

## MEMORANDUM OF AGREEMENT

### AMONG THE

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION,  
TEXAS PARKS AND WILDLIFE DEPARTMENT,  
TEXAS GENERAL LAND OFFICE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,  
AND  
UNITED STATES DEPARTMENT OF THE INTERIOR

### I. INTRODUCTION

This Memorandum of Agreement (MOA) by and between the Texas Natural Resource Conservation Commission (TNRCC), Texas Parks and Wildlife Department (TPWD), Texas General Land Office (TGLO), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), and the United States Department of the Interior (DOI) (collectively referred to as the Trustees) is entered into by the Trustees in recognition of their common interests and responsibilities as trustees of natural resources on the public's behalf and to ensure the coordination and cooperation of the Trustees in applying \$1,312,962.24 in natural resources damages jointly recovered from the parties responsible for the July 28, 1990 oil spill into Galveston Bay, Texas, including any interest which may accrue thereon pending use, toward costs associated with the restoration, replacement, rehabilitation, or acquisition of the equivalent of the natural resources or resource services which were injured, destroyed or lost as a result of that spill. Such funds were obtained in settlement of the Trustees' joint claim for natural resource damages asserted in *Golnoy Barge Company et al. v. M/T SHINOUSSA, et al.*, Civil Nos. 90-2414, -2476, -2488 and 91-180 (S.D. TX) pursuant to a Joint Stipulation and Final Judgement entered on October 26, 1994.

### II. PARTIES

The following officials, or their designees, are Parties to this MOA and act on behalf of the public as Trustees for natural resources under this MOA:

1. The Executive Director of the Texas Natural Resource Conservation Commission,
2. The Executive Director of the Texas Parks and Wildlife Department,
3. The Commissioner of the Texas General Land Office,
4. The Undersecretary and Administrator, National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce, and
5. The Secretary of the Department of the Interior.

### III. AUTHORITY

The Trustees enter into this MOA in accordance with the natural resource trustee authorities provided for each Trustee by the Natural Resource Damage Assessment Regulations, 43 C.F.R. Part 11, Subpart F, the Texas Oil Spill Prevention and Response Act, and other applicable State and Federal laws.

### IV. PURPOSE AND SCOPE

This MOA is intended to guide and provide a framework for cooperation and coordination among the Trustees, consistent with their duties and responsibilities as trustees, in the use of recovered damages to plan and implement actions appropriate to restore, replace, rehabilitate or acquire the equivalent of natural resources or resource services injured, lost or destroyed as a result of the July 28, 1990 oil spill in Galveston Bay. The scope of the injuries or losses to natural resources or resource services which are appropriate for consideration by the Trustees in the course of such restoration planning are as described in the Trustees' Pre-Assessment Screen and the Draft Damage Assessment Plan, as amended, prepared for this incident.

### V. STATEMENT OF OBJECTIVES

The Trustees are agreed that the amount of \$1,312,962.24 recovered by the Trustees for the July 28, 1990 discharge of oil into Galveston Bay, plus any interest accruing thereon, shall be used for the benefit of natural resources or resource services injured, destroyed or lost as a result of that discharge and that such benefits will accrue as the result of actions to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured or lost as a result of that discharge. In accomplishing this shared objective, the Trustees will coordinate with one another to:

- A. Develop and implement a Restoration Plan in an expeditious and efficient manner;
- B. Provide an appropriate opportunity for public review of the Draft Restoration Plan and to consider public comments received on such Plan before the Restoration Plan is adopted by the Trustees;
- C. Consistent with the terms of this MOA, provide for expenditures of settlement funds as necessary or appropriate to develop or implement the Restoration Plan; and
- D. Minimize Trustee administrative costs associated with development of the Restoration Plan and implementation of the projects selected thereunder.

## VI. NATURAL RESOURCES TRUSTEE RESTORATION COUNCIL

A. Organization. The Trustees hereby establish the Galveston Bay/Apex Barges Oil Spill Natural Resources Trustee Restoration Council (the Council) to implement this MOA. The Council shall be comprised of one representative of each State and Federal Trustee. The Trustee Council may create subcommittees when they are deemed necessary to effect the purposes of the MOA. The Trustee Council may seek advisory participation from the United States Department of Justice, the Texas Attorney General, or other agencies, when necessary or appropriate.

B. Designation of Council Members. Each Trustee hereby respectively designates the following person(s) as their representative on the Council:

1. For TNRCC: Richard Seiler  
Texas Natural Resource Conservation Commission  
Pollution Cleanup Division, MC142  
P.O. Box 13087  
Austin, Texas 78711-3087

Street Address      Technical Park Center  
12100 Park 35 Circle, MC142  
Austin, Texas 78753

Phone: (512) 239-2523

Fax: (512) 239-2527

2. For TPWD: Don Pitts  
Texas Parks and Wildlife Department  
Resource Protection Division  
4200 Smith School Road  
Austin, Texas 78744

Phone: (512) 389-4640

Fax: (512) 389-4394

3. For TGLO: Diane Hyatt  
Texas General Land Office  
Oil Spill Prevention and Response Division  
Stephen F. Austin Building  
1700 North Congress Avenue  
Austin, Texas 78701-1495

Phone: (512) 475-1395

Fax: (512) 475-1560

4. For NOAA: Dr. Thomas Minello  
NMFS/SEFC Galveston Lab  
4700 Avenue U  
Galveston, Texas 77551

Phone: (409) 766-3506 (alternate -3500)  
Fax: (409) 766-3520 (alternate -3508)

5. For DOI: Allan Strand  
U.S. Fish and Wildlife Service  
17629 El Camino Real, Suite 211  
Houston, Texas 77058

Phone: (713) 286-8282  
Fax: (713) 488-5882

C. Alternate Representative. To insure continuity in the Council's work, each Trustee shall designate an alternate representative to the Council and shall notify each of the other Trustees' designated representatives of the alternate's name, address, telephone and facsimile numbers within fourteen (14) days of the execution of this Agreement.

D. Changing Representatives. A Trustee may change its designated or alternate Council representative by providing notice to each of the other Trustees' designates to the Council. In the event a Trustee's designated representative can no longer serve in that capacity, the Trustees must designate a new Council representative within fourteen (14) days from the date the need presents itself.

E. Communications. All correspondence and communications to or between the Trustees pertaining to activities which are subject to coordination and cooperation under this Agreement shall be sent to the primary representative of each Trustee designated herein.

F. Duties and Responsibilities. The Trustee Council shall coordinate all Trustee activities and matters within the scope of this MOA. Actions to be taken or authorized by the Trustee Council in implementing this MOA will include but are not limited to:

1. Overseeing the development and the implementation of a plan (Restoration Plan) for the restoration, replacement, rehabilitation, and/or acquisition of the equivalent of natural resources or resource services injured, destroyed or lost as a result of the identified July 28, 1990 discharge of oil into Galveston Bay;
2. Coordinating Trustee decision making, planning, and project contracting and implementation to ensure such actions are conducted in accordance with applicable administrative procedures and/or legal requirements (e. g., National

Environmental Policy Act, State/Federal permitting requirements);

3. Making decisions and taking actions as are necessary to manage, administer and/or oversee projects being developed or implemented with settlement funds;
4. Designate a Lead Administrative Trustee. The duties for the Lead Administrative Trustee include the following:
  - a. scheduling of meetings of the Trustee Council and preparation of agendas for those meetings and recording of actions taken at those meetings;
  - b. acting as the central contact for the Trustee Council;
  - c. maintenance of records and documents received or generated by the Trustee Council;
  - d. prepare, issue or arrange for public notices or reports as determined to be necessary by the Trustee Council;
  - f. maintain records of fund expenditures and receipts related to this incident;
  - g. such other duties as are agreed upon by the Trustee Council which do not give the Lead Administrative Trustee decision making rights beyond those normally held by all Trustees.
5. Establishing protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of damages, or interest thereon, from the Galveston Bay Oil Spill Trust Fund as discussed in Section VII; and
6. Taking such other actions as the Trustee Council determines are necessary or appropriate to implement this MOA, including to fulfill responsibilities of the Trustees under applicable State or Federal laws.

G. Decision making. All decisions by the Trustee Council implementing this MOA shall be by consensus. In the event that unanimous agreement cannot be reached among the members of the Trustee Council, the matter in dispute will be elevated to the Authorized Officials for resolution. If necessary, the Trustees may establish further mechanisms by which disputes may be resolved. The Trustees further agree that, while recognizing the areas of expertise and authority of the Trustees, decision making deliberations will focus on the Trustees' mutual purpose of restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources. Trustee administrative costs associated with dispute resolution will not be reimbursable from settlement funds.

## VII. FUNDS

A. Galveston Bay Oil Spill Trust Fund. The \$1,312,962.24 in natural resources damages jointly recovered by the Trustees for the July 28, 1990 Galveston Bay/Apex Barges Oil Spill has been deposited into the Galveston Bay Oil Spill Trust Fund, an account established with the Registry of the Court, Southern District of Texas, on behalf of the Trustees. The account will serve as a repository for these funds pending joint decisions regarding the use of these funds by the Trustees.

B. Use of Funds. The Trustees recognize and agree that funds in the Galveston Bay Oil Spill Trust Fund may be used by the Trustees only to plan and implement appropriate actions to restore, replace, rehabilitate, and/or acquire the equivalent of natural resources or resource services injured, destroyed or lost as a result of the July 28, 1990 discharge of oil into Galveston Bay. Such uses will include Trustee administrative costs or expenses in coordinating and effecting the development or implementation of the Restoration Plan in accordance with this MOA. However, the Trustees agree that the total amount of expenditures from the Fund for such administrative costs may not exceed \$100,000.00. Trustee administrative costs or expenses include, but are not limited to costs, both direct and indirect, associated with preparation or review of documents pertinent to the development or implementation of the Restoration Plan, administration, management or oversight of contracts or projects, and travel. Disbursement of all funds from the Fund will be by unanimous written agreement of all Trustee Council members.

C. Procedures Relating to Use or Access to Funds. The Trustee Council, in accordance with the decision making process identified in Section VI, shall identify protocols, standards, procedures, budgets, or other directions as necessary to support access to or the use of damages, or interest thereon, to effectuate the purposes of this MOA.

## VIII. RESERVATION OF RIGHTS

Each Trustee has and reserves the right to take whatever actions necessary to pursue and/or to preserve any legal remedies available to that Trustee, and nothing in this MOA is intended to waive or foreclose any such right. Except as to matters in or relating to this MOA, the Trustees agree that this MOA may not be used by one Trustee against another for any reason. The Trustees further agree that declaratory relief and injunctive relief are to be the exclusive remedies requested by any Trustee from the court for any claim of breach of this MOA and that neither monetary damages nor attorneys' fees shall be available as a remedy against any Trustee in any such proceeding.

Each Trustee reserves the right to intervene or otherwise to participate in any legal proceeding concerning the contentions of a third party with respect to the scope of the other Trustees' trusteeship and each Trustee waives any objection to such intervention or

participation by the other Trustee.

#### IX. MODIFICATION OF AGREEMENT

A. This MOA may be amended by agreement of the Trustees where the Trustees determine an amendment is necessary to accomplish the objectives of this MOA consistent with the requirements of applicable law.

B. Any modification of this MOA shall be in writing, executed by all the Trustees.

#### X. TERMINATION

A. This MOA shall be in effect from the date of its execution until the completed development and implementation of the Restoration Plan. At any time prior to the occurrence of either of the above events, should all the Trustees agree that the purposes underlying this MOA have been addressed, the MOA will terminate upon such a finding.

B. In the event any Trustee withdraws from the MOA, such withdrawal must be in writing at least thirty (30) days in advance of the withdrawal. In the event of such withdrawal, this MOA remains in full force and effect for the remaining Trustees.

#### XI. LIMITATION

Nothing in this MOA shall be construed as obligating the United States, the State of Texas, or any public agency, their officers, agents, or employees, to expend any funds in excess of appropriations authorized by law.

#### XII. THIRD PARTY CHALLENGES OR APPEALS

The rights and responsibilities contained in this MOA are subject to the availability of funding and are intended to be guidance for the respective Trustees. They may not be the basis of any third party challenges or appeals.

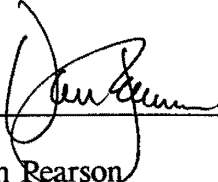
#### XIII. NONDISCRIMINATION

During the performance of this MOA, the parties will not discriminate against any person because of race, color, religion, sex or national origin.

#### XIV. EXECUTION: EFFECTIVE DATE

This MOA may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOA. The date of execution shall be the date of the final Trustee's signature.

The Trustee Authorized Officials hereto have signed this MOA on the date appearing under their signatures.



---

Dan Pearson  
Executive Director  
Texas Natural Resource  
Conservation Commission

Date 3-30-95

---

Andrew Sansom  
Executive Director  
Texas Parks and Wildlife  
Department

Date \_\_\_\_\_

---

Garry Mauro  
Commissioner  
Texas General Land Office

Date \_\_\_\_\_

---



The Trustee Authorized Officials hereto have signed this MOA on the date appearing under their signatures.

---

Dan Pearson  
Executive Director  
Texas Natural Resource  
Conservation Commission

Date \_\_\_\_\_

A handwritten signature in black ink, reading "Andrew Sansom", written over a horizontal line. The signature is cursive and extends to the right of the line.

Andrew Sansom  
Executive Director  
Texas Parks and Wildlife  
Department

Date March 28, 1995

---

Garry Mauro  
Commissioner  
Texas General Land Office

Date \_\_\_\_\_

---

The Trustee Authorized Officials hereto have signed this MOA on the date appearing under their signatures.

---

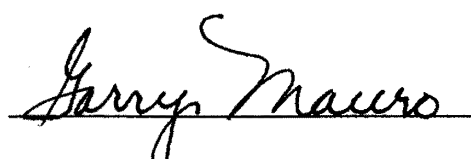
Dan Pearson  
Executive Director  
Texas Natural Resource  
Conservation Commission

Date \_\_\_\_\_

---

Andrew Sansom  
Executive Director  
Texas Parks and Wildlife  
Department


Date \_\_\_\_\_



---

Garry Mauro  
Commissioner  
Texas General Land Office

Date \_\_\_\_\_



Willie R. Taylor, Director  
U.S. Department of the Interior  
Office of Environmental  
Policy and Compliance

Date 4/21/95

---

Rolland A. Schmitten  
Assistant Administrator for Fisheries  
U.S. Department of Commerce  
National Oceanic and Atmospheric  
Administration  
National Marine Fisheries Service

Date \_\_\_\_\_

---

Willie R. Taylor, Director  
U.S. Department of the Interior  
Office of Environmental  
Policy and Compliance

Date \_\_\_\_\_

C. Ehler

Charles N. Ehler, Director  
Ocean Resources Conservation and Assessment  
National Ocean Service  
National Oceanic and Atmospheric  
Administration  
U.S. Department of Commerce  
Authorized Official

Date 6/16/95