

Memorandum of Agreement
Among the United States Department of the Interior,
the National Oceanic and Atmospheric Administration,
the Alaska Department of Fish and Game,
the State of Alaska Department of Law and,
the State of Alaska Department of Natural Resources,
in Consultation with the Qawalangin Tribe

SECTION I. INTRODUCTION

This Memorandum of Agreement ("MOA") is entered into by and among the United States Fish and Wildlife Service, in consultation with the Bureau of Indian Affairs, on behalf of the United States Department of the Interior, and the National Oceanic and Atmospheric Administration on behalf of the United States Department of Commerce, all on behalf of the United States of America; and the State of Alaska Department of Fish and Game, the State of Alaska Department of Law, and the State of Alaska Department of Natural Resources, all on behalf of the State of Alaska. These governmental entities acting on behalf of the public as Natural Resource Trustees, collectively referred to as "Trustees", have entered into this agreement, in consultation with the Qawalangin Tribe, in recognition of their common interest in the restoration, rehabilitation or acquisition of the equivalent of natural resources and associated services which have been injured, destroyed or lost as a result of the grounding of the M/V Kuroshima on November 26, 1997 and the subsequent discharge and substantial threat of the discharge of oil into Summer Bay, Unalaska Island, Alaska and surrounding areas (hereinafter referred to as the "Incident").

SECTION II. AUTHORITY

The Trustees enter into this Agreement in accordance with the authorities provided under section 1006 (a) - (g) of the Oil Pollution Act of 1990 ("OPA"), 33 U.S.C. Section 2706 (a) - (g); and other applicable Federal law, and Alaska 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, Subpart G, Executive Order 12580, and the Oil Pollution Act Natural Resource Damage Assessments Final Rule, 15 C.F.R. Part 990, 61 F.R. 440 (January 6, 1996.)

SECTION III. PURPOSE

Natural resources for which the Trustees have trust responsibility were injured as a result of the release of oil during the Incident. The Trustees, in consultation with the Qawalangin Tribe, have developed a Restoration Plan and Environmental Assessment ("Plan") to restore these injured natural resources and/or compensate for the interim loss of natural resources and services provided

by these natural resources pending restoration or recovery of injured natural resources as authorized by law.

The Trustees recognize that they have shared, common or overlapping authority for the natural resources affected by the Incident. This MOA is intended to provide a framework for continued coordination among the Trustees during the implementation of this Plan in furtherance of the Trustees' natural resource trustee responsibilities under OPA and other applicable federal and state statutory and common law. The Trustees intend to continue consultation with the Qawalangin Tribe during the implementation of this Plan.

The Trustees agree to fairly allocate the efforts, costs and expenses of carrying out the objectives of this MOA to the extent authorized by law.

SECTION IV. OIL SPILL TRUSTEE COUNCIL

The Kuroshima Natural Resource Trustee Council ("Trustee Council") is established and will be the forum through which the Trustees, in consultation with the Qawalangin Tribe, will coordinate their efforts during implementation of the Plan. The Trustees support the preferred alternatives defined in the Plan which the Trustees intend to implement. The Trustee Council shall operate as follows:

a. Composition.

The Trustee Council shall consist of one member and one alternate from each of the Trustees. To further government-to-government consultation, the Qawalangin Tribe shall be a non-voting member of the Trustee Council. Within ten business days following the effective date of this MOA, each Trustee and the Qawalangin Tribe will notify one another of the names, addresses, e-mail addresses, telephone numbers, and facsimile numbers of their representative (Council Representative) and an alternate Council Representative to the Council. The Council Representative and the alternate Council Representative may attend Council meetings. At the meetings, the Council Representatives may invite their respective staff, including legal counsel, to attend. In the interest of efficiency, Council Representatives should use their discretion to determine necessary staffing for meetings.

b. Decision Making.

Council decisions shall be reached by unanimous approval. Unanimous approval means an affirmative vote by each voting Council Representative or an affirmative vote by four of the five voting Council Representatives with one abstention. The Council will conduct good faith discussions directed toward obtaining unanimous approval. In the event that unanimous approval can not be reached, at the request of any voting Council Representative, a written presentation of the matter in dispute shall be forwarded to progressively higher level officials of the respective voting Council representatives for resolution. The Council Representatives may adopt further procedures for dispute resolution.

The Council may seek advisory participation from other federal, state or local agencies.

Decisions of the Council shall be recorded in writing, either by resolution signed by the voting Council Representatives, or in minutes approved as to content and form by the voting Council Representatives. The budget and other documents describing the work to be conducted will be attached to the resolution and maintained in the administrative record.

c. Duties and Authority

The Council, to the extent authorized by law, shall coordinate and authorize all activities and matters undertaken to implement the Plan. These activities may include, in accordance with applicable law, arranging contracts with professional consultants that the Trustee Council determines are necessary.

d. Lead Administrative Trustee

For purposes of facilitating the exchange of information and the coordination of activities among the Council Representatives, NOAA will be designated the Lead Administrative Trustee ("LAT"). The LAT will be responsible for coordinating the activities of the Council during the implementation of the Plan. The LAT may delegate any of its duties to another voting Council Representative with the unanimous approval of the voting Council Representatives.

e. Trustee Council Decisions by Proxy

A voting Council Representative may vote by proxy when both the primary and the alternative voting Council Representatives are unavailable for a meeting of the Trustee Council. The proxy must be in writing, delineating voting instructions for a specific resolution(s), and signed by the voting Council Representative. The proxy will be sent to the LAT prior to the meeting for which the proxy is intended. A copy of the proxy will be attached to any written resolution(s). The original proxy will be retained by the LAT for inclusion in the administrative record. A separate proxy is required for each meeting which a voting Council Representative can not attend. Should an issue arise at a Trustee Council meeting which is not covered by the proxy, the Trustee Council cannot vote on that issue at that meeting.

f. Telephone Participation

A Trustee Council meeting may be convened by a telephone conference call. Council Representative(s) may participate in Trustee Council meetings by telephone conference.

g. Termination of MOA

The Trustee Council created pursuant to this Section shall terminate upon the termination of the MOA as provided in Section VII (e).

SECTION V. FUNDS RECOVERED

a. State and Federal Trusteeships. The Trustees recognize that they have shared, common, or overlapping authority for the natural resources affected by the Incident.

b. Joint Use of Natural Resource Damage Recoveries. The Trustees recognize that their coordinated efforts will result in the recovery of funds for the purpose of restoring natural resources and /or natural resource services injured, destroyed, or lost as a result of the Incident. The Trustees, in consultation with the Qawalangin Tribe, agree that all natural resource damage recoveries obtained or received by the Trustees, and any interest earned thereon, shall be used solely for the design, permitting, implementation and monitoring of restoration projects as defined in V.c . In accordance with the consent decree filed in the United States District Court, Alaska District case number A02-0057 CV ("Consent Decree"), funds received for restoration purposes ("Funds") shall be maintained in an interest-bearing segregated account ("The Kuroshima Summer Bay Account") in the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund (NRDAR Fund). The Trustee Council shall, by resolutions, provide specific instructions to the NRDAR Fund Manager on distributing the Funds to the Trustees. Such resolutions require the signature of each of the voting Council Representatives to ensure that all of the voting Council Representatives concur on the release of the Funds. If voting Council Representatives abstain, their signature will not be required. The Trustees, in consultation with the Qawalangin Tribe, agree that recoveries in the form of reimbursement of designated Trustee assessment costs may be received directly by each Trustee into appropriate accounts.

The Trustees shall return any unused Funds from any of the projects, should a project either be cancelled or cost less than the amount provided for in the budget. The returned Funds shall be sent to the NRDAR Fund where they will be reinvested until receiving further instructions from the Trustee Council regarding the proper distribution of these monies for restoration purposes. In the event there are unused Funds after the Trustee Council completes restoration, the unused Funds will be put into the Oil Spill Liability Trust Fund.

c. Expenditure of Funds. The expenditure of Funds recovered from the parties responsible for the Incident shall be pursuant to the terms of the Consent Decree settling all natural resource damage claims arising from the Incident. The Consent Decree provides for payment by the Responsible Party of \$644,017.00 to the Trustees for deposit in the NRDAR fund and \$9000.00 for deposit into the registry of the United States District of Alaska. The Trustees, in consultation with the Qawalangin Tribe, agree that NOAA will be reimbursed from the NRDAR Fund for \$89,340.04 in costs expended in the implementation of the 2001 fish weir. The remaining Funds recovered, and any interest thereon, shall be distributed and used by the Trustees in accordance with the Plan in the following manner:

- i. the restoration of native birds by removing introduced foxes on Avatanak Island, in accordance with Section 5.2.2 of the Plan.
- ii. the monitoring of injured vegetation, in accordance with Section 5.3.2 of the Plan.
- iii. on-site planting of vegetation, in accordance with Section 5.3.3 of the Plan.

- iv. the monitoring of shellfish contamination, in accordance with Section 5.4.2 of the Plan.
- v. a seafood safety education project, in accordance with Section 5.4.3 of the Plan.
- vi. on-site riparian habitat improvement, in accordance with Section 5.5.3 of the Plan.
- vii. salmon enumeration and limnological sampling, in accordance with Section 5.5.4 of the Plan.
- viii. on-site sediment control and road improvements along Summer Bay Lake, in accordance with Section 5.5.2 of the Plan.
- ix. the procurement of tent platforms, weather ports, potable water, and sanitation facilities for public and camp use, in accordance with Section 5.6.2 of the Plan.
- x. the development of an environmental education curriculum, in accordance with Section 5.6.3 of the Plan.
- xi. shoreline maintenance, in accordance with Section 5.6.4 of the Plan.

Should any of these projects need to be cancelled or revised, the Trustees, in consultation with the Qawalangin Tribe, will undertake additional restoration planning to ensure all natural resource damage recoveries are properly expended for restoration purposes.

SECTION VI. CONFIDENTIALITY AND THE ASSESSMENT RECORD

Scientific data collected by the Trustees for purposes of preassessment activities, natural resource damage assessment or restoration of injured natural resources or services resulting from the Incident is joint work product prepared in anticipation of litigation. The Trustees, in consultation with the Qawalangin Tribe, nevertheless, agree that it is in the public interest that the aforesaid scientific data be made public as soon as its release or inclusion in the administrative record of the assessment will not prejudice pending or anticipated litigation. The Trustees, in consultation with the Qawalangin Tribe, agree that the documents identified in the administrative record for the Plan should be released for public review and are not privileged documents or communications.

The transmittal of a document privileged under state or federal law to, or a communication privileged under state or federal law between or among any of the Trustees, including their counsel, representatives, contractors and consultants, does not waive, or imply waiver, of any privilege or right which the transmitting government may assert with respect to that document or communication.

The Trustees shall each be entitled to assert any applicable privilege with respect to any document or communication jointly transmitted, prepared, or funded by the Trustees to the extent allowed by law. Any Trustee shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared or funded solely by that Trustee.

If a subpoena, discovery request, public records request, Freedom of Information Act request, or other request in any form, for a privileged document or information is received by any Trustee, a copy of the subpoena or request will be promptly forwarded to the Trustees. The Trustee that receives such a request shall make a good faith effort to consult with the other Trustees, and provide notice of its intended response, in advance of responding to a subpoena or request.

Prior to execution of the Consent Decree by a judge for the United States District Court, disclosure of a privileged document or communication to an entity not a party to this MOA shall only be pursuant to authorization by the United States Department of Justice and the Alaska Department of Law unless disclosure is otherwise required by law. Following execution of the Consent Decree by a judge for the United States District Court, disclosure of a privileged document or communication to an entity not a party to this MOA shall only be pursuant to unanimous approval of the voting Council Representatives unless disclosure is otherwise required by law.

Designated privileged documents shall be maintained in a manner to insure that no intentional or unintentional disclosure is made which would compromise any asserted privilege.

SECTION VII. GENERAL PROVISIONS

a. Reservation of Rights. Except for the provisions relating to confidentiality contained in Section VI and the provisions relating to the use of Funds in Section V, this MOA does not create any further legal rights or obligations among the Trustees or the Qawalangin Tribe, or any other persons or entities not a party to this MOA. Nothing in this MOA shall imply that any Trustee is in any way abrogating or ceding any responsibilities or authority inherent in its control or trusteeship over natural resources.

b. Third Parties. This MOA is not intended to, nor shall it, vest rights in persons who are not parties to this MOA.

c. Effective Date. This MOA shall be effective when executed by all of the Trustees and the Qawalangin Tribe. This MOA can be executed in one or more counterparts, each of which will be considered an original document. A copy with all original executed signature pages affixed shall constitute the original MOA and shall be maintained by the LAT.

d. Amendment. This MOA may be amended by unanimous approval of the voting Council Representatives if it is determined that an amendment is necessary to accomplish the objectives of this MOA, or it is necessary to modify the objectives of this MOA consistent with the requirements of the Oil Pollution Act of 1990 and/or other applicable Federal or state law. Any amendment shall be effective only if it is in writing and executed by the voting Council Representatives, in consultation with the Qawalangin Tribe.

e. Termination. This MOA shall remain in effect until it is terminated by unanimous approval of the voting Council Representatives in consultation with the Qawalangin Tribe. The voting Council Representatives may terminate the MOA upon a written finding that restoration of natural resource injuries and services lost due to the Incident has been completed to the extent reasonably possible, and that no further purpose is served by continuing the MOA in force and effect.

f. Withdrawal. Any Council Representative may withdraw from this MOA. In the event any Council Representative withdraws from this MOA, it must provide 20 days written notice to the other Council Representatives before the withdrawal is effective. In the event of such withdrawal, this MOA remains in effect for the remaining Council Representatives.

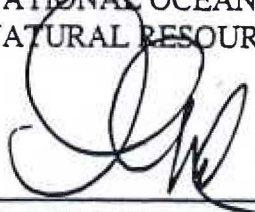
g. Antideficiency. Nothing in this MOA shall be construed as obligating the United States, the State of Alaska, the Qawalangin Tribe, their agents or employees, to expend any funds in excess of appropriations or other agreements authorized by law.

h. Accounting. In the event of the withdrawal of any voting Council Representative, or upon termination of this MOA, there shall be a full and complete accounting by the NRDAR Fund Manager and the LAT of all Funds received and expended pursuant to Section V of this MOA.

VIII. SIGNATURES


Each of the undersigned representatives of NOAA, the United States Fish and Wildlife Service, the Alaska Department of Fish and Game, the Alaska Department of Natural Resources, the Alaska Department of Law, and the Qawalangin Tribe certifies that he or she is fully authorized to enter into this MOA for the entity which he or she represents.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)
NATURAL RESOURCE TRUSTEE AUTHORIZED OFFICIAL



Craig R. O'Connor
Acting General Counsel, NOAA

UNITED STATES DEPARTMENT OF THE INTERIOR
NATURAL RESOURCE TRUSTEE AUTHORIZED OFFICIAL


David B. Allen
Regional Director, Region 7
U.S. Fish and Wildlife Service

STATE OF ALASKA DEPARTMENT OF FISH AND GAME

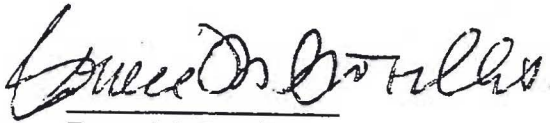
Frank Rue 6.13.02

Frank Rue

Commissioner


Alaska Department of Fish and Game

STATE OF ALASKA DEPARTMENT OF LAW

A handwritten signature in black ink, appearing to read "Bruce M. Botelho", written over a horizontal line.

Bruce M. Botelho
Attorney General

STATE OF ALASKA DEPARTMENT OF NATURAL RESOURCES



Pat Pourchot
Commissioner
Alaska Department of Natural Resources

QAWALANGIN TRIBE

QAWALANGIN TRIBE

Samit Bertog Pres.

Qawalangin Tribe