

HOW? Build State and Local Involvement

US Coast Guard reorganization of Area Contingency Plans.

The US Coast Guard is currently reorganizing existing Area Contingency Plans (ACPs), developed and used by states and Regional Response Teams (RRTs) as established under the Oil Pollution Act of 1990,¹ into sector ACPs controlled by Captains of the Port, as chairs of the Area Committees that develop the Plans.² The reorganization also affects Regional Contingency Plans (RCPs). This top-down approach is not a comfortable fit with states and Tribes but, legalities aside, the reorganization is ongoing and due to be completed by October 2026 (2 years before the governing policy expires).

ALERT and allies are currently advocating coastal states to use the US Coast Guard-driven reorganization process as an opportunity to update the “Plans” (ACPs and RCPs) within the new architecture. Since this “is the first major overhaul of ACP structure in over 25 years,”³ it seems appropriate to concurrently address two recommendations in the final report of the National Commission on the Deepwater Horizon (“National Commission”)⁴ that are relevant to *local* spill response preparation and planning and, therefore, also *national* preparedness, namely:

“Recommendation E3: EPA should develop distinct plans and procedures to address human health impacts during a Spill of National Significance” (at 278).

“Recommendation C3: EPA and the Coast Guard should bolster state and local involvement in oil spill contingency planning and training and create a mechanism

¹ 33 CFR (j)(4) National Response System. <https://www.law.cornell.edu/uscode/text/33/1321>

² The reorganization is driven by a US Coast Guard **Commandant Instruction** issued in September 2018 under the Trump Administration. The **Commandant** is the highest-ranking member of the US Coast Guard and is appointed by the President to serve a 4-year term. The Commandant reports to the President and the Secretary of Homeland Security. A **Commandant Instruction** is a directive prescribing authority or containing information that requires continuing action, as in this instance, or that is of continuing reference value like a new measurement standard. Commandant Instructions expire after 10 years.

2018. U.S. Coast Guard Marine Environmental Response and Preparedness Manual. COMDTINST M16000.14A 26 Sept 2018. https://media.defense.gov/2022/Nov/17/2003116850/-1/-1/0/CIM_16000_14A.PDF

³ 2023. US Coast Guard. Commandant. [OVERVIEW] Release of new coastal zone area contingency plan architecture. Marine Safety Information Bulletin MER-MSIB: 12-23. October 10, 2023. https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2023/MSIB-12-23_New_Coastal_ACP_Architecture.pdf?ver=hlQ6BGGvawTg2ZKdm0cYHA%3d%3d

⁴ National Commission on BP Deepwater Horizon and Offshore Drilling. 2011. *Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling. A Report to the President*. <https://nrt.org/sites/2/files/GPO-OILCOMMISSION.pdf>. At 139.



for local involvement in spill planning and response similar to the Regional Citizens' Advisory Councils mandated by the Oil Pollution Act of 1990" (at 268).

However, the ongoing Coast Guard-driven reorganization of ACPs is being treated as a simple rearrangement of existing plans into separate ACPs for each sector and new RCPs for each region. This treatment replicates past practices and omissions into multiple new plans instead of addressing these critical gaps in national preparedness. Yet all the pieces are in place to update area and regional contingency plans to better protect first responder health, public health and welfare, and the environment.

Opportunity to update Area and Regional Contingency Plans during reorganization.

Symptom-Based Exposure Assessment and Health Monitoring Units

The National Commission found that, "Industry and government responders did not adequately anticipate or address the magnitude of potential health impacts" (at 193). The National Commission found that the "National Contingency Plan overlooks the need to respond to widespread concerns about human health impacts... This lack of basic medical information, which could have been collected if a short medical questionnaire had been distributed, limits the ability to draw accurate conclusions regarding long-term physical health impacts. Additionally, residents of coastal communities may believe that they suffered adverse health consequences resulting from both chemical exposure from the spill itself and the mental stress occasioned by the spill's assault on their livelihoods" (at 277).

The National Commission's recommendation for EPA to develop distinct plans to address human health impacts during a very large spill infers involvement of state and local planners since spill preparation and response cascades outward from ACPs. This means ACPs must also address human health impacts at the local and state levels.

After the BP Deepwater Horizon disaster, it was widely recognized that people from professional responders to the exposed public were getting sick at levels of exposure to toxic chemicals that were previously thought to be "safe" (i.e., of a low health hazard risk). Consequently, federal agencies took steps to minimize harm to public employee responders in future all-hazard disasters.

For example, federal Occupational Safety and Health Administration (OSHA) revised its hazard communication (HAZCOM) standards in 2012 to recognize that certain health hazards are



exceptions to the toxicological (concentration-based) order,⁵ and that, when these health hazards are present, real-time symptom-based monitoring is more reliable for hazard risk assessment. In other words, when certain categories of health hazards are present, human bodies are more sensitive and reliable indicators of potential harm than air monitoring results. Further, the National Institute of Occupational Safety and Health (NIOSH) led an effort to develop and implement an emergency responder health monitoring and surveillance program that introduced health symptom-based monitoring, a program that the National Response Team and its 15 member agencies *recommended* for professional responders in 2012.⁶

Serendipitously in 2021, after over 30 years of work towards this end, teams of scientists found the immunology-based biomechanism that triggers symptoms at very low levels of exposure and/or repeated of exposure to health hazards and that can lead to hypersensitivity (that is loss of tolerance) to light, sound, touch, and chemical odors.⁷ This is relevant to both worker and public health and, therefore, the agencies and laws that regulate each field.

During emergency response, worker health is regulated by OSHA federal regulations [§ 1910.120]—the hazardous waste operations and emergency response (HAZWOPER) regs—and by states with OSHA-approved plans. Public health is under state jurisdiction and is not well integrated into the National Contingency Plan, as noted by the National Commission (above).

In 2023, the RRT 10 and Northwest Area Committee (including Washington, Oregon, and Idaho) chartered a task force to determine what, if anything, they could do to improve health protection for emergency responders and the public. The Health and Safety Task Force recommended developing and implementing a Worker Health Monitoring Unit and a Public Health Assessment Unit within the Incident Command Structure, and rewriting all the health and safety messaging for workers and the public regarding exposure to dispersants and oil spills based on the post-BP disaster scientific literature.⁸

⁵ Appendix A to § 1910.1200, at A.0.4.2. <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1200AppA> Three health hazards that are exceptions to the rule are carcinogens, germ cell mutagens, and reproductive toxins.

⁶ Emergency Responder Health Monitoring and Surveillance (ERHMS) Technical Assistance Document (2012). https://www.nrt.org/sites/2/files/ERHMS_Final_060512.pdf

⁷ Masri S, et al., 2021. Toxicant-induced loss of tolerance for chemicals, foods, and drugs: Assessing patterns of exposure behind a global phenomenon. *Environ Sci Eur* 33:65. <https://doi.org/10.1186/s12302-021-00504-z>

Miller CS, Palmer RF, Dempsey TT, et al. 2021. Mast cell activation may explain many cases of chemical intolerance. *Environ Sci Eur.* 33, 129. <https://doi.org/10.1186/s12302-021-00570-3>

⁸ Final report of the Health and Safety Task Force to the RRT 10/ Northwest Area Committee (2024). <https://alertproject.org/wp-content/uploads/2024/02/HSTF-report-20230214-1.pdf>

See also the ALERT and Government Accountability Project, 2024, Petition requesting EPA to remove Corexit 9527A and Corexit 9500A from the NCP Product Schedule pursuant to 40 CFR § 300.970. <https://alertproject.org/wp-content/uploads/2024/08/EPA-DELIST-petition-FINAL.pdf>



The current Coast Guard-driven reorganization of ACPs and RCPs presents an opportunity for *state-driven initiatives* to develop these units, update the safety messaging, and integrate this material into the revised Plans. It also presents an opportunity for *state-driven initiatives* to build out local and state preparedness to *man-made disasters* by establishing Regional Citizens' Advisory Councils.

Regional Citizens' Advisory Councils

In its final report, the National Commission on the Deepwater Horizon found that the Coast Guard's failure to actively engage state and local officials in the development of ACPs undercut the efficacy of the overall response during the disaster response.⁹ It specifically recommended creating a mechanism *similar to* the Regional Citizens' Advisory Councils in Alaska. The current Coast Guard-driven reorganization of ACPs does not address this recommendation but it provides an opportunity to do so.

ACPs are not Regional Citizens' Advisory Councils (RCACs or "Citizens' Councils").¹⁰ The Oil Pollution Act specifically established ACPs and RCACs,¹¹ because both are needed for efficient and effective ACPs that work as intended and do no more harm. Citizens' councils serve a different function than ACPs. They provide science and technical support for the Area Committees by conducting the research, environmental monitoring, and thorough reviews of government and industry contingency plans needed to demonstrate safe environmental practices.¹² They generate quality, area-specific information for Area Committees and RRTs to make informed decisions in developing and updating ACPs and RCPs, and they provide a critical feedback loop to determine if the Plans work as intended.

For example, these next generation Citizens' Councils could be tasked with supplemental testing for use of dispersants and other products to determine what products can be used safely in state and adjacent federal waters with species of concern. They could also be tasked with conducting baseline and post-event surveys for public health monitoring to determine location and needs of vulnerable populations during and after an oil spill to support the public health assessment units, as recommended by the Health and Safety Task Force. They could be tasked with preparing the public for man-made disasters like oil spills as the NEROs (Neighborhood Emergency Response Organizations) do for natural disasters.

⁹ See note 2, National Commission, 2011, at 265.

¹⁰ For history of ACPs and RCACs, see ALERT report, *The Opportunity to Make It Right* (2024), at 28–39. <https://alertproject.org/wp-content/uploads/2024/02/ALERT240212-Opportunity-FINALrev.pdf>

¹¹ 33 USC § 2732(d).

¹² 33 USC § 2732(d)(6).



To perform these critical functions, Citizens' Councils must be autonomous, able to act free of outside control. The Oil Pollution Act recognized this when it made the original Councils self-governing,¹³ restricted federal and state entities to nonvoting membership,¹⁴ and prohibited industry participation.¹⁵

In contrast, the US Coast Guard Commandant Instruction created a workaround of the Federal Advisory Committee Act, which prohibits industry representatives from holding Area Committee membership. The Coast Guard considers industry participation in Area Committee meetings "invaluable."¹⁶ So, in seeming direct contravention to federal law, the Commandant Instruction allows Area Committees to establish subcommittees that specifically include industry participation:

"Subcommittee participants include individuals such as facility and vessel owners/operators, spill cleanup contractors, emergency response officials, marine pilots, local chemical manufacturers, salvage and marine fire-fighting entities, and members of other qualified organizations from the local community, such as Non-Governmental Organizations (NGOs).¹⁷

Clearly, Citizens' Councils are not meant to be a function of Subcommittees or special Task Forces that serve Area Committees. To close a critical gap in national preparedness and fulfill the National Commission's Recommendation C3, *the States* should establish autonomous next generation Citizens' Councils *accountable to states*. Further, this should be done with the full cooperation and support of the Area Committees and RRTs. The latter should be providing resources and technical support for this purpose.¹⁸

¹³ 33 USC § 2732(d)(2)(B). Non-voting members.

¹⁴ 33 USC § 2732(d)(4). Self-governing.

¹⁵ 33 USC § 2732(d)(5). Dual membership and conflicts of interest prohibited.

¹⁶ See note 2, COMDTINST M16000.14A 26, Chapter 4, Area Contingency Planning Policy: B.4. Area Committee Composition and Membership, at 4-2 (prohibits industry representatives...).

¹⁷ *Ibid.* Chapter 4, B.6. Establishment of Subcommittees, at 4-3 (allows industry members), at 4-2, quote at (b).

¹⁸ For example, the Oil Pollution Act required funding for each RCAC to be provided by owners and operators of oil facilities and tankers in the region of operation. 33 USC §2732(k): "Approval of the contingency plans required of owners and operators of the Cook Inlet and Prince William Sound terminal facilities and crude oil tankers while operating in Alaskan waters in commerce with those terminal facilities shall be effective only so long as the respective Association and Council for a facility are funded..." The same opportunity should be afforded states, as part of their *required* oil spill response preparation and planning.