such services, the WHC will coordinate Participants of the OWCN and will utilize or make available to the Administrator the local OWCN facility, as well as any equipment or supplies provided through the OWCN.

c. The WHC agrees to work under the direction of the OSPR administration during a spill response and to operate within the ICS/Unified Command as provided in law and applicable oil spill response plans.

d. Telephone numbers for the WHC personnel, as well as all Participants organized by the WHC, who will provide such services, will be submitted to the Administrator and regularly updated by the WHC as needed.

e. The WHC administrative staff will collect all response billings from OWCN Participants, review them for accuracy, and submit for payment as described in Section V (Costs and Expenses) of this MOU.

III. TREATMENT, CARE, AND RELEASE

a. The OSPR's preferred protocols for oiled marine wildlife care, developed in consultation with appropriate federal agencies and experienced wildlife rehabilitation providers, will be revised as directed by the Administrator. Training in such protocols may be provided by the WHC to OWCN Participants at no cost to the Participants.

b. The WHC will work under the direction of the Administrator and will cooperate with the Unified Command's Volunteer Coordinator and other Network members in managing oiled marine wildlife caseloads in order to achieve the best possible care for affected marine wildlife. The WHC will coordinate transport, transfer, or segregate oiled marine wildlife to other Network facilities upon the Administrator's request to reduce potential disease problems, to take advantage of a Facility's special abilities, or when reasonable caseloads are reached or exceeded at any one Facility.

c. The WHC will assist the Administrator or his agents, upon request, by providing samples of blood or other biological materials for injury assessments and other appropriate studies when compatible with the medical needs of the animal and permitted by state and federal laws.

d. All appropriate and necessary equipment and supplies for treating oiled marine wildlife will be provided to the Network Participants and replenished by the WHC as necessary and appropriate.

e. The WHC may assist the OSPR in post-release monitoring and monitoring studies upon request of the Administrator.

f. All professional and supervisory volunteer personnel involved with providing oiled marine wildlife care will each year, satisfactorily complete at least one formal training session, approved by the Administrator, involving the care and cleaning of oiled marine wildlife. Formal training may also include sessions on marine wildlife identification, marine wildlife capture and restraint, marine wildlife laws and regulations, veterinary medical and other subjects approved by the Administrator. Such training will be organized and administered through the WHC as described in Section I (Administration) paragraph m. of this MOU.

IV. RECORDS, SAMPLES AND DATA

a. The WHC recognizes the state's ownership and control of all samples, records, carcasses, data and other potential evidence pertaining to oiled marine wildlife and will preserve and provide all such evidence to the Administrator upon request.

b. All such materials pertaining to oiled marine wildlife will be kept in accordance with standards established by the Administrator and may not be transferred or destroyed, without written authorization from the Administrator.

c. At the conclusion of any investigation or litigation resulting from an oil spill incident or response, the WHC may use data, samples, records, and information gained from the incident or response for analysis or publication consistent with the teaching and research mission of the University of California.

V. COSTS AND EXPENSES

a. It is the intention of the Administrator that all funding of WHC activities associated with the administration and management of the OWCN will be directly appropriated from the Governor's budget according to legislative mandate Chapter 940, AB1549 (1995) from interest earned on the Administrator's Oil Spill Response Trust Fund.

b. During an oil spill response, those Participant's operating costs associated with the rescue, medical treatment, and rehabilitation of oiled marine wildlife and other such costs related to providing such services, will be the obligation of the RP as provided in law. The Administrator will take appropriate efforts to ensure the RP reimburses the Participants for such costs.

c. In the event an RP does not exist or has not been identified, or the RP is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spilling of oil into marine waters, those Participant's operating costs associated with the rescue, medical treatment, and rehabilitation of oiled marine wildlife and other such costs related to those activities, when performed at the request of the Administrator, will be paid from the Oil Spill Response Trust Fund upon written authorization of the Administrator.

VI. ADVISORY COMMITTEES

a. The Director shall closely coordinate with the Administrator in matters concerning or involving communications with the Board directed otherwise. All meeting dates and agendas of the Board shall be scheduled subject to the prior approval of the Administrator. The Administrator or his delegatee shall be afforded the opportunity to attend such meetings at a location and time convenient to the Administrator.

VII. FIDUCIARY RESPONSIBILITIES

a. The Director shall coordinate closely with the Administrator on the expenditures of the OWCN funds appropriated to the WHC for the purposes outlined in this agreement. The Director, as agent of the Administrator, has a fiduciary duty to expend funds to insure the rescue and rehabilitation of oiled marine wildlife. The Director shall provide monthly fiscal reporting to the Administrator of the status of expenditures from the OWCN appropriations. Reports may be provided to the Administrator in a form compatible with existing University of California, Davis, fiscal management reporting.

b. If the Administrator believes existing expenditure patterns and practices have reduced, to an unacceptable level, the ability of the WHC or the OWCN to rescue and rehabilitate oiled marine wildlife, the Administrator may summarily order the cessation of certain expenditures in order to protect the integrity of the OWCN funding and the Administrator's ability to conform to the mandates of the Lempert-Keene-Seastrand Oil Spill Prevention Act. All contracts executed with the OWCN funding shall have provisions indicating that funding is terminable at the discretion of the Administrator.

VII. INDEMNIFICATION

a. The WHC will defend, indemnify and hold the Administrator, the Director, The OSPR, its respective officers, employees and agents harmless from and against any and all

liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this MOU, but only in proportion to and to the extent liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the WHC, its officers, agents or employees.

b. To the extent permitted by law, the Administrator will defend, indemnify and hold the WHC, its officers, agents, or employees harmless from and against any and all liability, loss, expense, attorney's fees, or claims for injury or damages arising out of the performance of this MOU in proportion to and to the extent liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Administrator, the Director, The OSPR, its respective officers, employees and agents. Nothing in this section shall be construed to create, characterize, or imply an employer-employee relationship between the Administrator and the Director of the WHC.

c. To the extent permitted by law, the Administrator will also indemnify the WHC, its officers, agents, or employees for: (A) all damages payable by means of settlement or judgment arising out of the performance of actions taken or omitted in good faith in the course of rendering care, assistance, or advice at the direction of the Administrator or the Unified Command in response to a spill or threatened spill of oil, to which immunity conferred by the State would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the WHC provided that indemnification shall only apply after the expiration of any immunity that may exist for the WHC under California law.

IX. LEGAL DISPUTES

a. Any controversy between the Parties hereto involving the interpretation or application of any terms, covenants, or conditions of this MOU will be submitted to non-binding arbitration in conformity with and subject to the applicable provisions of the California Code of Civil Procedure relating to arbitration.

X. TERM OF AGREEMENT

a. It is intended that this agreement between the Parties be of a continuous nature so as to provide appropriate OWCN services. This MOU shall be effective for three years from the date of signing and shall automatically renew every three years thereafter, unless either Party notifies the other in writing at least ninety (90) days in advance of its intent to no longer provide services identified under this agreement.

XI. MISCELLANEOUS

a. The terms of this MOU may be changed at any time by the Parties upon mutual consent by a written, signed agreement, with or without notice to any other person. Any action to modify or amend this agreement may only be taken by the Administrator or the Dean of the School of Veterinary Medicine. The Administrator reserves the right to terminate this MOU at any time upon giving reasonable notice to the WHC.

b. In the event the WHC no longer administers the OWCN or otherwise terminates this MOU, the WHC agrees to return to the Administrator all property, equipment and supplies provided to the WHC through the OWCN.

c. No oral understanding or agreement not incorporated herein will be binding upon the Parties, however both Parties agree that additional contracts, including oral contracts, may be agreed upon by the Parties during an oil spill response.

d. Nothing contained herein will be construed as obligating or requiring the Administrator to expend funds in excess of appropriated funds authorized by law for this purpose. The Parties recognize that funds for additional contracts during a spill response are authorized to the extent permitted by law.

e. The WHC will not assign its rights or interests in this MOU or the supplies and equipment provided through the OWCN without the prior written consent of the Administrator.

f. In the event that individual and severable portions of this MOU are found to be in conflict with either state or federal law, regulations or policies, and, therefore, of no effect, the MOU will remain in effect without those provisions.

g. Any written notice provided for herein shall be deemed to have been given if delivered by personal delivery or if deposited in the United States Postal Service, with postage prepaid, for mailing and addressed by either Party to the other as follows:

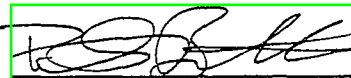
The Regents of the University of California, Davis
Office of Administration
University of California
Davis, California 95616-8540

California Department of Fish and Game
Office of Oil spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244
Attn: Legal Unit

SIGNATURES:

Dated: 11/17, 1997

THE OFFICE OF OIL SPILL PREVENTION
AND RESPONSE



Pete Bontadelli
Administrator

Dated: 10/29, 1997

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, DAVIS

