

**Memorandum of Understanding Between
The United States Coast Guard, Office of Marine Safety, Security and Environmental Protection
and
The United States Environmental Protection Agency, Office of Water
for EIS activities under NEPA for NANPCA rulemaking**

August 2003

A. Statement of Purpose

The purpose of this Memorandum of Understanding (MOU) is to establish procedures and policies to be employed by the United States Coast Guard (USCG) and the United States Environmental Protection Agency (EPA) for USCG to complete environmental impact analysis (EIS) under the National Environmental Policy Act (NEPA) for certain rulemaking activity pursuant to Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA), as amended by the National Invasive Species Act of 1996 (NISA). Specifically, this MOU is consistent with the Council on Environmental Quality (CEQ) regulations at 40 CFR 1501.6, 1501.8, and the January 30, 2002, CEQ Memorandum For The Heads Of Federal Agencies (Subject: Cooperating Agencies In Implementing The Procedural Requirements Of The National Environmental Policy Act). This MOU may serve as a potential model for future ballast water management activities between the two agencies as regulatory standards are developed and implemented over time.

It is the intent of the signatories to this MOU that this be a cooperative, non-adversarial endeavor, and all parties enter into this agreement with the intent to take reasonable steps to facilitate its successful execution. The parties note their ongoing productive and cooperative relationship in related areas, such as their participation on the ANS Task Force, interagency work group activities in support of developing the United States (US) position for an international ballast water agreement and various research partnerships. These activities will continue to provide valuable input to the standard development process and be governed under separate arrangements. Therefore nothing herein should be construed to alter any existing agreement for matters not specifically addressed in this MOU. Specifically, the provisions of this MOU will cover USCG and EPA roles with regard to the environmental analysis (i.e. environmental impact statement) for the USCG rule making activities pursuant to NANPCA, and amended by NISA. In NISA, Congress directs the USCG to issue regulations and guidelines to prevent the introduction and spread of non-indigenous species in US waters.

B. Terms and Conditions

This MOU will take effect immediately upon being executed and will expire at the end of 5 years at which time it may be renewed, amended, or left to expire. Either party may terminate the MOU by giving the other party 30 days written notice. Both parties must agree to any changes, modifications, and amendments in writing.

EPA participates in this MOU as a cooperating agency under authority set forth in Section 1501.6 of CEQ's NEPA implementing regulations. USCG participation in this MOU is authorized by 14 U.S.C. §141, USCG cooperation with other agencies, states, territories, and political subdivisions. This instrument in no way restricts either Party from participating in similar activities with other public or private agencies, governments, organizations, or individuals.

C. Limitations

All commitments made in this MOU are subject to the availability of appropriated funds and each agency's budget priorities. Nothing in this MOU, in and of itself, obligates USCG or EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligations.

This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both parties.

This MOU does not create any right or benefit, substantive or procedural, enforceable by law or equity against USCG or EPA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside USCG and EPA.

Any press releases or other public documents that reference this MOU, or the EIS, shall have prior approval of both Parties, with the exception of EPA comments to be made public pursuant to the Clean Air Act Section 309. Both parties agree that any privileged intra-agency records created and/or inter-agency records shared as a result of this agreement shall not be released to the public, such as pursuant to a Freedom of Information Act request, without prior consultation and approval from representatives of both agencies.

This agreement is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other Person.

Each party will communicate regularly with the other including, at minimum, immediate information of schedule changes that would affect its ability to provide timely input to the document.

D. Stipulations

The Parties Will: Comply with all necessary provisions of NEPA. The USCG will complete an EIS analyzing the impacts associated with rulemaking pursuant to NANPCA and NISA. Pursuant to that law, the USCG will undertake to establish certain standards for non-indigenous species. The EPA will perform its duties as a cooperating agency in addition to its traditional duties as a reviewer of the EIS under Section 309 of the Clean Air Act. Those review duties are independent of this agreement. Moreover, wherever possible, the USCG will adopt EPA input and incorporate same into its own conclusions prior to finalizing any section to be drafted by EPA. USCG will seek EPA's agreement on any changes USCG seeks to make to EIS sections drafted by EPA.

The Parties Will: Complete tasks listed in Attachment A according to the outlined schedule. Each agency will be responsible for the task assigned and the USCG will have overall responsibility for completion of all tasks. Once complete, the USCG will confirm, in writing, completion of these tasks. Attachment A may be updated by mutual agreement of the USCG and EPA designated representatives. The agencies will identify their designated representatives by letter.

The USCG will serve as lead agency for the development of the EIS. The EPA will serve as a cooperating agency by virtue of its considerable expertise in the subject matter area and related jurisdictional authority. EPA will be given ample opportunity to review EIS drafts before they are made public. EPA will also draft a response to public comments which speak to those portions of the EIS the EPA drafted.

The document will list the portions identified in Attachment A along with the agency (EPA or USCG) responsible for their completion.

DISPUTES: The following procedures shall be utilized to elevate any conflict or disagreement between the agencies. In any elevation, the agencies will jointly prepare an elevation document that will contain a joint statement of facts and succinctly state each agency's position and recommendations for resolution. If the agencies are aware of a dispute, they will defer taking final action, where consistent with applicable legal deadlines, to allow the issue to be resolved through the elevation process. The following procedures shall be utilized to elevate any conflict or disagreement between the agencies regarding their responsibilities under this MOU.

Level 1: The Level 1 review team consists of staff personnel from USCG and EPA. Any contentious issues will be discussed with an attempt to resolve them without further elevation. If disputes cannot be resolved among the Level 1 team members, the issue will be raised with the Level 2 review team as soon as possible.

Level 2: The Level 2 review team consists of the signatories to this agreement or their successors. The Level 2 team will make their best efforts to resolve any issues elevated to them. Where resolution is not possible at this level, the Level 2 team will elevate the issue to Headquarters Review no later than 14 days after notification by the Level 2 team, or sooner as agreed upon or mandatory deadlines require.

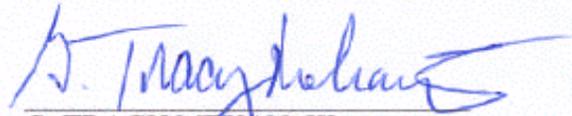
Headquarters Review: This review consists of the Administrator of EPA, and the Commandant, USCG, or their representatives, who will attempt to resolve disputes elevated by the signatories. Headquarters Review officials will attempt to issue a decision resolving the dispute within 21 days after elevation. Decisions will be binding upon the agencies' field staffs. At this resolution level, the decision rests with the agency exercising the statutory or regulatory authority in question.

E. The Parties Hereto have executed this agreement as of the last date shown below.



T. H. GILMOUR, RADM, USCG
Assistant Commandant for Marine Safety,
Security and Environmental Protection

Date August 21, 2003



G. TRACY MEHAN, III
ASSISTANT ADMINISTRATOR
Office of Water, U. S. EPA

Date August 21, 2003

Attachment A

Proposed EIS for Ballast Water Discharge Standard Regulations

Activity/Action	CEQ Ref.	USCG Action (Lead Agency)	EPA Action (Cooperating Agency)
Public Meetings <ul style="list-style-type: none"> • Identify topics • 2-4 meetings (DC, San Fran, Ann Arbor, Houston) <ul style="list-style-type: none"> ○ FR notice • Transcripts 		Lead - - - USCG to publish - USCG contractor	- Assist - provide \$25k - participate
EPA and USCG MOU on EIS development <ul style="list-style-type: none"> • Includes suggested research • 		Joint lead	Joint lead
EIS NOI <ul style="list-style-type: none"> • To EPA for review • To list public meeting dates 		USCG to draft	EPA to Review
Cover Sheet (1 page in length) <ul style="list-style-type: none"> • List agencies • Title of proposed action and location • Contact for further information • Document Type (EIS) • 1 paragraph abstract • Comment deadline (draft EIS) 	1502.11	USCG to draft	EPA to review
Summary - ≤ 15 pages and includes <ul style="list-style-type: none"> • Major conclusions <ul style="list-style-type: none"> ○ Standard • Areas of controversy <ul style="list-style-type: none"> ○ Cost ○ Effectiveness ○ Technology • Issues raised by agencies/public • Issues to be resolved • Choice among alternatives 	1502.11	USCG to Draft	EPA to review
Purpose and Need	1502.13	USCG to draft	EPA to review
Options paper identifying potential discharge standard alternatives		USCG to draft	EPA to review
Alternatives Including the Proposed Action <ul style="list-style-type: none"> • Explore and evaluate all alternatives <ul style="list-style-type: none"> ○ Discuss why eliminated or kept ○ Include alternatives not within jurisdiction of USCG or EPA • Environmental impacts of proposal • Environmental impacts of the alternative standards in comparative form • Define issues and explain the basis for the preferred alternative • Include evaluation of no action • Identify preferred alternative • Include appropriate mitigation measures not already included in proposed action or alternatives. • Identify scientific basis for standard 	1502.14 1502.14a 1502.14b 1502.14c .14(d) .14(e) .14(f)	USCG to review USCG to review USCG to review USCG to review USCG to review USCG to review USCG to draft	EPA contractor to draft based upon USCG option paper EPA contractor to draft EPA contractor to draft EPA to review EPA contractor to draft EPA to review

