

MEMORANDUM OF AGREEMENT

AMONG THE

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION,
TEXAS PARKS AND WILDLIFE DEPARTMENT,
TEXAS GENERAL LAND OFFICE,
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), 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 and National Park System resources on the public's behalf and to ensure the coordination and cooperation of the Trustees in applying \$1,568,077.00 in damages jointly recovered from the parties responsible for the February 5, 1995 oil discharge into the Gulf of Mexico off Galveston, Texas, including any interest which may accrue thereon pending use, toward the restoration, replacement, rehabilitation, or acquisition of the equivalent of the natural and National Park System resources or resource services which were injured, destroyed or lost as a result of that spill.

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, and
4. 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 Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq., the Park System Resource Protection Act, 16 U.S.C. 19jj, 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 and National Park System resources or resource services injured, lost or destroyed as a result of the February 5, 1995 oil discharge into the Gulf of Mexico.

V. STATEMENT OF OBJECTIVES

The Trustees are agreed that the amount of \$1,568,077.00 recovered by the Trustees for the February 5, 1995 discharge of oil into the Gulf of Mexico, plus any interest accruing thereon, shall be used for the benefit of natural resources and the services they provide that were injured, destroyed or lost as a result of that discharge. 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 Skaubay Oil Discharge 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 State Attorney General, or other agency, 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
Remediation Division, MC 142
P.O. Box 13087
Austin, Texas 78711-3087

Street Address Technical Park Center
12118 N. IH 35
Austin, Texas 78753

Phone: (512) 239-2523
Fax: (512) 239-4814

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) 463-5367

4. For DOI: Ken McMullen
Padre Island National Seashore
National Park Service
P.O. Box 181300
Corpus Christi, Texas 78480-1300

20301 Park Road 22
Corpus Christi, Texas 78418

Phone: (361) 949-8173 ext. 227
Fax: (361) 949-8023

Allan Strand
U.S. Fish & Wildlife Service
C/O CAMU-CC
Campus Box 338
6300 Ocean Drive
Corpus Christi, TX 78412

Phone: (512) 994-9005
Fax: (512) 994-8262

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 and National Park System resources or resource services injured, destroyed or lost as a result of the identified February 5, 1995 discharge of oil into the Gulf of Mexico;
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 Trustee accounts 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 Trustees 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. The \$1,568,077.00 in natural resource damages jointly recovered by the Trustees for the February 5, 1995 Skaubay oil discharge will be deposited into a Court Registry Account established by the Clerk of the United States District Court for the Southern District of Texas -- Houston Division -- on behalf of the Trustees. After this money is deposited into the Court

Registry Account, DOI may transfer \$285,102.00 that will be used to fund projects to compensate for injuries at Padre Island National Seashore to the Department of the Interior Restoration fund (hereinafter the "Restoration Fund"). The Superintendent of Padre Island National Seashore will propose projects to be undertaken with these funds to compensate for injuries at Padre Island National Seashore. The Trustees will review these projects and incorporate them into their Restoration Plan if appropriate. Both the Court Registry Account and the Restoration Fund (hereinafter the "Trustee accounts") will serve as a repository for funds pending joint decisions regarding the use of these funds by the Trustees.

B. Use of Funds. The Trustees recognize and agree that the recovered funds 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 February 5, 1995 discharge of oil into the Gulf of Mexico. 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 for that purpose should not exceed \$155,000.00. However, interest accrued on this amount may be used for Trustee administrative costs upon consensus of the Trustee Council. Trustee administrative costs or expenses includes, but is 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. The Trustees also agree that at least \$122,082.00 should be used to fund projects to restore injured migratory birds and their habitats; at least \$115,000.00 should be used for dune reconstruction on Texas State Beaches; at least \$14,292.00 should be used to compensate for lost ecological services related to the dunes on Padre Island National Seashore; at least \$25,000.00 should be used to compensate for excess wear at the paved parking lots used by heavy response equipment at Padre Island National Seashore; at least \$40,044.00 should be used for costs associated with designing and planning, and monitoring the sand mounding project at Padre Island National Seashore; at least \$205,766.00 should be used for compensatory restoration projects for lost recreational use at Padre Island National Seashore; at least \$890,893.00 should be used for compensatory restoration projects for lost recreational use on Texas State Beaches. Disbursement of all funds from the Trustee accounts 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 in 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.

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 other Trustees' trusteeship and waives any objection to such intervention or participation by the other Trustees.

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 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 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

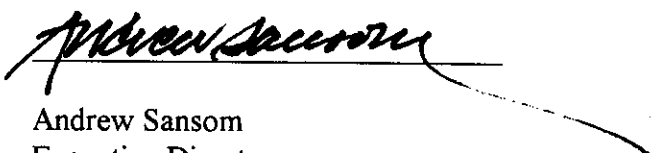
During the performance of this MOA, the parties will not discriminate against any person because of race, color, religion, sex or national origin.

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.

Jeff Saitas
Executive Director
Texas Natural Resource
Conservation Commission
Date _____


Andrew Sansom
Executive Director
Texas Parks and Wildlife
Department
Date March 3, 2000

David Dewhurst
Commissioner
Texas General Land Office
Date _____

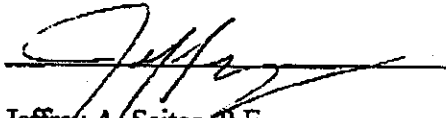
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Jeffrey A. Saitas, P.E.
Executive Director
Texas Natural Resource
Conservation Commission

Date 2/17/00

Andrew Sansom
Executive Director
Texas Parks and Wildlife
Department

Date _____



Michael Soukup, Associate Director for Natural Resource Stewardship and Science
National Park Service
Authorized Official
U.S. Department of the Interior

Date _____