

MEMORANDUM

State of Alaska

Department of Fish and Game
Habitat Section

TO: Alaska Department of
Environmental Conservation
Prevention Preparedness and Response

DATE: March 13, 2020

THRU: Ron Benkert *RCS*
Anchorage Regional Supervisor

SUBJECT: ADF&G comments on Oil
Discharge Prevention and
Contingency Plan Public Scoping

FROM: Jeanette Alas *JA*
Habitat Biologist

PHONE NO: 267-2805

The Alaska Department of Fish and Game (ADF&G) Habitat Section received the Alaska Department of Environmental Conservation (ADEC) public notice seeking comments on contingency planning under AS 46.04 and on oil discharge prevention and contingency planning regulations under 18 AAC 75 Article 4. ADF&G has reviewed these authorities and provides the following comments and recommendations. Please contact Habitat Biologist Jeanette Alas at 267-2805 or jeanette.alas@alaska.gov if you have any questions or would like additional information on any of these comments. ADF&G appreciates the opportunity to participate in this public scoping process.

ADF&G comment on AS 46.04.030(j)

ADF&G appreciates being provided a copy of contingency plan approvals and modifications and supports retaining this statute.

ADF&G comment on 18 AAC 75.405(a), 18 AAC 75.426(4), (5)(A), (11), and (14), and 18 AAC 75.475(b):

ADF&G recommends removing reference to “facsimile transmission” or “facsimile number” because this technology is antiquated and largely obsolete. ADEC should only accept widely used forms of communication, such as mail, electronic mail, or file sharing software (e.g., ZendTo).

ADF&G comment on 18 AAC 75.408(c)(3) and (8):

ADF&G supports ADEC’s regulations for electronic contingency plan formatting and for the plans to be electronically searchable. Compared to hard copy or even compact disc formats, electronic contingency plans are much easier to review and search for specific information. In addition to electronic plans being more portable and environmentally friendly, they greatly reduce space needed for storage of paper copies of the plans. ADEC’s online system of posting ‘plans under review’ and ‘approved plans’ is simple, straightforward, and user-friendly; ADF&G recommends continuing this web-based approach.

ADF&G comment on 18 AAC (c)(4–6):

ADF&G appreciates receiving copies of new plans, plan renewals, major and minor amendments, and routine updates, and supports retaining this regulation.

ADF&G comment on 18 AAC 75.408(c)(7):

ADF&G supports requiring that proposed additions, revisions, and deletions in plans are identifiable. This is typically conveyed by a red-lined or track changes copy of the plan, which enables reviewers to easily locate proposed changes.

ADF&G comment on 18 AAC 75.425(e)(1)(F)(v) and 18 AAC 75.425(e)(3)(J):

ADF&G assumes that by referencing subarea contingency plans for sensitive areas and areas of public concern, the regulation is directing plan holders to the Sensitive Area Sections in the (superseded) subarea contingency plans. The Sensitive Areas sections of the ten former subarea contingency plans are now compiled into the Alaska Sensitive Areas Compendium and housed on ADEC’s Area Plan References and Tools web page (<https://dec.alaska.gov/spar/ppr/contingency-plans/response-plans/tools/>) and the former Subarea Plan boundaries are now referred to as “Geographic Zones” in the Area Plans. At minimum, this regulation should be updated to reflect the new Area Plans.

ADF&G recommends the wording “if identification of those areas and site-specific strategies for protection of those areas are in an applicable subarea contingency plan, the plan holder may incorporate that information by reference” be removed from these regulations. The Alaska Sensitive Areas Compendium is an excellent tool to educate planners and responders on what sensitive areas or areas of public concern are and how they are prioritized, why these resources are sensitive, what the biological resources are (including habitat types, wildlife life history and habitat use, and protected species and habitats) and human uses of these resources, and describes various land management designations. This document provides high-level, generalized information on these topics and includes resources for users to find site-specific information on all of these topics.

Plan holders of stationary facilities would be better prepared to protect sensitive areas and areas of public concern that could be impacted by a spill from their facilities if they were as informed as possible about exactly where these areas are and which ones are likely to be impacted by different spill trajectories (i.e., spills to land, spills to freshwater, spills to marine waters, etc.). Having this information available at the onset of a spill rather than spending time researching this information after a spill occurs will not only save valuable time in the hectic initial hours of a spill, but it will also provide a better resource for responders. Instead of referencing the Alaska Sensitive Areas Compendium or Area Plans, ADF&G recommends that this regulation be modified to require plan holders to use these (and other) available resources to the extent practicable to 1) develop a map identifying sensitive areas and areas of public concern and 2) provide a detailed list (possibly in a table format) identifying sensitive areas and areas of public concern that occur within a certain radius of the facility. The pre-determined radius could be based on the response planning standard volume and likely spill trajectories. This list could include the following information:

- Name or general area (e.g., [*name of*] water body or [*name of*] protected land)
- Location (e.g., [*name of*] Bay or [*name of*] Community) and latitude and longitude
- Why it is a sensitive area or area of public concern (e.g., anadromous stream, seabird colony, community, small boat harbor, seafood processor water intake, historical site, etc.)
- Brief description about how these areas would be protected during a spill (e.g., exclusion boom at the mouth of a stream, deflection boom to keep oil away from tidal flats, alerting seafood processor of spill, notifying the State Historic Preservation Officer, etc.).

An example of this in a table format is included in Table 1.

Table 1. Example concept of detailed list of sensitive areas and areas of public concern. Note: examples are included to illustrate the concept and are intentionally not from one specific facility or area.

Name/Area	Location and Lat/Long	Sensitive Area/Area of Public Concern	Site-Specific Response Strategy
Taiya River and Nelson Creek	Skagway 59.4804° N, 135.3574° W	Anadromous streams supporting chum, coho, Chinook, and pink salmon, Dolly Varden, and eulachon	Deploy exclusion boom at river mouths (also see GRS SE08-02)
Nearshore waters of Cook Inlet	Cook Inlet, Nikiski 60.6806° N, 151.4129° W	Cook Inlet beluga whales (endangered) and Critical Habitat; Western Distinct Population Segment Steller sea lions (endangered); harbor seals, harbor porpoise, and killer whales	Free oil recovery
Gibson Cove seabird colony	St. Paul Harbor, Kodiak 57.7752° N, 152.4500° W	Pelagic cormorant, red-faced cormorant, black-legged kittiwake, tufted puffin, horned puffin; on colonies April to mid-September	Deploy diversion boom to protect colony
Trading Bay State Game Refuge	Trading Bay, West Cook Inlet 60.9334° N, 151.6305° W	Wetlands and tide flats provide spring migratory bird staging area and important stopover site; summer nesting habitat; fall staging area for waterfowl; overwintering rock sandpiper population. Uplands provide habitat for moose, brown and black bears, and furbearers. Human use: recreational, hunting, and subsistence activities	Booming to prevent oil from reaching shoreline and tidal flats
Nearshore waters of Kvichak Bay	Kvichak Bay, King Salmon 58.6361° N, 157.5690° W	Commercial, subsistence, and recreational fishing, varies seasonally	Free oil recovery. Contact ADF&G for information on open fisheries and fishing effort.

If contingency plans provided this level of detail, it would better prepare the plan holder to act quickly during a spill as this information could be used to populate the ICS-232 Resources at Risk Form. Having a comprehensive list of sensitive areas and areas of public concern readily available and specific to each facility would save both industry and natural resource agencies

valuable time during the initial hours of a spill. The Alaska Sensitive Areas Compendium should serve as a resource to aid plan holders in locating and documenting site-specific information for their facility, instead of being referenced as how to find this information. Requiring plan holders of stationary facilities to include this level of detail in their contingency plans will allow for these efforts to be conducted outside of the hectic emergency response phase of a spill and would ultimately make the plan more effective for use during a spill.

ADF&G comment on 18 AAC 75.425(e)(1)(F)(xi) and 18 AAC 75.425(e)(4)(A)(i):

ADF&G supports these regulations and would like to provide the following additional recommendations to improve response readiness for wildlife. A brief rationale for each recommendation is provided.

ADF&G recommends adding language to this regulation (or another regulation if there is a more appropriate one) that response strategies should include regular wildlife reconnaissance in and near a spill site, and that these observations are reported to the appropriate wildlife agency(ies) in a timely manner. Wildlife observations, even by untrained wildlife observers, during initial response actions and throughout the emergency response phase of a spill can provide valuable information that helps identify sensitive habitats or species and informs appropriate response activities to minimize impacts to wildlife. In general, wildlife observations will help inform responders and wildlife agencies about which wildlife response strategies are appropriate to implement and when equipment and personnel should be mobilized.

Plan holders often rely on wildlife response organizations for some or all of the activities listed in this regulation. Some plan holders have contracts with wildlife response organizations and others rely on their Primary Response Action Contractor (PRAC) to have contract(s) in place with wildlife response organizations. Some plan holders or their PRACs have contracts with wildlife response organizations to enable an effective response for some species (e.g., birds), but not others (e.g., marine mammals). Wildlife response contractors may have the expertise and/or may hold permits or authorizations from wildlife agencies to respond to specific species or species groups, but not others. Similarly, some PRACs may have trained staff to conduct some wildlife response activities themselves (e.g., bird hazing), but not others (e.g., bird capture and rehabilitation). Wildlife response activities can be complex and will vary considerably based on the appropriate response activity for a species/species group during an incident. For example, some species, especially marine mammals, require specialized species-specific expertise (e.g., an organization qualified to respond to sea otters may not be qualified to respond to polar bears or Steller sea lions and vice versa). During contingency plan reviews, ADF&G commonly observes plan holders mistakenly infer that having a contract with one wildlife response organization is suitable for any and all wildlife response activities.

To make wildlife response responsibilities as clear as possible in contingency plans, ADF&G recommends that plans specify the following information:

1. Identify who will conduct wildlife response strategies for each species/species group that may be impacted during a spill, what equipment will be used, and what expertise or training the responders have. This information should be described for each:

- Response strategy
 1. primary – carcass collection
 2. secondary – a) hazing/deterrence and b) pre-emptive capture
 3. tertiary – capture, transportation, stabilization, rehabilitation, and release of oiled wildlife; and
 - Species/species group
 1. birds
 2. terrestrial mammals
 3. sea otters
 4. polar bears
 5. walruses
 6. whales, porpoises, seals, sea lions.
2. Identify who has a contract for the appropriate wildlife response organization (PRAC or plan holder).
 3. Identify who will initiate implementing/mobilizing wildlife response organizations during a response (plan holder or PRAC) if an existing contract is in place. Include information about whether this responsibility is dependent on who holds the contract or what the PRAC is mobilized to do during a specific incident, and if this responsibility may shift based on incident-specific considerations (e.g., during one response, the plan holder may mobilize a PRAC to conduct oil containment and cleanup but not wildlife response whereas during another response, the plan holder may mobilize a PRAC for oil containment and cleanup and wildlife response).
 4. Identify whose responsibility it is (plan holder or PRAC) to locate and request mobilization of a contractor whose expertise is needed during an incident when neither the plan holder nor the PRAC has an existing contract with the wildlife response organization.
 5. Describe how wildlife response activities will be conducted if the plan holder or PRAC intends to conduct wildlife response activities themselves instead of implementing/mobilizing a contract with a wildlife response organization. This information should:
 1. identify who will conduct which response strategy for which species/species group;
 2. document what training/expertise they have;
 3. describe what equipment will be used;
 4. identify who is responsible for obtaining appropriate permits and authorizations from wildlife agencies; and
 5. describe the threshold (if any) where the required wildlife response activities would exceed plan holder or PRAC capabilities and wildlife response contractor(s) would be mobilized.

Including information on 1-5 above in contingency plans will help wildlife response activities be implemented more quickly and efficiently. Additionally, for plan holders with a PRAC, this information will minimize confusion and more clearly define expectations about what is the plan holder's versus the PRAC's responsibility for wildlife response activities during a spill.

ADF&G comment on 18 AAC 75.425(e)(1)(H):

ADF&G supports retaining this regulation. Plan diagrams are an essential tool to help orient those unfamiliar with the facility, railroad, or vessel. These can be used both during contingency plan reviews and responses. Diagrams indicating topography, roads, adjacent water bodies, and drainage (including stormwater outfalls or drainage ditches) are of particular help during planning as they can visually show routes that oil could follow to reach open water and identify locations where a response can be effectively implemented (i.e., where to block a culvert or stormwater drain or construct a berm). ADF&G recommends that this regulation also request diagrams showing sensitive area and areas of public concern within a certain radius of the facility (based on the response planning standard volume). See ADF&G comment on 18 AAC 75.425(e)(1)(F)(v) and 18 AAC 75.425(e)(3)(J) for a more detailed explanation.

ADF&G comment on 18 AAC 75.445(k)(3):

The required criteria for Best Available Technology Review (18 AAC 75.445(k)(3)(A-H)) does not provide the information necessary for adequate review of wildlife response, in large part because of the complexities described above for ADF&G comments on 18 AAC 75.425(e)(1)(F)(xi) and 18 AAC 75.425(e)(4)(A)(i). The “Best Available Technology” for wildlife response varies from in-house capabilities to mobilizing a PRAC or wildlife response organizations, and it depends on which response strategy is being implemented for which species/species group. ADF&G recommends revising the Best Available Technology Review criteria for wildlife response to include information on wildlife response activities for each species/species group. An example of this is provided in Table 2.

Table 2. For each species/species group that may be impacted by a spill, provide information on 1) who will conduct each wildlife response strategy, 2) what equipment will be used, and 3) what expertise or training the responders have.

	Primary	Secondary		Tertiary
	Carcass Collection	Haze/Deter	Pre-emptive Capture	Capture and Rehab
Birds				
Terrestrial mammals				
Sea otters				
Polar bears				
Walrus				
Whales, porpoises, seals, sea lions				

ADF&G comment on 18 AAC 75.455(h):

ADF&G appreciates and supports the continuation of this regulation.

ADF&G comment on 18 AAC 75.475(a):

ADF&G recommends modifying this regulation to ensure equipment is regularly inventoried and replaced if missing. Suggested additions are included as underlined text:

“All spill response and other equipment identified in the approved oil discharge prevention and contingency plan or nontank vessel plan to meet the response planning standards set out at 18 AAC 75.430 - 18 AAC 75.442 must be regularly inventoried and maintained in operational condition. Any equipment found to be missing or not to be operating properly must be repaired or replaced immediately.”

Email cc:

Al Ott, ADF&G Habitat, Fairbanks
Lee McKinley, ADF&G Habitat, Anchorage
Megan Marie, ADF&G Habitat, Anchorage
Angela Matz, USFWS FES, Anchorage
Bridget Crokus, USFWS FES, Anchorage
Sadie Wright, NMFS PRD, Juneau