

UNITED STATES OF AMERICA AND
THE STATE OF ALASKA,

vs.

Defendant.

Civil Action #

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I. RECITALS

A. This Consent Decree is made and entered into by and among the following parties (hereinafter referred to collectively as "the Parties" and individually as "Party"):

FOR THE PLAINTIFF: The United States of America on behalf of: the Department of Commerce (including the National Oceanic and Atmospheric Administration ("NOAA")); the Department of the Interior ("DOI") (including the U.S. Fish and Wildlife Service); the State of Alaska on behalf of the Alaska Department of Fish and Game (ADFG), the Alaska Department of Natural Resources (ADNR), the Alaska Department of Law (ADOL), and the Alaska Department of Environmental Conservation (ADEC). Collectively these government agencies are referred to as the "Trustees" or the "Natural Resource Trustees."

FOR THE DEFENDANT: Adak Petroleum, LLC, as the Settling Defendant, acknowledges and stipulates, for the sole purpose of giving effect to this Consent Decree and to satisfy the requirements of §1017(f)(1) of the Oil Pollution Act of 1990 (OPA), 33 USC § 2717(f)(1), that it is the Responsible Party (RP) for the 2010 Adak oil spill Incident.

B. Natural Resource Trustees are authorized to act on behalf of the public to assess and recover natural resource damages, to plan and implement restoration actions and to restore natural resources injured and lost as a result of oil spills. DOI and NOAA are designated federal Natural Resource Trustees pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") (40 C.F.R. §§ 300.600, *et seq.*) and Executive Order 12580 (52 Fed. Reg. 2923 (January 23, 1987) as amended by Executive Order 12777 (56 Fed. Reg. 54757 (October 19, 1991)). ADFG, ADNR, ADOL and ADEC are Natural Resource Trustees pursuant to subpart G of the NCP (40 C.F.R. 300.600, *et seq.*). Each of the agencies acts as a Natural Resource Trustee pursuant to OPA, 33 U.S.C. 2706 *et. seq.*

C. The Trustees have alleged the following: On January 11, 2010, up to 142,000 gallons of #2 diesel fuel was released from a 4.8 million gallon underground tank at the Adak Petroleum Bulk Fuel facility on Adak Island in the central Aleutian Islands of Alaska (hereinafter referred to as "the Incident"). Fuel was being transferred from a tanker at the adjacent loading dock when the tank was overfilled. The containment sump unit was overwhelmed and the fuel entered Helmet Creek, which flows into the small boat harbor in the Port of Adak. Approximately 2 km of Helmet Creek and 2.5 acres of associated riparian habitat experienced direct impacts. Most of the diesel was confined to the creek, though possibly more than a thousand gallons flowed out to Sweeper Cove affecting approximately 9.2 acres of marine habitat and shoreline in the small boat harbor and outer harbor. Hereinafter, both the Creek and the area in Sweeper Cove are referred to generally, but not exclusively, as the "Incident Site". Oil from the Incident caused injuries to natural resources, including birds, fish, and their habitats, and also had an impact upon recreational uses of natural resources and other public resources.

D. After the Incident, the Trustees for Natural Resources injured by the spill and the Settling Defendant entered into a cooperative natural resource damage assessment (NRDA) process. Injury assessment activities were planned and conducted, including gathering and analyzing data and other information. The Trustees subsequently used the data and other information to determine and quantify the resource injuries and damages. Because Adak Petroleum has agreed to undertake restoration at the Incident Site, the Trustees developed a Damage Assessment and Restoration Plan/Environmental Assessment (DARP/EA), which describes the affected environment and illustrates potential restoration alternatives and their environmental consequences. The DARP/EA was made available for public comment in March 2013 and thereafter was finalized after response to comments. The Trustees also worked with

Adak Petroleum to develop the Helmet Creek Restoration and Monitoring Work Plan (hereinafter referred to as "the Work Plan"), which outlines specific steps to be taken to restore natural resources injured by the oil spill and recover natural resource services lost as result of the Incident. The Work Plan was finalized after the public comment period.

E. Under the terms of this Consent Decree, and effective upon settling, the Settling Defendant has agreed to undertake full performance of work in accordance with the requirements of the Work Plan, as well as related documents created pursuant to the Work Plan. The Work Plan is incorporated at Appendix A, and its requirements are made enforceable under this Consent Decree. Hereinafter, all obligations of the Settling Defendant pursuant to the Helmet Creek Restoration and Monitoring Work Plan are collectively referred to as "Restoration Work."

F. Plaintiffs have filed a Complaint in this action alleging that the Settling Defendant is liable under Section 1002(b) of OPA, 33 U.S.C. § 2702(b), for damages for injury to, destruction of, and loss of natural resources and their services resulting from the release of oil, including the costs of assessing the damages. The Settling Defendant denies the allegations in the Complaint and does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint and the matters alleged in this Consent Decree. Neither this Consent Decree nor its terms shall constitute an admission to or evidence of liability in any violation by Adak Petroleum, LLC, and may not be used as evidence of liability or violation of the law in any proceeding involving Adak Petroleum, LLC, except in action to enforce this Consent Decree.

G. The Parties agree, and the Court finds, that settlement of this matter without further litigation is fair, reasonable and in the public interest.

NOW THEREFORE, with the Consent of the Parties, IT IS HEREBY ADJUDGED,
ORDERED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1345, 1355 & 1367; OPA, 33 U.S.C. § 2717(b). Venue is proper in this Court pursuant to, *inter alia*, 28 U.S.C. §§ 1391(b), (c) and 1395(a), 33 U.S.C. § 2717(b), because Settling Defendant did business in, and the January 2010 oil spill Incident occurred in, this Judicial District. The Court has personal jurisdiction over Settling Defendant for this particular action, and each Party does not contest the Court's jurisdiction and does not contest the propriety of venue in this Judicial District for the purposes of this Consent Decree.

III. EFFECT OF CONSENT DECREE

2. This Consent Decree shall apply to, be binding upon, and inure to the benefit of the United States, the State Trustees, and the Settling Defendant and its successors and assigns. Any change of ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets, real or personal property shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

IV. DEFINITIONS

3. Terms used in this Consent Decree that are defined in OPA, or in regulations promulgated pursuant to OPA, shall have the meanings assigned to them in OPA or in such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- (a) "Consent Decree" shall mean the content of this Decree, including all Appendices.
- (b) "Costs" shall mean Future Costs and Past Costs.

(c) "Entry of the Consent Decree" or "Entry" shall be the date upon which this Consent Decree is entered by the Court or motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

(d) "Federal Trustees" shall mean the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration and the United States Department of the Interior, acting through the United States Fish and Wildlife Service.

(e) "Future Costs" shall mean Trustee Costs incurred after August 31, 2012.

(f) "Incident" shall mean the January 11, 2010 discharge of diesel fuel at the Adak Petroleum Bulk Fuel facility on Adak Island in the central Aleutian Islands of Alaska, including, but not limited to, the discharge of oil into navigable waters and onto adjoining shorelines. The Trustees have alleged that up to 142,000 gallons of #2 diesel fuel were released during the Incident.

(g) "Incident Site" shall mean the vicinity of the Adak diesel fuel spill, which includes, but is not limited to, the affected areas of Helmet Creek and Sweeper Cove, as well as associated marine and riparian habitat and shorelines.

(h) "Interest" shall mean the interest rate prescribed under OPA, 33 U.S.C. § 2705(b)(4), and shall be computed daily to the date of payment and compounded annually.

(i) "Natural Resource Damages" shall mean damages as defined in Sections 1001(5) and 1002(b)(2) of OPA, 33 U.S.C. §§ 2701(5) and 2702(b)(2), 15 C.F.R. § 990.30, as well as AS 46.03.760(d)(2), AS 46.03.780 and AS 46.03.822.

(j) "Natural Resource Trustees" or "Trustees" shall mean those federal and state agencies or officials designated or authorized pursuant to the OPA and applicable state law to act as Trustees for the natural resources belonging to, managed by, controlled by, or appertaining to the United States or the State of Alaska. Specifically, as used in this Consent Decree, the Trustees are DOI, NOAA, ADFG, ADNRR, ADOL and ADEC.

(k) "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

(l) "Parties" shall mean the United States, the State Trustees, and the Settling Defendant.

(m) "Past Costs" shall mean Trustee Costs incurred through August 31, 2012.

(n) "Plaintiffs" shall mean the United States and State of Alaska.

(o) "Responsible Party" shall mean Adak Petroleum, LLC.

(p) "Restoration Work" shall mean those restoration, construction, reporting and monitoring activities specified in the Helmet Creek Restoration and Monitoring Work Plan, which is incorporated at Appendix A and made enforceable under this Consent Decree. Restoration Work shall also mean any additional work required under Section V, para.14 (*Restoration Requirements and Trustee Oversight*).

(q) "State Trustees" shall mean the Alaska Department of Fish and Game (ADFG), Alaska Department of Natural Resources (ADNR), Alaska Department of Law (ADOL), and the Alaska Department of Environmental Conservation (ADEC).

(r) "Settling Defendant" shall mean Adak Petroleum, LLC.

(s) "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities and includes the United States Department

of Commerce, acting through the National Oceanic and Atmospheric Administration, and the United States Department of the Interior, acting through the Fish and Wildlife Service.

V. RESTORATION REQUIREMENTS AND TRUSTEE OVERSIGHT

A. Settling Defendant's Restoration Requirements:

4. The Settling Defendant shall fund, perform, and execute the Restoration Work described in Appendix A (all provisions of which are incorporated and enforceable under this Consent Decree). Such work includes removing trash racks from Helmet Creek, clearing floodplain debris, restoring the creek grade to allow for fish passage, and re-vegetating the creek banks to provide stability. All required timelines for restoration, outlined in Appendix A, shall be met, unless the Parties agree, in writing, to an alternate timeframe. The Settling Defendant shall allow for Trustee monitoring and oversight of all Restoration Work required under this Consent Decree.

5. Not later than thirty (30) days after the Entry of this Consent Decree, the Settling Defendant shall notify the Trustees, in writing, of the name, address, and telephone number of its designated Project Coordinator. The person so designated shall have technical expertise sufficient to adequately manage and supervise all aspects of the Restoration Work outlined in Appendix A. The Settling Defendant may change its Project Coordinator by providing written notice to the Trustees at least thirty (30) days prior to the change.

6. The Settling Defendant shall implement the Restoration Work as described, defined and scheduled in Appendix A of this Consent Decree. The Settling Defendant shall comply with all applicable federal, state and local laws and regulations when implementing the Restoration Work. All federal, state, and local permits, rights-of-way, and other documents

necessary to implement the Restoration Work shall be obtained by the Settling Defendant at its expense.

7. After the Restoration Work has been implemented, the Trustee Council, defined in paragraph 10 below, or its designees shall complete a compliance inspection survey as set forth in Appendix A. The compliance inspection survey shall assess whether all proposed actions and restoration goals have been correctly and fully implemented and that any changes made in the field are consistent with performance standards outlined in the Work Plan. The Trustee Council or its designees will communicate deficiencies in the Restoration Work to the Project Coordinator in the field, when possible, so that corrective actions may be implemented immediately.

8. No later than sixty (60) days after completing the implementation of the Restoration Work as outlined in Appendix A, the Settling Defendant shall provide the Trustee Council with a written compliance inspection report. Such report shall be signed by the Settling Defendant's designated Project Coordinator and shall include information sufficient to show that all activities necessary to implement the Restoration Work have been completed in accordance with the terms outlined in Appendix A of this Consent Decree. The Trustee Council or its designees shall reserve the right to further inspect the Restoration Work after receipt of the compliance inspection report.

9. After the Trustee Council approves the compliance inspection report, the Settling Defendant shall initiate project monitoring at the frequencies laid out in Appendix A of this Consent Decree. Monitoring reports shall be submitted to the Trustee Council for review and approval.

B. Trustee Oversight of Restoration Work:

10. Collectively, the Trustees shall act by consensus through the Adak Trustee Council, consisting of one representative designated by NOAA, DOI, ADFG, ADNR, ADOL and ADEC.

11. The Adak Trustee Council shall address all matters relating to the Restoration Work required under this Consent Decree, including, but not limited to:

(a) Overseeing the Restoration Work outlined at Appendix A of this Consent Decree, including implementation, monitoring and related activities undertaken by the Settling Defendant;

(b) Identifying and determining appropriate additional or corrective actions to ensure that the performance standards associated with the required Restoration Work are met;

(c) Approving the compliance inspection report, prior to the commencement of restoration monitoring requirements; and

(d) Performing duties associated with the dispute resolution process, where necessary, as described in this Consent Decree.

12. Trustee oversight of the Settling Defendant's Restoration Work shall be undertaken by the Adak Diesel Spill Restoration Committee (AdakRC), which will be composed of technical representatives from all Trustees. The AdakRC shall report to the Adak Trustee Council.

13. If, based on the compliance inspection survey, monitoring, reporting, and upon consideration of other relevant information, the Trustee Council determines that the Restoration Work meets the performance standards outlined in Appendix A of this Consent Decree, the Trustee Council shall issue to the Settling Defendant a dated "Project Completion Certificate"

certifying that the Restoration Work is complete. Upon issuance of the Project Completion Certificate, the parties shall initiate actions to terminate the Consent Decree in accordance with Section XIX.

14. If the Trustee Council determines that the Restoration Work has not been implemented in accordance with the requirements outlined in Appendix A of this Consent Decree or if any aspect of the Restoration Work fails to achieve the goal or performance standard for that task, the Trustee Council shall determine what additional activities or corrective actions are needed and shall provide to the Settling Defendant written notice of the additional work that must be undertaken. After receipt of this notice, the Settling Defendant shall submit, within sixty (60) days, a draft work plan for approval by the Trustee Council to complete the additional work, with the schedule for implementation. Upon approval of the draft work plan by the Trustee Council, the Settling Defendant shall implement the additional restoration work, according to the submitted schedule. Settling Defendant shall notify Trustee Council of completion of its additional work, and the Trustees shall evaluate whether the additional work has been implemented in accordance with Appendix A. If the Trustees determine that the additional work is complete, then the Trustee Council shall approve as set forth in Paragraph 13. Nothing in this Consent Decree shall prohibit modifications or additions to the Restoration Work based upon mutual agreement of the Parties.

15. The Trustees, individually or collectively, may take any legal, administrative, or enforcement actions appropriate to enforce the terms of this Consent Decree. The Trustees and their designated representatives shall be given access at all reasonable times to the locations being used by the Settling Defendant to implement the Restoration Work, as well as all non-

privileged documents relating to the Restoration Work, for the purpose of overseeing and/or monitoring the implementation of the Restoration Work.

VI. RESPONSIBILITY FOR COMPLIANCE

16. The Settling Defendant is and shall remain solely responsible for compliance with all terms of this Consent Decree, including meeting all requirements of the Restoration Work.

17. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. Likewise, nothing in this Consent Decree shall be construed to affect or limit the obligation of the Settling Defendant to comply with all applicable federal, state, and local laws and regulations governing any activity required by this Consent Decree.

VII. PAYMENT OF TRUSTEE COSTS

A. Payment of Past Costs to Natural Resource Trustees:

Within twenty (20) days after the Effective Date, the Settling Defendant shall pay a total of \$277,027.08 to the Plaintiffs, to reimburse Past Costs, as follows:

18. *Past Costs Incurred by NOAA and DOI:* Settling Defendant shall pay a total of \$272,875.91 to the United States for Past Costs incurred by NOAA and DOI. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-5-1-1-10506. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Alaska. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

(a) Of the total amount to be paid by Settling Defendant pursuant to this Subparagraph, \$8,164.32 shall be applied toward Past Costs incurred by DOI.

(b) Of the total amount to be paid by Settling Defendant pursuant to this Subparagraph, \$264,711.59 shall be applied toward Past Costs incurred by NOAA.

19. ***Payment for Assessment Costs Incurred by Alaska:*** Settling Defendant shall pay a total of \$4,151.17 to the State of Alaska for Past Costs incurred by the State. Payment shall be made as set forth below.

(a) Of the total amount to be paid by Settling Defendant pursuant to this Subparagraph, \$524.52 shall be applied toward Past Costs incurred by ADOL. Payment will be made payable to the State of Alaska and shall be mailed to Kamie Willis, Alaska Department of Law, 1031 W. 4th Avenue, Suite 200, Anchorage, AK 99501.

(b) Of the total amount to be paid by Settling Defendant pursuant to this Subparagraph, \$3,626.65 shall be applied toward Past Costs incurred by ADFG. Payment will be made payable to the State of Alaska and shall be mailed to Alaska Department of Fish and Game, Accounts Receivable Unit, PO Box 115526, Juneau, AK 99811-5526.

20. For any portion of the Settling Defendant's payment that is made later than twenty (20) days after the Effective Date of this Consent Decree, Interest on the unpaid balance shall be paid at the rate established by OPA, 33 U.S.C. § 2705(b)(4), commencing on the twenty-first (21st) day after the Effective Date of this Consent Decree.

B. Payment of Future Costs to Natural Resource Trustees:

21. The Settling Defendant shall be responsible for the payment of all Future Costs of the Federal and State Trustees incurred after August 31, 2012.

22. At least once annually, the State and Federal Trustees will each individually submit to the Settling Defendant a bill for Future Costs with a cost summary with supporting

documentation. The Settling Defendant shall pay the Future Costs within thirty (30) days of receipt of each bill and cost summary. These costs shall be paid in the same manner as described in Part VII(A) above. In the event that payments required by this Paragraph are not made within thirty (30) days, Interest on the unpaid balance shall be paid commencing on the thirty-first (31st) day after the Settling Defendant's receipt of such bill and cost summary, and shall accrue through the date of payment. Disputes concerning the sufficiency of the supporting cost documentation provided by a State or Federal Trustee shall not defer payment obligations. Failure by the Trustees to timely submit Future Cost documentation shall not affect the Trustees' right to recover Future Costs.

23. Upon issuance of the Project Completion Certificate, the State and Federal Trustees shall promptly submit to the Settling Defendant a final bill for Future Costs.

VIII. FORCE MAJEURE

24. "Force majeure" for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of the Settling Defendant's contractors, or of any entity controlled by the Settling Defendant or controlling the Settling Defendant, that delays or prevents the performance of any obligation under this Consent Decree, despite the Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring, and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to (a) make payments of Past Costs or Future Costs, or (b) implement the Restoration Work or otherwise satisfy the requirements of Appendix A.

25. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure, the Settling Defendant shall orally notify the Trustees within forty-eight (48) hours of the time that the Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, the Settling Defendant shall provide in writing to the Trustees a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay or the effect thereof; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Defendant's rationale for attributing such a delay to a force majeure if they intend to assert such a claim; and state whether, in the opinion of the Settling Defendant, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendant shall be deemed to know of any circumstance that was known by, or should have been known by, the Settling Defendant, the Settling Defendant's contractors, or any entity controlled by the Settling Defendant or controlling the Settling Defendant.

26. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustees for such time as necessary to complete the obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, by itself, extend the time for performance of any other obligation. If the

Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify the Settling Defendant in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

27. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section IX (*Dispute Resolution*), they shall do so no later than fifteen (15) days after receipt of the Trustees' notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 25 and 26 above. If the Settling Defendant carries this burden, the delay at issue shall not be deemed to be a violation by the Settling Defendant of the affected obligation of this Consent Decree identified to the Trustees and the Court.

IX. DISPUTE RESOLUTION

28. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

29. ***Informal Dispute Resolution:*** If, in the opinion of either the Trustees or the Settling Defendant, there is a dispute that arises under or with respect to this Consent Decree, that Party shall send written notice to the other Parties to the dispute outlining the nature of the

dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

30. *Formal Dispute Resolution:*

(a) In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Plaintiff(s), individually or jointly, shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Defendant invokes the formal dispute resolution procedures of this Section by serving the Plaintiff(s) with a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Defendant.

(b) Within sixty (60) days after receipt of Settling Defendant's Statement of Position, the Plaintiff(s) will serve on the Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Plaintiff(s). Within fifteen (15) days after receipt of this Statement of Position, Settling Defendant may submit a Reply.

(c) An administrative record of the dispute shall be maintained by the Plaintiff(s) and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Plaintiff(s) may allow submission of supplemental statements of position by the Parties to the dispute.

(d) The Plaintiff(s) will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 30(c). This decision shall be binding on the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 30(c).

(e) Any administrative decision made by the Plaintiff(s) pursuant to this paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of the Plaintiff(s)' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the final administrative decision of the Plaintiff(s), the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The Plaintiffs may file a response to the Settling Defendant's motion.

(f) In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Plaintiffs is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision of the Plaintiff(s) shall be on the administrative record compiled pursuant to Paragraph 30(c).

(g) The invocation of informal or formal dispute resolution procedures pursuant to this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree that is not directly in dispute, unless the Trustees or the Court agree otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the

Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (*Stipulated Penalties*).

X. STIPULATED PENALTIES

31. The Settling Defendant shall be liable for stipulated penalties to the United States and the State for the Settling Defendant's failure to comply with the requirements of this Consent Decree specified below, unless excused under Section VIII (*Force Majeure*). "Compliance" by the Settling Defendant shall include the timely completion of the payments and activities identified in Sections V, VI, and VII within the time schedules established by and approved pursuant to the requirements of the Consent Decree, including Appendix A, and any work plans or other documents approved by the Trustees pursuant to this Consent Decree.

32. The following stipulated penalties shall accrue per violation per day for the Settling Defendant's failure to comply with the time schedules established for the following implementation requirements:

(a) Failure to comply with schedules in the Work Plan set forth in Appendix

A:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 7th day
\$1,000	8th through 30th day
\$1,500	31st day and beyond

(b) Failure to make the payments of Past Costs or Future Costs in a timely

manner:

<u>Penalty per Violation per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 7 th day
\$1,000	8 th through 30 th day
\$1,500	31 st day and beyond

33. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

34. Following the determination by the Plaintiffs, individually or jointly, that the Settling Defendant has failed to comply with one of the requirements of this Consent Decree listed above, the Plaintiff(s) may give the Settling Defendant written notification of the same and describe the noncompliance. The Plaintiff(s) may send the Settling Defendant a written demand for the payment of penalties. Penalties shall accrue and are due as provided in this Section regardless of whether the Plaintiff(s) have notified the Settling Defendant of a violation. Notwithstanding any other provision of this Section, the United States and the State, in their unreviewable discretion, may waive any portion of stipulated penalties owed to them that have accrued pursuant to this Consent Decree.

35. Stipulated penalties shall be paid as follows: Fifty percent (50%) of any stipulated penalty payments shall be paid to the United States in accordance with payment instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the District of Alaska, and shall be deposited in the United States Treasury. Fifty percent (50%) of any stipulated penalty payments shall be paid to Alaska, in accordance with the instructions set forth in Paragraph 19(a).

36. In the event the Settling Defendant fails to pay stipulated penalties when due, the United States and/or the State may institute a legal proceeding to collect such penalties, as well as Interest accruing on any unpaid balance, as provided by law.

37. All penalties due under this Section shall be due and payable within thirty (30) days of the Settling Defendant's receipt of a demand for payment from the Plaintiff(s), unless the Settling Defendant invokes dispute resolution under Section IX of this Consent Decree. In that case, stipulated penalties shall continue to accrue as provided in this Section, but need not be paid until the following:

(a) If the dispute is resolved by agreement, accrued penalties agreed to be owed shall be paid to the United States and the State within thirty (30) days of the agreement;

(b) If the dispute is appealed to this Court and the Plaintiff(s) prevail in whole or in part, the Settling Defendant shall pay all accrued penalties determined by the Court to be owed to the United States and the State within thirty (30) days of receipt of the Court's decision or order.

38. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Consent Decree.

XI. COVENANT NOT TO SUE BY PLAINTIFFS

A. Covenant by the United States:

39. Except as specifically provided in Section XIII (*Reservation of Rights*), the United States covenants not to sue the Settling Defendant pursuant to Section 1002(b)(1) or 1002(b)(2) of OPA, 33 U.S.C. §§ 2702(b)(1) or 2702(b)(2), or pursuant to Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), to recover Natural Resource Damages resulting from the Incident. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Section VII (*Payment of Trustee Costs*) of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant

of its obligations under this Consent Decree, including the payment of Future Costs, the successful performance by the Settling Defendant of its obligations to complete the Restoration Work, payment of all amounts that may become due to the United States under Section X (*Stipulated Penalties*), and to pay any Interest owed to the United States due to failure to timely pay any amount owed to the United States or the Federal Trustees. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

B. Covenant by State Trustees:

40. Except as specifically provided in Section XIII (*Reservation of Rights*), the State Trustees covenant not to sue the Settling Defendant pursuant to Section 1002(b)(1) or 1002(b)(2) of OPA, 33 U.S.C. §§ 2702(b)(1) or 2702(b)(2), or pursuant to Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), as well as AS 46.03.760(d)(2), AS 46.03.780, and AS 46.03.822, to recover Natural Resource Damages resulting from the Incident. This covenant not to sue shall take effect upon receipt of the Settling Defendant's payments pursuant to Section VII (*Payment of Trustee Costs*) of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree, including the payment of Future Costs, the successful performance by the Settling Defendant of its obligations to complete the Restoration Work, payment of all amounts that may become due to the State under Section X (*Stipulated Penalties*), and to pay any Interest owed to the State due to failure to timely pay any amount owed to the State or the State Trustees. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

XII. COVENANT NOT TO SUE BY THE SETTLING DEFENDANT

41. The Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action of any nature against the United States or the State (including all employees, agents, contractors, departments, agencies, administrations of any of them) under

federal, state, or local law arising out of or relating to Natural Resource Damages resulting from the Incident. The Settling Defendant likewise expressly waives its right to file a claim pursuant to Sections 1008 and 1013 of OPA, 33 U.S.C. §§ 2708 and 2713, to recover sums claimed to have been paid or that may be paid by Settling Defendant arising from or connected with the Incident. Likewise, the Settling Defendant waives any claims arising out of the Restoration Work, including and without limitation, claims based on the Trustees' approval, oversight and monitoring of the Restoration Work. The Settling Defendant reserves all defenses as to substantive claims pursued after the Entry of this Consent Decree.

XIII. RESERVATION OF RIGHTS

42. **General Reservation of Rights:** The United States and State Trustees reserve all rights against the Settling Defendant with respect to all matters not included in Section XI (*Covenant Not to Sue by Plaintiffs*), including the right to seek the costs required to enforce this Consent Decree, as outlined in Section XIV, (*Costs*).

43. The Trustees reserve all rights against the Settling Defendant with respect to claims or causes of action based on the Settling Defendant's failure to satisfy any requirement of this Consent Decree and based on non-Natural Resource Damage-related claims or causes of action. This reservation includes, but is not limited to, actions taken by the Trustees, individually or collectively, to institute proceedings against the Settling Defendant seeking recovery for:

- (a) claims or causes of action for Natural Resource Damages, based upon conditions caused by the Incident that were unknown to the Trustees at the time this Consent Decree was lodged; or information received by the Trustees indicating that the Incident resulted in injury to, loss of, or loss of use of natural resources of a type or future persistence that was unknown to the Trustees at the time this Consent Decree was lodged;

or any additional work that may be required under Section V, paragraph 14 (*Restoration Requirements and Trustee Oversight*);

(b) claims or causes of action for injunctive relief or any other costs incurred by the Trustees that are not within the definition of Natural Resource Damages, including, but not limited to, claims for lost public services, removal and cleanup costs associated with the Incident as per OPA, 33 U.S.C. §§ 2702(b)(1) and (b)(2)(F) and/or the CWA, 33 U.S.C. §§ 1311 and 1321;

(c) claims or causes of action brought against the Settling Defendant by the United States or the State of Alaska for future response costs associated with the Incident;

(d) with the exception of claims or causes of action for recovery of Natural Resource Damages, claims or causes of action brought against the Settling Defendant by the United States or the State of Alaska, for civil assessments, penalties or other damages under federal or state law, including but not limited to AS 46.03.758, AS 46.03.760(a), or (d)(1) or AS 46.03.822, associated with the Incident;

(e) claims or causes of action brought against the Settling Defendant by the United States or the State of Alaska for: (1) any criminal liability, (2) violation of any applicable federal or state law or regulation by the Settling Defendant for the Incident, or (3) violation of any applicable federal or state law or regulation by Settling Defendant when undertaking Restoration Work required by this Consent Decree; or

(f) subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amount paid or to be paid by the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C §§ 4611 and 9509.

XIV. COSTS

44. The Trustees, individually or collectively, may take any legal, administrative, or enforcement actions appropriate to enforce the terms of this Consent Decree. The Trustees shall be entitled to collect from Settling Defendant the costs (including reasonable attorneys' fees) incurred in any action required to collect funding required for the Restoration Work contemplated under this Consent Decree, as well as any unpaid balance, including interest.

XV. NOTICES

45. Unless otherwise specified herein, whenever modifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, DC 20044-7611
Re: DOJ Number 90-5-1-1-10506

To the State of Alaska:

Jennifer A. Currie
Alaska Department of Law
Environmental Section
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

To Settling Defendants

Tracy Timothy Woo
Chief Financial Officer & General Counsel
Aleut Corporation
4000 Old Seward Hwy, Suite 300
Anchorage, AK 99503
Phone 907.561.4300 Fax 907.563.4328

Any Party may, by written notice to other Parties, change its designated notice recipient or notice address provided above. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVI. EFFECTIVE DATE

46. The effective date of this Consent Decree shall be the date of Entry.

XVII. RETENTION OF JURISDICTION

47. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of effectuating or enforcing compliance with its terms.

XVIII. MODIFICATION

48. Where the modification constitutes a material change to any term of this Consent Decree, it shall be effective only upon approval by the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to approve, supervise and enforce modifications to this Consent Decree.

49. The provisions of this Consent Decree are not severable, unless by written agreement by the Parties and approval by this Court.

50. Economic hardship or changed financial circumstances of the Settling Defendant shall not serve as a basis for modifications of this Consent Decree.

XIX. TERMINATION

51. After Settling Defendant has completed the requirements of Section V (*Restoration Requirements and Trustee Oversight*) of this Decree, and has paid all of the Costs in Section VII (*Payment of Trustee Costs*) and any accrued stipulated penalties as required by this Consent Decree, Settling Defendant may serve upon the United States and the State a Request

for Termination, stating that Settling Defendant has satisfied those requirements, together with all necessary supporting documentation.

52. Following receipt by the United States and the State of Settling Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Settling Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the State agree that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

53. If the United States and the State do not agree that the Consent Decree may be terminated, the Settling Defendant may invoke Dispute Resolution under Section IX of this Consent Decree. However, the Settling Defendant shall not seek Dispute Resolution of any dispute regarding termination, under Section IX, until thirty (30) days after service of its Request for Termination.

XX. PUBLIC PARTICIPATION

54. This Consent Decree shall be lodged with this Court for a period of not less than thirty (30) days to allow the opportunity for public notice and comment. The Plaintiffs reserve the right to withdraw from or withhold their consent to this Consent Decree if the comments from the public regarding this Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to entry of this Consent Decree without further notice.

XXI. SIGNATORIES/SERVICE

55. Each undersigned representative of Settling Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party or Parties he or she represents to this document.

56. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

57. Settling Defendant agrees not to oppose the entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless by the consent of the Parties.

XXII. INTEGRATION

58. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied therein.

XXIII. APPENDIX

59. The following Appendix and its requirements are incorporated into this Consent Decree:

(a) The Adak Helmet Creek Restoration and Monitoring Work Plan

XXIV. FINAL JUDGMENT

60. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court, as to the United States, the State of Alaska and the Settling Defendant, in accordance with Rules 54 and 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

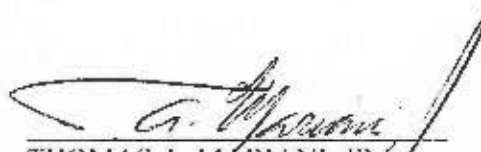
Dated: September 5, 2013

/s/ H. Russel Holland
UNITED STATES DISTRICT JUDGE
U.S. District Court of Alaska


THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Alaska v. Adak Petroleum, LLC.

FOR THE UNITED STATES:

DATED: 07-01-2013


THOMAS A. MARIANI, JR.
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

DATED: 7/2/13


KATHERINE A. LOYD
Trial Attorney
Environment and Natural Resources Division
United States Department of Justice

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Alaska v. Adak Petroleum, LLC.

FOR THE STATE OF ALASKA:

DATED: 6/11/2013

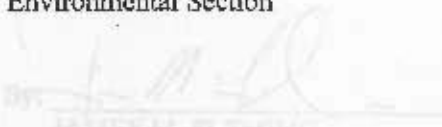
DATED: 6/13/13

DATED: 6/10/2013

By: Alastair Macgregor, LLC, its authorized member



JENNIFER A. CURRIE
Assistant Attorney General
Alaska Department of Law
Environmental Section


By: 
JAMES H. FLEMING
Operations Manager

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Alaska v. Adak Petroleum, LLC.


FOR THE SETTLING DEFENDANT:

By: Aleut Enterprise, LLC, its sole member

DATED: 6/11/2013

By: 
RYUICHI R. TSUKADA
President

DATED: 6/11/2013

By: 
JAMES M. FLEMING
Operations Manager