

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

and

STATE OF NEW JERSEY, DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

FRANCE SHIPMANAGEMENT S.A.

Defendant.

Civil Action No.

CONSENT DECREE

I. Background

A. The United States of America ("United States"), by the Attorney General, on behalf of the United States Department of the Interior ("DOI") and the United States Department of Commerce, National Oceanic and Atmospheric Administration ("NOAA"), and the State of New Jersey, on behalf of the Department of Environmental Protection ("State"), have filed a complaint against France Shipmanagement S.A. ("Settling Defendant") in this Court alleging that the Settling Defendant is liable to the United States and the State under Section 1002(a) and (b) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. § 2702 (a) and (b), for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing the damages, resulting from an oil spill that occurred in Big Stone Anchorage, Delaware Bay, on May 10, 1996.

The complaint alleges that the spill occurred when the tank vessel Anitra, which was operated by Settling Defendant, was in the process of lightering oil (the "Anitra Oil Spill"). The complaint further alleges that tens of thousands of gallons of oil were spilled as a result of the incident, that the spill caused injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State, and that the United States and the State have incurred costs in assessing the nature and extent of these injuries.

B. The United States and the State share trusteeship of the injured resources and are coordinating restoration efforts.

C. The Parties agree and the Court finds that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

D. The Parties agree and this Court, by entering this Decree, finds that this Consent Decree has been negotiated by the parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

E. The Settling Defendant does not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

II. Jurisdiction

1. The Parties agree and this Court concludes that it has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and also pursuant to 28 U.S.C. §§ 1331 and 1345. Venue is proper in this District pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. 1391(b). This Court has, and the Settling Defendant consents to, the Court's personal jurisdiction over them in connection with this action. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendant waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

III. Parties Bound

2. This Consent Decree applies to and is binding: upon the State, on behalf of the New Jersey Department of Environmental Protection, as the designated State trustee for natural resources, including natural resources at, in the vicinity of, or affected by the Anitra Oil Spill; upon the United States, on behalf of the DOI and NOAA, as the designated federal trustees for natural resources, including those at, in the vicinity of, or affected by the Anitra Oil Spill; and upon the Settling Defendant including, without limitation, its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal

property, shall in no way alter such Settling Defendant's or its successors' and assigns' rights or responsibilities under this Consent Decree.

IV. Definitions

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R. Part 990, shall have the meaning assigned to them in OPA or in such regulations. Whenever the following terms are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

“Anitra Oil Spill” means the oil spill that occurred on May 10, 1996, during the lightering of oil from the tank vessel Anitra while anchored in Big Stone Anchorage, Delaware Bay, New Jersey.

“Anitra Oil Spill Restoration Account” means a separate project numbered account, Project No. 0350, established within DOI's Natural Resource Damage Assessment and Restoration Fund, which will be funded by the Settling Defendant in accordance with Section VI (Payments to Trustees) of this Consent Decree and used by the Trustees in accordance with Section VIII (Restoration Plan and Anitra Oil Spill Restoration Account) of this Consent Decree.

“DEP” means the New Jersey Department of Environmental Protection.

“DOI” means the United States Department of the Interior.

"Fund" means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.

"Interest," as that term is used in Section VI (Payments to Trustees) of this Consent Decree, means interest at the rate provided in 28 U.S.C. § 1961. Interest shall be simple interest calculated on a daily basis.

"Memorandum of Agreement" means the Memorandum of Agreement entered into by the Trustees, as well as any amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

"Natural Resources" shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

"Natural Resource Damages" shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A).

"NOAA" means the National Oceanic and Atmospheric Administration.

"OPA" means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. § 2701-2761.

"Parties" means the Plaintiffs and the Settling Defendant.

"Plaintiffs" means the United States and the State of New Jersey.

"Restoration Plan" means the Draft Natural Resources Restoration Plan: Anitra Oil Spill of May 1996, as well as any amendments or modifications thereof. A copy of the Restoration Plan is attached hereto as Appendix B.

“Settling Defendant” means France Shipmanagement S.A.

“State” shall mean the State of New Jersey.

“Trustees” shall mean the designated federal and state officials who act on behalf of the public as trustees for the natural resources, including those at, in the vicinity of, or affected by the Anitra Oil Spill: the United States Department of the Interior, represented by the United States Fish and Wildlife Service (“USFWS”), and the National Oceanic and Atmospheric Administration are the federal trustees for natural resources herein; the Commissioner of the New Jersey Department of Environmental Protection (“NJDEP”), by N.J.S.A. 13:11K-1 through -19 and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24, and/or the duly delegated Assistant Commissioner, Natural and Historic Resources pursuant to N.J.S.A. 13:1B-4, is the state trustee for natural resources herein.

“United States” shall mean the United States of America, on behalf of the United States Department of the Interior and the United States Department of Commerce, National Oceanic and Atmospheric Administration, including all agencies, bureaus, administrations or departments of DOI and NOAA.

V. Objectives of the Parties

4. The Parties are entering into this Consent Decree to resolve all of the claims of the United States and the State against the Settling Defendant for Natural Resource Damages attributable to the Anitra Oil Spill, including, but not limited to, any injury to,

destruction of, or loss of piping plover or migratory shorebirds, based on the Settling Defendant's agreement to reimburse the Trustees for the reasonable costs of assessing the damages to the Natural Resources resulting from the Anitra Oil Spill, and fund the Restoration Plan to compensate for injury to, loss of, or destruction of Natural Resources resulting from the Anitra Oil Spill.

VI. Payments by Settling Defendant

5. In the manner set forth in this Paragraph 5 and in Paragraph 6, the Settling Defendant shall pay a total of \$1,500,000.00, plus Interest as provided in Paragraph 7, to the Trustees to reimburse costs incurred and to be incurred by the Trustees in assessing the damages to natural resources related to the Anitra Oil Spill, and to plan and implement projects to restore, replace, or acquire the equivalent of natural resources injured in relation to the Anitra Oil Spill.

a. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall pay \$58,528.00, plus Interest as provided in Paragraph 7, to NOAA as reimbursement of costs incurred by NOAA in assessing the Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. Payment shall be made by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, DOJ Case Number 90-5-1-1-4380, and NRDAR Account Number _____. Payment shall be made in accordance with instructions provided, upon request,

to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of New Jersey following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendant shall send notice that such payment has been made to the persons listed in Section XIII (Notices) for notice to the United States, and to NOAA/NOS/OR&R, ATTN: Kathy Salter, DARRF Manager, 1305 East West Highway, SSMC4, Room 9331, Silver Spring, Maryland 20910-3281. The notice shall state that the payment is for reimbursement of costs of assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill.

b. DOI acknowledges its receipt of payment in the amount of \$46,034.95 from the Settling Defendant in reimbursement of the costs incurred by DOI in assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill.

c. Within thirty (30) days of the effective date of this Consent Decree, the Settling Defendant shall pay \$133,238.00, plus Interest as provided in Paragraph 7, to the NJDEP in reimbursement of the costs incurred by the State in assessing Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. Payment shall be made by cashier's check or certified check referencing the "Anitra Oil Spill" and payable to "Treasurer, State of New Jersey." The check shall be mailed, with notice referring to this action, to: Chief, Office of Natural Resource Restoration, P.O. Box 404, Station 5, 501 East State Street, Building 5, Trenton, New Jersey 08625-0404. A copy of the check, as

well as the notice, shall be sent to Joan Olawski-Stiener, Deputy Attorney General, Division of Law, Richard J. Hughes Justice Complex, P.O. Box 093, Trenton, New Jersey 08625-0093.

6. a. Within thirty (30) days of the effective date of this Consent Decree, the Settling Defendant shall pay \$1,262,199.05, plus Interest as provided in Paragraph 7, to DOI as monetary compensation for Natural Resource Damages alleged to have arisen from the Anitra Oil Spill. The funds so paid shall be used in accordance with Section VIII (Restoration Plan and Anitra Oil Spill Restoration Account) of this Consent Decree. The Settling Defendant shall transfer these funds to the DOI NRDAR Fund Anitra Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the U.S. Treasury's Automated Clearing House (ACH)/Remittance Express program in accordance with instructions to be provided by DOI within 15 days of the date of the entry of the Consent Decree. The addenda record shall be annotated "Pay to DOI Account 14X5198, RE: Anitra Oil Spill Restoration" and shall list France Shipmanagement S.A. as the responsible party. Payment shall be deemed to have been made upon receipt of these funds by EFT. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent by the Settling Defendant to the persons listed in Section XIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
Mail Stop 4449
1849 C Street, N.W.
Washington, D.C. 20240

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, Maryland 20910-3281

Chief
Office of Natural Resource Restoration
P.O. Box 404
Station 5
501 East State Street
Building 5
Trenton, New Jersey 08625-0404

Notices shall reference the DOJ Case Number (#90-5-1-1-4380), spill name, location, and name of paying responsible party.

b. Because the jurisdiction, trusteeships, and restoration goals of DOI, NOAA and the State for injured natural resources may overlap, monies paid pursuant to this paragraph shall be used, as agreed by DOI, NOAA and the State, in accordance with the Restoration Plan, and all such expenditures must be approved by the Trustees in accordance with the Memorandum of Agreement.

7. a. In addition to the payments to be made pursuant to Paragraphs 5 and 6, Settling Defendant shall pay Interest on the amounts due pursuant to those Paragraphs, as set forth herein. Interest shall be calculated as follows:

i. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, on or before June 30, 2004, and payment is timely, no Interest shall accrue;

ii. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, on or before June 30, 2004, but payment is not timely, Interest shall be calculated from the date 30 days after the effective date of this Consent Decree until the date of payment; and

iii. if the Settling Defendant executes and returns this Consent Decree to the United States, with a copy to the State, after June 30, 2004, Interest shall be calculated from June 16, 2004, until the date of payment. In each case, Interest shall accrue through the date of the Settling Defendant's payment.

b. Interest on any unpaid balance due under Paragraphs 5 and 6 shall be paid to the entity to which the unpaid amount is owed, in the manner set forth in those paragraphs.

c. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Consent Decree.

VII. Stipulated Penalties

8. a. The Settling Defendant shall pay a stipulated penalty to the United States and/or the State for failure to make a payment in Paragraph 5 at the rate of one thousand

dollars (\$1,000) per day, per violation, for each day of non-compliance. The stipulated penalty shall be paid to the United States and/or the State, as applicable, depending upon to which government the unsatisfied payment obligation was owed.

b. The Settling Defendant shall pay a stipulated penalty to the United States and the State for failure to make the payment in Paragraph 6 at the rate of one thousand dollars (\$1,000) per day for each day of non-compliance. The stipulated penalty shall be paid 50% to the United States and 50% to the State.

9. a. Stipulated penalty payments to the United States shall be made by certified check payable to "Treasurer, United States of America" and shall be delivered by certified mail to the Office of the United States Attorney for the District of New Jersey. Stipulated penalty payments to the State shall be made in the same manner as set forth in Paragraph 5.c. and shall be credited to the appropriate State account as provided by law. Any stipulated penalty payments shall be accompanied by a reference to this Consent Decree, and be identified as "Stipulated Penalties." Notice of payment of a stipulated penalty shall be made to the Trustees in the manner specified in Section XIII (Notices).

b. Stipulated penalties shall begin to accrue on the day after payment is due and shall continue to accrue until payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

c. The United States or the State may give the Settling Defendant written notification that they have failed to make a payment as required by Paragraphs 5, 6.a., and 7. Such notice shall describe the noncompliance, and make a demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 8 regardless of whether the Settling Defendant has been notified of a violation. The Settling Defendant shall pay stipulated penalties within thirty (30) days of receipt of written demand for such penalties.

d. If the Settling Defendant fail to pay stipulated penalties when due, the United States and/or the State may institute proceedings to collect the penalties, as well as Interest as provided in Paragraph 9.e. below.

e. The Settling Defendant shall pay Interest on the unpaid balance of any stipulated penalties due, which shall begin to accrue on the date of demand made pursuant to Paragraph 9.c. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.a. shall be paid to the United States and/or the State, as applicable, depending upon which government the stipulated penalty was owed. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.b. shall be paid 50% to the United States and 50% to the State.

f. Notwithstanding any other provision of this Section, the United States and/or the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

g. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based.

VIII. Restoration Plan
and
Anitra Oil Spill Restoration Account

10. The Trustees shall implement the Restoration Plan, as it may be amended or modified, and jointly approve expenditures from the Anitra Oil Spill Restoration Account pursuant to the terms of their Memorandum of Agreement. If the funds in the Anitra Oil Spill Restoration Account are not sufficient to complete the Restoration Plan, the Trustees shall not be required to expend additional funds to complete the Restoration Plan, nor shall the Settling Defendant be required to pay any additional funds above the amounts set forth in this Consent Decree.

11. All funds in the Anitra Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Anitra Oil Spill Restoration Account solely for use by the Trustees to plan, implement or oversee restoration of natural resources or resource services in accordance with the Restoration Plan. DOI shall, in accordance with law, manage and invest the funds in the Anitra Oil Spill Restoration Account. DOI has assigned the funds to be received into the Anitra Oil Spill Restoration Account a special project number, Project No.0350, to allow the funds to be maintained

as a segregated account within the DOI Natural Resource Damage Assessment and Restoration Fund. DOI shall not make any charge against the Anitra Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

IX. Covenant Not to Sue by Plaintiffs

12. In consideration of the payments that have been and will be made by the Settling Defendant under Section VI (Payment by Settling Defendants) of this Consent Decree, the United States covenants not to sue or take administrative action against the Settling Defendant pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for Natural Resource Damages related to the Anitra Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section VI (Payment to Trustees) and Section VII (Stipulated Penalties) of this Consent Decree.

13. In consideration of the payment that will be made by the Settling Defendant under Section VI (Payment to Trustees) of this Consent Decree, the State covenants not to sue the Settling Defendant pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), the New Jersey Spill Compensation and Control Act, 58:10-23.11, et seq., and/or the New Jersey Water Pollution Control Act, 58:10A-1, et seq., for Natural Resource Damages related to the Anitra Oil Spill. This covenant not to sue is conditioned upon receipt by the United States and the State of all payments required by Section VI

(Payment to Trustees) and Section VII (Stipulated Penalties) of this Consent Decree.

14. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all matters other than those expressly specified in the covenant not to sue set forth in Paragraphs 12 and 13 of this Section, including, but not limited to:

- a. claims against the Settling Defendant for its failure to meet a requirement of this Consent Decree;
- b. claims against the Settling Defendant for damages, including the costs of an assessment of damages, under OPA and any other applicable law, for injury to, destruction of, or loss of Natural Resources due to sources of contamination that do not arise from the Anitra Oil Spill;
- c. any criminal liability;
- d. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund in connection with the Anitra Oil Spill;
- e. claims, other than claims for Natural Resource Damages, against the Settling Defendant that the State or the United States, on behalf of the United States Environmental Protection Agency, may have under any applicable law.

X. Covenant by the Settling Defendant

15. The Settling Defendant hereby covenants not to sue and agrees not to assert

any claims or causes of action against the United States (including all employees, agents, contractors, departments, agencies, administrations and bureaus thereof) or the State related to Natural Resource Damages arising from the Anitra Oil Spill, including, without limitation, any potential or pending claims against the Fund relating to the Anitra Oil Spill.

XI. Effect of Settlement

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each Party may have with respect to the Anitra Oil Spill against any person not a Party hereto.

17. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of costs, or other appropriate relief relating to the Anitra Oil Spill, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the

covenants not to sue set forth in Section IX (Covenant Not To Sue by Plaintiffs) or Section X (Covenant by Settling Defendant).

XII. Modification

18. a. **Material Modifications.** Material modifications to the Consent Decree may be made only by written approval of the Parties and the approval of the Court.

b. **Non-Material Modifications.** Non-material modifications of the Consent Decree may be made only by written approval of the Parties, and will become effective upon their filing with the Court.

c. **Modifications to Memorandum of Agreement and/or Restoration Plan.** Notwithstanding Paragraph 18.a.: 1) any modifications to the Memorandum of Agreement may be made only by written approval of the Trustees and in accordance with the terms of that agreement; and 2) any modifications to the Restoration Plan may be made only by written approval of the Trustees and in accordance with the requirements of OPA and any other applicable law. In addition, modifications to the Memorandum of Agreement and/or the Restoration Plan will become effective upon their filing with the Court.

d. Any modifications to the Memorandum of Agreement or Restoration Plan will not entitle the Trustees to seek any additional funds from the Settling Defendant.

XIII. Notices

19. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses and facsimile numbers specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Facsimile: (202) 514-0097

Sharon Shutler
NOAA GCNR
SSMC 3, 15th Floor
1315 East West Highway
Silver Spring, Maryland 20910
Facsimile: (301) 713-1229

Mark Barash
United States Department of the Interior
Office of the Solicitor
One Gateway Center
Suite 612
Newton, MA 02458
Facsimile: (617) 527-6848

As to the State:

Joan Olawski-Stiener
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 0093
Trenton, New Jersey 08625-0093
Facsimile: (609) 984-9315

Marc A. Matsil
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental Protection
501 East State Street
P.O. Box 404
Trenton, New Jersey 08625-0404
Facsimile: (609) 984-0836

As to France Shipmanagement S.A.:

Freehill, Hogan & Mahar, LLP
80 Pine Street
New York, New York 10005
Facsimile: (212) 425-1901

XIV. Retention of Jurisdiction

20. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce this Consent Decree.

XV. Lodging and Opportunity for Public Comment

21. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5), and 28 C.F.R. § 50.7. The United States, pursuant to 28 C.F.R. § 50.7, reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice.

22. If for any reason the Court should decline to approve this Consent Decree in the form presented, or if the United States withdraws or withholds its consent pursuant to Paragraph 21, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. Final Judgment

23. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendant.

XVII. Actions of Trustees

24. All actions taken by the Trustees pursuant to this Consent Decree shall be in accordance with the terms of their Memorandum of Agreement, attached hereto at Appendix A.

XVIII. Appendices

25. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A is the Memorandum of Agreement into which the Trustees have entered.

Appendix B is the Draft Natural Resources Restoration Plan: Anitra Oil Spill. of May 1996.

XIX. Effective Date

26. The effective date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

XX. Costs and Attorneys Fees

27. a. If the Settling Defendant fails to make any payment required under

Section VI of this Consent Decree when due, including stipulated penalties, and the United States and/or the State file(s) with the Court either a motion to enforce this Consent Decree, a complaint, or any other application for such payment, and: (1) the United States and/or the State thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States and/or the State; or (3) the action is settled in a manner in which the United States and/or the State receives any portion of the amount sought, the Settling Defendant shall reimburse the United States and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

b. The Trustees will use best efforts to coordinate among each other in any action to enforce this Consent Decree.

c. The Settling Defendant is entitled to assert any arguments or defenses, claims or counterclaims, available to them by law in an effort to mitigate such costs or fees.

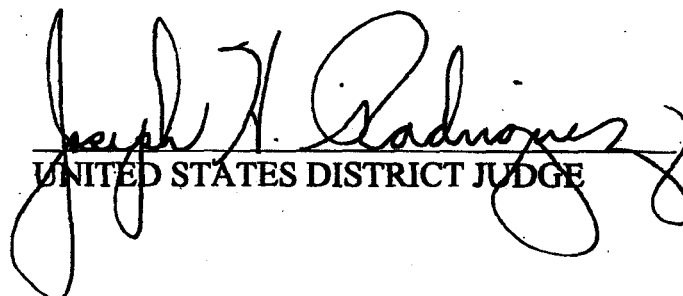
XXI. Signatories/Service

28. The undersigned representative of the Settling Defendant certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

29. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

30. The Settling Defendant shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Settling Defendant with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant hereby agrees to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 23rd DAY OF Nov., 2004.


UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR THE UNITED STATES:



THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



BRIAN G. DONOHUE
Senior Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

CHRISTOPHER CHRISTIE
United States Attorney
District of New Jersey

MICHAEL CHAGARES
Assistant United States Attorney
United States Attorney's Office
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR THE STATE OF NEW JERSEY:

PETER C. HARVEY
Attorney General for New Jersey

DATE: 8/17/04

BY: Joan Olawski-Stiener

JOAN OLAWSKI-STIENER
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 0093
Trenton, New Jersey 08625-0093

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION

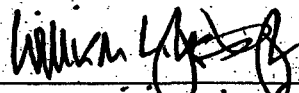
DATE: 8/18/04

BY: John S. Watson

JOHN S. WATSON
Assistant Commissioner
Natural and Historic Resources
New Jersey Department of Environmental
Protection
501 East State Street
P.O. Box 404
Trenton, New Jersey 08625-0404

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. France Shipmanagement S.A., relating to the Anitra Oil Spill.

FOR FRANCE SHIPMANAGEMENT S.A.:


[Name] William L. Juska, Jr.
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APPENDIX A

MEMORANDUM OF AGREEMENT

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MEMORANDUM OF AGREEMENT

AMONGST

DEPARTMENT OF THE INTERIOR

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATE OF NEW JERSEY

**REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION ARISING FROM THE M/T ANITRA OIL SPILL AND
COORDINATION OF OTHER STUDIES AND ENFORCEMENT
ACTIVITIES**

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MEMORANDUM OF AGREEMENT

AMONGST

DEPARTMENT OF THE INTERIOR

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATE OF NEW JERSEY

**REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION
ARISING FROM THE MOTOR TANKER ANITRA OIL SPILL
AND COORDINATION OF OTHER STUDIES AND ENFORCEMENT ACTIVITIES**

I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the Department of the Interior (hereinafter "DOI"), the National Oceanic and Atmospheric Administration (hereinafter "NOAA"), and the State of New Jersey (hereinafter "New Jersey"), (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 Motor Tanker Anitra Oil Spill which began on May 9, 1996 and occurred during lightering operations at and around the Big Stone Anchorage in Delaware Bay, and which impacted shorelines and beaches along the Delaware Bay and Atlantic shores from Reed's Beach in Cape May up to and beyond Holgate in Ocean County, 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(a)-(g) of the Oil Pollution Act of 1990 (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,

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1996).

B. In accord with Section 1006(b) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2706(b), and 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 Commissioner of the Department of Environmental Protection for the State of New Jersey,
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. "Federal Trustees" means the Secretary of Commerce, acting through NOAA, and the Secretary of the Interior or their respective authorized designees.

B. "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.

YC. "Lead Administrative Trustee" or "LAT" means the trustee who is selected by all participating trustees the purpose of coordinating natural resource damage assessment activities, together with other activities as authorized by the Trustee Council.

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 that such term does not include any award which is a judgment, settlement, or payment in reimbursement of costs of natural resource damage assessment, as defined in 15 CFR Part 990, 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. "Potentially Responsible Party" includes the owner, operator, or demise charterer of a vessel, or the owner or operator of a facility, who is or might be liable under the Oil Pollution Act of 1990 for natural resource damages.

H. "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.

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

J. "Spill" means the M/T Anitra Oil Spill which began on or about May 9, 1996 and occurred during lightering operations at and around the Big Stone Anchorage in Delaware Bay, together with any and all impacts to natural resources arising therefrom.

K. "State Trustee" means the Commissioner of the New Jersey Department of Environmental Protection, or the Commissioner's authorized designee.

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

M. "Trustee Representatives" means the three (3) authorized designees appointed by the Trustees of NOAA, DOI and New Jersey to the Trustee Council.

N. "Trustee Council" means the three Trustee Representatives appointed by the Trustees of NOAA, DOI and New Jersey 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 belon-

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ging 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 implementation 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 natural resource damage assessment, restoration, and other natural resource Trustee activities.

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. In pursuing these objectives, 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. The Trustees' objectives include, but are not limited to, the following:

- A. Coordinate the efforts of the Parties in implementing the natural resource damage assessment process consistent with the guidance and procedures provided at 15 CFR Part 990.
- B. Develop a plan for the restoration of natural resources and services injured, destroyed or lost due to the Spill, if necessary.
- C. Pursue implementation or funding of the plan, and reimbursement of assessment costs, by responsible parties.
- D. Fairly allocate the efforts, costs and expenses of carrying out the objectives of this Agreement among the Trustees;
- E. Achieve settlement of all trustee natural resource damages claims, including the costs of assessment, in a manner consistent with 15 CFR Section 990.25.
- F. Coordinate efforts of the Parties in litigation, if necessary.

VII. FUNDING

- A. Trustee Cooperation. To the extent provided by law, each Trustee agrees to cooperate in the administration of any private

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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. The Trustee Council may enter into an agreement with the PRPs in which the PRPs agree to fund and/or conduct natural resource damages assessment activities, and determine the terms of monetary disbursement and PRPs participation. Any such Trustee Council/PRPs agreement shall be consistent with subsection "A" above.

VIII. M/T ANITRA 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 M/T Anitra 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 Martin McHugh, with John Sacco as alternate for New Jersey, Willie R. Taylor, with Andrew Raddant as alternate for DOI, and Frank G. Csulak, with Margureite Matera as alternate for NOAA. In addition, the U.S. Department of Justice, the Office of the Attorney General for the State of New Jersey, 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. Each Trustee may, by written notification to all other Trustees, change the designated delegate and/or alternate.

B. Communications. To the extent not designated herein, 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), E-Mail addresses, 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 that Trustee, all correspondence and communications on behalf of such Trustee. In addition, the U.S. Department of Justice, and the Office of the Attorney General for the State of New Jersey, shall be directly and contemporaneously provided copies of all significant and relevant documents, notices and notifications.

C. Decisionmaking. The three (3) members of the Trustee Council shall have equal voting power, 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 unanimity among the Trustees involved in the dispute and consensus by the Trustee Council as a whole. If unanimous consent cannot be reached, the matter shall be elevated to the named Trustees identified in Section II(B) who may expressly delegate their decisionmaking authority to a senior supervisory level designee 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 damages claims arising from the Spill. In addition, the Trustee Council shall be responsible for all natural resource damage assessment activities, including but not limited to restoration planning, restoration implementation, and oversight both prior to and subsequent to final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill. Towards this end, the Trustee Council may request and receive relevant materials and/or information from Trustee staff and/or the public. The Trustee Council shall have final authority to disburse any PRP funding received pursuant to Section VII of this Agreement, to implement restoration using funds recovered from PRPs, 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 of this Agreement. The Trustee Council is specifically authorized to assign specific duties or functions to individual Trustees.

F. Lead Administrative Trustee. The Trustees hereby agree to designate one trustee to act as Lead Administrative Trustee (LAT) under this Agreement for the purpose of directing and coordinating trustee activities towards resolution of claims arising from the Spill, and other trustee activities as authorized by the Trustee Council. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT 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 LAT 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 the termination of this MOA pursuant to Section XII(F) of this MOA.

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 Restoration Implementation Duties of the Trustee Council.

In the event of a resolution of natural resource damages claims under which the PRP(s) either fund or agree to undertake all or part of the restoration activities, the Trustee Council:

1. 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 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.

2. May reimburse, and/or directly pay out of funds recovered from the PRPs, reasonable Trustee oversight expenses as natural resource damages. The Trustee Council shall establish by resolution reasonable limits to the reimbursement of oversight expenses.

3. Shall provide for reasonable public involvement, including notice and comment, in accordance with applicable law and regulations, for all restoration projects under this Agreement.

4. May invite representatives of other public agencies and members of the public to its meetings unless, subject to applicable

law, the Trustee Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.

5. May enter into contracts through its individual members, for the benefit of the Trustee Council, with consultants to provide such technical services as the Trustee Council determines are necessary and as permissible under applicable state or federal law.

6. May, to the extent permitted by applicable law, 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.

C. Restoration Coordinator. The Trustee Council may designate a Restoration Coordinator whose work shall be directed exclusively by the Trustee Council. The responsibilities of the Restoration Coordinator shall be determined by the Trustee Council, and may include all activities reasonably necessary to implement restoration.

D. The M/T Anitra Technical Advisory Committee.

1. Designation. The Trustee Council may establish a committee known as the M/T Anitra 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 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 Council determines that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law. The Trustee 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 Council, the Technical Advisory Committee may review and provide technical comment to the Trustee 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 Council to ensure its compliance with such contract or other agreement.

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E. Technical Services.

1. The Trustee Council may determine that they need technical advisors, consultants or other service providers to assist in carrying out their responsibilities under this Agreement. The members of the Trustee Council, may individually enter into contracts for the benefit of the Trustee Council, or may otherwise expend natural resource damage assessment funds or natural resource damage recoveries to perform the following services, either directly, or through service providers:

- 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 Trustee Council with logistical support and coordination;
- c. organize and prepare for Council meetings;.
- d. provide technical advice to the Trustee Council during Council meetings;
- e. provide technical or other advice to the Trustee Council 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 Trustee Council.
- g. To obtain technical services, the Trustee Council may agree to designate the LAT, 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 Trustee Council determines are qualified to provide services to the Trustee Council.

X. NOTIFICATION OF NEGOTIATIONS WITH PRP,

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

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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. As appropriate, the substance of any such communications will 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. COORDINATION AND CONFIDENTIALITY

A. Coordination. The Parties recognize and agree that their interests in the recovery of claims for natural resource damage assessment, and natural resource damages associated with the Spill are related and where appropriate have agreed to coordinate negotiation and, if necessary, litigation of their claims and damages that arise out of the Spill.

B. Confidentiality. 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 any 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

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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 Lead Administrative Trustee are not authorized by this agreement to enter into settlements on behalf of the other Trustees and a Trustee or the Lead Administrative Trustee does not represent

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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 D 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,

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upon application by a party to this MOA to the United States District Court (New Jersey), 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, to maintain confidentiality as agreed in Section XI, 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 assessment 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 New Jersey, 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.

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**Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T ANITRA OIL SPILL**

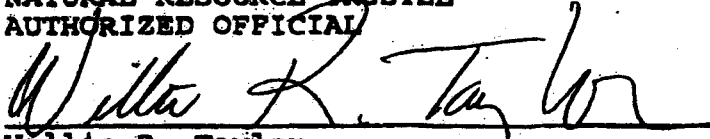
THE FEDERAL NATURAL RESOURCE TRUSTEES

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL**


_____/_____/1996
**Charles N. Ehler
Director, Office of Ocean Resource Conservation and Assessment**

Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T ANITRA OIL SPILL

FOR THE DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE
AUTHORIZED OFFICIAL

 7,28,97

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

**Memorandum of Agreement Concerning Natural Resource Damages in
the Matter of THE M/T ANITRA OIL SPILL**

FOR THE STATE OF NEW JERSEY



**James E. Hall, Assistant Commissioner for Natural and Historic Resources,
New Jersey Department of Environmental Protection**

8/4/1997

APPENDIX B

**DRAFT NATURAL RESOURCES RESTORATION PLAN:
ANITRA OIL SPILL OF MAY 1996**

**Draft Natural Resources Restoration Plan
and
NEPA Environmental Assessment
for the
Anitra Oil Spill of May 1996**

January 2004

**Prepared by the *Anitra* Oil Spill Natural Resource Trustees:
New Jersey Department of Environmental Protection
U. S. Fish and Wildlife Service
National Oceanic and Atmospheric Administration**

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DRAFT NATURAL RESOURCES RESTORATION PLAN: ANITRA OIL SPILL OF MAY 1996

I. INTRODUCTION AND AUTHORITY

This Draft Natural Resources Restoration Plan (Draft Plan) is made by the State of New Jersey Department of Environmental Protection (NJDEP), the United States Fish and Wildlife Service (Service), and the National Oceanic and Atmospheric Administration (NOAA) (collectively the "Natural Resource Trustees" or "Trustees"). This document, presenting the Draft Plan, describes the nature and extent of injuries to natural resources resulting from an oil spill that occurred in the Delaware Bay in May 1996, and identifies alternatives for restoring injured resources and the services these resources provide. This Draft Plan is intended to inform the public of proposed restoration actions.

The Oil Pollution Act of 1990 (OPA) (33 U.S.C. Section 2701 *et seq.*) together with Executive Order 12777 designated federal and State trustees for natural resources, which designations are set forth in greater detail in Subpart G of the National Contingency Plan, 40 CFR Section 300.600. The Secretary of Interior is a designated federal trustee for natural resources including migratory birds, certain marine mammals, anadromous fish, endangered species and their respective habitats, and federal lands managed by the Department of the Interior (Department). The Northeast Regional Director of the Service has been designated as Authorized Official to act on behalf of the Secretary as trustee for this case. The Secretary of Commerce, acting through the NOAA, is a designated federal trustee for natural resources including certain marine mammals and anadromous fish. The States are designated trustees for all natural resources within their jurisdiction. Under the OPA natural resource trustees are authorized to assess and recover compensation for injury to or loss of natural resources resulting from a discharge or substantial threat of discharge of oil, and use recovered funds to achieve appropriate restoration.

II. PUBLIC NOTIFICATION AND REVIEW

The Trustees are to receive \$1.25 million in compensation from the Responsible Party to restore resources injured as a result of the oil spill and \$250,000 to compensate the trustees for past assessment costs. Prior to expending funds for restoration, the OPA requires the Trustees to develop and implement a plan for the restoration of the natural resources under their trusteeship.

The OPA Natural Resource Damage Assessment Regulations at 15 CRF Part 990 require that the Trustees develop a publicly reviewed restoration plan, which identifies and evaluates a reasonable number of restoration alternatives developed to address the specific injuries resulting from the oil spill.

Accordingly, the Trustees are publishing, distributing, and seeking comments on this Draft Plan. Notice of Availability of the Draft Plan will be published in the *Federal Register*, and in *The Press of Atlantic City*. A copy of the Draft Plan is also available for viewing during office hours at the following location:

Cape May County Library
30 West Mechanic Street
Cape May Court House, New Jersey 08210
Mail: DN2030 4 Moore Road
609-463-6350

In addition, copies of the Draft Plan may be obtained from the Service at the following address:

U.S. Fish and Wildlife Service
New Jersey Field Office
927 N. Main Street, Bldg. D
Pleasantville, New Jersey 08232
ph:609-646-9310 fax:609-646-0352

Comments are welcome within 30 days of public notification. Commentators should provide their name, address and telephone number. All comments received on the Draft Plan will be considered and a response provided either through revision of this Draft Plan and incorporation into the Final Natural Resources Restoration Plan, or by letter to the commentator. The anticipated publication date of a Final Plan is February 2004.

III. BACKGROUND

On May 10, 1996, the U.S. Coast Guard (USCG) reported that the Bahamian-flagged *T/V Anitra* spilled approximately 10,000 gallons of Nigerian light crude oil while the vessel was in the process of lightering more than 40 million gallons of oil. On May 19, 1996, the USCG reported that as much as 42,000 gallons of oil were released into Big Stone Anchorage, Delaware Bay, where the vessel was anchored. Cold and stormy weather during the spill caused the oil to mix into the water column, forming tarballs. The *T/V Anitra* was secured and boomed following the release. The USCG reported 12,000 gallons of oil were recovered in the vicinity of the vessel within the first 72 hours following the spill.

Over 50 miles of beaches were oiled over a 2-week period, including at least some oiling of several State wildlife management areas, two State parks, and the Edwin B. Forsythe National Wildlife Refuge. An estimated 3 miles of beach (Higbee and Sunset) were impacted with tarballs from May 12-16, 1996. On May 17, varying densities of tarballs washed up on 8 miles of Atlantic Ocean shoreline in Stone Harbor, Avalon, Sea Isle City, and Ocean City. The Governor of New Jersey declared a Limited State of Emergency in Cape May County, and limited public access to beaches. On May 18, the tarballs continued to drift northward and washed up on beaches in Longport, Margate, Ventnor, and Atlantic City. On May 19, tarballs came ashore in Brigantine and later as far north as Holgate.

A. PIPING PLOVER

For the most part, impacts from the *Anitra* spill occurred on bayshore and coastal barrier beaches. The beaches oiled by the 1996 *Anitra* oil spill in Cape May and Atlantic Counties provide foraging and nesting habitats to piping plovers (*Charadrius melodus*), a shorebird listed as threatened under the federal Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA) and as endangered under New Jersey's Endangered and Nongame Species Conservation Act of 1973 (N.J.S.A. 23:24 *et seq.*, as amended). The spill occurred during a period when most piping plovers were involved in nesting activity. Piping plovers nest on the upper beach on the foredune, berm, dune blowouts, overwashes and tidal flats (U.S. Fish and Wildlife Service, 1996). In the area affected by the spill, piping plovers primarily feed on the intertidal beach along the oceanfront, inlets, the wrack line, and in the dunes. Here they feed on a variety of aquatic and terrestrial invertebrates (U.S. Fish and Wildlife Service, 1996). Oil exposure of these birds occurred as they foraged among stranded tarballs in the upper intertidal zone of the bayshore and coastal beaches.

The *Anitra* oil spill resulted in the oiling of at least 51 adult piping plovers and two chicks during the 1996 nesting season. The oiling directly or indirectly contributed to reduced nesting success and ultimately lowered productivity on affected beaches. The Trustees calculate a lost productivity of 5.6 fledglings by comparing oiled beaches in 1996 with the nesting success from the same set of beaches during the 5 years preceding the spill. The 5.6 lost fledglings equates to 2.7 adults that would have returned to breed in 1997 based on normal juvenile survival.

Oiling of adult birds may also directly or indirectly decrease their survival during the 1-year period following the spill. The Trustees calculated the diminished survival and the resulting loss of adult plovers by comparing survival rates over the season of eight color-banded oiled birds that were cleaned and released with average or "normal" survival rates. The differential was then applied to all 51 oiled adults. Based on this approach, oiling of adult piping plovers resulted in a loss of 13.5 adults. Combining the loss of 2.7 adults derived from the lost fledglings with this figure, a total of 16.2 adult plovers were removed from the current population.

The above figures represent the initial affect of the *Anitra* oil spill to piping plovers resident on southern New Jersey beaches during the spill. Restoration planning must recognize that the impact of the spill included not only the immediate loss of adults and reduced productivity, but also the intergenerational impacts of initial population reduction. Restoration initiatives that run for a significant number of years, and which will continue to replace birds lost to the spill by increasing nesting productivity on New Jersey's beaches, will have the greatest ability to ameliorate intergenerational losses. Such programs should also boost the productivity of birds recruited to New Jersey's nesting piping plover population while restoration efforts are ongoing.

B. SANDERLINGS AND OTHER MIGRATORY SHOREBIRDS

In surveys conducted on oiled beaches from May 22 to May 31, 1996 observers counted a number of bird species, including migratory shorebirds, most notably sanderlings (*Calidris alba*). Other species included migrant semipalmated plover (*Charadrius semipalmatus*), semipalmated sandpiper (*Calidris pusilla*), ruddy turnstone (*Arenaria interpres*), and short-billed dowitcher (*Limnodromus griseus*), and breeding residents - willet (*Catoptrophorus semipalmatus*), American oystercatcher (*Haematopus palliatus*), common tern (*Sterna hirundo*), and laughing, herring, and great black-backed gulls (*Larus atricilla*, *L. argentatus*, and *L. marinus*, respectively).

Data collected after the *Anitra* spill identified over 4,000 shorebirds as lightly to moderately oiled, with a much smaller number deemed heavily oiled. At least 3,324 sanderlings were oiled to some detectable degree. Such oiling has been found to result in reduced weight gain during the period the birds spend in the Delaware Bay region, when they, in fact, need to feed heavily to be able to reach the Arctic and nest successfully (Myers, 1986). Sanderlings are particularly vulnerable to the effects of reduced weight gain caused by oiling (Burger and Tsipoura 1998). The additional stress of migration increases the chances of mortality and reproductive failure (Burger, 1997).

Another 1,019 oiled migrating birds were assumed to be under the same stresses as the sanderlings (*i.e.*, they were in the midst of a long-distance migration and needed to feed heavily while on the New Jersey shore in order to continue their flight to nesting grounds). The resident, breeding birds, however, are under different stresses of laying eggs and maintaining nesting territories, similar to piping plovers and least terns. Birds oiled by the *Anitra* spill, other than piping plovers, likely suffered significant oil-related mortality.

IV. PROPOSED RESTORATION

The Trustee's goal is to restore, rehabilitate, replace or acquire the equivalent of injured natural resources. The concept of restoration in this context may include returning a resource to its prior condition, rehabilitating or replacing a resource, protecting or improving habitat of significance to an injured resource, and acquiring other resources (including overwintering grounds) to compensate for those that are lost. Restoration must be focused on the resources and resource services injured by the spill itself.

The Trustees must consider a reasonable number of possible restoration alternatives (15 CFR Section 990.53). In our initial review, the Trustees identified the following as desirable characteristics for potential projects: where possible, (1) the project(s) should be in the same area as the impacts; (2) the restored habitat should be similar in type and provide similar services to the injured before it was impacted; and, (3) most importantly, the project(s) should provide long-term or perpetual benefits to the injured natural resources. Other factors that were considered include: (1) cost; (2) extent to which each alternative will prevent future injury to the resources

of concern; (3) extent to which each alternative benefits more than one species; and, (4) effects on public health and safety. Based on these characteristics, and on the National Environmental Policy Act (83 Stat. 852, 42 U.S.C. 4321 *et seq.*) guidance, we identified the following specific potential projects:

A. PIPING PLOVERS

1. Restoration Alternatives Considered

The goal of the piping plover restoration plan is to undertake activities or projects that will result in an increase in piping plover numbers to offset those lost as a result of the oil spill. In the absence of a precise ability to quantify the future outcomes of restoration activities, the Trustees strove to consider restoration alternatives that would increase the likelihood that injured natural resources will, in fact, be fully restored and to maximize the restoration benefits achievable with recovered restoration funds. Several alternatives were considered: (a) no action; (b) habitat acquisition; (c) habitat restoration and enhancement; and, (d) increased protective management. The basic components of each alternative are provided below.

a. No action alternative

Federal regulations require the consideration of this option. Under the no-action alternative, no actions involving restoration, rehabilitation, replacement, or acquisition would occur to compensate for resources injured due to the oil spill. Affected resources must recover naturally from the injuries sustained.

b. Habitat acquisition

Purchase high quality beach habitat to guard against future competing uses of nesting habitat, such as development that could diminish habitat suitability or diminish nesting success.

c. Habitat restoration and enhancement

(1) Increase feeding habitat through projects that create man-made tidal pools and mudflats near nesting habitat.

(2) Develop access to alternative feeding habitat by removing vegetation and other obstacles that prevent unflighted chicks from reaching alternative feeding habitats, such as tidal pools and mudflats.

(3) Create or enhance nesting habitat by controlling and managing vegetation or by directing dredged material disposal on appropriate beaches or bay islands.

d. Increased protective management

(1) Monitor populations and reproductive success.

(2) Protect known nesting areas with symbolic or barrier fencing and signs to avoid direct human destruction of nests and reduce human disturbance.

(3) Use patrolling and on-site outreach by paid staff, interns, and volunteers to increase compliance, cooperation and understanding of the public using beaches near nesting areas.

(4) Construct predator exclosures (including enhancement such as electric fence) to reduce losses of individual nests to mammalian and avian predators.

(5) Employ predator control where needed to reduce losses of nests and chicks to predation.

(6) Increase support and understanding among community officials and the general public through educational outreach.

(7) Implement community-based management plans that decrease harmful beach management practices and increase participation of communities in management activities.

(8) Enforce compliance with State and federal endangered species regulations.

2. Evaluation of Alternatives

a. No action alternative

The habitats degraded and migratory birds injured by the oil release would not be compensated under this alternative. For these reasons, the Trustees consider this alternative to be inappropriate.

b. Habitat acquisition

Little suitable undeveloped coastal beach habitat is available in the area that is not already protected. Most parcels are small and isolated and would be very costly to purchase. In addition, purchase alone would not necessarily result in a net benefit to piping plovers, as management measures would still need to be implemented to reduce the effects of human disturbance and predation. Habitat acquisition, therefore, combines high cost with minimal restoration benefits. For those reasons, the Trustees do not consider this alternative to be feasible.

c. Habitat restoration and enhancement

Intense residential and commercial development of New Jersey's coastal beaches has reduced opportunities for piping plover habitat enhancement projects. In general, piping plovers with access to both ocean and bayside beach feeding areas or tidal pools have higher productivity than plovers feeding on ocean beaches alone. Habitat enhancement projects that would create access to bayside feeding habitat would have the greatest potential to improve piping plover breeding habitat and increase plover productivity. However, in most areas of New Jersey, such habitat enhancement is not possible because development, including homes, businesses, and related infrastructure (e.g., roads and utilities), occur along even the narrowest sections of barrier islands, precluding plovers from accessing bayside feeding habitats. Projects that would enhance piping plover habitat by promoting overwash of barrier islands may be incompatible with flood control or storm protection and might conflict with New Jersey coastal protection regulations.

Some coastal areas of New Jersey that are undeveloped and thus have potential for piping plover habitat restoration or enhancement are encumbered by existing regulations that prevent such projects. Two undeveloped barrier beach areas, Holgate and Little Beach Island, are federally designated Wilderness Areas where federal regulations prohibit man-made habitat alteration.

Projects that enhance habitat by removing excessive vegetation or creating breaches in dunes could benefit plover habitat at such locations as the U.S. Coast Guard Electronics Engineering Center (USCG EEC), Barnegat Light, and the south end of Brigantine Island. However, coastal regulations or local opposition may present significant obstacles to this alternative. Beach nourishment projects could also provide increased or improved nesting habitat. However, unless coupled with other ongoing large beach restoration projects, beach nourishment is cost prohibitive due to the high cost of equipment mobilization and sand purchase. In addition, habitat created by beach nourishment could be ephemeral as would be the benefits to piping plovers. Given the uncertainty of costs and regulatory or political obstacles, restoration and enhancement of piping plover habitat is not considered by the Trustees to be presented here as the optimal approach.

d. Increased protective management - Preferred Alternative

The protective management approach described below, which is the Trustees' preferred restoration alternative for piping plovers, has been the focus of piping plover restoration programs throughout their range (Hecht, 1999; Melvin *et al.*, 1991; U.S. Fish and Wildlife Service, 1996; Hecht, pers. com., 2001). The protective management proposed here has a record of success, as seen by the increase in piping plover populations achieved in the Northeast since listing in 1986 (U.S. Fish and Wildlife Service, 2002). While similar programs have been implemented in New Jersey for several years, the current proposal would increase the intensity of ongoing protective efforts. Further, funding provided through a natural resource damage settlement from a previous oil spill financed a portion of protective management in the State over 6 years. Funding from that settlement was exhausted at the end of the 2000 nesting season. In

the absence of the support that would be provided under the current proposal, there would be a significant diminution in protective management compared with this previous 6 years.

The number of nests and project duration necessary to restore 16.2 adult piping plovers (and subsequent offspring) lost due to the spill are difficult to precisely determine. Therefore, the Trustees propose to implement the protective management program described below for 5 years. The Trustees currently estimate that the scale and duration of this project is sufficient to make it the most appropriate alternative to achieve the goal of restoring at least 16.2 adults to the population.

(1) Introduction: The New Jersey Endangered and Nongame Species Program (ENSP) is directly responsible for managing piping plovers on 25-30 nesting areas located in 13 different municipalities within the State, four separately administered State parks or natural areas, two separately administered USCG bases and one State wildlife management area. Nesting areas directly managed by ENSP account for approximately 60 percent of all nesting sites and roughly 50 percent of the State's total piping plover population (Table 1). In addition, the ENSP serves an oversight role with respect to monitoring and management on all other State nesting sites, including Gateway National Recreation Area, Edwin B. Forsythe National Wildlife Refuge and The Nature Conservancy's South Cape May Meadows Migratory Bird Refuge. The ENSP is also responsible for coordinating and compiling statewide monitoring information for reporting to the Service.

The Service's Division of Refuges (Refuge or Refuges) is directly responsible for managing piping plovers on three nesting areas administered by the National Wildlife Refuge System and assists in managing a plover nesting area administered by the USCG EEC in Lower Township, Cape May County. While Refuges directly manages only about 10 percent of the Statewide nesting sites, these sites support over 25 percent of the nesting pairs found in New Jersey. The remaining 30 percent of nesting sites and 25 percent of nesting pairs occur on the Gateway National Recreational Area, Sandy Hook Unit.

The Service's Ecological Services - New Jersey Field Office (NJFO) is responsible for ensuring that all piping plover nesting areas throughout the State in private, municipal, State, or federal ownership are monitored and managed in accordance with the ESA and the Service's *"Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act"* (Guidelines). In addition, the NJFO is responsible for ensuring that all projects that are federally funded, federally authorized, or carried out by a federal agency (i.e., beach nourishment projects, fireworks displays, marine events, activities on federal lands) do not jeopardize the continued existence of the piping plover or other federally listed species.

A synopsis of the proposed piping plover monitoring and management activities that would be carried out by ENSP and the Service under this alternative is set forth below. In general, ENSP would be responsible for carrying out these activities on municipal and State-owned lands. The

Service would conduct similar activities on Refuge lands and assist the USCG at the Electronics Engineering Center in Cape May County, New Jersey. In addition, ENSP and the Service would develop outreach programs and work with local municipalities to develop and implement site-specific piping plover management programs for each of the 13 municipalities with nesting piping plovers. If, as a result of beach nourishment projects or natural accretion of sand, new areas are occupied by nesting piping plovers, the ENSP and Service would work with additional municipalities and local landowners or managers to protect the species and its habitat through outreach and development of site-specific management plans.

(2) Monitoring: All previously active nesting sites would be checked several times during the nesting season to determine if any nesting activity is ongoing. At each site, monitors would search for piping plovers or tracks or other signs of plover activity. During the early nesting season, weekly nest search visits would be conducted on all sites that show signs of occupation by piping plovers. All sites with nests or territorial or courting plovers would be visited no less than three times per week to locate any new nests and/or to monitor nesting progress and outcome of any nests or nesting pairs previously discovered. For each active nesting beach, the total number of nesting pairs present, the number of successful nests, and the total number of chicks fledged from each nesting pair would be determined. Monitoring would also include assessing the causes of nest failure and noting other potential inimical factors such as predators, human disturbance and use of off-road vehicles, occurring on the site. Monitoring would be conducted by seasonal stewards and full-time equivalent staff (FTE) and will be coordinated by biologists working for ENSP and the Service - Refuges. Dead adults, chicks, and eggs would be salvaged as they become available and archived for possible contaminants analysis and gross necropsy. See Table 1 for individual site assignments.

(3) Site management: (see Table 1 for a summary of management activities by site and assignments by agency).

(a) Fencing and Signs: The ENSP would fence three to six major nesting areas prior to the nesting season (Monmouth Beach, Barnegat Light, Ocean City, Strathmere, Avalon, Stone Harbor). The Service's Refuge staff would construct a fence at the northern end of Holgate to close the entire area during the plover nesting season. At all other locations, piping plover nests would be fenced as nests are discovered. Fencing would consist of PVC pipe or steel posts and string, sometimes augmented with additional rows of polypropylene rope. Snow fence and/or wire pasture fence may be used to fence areas such as pedestrian corridors. Wire "pasture fence" would be used to fence a large nesting area at Barnegat Light. All areas would be posted with plastic "Area Closed" or other appropriate signs.

(b) Patrolling: All municipal and state park nesting sites would be patrolled on weekends by ENSP staff (FTEs and seasonal stewards). Many sites would also receive weekday patrols. Refuge lands would be patrolled daily (FTEs and seasonal stewards).

(c) Predator Control: Predator exclosures are the primary technique employed to reduce the impact of predators on nesting success. The ENSP staff (seasonal stewards and full-time staff) would erect predator exclosures on all beaches where ENSP biologists have determined this to be an appropriate management technique. Over the past 5 years, ENSP staff has installed predator exclosures at 15 to 35 nests each year. Service staff would erect predator exclosures to protect piping plover nests on refuge lands where appropriate.

In the last 5 years, this management technique was used to protect from 14 to 27 nesting attempts on Refuge lands. Electric fencing has been used around some exclosures to combat problem areas where predators have learned to target exclosures. Electric fencing has proven to be a very effective means of increasing the success of exclosures. Use of electric fences would be increased in problem areas, including on Refuge lands. In addition to the use of predator exclosures, a predator removal program would be implemented on Refuge and USCG lands, targeting both mammalian and avian predators.

(4) Outreach and municipal cooperation: Recreational beach use and municipal beach management activities create some of the most significant threats to successful piping plover nesting. Consequently, major portions of ENSP's management efforts are dedicated to educational outreach to beach users and local officials and to developing cooperative relationships with municipal managers.

In this case, ENSP would conduct onsite educational outreach aimed at beach users, including one-on-one contact with the monitors/wardens, organized tours conducted by the monitors/wardens, interpretive signs, and distribution of brochures. More generalized outreach activities would be conducted by ENSP and the Service, including staffing interpretive displays at festivals and events, giving slide talks, and producing press releases.

The ENSP and Service staff would meet frequently with local officials, including public works directors and supervisors, police, lifeguards, and others. During the nesting season, local officials would be kept apprised of nesting and management activities through weekly updates faxed to all appropriate departments and staff. Near the beginning of each nesting season, slide talks would be given to beach patrol and public works staff who work on the beach.

Over the next 5 years, ENSP and Service biologists would work with municipal managers and local environmental commissions to develop municipal management plans. The management plans would be adopted through Memoranda of Agreement signed by all parties, and would clarify responsibilities and provide detailed guidance to the municipalities regarding the management and protection of threatened and endangered beach nesting birds nesting on municipal beaches and ensure compliance with the ESA, State regulations, and Service Guidelines. The goal of this effort would be to effect a progressive shift of specific responsibilities for managing beach nesting birds to the municipalities, particularly for those aspects of management that protect birds from activities permitted, encouraged, sponsored, or performed by the municipalities.

Table 1. Summary of proposed site monitoring and management activities for Piping Plover nesting sites in restoration area.

Site	# of nesting pairs in 2000	Steward	Monitor	Signs	"Symbolic" (String & post)	Partial snow fence	Encl. wire fence	Feeding Corridor	Wardening		Predator Exlosures*	Notes
									Weekend	Weekday		
Brick Twp.	0	ENSP-1	X									
Barnegat Light	3	ENSP-1	X	X	P,X		P	X	V,S	S	0	1
Holgate	13	USFWS-1	X	X					V,S	S	14	2
N. Brigantine	17	ENSP-1	X	X	P,X	P			S	V,S	6,E	4
South Brigantine Inlet	0	ENSP-1	X									
Ocean City - center	8	ENSP-2	X	X	X	X		X	LS	S	0	
Strathmere Upper Twp.	1	ENSP-2	X	X	X	X			S	S		
Sea Isle City	0	ENSP-2	X									
Avalon - North	0	ENSP-3	X								0	
Stone Harbor Point	6	ENSP-3	X	X	P				LS	S	1	
North Wildwood	0	ENSP-3	X									
Coast Guard - EECEN	2	USFWS-3	X	X	P				S	S		7
Cape May City	0	ENSP-3	X								0	

P=Large areas fenced prior to nesting season. X=activity conducted. I=intern. V=volunteer. S=steward (paid). * Number represents number of nests enclosed in 2003. B=Electric fence used with enclosures. Beaches in italics would be managed by the Service-New Jersey Refuges. NOTES: 1) Large area fenced prior to nesting season using wire pasture fence. 2) Beach closed to public. 3) Beach only accessible by boat, closed to public. 4) Beach access closed to off-road vehicle traffic during period of chick rearing. 5) Division of Parks and Forestry personnel patrol beach. 6) No making of beach between 52nd and 58th Streets - part of a Wetlands Institute study. 7) Base personnel patrol beach. 8) Beach closed to public, patrolled by base personnel.

Efforts to develop and implement site-specific management plans would be undertaken with each municipality or land manager in New Jersey with nesting piping plovers. Priority would be given to development of management plans for the City of Cape May, Stone Harbor Borough, Upper Township and the U.S. Coast Guard in Cape May County; City of Brigantine, Atlantic County; and Barnegat Light Borough, Ocean County. These areas were selected because they were the most impacted by the *Anitra* Oil Spill and contained the most oiled birds.

(5) Threat abatement: The Service would increase efforts to identify and abate threats to piping plover at sites throughout the State, such as non-compliance with pet leash laws, trespass into closed areas, and recreational or municipal activities that are not in compliance with the Service Guidelines. The Service would supplement ENSP site management activities through direct coordination with the site land manager/land owner and would recommend actions to eliminate site-specific threats. Where necessary, law enforcement action would be initiated to ensure that unauthorized take of piping plovers does not occur.

B. MIGRATORY SHOREBIRDS

1. Restoration Alternatives Considered

The goal of the migratory shorebird restoration plan is to undertake activities or projects that will result in an increase in migratory shorebird numbers to offset those lost as a result of the oil spill. In the absence of a precise ability to quantify the future outcomes of restoration activities, the Trustees strove to consider restoration alternatives that would increase the likelihood that injured natural resources will, in fact, be fully restored and to maximize the restoration benefits achievable with recovered restoration funds. Several alternatives were considered: (a) no action; (b) habitat acquisition; (c) protective management; and (d) habitat restoration and enhancement. The basic components of each alternative are provided below.

a. No Action Alternative

Federal regulations require the consideration of this option. Under the no-action alternative, no restoration, rehabilitation, replacement, or acquisition actions would occur to compensate for resources injured due to the oil spill. Affected resources must recover naturally from the injuries sustained.

b. Habitat acquisition

Purchase high quality beach habitat to guard against future detrimental activity in foraging areas that could diminish feeding opportunity and breeding success.

c. Protective management

(1) Protect known foraging areas with symbolic or barrier fencing and signs to

reduce human disturbance.

(2) Use patrolling and on-site outreach by paid staff, interns, and volunteers to seek compliance with restrictions, cooperation and understanding of public using beaches near foraging areas.

(3) Monitor populations and reproductive success.

(4) Increase support and understanding among community officials and the general public through educational outreach.

(5) Implement community-based management plans that decrease harmful beach management practices and increase participation of communities in management activities.

d. Habitat restoration and enhancement

Creation or enhancement of feeding habitat through projects that clear debris from beaches where horseshoe crabs lay eggs and birds forage.

e. Wintering grounds protections

Migratory shorebirds travel on a yearly basis from their northern breeding grounds to South American wintering grounds, and back again. The threats to migratory shorebirds addressed in the above alternatives also apply to their wintering grounds, and, in fact, are exacerbated by the lack of local government resources to protect natural resources.

2. Evaluation of Alternatives

a. No action alternative

The habitat and migratory birds injured by the oil release would not be compensated for under this alternative. For these reasons, the Trustees consider this alternative to be inappropriate.

b. Habitat acquisition

Land prices of bayfront property are high and there is little suitable habitat available in the area for purchase. Additionally, it is unclear if a change in ownership of such property would result in any restoration benefit to migratory shorebirds. For those reasons, the Trustees do not consider this alternative to be feasible.

c. Protective management, New Jersey beaches

Wardening and educational outreach measures are already in place at most of the critical forage

areas used by migratory shorebirds. Also, since the shorebirds are all adults capable of flight and do not nest on New Jersey beaches, protective management may offer minimal benefit. The Trustees do not consider this alternative to be feasible.

d. New Jersey habitat restoration and enhancement - Portion of Preferred Alternative

Given the large number of sanderlings exposed to oil (at least 3,324) and numerous deleterious effects of oil exposure identified above, the potential for long-term impact at the population level is great, as the Atlantic coast migratory population is estimated to be approximately 10,000 birds. Considering exposure and potential impact to other shorebirds (at least 1,019 birds were estimated to have some degree of oiling), the Trustees postulate that the project, as described below, is of appropriate scale to restore for injuries to shorebirds from the *Anitra* spill. As such, it - along with alternative e. below (Protective Management, Wintering Grounds) - is part of the preferred restoration alternative for migratory shorebirds. For many years, the shorelines of East Point, Thompson Beach, and Moores Beach, in Cape May County, have been the areas most heavily utilized by horseshoe crabs and migrating shorebirds. Thousands of crabs came ashore each spring to lay their eggs on these beaches. The eggs, in turn, were fed upon by tens of thousands of shorebirds migrating to their Arctic nesting grounds.

During the past 70 years, these three areas have been gradually developed with small houses, trailers, jetties, and piers. These areas also experience heavy erosion, and storms have damaged homes and deposited debris on the beach. In an effort to maintain the waterfront and protect the remaining homes, rubble (e.g., cinder blocks, concrete) has been placed on the beach. This rubble, coupled with wreckage from damaged homes, has drastically reduced the amount of beach available for horseshoe crabs to lay eggs and shorebirds to feed. The rubble has also accelerated beach erosion, further reducing suitability for crab and bird use. During the past year, Maurice River Township, with the assistance of the State has condemned, purchased, and removed all of the homes and most of the beach rubble from Moores Beach. This has resulted in a significant increase in horseshoe crab use and improved foraging habitat for migrating shorebirds on the beach.

Since the completion of the Moores Beach project, the Township has purchased all the homes on Thompson Beach and is presently in the process of removing them. However, removal of the 23,000 cubic yards of beach debris scattered over 5,000 feet of upper intertidal beach is not within the scope of the municipality budget.

Clearing this beach of debris would make this area available to horseshoe crabs and reestablish historically important foraging habitat for migrating shorebirds. If this debris is not removed within 15 to 20 years, the beach front will move behind the debris, making the debris difficult to remove and leaving it to trap crabs at low tide. Clearing debris now would aid in the immediate rehabilitation of the beach to provide shorebird foraging habitat and eliminate a potential future trap for horseshoe crabs.

The most efficient method of debris removal would entail piling and crushing the material to a maximum size of 1.5-inch diameter. This material would then be used to improve the access road to the beach and facilitate removal of remaining material from the beach. Any material not used to improve the access road to the beach would be stored at the New Jersey Fish and Wildlife facility in Millville for future use. Storing the crushed material at the New Jersey Fish and Wildlife facility, rather than landfilling, would result in substantial project cost reduction. Based on preliminary discussions, the Township is agreeable to placing its land along the beach under a deeded conservation restriction to prevent future land use for anything other than open space. Restoration of this beach would provide more egg laying habitat for horseshoe crabs and thus increase and improve critical forage areas for migrating shorebirds.

e. Protective Management, Wintering Grounds - Portion of Preferred Alternative

The following describes an additional portion of the Trustees' preferred alternative for migratory shorebirds. Sanderlings, and other migratory shorebirds congregate in very large numbers at certain South American locations. For example, census figures for Bigi Pan in Suriname note upwards of 1,350,000 *Calidris spp.*, 1,030,000 *Calidris spp.* at Coppername River mouth in Suriname, an estimated 40,000 red knots (approximately 25 percent of the flyway population) at San Antonio Oeste in Argentina, and over 6,000 sanderlings at Lagoa do Peixe in Brazil. There is the potential for enormous resource conservation benefits from development and implementation of management plans that integrate local and community involvement with activities, which the local host nations' support but have limited financial resources to undertake.

C. FUNDING

The Trustees propose to allocate the portion of the restoration funds limited (as noted below) to support the preferred alternatives described above, with the intention that such funds will be leveraged through matching grants and directed at programmatic initiatives, which are likely to be self-sustaining.

The proposed allocation of funds to implement the preferred alternatives is broken down as follows:

Piping plover restoration

U.S. Fish and Wildlife Service	\$300,000
New Jersey Department of Environmental Protection	\$400,000

Migratory shorebird protection

New Jersey Department of Environmental Protection	\$500,000
U.S. Fish and Wildlife Service	\$ 50,000

If the Trustees obtain new information indicating that any of these projects should not be implemented, that the allocation of funds among these projects and/or among the trustee agencies should be significantly adjusted, or that another project or projects should be substituted for any of the projects discussed herein, the Trustees may select alternative projects for implementation or significantly modified fund allocations, and will provide further public notice to the extent required by the OPA and the NEPA.

V. COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The *Final Revised Procedures* for the Service for implementing NEPA, published in the *Federal Register* on January 16, 1997, provide a categorical exclusion for natural resource damage assessment restoration plans prepared when only minor or negligible change in the use of the affected area(s) is planned. Categorical exclusions are classes of actions that do not individually or cumulatively have a significant impact on the human environment.

The proposed project will result in little or no change in the use of the affected areas. Accordingly, the project as set forth above is a categorical exclusion under NEPA.

VI. REFERENCES

A. LITERATURE CITED

- Burger, J. 1997. Oil Spills. Rutgers University Press, New Brunswick, NJ.
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B. PERSONAL COMMUNICATION

Hecht, A. 2001. Endangered Species Biologist. U.S. Fish and Wildlife, Hadley, Massachusetts.

Deep Natural Resources Restoration Plan and NEPA Environmental Action Statement for the *Amoco* Oil
Spill of May 1996

Approved:


Marvin E. McCarthy, Regional Director
U.S. Fish and Wildlife Service

3-3-04
Date