

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE U.S. FISH AND WILDLIFE SERVICE
AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
RELATING TO RESTORATION OF NATURAL RESOURCES INJURED BY THE
DISCHARGE OF OIL FROM THE *S/T AMERICAN TRADER*

I. INTRODUCTION

The following parties (collectively the "Trustees") enter into this Memorandum of Understanding ("MOU"): the U.S. Department of the Interior represented by the U.S. Fish and Wildlife Service ("USFWS"); the National Oceanic and Atmospheric Administration ("NOAA"); and the State of California represented by the California Department of Fish and Game ("CDF&G"). The Trustees enter into this MOU to ensure the continued coordination and cooperation of the Trustees in carrying out their responsibilities to restore the natural resources injured as a result of the discharge of crude oil from the vessel *American Trader* on February 7, 1990.

II PARTIES

The following officials, or their designees, execute this MOU as representatives of their respective agencies which act on behalf of the public as trustees for natural resources:

- Manager, California/Nevada Operations, USFWS
- Deputy General Counsel, NOAA
- Administrator, CDF&G, Office of Spill Prevention and Response

III. AUTHORITIES

The parties to this MOU are natural resource trustees pursuant to the Clean Water Act, 33 U.S.C. 1321, Subpart G of the National Contingency Plan, 40 C.F.R. Parts 300.60 *et seq.*; Executive Order 12580; Section 1802 of the California Fish & Game Code, and other applicable federal and state laws.

IV. DEFINITIONS

Whenever the following terms are used in this MOU, they have the following meanings:

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- "Natural resource(s)" - land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State of California and the services that those resources provide to other natural resources and/or humans.
- "Oil Spill" - refers to that incident which occurred on February 7, 1990 in which oil was spilled from the *S/T American Trader* onto the waters and coastline in the vicinity of Huntington Beach, California.
- "Restoration Plan" - refers to the document (as it may be amended) titled "Restoration Plan & Environmental Assessment For Seabirds Injured by the *S/T American Trader* Oil Spill," dated April, 2001, which sets forth those projects and actions determined by the Trustees as most appropriate to restore, rehabilitate, replace, or acquire the equivalent of injured natural resources and/or their services injured by the Oil Spill.
- "Settlement Funds" - refers to the amount paid by BP America, Inc., BP Oil Supply Company, and BP Oil Shipping Company USA (collectively referred to as BP) to compensate for natural resource injuries arising from the Oil Spill pursuant to a Court approved settlement entered into by state agencies including the CDF&G, and Local Governments, in May 1994, in the matter captioned *State of California, et al. v. BP America, Inc., et al.* ("BP Settlement"). It also refers to the amount paid to compensate for natural resource injuries arising from the Oil Spill pursuant to the Consent Decree between the United States and BP which was entered by the Court on March 5, 1997 in the matter captioned *United States v. BP America, Inc., et al.* ("Consent Decree").

V. BACKGROUND

On February 7, 1990, the *S/T American Trader*, a cargo ship, was in the process of docking at the Golden West offshore sea mooring located one and one half miles off Huntington Beach when the vessel ran aground on one of its own anchors. The anchor ruptured the vessel's hull spilling approximately 416,598 gallons of Alaska North Slope crude oil. The oil contaminated over 14 miles of shoreline, from Long Beach at the north to Laguna Beach at the south. It adversely affected thousands of seabirds, shorebirds, waterfowl, fish and other marine organisms and their habitats.

The Trustees along with seven other state and local Governments pursued lawsuits to recover damages and penalties related to the Oil Spill. The BP Settlement and Consent Decree

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resulted in funds in the amount of \$2,484,567 plus interest thereon that will be used to restore natural resources similar to those injured or destroyed by the Oil Spill.

The Parties to this MOU, along with seven other governmental agencies, entered into a Memorandum of Understanding in 1994 by which they sought to coordinate their responsibilities and activities related to the Oil Spill. The parties to that 1994 MOU subsequently formed two subcommittees, one dealing with lost recreational uses and a second dealing with biological resources impacted by the Oil Spill.

Pursuant to that 1994 MOU, the BP Settlement, and the Consent Decree, the natural resource trustees for biological resources (the parties to this MOU) prepared a draft Restoration Plan and Environmental Assessment, obtained public comment, solicited comment from other parties to the 1994 MOU, and finalized the Restoration Plan, all in accordance with the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA) and the Oil Pollution Act Natural Resource Damage Assessment Regulations.

Those parties to the 1994 MOU responsible for lost recreational services pursued damages for lost human use and selected projects to compensate the public for those losses.

VI. PURPOSE

The purpose of this MOU is to provide a framework for the continued coordination and cooperation among the Trustees responsible for natural resource injuries in the use of Settlement Funds for the implementation, oversight, and monitoring of projects set forth in the Restoration Plan. The Trustees retain the ultimate authority and responsibility to determine the use of Settlement Funds in accordance with the provisions of applicable federal and state law, any applicable regulations governing use of recoveries for natural resource damages and the terms of the BP Settlement and Consent Decree.

VII. ORGANIZATION OF AMERICAN TRADER TRUSTEE COUNCIL

To implement this MOU, the American Trader Trustee Council ("Trustee Council") has been created through the appointment by each Trustee of a primary representative and one alternate representative. Each party to this agreement shall have one vote that shall be cast by the party's primary representative, or in the absence or disqualification of the primary representative, by the alternate representative.

Each Trustee, should it choose to change its primary or alternate representative, shall notify the other Trustees in writing of such new representative's name, address, email address, telephone

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number, and facsimile number. Communications regarding Trustee Council business shall be addressed to the primary representative and, unless the Trustee Council directs otherwise, copied to the alternate representative and the Trustee legal representative.

Designated representatives of the General Counsel of CDF&G, NOAA General Counsel and the DOI's Office of the Solicitor shall serve as legal counsel to the Trustee Council. The Trustee Council will seek advisory participation from other federal, state or local agencies or any other entity as deemed appropriate by the Trustee Council.

VIII. DECISION MAKING

The Trustees agree that decisions implementing this MOU shall require the unanimous approval of the Trustee Council representatives. Decisions shall be recorded in writing, either by resolution signed by the voting representatives or in minutes approved as to content and form by the voting representatives. All decisions authorizing expenditures of funds, however, shall be memorialized in a resolution signed by the voting representatives. The budget and other documents describing the work to be conducted will be attached to the resolution and maintained in the administrative record.

In the event that unanimous approval cannot be reached among the representatives of the Trustee Council, the matter in dispute will be elevated within the Trustee agencies, no later than ten working days after the Trustee Council makes a determination that the voting representatives cannot reach an agreement. If necessary, the Trustees may establish further mechanisms to resolve disputes. The Trustees agree that decision-making deliberations will focus on the Trustees' mutual purpose of restoring injured natural resources rather than on individual Trustee control or trusteeship over those resources.

Trustee Council representatives will abstain from discussing and voting on any issue coming before the Trustee Council in which they have a personal financial interest. Each Trustee Council representative will identify any such conflict to the Trustee Council prior to consideration of the issue(s). In such circumstances, alternate representatives may participate and vote on the issue(s), so long as they do not have a personal financial interest.

If the Trustee Council determines that a proposed restoration project will impact property under the jurisdiction of the California Coastal Conservancy, it shall notify the Conservancy. In such case, the Conservancy shall have a right to vote with respect to that project.

A Trustee Council meeting may be convened by telephone conference call. Should an Trustee Council representative(s) be unable to travel to a meeting, that representative(s) may participate by telephone conference if telephonic equipment is available at the meeting site.

IX POWERS, DUTIES, AND RESPONSIBILITIES

On behalf of the parties to this MOU, the Trustee Council shall coordinate and authorize all Trustee activities required to implement the Restoration Plan to restore the injured natural resources related to the Oil Spill. Any Trustee on the Trustee Council may convene a meeting of the full Trustee Council.

To the extent authorized by applicable laws and policies, the Trustee Council may take the following actions, among others, to address the Trustees' natural resources responsibilities:

- Conduct and /or oversee scientific and technical studies, sampling and other matters related to the planning and implementation of restoration activities for natural resources injured by the Oil Spill;
- Arrange, by contract(s) between a Trustee and/or a professional consultant(s), for services that the Trustee Council determines are necessary to fulfill the Trustee Council's responsibilities;
- Oversee implementation of the Restoration Plan, including the monitoring of the projects set forth in the Restoration Plan to determine whether they have been successful in restoring injured natural resources;
- Delegate administrative and other specific duties to individual Trustees;
- Establish record keeping requirements and
- Make or oversee all necessary decisions for the management and administration of Settlement Funds, including the preparation of budgets and of the periodic accountings of expenditures.

Each Trustee will provide an accounting to the Trustee Council of agency administrative costs charged against the Settlement Funds. Such accountings shall be done once a year unless the Trustee Council requests more frequent reporting. The Trustee Council will determine the type of supporting documentation required to corroborate such costs.

X. CONFIDENTIALITY

It is the general policy of the Trustee Council that documents developed during restoration planning and implementation will be made available to the public upon request in accordance with the federal Freedom of Information Act and the California Public Records Act. The parties to this MOU agree that whenever there is a request for documents which may be exempt from disclosure

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under such laws, the request will be forwarded for response to the Trustee representative whose agency originally generated the requested document or who may choose to assert such an exemption. Nothing contained herein shall be construed as requiring, prohibiting or restraining a Trustee or the Trustee Council from agreeing to release any record. The parties to this MOU recognize, however, that certain documents developed for the American Trader litigation may be privileged and therefore protected from disclosure.

XI. RESERVATION OF RIGHTS

Nothing in this MOU is intended to imply that any signatory Trustee agency is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over natural resources.

XII. LIMITATIONS

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

XIII. THIRD-PARTY CHALLENGES OF APPEALS

Nothing in this MOU may be the basis of any third party challenges or appeals. Nothing in this MOU creates any rights or causes of action in persons not parties to this agreement.

XIV. MODIFICATION

Modification of this MOU must be in writing and approved by all parties to this MOU.

XV. TERMINATION

This MOU shall be in effect from the date of execution until termination by agreement of the Trustees. At any time that the Trustees determine that the purposes set forth in this MOU have been satisfied, the MOU may be terminated. In the event any Trustee withdraws from the MOU, such withdrawal must be in writing and provided to the other parties to this MOU at least thirty days in advance of withdrawal.

In the event of withdrawal of any Trustee or termination of the MOU, the Trustees shall

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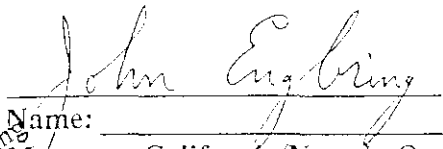
give a full and complete accounting to the Trustee Council of all restoration funds received, deposited, held, disbursed, managed, expended, or otherwise controlled by the Trustees in any joint or separate account held pursuant to the BP Settlement and Consent Decree or this MOU. In the case of withdrawal by a Trustee, that Trustee shall return any unused and unobligated funds to the Natural Resource Damage Assessment & Restoration Fund no later than thirty days after the date of withdrawal from this MOU.

XVI. EXECUTION: EFFECTIVE DATE

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU and shall be retained by the Trustee Council in the administrative record. The date of execution shall be the date of the signature of the last Trustee to sign the MOU.

XVII. SIGNATURES

U.S. Fish and Wildlife Service


Name: _____
Acting Manager, California/Nevada Operations

Date: 1-22-02


U.S. National Oceanic and Atmospheric Administration

Craig R. O'Connor,
Acting General Counsel &
Deputy General Counsel

Date: _____

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California Department of Fish and Game


Harlan Henderson
Administrator
Office of Spill Prevention and Response

Date: 3/27/02