

MEMORANDUM OF UNDERSTANDING

I. INTRODUCTION

This Memorandum of Understanding (MOU) by and between the Florida Department of Environmental Protection (DEP or the State), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), and the United States Department of the Interior (DOI) (collectively referred to as the Trustees) is entered into to ensure the coordination and cooperation of the Trustees in the initiation of assessment, assessment of damages for injuries to natural resources resulting from the "Incident" as defined in Section III below, and the application of any natural resource damages recovered toward the restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources.

II. PARTIES

The following officials, or their designees, are parties to this MOU and act on behalf of the public as Trustees for natural resources under this MOU:

1. The Secretary of the Department of Environmental Protection, State of Florida,
2. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce,
3. The Secretary of the Department of the Interior.

III. LOCATION

This MOU is intended to address natural resources injured, destroyed or lost as a result of the discharges of # 6 fuel oil and Jet A fuel into the waters of Tampa Bay and the Gulf of Mexico due to a collision on August 10, 1993, of the Tank Barge Ocean 255 and the Tank Barge B-155 with the freighter Balsa 37 near the entrance of Tampa Bay, Florida (the Incident).

IV. PURPOSE

The Trustees recognize the importance of integrating and coordinating the assessment of natural resource damages for injuries to natural resources affected by the Incident, avoiding the potential for double recovery of natural resource damages and the duplication of assessment costs, seeking compensation for those injuries to natural resources and/or the services they provide, and restoration of those affected resources and/or services provided by those resources. The purpose of this MOU is to provide a framework

for such coordination and cooperation among the Trustees, and for the implementation of the activities of the Trustees in furtherance of their natural resource trustee responsibilities. The Trustees' activities will primarily involve assessing damages for injuries to natural resources, seeking compensation for those injuries to natural resources and/or the services they provide, and restoring the injured natural resources and/or the services provided by those natural resources affected by the Incident.

V. AUTHORITIES

The Trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each Trustee by the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Oil Pollution Act of 1990, P.L. 101-380, and other applicable Federal law including the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) Subpart G, 40 C.F.R. Sections 300.600 - 300.615 and the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, and applicable provisions of State law. In addition, DEP enters into this MOU pursuant to authority provided by Chapter 376, Florida Statutes.

VI. ORGANIZATION

The Trustees recognize the importance of coordinating their efforts in order to effectively and efficiently meet their respective natural resource trustee responsibilities under applicable Federal and State law. Accordingly, there is hereby created a Trustee Council to implement the MOU which is composed of a representative of each Trustee. Each Trustee respectively designates its primary representative on the Council as follows:

1. For DEP: Debra Preble
Chief, Office of Coastal Protection
Florida Department of Environmental
Protection
3900 Commonwealth Blvd.; MS-59
Tallahassee, Florida 323990-3000
904-488-2974
Fax: 904-488-5957

2. For NOAA: Jim Jeansonne
Injury Assessment Coordinator
NOAA Damage Assessment Center
Southeast Region

9450 Koger Blvd.
St. Petersburg, FL 33702
813-893-3571
Fax: 813-893-3111

3. For DOI: Gregory L. Hogue
Regional Environmental Assistant
Office of Environmental Affairs
Department of Interior
75 Spring Street, S.W. Suite 306
Atlanta, GA 30303
404-331-4524
Fax: 404-331-1736

Each Trustee shall designate an alternate representative to the Council and shall notify each of the other Trustees' designated primary representatives of the alternate's name, address, telephone and facsimile number within fourteen (14) days of the execution of this MOU. The Council may create subcommittees when they are deemed necessary to effect the purposes of this MOU. A representative designated by unanimous consent of the Trustee Council members will serve as Trustee Coordinator for administrative purposes. This representative shall fully coordinate its activities with and act under the direction of the Council. The Trustee Council may also seek advisory participation from the United States Department of Justice, the Attorney General of the State of Florida or other legal advisor and other State and Federal agencies, when appropriate.

VII. DUTIES AND RESPONSIBILITIES

1. Trustee Council

On behalf of the Trustees, the Trustee Council shall coordinate and authorize all Trustee activities and matters under this MOU in accordance with the decision making requirements contained in Section VIII. The Trustee Council may take whatever actions the Council, in its discretion, determines are necessary to fulfill the trust responsibilities of each Trustee under and to effectuate the purposes of applicable Federal and State law. It is expected that the Trustee Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the Trustees' natural resource trustee responsibilities:

A. Conduct scientific and technical studies, sampling and other matters related to the assessment of natural resource damages

with respect to trust resources which have been lost, injured or destroyed as a result of the Incident.

B. Seek compensation from responsible parties for the damages assessed by the Trustees, including the costs of planning and implementing the assessment.

C. Acting in concert with its attorneys, participate in negotiations with responsible parties.

D. In accordance with applicable law, supervise, manage and obligate any money paid to the Trustees by or on behalf of responsible parties for the purpose of assessing damages or restoring, replacing, rehabilitating and/or acquiring the equivalent of the affected natural resources.

E. Oversee the development and the implementation of a plan for the restoration, replacement, rehabilitation and/or acquisition of equivalent resources for those trust resources, and/or the services provided by those resources, that have been injured, destroyed or lost as a result of the Incident.

F. In accordance with applicable law, make all necessary decisions for the management and administration of funds pursuant to Section IX.

G. In accordance with applicable law, arrange for one or more contracts with professional consultants, technical or otherwise, that the Trustee Council determines are necessary and best qualified to provide services to the Council.

2. Trustee Coordinator

The duties of the Trustee Coordinator shall include, but are not limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings of the Trustee Council, and preparation of agendas for those meetings; acting as a central contact point for the Trustee Council; establishment and maintenance of records and relevant documents related to the function of the Trustee Council; and such other duties as directed by the Trustee Council. The Trustee Coordinator will be responsible for informing the other Trustees of all pertinent developments on a timely basis.

3. Communications with Responsible Parties

The Trustees agree that they will endeavor to have coordinated communications with the responsible parties (RPs) for the Incident on matters related to natural resource damages and claims for those damages. To the maximum extent possible, no Trustee will discuss these matters with the RPs without first providing the other Trustees notice and an opportunity to participate in such discussions. The above agreement shall not preclude a Trustee from having separate communications with the RPs on matters within the scope of the MOU where circumstances warrant it (provided, that each Trustee agrees to keep the other Trustees informed about such discussions) or on matters outside the scope of this MOU.

VIII. DECISION MAKING

The Trustees agree that all decisions implementing this MOU shall require unanimous approval of the Trustees. In the event that unanimous agreement cannot be reached among the members of the Trustee Council, the matter in dispute will be elevated to the Trustees for resolution. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved. The Trustees further agree that decision making deliberations will focus upon the Trustees' mutual purpose of assessing natural resource damages and restoring, rehabilitating, replacing and/or acquiring the equivalent of the affected natural resources, rather than upon control or respective trusteeship over those resources.

IX. FUNDS

The Trustees agree that any and all sums received by the Trustees as damages for the injury, loss, destruction or loss of use of natural resources as a result of the Incident shall be used for the purposes of restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured as a result of the Incident and the reduced or lost services provided by such resources. The Trustee Council shall, consistent with these purposes and in accordance with its decision making process in Section VIII, establish standards and procedures governing the joint use of such sums.

X. CONFIDENTIALITY

The Trustees agree that it is in the public interest that all scientific data arising out of their review of the injury to natural resources resulting from the Incident be made public. Therefore, such data shall be available to the public in accord with Chapter 119, Florida Statutes, and applicable federal law. Public sharing of scientific data will be the general policy of the Trustees.

However, all parties to this MOU recognize that all written or oral communications related to the assessment and recovery of damages for injury to natural resources are being undertaken in anticipation of litigation. Accordingly, all oral and written communications and work product will be treated as privileged attorney-client communications, attorney work product or protected by other applicable privilege (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent permitted under applicable Federal or State law.

Each Trustee further agrees that whenever it receives a request for the production of any record related to the assessment and recovery of natural resource damages resulting from the Incident, it will notify the other Trustees of such request and whether the record has been or will be released. Nothing contained herein shall be construed as prohibiting or restraining the Trustees or the Trustee Council from agreeing to release any record.

XI. MODIFICATION OF AGREEMENT

It is acknowledged that additional agreements may be needed among the Trustees with regard to natural resource damage claims that arise and planning for the restoration, replacement, rehabilitation and/or acquisition of equivalent natural resources that have been injured, destroyed or lost as a result of the Incident. All such modifications of this MOU must be in writing and approved by all Trustees currently parties to the MOU.

XII. TERMINATION

This MOU shall be in effect from the effective date as defined in Section XV until termination by agreement of the Trustees. At any time the trustees determine that the purposes underlying this MOU have been fulfilled the MOU will terminate upon such a finding.

In the event any Trustee withdraws from the MOU, such withdrawal must be in writing at least thirty days in advance of the withdrawal. Each Trustee shall have the right to withdraw from this MOU at any time following the giving of notice as hereinafter provided. In the event of such withdrawal, this MOU remains in full force and effect for the remaining parties.

XIII. LIMITATION

Nothing in this MOU shall be construed as obligating the United States, the State or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XIV. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective Trustees. They may not be the basis of any third party challenges or appeals.

XV. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. The effective date shall be the date that the last Trustee to sign this MOU does so sign.

IN WITNESS WHEREOF, the parties hereto have signed this MOU on the day and year appearing opposite their signatures.

[Signatures begin on next page]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
Authorized Official

Charles N. Ehler.
Charles N. Ehler
Director, Office of Ocean Resource
Conservation and Assessment

2/22, 1994
Dated

[Signatures continued on next page]

UNITED STATES DEPARTMENT OF THE INTERIOR
Authorized Official



Jonathan P. Deason, Director
Office of Environmental Policy and Compliance

3/1, 1994
Dated

(Signatures continued on next page)

STATE OF FLORIDA
Authorized Official

Virginia B. Wetherell
Virginia B. Wetherell, Secretary
Director, Florida Department of
Environmental Protection

Feb. 14, 199~~4~~⁹
Dated ^{UBW}