

Florida Deepwater Horizon Response and Recovery Workgroup #1: Response to Current Disaster and Preparation for Future Disasters

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Overview of the Current System and Protocols in Place for Responding to Oil Spills Including the National Response Framework and the National Response System/National Contingency Plan

This briefing paper provides an overview of the oil spill response system and protocols in place prior to the explosion on the Deepwater Horizon in the Gulf of Mexico. These protocols were designed to provide a systematic response by federal, state, local, and private sector agencies and organizations with interests in or responsibilities for oil and hazardous materials emergencies.

I. Federal Responses to all Domestic Emergencies: The National Response Framework

The National Response Framework (NRF) was issued by the Department of Homeland Security (DHS) and is an overarching guide that describes how the nation responds to *all types* of domestic emergencies, including natural disasters and terrorist incidents. It describes the role of federal, state, local, and tribal governments, as well as non-governmental organizations and the private sector. In addition, the NRF integrates the National Contingency Plan (NCP), which is the response plan that is activated when an oil spill occurs.

Under the NRF, DHS coordinates the federal response to incidents requiring significant federal coordination, which includes incidents for which the President issues a disaster declaration under the Stafford Act.¹ For smaller-scale incidents, other federal agencies may lead the federal response under their own emergency response authorities, and primarily follow the procedures of their own response plans while apprising the DHS National Operations Center of their activities as needed to ensure DHS maintains situational awareness under the NRF in case those incidents escalate or DHS assistance becomes necessary.

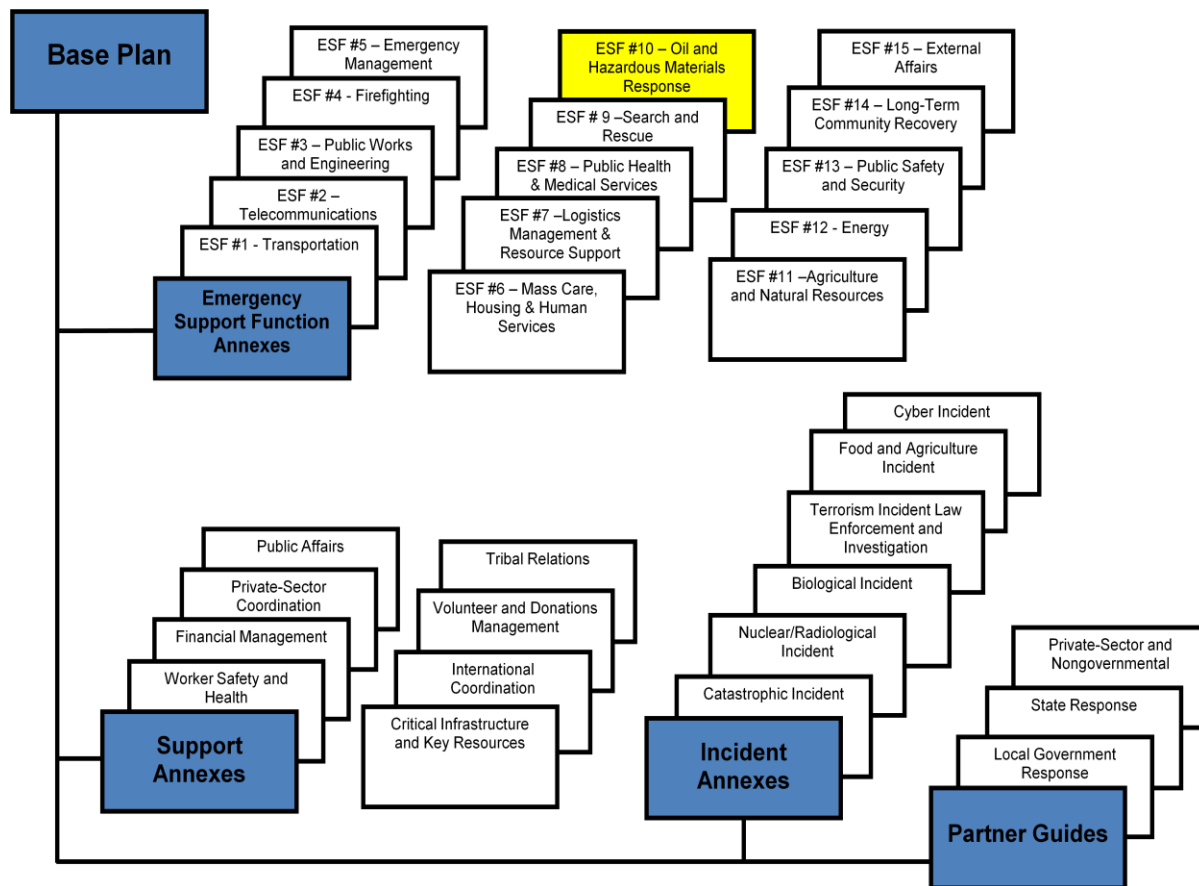
Core documents of the NRF describe:

- Roles and responsibilities at the individual, organizational and other private sector as well as local, state and federal government levels;
- Response actions;
- Staffing and organization;
- Planning and the National Preparedness Architecture; and
- NRF implementation, Resource Center, and other supporting documents incorporated by reference.

¹ The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, 88 Stat. 143 (1974), codified in 42 U.S.C. §§ 5121-5206 (2007).

The NRF Annexes are comprised of 23 individual documents designed to provide concepts of operations, procedures, and structures for achieving response directives for all partners in fulfilling their roles under the NRF. Specifically, Emergency Support Function Annex #10 (ESF #10) Oil and Hazardous Material Response, which is highlighted in yellow below and is the primary point of interface between the NRF and NCP, provides for federal direction in response to a release of oil or hazardous materials.

The graphic below illustrates both the core documents and the support annexes of the NRF.



The DHS activates ESF #10 for incidents requiring a more robust coordinated federal response, such as:

- A major disaster or emergency under the Stafford Act;
- A Federal-to-Federal support request (e.g., a Federal agency, such as the Department of Health and Human Services requests support from ESF #10 and provides funding for the response through the mechanisms described in the Financial Management Support Annex); or
- An actual or potential oil discharge or hazardous materials release to which the Environmental Protection Agency (EPA) and/or DHS/United States Coast Guard (USCG) respond under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and/or the Federal Water Pollution Control Amendments of 1972 (Clean Water Act or CWA) and which DHS determines it should lead the federal response.

ESF #10 requires documentation of all response activities to support after-action requirements and justify actions taken by primary and support agencies. This includes documentation to support financial transfers between primary and support agencies that are necessary to conduct ESF #10 activities. Currently, the level of the spill determines the response plan and the level of funding. The table below compares the different types of pollution incidents.

Type of Pollution Incident	Who Declares	Plan	Funding
Most Spills	N/A	National Contingency Plan (NCP)	OSLTF (oil) Superfund (HAZMAT)
Spill of National Significance (SONS)	EPA Administrator (inland zone spills) USCG Commandant (coastal zone spills)	National Contingency Plan (NCP)	OSLTF (oil) Superfund (HAZMAT)
Incident of National Significance (IONS)	Secretary of Department of Homeland Security (DHS)	Usually ESF #10 of the National Response Framework (NRF)	Stafford Act Disaster Funding
		Occasionally, Oil & HAZMAT Incident Annex of NRF (Basically NCP) ²	OSLTF (oil) Superfund (HAZMAT)
Stafford Act Disaster/Emergency	President	Almost Always ESF #10 of the National Response Framework (NRF)	Stafford Act Disaster Funding

II. Federal Response to Oil and Chemical Incidents: The National Response System (NRS)

The NRF describes how the nation responds to all types of domestic emergencies, from natural disasters to terrorist incidents. Where certain events occur which carry with them such specific response authorities as pertains to oil spills, the NRF is generally not activated. The National Response System (NRS), which is narrower in scope, is the government's mechanism for emergency response to most discharges of oil and the release of chemicals into the navigable waters or environment of the United States and its territories.³

² Most Incidents of National Significance involving oil and hazardous materials are managed through an ESF #10 activation, but an Incident of National Significance involving oil and hazardous materials could occur for which ESF #10 would not be activated; in these cases, the Oil & HAZMAT Incident Annex is used. Some oil and hazardous materials incident responses may be initiated under the NCP alone, or under the Oil and HAZMAT Incident Annex as an Incident of National Significance, then transition to ESF #10 after a Stafford Act declaration is made (or after ESF #10 is activated via the NRF Federal-to-Federal support mechanism).

³ The NRS is a critical component of the National Response Framework (NRF), which is the federal government's comprehensive, *all-hazard* approach to crisis management. The NRF provides a mechanism for coordinating federal assistance to state governments and localities. The NRF works in conjunction with the NRS and the National Contingency Plan (NCP), discussed later in this paper.

The NRS is chaired by the EPA, with the USCG serving as vice chair, along with 13 other federal agencies with responsibilities and expertise in various aspects of emergency response to pollution incidents. The group of 15 agencies makes up the National Response Team (NRT). A primary function of the NRT is consolidating multiple plans that facilities have prepared to comply with various regulations into one functional emergency response plan or integrated contingency plan.⁴ Prior to an incident, the NRT provides policy guidance, planning, and assistance. During an incident, the NRT offers technical advice and access to resources and equipment of its member agencies.⁵

Typically, when a release or spill occurs, the company responsible for the release, its response contractors, local fire and police departments, and local emergency response personnel provide the first line of response. State agencies stand ready to support, assist, or assume a response operation if an incident is beyond local capabilities.

If the quantity of discharged oil violates state water quality standards, causes a film or sheen on the water's surface or adjoining shorelines, or leaves sludge or emulsion beneath the surface or adjoining shorelines, the spill must be reported to the federal government's National Response Center (NRC). Once a report is made, the NRC immediately notifies a pre-designated EPA or USCG On-Scene Coordinator (OSC), based on the location of the spill.⁶ The OSC evaluates the local response and monitors the situation to determine whether, or how much, federal involvement is necessary. The OSC must ensure that the cleanup, whether accomplished by industry, local, state, or federal officials, is appropriate, timely, and minimizes human and environmental damage.⁷

The OSC may determine that the local action is sufficient and that no federal response action is required. If the incident is large or complex, the federal OSC may remain on the scene to monitor the

⁴A number of statutes and regulations, administered by several federal agencies, include requirements for emergency response planning. A particular facility may be subject to one or more of the following federal regulations: EPA's Oil Pollution Prevention Regulation (SPCC and Facility Response Plan Requirements) -- 40 CFR part 112.7(d) and 112.20-.21; MMS's Facility Response Plan Regulation -- 30 CFR part 254; RSPA's Pipeline Response Plan Regulation -- 49 CFR part 194; USCG's Facility Response Plan Regulation -- 33 CFR part 154, Subpart F; EPA's Risk Management Programs Regulation -- 40 CFR part 68; OSHA's Emergency Action Plan Regulation -- 29 CFR 1910.38(a); OSHA's Process Safety Standard -- 29 CFR 1910.119; OSHA's HAZWOPER Regulation -- 29 CFR 1910.120; and EPA's Resource Conservation and Recovery Act Contingency Planning Requirements -- 40 CFR part 264, Subpart D, 40 CFR part 265, Subpart D, and 40 CFR 279.52. Source document: The National Response Team's Integrated Contingency Plan Guidance, located at

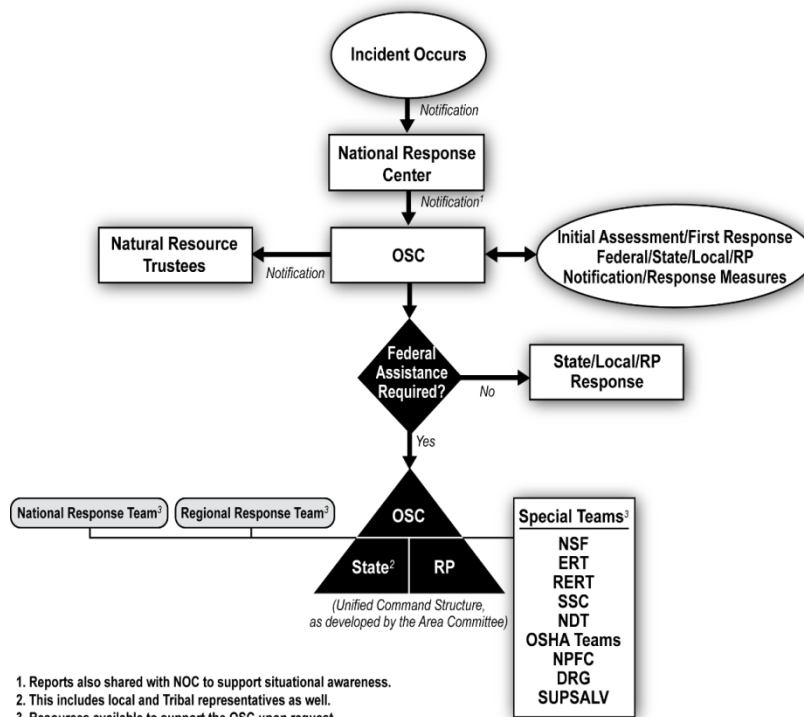
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=13550

⁵ Member agencies comprising the NRT are the Environmental Protection Agency, U.S. Coast Guard, U.S. Department of Agriculture, U.S. Department of Commerce/National Oceanographic and Atmospheric Administration, U.S. Department of Defense, U.S. Department of Energy, U.S. Department of Health and Human Services, U.S. Department of the Interior, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, Federal Emergency Management Agency (DHS), U.S. General Services Administration, U.S. Nuclear Regulatory Commission, and the U.S. Department of State.

⁶ The EPA is the lead agency and provides OSCs for inland areas while the USCG is the lead agency and provides OSCs for coastal areas. There are approximately 250 pre-designated EPA OSCs and 35 pre-designated USCG OSCs. They are located in and deploy from EPA regional and USCG district offices.

⁷ The NRC records and maintains all reports in a computer database called the Emergency Response Notification System, which is available to the public.

response and provide advice on the deployment of personnel and equipment.⁸ The graphic below illustrates the notification and decision process in the event of a spill.



The federal OSC will take command of the response in the following situations:

- If the party responsible for the chemical release or oil spill is unknown or not cooperative;
- If the OSC determines that the spill or release is beyond the capacity of the company, local, or state responders to manage; or
- For oil spills, if the incident is determined to present a substantial threat to public health or welfare due to the size or character of the spill.

A. The National Contingency Plan

The National Oil and Hazardous Substances Pollution Contingency Plan, or NCP, is described by the EPA as “the heart of the NRS.”⁹ The NCP was established in 1968 after U.S. policymakers observed the response to a 37-million-gallon oil tanker spill (Torrey Canyon) off the coast of England. The NCP contains the federal government’s procedures for responding to oil spills and hazardous substance releases. The NCP is intended to ensure the resources and expertise of the federal government is available immediately for oil or hazardous substance releases beyond the capabilities of local and state responders. The NCP provides the framework for the NRS and establishes how it works.

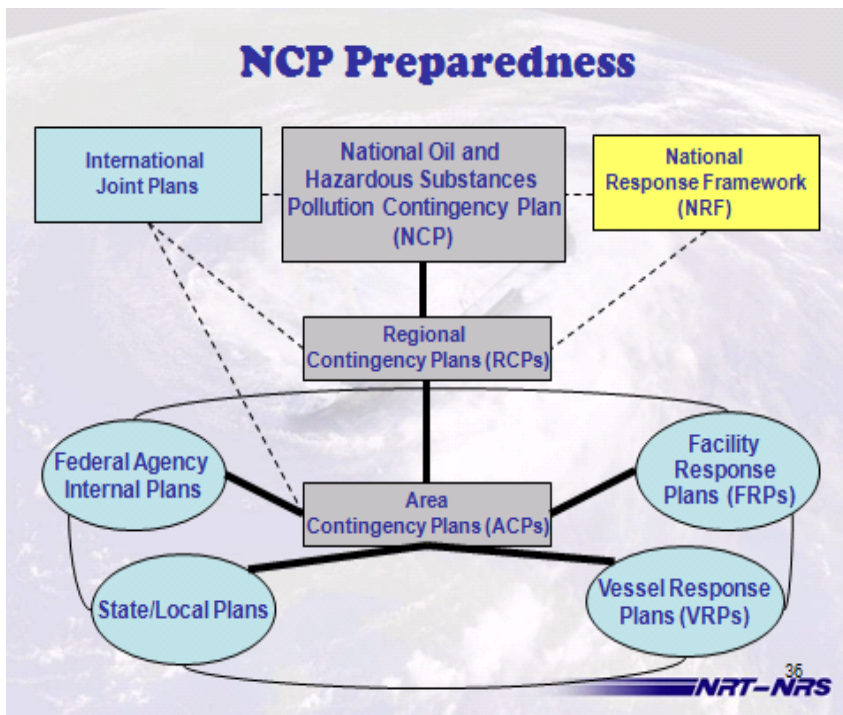
The graphic below illustrates the framework for coordination among federal, state, and local responders and responsible parties to respond effectively on-scene to oil discharges and releases of hazardous substances, pollutants, and contaminants. Coordinated planning requires integrating elements of a host of federal and state statutes and implementing regulations with different purposes. The NRS accomplishes this through the development and maintenance of a family of contingency plans. These plans are required under regulation to be consistent. The family of plans includes four levels of

⁸ <http://www.epa.gov/oem/content/nrs/nrsworks.htm>

⁹ <http://www.epa.gov/emergencies/content/nrs/index.htm>

contingency planning shown in gray and blue (federal, regional, area, local, and site-specific industry) that guide response efforts. This family of plans becomes a part of the National Response Framework

(NRF) when an NRF incident involves oil or hazardous substance response.



Graphic Key:
 Larger solid lines = Plans of the NRS
 Small solid lines = Plans integrated with the ACP
 Dotted lines = Points of coordination with the NRS

Subsequent laws have amended the NCP, including the CWA in 1972, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) in 1980, and the Oil Pollution Act (OPA) in 1990. As required by the Clean Water Act of 1972 (CWA), the NCP was

revised to include a framework for responding to hazardous substance spills as well as oil discharges.¹⁰ Following the passage of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) legislation in 1980, the NCP was broadened to cover releases at hazardous waste sites requiring emergency removal actions.¹¹ The latest revisions to the NCP were finalized in 1994 to reflect the oil spill provisions of OPA.¹² With the enactment of OPA on August 18, 1990, Congress consolidated the existing federal oil spill laws under one program. The 1990 law expanded the existing liability provisions within the CWA and created new free-standing requirements regarding oil spill prevention and response.

OPA strengthened and clarified the federal government’s role in oil spill response and cleanup. OPA Section 4201 amended Section 311(c) of the CWA to provide the President (delegated to the USCG or EPA) with three options: perform cleanup immediately (“federalize” the spill), monitor the response efforts of the spiller, or direct the spiller’s cleanup activities. The revised response authorities addressed concerns “that precious time would be lost while waiting for the spiller to marshal its cleanup forces.”

The federal government determines the level of cleanup required. Although the federal government must consult with designated trustees of natural resources and the governors of states affected by the

¹⁰ Clean Water Act - 33 U.S.C. 26

¹¹ The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) - 42 U.S.C. 103, is also known as the Superfund.

¹² Oil Pollution Act - 33 U.S.C. 40

spill, the decision that cleanup is completed and can be ended rests with the federal government. States may require further work, but without the support of federal funding.

In addition, OPA expanded the role and breadth of the NCP. The 1990 law established a multi-layered planning and response system to improve preparedness and response to spills in marine environments. Among other things, the act also required the President to establish procedures and standards (as part of the NCP) for responding to worst-case oil spill scenarios.

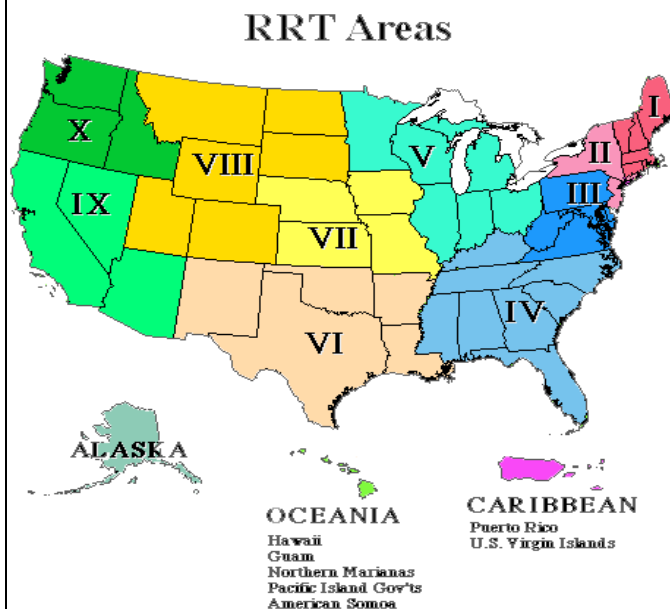
1. Regional Response Teams (RRT)

One tier below the NRT under the NRS are the Regional Response Teams (RRT). There are 13 RRTs, one for each of 10 federal regions, plus one for Alaska, one for the Caribbean, and one for the Pacific Basin. Florida is in Region IV along with Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, and Mississippi. Each RRT maintains a Regional Contingency Plan (RCP) and has state, as well as federal government, representation. The EPA and the USCG co-chair the RRTs. Like the NRT, the standing RRTs are planning, policy and coordinating bodies and do not respond directly to the scene. The RRT provides assistance as requested by the On-Scene Coordinator during an incident.

Regional Contingency Plan – Region IV

The NCP requires each Federal region, through the collective efforts of the RRT and working closely with the states, to develop an RCP. The RRT provides the mechanism for planning and coordination of preparedness and response actions. Through this mechanism, the RCP is developed and maintained. The RCP coordinates timely, effective response by various Federal agencies and other organizations to discharges of oil or releases of hazardous substances, pollutants, or contaminants. Source:

http://www.nrt.org/production/NRT/RRTHome.nsf/Allpages/newrrt_iv-opsmanual.htm



a. Region IV: Area Contingency Plans

Area Contingency Plans (ACPs) are required under the provisions of the OPA of 1990 and apply to discharges of oil and to those hazardous substances designated under the CWA. The ACPs, when implemented in conjunction with other provisions of the NCP and RCP, must be adequate to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge. ACPs for designated areas within a region are developed by appointed Area Committees, each under the

direction of an OSC. Area Committees are planning and preparedness entities and encompass federal, state, local, and private sector representation from within the designated area.

b. Region IV RCP: Area Committees

Section 4202(a)(4) of OPA requires that Area Committees, made up of federal, state and local officials, be established to develop an ACP. The designated OSC for the area serves as the Chair of the Committee, provides general advice and guidance, and directs the Committee's development and maintenance of the ACP. The Area Committee also is charged with the responsibility to work with state and local officials to enhance contingency planning and to assure preplanning of joint response efforts, including procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife. In development of the ACP, the committee must ensure that resources and personnel are adequate to remove or prevent a worst-case discharge of oil in or near the area covered by the plan. Both the EPA and the USCG are responsible for overseeing the formation of the Area Committees and the development of the ACPs for the inland zone and the coastal zones, respectively. In the standard Federal Region 4, there are eight Captain of the Port Areas in the coastal zone, each with an Area Committee and an ACP. In the inland zone of Region 4, the standing RRT generally will serve as the Area Committee. As additional Areas are designated, additional Area Committees for those Areas are appointed.¹³

c. Region IV RCP: State Responsibilities

Because of the diversity of incidents involving oil and hazardous substances and the potential impact to public safety as well as to public health, welfare, and the environment, the Governor of each state is requested to designate representatives to the RRT from both the agency responsible for response to environmental emergencies and the state emergency management agency. State and local government agencies are encouraged to coordinate the state contingency planning efforts for response to hazardous material events with this plan and with requirements of the Superfund Amendments and Reauthorization Act (SARA) Title III and OPA.

Section 300.180 of the NCP describes State and local participation in a response. Ordinarily, state and local public safety organizations are the first government representatives at the scene of a discharge or release. As first responders they are expected to initiate public safety measures, consistent with containment and cleanup requirements as stated in the NCP, that protect the public health and welfare. They are also responsible for directing evacuations pursuant to existing state or local procedures. Contact names and phone numbers for state organizations are maintained in the EPA Region 4 Regional Response Center.¹⁴

Chapter 376, Florida Statutes, designates the Florida Department of Environmental Protection (DEP) as the lead state agency for responding to impacts of oil spills in coastal waters. Personnel from the DEP Bureau of Emergency Response serve as State On-Scene Coordinators.

¹³ Region IV Regional Contingency Plan: Section 202. 3.

¹⁴ Region IV Regional Contingency Plan: Section 203.5.

The Florida Division of Emergency Management (DEM) (a statutorily-designated unit of the Florida Department of Community Affairs) operates and leads an emergency response team from the State Emergency Operations Center (SEOC) in Tallahassee. Typically, the SEOC is activated in the event of a major *coastal* spill event and serves to coordinate the deployment of state resources in support of the response. Other state agencies providing assistance in the response effort include the:

- Florida Fish & Wildlife Conservation Commission;
- Florida Department of Agriculture & Consumer Services;
- Florida Department of Law Enforcement;
- Florida Department of Health;
- Florida Attorney General; and
- Florida Department of Financial Services.¹⁵

As the primary federal response authority in coastal waters, the USCG retains the ultimate authority to ensure that an oil spill is effectively removed and that actions are taken to prevent further discharge from the source. In accordance with NRS protocols, the federal OSC is the point of contact for the coordination of federal efforts with those of the local response community. In the Gulf section for region IV, each U.S. Coast Guard Sector (Mobile, St. Petersburg, Key West, Miami and Jacksonville) maintains an Area Contingency Plan (ACP). The state has adopted these five ACPs as its own state contingency plan for each designated area.

In addition to the ACPs, the DEP and the USCG cooperate and coordinate response efforts related to oil spill prevention and response in accordance with a memorandum of understanding (MOU).¹⁶ This MOU recognizes that the USCG and the state have various overlapping authorities, and are committed to working together to complement rather than duplicate programs and resources. The memo indicates the following with regard to response:

- The USCG OSC is the pre-designated official responsible for cleanup operations.
- The OSC may direct or monitor all federal, state and private actions in response to an oil spill in state waters.
- The parties will respond to oil spills in accordance with the NCP.
- The OSC will consult with the Bureau of Emergency Response within the Florida DEP concerning oil spill response activities.
- State law provides that the DEP is responsible for coordinating oil spill cleanup efforts within Florida waters.
- The parties agree to work together within the framework of their respective authorities to ensure a coordinated effort with a minimum of duplication is undertaken in response to an oil spill.
- The Unified Command System¹⁷ establishes lines of communication, information sharing and control for the conduct of an oil spill response operation by the

¹⁵ The "One Gulf Plan," U.S. Department of Homeland Security /United States Coast Guard (2009).

¹⁶ This MOU has been in effect since 1995.

¹⁷ The NCP provides that the basic format for the response management system brings together federal and state agencies and the responsible party to achieve an effective and efficient response. This structure is commonly referred to as the Unified Command.

adoption of the Area Plan. The parties agree to provide the earliest possible notification of discharges of oil to each other in accordance with law and consistent with the NCP. The DEP's Florida Marine Patrol District Office¹⁸ represents all state agencies and is the primary point of contact.

- The OSC may request the state to undertake response actions on a case-by-case basis.
- If the state assumes responsibility for response activity, the state will conduct those activities as directed by the federal OSC, in accordance with the NCP and ACP.
- The OSC will coordinate with the state in decision-making relating to the conduct of the oil spill response operations.
- The parties agree to establish a joint public information center to provide for the coordinated dissemination of information during a response operation.

d. Region IV RCP: Local Operations

As provided by Sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act (EPCRA), the State Emergency Response Commission (SERC) of each state, appointed by the Governor, is to designate emergency planning districts, appoint local emergency planning committees (LEPCs), supervise and coordinate their activities, and review local emergency response plans.¹⁹ The SERC also establishes procedures for receiving and processing requests from the public for information generated by SARA reporting requirements, and designates an official to serve as coordinator for information. The Region 4 RRT places a great deal of emphasis on states assisting local communities in the development of local contingency plans.²⁰

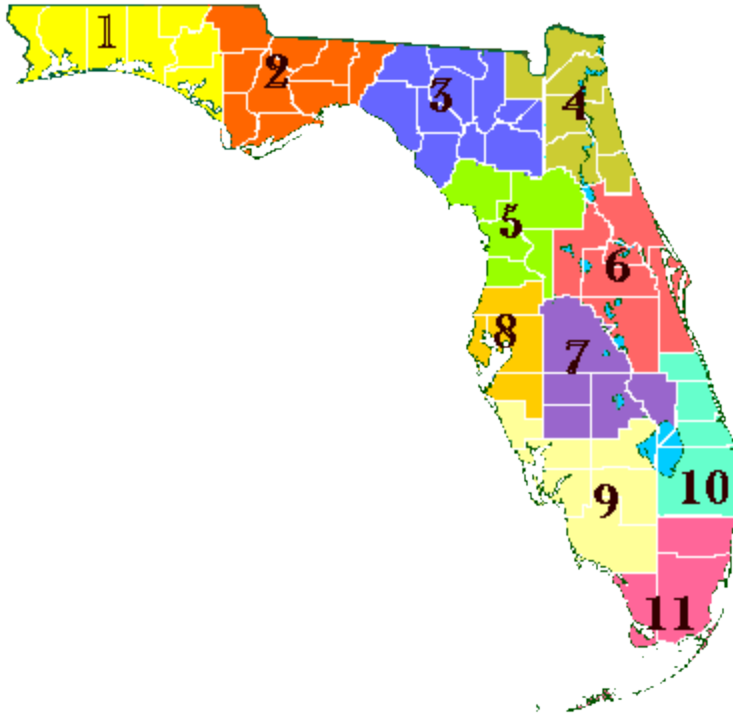
It is the mission of SERC and LEPCs to implement EPCRA in the state and mitigate the effects of a release or spill of hazardous materials.²¹ The graphic below shows the location of Florida's 11 LEPCs.

¹⁸ The Florida Marine Patrol no longer exists within the DEP. Many of its functions have been assumed by the Division of Law Enforcement in the Florida Fish and Wildlife Conservation Commission.

¹⁹ On October 17, 1986, in response to a growing concern for safety around chemical facilities, Congress enacted the Emergency Planning and Community Right-To-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA). EPCRA contains five sections which cover issues associated with the manufacture, use, exposure, transportation, and public education of hazardous materials.

²⁰ Region IV Regional Contingency Plan: Section 203.6.

²¹ <http://www.floridadisaster.org/cps/SERC/lepcs.htm>



An LEPC is responsible for preparing a regional hazardous materials emergency response plan, and serves as a repository for regional hazardous materials information, and performs outreach functions to increase hazardous materials awareness. LEPC membership typically consists of local professionals representing occupational categories such as firefighting, law enforcement, emergency management, health, and/or transportation.

The Florida Division of Emergency

Management (DEM) is the lead agency responsible for implementing EPCRA and provides staff support to the SERC.²²

III. Deepwater Horizon Incident

According to the DEP, the state became aware of the Deepwater Horizon incident on April 20, 2010, through the national news services. Initial reports after the sinking indicated there was no oil spill. Initially, according to the DEP, there was no official contact with the State of Florida because there was no specific, imminent threat to Florida waters. The State Emergency Operations Center was activated on or about April 29, 2010, based on the threat of oil, and the affected counties were notified by the DEM of the event. Counties worked through the DEM for information.

The Deepwater Horizon incident began as a Search and Rescue (SAR) Case on April 20, 2010, because personnel were in the water. In order to comply with federal reporting requirements for oil spills, BP, the owner/operator, reported the incident to the National Response Center once a leak was detected.²³

²² The SEC conducts quarterly public meetings in varying locations throughout the state. Currently, SERC membership comprises 23 Governor-appointed individuals who represent the interests of state and local government, emergency services, industry and the environment.

²³ The National Response Center (NRC) is the federal government's national communications center, which is staffed 24 hours a day by U.S. Coast Guard officers and marine science technicians. The NRC is the sole federal point of contact for reporting all hazardous substances and oil spills. The NRC receives all reports of releases involving hazardous substances and oil that trigger the federal notification requirements under several laws. Reports to the NRC activate the National Contingency Plan and the federal government's response capabilities. It is the responsibility of the NRC staff to notify the pre-designated On-Scene Coordinator (OSC) assigned to the area of the incident and to collect available information on the size and nature of the release, the facility or vessel

That action activated the pre-designated federal OSC, in this case, the Coast Guard Sector in New Orleans. After the activation of, and assessment by the federal OSC, the National Contingency Plan was activated. Over the next several weeks, the workgroup will learn in greater detail how the NRS/NCP was implemented in response to the Deepwater Horizon oil spill.

involved, and the party(ies) responsible for the release. The NRC maintains reports of all releases and spills in a national database. <http://www.epa.gov/oem/content/partners/nrsnrc.htm>