

**MEMORANDUM OF AGREEMENT
AMONG
PUYALLUP TRIBE OF INDIANS
MUCKLESHOOT INDIAN TRIBE
WASHINGTON DEPARTMENT OF ECOLOGY
WASHINGTON DEPARTMENT OF NATURAL RESOURCES
WASHINGTON DEPARTMENT OF FISHERIES
WASHINGTON DEPARTMENT OF WILDLIFE
ENVIRONMENTAL PROTECTION AGENCY
✓ NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
AND
BUREAU OF INDIAN AFFAIRS
REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT IN THE
COMMENCEMENT BAY, WASHINGTON ENVIRONMENT**

This Memorandum of Agreement (Agreement) is among the following parties: the Puyallup Tribe of Indians (Puyallup Tribe); the Muckleshoot Indian Tribe (Muckleshoot Tribe); the Washington Department of Ecology (WDOE), the Washington Department of Natural Resources (WDNR), the Washington Department of Fisheries (WDF), and the Washington Department of Wildlife (WDW); the Environmental Protection Agency (EPA); the National Oceanic and Atmospheric Administration (NOAA); the Department of the Interior; the U.S. Fish and Wildlife Service (USFWS), and the Bureau of Indian Affairs (BIA).

I. RECITALS

A. Parties

EPA is the principal federal agency responsible for implementation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601-9675. The other Parties to this Agreement are natural resource trustees ("Trustees") under applicable Federal, State and Tribal law, and enter into this Agreement in furtherance of their responsibilities to evaluate and, if appropriate, assert claims for damages to natural resources, including, but not limited to, the replacement and restoration of damaged resources and the recovery for lost use and non-use values of damaged resources.

B. Geographic Scope

This Agreement is intended to address resources damaged in the Commencement Bay environment, in the State of Washington and the Puyallup Indian Reservation. The Commencement Bay environment includes, but is not limited to, the Commencement Bay Near-shore/Tideflats National Priority List (NPL) site, and the South Tacoma Channel NPL site.

C. Purpose

1. The Parties to this Agreement recognize the importance of integrating and coordinating the assessment of natural resource damages with ongoing studies and remedial, enforcement and restoration activities in the Commencement Bay environment. The purpose of this Agreement is to provide a mechanism for such integration. Therefore, to the maximum extent practicable, the Parties shall coordinate their activities under this Agreement.

2. The Trustees intend to assess damages to injured natural resources as provided for by CERCLA, the Clean Water Act, 33 U.S.C. §§ 1251-1387, and the National Contingency Plan (NCP), 40 C.F.R. Part 300, as well as other applicable Federal, State, and Tribal laws. Each Trustee acknowledges its trust responsibility to protect, restore and enhance natural resources within its jurisdiction or control. Furthermore, it is the intent of all Parties to ensure that such actions be conducted with the benefit of public participation. Each Party agrees to fully cooperate in fulfilling the goals and objectives of this Agreement. While the procedural aspects of the proposed damage assessment will be carried out in a manner generally consistent with the federal regulations for "Type B" full-field assessments, the Trustees have not yet decided whether, or to what extent, to utilize these regulations in conducting the assessment.

3. This Agreement provides a mechanism for the Parties to coordinate their various activities regarding natural resource damage assessments. It is acknowledged that additional agreements may be executed among the Parties with regard to natural resource damage claims and the restoration, rehabilitation and enhancement of natural resources of the Commencement Bay environment.

II. AUTHORITY

EPA enters into this Agreement in furtherance of its coordination responsibilities under Section 104(b)(2) of CERCLA, 42 U.S.C. § 9604(b)(2), as amended, and the natural resource trustees enter into this Agreement in accordance with the natural resource trustee authorities provided for each such trustee by Section 107(f) of CERCLA, as amended, 42 U.S.C. § 9607(f), Section 311(f) of the Clean Water Act, 33 U.S.C. § 1321(f), and other applicable Federal, State and Tribal law including the Puyallup Tribe of Indians Land Claims Settlement Act of 1989, Pub. L. No. 101-41, 103 Stat. 83, 25 U.S.C. § 1773 (1989), the National Contingency Plan (NCP), as amended pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and, to the extent they are utilized, the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11 (1988), insofar as they may be amended.

III. TERMS OF AGREEMENT

A. Scope of Activities

Under this Agreement, the Parties will coordinate and cooperate with regard to the following activities:

1. Notification to all other Parties to this Agreement of the discovery of any injury to natural resources;
2. Development of and conducting a pre-assessment screen to determine whether an assessment should be carried out;
3. Preparation of a natural resource damage assessment plan, if deemed necessary;
4. Assessment of natural resource injury and damage by establishing the nature, extent and link between releases of hazardous substances and petroleum products, and injury to natural resources;
5. Quantification of the extent of injury to all damaged resources;
6. Assessment of:
 - a. lost resource use, non-consumptive use, and non-use values;
 - b. rehabilitation and restoration options and costs;
 - c. natural resource replacement options and costs;
 - d. damage and injury to Tribal spiritual and cultural resources;
 - e. lost Treaty right entitlement.
7. Development of a restoration and enhancement plan for the natural resources of Commencement Bay.

B. Funding

Each Party agrees to identify and pursue funding sources necessary for its participation under this Agreement. It is acknowledged and understood that the participation of the Federal Trustees under this Agreement is contingent upon the availability of Congressional appropriations, and other appropriate funding sources, for this purpose, and that the participation of other Parties to this agreement is also contingent on the availability of funding.

C. Representatives

Within ten (10) working days of the effective date of this Agreement, each Party will identify a representative for the purpose of implementing this Agreement, and will inform all other Parties to this Agreement in the event that another representative is appointed.

D. Lead Natural Resource Trustee

The Parties hereby agree to designate the National Oceanic and Atmospheric Administration to act as Lead Natural Resource Trustee under this Agreement. The Lead Natural Resource Trustee's responsibilities include, but are not limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings of the Parties and preparation of agendas for those meetings; acting as a central contact point for the Trustees and the potentially responsible parties (PRPs) in Commencement Bay; coordination of the procurement of goods and services necessary to implement this Agreement; development of a proposed system of cost accounting to facilitate eventual cost recovery; and such other duties as are agreed upon by the Parties to the Agreement. The Lead Natural Resource Trustee shall notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

E. Natural Resource Trustees' and Agencies' Responsibilities

The Parties agree to carry out the following preliminary tasks:

1. The National Oceanic and Atmospheric Administration shall:
 - (a) Act as Lead Authorized Official for marine resources in Commencement Bay; and
 - (b) Coordinate and conduct the pre-assessment screen for marine resources in Commencement Bay, and document the conclusions of that process; and
 - (c) Coordinate a pre-assessment screen inclusive of all natural resources in the Commencement Bay environment.

2. The Environmental Protection Agency shall:
 - (a) Provide notice to the other Parties to this Agreement of any CERCLA-related negotiations with, or enforcement action taken against, any entity that may be liable for natural resource damage in Commencement Bay; and
 - (b) Coordinate its CERCLA remedial actions in the Commencement Bay area with the other Parties to this Agreement; and

- (c) Provide project status reports as they are developed for the priority areas (as identified in the Record of Decision) within the Commencement Bay Nearshore/Tideflats NPL site, summarizing enforcement actions under the various federal, state, tribal and local environmental programs which involve source control and sediment remediation; and
- (d) Provide periodic updates summarizing negotiations, enforcement actions, and other activities under CERCLA, RCRA, or the Clean Water Act in Commencement Bay that may impact natural resources in the Commencement Bay environment, and that are not included in the project status reports described above; and
- (e) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.
3. The U.S. Fish and Wildlife Service shall:
- (a) Act as Lead Authorized Official for the wildlife resources of Commencement Bay; and
- (b) Coordinate and conduct the pre-assessment screen for wildlife resources in Commencement Bay, and document the conclusions of that process; and
- (c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.
4. The Bureau of Indian Affairs shall:
- (a) Coordinate activities and assist Indian Tribes with regard to natural resources potentially damaged by releases of contaminants into the Commencement Bay environment; and
- (b) Coordinate and conduct a pre-assessment screen for those resources within its jurisdiction, in cooperation with affected Indian Tribes, and document the conclusions of that process; and
- (c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.
5. The Puyallup Indian Tribe shall:
- (a) Coordinate with the other Parties to this Agreement implementation of the Puyallup Land Claims Settlement Agreement and the actions undertaken pursuant to this Agreement; and
- (b) Coordinate and conduct, in cooperation with the Bureau of Indian Affairs, a pre-assessment screen for those resources within its jurisdiction, and document the

conclusions of that process; and
(c) Act as Lead Authorized Official for assessing damage to the Puyallup Tribe's spiritual, cultural and Treaty resources; and
(d) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

6. The Muckleshoot Indian Tribe shall:

(a) Coordinate and conduct, in cooperation with the Bureau of Indian Affairs, a pre-assessment screen for those resources within its jurisdiction, and document the conclusions of that process; and
(b) Act as Lead Authorized Official for assessing damage to the Muckleshoot Tribe's spiritual, cultural and Treaty resources; and
(c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

7. The Washington Department of Ecology shall:

(a) Provide that the Urban Bay Action Team shall notify the other Parties on a quarterly basis of all Department of Ecology program activities in Commencement Bay (including Model Toxics Control Act and state Water Pollution Control Act activities) that may impact natural resources in the Commencement Bay environment. This notification requirement may be fulfilled by submission to the other Parties of the Department of Ecology's quarterly report to EPA, made pursuant to the June 30, 1989 DOE/EPA Cooperative Agreement, within ten (10) working days after its submission by DOE to EPA. This notification requirement does not mandate the release of enforcement-sensitive or privileged information, although the Urban Bay Action Team may elect to release such information; and
(b) Provide information to the other Parties of resources of concern to the agency; and
(c) Submit to the other Parties the Department of Ecology's quarterly report to EPA, made pursuant to the June 30, 1989 DOE/EPA Cooperative Agreement, within ten (10) working days after its submission by DOE to EPA; and
(d) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

8. The Washington Department of Natural Resources shall:

(a) Participate in conducting a pre-assessment screen for

those resources within its jurisdiction and the documentation of the conclusions of that process, contingent upon receipt of funding; and

(b) Provide information to the other Parties of resources of concern to the agency; and

(c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

9. The Washington Department of Fisheries shall:

(a) Participate in conducting the pre-assessment screen for those resources within its jurisdiction and the documentation of the conclusions of that process, contingent upon receipt of funding; and

(b) Provide information to the other Parties of resources of concern to the agency; and

(c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

10. The Washington Department of Wildlife shall:

(a) Participate in conducting the pre-assessment screen for those resources within its jurisdiction, and the documentation of the conclusions of that process, contingent upon receipt of funding; and

(b) Provide information to the other Parties of resources of concern to the agency; and

(c) Notify other Parties before taking any action that reasonably affects, or could reasonably be expected to affect, the claims of the other Parties to this Agreement.

F. Decisions and Dispute Resolution

Decisions of the Parties shall be by consensus. In the event of a dispute involving this Agreement, the Parties shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Parties involved in the dispute. In the event consensus cannot be reached, the matter shall be presented to the authorized officials (defined to mean the officer or employee who executed this Agreement on behalf of a Party, or his or her successor or designee) of the Parties to the dispute for resolution.

G. Communication

Written communications, other than internal communications within a particular Party, regarding activities under this

Agreement shall be sent to the following representatives:

1. For the National Oceanic and Atmospheric Administration: Charles Albertson of the NOAA Office of General Counsel, with copy to Lew Consiglieri.
2. For the Environmental Protection Agency: Allan Bakalian of the EPA Office of Regional Counsel (Region 10), with copies to Michael Stoner and Lori Cohen of the EPA Superfund Branch, Hazardous Waste Division.
3. For the U.S. Fish and Wildlife Service: David Fredericks, with copy to Don Kane.
4. For the Bureau of Indian Affairs: Ron Eggers, with copy to Barry Stein, Office of the Regional Solicitor.
5. For the Puyallup Tribe: Bill Sullivan, Director, Environmental Programs, with copies to Henry John, Chairman of the Tribal Council, and Richard DuBey, Esq, Special Environmental Counsel.
6. For the Muckleshoot Tribe: Walter Pacheco, Fisheries Manager, with copy to Rob Otsea, Office of the Tribal Attorney, and Virginia Cross, Tribal Chairperson.
7. For the Washington Department of Ecology: Fred Gardner, with copy to Ann C. Essko, Office of the Attorney General.
8. For the Washington Department of Fisheries: Mary Lou Mills, with copy to Ann C. Essko, Office of the Attorney General.
9. For the Washington Department of Wildlife: John Carleton, with copy to Ann C. Essko, Office of the Attorney General.
10. For the Washington Department of Natural Resources: Tom Mumford, with copy to Ann C. Essko, Office of the Attorney General.

H. Confidentiality

1. The Parties believe that their status as trustees or co-trustees for various resources in the Commencement Bay environment make it necessary that they carry out their preparation for litigation in a coordinated fashion and that they protect the integrity of the natural resource damage assessment process and confidentiality and secrecy of information and strategies.

2. The Parties agree to share certain information, strategies, confidences, and secrets to facilitate preparation of their case and to protect the public interest.

3. To further the public interest, the Parties agree: a) to share and exchange among and between themselves and their counsel, certain information, legal strategies and theories, documents, confidences, and other secrets for the purpose of asserting common claims, and asserting and protecting respective client interests and rights, without authorizing or permitting any other publication or use; b) that the sharing and exchange of such information, legal strategies and theories, confidences, and secrets does not waive any attorney-client or attorney work product privilege attaching to information, legal strategies and theories, confidences and secrets not so shared or exchanged; c) that the attorney-client and attorney work product privilege is intended to remain attached to information, legal strategies and theories, confidences and secrets so shared and exchanged; and d) not to reveal to any non-Party, to the extent permitted by applicable law, any such information, legal strategy or theory, confidence, or secret without the written consent, in advance, of the Party who contributed or caused the same to be contributed to the joint effort.

I. Notification of Negotiations with Potentially Responsible Parties

It is recognized that each Party to this Agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies; however, each Party to this Agreement agrees to provide twenty (20) days prior written notice to all other Parties of its intent to participate in negotiations with any PRP or other entity regarding settlement or other disposition of natural resource damage claims in the Commencement Bay environment. The Parties further agree to inform each other within five (5) business days of the effective date of this Agreement of the existence of any such negotiations that are taking place as of the effective date of this Agreement negotiations. The Parties further agree to provide copies of any agreements or other documents reflecting settlement of such claims.

J. Miscellaneous Provisions

1. In accordance with 41 U.S.C. § 22, no Member of or Delegate to Congress shall be admitted to any share or part of this Agreement, or to any benefit that may arise from this Agreement.

2. All Parties stipulate that neither execution of this Agreement nor performance of any activities pursuant to this Agreement, shall necessarily constitute approval or admission of, or precedent regarding, any principle, fact or issue in any administrative or judicial proceeding other than those relating to the Commencement Bay environment.

3. The Parties recognize that the State of Washington, acting by and through the Department of Natural Resources (DNR), may be a PRP in Commencement Bay and that DNR has authorized and empowered a discrete portion of the agency to carry out DNR's trustee rights, powers, duties and remedies. The Parties therefore agree that DNR is bound to this Agreement solely in its trustee capacity, and that the responsibility to carry out the terms, covenants and conditions of this Agreement (including, but not limited to, confidentiality, information sharing and notification requirements) extends only to the portion of the agency authorized and empowered to carry out DNR's trustee rights, powers, duties and remedies.

K. Execution; Effective Date

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Agreement, and shall be retained by the Lead Natural Resource Trustee. The date of execution shall be the date of the final Party's signature.

L. Amendment and Termination

This Agreement may not be amended except by written agreement of all the Parties. This Agreement shall continue in effect until terminated by agreement of all of the Parties, provided, however, that any party may terminate its participation in the Agreement upon giving sixty (60) days written notice to all other Parties. The withdrawal of any Party to this Agreement shall not affect the subsequent validity of this Agreement with respect to the Parties hereto.

IN WITNESS WHEREOF the Parties have executed this Agreement on the dates noted below.

THE PUYALLUP TRIBE OF INDIANS

BY: Henry John, Chairman
Henry John, Chairman
Tribal Council

4-11-90
(Date)

Approved as to Form By:

(Date)

THE MUCKLESHOOT INDIAN TRIBE

BY: Virginia Cross
Virginia Cross, Tribal Chairperson

8-8-90

(Date)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____
Charles N. Ehler
Director, Office of Oceanography
and Marine Assessment
National Ocean Service

(Date)

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Thomas P. Dunne
Acting Regional Administrator

(Date)

U.S. FISH AND WILDLIFE SERVICE

BY: _____
Regional Director

(Date)

BUREAU OF INDIAN AFFAIRS

BY: _____
Area Director

(Date)

Approved as to Form By:

(Date)

THE MUCKLESHOOT INDIAN TRIBE

BY: _____
Virginia Cross, Tribal Chairperson

(Date)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: Charles N. Ehler
Charles N. Ehler
Director, Office of Oceanography
and Marine Assessment
National Ocean Service

4/12/90

(Date)

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Thomas P. Dunne
Acting Regional Administrator

(Date)

U.S. FISH AND WILDLIFE SERVICE

BY: _____
Regional Director

(Date)

BUREAU OF INDIAN AFFAIRS

BY: _____
Area Director

(Date)

Approved as to Form By:

(Date)

THE MUCKLESHOOT INDIAN TRIBE

BY: _____
Virginia Cross, Tribal Chairperson

(Date)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____
Charles N. Ehler
Director, Office of Oceanography
and Marine Assessment
National Ocean Service

(Date)

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Concurred by Separate Letter
Thomas P. Dunne
Acting Regional Administrator

(Date)

U.S. FISH AND WILDLIFE SERVICE

BY: _____
Regional Director

(Date)

BUREAU OF INDIAN AFFAIRS

BY: _____
Area Director

(Date)

Approved as to Form By:

(Date)

THE MUCKLESHOOT INDIAN TRIBE

BY: _____
Virginia Cross, Tribal Chairperson

(Date)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____
Charles N. Ehler
Director, Office of Oceanography
and Marine Assessment
National Ocean Service

(Date)

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Thomas P. Dunne
Acting Regional Administrator

(Date)

U.S. FISH AND WILDLIFE SERVICE

BY: Marvin L. Plenert
Regional Director MARVIN L. PLENERT

May 25, 1990
(Date)

BUREAU OF INDIAN AFFAIRS

BY: _____
Area Director

(Date)

Approved as to Form By:

(Date)

THE MUCKLESHOOT INDIAN TRIBE

BY: _____
Virginia Cross, Tribal Chairperson

(Date)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____
Charles N. Ehler
Director, Office of Oceanography
and Marine Assessment
National Ocean Service

(Date)

U.S. ENVIRONMENTAL PROTECTION AGENCY

BY: _____
Thomas P. Dunne
Acting Regional Administrator

(Date)

U.S. FISH AND WILDLIFE SERVICE

BY: _____
Regional Director

(Date)

BUREAU OF INDIAN AFFAIRS

BY: _____
Area Director

3/15/90
(Date)

COMMENCEMENT BAY TRUSTEES
MEMORANDUM OF AGREEMENT - PAGE 11

WASHINGTON DEPARTMENT OF ECOLOGY

BY: Fred Olsen
Deputy Director
Title

4/2/90
(Date)

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____

Title

(Date)

WASHINGTON DEPARTMENT OF FISHERIES

BY: _____

Title

(Date)

WASHINGTON DEPARTMENT OF WILDLIFE

BY: _____

Title

(Date)

Approved as to Form for the Washington Departments
of Ecology, Natural Resources, Fisheries and Wildlife:

BY: _____

(Date)

WASHINGTON DEPARTMENT OF ECOLOGY

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: Richard Boyle

August 7, 1990
(Date)

Title

WASHINGTON DEPARTMENT OF FISHERIES

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF WILDLIFE

BY: _____

(Date)

Title

Approved as to Form for the Washington Departments
of Ecology, Natural Resources, Fisheries and Wildlife:

BY: _____

(Date)

WASHINGTON DEPARTMENT OF ECOLOGY

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF FISHERIES

BY: *P. John Martenson*

4/26/90
(Date)

Assistant Director, Salmon Program
Title

WASHINGTON DEPARTMENT OF WILDLIFE

BY: _____

(Date)

Title

Approved as to Form for the Washington Departments
of Ecology, Natural Resources, Fisheries and Wildlife:

BY: *Ann C. Essick, AAAs*

6/11/90
(Date)

WASHINGTON DEPARTMENT OF ECOLOGY

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF FISHERIES

BY: _____

(Date)

Title

WASHINGTON DEPARTMENT OF WILDLIFE

BY: *Curt Smith*
 Director
Title

 4/16/90
(Date)

Approved as to Form for the Washington Departments
of Ecology, Natural Resources, Fisheries and Wildlife:

BY: _____

(Date)



JUN 7 1990

NOAA OFFICE OF GENERAL COUNSEL
RECEIVED

Reply To
Attn. Of: SO-125

JUN 08 1990

GCNW, SEATTLE, WA

Charles E. Albertson
Office of General Counsel
Northwest Region
National Oceanic and Atmospheric Administration
7600 Sand Point Way N.E., BIN C15700
Seattle, Washington 98115

Dear Mr. Albertson:

This formally transmits the United States Environmental Protection Agency's (EPA) concurrence and approval of the attached Commencement Bay Natural Resource Damage Assessment Memorandum of Agreement, subject to the clarification below.

EPA supports, and has agreed to assist coordinating the federal, state, and tribal natural resource Trustees' preparation and development of a natural resource damage assessment for the Commencement Bay environment. This role is, however, independent from EPA's activities involving the Commencement Bay - Nearshore/Tideflats Superfund site.

EPA is not a natural resource trustee under CERCLA and thus is not responsible for performance of the "Scope of Activities" under Section III. A. on page 3 of the Memorandum of Agreement. For purposes of that section, the term "Parties" properly refers to the Trustees and not EPA.

In all other respects, EPA is in agreement with the Memorandum of Agreement and intends to both coordinate and cooperate with the Trustees regarding the development of a natural resource damage assessment.

EPA hereby submits its concurrence and approval of the Memorandum of Agreement through execution of this letter to be attached as a counterpart to that Agreement.

Sincerely,

A handwritten signature in black ink that reads "Thomas P. Dunne".

Thomas P. Dunne
Acting Regional Administrator

John Carleton
Washington Dept. of Wildlife
600 Capitol Way North
OLYMPIA WA 98501-1091

Don Kane
U.S. Fish & Wildlife Service
Division of Ecological Services
2625 Parkmont Lane S.W., Bldg. B-3
OLYMPIA WA 98502

Tanya Barnett
Office of the Attorney General
Mail Stop PV-11
OLYMPIA WA 98504

Ron Eggers
Bureau of Indian Affairs
Portland Area Office
P.O. Box 3785
PORTLAND OR 97208

Bill Sullivan
Environmental Department
Puyallup Tribe of Indians
2002 East 28th Street
TACOMA WA 98404

Charles E. Albertson
NOAA General Counsel
7600 Sand Point Wy. NE
SEATTLE WA 98115-6349

Morgan Bradley
Muckleshoot Indian Tribe
39015 - 172nd Avenue S.E.
AUBURN WA 98002

Barry Stein
Office of the Regional Solicitor
U.S. Dept. of the Interior
500 N.E. Multnomah - Suite 607
PORTLAND OR 97232

Thom Hooper
Washington Department of Fisheries
115 General Administration Building
OLYMPIA WA 98504

Chris Mebane
c/o EPA Superfund Branch
1200 Sixth Avenue
SEATTLE WA 98101

Tom Mumford
WA Dept. of Natural Resources
Division Of Aquatic Lands
900 - 47th Avenue N.E.
OLYMPIA WA 98506

Fred Gardner
Damage Assessment Program
Washington Department of Ecology
Mail Stop PV-11
OLYMPIA WA 98504-8711

Richard DuBey
DuBey Law Firm
3110 Bank of California Center
900 Fourth Avenue
SEATTLE WA 98164

Rob Otsea
Tribal Attorney
Muckleshoot Indian Tribe
39015 - 172nd Ave. N.E.
AUBURN WA 98002

David Fredericks
U.S. Fish & Wildlife Service
Division of Ecological Services
2625 Parkmont Lane S.W., Bldg. B-3
OLYMPIA WA 98502

Mr. Henry John
Chairman of the Tribal Council
Puyallup Tribe of Indians
2002 East 28th Street
TACOMA WA 98404

Walter Pacheco
Fisheries Manager
Muckleshoot Indian Tribe
39015 - 172nd Avenue S.E.
AUBURN WA 98002

Virginia Cross
Tribal Chairperson
Muckleshoot Indian Tribe
39015 - 172nd Avenue S.E.
AUBURN WA 98002

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF GENERAL COUNSEL
OLYMPIA, WA

MAR 13 1991

RECEIVED



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, GCNW
7600 Sand Point Way N.E., BIN C15700
Seattle, Washington 98115
(206) 526-6075; FTS 392-6075

March 5, 1991

FILE COPY

MEMORANDUM FOR: Commencement Bay Natural Resource Trustees and Interested Parties (see attached distribution list)

FROM: Charles E. Albertson *Chuck*
Staff Attorney

SUBJECT: Transmittal of Memorandum of Agreement

At long last, enclosed is a copy of the Memorandum of Agreement regarding natural resource damage assessment in the Commencement Bay environment, including the signatures of those authorized to execute the Agreement for each party. As set forth in Section III.K. of the Agreement, it has been in effect since August 9, 1990, the date of the last party's signature. Attached to each copy are copies of the transmittal letters from the Environmental Protection Agency, NOAA, and the U.S. Fish and Wildlife Service. The list of contacts at page 8 of the Agreement is already a bit stale, and the distribution list attached to this memo is probably more up to date.

My thanks to everyone for the effort that was put into negotiating this agreement, and for obtaining the approval of your respective agency and tribal management.

Encl.: As noted

