

Memorandum of Agreement  
Between  
Bouchard Transportation Co., Inc. and the Natural Resource Trustees  
Governing  
Cooperative Natural Resource Damage Assessment and Restoration Planning Activities  
for the  
Bouchard B. 120 Oil Spill

I. Introduction and Authority

This Memorandum of Agreement (MOA) is made by and among the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of the Interior (DOI), the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts (MA EOEA) and the State of Rhode Island & Providence Plantations, Department of Environmental Management (RIDEM), which are collectively "the Natural Resource Trustees" (the Trustees), and Bouchard Transportation Co., Inc. (Bouchard), the Responsible Party, as that term is defined pursuant to 33 U.S.C. § 2701 (32). The Trustees and the Responsible Party are collectively referred to as Parties and individually as a Party. This MOA is made pursuant to Section 1006 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2706, Subpart G of the National Contingency Plan, 40 C.F.R. § 300.600, et seq., the OPA Natural Resource Damage Assessment Regulations (OPA Regulations), 15 C.F.R. § 990.14, Massachusetts General Laws, Chapter 21 E and Rhode Island General Laws, Section 46-12.5.1. All terms in this MOA shall have the same meaning as set forth in OPA, 33 U.S.C. § 2701 et seq. and the OPA Regulations, 15 C.F.R. Part 990 et seq., unless otherwise specified.

II. Purpose

The purpose of this MOA is to provide the framework for a cooperative Natural Resource Damage Assessment (NRDA) to facilitate the resolution of any claims for natural resource damages (NRD), as defined in OPA § 1002, arising from the Bouchard B. 120 (B. 120) Oil Spill that occurred on or about April 27, 2003 (the Spill) and affected natural resources in the vicinity of Buzzards Bay, off the shores of Massachusetts and Rhode Island. Accordingly, this MOA sets forth procedures for: a.) undertaking a cooperative NRDA study or studies (Cooperative Study or Cooperative Studies) including those necessary for pre-assessment activities, the determination and quantification of injury to natural resources and/or related services, and the development and implementation of a restoration plan for said injured resources and/or services; and b.) the payment of Reasonable Assessment Costs, as provided in 15 C.F.R. § 990.30 and applicable state law, incurred by the Trustees including, but not limited to: assessment, restoration planning, public outreach, and restoration oversight costs. Through this MOA, the Parties intend to work efficiently and in a cost-effective manner to resolve NRD claims for natural resource damages alleged to have resulted from the Spill.

The Parties agree that a cooperative effort to determine the injuries to natural resources and/or resource services, to quantify such injuries, and to conduct restoration planning may be cost-effective, avoid duplication, and effectively use limited resources. For the purposes of this MOA, the Parties will conduct cooperative injury determination and quantification activities, when possible. The Parties may later agree to cooperate in undertaking other injury assessment activities and/or identifying restoration alternatives pursuant to the terms of this MOA.

### III. Cooperative Assessment Activities

#### A. General

1. The Parties shall determine whether there are specific facts, data or conclusions related to the Spill about which the Parties agree and to which the Parties could stipulate in advance of performing any Cooperative Study. The Parties shall reduce to writing all matters to which the Parties stipulate and shall make the stipulation a part of the Administrative Record.
2. The Parties will use good faith efforts to reach consensus on the necessity, selection, design and protocols for Cooperative Studies related to the NRDA process for the Spill.
3. To the extent possible, the Trustees and the Responsible Party agree to use site-specific reports, studies and assessments prepared for other purposes (such as compliance with the Massachusetts Contingency Plan, Mass General Laws Chapter 21E § 5, et seq.) whenever the Trustees, in whom rests the ultimate responsibility to determine appropriate assessment methods, determine that such reports, studies and assessments satisfy the standards set forth in 15 C.F.R. § 990.27(a), in order to promote the expeditious and cost-effective assessment and restoration of natural resources and services injured as a result of the Spill. The Trustees agree not to unreasonably withhold or deny the approval to use such reports, studies and assessments that were developed for other purposes.
4. The Parties shall meet quarterly, or as otherwise agreed, telephonically or in person, to identify potential Cooperative Studies.
5. The Parties acknowledge that non-responsiveness is counter to the objectives of a cooperative NRDA, OPA and the OPA Regulations. Therefore, each Party shall make good faith efforts to respond to requests from other Parties in a timely manner and within the timelines set forth in this MOA or shall inform the other Parties of their intention not to respond and provide an explanation for that decision.

B. Organization

1. The Trustees have established a Trustee Council to oversee and approve the activities of the Parties. The Trustee Council is composed of one representative for each of the Trustees who is duly authorized to act on behalf of the public as a steward for natural resources under its trusteeship.
2. Pursuant to OPA, this MOA currently establishes that NOAA will serve as the Lead Administrative Trustee (LAT) for the Spill. The LAT will serve as the central point of contact between the Trustee Council and the Responsible Party. Designation of the LAT is subject to change by decision of the Trustee Council. The LAT does not possess authority to represent any of the other Trustees, or all of the Trustees, on any substantive matter.
3. The Parties shall establish and form an organizational structure consisting of a Joint Assessment Team (JAT) and Technical Working Groups (TWGs). The Purpose of this organizational structure is to facilitate the efficient coordination and planning of the NRDA and restoration tasks among the Parties.
  - a. The JAT shall be comprised of one or more technical representatives from each of the Parties, as appropriate. All study proposals shall be directed to the JAT for consideration. The JAT shall approve all cooperative technical activities on behalf of the Parties. JAT members will use good faith efforts to consult or inform, as appropriate, their respective Trustee Council representative (or in the case of the Responsible Party, the Responsible Party's legal counsel) and legal counsel, prior to providing JAT level approval for any action.
  - b. The JAT shall establish one or more groups of technical representatives which shall be referred to as TWGs.
  - c. Each TWG shall be comprised of at least one representative from each of the Parties. Two technical leads shall be designated for each TWG: one to be designated by the Trustees and one to be designated by the Responsible Party. Each TWG shall be responsible for developing a Proposed Work Plan, for JAT review and approval, for each proposed Cooperative Study assigned to it by the JAT. Each TWG member will use good faith efforts to consult or inform, as appropriate, their respective JAT representative (or in the case of the Responsible Party, the

Responsible Party's legal counsel) and legal counsel of issues and proposals that arise in the TWG.

4. The designation of representatives pursuant to this MOA (i.e., JAT members and TWG members) is for coordination and planning purposes. For each Party, the designation of a representative under this MOA does not constitute a delegation of any legal or policy making authority, nor does it authorize the representative to create policy positions, to create liabilities or debts against the Party, or otherwise to legally obligate the Party in any way.

C. Proposing and Selecting Cooperative Studies

1. Any Party may propose a study to be performed as a Cooperative Study. Proposed Cooperative Studies are to be presented to the JAT for consideration and approval.
2. If the JAT determines that a study proposal is reasonable and appropriate, the JAT shall assign the development of a Proposed Work Plan for the associated Proposed Study to the appropriate TWG. A Proposed Work Plan shall include, at a minimum, the following information, as applicable:
  - a. study objectives, including a statement of the purpose and need for the study and how the study will lead to the identification or documentation of injury to a natural resource or service, pursuant to 15 C.F.R. § 990.27;
  - b. study design or methods, including types of data to be collected, sampling protocols, and a sampling plan which will identify whether there is a need for split and/or duplicate samples and will address the process for archiving samples;
  - c. a quality assurance/quality control plan, as defined and required by the JAT;
  - d. qualifications for, or designation of, the Principal Investigator, which may be an employee, or contractor, of any of the Parties, and will be responsible for implementing the study;
  - e. analysis plan, including the laboratory to be used and a description of any phased analyses, methods for selecting samples for analysis, and analytical methods (including anticipated detectable limits for

laboratory analyses);

- f. expected duration;
  - g. expected work product or deliverables;
  - h. schedule of deliverables;
  - i. budget; and
  - j. a finding that the proposed Cooperative Study complies with the standards set forth in 15 C.F.R. § 990.27.
- 3. The JAT will review the Proposed Work Plan presented by the TWG, and any modifications thereto, and determine whether it is acceptable to the Parties or needs revision.
  - 4. This pre-initiation review is intended to encourage up front consensus and resolution of technical differences during the Cooperative Study design, development, review and approval phases.
  - 5. If the JAT unanimously approves a Proposed Work Plan, and any modification thereto, it will become a Final Work Plan and the associated proposed Cooperative Study will become and be deemed a Cooperative Study. A copy of the Final Work Plan, and any modifications thereto, for each Cooperative Study shall be attached to, and incorporated by reference into, this MOA.
  - 6. Each Cooperative Study shall be conducted pursuant to the Final Work Plan and the provisions related to Cooperative Studies in this MOA.
  - 7. The Parties shall create and maintain a current list of all Cooperative Studies and the contractors, consultants and experts deemed to be performing such Cooperative Studies.

D. Retention of Persons Performing Cooperative Studies

- 1. Cooperative Studies shall be performed by the Trustees, their contractors, consultants and/or experts, unless the Trustees determine, in their discretion, that a Cooperative Study would be most effectively or efficiently performed by the Responsible Party, or by mutually agreed upon contractors, consultants and/or experts retained by the Responsible Party, and the Trustees expressly agree to such arrangement in writing. Any Cooperative Studies performed by the Responsible Party will be done

at the direction of, and with oversight by, the Trustees.

2. The Parties agree that they will require the disclosure of any and all potential conflicting relationships of such contractors, consultants and/or experts as early in the contract solicitation, proposal or negotiations as possible and, in any event, before the contractor, consultant or expert is retained.
3. If the Responsible Party proposes to retain a contractor, consultant or expert to assist in the performance of a Cooperative Study pursuant to this MOA, the Trustees will have the opportunity to review and approve: the qualifications of any such proposed contractor, consultant or expert; the goals and objectives for the proposed contractor, consultant or expert; the proposed scope of work and planned activities of the proposed contractor, consultant or expert; and the schedule for work to be performed by the contractor, consultant or expert. The Responsible Party must obtain the Trustees' approval, in writing, prior to retaining the contractor, consultant or expert for a Cooperative Study.
4. Each Party may call as a witness any mutually agreed upon contractor, consultant or expert assisting the Responsible Party in performing a Cooperative Study for the Spill, in any judicial or administrative proceeding relating to natural resource damages resulting from the Spill, to testify regarding the conduct of, and conclusions reached in performing, such Cooperative Study. In addition, in any judicial or administrative action, the Trustees will have the right to retain, as a testifying or consulting expert or witness for the Trustees, any person contracted or hired by the Trustees, or chosen or approved by the Trustees but hired or contracted by the Responsible Party for a Cooperative Study, undertaken for the Spill, provided, however, that in the case of a testifying or consulting expert, information exchanged between the Trustees and such expert shall be privileged/non-discoverable except as required by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and their state equivalents.
5. Each of the Parties may separately retain any contractors, consultants and/or experts for any issue relating to this NRDA, unless otherwise expressly addressed in this MOA, and all rights to challenge such contractors, consultants and/or experts are expressly reserved.

E. Data Collection, Dissemination, and Retention

1. Data Collection

a. In General

Consistent with laboratory and field collection protocols and procedures, all Parties may be present during data collection activities for Cooperative Studies. The Parties agree to give each other ten (10) days advance notice of any data collection activity for Cooperative Studies, unless otherwise agreed upon or impracticable. In the latter event, the Parties agree to notify each other of upcoming data collection activity as soon as reasonably practicable.

b. Data Collected from Respondents

In the case of data collection from human respondents (e.g. the use of surveys, interviews), the Parties may agree that the presence of all Parties and the sharing of complete data may impede the collection of accurate, complete and candid responses. In such cases, and to the extent necessary to promote the accuracy, volume, and candor of responses, the Parties shall agree on procedures for the collection and sharing of such data that depart from the requirements of Sections III.E.1.a. and III.E.2. of this MOA. For example, the Parties may: use neutral interviewers, aggregate data prior to dissemination to protect the confidentiality of individual responses, or require the absence of a Party during data collection activities.

2. Data Dissemination

a. In General

All data, writings, analyses and modeling results, including drafts but excluding internal working documents and analyses, collected or developed for Cooperative Studies shall be fully and freely shared among the Parties concurrently and as soon after it is developed, produced or collected as is reasonably practicable. This does not include data, writings, analyses and modeling results collected or developed as part of an Independent Study and/or Independent Interpretation and Conclusion as discussed in Sections III. I.2. and IV. of this MOA.

b. Validated Data

Any Party has the right to use, at its discretion, any validated data collected pursuant to a Cooperative Study, except such validated data shall not be released to third parties unless required by law. Validated data shall be provided to the members of the JAT in both paper and electronic



formats, when practical.

3. Data Retention and the Use of Archived Data

- a. All samples taken in the course of a Cooperative Study, or records or data generated in the course of such study, shall be retained for a reasonable period not to exceed the period of time necessary to fully satisfy all restoration obligations unless and until otherwise agreed upon by the JAT in writing, or as required by any applicable law or government policy. The QA/QC section of the Final Work Plan for each Cooperative Study shall specify: samples, records, and data that shall be retained; the retention method(s) and time frame; the repository location; and the Party responsible for retaining the samples. The Responsible Party agrees to pay for such sample, record and data retention.
- b. Use of any archived samples will be at the direction of the JAT. In any event, upon notice to other Parties, the Trustees and the Responsible Party shall have access to all samples taken as part of a Cooperative Study at all times.
- c. An Administrative Record shall be established by the Trustees. The Administrative Record shall be maintained by NOAA with the assistance of the other Trustees and the Responsible Party. The Responsible Party agrees to pay the Reasonable Assessment Costs related to establishing and maintaining the Administrative Record.

F. Documentation of Cooperative NRDA Activities

When members of the JAT or any of the TWGs develop a proposal or a reach a preliminary or interim decision, understanding, or agreement related to Cooperative Studies and other cooperative NRDA activities including, but not limited to, the following :

1. The performance or acquisition of the services of others to perform an activity or study;
2. The purpose, scope, design and/or cost of an activity or study;
3. The procedures to be followed, techniques to be used or criteria to be consulted when conducting an activity or study;
4. Decisions as to the use of existing literature values or information, or



literature-based assumptions, for Spill-specific issues either in addition to, or in lieu of, Spill-specific data collection;

5. Data collection;
6. Costs of a particular activity;
7. Approval of meeting minutes; and
8. Public Outreach Activities;

at least one representative of the Trustees (if duly authorized to act on behalf of all Trustees) and the representative of the Responsible Party on the JAT or the relevant TWG shall use best efforts to memorialize the proposal or the preliminary or interim decision, understanding, or agreement in writing and submit it to the JAT for review and approval. Likewise, the same procedure will be followed when members of the JAT or TWGs agree to modify any such proposal or preliminary or interim decision, understanding or agreement.

After any decision of the Trustee Council and the Responsible Party's legal counsel is memorialized in writing, such decision shall be final and binding on the Parties unless objected to within sixty (60) days, subject to the provisions for Independent Studies and Independent Interpretations and/or Conclusions.

These provisions are intended to ensure that the cooperative relationship between the Parties is not harmed by miscommunication, misunderstanding, or inconsistent recollection relative to individual tasks, agreements, or decisions and/or any modifications thereto.

#### G. Modifying Cooperative Studies

Any Party may propose to modify any Cooperative Study based on preliminary results, changed circumstances, or for other reasons. Any proposed modification that the Parties jointly agree is reasonable and appropriate shall be incorporated in the Final Study Plan. The modified Final Study Plan will be incorporated by reference into this MOA and will be subject to all of its terms and conditions.

#### H. Finalizing Cooperative Studies

1. Upon completion of a Cooperative Study, the Principal Investigator (an individual or entity to be designated by the JAT for each Cooperative Study) shall produce a Draft Report describing the study and its conclusions and provide copies of that report to the TWG which developed the Final Study Plan and the JAT. The TWG and the JAT shall

review the Draft Report, including review of any comments regarding the Draft Report submitted by any member of the TWG or the JAT, and provide comments, questions, or recommendations for suggested revisions to the Principal Investigator.

2. The Principal Investigator shall consider all comments and respond in writing to any comments that were not incorporated into the Draft Report. The Principal Investigator will then provide a Final Draft Report and response to comments to the appropriate TWG and the JAT.
3. The appropriate TWG and the JAT will then decide whether to accept the Final Draft Report as submitted or to propose further revisions pursuant to the review and comment process described above. The Principal Investigator will then provide the Final Report to the appropriate TWG and the JAT.
4. Timelines for providing draft and final reports, submitting comments, reviewing comments, and revising the report will be established for each Cooperative Study by the TWG for that Cooperative Study on a study-by-study basis.

#### I. Interpreting Data from Cooperative Studies

##### 1. Consensus on Interpretation

The Parties shall use good faith efforts to reach consensus on the interpretation of, and conclusions to be drawn from, data collected pursuant to a Cooperative Study. All such matters as to which the Parties reach consensus shall be reduced to writing and incorporated in the Administrative Record and shall be binding upon the Parties in any civil judicial or administrative proceeding between or among the Parties relating to NRD arising from the Spill.

##### 2. Independent Interpretations and/or Conclusions

- a. The Parties recognize that, good faith efforts notwithstanding, it may not be possible to agree on the interpretations of, and/or conclusions to be drawn from, data collected pursuant to a Cooperative Study. The Parties, therefore, expressly reserve the right to produce and present independent interpretations and/or conclusions (Independent Interpretation and/or Conclusion or Independent Interpretations and/or Conclusions).
- b. The Parties may choose to develop Independent Interpretations and/or Conclusions at any time.

- c. Any Party that chooses to exercise its right to develop and/or present Independent Interpretations and/or Conclusions shall provide written notice to the JAT of its intent to do so.
- d. Independent Interpretations and/or Conclusions are not part of a Cooperative Study.
- e. All Independent Interpretations and/or Conclusions, produced and presented pursuant to this Paragraph, may be submitted for inclusion in the Administrative Record for this NRDA.
- f. If the Parties are not able to reach consensus on the interpretations and/or conclusions to be drawn from data collected pursuant to a Cooperative Study, a Party or Parties may develop Independent Interpretations and/or Conclusions, at their own expense, subject to reimbursement to the extent permitted by 15 C.F.R. § 990.30 or otherwise as allowed by applicable law.

#### J. Withdrawing from Cooperative Studies

##### 1. Right to Withdraw from a Cooperative Study

Each Party has the right to withdraw from a Cooperative Study. Each Party shall, however, use good faith efforts to resolve disputes and follow the dispute resolution procedures, at a minimum, prior to withdrawing from a Cooperative Study. A Party's Withdrawal from a Cooperative Study does not terminate this MOA or signify withdrawal from other Cooperative Studies.

##### 2. Responsible Party's Obligation to Fund an On-Going Cooperative Study

Notwithstanding a dispute regarding a Cooperative Study, the Responsible Party shall continue to fund an on-going Cooperative Study so long as the Cooperative Study is conducted pursuant to the Final Study Plan, the terms and provisions of this MOA, and any agreed upon modifications thereto.

##### 4. Responsible Party's Objection to the Cost of an On-Going Cooperative Study

Should the Responsible Party object solely to the cost of an on-going Cooperative Study conducted pursuant to the Final Study Plan, this MOA and any modifications thereto, the Responsible Party may request additional documentation and explanation of the costs from the appropriate entity and may

pursue the dispute resolution procedures set forth in Section VIII. of this MOA. The Responsible Party shall not withdraw from the on-going Cooperative Study nor seek to remove the study from the Cooperative Study category based solely on an objection to the costs of the on-going Cooperative Study.

K. Challenges to Completed Cooperative Studies

1. Data and Associated Materials Deemed Valid and Acceptable

Any Party may challenge any data collected, and/or associated material (as hereinafter defined) developed, pursuant to a Cooperative Study. Such challenge shall be made within sixty (60) days of receipt of the Final Work Plan for the Cooperative Study, shall be in writing, and shall contain a detailed explanation of the basis for such challenge. In the event a Party fails to raise a challenge, such data and/or associated material shall be binding upon such Party in any civil judicial or administrative proceeding between or among the Parties relating to NRD arising from the Spill. For purposes of this paragraph, "associated material" is limited to the study design, data collection methodologies, QA/QC procedures and analysis plan(s) contained in the Work Plan for the Cooperative Study, and/or the costs of the Cooperative Study.

2. Timely Challenge of Data and/or Associated Materials and Opportunity to Respond.

If a Party has timely filed a challenge pursuant to this Subsection, that Party has the right to challenge, in any civil judicial or administrative proceeding between the Parties relating to NRD arising from the Spill, only the data and associated materials referenced above. In the event that a Party files a timely challenge, any other Party shall have an additional one hundred twenty (120) days to respond and submit additional challenges.

3. Reservation of Rights Related to Data Interpretation

Notwithstanding any of the provisions contained in this MOA, the Parties reserve their right to produce and present Independent Interpretations and Conclusions from the data and information derived from a Cooperative Study.

IV. Independent Studies

A. The Parties expressly reserve the right to perform Independent NRDA Studies (Independent Studies).

B. Each Party agrees not to undertake any Independent Study unless such study has

first been proposed as a Cooperative Study to all the Parties.

- C. If a proposed study is not approved as a Cooperative Study, or the Parties are otherwise unable to reach consensus on the proposed study, a Party or Parties may conduct the proposed study as an Independent Study at their own-expense, subject to reimbursement to the extent permitted by 15 C.F.R. § 990.30 or otherwise as allowed by applicable law.

## V. Funding

### A. Cooperative Studies

#### 1. Responsible Party Funding and/or Reimbursement of Costs

For each Cooperative Study as described in this MOA, the Responsible Party shall: 1.) contract and pay directly for the development and execution of the Cooperative Study; or 2.) reimburse the Trustees for all costs of the development and execution of a Cooperative Study to the extent permitted by 15 C.F.R. § 990.30 and/or applicable law at an appropriate time, per Sections V.B.2., V.C., and V.D. of this MOA, or as otherwise agreed by the Parties; or 3.) develop and execute the Cooperative Study per Trustee oversight. The Trustees, in good faith consultation with the Responsible Party, shall determine which of the methods listed above will be utilized for each Cooperative Study. The Trustees may modify their decision as circumstances require.

#### 2. Cost Estimate Overrun

If the budget agreed to by the Parties for a Cooperative Study, or any part thereof, is estimated to be materially exceeded, the Trustees and/or the Responsible Party shall notify the JAT in writing. The JAT shall then convene to appraise the situation and decide what steps to take, if any, to address the situation.

### B. Assessment Costs

#### 1. Types of Reimbursable Assessment Costs

The Responsible Party shall fund all Reasonable Assessment Costs arising from or related to the Spill including, but not limited to, costs incurred for the following activities: a.) Trustee coordination; b.) Cooperative Studies pursuant to Section III of this MOA; c.) public outreach and information dissemination; d.) administrative tasks; e.) oversight and monitoring activities; f.) restoration planning and oversight; g.) legal costs; g.) indirect rates and overhead costs; and, h.) all other costs identified in Section V.B.4.

2. Trustees' Request for Payment of Incurred Costs

As provided herein, the Trustees shall provide the Responsible Party with a statement of the NRDA costs incurred as of the date of the Spill, and supporting documentation as specified in Subsection B.4. below. The Trustees may present requests for payment of costs incurred after that date, with supporting documentation, to the Responsible Party no more frequently than quarterly.

3. Cost Reduction Efforts

All Parties shall use their best efforts to promote expeditious restoration of natural resources and to minimize the costs of the NRDA. Parties shall use their reasonable judgment to prepare for and attend meetings and to avoid the unnecessary duplication of experts or other resources.

4. Cost Documentation

When presenting a statement of costs for payment pursuant to this MOA, the Trustees shall provide the Responsible Party with documentation of all NRDA costs incurred excluding, however, information protected from disclosure under applicable federal and state law (i.e. Confidential Business Information, information protected under the Freedom of Information Act, the Privacy Act, etc.). Each Trustee shall provide the following types of information in support of their Reasonable Assessment Costs, as applicable and if not protected from disclosure:

- a. Labor and overhead rates of each employee or contractor including the employee or contractor's name, title, grade and/or hourly rate, and total hours per billing period;
- b. Travel and transportation costs, including travel orders, vouchers, and receipts;
- c. Building or equipment rental costs;
- d. Printing and reproduction costs;
- e. Contract costs including billing period, amount of invoice, and report of activities;
- f. Supplies and materials costs, including copies of bills for purchase and supporting receipts;
- g. Equipment costs for equipment acquired in direct support of the

case, including copies of bills for purchase and supporting receipts;  
and

- h. Electronically submitted cost documentation must be in a mutually agreed upon format.

#### C. Undisputed Costs and Payment by Responsible Party

The Responsible Party agrees to pay all undisputed Trustee costs in accordance with this MOA within sixty (60) days of their receipt of the Trustees' request for payment and supporting documentation. The Responsible Party shall transfer funds to the Trustees for such undisputed costs as directed in Section IX. of this MOA.

#### D. Disputed Costs

The Responsible Party reserves the right to dispute those allegedly Reasonable Assessment Costs of Cooperative Studies that are insufficiently documented pursuant to Section V.B.4. of this MOA. In the event that the Responsible Party objects to any claimed assessment costs because the Trustees have failed to provide adequate information or made a mathematical error, the Responsible Party shall provide a written statement identifying with specificity the disputed assessment costs and the bases for the Party's objections to the Trustees within sixty (60) days of receipt of the Trustees' cost documentation package, or shall be deemed to have waived any objections. The Responsible Party may request additional time to submit its objection and stay the automatic waiver and the Trustee Parties agree not to unreasonably deny such request. To the extent that the Parties agree that the Responsible Party has paid an invoice more than once, the Parties agree to offset any duplicate payments for future invoices from the same Trustee unless prohibited by law.

#### E. Costs of Independent Studies and Independent Interpretations and/or Conclusions

The Responsible Party is not obligated under this MOA to pay the costs of Independent Studies conducted by the Trustees or the costs of developing Independent Interpretations and/or Conclusions from data collected pursuant to a Cooperative Study. The Trustees, however, reserve their right to recover such costs to the extent permitted under Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A) and the OPA Regulations, 15 C.F.R. Part 990, or otherwise as allowed by applicable law.

#### F. Non-waiver by Responsible Party

The Responsible Party's agreement to fund activities and reimburse Trustee costs pursuant to this MOA shall not act as a waiver of its right to seek to limit its liability pursuant to OPA, 33 U.S.C. § 2704, and the OPA Regulations, 15 C.F.R. Part 990.



## VI. Public Outreach Activities

In compliance with applicable law, the Trustees shall compile an Administrative Record for the NRDA Process for the Spill which will be available for public review. The Trustees shall provide notice to the public of the opportunity to review documents and information and solicit public review of, and comment on, such documents and information, as the Trustees deem appropriate and in accord with relevant laws and regulations. In the event that the Trustees and the Responsible Party have entered agreements that propose activities subject to public notice, review and comment, the Parties agree that no action shall be initiated until the appropriate notice, review and comment requirements are fulfilled. If a time sensitive or emergency situation exists, certain studies or activities may go forward pending the public notice, review, and comment processes, if, and only so far as, relevant laws and regulations allow. Notwithstanding any other provision of this MOA, the Trustees reserve the right to provide information about the Spill and the NRDA process to the public, including but not limited to information already lawfully within the public domain or subject to disclosure under applicable law.

## VII. Reservations of Rights and Claims

- A. Except as specifically provided in this MOA or in any Amendments hereto, the Parties agree that:
1. This MOA shall not be admissible as proof of the Responsible Party's liability for the Spill under OPA or the OPA Regulations, except with respect to the Responsible Party's liability for payment of Reasonable Assessment Costs as provided in Sections III.J. and V. of this MOA.
  2. None of the Parties is making any admission of fact or law by entering into this MOA.
  3. This MOA shall not be admissible as to the validity of any claim or defense in any proceeding related to the Spill.
  4. Nothing in this MOA is intended to be nor shall be construed as a waiver by any of the Parties of any defenses or affirmative claims in any proceedings related to the Spill.
  5. Nothing in this MOA shall be construed as a waiver of attorney-client privilege, attorney work product privilege, settlement confidentiality, or any other privilege that has been or may be asserted in this or any other matter unless explicitly stated herein.
  6. Validated data and factual information collected pursuant to the

Cooperative Studies provisions of this MOA shall not be considered privileged unless protected as such under applicable laws and regulations and/or as otherwise agreed to by the Parties and in accord with applicable laws and regulations.

- B. The Responsible Party is not released from any liability under this MOA, including but not limited to liability for unpaid claims for damages for injury, loss, or destruction of natural resources and/or their associated services, and unpaid claims for restoration, rehabilitation, replacement, or the acquisition of the equivalent of injured natural resources or lost services of those resources, and unpaid claims for reasonable assessment costs.
- C. This MOA does not affect any of the Responsible Party's obligations under other statutes, regulations, agreements, consent orders, permits, etc. issued by any agency of the Federal government or any State government.
- D. This MOA does not affect or limit the rights and authorities of the Trustees to seek reimbursement of assessment costs and NRD claims under Federal or State law.
- E. Except in an action to enforce this MOA, this MOA will not be used in any civil judicial or administrative proceeding.

#### VIII. Dispute Resolution

##### A. Written Notice

A dispute shall be considered to have arisen when one Party provides the JAT with a written Notice of Dispute. The notice shall describe the dispute with enough specificity to allow the other Parties to identify the issues involved and to respond effectively. To the extent practicable, such notice shall be provided at least fifteen (15) calendar days prior to the initiation of any field, analytical, or other assessment activity which is the subject of the disagreement, or which may be affected thereby.

##### B. Informal Resolution

The JAT will immediately forward the Notice of Dispute to each Trustee delegate and to a representative of the Responsible Party, and to other involved parties as appropriate (i.e. if the dispute arises over a particular Cooperative Study, the JAT will notify all members of the TWG that developed the Final Study Plan for the associated Cooperative Study). The Parties involved shall attempt to resolve any disputes concerning the implementation of this agreement, or any portion thereof, through good faith, informal negotiations. The period of informal negotiations

shall not exceed fifteen (15) calendar days from the time the JAT received the written Notice of Dispute, unless otherwise agreed in writing between all Parties involved.

C. Formal Resolution

If fifteen (15) calendar days have passed since the JAT received the Notice of Dispute, or a longer period of time if agreed to in writing by all Parties involved, and the dispute remains, each Trustee delegate and the representative of the Responsible Party will elevate the dispute to a senior member (i.e. supervisor, manager, director, senior partner, etc.) of the agency or entity that he/she represents. The senior members will be designated at the time of the dispute. Each senior member may have legal counsel, or any other individual they deem beneficial to the resolution of the dispute, in attendance during discussions of the dispute. If a dispute cannot be resolved at the senior member level within twenty (20) calendar days of the identification of the senior members the matter shall be elevated to the individuals who have executed this MOA. Those individuals shall use best efforts to resolve the dispute within thirty (30) calendar days, or such longer period as agreed to by the Parties.

D. Effect of Dispute Regarding an On-Going Cooperative Study

An unresolved dispute regarding an on-going Cooperative Study or portion thereof, other than a dispute solely regarding costs, has the effect of removing that study or portion thereof from the Cooperative Study category. An unresolved dispute regarding an on-going Cooperative Study or portion thereof does not, however, result in termination of this MOA, or any other Cooperative Study, nor does it relieve the Responsible Party from its obligation to fund said study.

E. Trustees' Decision to Conduct an Independent Study or Develop an Independent Interpretation and/or Conclusion

If the Trustees decide to conduct an Independent Study, to continue a study which was begun as a Cooperative Study as an Independent Study because of an unresolved dispute, or to develop an Independent Interpretation and/or Conclusion from data collected pursuant to a Cooperative Study, the Trustees reserve the right to seek reimbursement from the Responsible Party for the costs of that study, or any portion thereof not paid for by the Responsible Party previously, and the Responsible Party reserves the right to assert challenges, as allowed by law, to the cost of that Independent Study or Independent Interpretation and/or Conclusion.

IX. Payment of Funds

Payment of funds to the Trustees by the Responsible Party shall be made as follows:

A. For the Commonwealth of Massachusetts:

Checks shall be made payable to "the Commonwealth of Massachusetts" and reference "Natural Resource Damages Trust Fund: Account # 2000-6020".

Mailing address:

Office of General Counsel  
Executive Office of Environmental Affairs  
100 Cambridge Street Suite 900  
Boston, MA 02114

Notification of payment shall be sent to:

Dale Young, NRD Program Director  
Executive Office of Environmental Affairs  
100 Cambridge Street Suite 900  
Boston, MA 02114

B. For the State of Rhode Island and Providence Plantations:

Checks shall be made payable to "State of Rhode Island Department of Environmental Management".

Mailing Address:

State of Rhode Island Department of Environmental Management  
c/o Mary E. Kay, Esq.  
Office of Legal Services  
235 Promenade Street  
Providence, RI 02908

Notification of payment shall be sent to:

Mary E. Kay, Esq.  
Deputy Chief Legal Counsel  
Office of Legal Services  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908

C. For the Department of the Interior:

Payment shall be made electronically according to instructions which will be provided to the Responsible Party. If electronic fund transfers are not possible, checks shall be made payable to the Department of Interior. Checks shall reference "Bouchard B. 120 Oil Spill".

Mailing address:

Department of Interior  
NBC/Division of Financial Management Services  
Branch of Accounting Operations  
1849 C Street, NW  
Washington, D.C. 20240

Notification of payment shall be sent to:

Bruce Nessler, Restoration Fund Manager  
Office of Natural Damage Assessment and Restoration  
Mailstop 4449  
1849 C Street, NW  
Washington, D.C. 20240

D. For the National Oceanic and Atmospheric Administration:

Checks shall be made payable to "NOAA, U.S. Department of Commerce" and reference "Bouchard B. 120 Oil Spill".

Checks shall be mailed to:

NOAA/NOA/OR&R  
ATTN: Kathy Salter, DARRF Manager  
1305 East West Highway  
Silver Spring, MD 20910 - 3281

Notification of payment and a copy of the check shall be mailed to:

Gwendolyn A. McCarthy, Esq.  
U.S. Department of Commerce  
NOAA Office of General Counsel for Natural Resources  
One Blackburn Drive  
Gloucester, MA 01930

X. Correspondence and Notification

All correspondence relative to this MOA shall be directed to the following persons on behalf of the Parties:

A. For the Trustees

1. Commonwealth of Massachusetts

Technical Communications:

Dale Young  
NRD Program Director  
Executive Office of Environmental Affairs  
100 Cambridge Street Suite 900  
Boston, MA 02114

Legal Communications:

Kenneth M. Collette, Esq.  
Deputy General Counsel  
Executive Office of Environmental Affairs  
100 Cambridge Street Suite 900  
Boston, MA 02114

2. State of Rhode Island and Providence Plantations

Technical Communications:

Associate Director for Natural Resources  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908

Legal Communications:

Mary E. Kay, Esq.  
Deputy Chief Legal Counsel  
Office of Legal Services  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908

3. Department of the Interior

Technical Communications:

Veronica Varela  
Environmental Contaminants Biologist/  
Natural Resource Damage Assessment and Restoration Specialist  
U.S. Fish and Wildlife Service,  
New England Field Office  
70 Commercial Street Suite 300  
Concord, New Hampshire 03301

Legal Communications:

Mark Barash, Esq.  
U.S. Department of the Interior  
Office of the Solicitor  
One Gateway Center  
Newton Corner, MA 02158

4. National Oceanic and Atmospheric Administration

Technical Communications:

Frank Csulak  
Injury Assessment Coordinator  
NOAA  
Office of Response and Restoration  
Damage Assessment Center  
74 Magruder Road  
Highlands, NJ 07732

Legal Communications:

Gwendolyn A. McCarthy, Esq.  
U.S. Department of Commerce  
NOAA Office of General Counsel  
One Blackburn Drive  
Gloucester, MA 01930



B. For the Responsible Party:

Technical Communications:

Ralph Markarian  
ENTRIX  
10 Corporate Circle Suite 100  
New Castle, DE 19720

Legal Communications:

Austin P. Olney, Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
260 Franklin Street  
Boston, MA 02110

And

Andrew N. Davis, Ph.D., Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
225 Asylum Street, Goodwin Square  
Hartford, CT 06103

XI. Modification of this MOA

Any modifications to this MOA and any attachments hereto must be in writing and executed by all of the Parties.

XII. Duration of this MOA

This agreement is intended to continue in full force and effect until either 1) The completion of the purposes of the MOA or 2) the termination of this MOA pursuant to the following section entitled "Termination of this MOA".

XIII. Termination of this MOA

A. In recognition of the benefits of maintaining a cooperative NRDA, each Party shall use good faith efforts to resolve disputes and follow the dispute resolution procedures, at a minimum, prior to withdrawing from or terminating the MOA. Any Party may terminate their participation in this MOA by giving thirty (30) calendar days written notice to all other Parties. Such written notice shall state the reason for termination and must be signed by a duly authorized official of such Party. The Party's termination of the participation in the MOA shall become effective thirty (30) calendar days from the date

of receipt of the Party's written notice of termination by all the other Parties involved. Termination by one or more of the Trustees shall not terminate this MOA as to the remaining Parties, unless otherwise agreed by the remaining Parties. Termination of this MOA is prospective only. As such, this MOA, including all attachments, agreements, modifications and stipulations contained herein or attached hereto that are or were incorporated prior to the effective date of such termination, shall survive and will remain in full effect.

B. In the event of termination of this MOA, the Responsible Party shall either provide any samples, records or data from Cooperative Studies within its possession or control to the Trustees, upon their request, or continue to comply with the retention procedures specified in the Work Plan pertaining to such samples, data or records.

#### XIV. Access

If any property to which access is needed by the Responsible Party or the Trustees to perform a Cooperative Study is owned or controlled by persons other than the Responsible Party, the Responsible Party will use reasonable efforts to secure from such persons an agreement to provide access to such property for the Parties, as necessary to perform the Cooperative Study. If any access required by the Responsible Party or the Trustees to perform a Cooperative Study cannot be obtained in a time specified by the Trustees, the Responsible Party shall promptly notify the Trustees in writing, and include therein a summary of the steps taken to obtain such access.

#### XV. Indemnification

The Parties agree to continue good faith efforts to discuss and develop indemnification and/or insurance provisions to address potential claims arising from contractor activities for Cooperative Studies. If the Parties are able to reach agreement on such provisions, they agree to amend this MOA as appropriate.

#### XVI. Confidentiality and Publication Restrictions

- A. The Responsible Party may assert business confidentiality claims covering part or all of the documents or information submitted to the Trustees under this MOA to the extent permitted by and in accordance with applicable state law and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by the Trustees will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and applicable state law. If no claim of confidentiality accompanies documents or information when they are submitted to the Trustees, or the Trustees have notified the Responsible Party that the documents or information are not confidential under the standards of applicable state law or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to the Responsible Party.

- B. The Responsible Party may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law as applicable. If the Responsible Party asserts such a privilege in lieu of providing documents, it shall provide the Trustees with the following: 1.) title of the document, record or information; 2.) the date of the document, record or information; 3.) the name and title of the author of the document, record or information; 4.) the name and title of each addressee and recipient; 5.) a description of the content of the document, record or information; and 6.) the privilege asserted by the Responsible Party. However, no documents, records or other information created or generated pursuant to this MOA shall be withheld on the grounds that they are privileged unless allowed by applicable federal or state law.
- C. The Responsible Party shall not assert a claim of confidentiality with respect to any data collected or generated in connection with the work performed under this MOA, including but not limited to, all sampling, analytical, monitoring, hydro-geologic, scientific, chemical, or engineering data or any other documents or information evidencing conditions resulting from the Spill.
- D. Publication

Unless otherwise agreed to by all Parties, or required by judicial process, the Parties, their contractors, agents, consultants, etc. shall be prohibited from publishing any material or information derived from or related to Spill NRDA activities until the conclusion of the assessment and restoration process or until a final settlement of all NRD claims is executed among the Parties. The Trustees, however, reserve their rights to publish information in order to keep the public informed about the Spill and the NRDA activities in accord with Section VI. of this MOA.

## XVII. General Provisions

This agreement in no way affects or relieves the Parties from their responsibility to comply with, nor does it impair the Trustees ability to enforce, any applicable Federal or State law, administrative order, regulation or permit.

### A. Parties Bound

This MOA shall be binding on the Trustees and on the Responsible Party and its officers, directors, agents, successors in interest, representatives and assigns.

### B. No Assumption of Liability by Governmental Entities

The Trustees, the United States, the Commonwealth of Massachusetts, and the State of Rhode Island and Providence Plantations (collectively, the Trustees and/or the Governmental Entities) do not assume any liability by entering into this MOA.

C. Third Party Rights

This MOA is not intended to create any rights or causes of action enforceable by third persons not Parties to this MOA. Nothing in this MOA may be the basis of any third party challenges or appeals.

D. No Agency Relationship

Neither the Responsible Party nor any of its officers, directors, employees, agents, subcontractors, or any persons acting on its behalf or under its control shall be considered an agent of the Trustees or the Governmental Entities.

E. Severability

The terms of this MOA are severable. If any term, covenant or condition of this MOA is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants, and conditions. However, within thirty (30) calendar days after the court's determination that this MOA, or a portion thereof, is invalid, any Party hereto may withdraw from this MOA.

F. Limitation

Nothing in this MOA shall be construed as obligating the United States, the Commonwealth of Massachusetts, and the State of Rhode Island and Providence Plantations, or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

G. Effective Date

This MOA may be executed in one or more counterparts, all of which shall be considered an original. The Effective Date of this MOA shall be the last date of execution of any counterpart hereto.

H. Signatures

Signature on the lines provided below shall constitute acceptance of the terms and conditions of this MOA. The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into this MOA and to bind that Party to it.

Memorandum of Agreement Between the Natural Resource Trustees and Bouchard  
Transportation Co., Inc. Governing Cooperative Natural Resource Damage Assessment and  
Restoration Planning Activities for the Bouchard B. 120 Oil Spill

FOR THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF  
ENVIRONMENTAL AFFAIRS:

By: Stephen R. Pritchard

Stephen R. Pritchard, Secretary  
Executive Office of Environmental Affairs

6/15/06

Date

Memorandum of Agreement  
Between the Natural Resource Trustees and Bouchard Transportation Co., Inc.  
Governing Cooperative Natural Resource Damage Assessment and Restoration Planning  
Activities for the Bouchard B. 120 Oil Spill

FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS:

By:



W. Michael Sullivan, Ph.D.  
Director  
State of Rhode Island and Providence Plantations  
Department of Environmental Management

9/22/06

Date

Memorandum of Agreement Between the Natural Resource Trustees and Bouchard  
Transportation Co., Inc. Governing Cooperative Natural Resource Damage Assessment and  
Restoration Planning Activities for the Bouchard B. 120 Oil Spill

FOR THE U.S. DEPARTMENT OF THE INTERIOR:

By:



Marvin Moriarty  
Director, Region 5  
United States Fish and Wildlife Service

10/10/06

Date



Memorandum of Agreement  
Between the Natural Resource Trustees and Bouchard Transportation Co., Inc.  
Governing Cooperative Natural Resource Damage Assessment and Restoration Planning  
Activities for the Bouchard B. 120 Oil Spill

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

By:



Kenneth Barton  
Acting Director  
Office of Response and Restoration  
National Oceanic and Atmospheric Administration

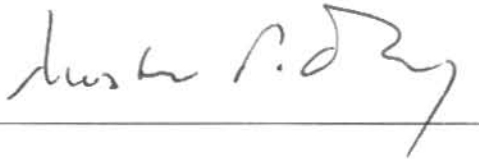


Date

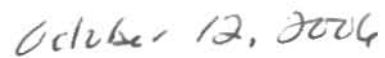
Memorandum of Agreement  
Between the Natural Resource Trustees and Bouchard Transportation Co., Inc.  
Governing Cooperative Natural Resource Damage Assessment and Restoration Planning  
Activities for the Bouchard B. 120 Oil Spill

FOR THE BOUCHARD TRANSPORTATION CO., INC.

By:



Austin P. Olney, Esq.  
LeBoeuf, Lamb, Greene & MacRae LLP  
Its Counsel



Date