

MEMORANDUM OF AGREEMENT FOSS POINT WELLS 2003 OIL SPILL

This Memorandum of Agreement (MOA or Agreement) is entered into by and between the following governmental entities: the Suquamish Tribe (Tribe), the National Oceanic and Atmospheric Administration (NOAA), the United States Department of the Interior (DOI) as represented by the U.S. Fish and Wildlife Service (FWS), and the State of Washington by the Department of the Ecology, collectively referred to as the "Trustees."

I. BACKGROUND

On December 30, 2003, at approximately 12:05 a.m. a spill occurred into Puget Sound during loading of oil onto the Foss tank barge 248-P2 at the Point Wells asphalt facility in Shoreline, Washington (hereinafter referred to as the "Foss Spill"). A comprehensive overview of the incident, clean-up efforts, extent of oiling, and assessment efforts is described in the May 2004 report entitled *Data Collected to Support Response and NRDA Activities for the Foss 248-P2 Spill of December 30, 2003*. The Trustees and Foss Maritime Company have entered into a settlement agreement resolving natural resource damage claims resulting from the Foss Spill, which is contained in a consent decree entered in the matter of *United States, et al., v. Foss Maritime Company*, Civ. No. 08-01364 MJP (W.D. Wash.) ("Consent Decree").

II. PURPOSE

The purpose of this MOA is to establish a process for coordinating and cooperating in 1) the assessment of damages for injuries to natural resources resulting from the discharge of oil from the Foss tank barge 248-P2 which occurred on December 30, 2003 at the Point Wells facility; and 2) the planning, designing, implementing, maintaining and monitoring of actions to restore, replace or acquire the equivalent of those resources utilizing proceeds of the settlement. This MOA provides a framework for such coordination and cooperation between the Trustees, for managing natural resource damage recoveries, and for implementing joint restoration actions.

III. AUTHORITY

The Trustees enter into this MOA in furtherance of and in accordance with their respective responsibilities and authorities as natural resource trustees pursuant to the Oil Pollution Act, 33 U.S.C. Section 2701, *et seq.* (OPA); the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300, Subpart G; the Washington State Water Pollution and Control Act, Chapter 90.48 RCW; the Washington State Oil and Hazardous Substance Spill Prevention and Response Act, Chapter 90.56 RCW; and other applicable laws and regulations to act as Trustees for natural resources affected by releases of petroleum products at or from the Foss Spill. The following officials are the signatories to this MOA

1. Tribal Chairman, Suquamish Tribe
2. Special Counsel for Natural Resources, for NOAA.
3. Regional Director, U.S. Fish and Wildlife Service, authorized official for the

- Department of the Interior.
4. Director, Washington State Department of Ecology

IV. SCOPE

This MOA is intended to address the restoration of natural resources injured, destroyed or lost as a result of, the Foss Oil Spill.

V. TRUSTEE COORDINATION

The Tribe, State, NOAA, and the DOI agree to coordinate any restoration actions to fulfill their responsibilities as trustees under applicable federal, state, and tribal laws and regulations.

VI. CONFIDENTIALITY

The status of the parties as co-Trustees requires that they carry out their damage assessment and settlement negotiation process in a coordinated fashion and that they protect the integrity of the claim determination and analysis process and the confidentiality of information and strategies. The Trustees agree to share among each other certain confidential information, legal strategies and theories, documents, and other confidences (Confidential Information) regarding the assessment and collection of natural resource damages associated with the Foss Spill. The Trustees agree that the sharing of such Confidential Information among Trustees is being done for the purpose of asserting common claims and asserting and protecting the rights and interests of respective clients, and that any other publication or use is not authorized or permitted. The attorney-client and attorney work product privileges are intended to remain attached to Confidential Information so shared and exchanged and the sharing and exchange of such Confidential Information does not waive any privilege attaching thereto or to any Confidential Information not shared or exchanged. Each Trustee agrees not to reveal to any person not party to this Agreement, to the extent permitted by applicable law (including the Washington State Public Records Act, Chapter 42.56 RCW), any such Confidential Information without the prior written consent of the party who contributed or caused the same to be contributed to the joint effort.

VII. REPLACEMENT /RESTORATION FUNDS

- A. The Trustees recognize that their coordinated activities may result in the recovery of funds, the commitment of services and/or the use of land for the purpose of restoring natural resources and/or natural resource services injured, destroyed, or lost as a result of the Foss Spill. The Trustees have determined that the appropriate place for the deposit of recovered funds is into the DOI Natural Resource Damage Assessment and Restoration (NRDAR) Fund. The depository into the NRDAR Fund will be referred to as the Foss Spill NRD Fund (Foss NRD Fund). Any interest earned on the money deposited in the Foss NRD Fund shall be credited to the fund and shall be subject to the terms of this MOA. No money shall be expended from the Foss NRD Fund except to the extent such expenditure is consistent with this MOA, the Consent Decree, and any applicable law.

B. Use of Foss Spill NRD Fund Money

1. The funds in Foss NRD Fund shall be spent on planning and implementing actions to restore, replace or acquire the equivalent of resources and resource services injured, destroyed or lost by the Foss Spill.
2. To the extent practicable, the Trustees will use the funds in the Foss NRD Fund for natural resource restoration or replacement activities within close proximity to the Foss Spill site and within Water Resource Inventory Area 15 (WRIA 15) so as to provide equivalent habitat, resources and services.
3. The funds in the Foss Spill NRD Fund will only be spent in compliance with applicable state, federal, and tribal laws and regulations.
4. The Trustees' goal is to minimize the amount of the funds placed in the Foss Spill NRD Fund that are spent on administrative charges and expenses. Administrative charges and expenses may include, but are not limited to, salary, travel and overhead of Trustee committee members and trustee staff costs associated with administering the Foss Spill NRD Fund and managing the Trustee decision making and restoration implementation process.
5. Funds in the Foss Spill NRD Fund shall not be used on additional natural resource damage assessment studies, unless the Trustees agree that such further assessment activities are necessary for the fulfillment of their trustee responsibilities.

VIII. TRUSTEE COUNCIL

- A. There is established a Trustee Council ("Council"), which shall be the mechanism through which the Trustees will coordinate their natural resource damage assessment and restoration related activities regarding the Foss Spill. Each of the Trustees may have more than one representative on the Council, but only one representative of each Trustee will be designated by the respective Trustee as a voting member of the Council. Within 30 days of the effective date of this Agreement, each Trustee shall provide the name of its voting member and an alternate voting member to the Lead Administrative Trustee.
- B. The Council shall be responsible for:
1. Conducting any natural resource studies, data gathering and/or analysis for purposes of planning efforts to restore injured natural resources;
 2. Planning and implementing restoration actions to benefit the natural resources that have been injured by releases of petroleum products at or from the Foss Spill;
 3. Authorizing disbursements from the Foss Spill NRD Fund;
 4. Deciding other matters relating to the use, handling and accounting of funds, goods and in-kind services recovered or made available as a result of the resolution of natural resource damage claims regarding the Foss Spill; and
 5. Adopting such bylaws, statements of Council policy or position, cost accounting procedures or cost reimbursement guidelines consistent with this Agreement as are needed to carry out this Agreement or to implement any

settlements of natural resource damage claims.

- C. The Trustee Council shall consist of one voting member from each of the Trustees. Other representatives of each Trustee may attend meetings and participate in the deliberations of the Trustee Council. A Trustee may designate different individuals to serve as its Trustee Council representative regarding the different activities that are the subject of this MOA. All decisions of the Trustees under this Agreement shall be by consensus. Consensus means the affirmative vote of each Trustee Council representative or an affirmative vote by four of the five Trustee Council representatives with one abstention. In the event that consensus is not reached by the voting representatives of the Council, the Council should conduct extensive good faith discussions directed toward obtaining consensus among all Trustees. In the event consensus cannot be reached, the matter in dispute shall be presented to higher level officials of the Trustees for resolution. The Trustees may adopt further procedures for dispute resolution.

Trustee Council decisions will be recorded in writing, either by resolution signed by the voting representatives or in minutes approved as to form and content by the voting representatives. Provided, however, that all decisions authorizing the expenditure of funds or the acceptance of work effort as satisfying in-kind contribution obligations shall be memorialized in a Trustee Council resolution signed by the voting representatives. All records of Trustee Council decisions plus copies of any supporting documents shall be maintained in the administrative record.

IX. LEAD ADMINISTRATIVE TRUSTEE

- A. For purposes of facilitating the exchange of information and the coordination of positions among the Trustees, one Trustee shall be designated the Lead Administrative Trustee. Determination of the Lead Administrative Trustee shall be by consensus of the Trustees.
- B. The Lead Administrative Trustee shall be responsible for:
1. Scheduling of meetings of the Trustees and preparation of proposed agendas for those meetings;
 2. Acting as a central contact point for the Trustees where needed to facilitate communication between the Trustees and RP;
 3. Preparation of such minutes, resolutions, and other documents as needed to record actions and decisions of the Council;
 4. Maintenance of the administrative record covering the assessment and resolution of natural resource damage claims for the Foss Spill and the planning and implementation of efforts to restore injured natural resource; and
 5. Such other duties as are agreed upon by the Trustees.
- C. Designation of a Lead Administrative Trustee shall not preclude the Trustees' determination on a case-by-case basis to assign responsibility for specific tasks to another Trustee.

- D. The Trustees agree that FWS shall initially serve as Lead Administrative Trustee. The Trustees may by consensus change the designation of Lead Administrative Trustee without the need for an amendment to this Agreement. Such a change in the designation of Lead Administrative Trustee shall be confirmed in a writing signed by the appropriate representatives of all Trustees.

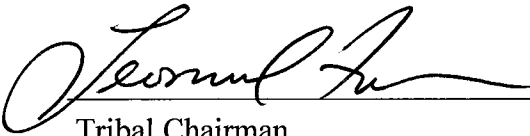
X. DISPOSITION OF EXCESS FUNDS

In accordance with section 1006(f) of OPA, 33 U.S.C. § 2706(f), sums recovered for natural resource damages in excess of amounts required for implementation of restoration actions and reimbursement of damage assessment costs shall be deposited in the Oil Spill Liability Trust Fund established by 26 U.S.C. § 9509 (OPA Fund). The Trustees agree that if they have not adopted a restoration plan and begun implementing the restoration projects identified in the plan within five years following the recovery of such damages they will authorize the transmission of all unexpended damages from the Foss Spill NRD Fund to the OPA Fund.

XI. MISCELLANEOUS PROVISIONS

- A. Effective Date; Amendment and Termination. This Agreement shall be effective when executed by all of the Trustees and may not be amended except by written agreement of all Trustees. A Trustee may give 30 days' written notice to terminate its participation in this Agreement. Upon such termination and withdrawal of any Trustee, the Agreement shall continue to be effective as to the remaining Trustees. It is the intent of the Trustees that the provisions of Section VI. Confidentiality of this MOA regarding the use and maintenance of Confidential Information shall survive the termination of this MOA.
- B. Commitment of Resources. Nothing in this Agreement shall be construed as obligating NOAA, FWS, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.
- C. Reservation of Rights. It is recognized that each Party to this Agreement has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or treaty or otherwise, except as specifically agreed herein, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies.
- D. Modification of Agreement. Modification of this MOA must be in writing and approved by all Trustees currently party to this MOA.

For the Suquamish Tribe


Tribal Chairman

10/13/08
Date

For the National Oceanic and Atmospheric Administration

Craig R. O'Connor
Special Counsel for Natural Resources

Date

For the Department of the Interior

Regional Director
U.S. Fish and Wildlife Service, Region 1, Portland, OR

Date

For the State of Washington

Dale Jensen, Program Manager
Spills Program
Department of Ecology

Date

For the Suquamish Tribe

Tribal Chairman

Date

For the National Oceanic and Atmospheric Administration



Craig R. O'Connor
Special Counsel for Natural Resources

10/8/08
Date

For the Department of the Interior

Regional Director
U.S. Fish and Wildlife Service, Region 1, Portland, OR

Date

For the State of Washington

Dale Jensen, Program Manager
Spills Program
Department of Ecology

Date

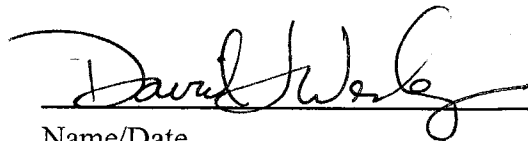
For the Suquamish Tribe:
Leonard Forsman, Tribal Chairman

Name/Date

For the Department of Commerce/NOAA
Craig O'Connor, Special Counsel for
Natural Resources

Name/Date

For the Department of the Interior
U.S. Fish and Wildlife Service
FOR: Robyn Thorson, Region 1 Director

 3/3/09

Name/Date

For the State of Washington
Washington Department of Ecology
Dale Jensen, Program Manager Spills Program

Name/Date

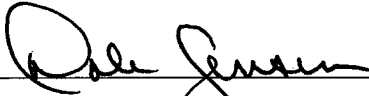
For the National Oceanic and Atmospheric Administration

Craig R. O'Connor
Special Counsel for Natural Resources

For the Department of the Interior

Regional Director Date
U.S. Fish and Wildlife Service, Region 1, Portland, OR

For the State of Washington


Dale Jensen, Program Manager
Spills Program
Department of Ecology

10-8-2008
Date