MEMORANDUM OF AGREEMENT

AMONGST

DEPARTMENT OF THE INTERIOR

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION ARISING FROM THE BARGE NORTH CAPE/ TUGBOAT SCANDIA OIL SPILL AND COORDINATION OF OTHER STUDIES AND ENFORCEMENT ACTIVITIES

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I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and between the Department of the Interior (hereinafter "DOI"), the National Oceanic and Atmospheric Administration (hereinafter "NOAA"), and the State of Rhode Island and Providence Plantations (hereinafter "Rhode Island"), (collectively hereinafter "Trustees" and "Parties") is entered into in recognition of the common interests of the Trustees in the restoration of natural resources and associated services which have been injured, destroyed or lost as a result of the Barge North Cape/Tugboat Scandia Oil Spill which began on January 19, 1996 in Block Island Sound at and around the Trustom Pond National Wildlife Refuge in Rhode Island, and in the coordinated handling of natural resource damage claims arising therefrom.

II. AUTHORITY

A. The natural resource Trustees enter into this Agreement in accordance with the natural resource Trustee authorities provided for each Trustee under Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706(a)-(g); Section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9607(f); Section 311(f) of the Clean Water Act (CWA), 33 U.S.C. §1321(f), and other applicable Federal law, and State statutory and common law; and authority including, but not limited to, The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as amended, 40 C.F.R. Part 300, and the Oil Pollution Act Natural Resource Damage Assessments Final Rule, 15 C.F.R. Part 990, 61 F.R. 440 (January 6, 1996).

B. In accord with Subpart G of the NCP, 40 CFR § 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this Agreement:

1. The Director of the Department of Environmental Management for the State of Rhode Island,

2. The Secretary of the Interior, for the Department of the Interior,

3. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, for the Department of Commerce.

III. DEFINITIONS

For purposes of this Agreement the following definitions shall apply:

A. "Assessment Coordinator" means the person appointed or hired by the Trustee Council to conduct activities as described at Section VIII(E).

B. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior or their respective authorized designees.

C. "Joint use" means use of natural resource damage recoveries by the State Trustee or the Federal Trustees, whether individually or collectively, in such a manner as is agreed upon by the Trustees in accordance with the terms of this Agreement.

D. "Natural resources" shall have the same meaning as set forth in Section 1001(20) of OPA, 33 U.S.C. §2701(20).

E. "Natural resource damage(s) recovery(ies)" means any award, judgment, settlement or other payment to the Federal Trustees or the State Trustee which is received or controlled by any of the Trustees, individually or collectively, for or as a result of claims for natural resource damages against any potentially responsible parties regarding the Spill, except any such award which is judgment, settlement, or payment in reimbursement of natural resource damage assessment costs incurred by any of the Trustees.

F. "Oversight expenses" means any costs associated with individual trustee participation in the restoration planning process, Trustee Council administrative proceedings, costs associated with the retention of consultants, coordinators, or any other technical or administrative services associated with the

development of the restoration plan, or any other costs reasonably related to the implementation of this Agreement other than the physical implementation of the final restoration plan approved by the Trustee Council.

G. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to OPA Section 2706(c), (d) and (f), and other applicable laws or regulations, including planning, implementation, administration and oversight, which serve to restore, rehabilitate, replace, or acquire the equivalent of natural resources or natural resource services injured, destroyed or lost as a result of the Spill.

H. "Restoration Coordinator" means the person appointed/hired by the Trustee Restoration Council to conduct activities as described at Section VIII, Paragraph D.

I. "Spill" means the Barge North Cape/Tugboat Scandia Oil Spill which began on or about January 19, 1996 in Block Island Sound at and around the Trustom Pond National Wildlife Refuge in Rhode Island, together with any and all impacts to natural resources arising from said release of oil.

J. "State Trustee" means the Director of the Rhode Island Department of Environmental Management, or the Director's trustee representative.

K. "Trustees" means the Federal Trustees and the State Trustee.

L. "Trustee Representatives" means the three (3) authorized designees appointed by the Trustees of NOAA, DOI and Rhode Island to the Trustee Council.

M. "Trustee Council" means the three Trustee Representatives appointed by the Trustees of NOAA, DOI and Rhode Island to oversee coordination of natural resource damage assessment and restoration arising from or related to the Spill.

IV. SCOPE

This Agreement is intended to cover natural resources as defined under Section 1001(20) of OPA, as amended, 33 U.S.C. 2701(20), belonging to or managed by, controlled by, or appertaining to the Trustees under OPA, CERCLA and the NCP which have been or may be affected by the Spill.

V. PURPOSE

The purpose of this Agreement is to provide a framework for intergovernmental coordination among the Trustees and for implemen-

tation of the Trustees' activities in furtherance of their natural resource trustee responsibilities under OPA and other applicable Federal law, and State statutory and common law, with respect to the Spill as regards both the handling of any claims for natural resource damages, and the development, implementation, and oversight of restoration activities relating to the Spill.

VI. OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under OPA, CERCLA and other applicable Federal law and State statutory and common law. The Trustees agree to work together to achieve the following natural resource damage claim and restoration implementation objectives:

A. Natural Resource Damage Claim Objectives.

1. Prepare a Notice of Intent to Conduct Restoration Planning and/or a Pre-assessment Screen to determine whether to conduct a full natural resource damages assessment.

2. Develop and implement a plan to assess the damages for injured, destroyed or lost natural resources resulting from the Spill.

3. Develop and implement a plan for the restoration of natural resources injured, destroyed or lost due to the Spill.

4. Determine the costs and expenses likely to be incurred for restoration of natural resources injured, destroyed or lost due to the Spill.

5. Determine the value of any loss of use of natural resources injured, destroyed or lost due to the Spill.

6. Assess, as appropriate, any other damages for any such injury, destruction or loss of natural resources resulting from the Spill.

7. If appropriate, assert claims against responsible and/or potentially responsible parties (PRPs) for damages as compensation for injury, destruction or loss of natural resources and costs incurred in carrying out Trustee responsibilities for natural resource damages resulting from the Spill.

B. Natural Resource Restoration Objectives.

1. Coordinate the efforts of the Parties in implementing the objectives of this Agreement;

2. Prepare a comprehensive Restoration Plan to address natural resource injuries resulting from the Spill.

3. Develop the Restoration Plan consistent with the federal National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the NOAA regulations at 15 C.F.R. Part 990, and Rhode Island statutory and common law.

4. Identify and evaluate a range of potential restoration alternatives and select appropriate alternatives for restoration of natural resources;

5. Determine the costs and expenses likely to be incurred for the restoration of natural resources;

6. Implement the Restoration Plan to restore natural resources injured, destroyed, or lost;

7. Fairly allocate the costs and expenses of carrying out the objectives of this Agreement among the Trustees;

8. Foster public participation in development and implementation of the Restoration Plan; and

9. Oversee and monitor any PRPs restoration activities.

VII. FUNDING

A. Trustee Cooperation. Each Trustee agrees to cooperate in the administration of any private funding source or sources that may become available to the Trustees from PRPs or others in the furtherance of this Agreement. Such funds shall be administered through the Trustee Council established pursuant to this Agreement.

B. PRP Funding. If PRP funding of natural resource damages assessment activities becomes available, the Trustee Council may enter into an agreement with the PRPs to determine the terms of monetary disbursement and PRPs participation. Any such Trustee Council/PRPs agreement shall be consistent with subsection "A" above, and shall require that such funds be deposited in a dedicated account, preferably one which is interest bearing, and shall contain such other terms and conditions as the Trustee Council shall determine are necessary and appropriate.

C. Governmental Funding. Each Trustee agrees to identify and pursue funding sources, as necessary, and subject to their respective legal limitations, to provide for participation under this Agreement. Nothing in this Agreement shall be construed as

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B. PRP Funding. If PRP funding of natural resource damages assessment activities becomes available, the Trustee Council may enter into an agreement with the PRPs to determine the terms of monetary disbursement and PRPs participation. Any such Trustee Council/PRPs agreement shall be consistent with subsection "A" above, and shall require that such funds be deposited in a dedicated account, preferably one which is interest bearing, and shall contain such other terms and conditions as the Trustee Council shall determine are necessary and appropriate.

C. Governmental Funding. Each Trustee agrees to identify and pursue funding sources, as necessary, and subject to their respective legal limitations, to provide for participation under this Agreement. Nothing in this Agreement shall be construed as

obligating the DOI, NOAA, or Rhode Island to expend any funds in excess of appropriations or other amounts authorized by law.

VIII. BARGE NORTH CAPE/TUGBOAT SCANDIA OIL SPILL TRUSTEE COUNCIL

A. Composition. Within ten (10) days of the execution of this Agreement, each Trustee, as specified under Section III, shall designate one primary voting delegate to the Barge North Cape/Tugboat Scandia Trustee Council ("Trustee Council"). Each Trustee shall also designate an alternate delegate to act in the absence of the primary voting delegate. Until such designation is made, the interim voting delegates shall be Warren Angell, with Claude Cote as alternate for Rhode Island, Willie R. Taylor for DOI, and Frank G. Csulak for NOAA. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of Rhode Island, the Office of the Governor of the State of Rhode Island, and in-house counsel for each of the Trustees, each may provide one delegate in a legal/consultative role, who shall not be a member of the Trustee Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Council.

B. Communications. Within ten (10) days of the execution of this Agreement each Trustee shall notify all of the Trustees of the name(s), address(es), phone number(s), and facsimile number(s), of the Trustee's primary and alternate delegates to the Trustee Council who shall receive, and shall be responsible for on behalf of the Trustee, all correspondence and communications on behalf of such Trustee. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of Rhode Island, and the Office of the Governor of the State of Rhode Island shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

C. Decisionmaking. The 3 (three) members of the Trustee Council, NOAA, DOI, and Rhode Island, shall have equal authority, and all decisions under this Agreement shall be by **unanimous** agreement of **all** Trustee Council members.

D. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and consensus by the Trustee Council as a whole. In resolving any such disputes, the Trustees shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of the Oil Pollution Act of 1990, the nature and extent of each Trustee's resource concerns, and general principles of

equity. If unanimous consent cannot be reached, the matter shall be elevated to the Trustees for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. In the event of irreconcilable disputes, the disposition of funds recovered from the PRPs shall be governed by Section XII(F)(3) of this MOA.

E. Duties and Authority. The Trustee Council shall coordinate and authorize all Trustee activities and matters under this Agreement directed towards the resolution of natural resource damage claims arising from the Spill. In addition, the Trustee Council shall be responsible for restoration planning, oversight and implementation to the extent such issues arise prior to final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill, or the establishment of a Trustee Restoration Council pursuant to Section IX(B), below. Prior to the establishment of the Trustee Restoration Council, to the extent the Trustee Council deems such activities or actions necessary, the Trustee Council may take all actions authorized by and for the Trustee Restoration Council, including but not limited to the creation of a Technical Advisory Committee. The Trustee Council shall have final authority to disburse any PRPs funding received pursuant to Section VII of this Agreement and to make all necessary decisions for the management and administration of projects undertaken by the PRPs to implement restoration, and/or for which PRPs funding may be used. This shall include, but is not limited to, the payment of administrative costs to individual Trustees that the Trustee Council determines are reasonable and necessary. The Trustee Council reserves the right to take such further actions as may be necessary to further the purposes and achieve the objectives set forth in this Agreement. The Trustee Council is specifically authorized to assign specific duties or functions to individual Trustees.

F. Administrative Trustee. The Trustees hereby agree to designate one trustee to act as Administrative Trustee under this Agreement for the purpose of directing and coordinating trustee activities towards resolution of claims arising from the Spill. The initial responsibilities of the Administrative Trustee include: scheduling of meetings; preparation of agendas for those meetings; acting as a central contact point and spokesperson for the Trustees; maintenance of records and relevant documents; circulation of documents among Parties; and such other duties as are agreed upon and assigned to the Administrative Trustee by the Trustee Council pursuant to Section VIII E. The Administrative Trustee shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the Administrative Trustee and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

G. Meetings. Any member of the Trustee Council may, upon reasonable notice through the Administrative Trustee, call a

meeting of the Trustee Council to be conducted either in person or by telephone conference call. Such meetings shall generally be held in conjunction with other set meetings among the Trustees to this Agreement. Members of the Council may invite their respective staffs or attorneys to attend.

H. Trustee Council Termination. The Trustee Council created pursuant to this Section shall terminate upon final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill. Upon such event, the members of the Trustee Council shall serve as the interim members of the Trustee Restoration Council described hereinafter.

IX. RESTORATION COORDINATION AND IMPLEMENTATION

A. Joint Use Of Natural Resource Damage Recoveries.

1. State and Federal Trusteeships. The Trustees recognize that each of them has trusteeship, through their respective natural resource Trustees, under OPA and CERCLA over natural resources affected by the Spill, and that the scopes of their respective trusteeships overlap.

2. Joint Use of Natural Resource Damage Recoveries. The Trustees agree that any natural resource damage recoveries, as defined in Section III(E) of this Agreement, obtained or received by the Trustees, individually or collectively, and any interest earned thereon, shall be jointly used to restore natural resources which have been injured, destroyed or lost as a result of the Spill.

B Barge North Cape/Tugboat Scandia Oil Spill Trustee Restoration Council.

1. Composition. Within ten (10) days of final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill, each Trustee, as specified under Section III, shall designate one primary voting delegate to the Barge North Cape/Tugboat Scandia Trustee Restoration Council ("Trustee Restoration Council"). Each Trustee shall also designate an alternate delegate to act in the absence of the primary voting delegate. Until such designation is made, the interim voting delegates as designated pursuant to Section VIII.E. shall be the representatives on the Trustee Restoration Council. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of Rhode Island, the Office of the Governor of the State of Rhode Island, and in-house counsel for each of the Trustees, each

may provide one delegate in a legal/consultative role, who shall not be a member of the Trustee Restoration Council, but who shall nonetheless be able to attend all meetings of, or organized by, the Trustee Restoration Council.

2. Communications. Within ten (10) days of the creation of the Trustee Restoration Council, each Trustee shall notify all of the Trustees of the name(s), address(es), phone number(s), and facsimile number(s), of the Trustee's primary and alternate delegates to the Trustee Restoration Council who shall receive, and shall be responsible for on behalf of the Trustee, all correspondence and communications on behalf of such Trustee. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of Rhode Island, and the Office of the Governor of the State of Rhode Island shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

3. Decisionmaking. The 3 (three) members of the Trustee Restoration Council, NOAA, DOI, and Rhode Island, shall have equal authority, and all decisions under this Agreement shall be by **unanimous** agreement of **all** Trustee Restoration Council members.

4. Dispute Resolution. In the event of a dispute involving any decisions under this Agreement, the Trustee Restoration Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining consensus among the Trustees involved in the dispute and consensus by the Trustee Restoration Council as a whole. In resolving any such disputes, the Trustees shall remain cognizant of all relevant principles and concerns, including without limitation, the goals of the Oil Pollution Act of 1990, the nature and extent of each Trustee's resource concerns, and general principles of equity. If unanimous consent cannot be reached, the matter shall be elevated to the Trustees for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. In the event of irreconcilable disputes, the disposition of funds recovered from the PRPs shall be governed by Section XIII(F)(3) of this MOA.

5. Duties. The Trustee Restoration Council shall coordinate all Trustee activities and matters under this Agreement. The Trustee Restoration Council's duties, subject to review and direction by the Trustees, shall include, but not be limited to, the following:

a. The Trustee Restoration Council shall coordinate to

make all decisions and to take any actions that are reasonably necessary to carry out the purposes of this Agreement. All decisions shall be issued in writing and signed by all three members of the Trustee Restoration Council, as representatives of their respective Trustees.

b. The Trustee Restoration Council shall coordinate on all decisions relating to restoration activities or the use of any natural resource damage recoveries, and any interest earned thereon, for restoration activities, including, but not limited to, the payment of reasonable and necessary costs for each Trustee's participation in the Trustee Restoration Council process and for the planning, implementation, administration and oversight of any activities that are reasonably necessary to carry out the purposes of this Agreement.

c. Reasonable Trustee oversight expenses may be reimbursed and or directly paid out of funds recovered from the PRPs as natural resource damages. The Trustee Restoration Council shall establish by resolution reasonable limits to the reimbursement of oversight expenses.

d. The Trustee Restoration Council may establish a committee known as the Barge North Cape/ Tugboat Scandia Technical Advisory Committee (hereinafter the "Technical Advisory Committee").

e. The Trustee Restoration Council shall have the duty to provide for reasonable public involvement, including notice and comment, in accordance with applicable law and regulations, for all restoration projects under this Agreement.

f. The Trustee Restoration Council may invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Restoration Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Restoration Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.

g. The Trustee Restoration Council may contract with consultants to provide such technical services as the Trustee Restoration Council determines are necessary and as permissible under applicable state or federal law.

h. To the extent permitted by applicable law, the Trustee Restoration Council may collectively or through individual Trustees, receive grants or donations to be applied to the restoration of natural resources related to injuries arising from the Spill.

6. Restoration Coordinator. The Trustee Restoration Council may designate a Restoration Coordinator whose work shall be directed exclusively by the Trustee Restoration Council. The responsibilities of the Restoration Coordinator may include:

a. preparation of a Restoration Plan;

b. coordination, management, reporting and monitoring of the natural resource restoration process;

c. scheduling of meetings of the Trustee Restoration Council and the Technical Advisory Committee and preparation of agendas for those meetings and the recording of all actions taken at such meetings;

d. preparing and issuing, from time to time, public reports on the work of the Trustee Restoration Council;

e. conducting public outreach and fostering public participation in the development and implementation of the Restoration Plan;

f. to the extent permitted by applicable law, identify and secure, wherever possible, other financial resources such as, but not limited to, grants that may be available to the Trustee Restoration Council individual trustees for use according to the terms of this Agreement.

g. such other duties as are unanimously agreed upon by the Trustee Restoration Council;

7. Administrative Restoration Trustee. The Trustee Restoration Council shall designate a Administrative Restoration Trustee (ART). The ART may delegate responsibilities to the Restoration Coordinator with the prior approval of the Trustee Council except that item (d) below shall at all times remain the exclusive responsibility of the ART. The responsibilities of the ART may include:

a. coordination and monitoring of the natural resource restoration process;

b. scheduling of meetings of the Trustee Restoration Council and the Technical Advisory Committee and preparation of agendas for those meetings and the recording of all actions taken at such meetings;

c. acting as a central contact for the Trustee Restoration Council and the Technical Advisory Committee;

d. maintenance of all records and relevant documents received or generated by the Trustee Restoration Council or the Technical Advisory Committee;

e. contracting with consultants to provide such technical services to the Trustee Restoration Council as the Technical Advisory Committee may advise or as the Trustee Council determines are necessary;

f. preparing and issuing, from time to time, public reports on the work of the Trustee Restoration Council;

g. such other duties as are unanimously agreed upon by the Trustee Restoration Council.

8. Meetings. Any member of the Trustee Restoration Council may, upon reasonable notice through the RAT, call a meeting of the Trustee Restoration Council to be conducted either in person or by telephone conference call. Such meetings shall generally be held in conjunction with other set meetings among the Trustees to this Agreement. Members of the Council may invite their respective staffs or attorneys to attend.

9. Trustee Council Termination The Trustee Council created pursuant to this Section shall terminate upon the completion of all restoration activities undertaken related to the Spill, or otherwise in accord with the provisions of Section XIII (F) of this MOA.

C. The Barge North Cape/ Tugboat Scandia Technical Advisory Committee.

1. Designation. The Trustee Restoration Council may establish a committee known as the Barge North Cape/ Tugboat Scandia Technical Advisory Committee (hereinafter the "Technical Advisory Committee").

2. Composition. The State Trustee and the Federal Trustees

each may designate up to three (3) members from their respective State or Federal agencies or sub-divisions to serve on the Technical Advisory Committee. The Trustee Restoration Council may designate individuals from the public or non-government environmental organizations to serve on the Technical Advisory Committee. The Technical Advisory Committee may invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable law, the Trustee Restoration Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Restoration Council's work would prejudice the effectiveness of the Trustee Restoration Council and the Trustees' responsibilities under applicable law. The Trustee Restoration Council may limit or expand the size of the Technical Advisory Committee as necessary to meet the objectives of this Agreement and the responsibilities of the Trustees under applicable law.

3. Duties. At the request of the Trustee Restoration Council, the Technical Advisory Committee may review and provide technical comment to the Trustee Restoration Council on the Restoration Plan and on proposals for natural resource restoration. If requested, the Technical Advisory Committee may also review and comment upon work that is in progress or that has been completed under contract or other agreement for the Trustee Restoration Council to ensure its compliance with such contract or other agreement.

D. Technical Services.

1. The Trustee Council and/or the Trustee Restoration Council (hereinafter "Councils") may determine that they need technical advisors, consultants or other service providers to assist in carrying out their responsibilities under this Agreement. The Councils, through their individual members or collectively, may expend natural resource damage recoveries for service providers to perform the following services:

a. provide project design and technology review, Spill related analysis, restoration planning or services, testing, sampling, and other services related to the development or implementation of a restoration plan for the Spill;

b. provide the Councils with logistical support and coordination;

c. organize and prepare for Council meetings;

d. provide technical advice to the Councils during Council meetings;

e. provide technical or other advice to the Councils and the Technical Advisory Committee as required to carry out the purposes of this Agreement;

f. provide such other services, consistent with applicable law, as requested by the Councils.

g. To obtain technical services, the Councils may agree to designate the Restoration Coordinator designated pursuant to section IX.B.6 or any one or more Trustee(s) as authorized to enter into intergovernmental personnel transfers, one or more contracts, or other lawful agreements with professional consultants, advisors, or other service providers that the Councils determines are qualified to provide services to the Councils.

X. NOTIFICATION OF NEGOTIATIONS WITH PRPs

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 the extent practicable to provide twenty (20) days prior written notice to each of the other Parties to this Agreement of its intent to participate in negotiations with any PRPs or other entity regarding settlement or other disposition of natural resource damages claims arising from the Spill.

The Parties agree to inform each other within five (5) working days of any oral or written communications to or from the PRPs regarding settlement or other disposition of natural resource damages claims in regard to the Spill. The substance of any such communications shall be shared with the Parties.

The Parties further agree to provide copies of any agreements or other documents reflecting settlement or other disposition of such claims, including quasi-public claims involving or related to natural resource injuries arising from or related to the Spill. If the Party refuses to do so for any reason, that Party shall no longer be a Party to this Agreement unless all remaining Parties request in writing within ten days (10) that such Party remain a Party.

XI. CONFIDENTIALITY

A. The Parties recognize and agree that their interests in the

recovery of certain claims and natural resource damages associated with the Spill are co-extensive and have agreed to coordinate negotiation and, if necessary, litigation of their claims and damages that arise out of the Spill.

B. The Parties recognize that, in order to effectively and efficiently negotiate and litigate their claims, their counsel, employees and consultants may, at each Party's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice prepared in anticipation of litigation, and/or subject to attorney-client privilege or other forms of privilege. The Parties therefore hereby agree as follows:

1. Except as provided by law or otherwise provided herein, the Parties shall treat all designated privileged documents generated, and designated privileged communications, by, between or among the Parties as privileged attorney-client communications, attorney work product or protected by other applicable privileges (or as a combination thereof), and shall protect such documents and communications from disclosure to the maximum extent possible under applicable Federal and State law. A "designated privileged document" is one identified on its cover page or elsewhere as subject to one or more privileges or forms of immunity. A "designated privileged communication" is one which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Governments' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional government deliberations.

2. The transmittal of a privileged document to, or a privileged communication between or among any of the Parties (and their counsel, representatives, contractors and consultants) does not waive, or imply any waiver, of any privilege or right which the transmitting government may assert with respect to that document or communication.

3. Unless otherwise specifically provided, the Parties shall each be entitled to assert an applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Parties. Each Party shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Party.

4. If a subpoena, discovery request, or other request in any form, for a privileged document or information is received by any Party, a copy of the subpoena or request will be immediately forwarded to counsel for the Party or Parties to which the privilege applies and to the government representative(s) who originally generated the document or communication requested. The Party who receives such a request shall also provide a draft of the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Parties agree to act in good faith to meet any such requirements.

5. Only by specific written agreement among the Parties or pursuant to Court Order shall disclosure of a privileged document or communication be made public or disclosed to a party-opponent or non-party. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications.

6. Nothing herein in any way affects or limits the authority of any Party to waive any privilege and release any documents, information, analysis, opinion, conclusion, or advice that are subject to privileges held exclusively by that Party.

7. Designated privileged documents shall be maintained in such a manner as to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege, including segregating designated privileged documents in files that are identified as containing privileged documents that are not be to disclosed publicly or in response to a discovery request in this or any other case.

8. At the request and option of any Party, designated privileged documents shall be returned to the originating Party or destroyed.

C. The Parties agree that, to the extent consistent with the effective and efficient negotiation and litigation of their claims, public dissemination of final data and studies related to injuries arising from the Spill is in the best interests of the public and the Parties. Such final data and studies shall be made available to the public upon request to the extent consistent with the foregoing confidentiality provisions. In addition, the Parties shall open and maintain a publicly available administrative record to the extent required by, and

consistent with the requirements of, the Federal Natural Resource Damage Regulations that the Parties select for use in connection with the Spill.

XII. GENERAL PROVISIONS

A. Reservations. Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal law or state statutory and common law to protect, restore, or enhance any natural resources affected by the Spill over which any other Trustee asserts trusteeship. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Trustee named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury to any natural resources affected by the Spill over which any other Trustee asserts trusteeship.

B. Limitation of Authority. The Trustees and the Administrative Trustee are not authorized to enter into settlements on behalf of the other Trustees and a Trustee or the Administrative Trustee does not represent another Trustee in any litigation that may be commenced by the other Trustees.

C. Third Parties. This Memorandum of Agreement is not intended to, nor shall it, vest rights in persons who do not represent the Parties to this Agreement or who are not Parties to this Agreement.

D. Effective Date. This Agreement shall be effective when executed by all of the Parties. The effective date of this agreement will be the date on which the last signature is entered.
This Agreement can be executed in one or more counterparts, each of which will be considered an original document.

E. Amendment.

1. This Agreement may be amended by agreement of the Parties if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or is necessary to modify the objectives of this Agreement consistent with the requirements of OPA, CERCLA, any amendments thereto, or other applicable Federal law or State common or statutory law.

2. Any amendment of this Agreement shall be effective only if it is in writing and executed by all parties to this

Agreement.

F. Termination.

1. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the restoration plan or plans implemented under this Agreement have been completed, except that this Agreement may be extended by written agreement, as provided in Section XII of this Agreement.

2. Any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with paragraph B of Section VIII of this Agreement. Such withdrawal shall only be effective upon thirty (30) days written notice upon all Parties to this Agreement.

3. In the event that this Agreement is terminated or one of the Parties withdraws, the Trustees expressly agree that they will continue to coordinate their activities to the greatest extent practicable to restore the natural resources affected by the Spill, and that they will be guided by the objectives set forth in Section VI of this Agreement. The disposition of any unobligated sums recovered from PRPs as natural resource damages, and any interest earned thereon, shall be determined by further agreement of the Trustees or, if an agreement cannot be reached, upon application by a party to this MOA to the United States District Court (R.I.), by allocation of such recoveries and interest by the Court. In making a fair and reasonable allocation of these monies among the Trustees, the Court shall consider primarily the need to achieve, to the maximum extent practicable, the Natural Resource Objectives of this MOA and shall further consider the overlapping jurisdictions of the federal and state trustees. In any event, the Trustees further expressly agree that any unobligated funds recovered from PRPs as natural resource damages, and any interest earned thereon, shall be expended solely to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706.

4. The withdrawal of any Party to this Agreement for whatever reason, shall not affect the subsequent validity of this Agreement among the remaining Parties. A party that has withdrawn from this agreement shall have no further obligations under this agreement except for the obligations under Section XII(F)(3), above, to continue to coordinate activities to the greatest extent practicable, and to expend unobligated funds recovered for natural resource damages solely to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706.

G. Federal Natural Resource Damages Regulations. It is the intention of the Trustees to follow the NOAA natural resource damage regulations, 15 CFR Part 990 in matters relating to the Spill.

H. Antideficiency. Nothing in this Agreement shall be construed as obligating the United States or Rhode Island, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

The GOVERNMENTS, through their designated representatives, have signed this Agreement on the day and year appearing opposite their signatures.

[Memorandum of Agreement Concerning Natural Resource Damages in the Matter of THE BARGE NORTH CAPE/ TUGBOAT SCANDIA OIL SPILL

THE FEDERAL NATURAL RESOURCE TRUSTEES

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

CNEhler 06/06/1996

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

[Memorandum of Agreement Concerning Natural Resource Damages in the Matter of THE BARGE NORTH CAPE/ TUGBOAT SCANDIA OIL SPILL

FOR THE DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

8/2/1996

Willie R. Taylor
Director, Office of Environmental Policy and Compliance

[Memorandum of Agreement Concerning Natural Resources Damages in the Matter of THE BARGE NORTH CAPE/ TUGBOAT SCANDIA OIL SPILL

FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Timothy R. E. Keeney Oct 16/ 1996

Timothy R. E. Keeney
Commissioner, Rhode Island Department of Environmental Management
State Trustee of Natural Resources

Amendment 96-1

of the

Memorandum of Agreement Between

Department of the Interior

National Oceanic and Atmospheric Administration

State of Rhode Island and Providence Plantations

Regarding Natural Resource Damage Assessment and Restoration Arising from the Barge North Cape/Tugboat Scandia Oil Spill and Coordination of Other Studies and Enforcement Activities

AMENDMENT 96-1

On October 16, 1996, the Department of the Interior, the National Oceanic and Atmospheric Administration, and the State of Rhode Island (collectively, the Trustees) entered into a Memorandum of Agreement (MOA) in recognition of their common interests in the restoration of natural resources and associated services which were injured, destroyed or lost as a result of the Barge North Cape/Tug Scandia Oil Spill which began on January 19, 1996 in Block Island Sound at and around the Trustom Pond National Wildlife Refuge in Rhode Island, and in the coordinated the handling of natural resource damage claims arising therefrom. These agencies have the authority, under 40 C.F.R. Sections 300.600 through 300.615, to act on behalf of the public as Federal and State Trustees for natural resources.

Article XII. Section E. of the MOA provides that the MOA may be amended by agreement of the Trustees if is determined, *inter alia*, that an amendment is necessary to accomplish the objectives of the MOA.

The Trustees have determined that amendment of the MOA is necessary to accomplish the objectives of the MOA. The Trustees therefore agree that the MOA will be amended as follows:

1. Article VI. Section B. 3 shall be changed to read:

> Develop a Restoration Plan consistent with the federal National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the NOAA regulations at 15 C.F.R. Part 990; and Rhode Island statutory law, common law, and resource management policies.

2. Article IX. Section B.4. - The last sentence shall be changed to read:

> In the event of irreconcilable disputes, the disposition of funds recovered from the PRPs shall be governed by Section XII(F)(3).

3. Article IX. Section B.8. - The first sentence shall be changed to read:

> Any member of the Trustee Restoration Council may, upon reasonable notice through the ART, call a meeting of the Trustee Restoration Council to be conducted either in person or by telephone conference call.

4. Article IX. Section B.9. The first sentence shall be changed to read:

> The Trustee Council created pursuant to this Section shall terminate upon the completion of all restoration activities undertaken related to the Spill, or otherwise in accord with the provisions of Section XII(F) of this MOA.

5. Article XII. Section G. The first sentence shall be changed to read:

> It is the intention of the Trustees to follow as guidance the NOAA natural resource damage regulations, 15 C.F.R. Part 990, in matters relating to the Spill.

The Trustees, through the delegates designated pursuant to Article VIII. Section A. of the MOA, have signed Amendment 96-1 on the date appearing opposite their signatures.

Amendment 96-1
Memorandum of Agreement Between
Department of the Interior
National Oceanic and Atmospheric Administration
State of Rhode Island and Providence Plantations

Barge North Cape/Tugboat Scandia
Oil Spill

FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
NATURAL RESOURCE TRUSTEE
TRUSTEE DELEGATE

Timothy R. E. Keeney
Commissioner

Oct 11, 1996
Date

TOTAL P.02

Amendment 96-1
Memorandum of Agreement Between
Department of the Interior
National Oceanic and Atmospheric Administration
State of Rhode Island and Providence Plantations

Barge North Cape/Tugboat Scandia
Oil Spill

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE

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

2/10/97.
Date