

## **THE FISH AND WILDLIFE SERVICE'S RESPONSIBILITIES** **IDENTIFIED UNDER THE OIL POLLUTION ACT OF 1990**

The Oil Pollution Act of 1990 (OPA) identifies the need for enhanced capabilities for oil spill response and natural resource damage assessment that applies to the Fish and Wildlife Service (Service). The Environmental Quality Program is responsible for implementing many of these appointed requirements. Although these designated responsibilities in OPA are unfunded, there is a vital need for the Service, as a manager of trust natural resources, to pursue the "immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife and their habitat that are harmed or may be jeopardized by a discharge." The activities and responsibilities which the Service needs to address now and into the future to meet OPA requirements and develop comprehensive oil spill response plans and damage assessment plans are as follows:

### **OIL POLLUTION ACT OF 1990**

#### **TITLE I. OIL POLLUTION LIABILITY AND COMPENSATION**

#### **SECTION 1001. DEFINITIONS**

**(30)**

"Remove" or "Removal" as defined in OPA refers to the elimination of oil or hazardous substance. This applies to any action the Service undertakes to minimize or mitigate injuries to "public health or welfare, including , but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

#### **SECTION 1002. ELEMENTS OF LIABILITY**

**(b)(2)(A)**

Natural Resources - Damages include injury to, destruction of, loss of, or loss of use of, including reasonable assessment costs.

#### **SECTION 1006. NATURAL RESOURCES.**

**(a)(1)-(3)**

Liability for natural resources shall be to the United States Government, any State, or any Indian tribe.

**(b)(1)-(4)**

The designated trustee shall act on behalf of the public or Indian tribe, presenting a claim for and to recover damages to the natural resources.

**(c)(1)(A)**

Federal Trustees shall assess natural resource damages for natural resources under their trusteeship.

**(c)(1)(B)**

Trustees may, upon request from a State or Indian tribe assess damages to natural resources for the State or Indian tribe.

**(c)(1)(C)**

Trustees shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of natural resources under their trusteeship.

**(f)**

The recovered funds shall be retained by the trustee in a revolving account and used only to reimburse or pay costs incurred by the trustee.

**SECTION 1011. CONSULTATION ON REMOVAL ACTIONS.**

Trustees are to be consulted on the appropriate removal action to be taken in connection with any discharge of oil.

**TITLE IV. PREVENTION AND REMOVAL****SECTION 4201. FEDERAL REMOVAL AUTHORITY.****(b)**

Amends Subsection (d) of section 311 of the Federal Water Pollution Control Act (FWPCA):  
 "(d)" Declares the contents of the National Contingency Plan (NCP), assigning duties and responsibilities to Federal agencies, but not identifying them by name (much of this shall be designated in the Executive Order). It does identify a duty and responsibility which pertains directly to the Service:

"(A) "Assignment of duties and responsibilities ... water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife)."

**"(M)**

The Fish and Wildlife Response Plan (Section 300.210 of the NCP) is to be developed in consultation with the Service and NOAA, for the immediate and effective protection...of fish and wildlife resources and their habitat endangered or damaged by a spill. The FWS and NOAA co-authored this section of the NCP expanding the title to include sensitive environments. This section gives guidance to Area Committees in the development of their Area Contingency Plans. Additional guidance is given in a NOAA Federal Register Notice (see appendix G).

**SECTION 4202. NATIONAL PLANNING AND RESPONSE SYSTEM.****(a)**

This section of the NCP amends subsection (j) of section 311 of the FWPCA:  
 "(4)" Defines Area Committees (AC) and Area Contingency Plans (ACP). Federal personnel active in these committees will be identified in the Executive Order. Participation of the Service in these Committees is important for protection of the trust resources. Participating in the Committees allows for the consolidation of a functioning Incident Command System. The Service plays a vital role in this system during spills.

**"(4)(B)(ii)**

The ACPs are to include plans for the protection of sensitive environmental areas and the protection, rescue, and rehabilitation of fisheries and wildlife

**"(4)(C)(ii)**

Requires the ACPs to include a description of the area covered by the plan, including areas of special economic and environmental importance that may be harmed during a spill.

**"(4)(C)(iii)**

Calls for a description of responsibilities of Federal agencies (the Service falls under this category) in the mitigation or prevention of a substantial threat of a discharge.

**"(4)(C)(iv)**

Under this the Service would be required to generate a list of all equipment, including fire fighting equipment, personnel available, and any other possible mitigating equipment or supplies that could be used in the immediate removal or mitigation of a spill.

**"(5)**

The owner of a tank vessel or facility must prepare and submit a plan of response for a worst case discharge of oil or hazardous substance. This paragraph puts direct requirements on the Service and its facilities. The guidance for this will be in the NCP and contained in various response plan rules.

**"(7)**

Area drills will be conducted without prior notice in areas which are required to have ACPs (Service personnel should be involved in these).

## **TITLE VII - OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM**

### **SECTION 7001. RESEARCH AND DEVELOPMENT PROGRAM**

**(c)(4)(A)**

Monitoring and evaluation of environmental effects caused by spills comes under the authority of the Committee established Oil Pollution Effects Research Program. The Service is involved in this Program.

**(c)(4)(A)(iii)**

One aspect of this program, which is of interest to the Service, will involve identification of ecologically sensitive areas and the preparation of scientific monitoring and evaluation plans.

**(c)(4)(C)**

Any research conducted under this program by the Service will be directed and coordinated by the Service's National Wetland Research Center.