

CRITERIA FOR DOWNGRADE OF MARINE TRANSPORTATION RELATED (MTR) FACILITY CLASSIFICATION AND ALTERNATIVE BOOMING

PURPOSE: This document provides guidance to facility inspectors in order to standardize facility downgrades as well as granting booming alternative compliance within Western Alaska COTP zone. These standards are maintained to assure continuity of continuity of classification among facilities of similar size and operational parameters. Nothing in this instruction takes precedence over existing Coast Guard policy, but is meant to supplement and consolidate guidance into one document. All previous unsigned downgrade criteria and alternatives prior to this date are not valid and should not be used in any decision making regarding downgrades and alternatives.

REFERENCES: (a) Title 33 Code of Federal Regulations (CFR) Part 154.1016(b)
(b) 33 CFR § 154.107(a)
(c) 33 CFR § 154.1015

ENCLOSURES: (1) Downgrade Worksheet
(2) Endangered Species Act (ESA) Consultation

ACTION: All inspectors will become familiar with this memo and the references. Suggested changes shall be routed and approved by the Chief, Inspections Division (spi).

DEFINITIONS: Class #1 Facility – facility that could not only reasonably be expected to cause substantial harm, but also significant and substantial harm to the environment.

Class #2 Facility – facility that could reasonably be expected to cause substantial harm to the environment.

Class #3 Facility – facility that could reasonably be expected to cause neither significant and substantial harm to the environment, nor significant harm to the environment.

DOWNGRADE CLASSIFICATION: The following criterion establishes standards for evaluating downgrade requests and classification of facilities in accordance with reference (a) and were approved by the COTP (Captain Fosdick) on January 17, 2012. Requests for downgrades shall be submitted to the COTP in writing addressing the criteria used to evaluate

the request. Facility inspectors shall use enclosure (1a) to assist with processing downgrade requests. A facility shall not be downgraded more than one level. Prior to routing up any approval for downgrade, ESA consultation shall be completed as discussed later in this memo. Facility classification is as follows:

- a. Class #1 Facility: According to ref (c), all facilities shall be initially classified as a Class #1 Facility with the exception of mobile facilities and facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons.

In accordance with 154.1016(c) the COTP may downgrade a facility classification after considering all relevant factors to include: Type and quantity of oils handled in bulk, facility spill history, age of facility, proximity to public and commercial water supply intakes, proximity to navigable waters, and proximity to fish and wildlife sensitive areas.

- b. In accordance with ref (a), a Class #1 Facility may be downgraded to a Class #2 Facility if the facility meets all of the following:
 - i. The MTR Facility transfers non-persistent oils only.
 - ii. The MTR Facility conducts less than 6 transfers per year, with an annual throughput of not more than 240,000 gallons and a total storage capacity of not more than 100,000 gallons.
 - iii. The MTR Facility has not more than 2 small spills (less than 50 gallons) within the previous 5 years.
 - iv. The MTR Facility conducts annual transfer pipeline tests as required by 33 CFR § 156.170 and proper records are maintained.
 - v. The proximity of the MTR Facility and surrounding landscape poses no risk of impacting public and commercial water supply intakes if a spill were to occur from any transfer piping or storage tank.
 - vi. The topography surrounding the MTR portion of the facility is such that a spill of an average most probable discharge would have minimal potential impact to navigable waters.
 - vii. The MTR Facility is not located within a Most Environmentally Sensitive Area as designated within the associated Subarea Contingency Plan.
- c. In accordance with ref (a), a Class #2 Facility may be downgraded to a Class #3 Facility if the facility meets all of the following:
 - i. The MTR Facility transfers non-persistent oils only.
 - ii. The MTR Facility conducts less than 3 transfers per year, with an annual throughput of not more than 120,000 gallons and a total storage capacity of not more than 42,000 gallons.
 - iii. The MTR Facility has no spill history within the previous 5 years.
 - iv. The MTR Facility conducts annual transfer pipeline tests as required by 33 CFR § 156.170 and proper records are maintained.

- v. The proximity of the MTR Facility and surrounding landscape poses no risk of impacting public and commercial water supply intakes if a spill were to occur from any transfer piping or storage tanks.
- vi. The topography surrounding the MTR portion of the facility is such that a spill of an average most probable discharge would have minimal potential impact to navigable waters.
- vii. The MTR Facility I not located within a Most Environmentally Sensitive Area as designated within the associated Subarea Contingency Plan.

ALTERNATIVES:

In accordance with ref (a), booming alternatives may be granted to facilities. Requests shall be in writing. Barges that transfer fuel to facilities in Western Alaska are required to carry boom that is at least three times the length of the vessel. Many facilities do not conduct secondary transfers and their headers are typically some distance from the waterway; therefore, the likely hood of a discharge reaching a navigable waterway is very small. Inspectors shall review all requests using enclosure (2) and ensure facilities meet the below criteria prior to granting the alternative:

- a. Barges shall be the only vessel that transfers oil to the MTR Facility.
- b. The MTR Facility conducts less than 6 transfers per year.
- c. The MTR Facility has not more than 2 small spills (less than 50 gallons) within the previous 5 years.
- d. The MTR Facility conducts annual transfer pipeline tests as required by 33 CFR § 156.170 and proper records are maintained.
 - i. If MTR Facility conducts a pneumatic test, then an approval letter from the COTP for alternative testing must be maintained by the facility.
- e. The proximity of the MTR Facility and surrounding landscape poses no risk of impacting public and commercial water supply intakes if a spill were to occur from any transfer piping or storage tank.
- f. The topography surrounding the MTR portion of the facility is such that a spill of an average most probable discharge would have minimal potential impact to navigable waters.
- g. The MTR Facility is not located within a Most Environmentally Sensitive Area as designated within the associated Subarea Contingency Plan.
- h. The MTR facility does not conduct secondary marine transfers.

CONSULTATION:

Consultation with NMFS and USFWS shall be conducted for all recommended downgrade and alternative request approvals, unless the determination of ‘zero effect’ is made. This determination should be confirmed with the CID and Chief of Prevention. Information to be submitted shall include the facility/village name and location and the adjacent body of water, what endangered species and critical habitat are in the area as listed in the Unified Plan, and how the downgrade or alternative compliance will affect the endangered species and critical habitat (use section 2 of enclosure (3) to assess the effects of the action)

DOWNGRADE REQUEST

FACILITY NAME: _____

This request is based on the relevant factors listed in 33 CFR 154.1016(c), as follows:

1. Type of oils handled: _____
2. Transfers per year: _____
3. Annual throughout (gallons): _____
4. Storage Capacity (gallons): _____
5. Facility spill history in last 5 years: _____
6. Facility conducts testing as required by 33CFR156.170 and maintains records: Y/N
 - a. Date of last test: _____
7. Proximity to public and commercial water supply intakes: _____
8. Proximity to navigable waters: _____
9. Proximity to fish and wildlife sensitive environments: _____

10. Coast Guard inspection history / outstanding deficiencies: _____
11. NMFS and USFWS have been consulted: Y / NA (because no effect has been determined)
12. Does facility conduct secondary transfers over the water? Y / N
If yes, capacity of the largest vessel? _____

Facility meets the requirements as set forth in the CID Memo #09-11 and I recommend this facility to be downgraded to a **substantial harm** facility based on the above information.

Downgrading this facility means the facility will:

1. Not have list the organization of personnel to manage a response
2. May have 200ft. of containment boom vice 1,000 ft.

Facility reviewed by: _____

Date: _____

BOOM ALTERNATIVE REQUEST

FACILITY NAME: _____

This request is based on the relevant factors listed in 33 CFR 154.107, as follows:

1. Facility Classification: Significant and Substantial Harm / Substantial Harm
2. Location: Coastal / River
 - a. If coastal facility: Are barges the only vessel that delivers fuel to the facility Y / N
Tidal Range: _____ ft.
3. Type of oils handled: _____
4. Transfers per year: _____
5. Annual throughout (gallons): _____
6. Facility spill history in last 5 years: _____
7. Facility conducts testing as required by 33CFR156.170 and maintains records: Y/N
 - a. Date of last test: _____
8. Proximity to public and commercial water supply intakes: _____
9. Proximity of header to navigable waters: _____
10. Proximity to fish and wildlife sensitive environments: _____

11. Coast Guard inspection history / outstanding deficiencies: _____
12. NMFS and USFWS have been consulted: Y / NA (because no effect has been determined)
13. Does facility conduct secondary transfers over the water? Y / N
 - a. If yes, capacity of the largest vessel? _____

Facility meets the requirements as set forth in the CID Memo #01-12 (rev 09JAN14) and I recommend this facility be granted sorbent boom as an alternative to hard boom. (500 ft. of sorbent boom for significant and substantial harm facilities and 250 ft. of sorbent boom for substantial harm facilities)

As a _____ harm facility, _____ ft. of sorbent boom is required:

Facility reviewed by: _____

Date: _____

When does an Action Require Consultation with NMFS under Section 7 of the ESA?

1. Does the action have a **Federal Nexus** (is the project/action funded, authorized, or carried out by a Federal agency)?

- Yes - consultation with NMFS may be required prior to initiating the action
- No - consultation with NMFS is not required and the action may proceed; however, the action is still subject to ESA Section 9 prohibitions (for example, it is illegal to take an endangered species*)

2. If there is a Federal nexus, the lead Federal action agency will request a species list from NMFS documenting the presence of threatened/endangered species or critical habitat in the action area. If listed species or critical habitat are present, the Federal action agency needs to assess the effects of the action on those listed species or critical habitat and make one of the following determinations (this process is often conducted through a Biological Assessment):

- **No Effect** - the proposed action will have zero effect on the listed species or critical habitat
- **May Affect but Not Likely to Adversely Affect** - the proposed action may affect the listed species or critical habitat but the effects will be insignificant, discountable, or beneficial
- **May Affect and Likely to Adversely Affect** - the proposed action may negatively and significantly affect the listed species or critical habitat

3. If the determination was “No Effect” then the action may proceed without consultation with NMFS. However, ESA Section 9 prohibitions will apply if an unanticipated take to a listed species occurs.

If the determination was “May Affect but Not Likely to Adversely Affect”, NMFS must be consulted. During consultation, NMFS will review the Biological Assessment and either will concur with the determination (at which point the consultation process ends and the action may move forward keeping in mind ESA Section 9 prohibitions on unanticipated take), or will not concur with the determination. If NMFS does not concur, NMFS may recommend changes or mitigation measures to remove any adverse effects, or recommend formal consultation.

If the determination was “May Affect and Likely to Adversely Affect”, the Federal action agency needs to enter into **formal consultation** with NMFS. The action may not proceed as designed until consultation is complete. During formal consultation, NMFS will review the Biological Assessment and prepare a Biological Opinion. If NMFS determines that the action will not jeopardize the species or adversely modify critical habitat, NMFS will prepare an Incidental Take Statement (ITS) to cover take of listed species; however, no ITS will be included for any species of listed marine mammals unless small take authorizations have been approved under the MMPA. At that point the action may proceed with approved types and levels of take. If NMFS determines the action will jeopardize the species or adversely modify critical habitat, then by law, the action cannot proceed as designed. NMFS may recommend a reasonable and prudent alternative which allows the action to proceed, but which avoids jeopardy or adverse modification.

**take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct*

ESA Section 7 Consultation Flow Chart for Actions with a Federal Nexus

