

**APPENDIX B**

**BOUCHARD B.120 SPILL**  
**TRUSTEE MEMORANDUM OF AGREEMENT**

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF  
ENVIRONMENTAL AFFAIRS  
THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
THE U.S. DEPARTMENT OF THE INTERIOR  
and  
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

**REGARDING**

**NATURAL RESOURCE DAMAGE ASSESSMENT, RESTORATION AND  
OTHER NATURAL RESOURCE TRUSTEE ACTIVITIES**

**ARISING FROM**

**THE BOUCHARD B. 120 OIL SPILL**

**Prepared on March 27, 2007**

## TABLE OF CONTENTS

	Page
I. INTRODUCTION .....	1
II. AUTHORITY .....	1
III. DEFINITIONS .....	2
IV. SCOPE .....	3
V. PURPOSE .....	3
VI. OBJECTIVES .....	4
VII. FUNDING .....	4
A. PRP Funding .....	4
B. Trustee Agency Funds .....	4
C. NRDA Activities Conducted or Funded by the PRP .....	4
VIII. BOUCHARD 120 OIL SPILL TRUSTEE COUNCIL .....	5
A. Composition .....	5
B. Communications .....	5
C. Decision making .....	5
D. Dispute Resolution .....	5
E. Duties and Authority .....	6
F. Lead Administrative Trustee .....	7
G. Meetings .....	7
H. Trustee Council Termination .....	7
IX. Damage Assessment and Restoration Planning and Implementation .....	7
A. Joint Purpose and Overlapping Authorities .....	7
B. Joint Use of Natural Resource Damage Recoveries .....	7
X. NOTIFICATION OF NEGOTIATIONS WITH PRPs .....	8
XI. COORDINATION AND CONFIDENTIALITY .....	8
A. Coordination .....	8
B. Confidentiality .....	8
C. Sharing Information with the Public .....	10
D. Compliance with Federal and State Law .....	10
E. Reservation of Rights to Release Information .....	10
XII. GENERAL PROVISIONS .....	11
A. Reservations .....	11
B. Limitation of Authority .....	11
C. Third Parties .....	11
D. Effective Date .....	11
E. Amendment .....	11
F. Termination .....	11
G. Federal Natural Resource Damages Regulations .....	12
H. Antideficiency <sup>12</sup>	

## I. INTRODUCTION

This Memorandum of Agreement (Agreement) by and among the Commonwealth of Massachusetts, Executive Office of Environmental Affairs (hereinafter "MA EOE"), The Director, Rhode Island Department of Environmental Management for the State of Rhode Island and Providence Plantations (hereinafter "RIDEM"), the U.S. Department of the Interior (hereinafter "DOI") and the National Oceanic and Atmospheric Administration of the United States Department of Commerce (hereinafter "NOAA") (collectively hereinafter "Trustees" and "Parties") is entered into in recognition of the common interests of the Trustees in the restoration of natural resources and associated services which have been injured, destroyed or lost as a result of the Bouchard 120 Oil Spill which occurred on or about April 27, 2003 and resulted in the discharge of oil into the area known as Buzzards Bay in Massachusetts.

## II. AUTHORITY

A. The natural resource Trustees enter into this Agreement in accordance with the natural resource Trustee authorities provided for each Trustee under Section 1006 (a) - (g) of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2706(a)-(g); Section 311 (f) of the Clean Water Act (CWA), 33 U.S.C. §1321 (f), and other applicable Federal law, and State 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, and the Oil Pollution Act Natural Resource Damage Assessments Final Rule, 15 C.F.R. Part 990, 61 F.R. 440 (January 6, 1996), and the Massachusetts Oil and Hazardous Material Release and Response Act, General Law, Chapter 21E.

B. In accord with Section 1006(b) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2706 (b), and Subpart G of the NCP, 40 CFR § 300.600 through 300.615, the following officials or their designees shall act on behalf of the public as Federal and State Trustees for natural resources under this Agreement:

1. The Secretary of Environmental Affairs for the Commonwealth of Massachusetts
2. The Director, Rhode Island Department of Environmental Management for the State of Rhode Island and Providence Plantations
3. The Director, Office of Response and Restoration, National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce
4. The Regional Director, U.S. Fish and Wildlife Service Northeast Region, as Authorized Official, acting on behalf of the Secretary of the Department of the Interior

## III. DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

- A. "Federal Trustees" means the Regional Director, U.S. Fish and Wildlife Service, Region 5, as Authorized Official acting on behalf of the Secretary of the Interior, or the

Regional Director's authorized designees, and the Director, Office of Response and Restoration, National Oceanic and Atmospheric Administration, as Authorized Official acting on behalf of the Secretary of Commerce, or the Director's designees.

- B. "Joint use" means use of natural resource damage recoveries by the Federal and and/or State Trustees whether individually or collectively, in such a manner as is agreed upon by the Trustees in accordance with the terms of this Agreement.
- C. "Lead Administrative Trustee" or "LAT" means the trustee agency which has been selected by all participating Trustees to coordinate natural resource damage assessment activities, and other activities as authorized by the Trustee Council.
- D. "Natural resources" shall have the same meaning as set forth in Section 1001 (20) of OPA, 33 U.S.C. §2701(20).
- E. "Natural resource damage (s) recovery (ies)" means any award, judgment, settlement or other payment to the Federal or State Trustees which is received or controlled by any of the Trustees, individually or collectively, for, or as a result of, claims for natural resource damages related to the Spill, except that such term does not include any award which is a judgment, settlement, or payment in reimbursement of costs of natural resource damage assessment, as defined in 15 CFR Part 990, incurred by any of the Trustees.
- F. "Oversight expenses" means any costs associated with individual trustee participation in the damage assessment and restoration planning process, Trustee Council administrative proceedings, costs associated with the retention of consultants, coordinators, or any other technical or administrative services associated with the development of the restoration plan, or any other costs reasonably related to the implementation of this Agreement other than the physical implementation of the final restoration plan approved by the Trustee Council.
- G. "Potentially Responsible Party(ies)", "PRP(s)" includes the owner, operator, or demise charterer of a vehicle, or the owner or operator of a facility, or any other party who is or might be liable' under the Oil Pollution Act of 1990 for natural resource damages.
- H. "Restore" and "Restoration" mean any actions undertaken by the Trustees pursuant to OPA Section 2706 (c), (d) and (f), and other applicable laws or regulations, including planning, implementation, monitoring, administration and oversight, which serve to restore, rehabilitate, replace, or acquire the equivalent of natural resources or natural resource services injured, destroyed or lost as a result of the Spill.

- I. "Spill" means the Bouchard 120 Oil Spill which began on April 27, 2003 and resulted in the discharge of oil into Buzzards Bay, Massachusetts, together with any and all impacts to natural resources arising therefrom.
- J. "State Trustees" means the Secretary of Environmental Affairs for the Commonwealth of Massachusetts, or the Secretary's authorized designee, and the Director of the Rhode Island Department of Environmental Management.
- K. "Trustees" means the Federal, State and Tribal Trustees.
- L. "Trustee Council" refers to the four (4) Trustee Representatives appointed by the Trustees of Massachusetts, Rhode Island, DOI and NOAA to oversee coordination of natural resource damage assessment and restoration activities arising from or related to the Spill.
- M. "Trustee Representatives" means the four (4) authorized designees appointed by the Trustees of Massachusetts, Rhode Island, DOI and NOAA.

#### IV. SCOPE

This Agreement is intended to cover Natural Resources belonging to or managed by, controlled by, or appertaining to the Trustees under OPA, CWA, and the NCP, and other applicable federal and state law, which have been or may be affected by the Spill, the assessment of damages thereto and restoration thereof.

#### V. PURPOSE

The purpose of this Agreement is to provide a framework for coordination and cooperation among the Trustees to: (i) ensure timely and efficient implementation of a natural resource damage assessment to address resource injuries, including service losses, caused by the Spill, consistent with the procedures and guidance for the conduct of such assessments at 15 C.F.R. 990, and other applicable laws and regulations; (ii) avoid duplication of assessment costs and otherwise ensure costs are reasonable; (iii) seek compensation for such resource injuries or losses, including reimbursement of assessment costs; and (iv) provide for appropriate restoration, rehabilitation, replacement or acquisition of natural resources and/or services injured or lost.

#### VI. OBJECTIVES

The Trustees shall coordinate their efforts to meet their respective natural resource trustee responsibilities under OPA, and other applicable Federal law and State statutory and common law. In pursuing these objectives, the Trustees shall remain cognizant of all relevant law, policy, principles and concerns, including without limitation, the goals of the Oil Pollution Act of 1990, the nature and extent of each Trustee's resource concerns, and general principles of equity. The Trustees' objectives include, but are not limited to, the following:

- A. Coordinating the efforts of the Trustees in implementing the natural resource damage

assessment process consistent with the guidance and procedures provided at 15 CFR Part 990.

- B. Developing a plan for the restoration of natural resources and services injured, destroyed or lost due to the Spill, if necessary.
- C. Pursuing implementation or funding of the plan, and reimbursement of assessment costs, by responsible parties.
- D. Fairly allocating the efforts, costs and expenses of carrying out the objectives of this Agreement among the Trustees.
- E. Achieving settlement of all trustee natural resource damages claims, including the costs of assessment, in a manner consistent with 15 CFR Section 990.25.
- F. Coordinating efforts of the Trustees in litigation, if necessary.

#### VII. FUNDING

- A. PRP Funding: To the extent provided by law, each Trustee agrees to cooperate in the administration of any private funding source or sources that may become available to the Trustees from PRP's or others. Such funds shall be administered through the Trustee Council in accord with the terms established pursuant to this agreement.
- B. Trustee Agency Funds. Each Trustee also agrees to coordinate the expenditure of any funds that are or may become available to a Trustee for NRDA activities, except funds for the reimbursement of damage assessment costs, with the other Trustees. The goal of this provision is to prevent duplication of efforts, ensure optimum coordination among the individual Trustees, and ensure that assessment costs are reasonable. This provision in no way limits the individual authority of each Trustee.
- C. NRDA Activities Conducted or Funded by PRP's. The Trustee Council may enter into an agreement with the PRP's in which the PRP's agree to fund and/or conduct NRDA activities. Such agreements shall specify the terms of the activity, monetary disbursement, and PRP's participation. Any such Trustee Council/PRP's agreement shall be consistent with subsection "A" above.

#### VIII. BOUCHARD TRANSPORTATION CO., INC. OIL SPILL TRUSTEE COUNCIL

- A. Composition. Within ten (10) days of the execution of this Agreement, each Trustee, as specified under Section III, shall designate a Primary Trustee Representative to the Bouchard Transportation Co., Inc. Trustee Council ("Trustee Council") who shall be authorized to vote on behalf of that Trustee. Each Trustee shall also designate an Alternate Trustee Representative who shall be authorized to act, and vote, in the absence of the Primary Trustee Representative. Each Trustee may, by written notification to all other Trustees, change the Primary and Alternate Trustee Representative designees. The U.S.

Department of Justice, the office of the Attorney General for the Commonwealth of Massachusetts, and in-house counsel for each of the Trustees may each appoint one attorney who may attend all meetings of, or organized by, the Trustee Council in a legal/consultative role but who shall not be a member of the Trustee Council. The Commonwealth of Massachusetts may appoint one representative from the Massachusetts Department of Environmental Protection (MA DEP) who may attend all meetings of, or organized by, the Trustee Council in a consultative role but who shall not be a member of the Trustee Council.

**B. Communications.** To the extent not designated herein, within ten (10) days of the execution of this Agreement each Trustee shall notify all of the Trustees of the name(s), address(es), phone number(s) and facsimile number(s) of their designated Primary and Alternate Trustee Representatives who shall receive, and shall be responsible for, all correspondence and communications on behalf of such Trustee. In addition, the U.S. Department of Justice and the Office of the Attorney General for the Commonwealth of Massachusetts shall directly and contemporaneously be provided copies of all significant notices and notifications.

**C. Decision making.**

1. The four (4) members of the Trustee Council shall have equal voting power, and all decisions under this Agreement shall be by unanimous agreement of all Trustee Council members, except where a Trustee has notified the Trustee Council as described in C.2 below.

2. The Trustees understand and acknowledge that each Trustee's duties and interests, although overlapping, may be sufficiently different that a Trustee may wish to bound or limit their involvement in certain aspects of the NRDAR process. In recognition thereof, to avoid delaying the work of the Trustee Council as a whole, and to maximize the efficiency of trustee assessment efforts a Trustee may limit their involvement in the NRDAR process by notifying the Trustee Council in writing, and in a timely manner, of those NRDAR activities for which the Trustee would like to limit or end their participation.

**D. Dispute Resolution.** In the event of a dispute involving any decisions under this Agreement, the Trustee Council shall initially attempt to resolve the dispute through good faith discussions directed toward obtaining unanimity among the Trustees involved in the dispute and consensus by the Trustee Council as a whole. If unanimous consent cannot be reached, the matter shall be elevated to the named Trustees who may expressly delegate their decision making authority to a senior supervisory level designee for decision or further instructions. If necessary, the Trustees may establish other mechanisms by which disputes may be resolved. In the event of irreconcilable disputes, the disposition of funds recovered from the PRPs shall be governed by Section XII (F) (3) of this MOA.

**E. Duties and Authority.**

1. The Trustee Council shall coordinate all Trustee activities and matters under this Agreement directed towards the assessment of natural resource damages and resolution of natural resource damages claims arising from the Spill.



2. The Trustee Council shall be responsible for all natural resource damage assessment activities, including but not limited to restoration planning, restoration implementation, and oversight both prior to and subsequent to final settlement or judgment covering all Trustee natural resource damages claims arising from the Spill. Such activities may include but are not limited to the payment of any reasonable and appropriate costs of assessment or restoration using trustee or recovered PRP funds.

3. The Trustee Council may enter into contracts through its individual members, for the benefit of the Trustee Council, and after consultation with the Trustee Council, with consultants to provide such technical services as the Trustee Council determines are necessary and as permissible under applicable state or federal law.

4. The Trustee Council may request and receive relevant materials and/or information from Trustee staff and/or the public.

5. The Trustee Council shall have final authority to disburse any PRP funding received pursuant to Section VII of this Agreement, to implement restoration using funds recovered from PRPs, and to make all necessary decisions for the management and administration of projects undertaken by the PRPs to implement restoration, and/or for which PRPs funding may be used. This shall include, but is not limited to, the payment of administrative costs to individual Trustees that the Trustee Council determines are reasonable and necessary.

6. The Trustee Council may reimburse and/or directly pay out of funds recovered from the PRPs, reasonable Trustee oversight expenses. The Trustee Council may establish by resolution reasonable limits to the reimbursement of oversight expenses.

7. The Trustee Council may, to the extent permitted by applicable law, collectively or through individual Trustees, receive grants and or donations to be applied to the restoration of natural resources related to injuries arising from the Spill.

8. The Trustee Council reserves the right to take such further actions as may be necessary to further the purposes and achieve the objectives of this Agreement.

9. Records. All records created by the Trustee Council in support of this MOA (e.g. meeting agendas, meetings minutes, resolutions etc.) shall be considered "Draft" unless and until voted on and approved as a "Final" record by the Trustee Council, or their designated representatives, and marked as such.

10. Public Review and Comment. The Trustee Council shall determine which records are appropriate, or legally required to be made available, for public review and comment, in compliance with applicable laws and regulations. For each record to be released upon such a determination, the Trustee Council shall determine the media or format and the procedures to be followed, including the dates and length of any public comment period, in accordance with applicable laws and regulations. Nothing in this paragraph shall apply to a Trustee's response to request for designated privileged documents from parties and non-parties as described in Section XI of this Agreement.

11. Community Involvement. The Trustee Council shall provide the community affected by the Bouchard 120 oil spill with early, direct, and meaningful involvement in any natural resource damage assessment studies conducted concerning this spill as well as in the restoration planning process.

F. Lead Administrative Trustee. The Trustees designate NOAA as Lead Administrative

Trustee (LAT) under this Agreement for the purpose of directing and coordinating trustee activities towards resolution of claims arising from the Spill, and other trustee activities as authorized by the Trustee Council. The LAT shall fully coordinate its activities with and only act under the direction of the Trustee Council. Other duties of the LAT and/or the other Trustee entities shall be arrived at by resolution of the Trustee Council.

G. Meetings. Any member of the Trustee Council may, upon reasonable notice through the LAT, call a meeting of the Trustee Council to be conducted either in person or by telephone conference call. Such meetings shall generally be held in conjunction with other set meetings among the Trustees to this Agreement. Members of the Trustee Council may invite their respective staff members or attorneys to attend. Members of the Trustee Council also may invite representatives of public, private or non-profit entities, representatives of other agencies or members of the public to its meetings unless the Trustee Council determines, in compliance with applicable law, that the subject of the meeting is privileged or that public disclosure of the Trustee Council's work would prejudice the effectiveness of the Trustee Council and the Trustees' responsibilities under applicable law.

H. Trustee Council Termination. The Trustee Council created pursuant to this Section shall terminate upon the termination of this MOA pursuant to Section XII (F) of this MOA.

#### IX. DAMAGE ASSESSMENT AND RESTORATION PLANNING AND IMPLEMENTATION

##### A. Joint Purpose and Overlapping Authorities.

State and Federal Trusteeships. The Trustees recognize that each of them has trusteeship, through their respective natural resource Trustees, under OPA and CERCLA, and other applicable federal and state law, over natural resources affected by the Spill, and that the scopes of their respective trusteeships overlap

##### B. Joint Use Of Natural Resource Damage Recoveries.

The Trustees agree that any natural resource damage recoveries, as defined in Section III (E) of this Agreement, obtained or received by the Trustees, individually or collectively, and any interest earned thereon, shall be jointly used to restore natural resources which have been injured, destroyed or lost as a result of the Spill, unless the Trustee Council agrees otherwise.

#### X. NOTIFICATION OF NEGOTIATIONS WITH PRP's

It is recognized that each Trustee has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and that nothing in this Agreement waives or forecloses the exercise of any such rights, powers or remedies. However, each Trustee agrees to the extent practicable to provide twenty (20) days prior written notice to each of the other Trustees of its intent to participate in negotiations with any PRPs or other entity regarding settlement or other disposition of natural resource damages claims arising from the Spill, and to permit the other parties to join in these negotiations.

The Trustees agree to inform each other within five (5) working days of any oral or written

communications to or from the PRPs regarding settlement or other disposition of natural resource damages claims in regard to the Spill. The substance of any such communications will be shared with the Trustees.

The Trustees further agree to provide copies of any agreements or other documents reflecting settlement or other disposition of such claims, including quasi-public claims involving or related to natural resource injuries arising from or related to the Spill. If the Trustee refuses to do so for any reason, that Trustee shall no longer be a Party to this Agreement unless all remaining Trustees request in writing within ten days (10) that such Party remain a Party.

## XI. COORDINATION AND CONFIDENTIALITY

A. Coordination. The Trustees recognize and agree that their interests in the recovery of claims for natural resource damage assessment, and natural resource damages associated with the Spill are related and agree to coordinate negotiation and, if necessary, litigation of their claims and damages that arise out of the Spill.

B. Confidentiality. The Trustees recognize that in order to effectively and efficiently negotiate and litigate their claims their counsel, employees and consultants may, at each Trustee's discretion, exchange documents and information including draft reports, analyses, opinions, conclusions, and advice that is prepared in anticipation of litigation, or for confidential settlement purposes, or which is protected by the attorney work product or attorney-client privilege, or other forms of privilege. Therefore, subject to paragraph XI E. below, the Trustees hereby agree as follows:

1. The Trustees shall treat each "designated privileged document", and any "designated privileged communication" by, between or among the Trustees as privileged and shall protect such document or communication from disclosure to the maximum extent possible under applicable Federal and State law, unless the Trustee Council agrees otherwise.
2. A "designated privileged document" is one identified on its cover page or elsewhere as subject to one or more privileges or forms of immunity. It is the obligation of each Party to properly label as privileged each document for which a Party or Parties asserts such privilege. A label for privileged materials shall be placed as a header; in boldface type, on the first page of each such document to read as follows:

**NOT FOR PUBLIC RELEASE  
FOIA EXEMPT**

In addition, all predecisional drafts of studies, reports or analyses shall be labeled prominently on the first page as "DRAFT", and are deemed confidential, unless and until the Parties agree to the release of any such document. A Party's failure to identify or label a privileged document shall not, as such, constitute a waiver of any applicable privilege.

3. A "designated privileged communication" is one which occurs with an expectation of confidentiality and includes, but is not limited to, communications between the Governments' attorneys or their staff, agents, and/or experts in anticipation of litigation, in the seeking or giving of legal advice, and/or in the context of pre-decisional

government deliberations.

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

5. Designated privileged documents shall be maintained in such a manner as to ensure that no intentional or unintentional disclosure is made which would compromise any asserted privilege, including segregating "designated privileged documents" in files that are identified as containing privileged documents that are not to be disclosed publicly or in response to a discovery request in this or any other case.

6. Unless otherwise specifically provided, 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. Each Trustee shall be entitled to assert an applicable privilege with respect to any document or communication transmitted, prepared, or funded solely by that Trustee.

7. If a subpoena, discovery 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 immediately forwarded to counsel for the Trustee or Trustees to which the privilege applies and to the government representative (s) who originally generated the document or communication requested. The Party who receives such a request shall also provide a draft of the Party's intended response to such request not less than ten (10) days prior to the date that the Party intends to issue its response. To the extent that applicable law may require a response more promptly than is consistent with the above temporal requirement, the Trustees agree to act in good faith to meet any such requirements.

8. Only by specific written agreement (e-mail is sufficient) among the Trustees or pursuant to a Court Order shall a privileged document or communication be made public or disclosed to a party-opponent or non-party. Such agreement shall not be construed as a waiver of privilege or confidentiality regarding any other documents or communications.

9. In the event that any Trustee determines, for any reason, that any privileged communication, information, or document received from one of the other Trustees pursuant to this agreement should be released to a third party voluntarily, in response to a request, or pursuant to any statute or regulation, the Trustee planning to release such communication, information, or document shall first consult with the other Trustee/s. If the Trustees do not reach an agreement regarding release, then they shall each present the matter to supervisory and/or management personnel with their respective governments for resolution. Unless the supervisory and/or management personnel agree that the communication, information, or document may be released, the Trustee seeking to release the communication, information, or document may do so only if such Trustee has determined that it may release the communication, information, or document pursuant to Paragraph XI E. of this Agreement.

10. Subject to the terms of this Section XI, nothing herein in any way affects or limits the authority of any Trustee to waive any privilege and release any documents, information, analysis, opinion, conclusion, or advice that are subject to privileges held exclusively by that Trustee.

11. At the request and option of any Trustee, designated privileged documents shall be returned to the originating Trustee or destroyed, in compliance with federal and state law.

12. The obligations of the Parties under this Agreement shall apply to all of their counsel, employees, consultants, agents, contractors and representatives.

C. **Sharing Information with the Public.** The Trustees agree that, to the extent consistent with the effective and efficient negotiation and litigation of their claims, public dissemination of final data and studies related to injuries arising from the Spill is in the best interests of the public and the Trustees. Such final data and studies shall be made available to the public upon request to the extent consistent with the foregoing confidentiality provisions. In addition, the Trustees shall open and maintain a publicly available administrative record consistent with the requirements of the Federal Natural Resource Damage Regulations that the Trustees select for use in connection with the Spill, the National Environmental Policy Act, and any other applicable Federal or State law.

D. **Compliance with Federal and State Law.** In the event that any provision of section XI of this MOA conflicts with federal or state law, including the Freedom of Information Act or similar state law, the federal or state law will, of course, control and the Trustees will comply with the applicable law.

E. Notwithstanding any other provision of this Agreement, each Trustee reserves the right to provide information or document related to the Spill and the natural resource damage assessment process to the public if such Trustee determines that such information or document (1) is already lawfully in the public domain, (2) requires disclosure pursuant to the Freedom of Information Act, 5 U.S.C. § 552, or the Massachusetts public records law, M.G.L. c. 66 § 10, or (3) should be disclosed in order to protect public health, welfare, or the environment.

## XII. GENERAL PROVISIONS

A. **Reservations.** Neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Party named herein (or any government) of (nor be construed as precedent for) any legal responsibility under federal law or state statutory and common law to protect, restore, or enhance any natural resources affected by the Spill over which any other Trustee asserts trusteeship. Furthermore, neither execution of this Agreement nor performance of any activities pursuant to this Agreement shall constitute an admission by any Trustee named herein (or any government) of (nor be construed as precedent for) any liability for damage or injury to any natural resources affected by the Spill over which any other Trustee asserts trusteeship.

B. **Limitation of Authority.** No Trustee is authorized to enter into settlements on behalf of the other Trustees and no Trustee represents another Trustee in any litigation that may be commenced by the RP or any other Trustee.

C. **Third Parties.** This Memorandum of Agreement is not intended to, nor shall it, vest

rights in persons who do not represent the parties to this Agreement or who are not parties to this Agreement.

**D. Effective Date.** This Agreement shall become effective when executed by all of the Trustees, that is, the date on which the last signature is obtained. This Agreement can be executed in one or more counterparts, each of which will be considered an original document.

**E. Amendment.**

1. This Agreement may be amended by agreement of the Trustees if it is determined that an amendment is necessary to accomplish the objectives of this Agreement, or is necessary to modify the objectives of this Agreement consistent with the requirements of OPA, CERCLA, any amendments thereto, or other applicable Federal law or State common or statutory law.

2. Any amendment of this Agreement shall be effective only if it is in writing and executed by all parties to this Agreement.

**F. Termination.**

1. This Agreement shall be in effect from the day of execution until the Trustee Council determines that the restoration plan or plans implemented under this Agreement have been completed, except that this Agreement may be extended by written agreement, as provided in Section XII of this Agreement.

2. Withdrawal from the Agreement.

a. Due to Dispute. Any Party may withdraw from this Agreement, but only after efforts have been made to resolve any dispute in accordance with paragraph D of Section VIII of this Agreement, if applicable. Such withdrawal shall only be effective upon thirty (30) days written notice upon all Parties to this Agreement.

b. Due to Differing Duties and Interests. The Trustees understand and acknowledge that at some point a Trustee may determine that it is no longer necessary to participate in the Trustee Council in order to fulfill their duty and that, perhaps, continuing to participate will not further the Trustees' interests. In that event, a Trustee may withdraw from the Agreement by notifying the Trustee Council, in writing, and in a timely manner, that the Trustee no longer will be participating in the Trustee Council.

3. In the event that this Agreement is terminated or one of the Trustees withdraws, the Trustees expressly agree that they will continue to coordinate to the greatest extent practicable their activities to assess injury to and restore the natural resources affected by the Spill, and that they will be guided by the objectives set forth in Section VI of this Agreement. The disposition of any unobligated sums recovered from PRPs as natural resource damages, and any interest earned thereon, shall be determined by further agreement of the Trustees or, if an agreement cannot be reached, upon application by a party to this MOA to the United States District Court (Massachusetts), by allocation of such recoveries and interest by the Court. In making a fair and reasonable allocation of these monies among the Trustees, the Trustees request that the Court consider primarily the need to achieve, to the maximum extent practicable, the Natural Resource

Objectives of this MOA and further consider the overlapping jurisdictions of the federal and state trustees. In any event, the Trustees further expressly agree that any unobligated funds recovered from PRPs as natural resource damages, and any interest earned thereon, shall be expended solely to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706.

4. The withdrawal of any Trustee from this Agreement for whatever reason, shall not affect the subsequent validity of the Trustee Council or this Agreement among the remaining Trustees. A party that has withdrawn from this agreement shall have no further obligations under this agreement except for the obligations under Section XII (F)(3), above, to continue to coordinate activities to the greatest extent practicable, to maintain confidentiality as agreed in Section XI, and to expend unobligated funds recovered for natural resource damages solely to develop and implement a plan to restore injured natural resources under their trusteeship, as mandated by Section 1006 of the Oil Pollution Act (OPA), 33 U.S.C. § 2706.

G. Federal Natural Resource Damages Regulations. It is the intention of the Trustees to follow the NOAA natural resource damage assessment regulations, 15 CFR Part 990 in matters relating to the Spill.

H. Anti-deficiency. Nothing in this Agreement shall be construed as obligating the United States or Massachusetts, their officers, agents or employees, to expend any funds in excess of appropriations or other amounts authorized by law.

The GOVERNMENTS, through their designated representatives, have signed this Agreement on the day and year appearing opposite their signatures.

**Memorandum of Agreement Concerning Natural Resource Damages in the Matter  
of the  
BOUCHARD 120 OIL SPILL in BUZZARDS BAY, MASSACHUSETTS**

**FOR THE COMMONWEALTH OF MASSACHUSETTS**

I A Bowles

4/25/08

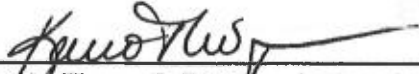
**Ian A. Bowles, Secretary  
Massachusetts Executive Office of Environmental Affairs  
State Trustee for Natural Resources**

**Date**



**Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the  
BOUCHARD 120 OIL SPILL in BUZZARDS BAY, MASSACHUSETTS**

**FOR THE UNITED STATES DEPARTMENT OF COMMERCE**



\_\_\_\_\_  
**Captain Kenneth Barton, Acting Director  
Office of Response and Restoration  
National Oceanic and Atmospheric Administration  
Federal Trustee for Natural Resources**

12/27/07

**Date**

**Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the  
BOUCHARD 120 OIL SPILL in BUZZARDS BAY, MASSACHUSETTS**

**FOR THE DEPARTMENT OF THE INTERIOR, U.S. Fish and Wildlife Service  
NATURAL RESOURCE TRUSTEE  
AUTHORIZED OFFICIAL**



4/19/10

**Acting**

**Marvin Moriarty, Regional Director  
Northeast Region  
U.S. Fish and Wildlife Service  
Federal Trustee for Natural Resources**

**Date**

**Memorandum of Agreement Concerning Natural Resource Damages in the Matter of the  
BOUCHARD 120 OIL SPILL in BUZZARDS BAY, MASSACHUSETTS**

**FOR THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**



---

**Dr. W. Michael Sullivan, Director  
Rhode Island Department of Environmental Management  
State Trustee for Natural Resources for the Bouchard 120 Oil Spill**

4/22/08

---

**Date**