



The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

February 26, 2024

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His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, NH 03301

**REQUESTED ACTION**

Authorize the New Hampshire Department of Environmental Services (NHDES) to enter into a Memorandum of Understanding (MOU) with the New Hampshire Fish and Game Department (NHFG), (VC# 177911-B001) to improve and define roles and responsibilities related to planning, protection, rescue and rehabilitation of oiled wildlife, effective upon Governor and Council approval.

**EXPLANATION**

NHDES, under RSA 146-A:4 and RSA 147-A:13, is given the jurisdiction and responsibility to oversee the response to discharges of oil and hazardous materials. This authority includes the ability to hire and direct response contractors. NHFG, under RSA 206:10, is assigned responsibility for the protection, propagation and preservation of fish, game, bird and wildlife resources of the state.

NHDES and NHFG both respond to oil and hazardous material spills that impact the wildlife of New Hampshire. Coordination and preparation increases the likelihood of a favorable response to limit the impact to wildlife. This MOU allows NHDES and NHFG to clearly set response roles, within each agency's respective authorities and areas of expertise. The agencies will coordinate in preparing and maintaining response and rehabilitation plans and assets used during an oil or hazardous material spill response. This coordination will be critical when an oiled wildlife rehabilitation facility is set up under NHDES spill response contracts. NHFG has specific knowledge for wildlife recovery, handling and protection, as well as relationships with local experts in wildlife rehabilitation. This MOU will allow NHFG to manage the wildlife facilities treating impacted wildlife and maintain decision making authority regarding the wildlife in their care. The agencies will conduct joint training sessions on response to oiled wildlife, including field deployments, the development of oil spill response plans and full-scale response exercises.

This MOU will benefit the state by improved coordination and cooperation during responses impacting wildlife. This agreement has been approved as to form, substance, and execution by the Office of the Attorney General.

We respectfully request your approval.

  
Robert R. Scott, Commissioner

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**New Hampshire Department of Environmental Services**  
**And**  
**New Hampshire Fish and Game Department**

I. Introduction:

The Department of Environmental Services (NHDES) and the New Hampshire Fish and Game Department (NHFGD) share a common interest and responsibility for protecting the natural resources of New Hampshire and have determined that a cooperative response to oil and/or hazardous materials releases has allowed the state to coordinate available resources leading to better protection of the environment and natural resources.

In 1990, Congress enacted the Oil Pollution Act (33 U.S.C. 2701-2761). As a result of the Law, more emphasis was placed on planning and preparedness for marine oil spills. Congress charged the United States Coast Guard and the Environmental Protection Agency with the authority and responsibility to establish area committees. Each committee was required to prepare contingency plans.

New Hampshire is represented on two Area Committees, the Maine/New Hampshire Area Committee and the Region 1 Area Committee, by NHDES and NHFGD. The Area Contingency Plans prepared by these committees include a wildlife rehabilitation plan for New Hampshire, which was originally drafted in 1994, and includes wildlife relocation and deterrence efforts. These plans must be periodically reviewed and updated.

II. Purpose:

The purpose of this memorandum of understanding (MOU) is to define the role each agency will play in oil and/or hazardous materials (OHM) releases, including the planning, protection, rescue, and rehabilitation of wildlife affected by OHM releases within the state.

III. Authority:

RSA 206:10 assigns to the executive director of NHFGD the responsibility of protecting, propagating and preserving the fish, game, bird, and wildlife resources of the state.

RSA 146-A:4, assigns to NHDES, primary jurisdiction over the response and cleanup of an oil discharge or spill which may pollute, or which has polluted, the surface water or groundwater of the state.

RSA 147-A:13, assigns to NHDES, authority to hire contractors for and supervise the response and cleanup of a Hazardous Materials spill or discharge to protect human health and the environment from an imminent hazard.

RSA 485-A:14 assigns to NHDES, the responsibility to investigate possible contamination from, and ensure the safe removal of, partially or completely submerged petroleum-powered vehicles or petroleum containers.

IV. Agency Responsibilities:

The exchange of information between NHDES and NHFGD is necessary for planning and response. Both agencies maintain information and plans relevant to OHM response. The departments will share information in order to make accurate and timely decisions for planning or when responding to an OHM release. The agencies will share information by the most efficient means possible, subject to limitations imposed by applicable law and regulation.

Each agency will assume certain responsibilities pertaining to rescue and rehabilitation of wildlife from OHM releases. The responsibilities of each agency contained in this section begins with the planning stage through the implementing of response activities during and after an OHM release.

**DEPARTMENT OF ENVIRONMENTAL SERVICES (NHDES)**

1. NHDES will perform all tasks necessary to establish a contract with a firm qualified to develop OHM wildlife rehabilitation facilities and train personnel in OHM wildlife handling and rehabilitation.
2. NHDES will assume responsibility and costs for the OHM wildlife rehabilitation contract.
3. NHDES will participate on the Wildlife Response Working Group to be established by NHFGD.
4. NHDES will provide all equipment necessary to operate an OHM wildlife rehabilitation facility as identified by the OHM wildlife rehabilitation contractor.
5. During and after an OHM incident, NHDES will coordinate with NHFGD to initiate wildlife rescue and rehabilitation operations.
6. NHDES will coordinate the disposal of authorized (e.g., non-evidentiary) OHM carcasses and other wastes that result from wildlife rehabilitation operations.
7. NHDES will request concurrence from the responsible party and other state and federal agencies when NHFGD requests activation of the OHM wildlife rehabilitation contractor.
8. NHDES will request concurrence from the responsible party and other state and federal agencies when NHFGD requests approval to initiate volunteer recruitment for wildlife

rescue and rehabilitation.

9. NHDES will coordinate all OSHA-required personnel protection and safety training for volunteers.
10. NHDES will collaborate with NHFGD to identify areas that require priority protection for natural resources and habitat considerations during an OHM release incident.
11. NHDES will request concurrence from NHFGD prior to applying any chemical counter measures in response to an OHM release incident.

#### **FISH AND GAME DEPARTMENT (NHFGD)**

1. NHFGD will be responsible for developing and modifying a Wildlife Rehabilitation Plan.
2. NHFGD will collaborate with NHDES to initiate rehabilitation procedures during an OHM release incident.
3. NHFGD will be responsible for establishing and chairing a Wildlife Response Working Group as detailed in the NHFGD Wildlife Rehabilitation Plan.
4. The NHFGD Executive Director, or designee, shall approve the priority of species to be treated at the rehabilitation facility as identified by the Wildlife Response Working Group prior to implementing rehabilitation operations.
5. NHFGD will develop guidelines for the deterrence and or relocation of vulnerable species of wildlife.
6. NHFGD will assume responsibility for coordinating wildlife relocation.
7. NHFGD will provide NHDES with guidelines for the deterrence of wildlife during an OHM release incident.
8. NHFGD will supervise implementation of the Wildlife Rehabilitation Plan during an OHM release incident
9. NHFGD, in consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and/or US Fish and Wildlife, will establish and activate a Resource Assessment Team to provide initial assessment of damages to natural resources and habitats resulting from an OHM release incident.
10. NHFGD will advise and coordinate with NHDES and other participating parties when the services of the wildlife rehabilitation contractor are needed during an OHM release incident.
11. Once the wildlife rehabilitation contractor is activated by NHDES, NHFGD will supervise activities of the contractor.

12. Upon approval by NHDES or the Federal On Scene Coordinator, NHFGD will recruit volunteers for wildlife rehabilitation operations.
13. NHFGD will participate in OHM training exercises coordinated by NHDES.
14. NHFGD will provide staff and coordinate with other natural resource agencies during an OHM release event.

V. Amendments:

Either NHDES or NHFGD may, at any time, propose amendments to this agreement whereupon NHDES and NHFGD shall consult to consider such amendment. This agreement may be amended only upon written concurrence of both NHDES and NHFGD.

VI. Termination:

- A. Either NHDES or NHFGD may terminate this agreement. If this agreement is not amended as provided for in paragraph V, or if either party proposes termination of this agreement for other reasons, the party proposing termination shall notify the other party in writing, explain the reason for proposing termination, and consult to seek alternatives to termination.
- B. Should such consultation result in an agreement on an alternative to termination, NHDES and NHFGD shall proceed in accordance with that agreement.
- C. Should such consultation fail, the party proposing termination may terminate this agreement.

VII. Duration of Agreement:

This agreement shall be reviewed annually by NHDES and NHFGD for modification or termination and will remain in effect unless and until it is terminated.

Signatures:



Robert R. Scott  
Commissioner  
NH Department of Environmental Services

2-29-24

Date



Scott R. Mason  
Executive Director  
NH Fish & Game Department

2-12-24

Date

OFFICE OF THE ATTORNEY GENERAL

Approved as to form, substance, and execution:



Assistant Attorney General  
Melissa Fates

3/6/24

Date