MEMORANDUM OF AGREEMENT

Among the

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF THE INTERIOR

and the

STATE OF NORTH CAROLINA

REGARDING NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION ACTIVITIES ARISING FROM RELEASES OF HAZARDOUS SUBSTANCES

from the

WEYERHAEUSER PLYMOUTH MILL
MARTIN COUNTY, NC

NOS Agreement Code: MDA-2006-044/7203

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I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), the U.S. Department of the Interior (DOI) by and through the U.S. Fish & Wildlife Service (FWS) and the Trustees for the State of North Carolina, through the Department of Environmental and Natural Resources (collectively, the Trustees) 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 releases of hazardous substances (Release) from the Weyerhaeuser Company Plymouth Mill (Facility) located in Martin County, North Carolina. By way of this Agreement, the Trustees seek to ensure the coordination and cooperation of the Trustees in addressing their respective natural resource damage and restoration responsibilities arising from Releases from the Facility.

II. AUTHORITY

A. Legal

The Trustees enter into this Agreement in accordance with the natural resource Trustee authorities provided for each Trustee under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9607(f); the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), as amended, 40 C.F.R. Part 300; and the CERCLA Natural Resource Damage Assessments Final Rule, 43 C.F.R. §§ 11.10 *et seq.*; and other applicable Federal or State law.

B. Natural Resource Trustees

In accord with CERCLA Section 107(f), 42 U.S.C. § 9607(f) and Subpart G of the NCP, 40 C.F.R. §§ 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this Agreement:

1. The Director, Office of Response and Restoration, NOAA, as Authorized Official, acting on behalf of the Secretary of Commerce.
2. The Regional Director, U.S. Fish and Wildlife Service Southeast Region, as Authorized Official, acting on behalf of the Secretary of the Department of the Interior.
3. The Secretary, North Carolina Department of Environmental and Natural Resources, as Authorized Official, acting on behalf of the Governor of North Carolina.

III. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

A. "Assessment Costs" means the reasonable costs of determining injury and developing a restoration plan including but not limited to reasonable administrative and legal costs; monitoring and oversight costs; costs associated with public participation; and indirect costs.

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

C. "Lead Administrative Trustee" or "LAT" means the Trustee agency selected by the participating Trustees to coordinate natural resource damage assessment activities and other activities as authorized by the Trustee Council.

D. "Natural Resources" shall have the same meaning as set forth in 43 C.F.R. § 11.14(z).

E. "Natural Resource Damage Assessment" or (NRDA) means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident and determine the restoration actions needed to bring injured natural resources and services back to baseline and to make the environment and public whole for interim losses.

F. "Natural resource damage (s) recovery (ies)" means any award, judgment, settlement or other payment to any of the Trustees which is received or controlled by any of the Trustees as a result of claims for natural resource damages related to the Release, 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 incurred by any of the Trustees.

G. "Potentially Responsible Party" or (PRP) means the Weyerhaeuser Company.

H. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to 42 U.S.C. § 9607(f)(1), and other applicable laws or regulations, including planning, implementation, monitoring, administration and oversight, which serve to restore, rehabilitate, replace, or acquire the equivalent of natural resources or natural resource services and compensate for the interim natural resource lost use or lost services, injured, destroyed or lost as a result of releases of hazardous substances.

I. "Trustee Council" refers to the Trustee Representatives appointed by the Trustees of NOAA, FWS, and North Carolina pursuant to VI. A. to coordinate NRDA and restoration activities arising from the Release.

J. "Trustee Representatives" mean the authorized designees appointed by NOAA, FWS, and North Carolina pursuant to VI. A.

K. "Governments" mean the United States and the State of North Carolina.

IV. PURPOSE and OBJECTIVES

The purpose of this Agreement is to provide a framework for coordination and cooperation among the Trustees to:

A. Ensure timely and efficient implementation of a NRDA to determine resource injuries, including service losses, caused by the Release;

B. Avoid duplication of assessment costs and ensure that assessment costs are reasonable;

C. Seek recoveries for natural resource damage claims, including the claims for the costs of assessment;

D. Develop a Damage Assessment and Restoration Plan (DARP) to restore, rehabilitate, replace or acquire the equivalent of natural resources and/or services injured or lost;

E. Coordinate activities undertaken pursuant to this Agreement with response or corrective actions carried out by federal and state agencies; and

F. Coordinate efforts of the Trustees in litigation, if necessary.

V. FUNDING

A. Use of Funds

Any funds made available to the Trustees by the PRP or other private sources shall be used in accordance with this Agreement, consistent with CERCLA, and as agreed to by the Trustee Council.

B. PRP Funding

The Trustees may enter into an agreement with the PRP in which the PRP agrees to fund and/or conduct NRDA activities. Such agreements shall specify the terms of the activity, monetary disbursement, and PRP participation.

C. Trustee Agency Funds

Each Trustee agrees to coordinate the expenditure of any funds available to a Trustee for NRDA activities, except funds that reimburse damage assessment costs, with the other Trustees. The goal of this provision is to prevent duplication of efforts, ensure optimum coordination among the individual Trustees, and ensure that assessment costs are reasonable.

VI. ALBEMARLE SOUND TRUSTEE COUNCIL

A. Composition

Within ten (10) days of the execution of this Agreement, each Trustee, as specified under Section II, shall designate a Primary Trustee Representative to the Albemarle Sound Trustee Council ("Trustee Council"). Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to make decisions, in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees, change the Primary and Alternate Trustee Representative designees. The Trustees and the U.S. Department of Justice may each appoint an attorney who may attend Trustee Council meetings in a legal/consultative role.

B. Communications

Within ten (10) days of the execution of this Agreement each Trustee shall notify all other Trustees of the names, addresses, e-mail addresses, phone numbers and facsimile numbers of their designated Primary and Alternate Trustee Representatives who shall receive, and shall be responsible for, all correspondence and communications on behalf of such Trustee.

C. Decision making

1. The three agencies represented by the members of the Trustee Council shall have one vote each, and all decisions under this Agreement shall be by unanimous agreement of the Trustees, except where a Trustee has notified the Trustee Council as described in C.2 below.

2. A Trustee may limit its involvement in any component of the NRDA by notifying the Trustee Council in writing, and in a timely manner, of those NRDA activities for which the Trustee would like to limit or end its participation. Should a Trustee limit or end its participation in a NRDA component, the Trustee Council may make decisions relative to that NRDA component without the vote of the Trustee choosing to limit or end its involvement in said component.

D. Dispute Resolution

In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees. If unanimous consent cannot be reached, the Trustees shall each elevate the matter to a senior official for further Trustee agency discussions, decisions or 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 VII. B.

E. Duties and Authority

1. The Trustee Council shall coordinate all Trustee activities and matters under this Agreement regarding the assessment of natural resource damages and resolution of natural resource damages claims arising from the Release.

2. The Trustee Council shall be responsible for all NRDA activities, including but not limited to restoration planning, restoration implementation, and oversight, both prior to and subsequent to, final settlement or judgment of all NRDA claims arising from the Release. Towards that end, the Trustee Council may take the following actions among others:

   a. Designate a Lead Administrative Trustee (LAT) whose duties are defined pursuant to VI. H. below;
   b. 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;
   c. Coordinate activities undertaken pursuant to this Agreement with response, or corrective actions carried out by other federal or state agencies, as appropriate;
   d. Carry out studies, prepare reports, and collect information necessary to support the NRDA;
   e. Develop and/or evaluate a DARP;
   f. Disburse any PRP funding received pursuant to V. B. of this Agreement;
   g. From funds received from the PRP pursuant to V. B., reimburse the reasonable assessment costs incurred by the Trustees including, but not limited to, the costs of administration, management, and oversight, pursuant to the terms of this Agreement;
   h. Receive grants or donations for restoration of natural resources injured from the Release to the extent permitted by applicable law;
   i. Determine which records are appropriate for public review and comment in compliance with relevant laws and regulations;
   j. Establish procedures to avoid duplication of effort among the Trustees and to ensure adequate cost documentation of claims;
   k. Develop reasonable budgets for administration, management, oversight and other costs that each Trustee anticipates incurring for specified time periods, and upon approval, adopt those budgets;
   l. Submit cost documentation records in a timely fashion to the LAT that shall include, as applicable:
      - Labor costs of each employees;
      - Travel and transportation costs, including invoices and receipts;
      - Printing and reproduction costs, including invoices and receipts;
      - Contracts, including invoices and receipts for each billing period;
      - Supplies and materials, including invoices and receipts; and,
      - Overhead including method of calculation;

   m. Consult and coordinate with federal and state agencies and the public, as appropriate;

   n. Develop a modification to this Agreement for implementation of the DARP post settlement; and

o. Take such further actions as may be necessary to further the purposes and achieve the objectives of this Agreement.

F. Records

All records created by the Trustee Council in support of this Agreement (e.g. meeting agendas, meeting minutes, resolutions, etc.) shall be considered "Draft" unless approved as a "Final" record by the Trustee Council.

G. Public Review and Comment

The Trustee Council shall determine what documents should be released for public review and comment, in compliance with relevant law and regulations. The Trustee Council shall determine the media or format and the procedures to be followed in connection with the release of any such documents, including the dates and length of any comment period, in accordance with relevant law and regulations; provided that the Governments each retain the right to release any public record made or received pursuant to this Agreement if required by either the North Carolina Public Records Act, NCGS 132-1 *et seq.* or the Freedom of Information Act, 5 U.S.C. § 552.

H. Lead Administrative Trustee

Unless the Trustees decide otherwise, NOAA will be the LAT under this Agreement. The duties of the LAT include, but are not limited to, the following:

1. Convene Trustee Council meetings and develop and disseminate Trustee Council meeting agendas;

2. Develop and disseminate Trustee Council action items and resolutions;

3. Ensure that Trustees responsible for or overseeing studies provide regular status updates to the Trustee Council;

4. Ensure development and dissemination of budgets to the Trustee Council; and

5. Develop and maintain an Administrative Record.

I. 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.

J. Trustee Council Termination

The Trustee Council created pursuant to this Section shall terminate upon the termination of this Agreement pursuant to Section X. F.

VII. JOINT USE OF NATURAL RESOURCE DAMAGE RECOVERIES

A. Joint Purpose and Overlapping Authorities

The Trustees recognize each other's trusteeship under CERCLA, and other federal and state law, over natural resources affected by the Release, and that the scopes of their respective trusteeships may overlap.

B. Joint Use of Natural Resource Damage Recoveries

The Trustees agree that any natural resource damage recoveries, as defined in Section III. F. 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 Release.

VIII. NEGOTIATIONS WITH PRP

A. Trustee Coordination

The Trustees recognize that their interests in the recovery of claims for natural resource damages are related and agree to use best efforts to coordinate negotiation and, if necessary, litigation of their claims that arise out of the Release.

B. Notification

The Trustees agree to notify, and consult with, each other concerning any action or decision they make that may affect the NRDA process.

C. Independent Negotiations

Should a Trustee determine it needs to enter into independent negotiations, the Trustee shall, to the extent practicable, provide twenty (20) days prior written notice to each of the other Trustees of its intent to participate in negotiations with the PRP or other entity regarding settlement or other disposition of natural resource damages claims arising from the Release. The notifying Trustee shall permit other Trustees to join in these negotiations.

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

The Trustees further agree to provide copies of any agreements or other documents reflecting settlement of natural resource damage claims arising from the Release. If a Trustee refuses to do so, that Trustee shall no longer be a party to this Agreement unless all remaining Trustees agree in writing within ten days (10) of the refusal that the Trustee remains a party.

IX. CONFIDENTIALITY

A. Confidentiality Generally

1. This Agreement reflects the mutual understanding among the Governments with respect to privileges that may be asserted in potential civil enforcement actions, whether administrative or judicial, arising from violations with respect to the Release.

2. The Governments agree that sharing of information by their employees, consultants, agents and counsel furthers their common enforcement goals with respect to the Release.

3. The Trustee representatives will consult with each other in order to resolve claims arising from the Release. The Trustees expect that this consultation could lead to a joint prosecution of claims relating to the Release, should settlement with the PRP not occur.

4. The Trustees agree that all written and oral communications related to any investigations governed by this Agreement, litigation, settlement strategy, or any other matters related to potential judicial or administrative enforcement actions related to the Release are being made in anticipation of litigation.

5. The Trustees do not intend through their consultations to waive any privileges, including, but not limited to, attorney-client and work product privileges, which would attach to any documents or communications shared among the Trustees. The Governments intend that all such privileges shall be preserved, and that privileged information shall be protected from disclosure to the Weyerhaeuser Company or its representatives, or to any third party, except with respect to disclosures agreed to by all Trustees.

6. The Trustees further agree to consult with each other before producing any documents relating to the Release whether such production is made voluntarily, in response to any discovery request, or pursuant to any other law or regulation.

7. The Trustees agree and acknowledge that the common interest privilege and confidentiality established by this Agreement are held jointly by all Governments. No Government is authorized to waive the privilege with respect to any information or documents shared by the Trustees pursuant to this Agreement.

8. The Trustees shall take appropriate measures to ensure that any person who is granted access to any confidential information or documents shared pursuant to this Agreement is subject to the confidentiality provisions.

9. Documents that are determined to be privileged by attorneys representing the Trustees shall be labeled as such and the following header shall be placed on each page of the document:

In addition, all pre-decisional drafts of documents, studies, reports or analyses shall be labeled as "DRAFT" prominently on the first page of such document. A party's failure to identify or label a privileged document shall not constitute a waiver of any applicable privilege.

10. The confidentiality obligations established by this Agreement shall remain in full force and effect, without regard to whether the Agreement is terminated pursuant to X. F. and without regard to whether any asserted claims are terminated by final judgment or settlement.

B. Sharing Information with the Public

The Trustees agree that, to the extent consistent with efficient negotiation and litigation of their claims, public dissemination of final data, studies, or reports related to the NRDA or DARP is in the best interests of the public and the Trustees. Accordingly, final data and studies shall be made available to the public upon request to the extent consistent with the foregoing confidentiality provisions.

C. Compliance with Federal and State Law

In the event that any provision of this Section conflicts with federal or state law, including the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or similar state law, the federal or state law will control.

X. GENERAL PROVISIONS

A. Reservations

The Trustees recognize that each has independent authority under respective Federal or State law to seek restoration of natural resources or payment of natural resource damages. Accordingly, nothing in this Agreement shall constitute:

1. An abrogation or ceding of any Trustee responsibility or authority over natural resources affected by the Release;

2. An admission by the Trustees in any dispute or action between the Trustees or between the Trustees and a third party; or,

3. A waiver of the Trustees of any claims or defenses in any legal action, or of any rights or remedies.

B. Limitation of Authority

No Government is authorized to enter into settlements on behalf of the other Governments and no Government represents another Government in any litigation that may be commenced by the PRP or any other Government.

C. Third Parties

This Agreement shall not vest rights in persons who do not represent the Trustees.

D. Effective Date

This Agreement shall become effective when executed by all of the Trustees. This Agreement may be executed in one or more counterparts, each of which will be considered an original document when copies of signature pages from all parties are attached.

E. Amendment

This Agreement may be amended by agreement of the Trustees. 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 Effective Date until the Trustee Council determines that the restoration plan implemented under this Agreement, or amendments thereto, has been completed, unless the Agreement is terminated earlier or extended later by written consent of all parties.

2. A Trustee may withdraw from the Agreement by notifying the Trustee Council, in writing, and in a timely manner, that the Trustee no longer will be participating in the Trustee Council. If the Trustee seeks to withdraw due to a dispute that Trustee must first attempt to resolve the dispute in accordance with paragraph VI. D. Withdrawal shall be effective thirty (30) days after written notice is provided to all other Trustees.

3. Should any Trustee withdraw from this Agreement, such withdrawal shall not affect the subsequent validity of the Trustee Council or this Agreement among the remaining Trustees. A Trustee that has withdrawn from this Agreement shall have no further obligations under this Agreement except to maintain confidentiality as agreed in Section IX and to account for and return to the Trustees unobligated funds recovered for natural resource damages to develop and implement a DARP and to restore injured natural resources, as mandated by 42 U.S.C. § 9607(f)(1).

G. Anti-deficiency

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

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

Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the Weyerhaeuser Release of Hazardous Substances in the Welch Creek, Roanoke River, and the Albemarle Sound

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Kenneth Barton

6/6/01

Kenneth Barton, Acting Director
Office of Response and Restoration
National Oceanic and Atmospheric Administration
Authorized Official for NOAA

Date

Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the Weyerhaeuser Release of Hazardous Substances in Welch Creek, Roanoke River, and the Albemarle Sound

FOR THE DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE

_____ 7/5/06

Sam Hamilton, Regional Director **Date**
Southeast Region
U.S. Fish and Wildlife Service
Authorized Official for the U.S. Department of the Interior

Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the Weyerhaeuser Release of Hazardous Substances in Welch Creek, Roanoke River, and the Albemarle Sound

FOR THE STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

William G. Ross, Jr.

April 3, 2006

William G. Ross, Jr., Secretary
North Carolina Department of Environment & Natural Resources
Authorized Official for the State of North Carolina

Date