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MEMORANDUM

From: 
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COMDT (G-M)

Reply to G-MOR-2
Attn of: LCDR Mark Cunningham
202-267-2877

To: Distribution

Subj: AREA CONTINGENCY PLAN DEVELOPMENT

- Ref:
- (a) Area Contingency Plan Organization, Content, Revision Cycle, and Distribution, COMDTINST 16471.3
 - (b) U.S. Coast Guard National Incident Management System and National Response Plan Implementation Plan of 29 Dec 04
 - (c) Establishment of Area Committees and Development of Area Contingency Plans, COMDTNOTE 16471 of 24 Jun 96
 - (d) National Response Plan, of 15 December 2004
 - (e) Marine Safety Manual, Volume VI, Ports and Waterways Activities, COMDTINST M16000.11, ch. 8
 - (f) NRT ACP – RCP Internet Security Technical Assistance Document of 12 Aug 03

1. BACKGROUND

- a) Reference (a) requires that Coastal and Great Lakes Area Contingency Plans (ACP) be updated and submitted for District review no later than 01 October 2005. October 2005 marks the end of the 5-year development period and is consistent with reference (b) that requires ACPs to be updated no later than 30 September 2005 to reflect National Incident Management System (NIMS) terminology and National Response Plan (NRP) management constructs. After October 2005, ACPs will be updated on a three year cycle in alignment with the Area Exercise schedule. The Coast Guard's three year Area Exercise schedule and subsequent ACP review is considered a minimum revision frequency and Area Committees are encouraged to conduct annual revisions. Area Exercises or significant incidents that receive Area Exercise credit will serve as the primary mechanism for continued development and updating of ACPs.
- b) This memorandum summarizes the key ACP requirements outlined in reference (a) and provides clarification and guidance for Hazardous Substance (HAZSUB) response planning as required in reference (c). It also brings attention to the Coast Guard's expanded role in responding to certain radiological incidents as per reference (d) and announces the ACP response guides for marine salvage and lightering, the Endangered Species Act Memorandum of Agreement (MOA), the Essential Fish Habitat provisions of the Magnuson Stevens Act, and the National Historic Preservation Act Programmatic Agreement to be disseminated in February 2005. Finally, it provides initial guidance for aligning the ACPs with the NRP and the NIMS.

2. SPECIFIC RESPONSE PLANNING TOPICS

- a) Hazardous Materials Federal statutes mandate contingency planning for the removal of discharges for both oil and hazardous substances (FWPCA Section 311(j) and CERCLA Section 105). HAZSUB response preparedness is a critical element in the President's strategy for Homeland Security. The President and the DHS Secretary call for the federal support and augmentation of First Responders, our first tier in the National Response System. This support is detailed in the National Response Plan and supporting Annexes. G-MOR is currently developing the final draft version of the CERCLA HAZSUB response and preparedness Instruction. This instruction will replace COMDT Instructions M16465.29 and M16465.30 and COMDTNOTE 16471. The following HAZSUB preparedness process was presented and endorsed at the 2002 M and O Planners Conference and is considered temporary guidance until promulgated in the aforementioned instruction. The CERCLA HAZSUB Instruction and Marine Safety Manual will reflect this process as well.
- i) Identify high-risk HAZSUB sources within Federal On-Scene Coordinator (FOSC) AORs (includes certain radiological materials transported by ship and/or handled at facilities as per the Nuclear/Radiological Incident Annex of reference (d)). FOSCs in coordination with their Area Committees must identify high-risk Coastal Zone HAZSUB sources, particularly those that could be used as a Weapon of Mass Destruction (WMD) within their AORs. Local Emergency Planning Committees (LEPC) and State Emergency Planning Committees (SERC) are excellent sources for this information. ACPs should document these HAZSUB sources and their associated public risks in a FOUO annex (directly or by reference). Note that the National Response Plan also calls for the Coast Guard to support the Department of Health and Human Services in the decontamination of biological incidents as per the NRP's Emergency Support Function 10 – Oil and Hazardous Materials Response Annex. The National Strike Force would most likely provide this kind of support.
 - ii) Assess capabilities. Identify and assess local, state, federal and industry HAZSUB response capabilities within FOSC AORs in coordination with the applicable Area Committees, LEPCs, SERCs and regional EPA representatives. Consider coordinating your planning efforts with the EPA. Both public and private capabilities must be evaluated to determine if they can adequately respond to potential HAZSUB releases from the high-risk sources identified. Where gaps exist, such as shipboard entry capability, work with officials to develop solutions for coverage. This might include mutual aid agreements, new Basic Ordering Agreements (BOA), or supporting local agency requests for capability enhancements. ACPs should reflect the response capabilities and agreements that were identified and evaluated.
 - iii) Integrate into existing local HAZSUB response agency planning and exercising programs as appropriate. Local HAZSUB response plans must reflect Coast Guard capabilities and responsibilities. By participating in local – regional HAZSUB planning and exercise development, FOSCs can address shortfalls and exercise critical maritime response and coordination elements such as communications, jurisdictional conflicts, air – land – sea capabilities and joint command post requirements. Local area exercising and planning coordination will serve to build strong partnerships with our stakeholders. ACPs should reflect the resource and planning commitments made to these stakeholders.
 - iv) Augment local and state HAZSUB response agencies when incidents have the potential to impact public health and safety, the marine environment or maritime transportation infrastructure in the coastal zone. In most HAZSUB cases the Incident

Commander (IC) will be from a local HAZSUB response agency. FOSCs or their representative should support the IC through the use of CERCLA funding, BOA contractors, USCG aircraft and vessels, National Strike Force resources, security forces, if appropriate, and facilitation of maritime transportation utilizing COTP authorities. In cases where there is no local HAZSUB response agency, or for incidents that exceed local government capability, FOSCs or their designated representatives should serve as the IC.

Headquarters is currently developing hazardous substance response regulations which will be applicable to tank vessels. Vessel owners for which the regulations will apply will be required to develop HAZSUB response plans that are consistent with ACPs. We anticipate this rulemaking effort to conclude sometime in 2006.

- b) Marine Fire Fighting Reference (e) directed the revision of marine fire fighting contingency plans (MFFCP) and allowed the integration of those plans within ACPs. District Commanders must have determined whether specific Areas within their jurisdiction may retain stand alone MFFCPs or fully integrate them into the ACPs.
- c) Marine Salvage and Lightering Specific guidance to aid FOSCs and/or COTPs manage an incident involving emergency salvage or lightering is under development by G-MOR, the Marine Safety Center, Navy SUPSALV and the American Salvage Association. When published it should be considered for inclusion in ACPs.
- d) Endangered Species The Endangered Species Act of 1973 (ESA) and subsequent guidance that includes the Interagency Memorandum of Agreement for Endangered Species Act (MOA) and a Guide Book for the MOA are documents that must guide our contingency planning efforts in this area. Additional Guidance is under development by G-MOR, for inclusion in the ACP that is aimed at aiding the FOSC during an emergency. This guidance is not in as much detail as other doctrine on Endangered Species, but provides the FOSC with enough guidance to help manage the overall effort.
- e) Essential Fish Habitat As with the Endangered Species Act, Coast Guard FOSCs must determine when an action "may adversely affect" an Essential Fish Habitat (EFH). Both the Magnuson-Stevens Act and the Endangered Species Act call for a consultation process to take place. Consultations take place during planning and during emergency operations. Consultations as part of the contingency planning process allow time to consider complex issues more fully and identify the best course of action prior to an incident. By documenting the actionable results of these consultations in your plans you help ensure all applicable information is considered and the best course of action institutionalized for future command organizations. This pre-incident consultation and planning reduces significantly the time it takes to perform this mandated function during an emergency. Guidance for emergency consultations for EFH is under development by G-MOR.
- f) National Historic Preservation Guidance is also being developed for the FOSCs to aid them in managing a response where National Historic Properties are involved and the National Historic Preservation Act (NHPA) must be complied with. The Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan was developed to facilitate consultation with other federal agencies and should be referred to for contingency planning purposes. Like the guidance under development by G-MOR for endangered species and essential fish habitat, this guidance is intended to aid FOSCs manage this portion of the response efforts during emergencies.

- g) Places of Refuge On 5 December 2003, the International Maritime Organization (IMO) adopted resolution A.949(23) titled, *Guidelines on Places of Refuge for Ships In Need of Assistance*. The guidelines were adopted following the tank ship *Prestige* catastrophe off the coast of Spain in 2002. They are intended to provide relevant stakeholders a framework for planning, preparedness, and response with respect to potentially polluting ships in need of assistance. Area Committees and Harbor Safety Committees are encouraged to consider these guidelines in planning for such scenarios. The IMO also adopted A.950(23) titled, *Maritime Assistance Services (MAS)*. Resolution A.950 is intended to ensure coastal States are equipped to receive and coordinate communications among relevant parties in response to a vessel casualty. While important, resolution A.950 is also redundant to Coast Guard Search and Rescue protocols, and there is no need for a new MAS initiative in the U.S. However, Area Committees and Harbor Safety Committees should ensure timely response to place of refuge requests by confirming close coordination between the appropriate Coast Guard Command Center and COTP. Both resolutions are available at <http://www.imo.org/home.asp> (click "SAFETY", then "Places of Refuge"). Further guidance from G-MOR is forthcoming.
- h) Chaffey amendments to the Oil Pollution Act of 1990 The Chaffey amendments require that Area Committees, "compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill." This amendment is to 33 USC 1321, subsection (j)(4)(C)(v). ACPs must maintain a list of local area scientist from the public and private sectors that have expertise in the environmental effects of oil transported in the plan's coverage area.
- i) Contingency Planning for Group V oil (nonfloating) Area Committees that have Group V oils transported through their areas should have planned for the response to these types of oils. Electric power generation facilities often times use Group V oils due to their lower costs and higher BTU content over other fuel oil products. To facilitate the response planning for Group V oils, the National Academy of Sciences published the *Spills of Nonfloating Oils Risk and Response* report in 1998. Copies are available through www.nap.edu. The report identifies effective response and recovery methods that can be employed as well as risk factors associated with these type of oils.
- j) Security Sensitive Information (SSI) Coast Guard Headquarters developed reference (f) with the National Response Team (NRT) and other affected federal agencies and industry. This Technical Assistance Document identifies Security Sensitive information that must not be part of publicly available ACPs. Since ACPs are not USCG owned plans but rather response community plans, SSI information identified in this NRT Technical Assistance Document should be relegated to a FOUO annex and comply with the provisions of reference (f) (available on the NRT website) and DHS – Coast Guard Security Sensitive Information handling policies.

3. ALIGNMENT WITH NRP AND NIMS

- a) Updated ACPs must align with the *National Response Plan* dated December 15, 2004, and the *National Incident Management System* dated March 1, 2004. Coast Guard personnel may view and download a PDF copy of the NRP on line at: <http://www.dhs.gov/nationalresponseplan> or at www.nrt.org. Training on the NRP and NIMS may be found at the FEMA training web site at: <http://training.fema.gov/EMIweb/IS/crslist.2sp>.

On this web site you will also find a list of on-line training courses. Course IS 700 is on NIMS and IS 800 is on the NRP. First Responders and incident management authorities may also call DHS at 1-800-368-6498 from 8:00 am to 6:00 pm EST during normal workdays for more information on the plan.

ACPs should address how the National Response System (NRS) operates on-scene during Incidents of National Significance (INS) as defined in the NRP. The Oil and Hazardous Materials Incident and the Emergency Support Function 10 (ESF 10) Annexes of the NRP describe how the NRS will function during an Incident of National Significance. But this description will need to be addressed in the ACPs and the RCPs to accommodate local conditions and address actual application. This planning should focus on aligning the National Response System under the NCP with the NRP. This may be accomplished by linking the field level NRS mechanisms (Unified Command) with the NRP coordination mechanisms (Area Command, Joint Field Office (JFO), and Regional Response Coordination Center (RRCC), along with local and State EOCs. This should include identifying the staffing of the coordination mechanisms to ensure proper representation of the NRS. DHS is developing Standard Operating Procedures (SOP) for the JFO. Once published, planners will need to consider this SOP in updating their plans.

MSO Philadelphia, with support from Coast Guard Headquarters, is currently developing ACP response annexes, including terrorism, HAZSUB, oil, biological and radiological. These annexes are being developed to align NIMS and NRP management constructs with the aforementioned contingencies at the Unified Command level. The annexes will identify primary objectives, agency roles and responsibilities, and organizational structures. Upon their completion on 1 May 2005, G-MOR will disseminate them to Areas and Districts. Area Committees, FOsCs and Federal Maritime Security Coordinators are encouraged to consider these annexes for applicability and use within their particular ACPs and Area Maritime Security Plans.

Reference (a) required all ACPs to be in ICS format. This requirement does not preclude the development of geographically delineated response plans provided they are referenced in ACP section 9700 – List of Response References. At present, ACPs following the format described in reference (a) are considered meeting the intent of the NIMS.

Finally, the drafters of the NRP and NIMS recognize that they are not perfect documents, but are first publications that will be improved upon as we observe during their use what works and what does not. With this in mind, planners must align the ACPs with the NRP and NIMS to the maximum extent practicable. However, alignment should not be so strict as to compromise the authority and ultimate responsibility of the FOsC to ensure a safe and adequate response.

4. ACTION

a) Headquarters

i) Coast Guard Headquarters and NSFCC will retain hard copies of all ACPs.

b) Areas

i) Retain copies of the ACPs for their Area.

c) Districts

- i) Per reference (a), establish the criteria and protocol for revision and submission of ACPs for units within their AOR to ensure approval by 01 October 2005, and triennially thereafter.
- ii) Upon satisfactory review, Districts will ensure that ACPs are made publicly available in a digitized form, preferably via the Internet.
- iii) Retain copies of the ACPs for your District.

e) Units

- i) In coordination with your Area Committees, revise your ACPs in accordance with the criteria and protocol established by your District Commander. Ensure the response planning subjects identified in this action memorandum are addressed in the ACPs.
- ii) Personnel identified for responding in support of HAZSUB incidents or to serve as Incident Commander must have as a minimum 24 hour HAZWOPER training and appropriate National Incident Management System qualifications as they are developed and implemented. FOSCs of Marine Safety Offices and Sectors should ensure MSO and Sector HAZSUB response planners have a minimum of 40 hour HAZWOPER training and should have strong oil and HAZSUB response experience.
- iii) MSOs and Sectors, although not mandated, are encouraged to maintain hard copy ACPs. Experience has shown that hard copy plans have proven to be the most reliable in ensuring availability of information during any emergency.

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