



WHEREAS, the United States and the State have filed claims against defendants Marine Oil Trader 3, Ltd., and ERMIS Maritime Corp. pursuant to the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b) and Section 2480 of the Louisiana Oil Spill Prevention and Response Act (OSPRA), La. Rev. Stat. 30:2480, for removal costs and damages due to injuries to natural resources arising from an oil spill in waters of the Mississippi River at Plaquemines Parish, Louisiana, on November 28, 2000, that resulted from the casualty to the tanker WESTCHESTER (the "WESTCHESTER Oil Spill").

WHEREAS, the United States and the State share trusteeship of the injured resources and are coordinating restoration efforts.

WHEREAS, the Restoration Projects described herein have been determined by the Trustees to provide for the restoration or the replacement of equivalent natural resources (or natural resource services) that were injured, destroyed, or lost as a result of the WESTCHESTER Oil Spill. Specifically, the Splay Marsh Restoration Project provides for the creation of vegetative habitat as compensatory restoration for habitat services lost, and for bird and aquatic faunal injuries sustained, as a result of the WESTCHESTER Oil Spill. The Boat Dock Restoration Project involves the construction of a boat dock and other recreational amenities as compensatory restoration for recreation losses incurred by hunters and anglers due to the WESTCHESTER Oil Spill.

WHEREAS, the Parties agree and this Court, by entering this Consent Decree, finds that this Consent Decree has been negotiated by the Parties in good faith, implementation of this Consent Decree is consistent with the objectives of Oil Pollution Act, 33 U.S.C. § 2701, et seq., and will avoid prolonged and complicated litigation between the Parties, and that this Consent

Decree is fair, reasonable, and in the public interest.

WHEREAS, the Settling Defendants do not admit any liability arising out of the WESTCHESTER Oil Spill.

THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

## II. DEFINITIONS

1. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA, 33 U.S.C. § 2701, et seq., or in the regulations promulgated under OPA at 15 C.F.R. Part 990, shall have the meaning assigned to them in OPA or in such regulations.

Whenever terms listed below are used in this Consent Decree or in the attachments attached hereto and incorporated hereunder, the following definitions shall apply:

A. "Complaint" shall mean the civil complaint filed in this action by the United States and the State concurrently with lodging of this Consent Decree;

B. "Federal Trustees" means the U.S. Fish and Wildlife Service (FWS) of the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce;

C. "Federal Future Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in connection with the WESTCHESTER Oil Spill, including reviewing or developing plans, reports and other items pursuant to this Consent Decree, monitoring, implementing, or otherwise overseeing the Restoration Projects, or otherwise enforcing this Consent Decree, commencing April 7, 2002, as to NOAA and March 16, 2003, as to DOI.

D. "Federal Past Costs" shall mean all removal costs and natural resource damage

assessment costs, including, but not limited to, direct and indirect costs, that the United States has incurred in connection with the WESTCHESTER Oil Spill, through: (a) April 6, 2002, as to NOAA; (b) March 15, 2003, as to DOI; and (c) March 15, 2003, as to the U.S. Coast Guard.

E. "Fund" means the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509;

F. "Interest" shall mean interest at the rate prescribed under OPA, 33 U.S.C. § 2705(b)(4), and shall be computed daily to the date of payment and compounded annually on June 1 of each year;

G. "LDNR Permit" means the permit required to be obtained from the Louisiana Department of Natural Resources in connection with the performance of the Restoration Projects, pursuant to La. Rev. Stat. 49:214.30;

H. "Natural Resource Damages" means the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A);

I. "OPA" means the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.;

J. "Parties" means the United States, the State, and the Settling Defendants;

K. "Plaintiffs" means the United States and the State;

L. "Restoration Plan" means the plan entitled Damage Assessment/Restoration Plan and Environmental Assessment, attached and incorporated as Attachment A to this Consent Decree;

M. "Restoration Projects" shall mean the restoration actions comprised of the Splay Marsh Restoration Project and the Boat Dock Restoration Project, as defined, described, and scheduled in Attachments A and B to this Consent Decree;

N. "Settling Defendants" means Marine Oil Trader 3, Ltd., and ERMIS Maritime Corp.;

O. "State" means the State of Louisiana;

P. "Statement of Work" means the Statement of Work describing the restoration projects to be completed by the Defendants, attached and incorporated as Attachment B to this Consent Decree;

Q. "State Trustees" means the Louisiana Oil Spill Coordinator's Office-Office of the Governor (LOSCO), the Louisiana Department of Wildlife and Fisheries (LDWF), Louisiana Department of Natural Resources (LDNR), and the Louisiana Department of Environment Quality (LDEQ);

R. "State Future Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State incurs in connection with the WESTCHESTER Oil Spill, including reviewing or developing plans, reports and other items pursuant to this Consent Decree, monitoring, implementing, or otherwise overseeing the Restoration Projects, or otherwise enforcing this Consent Decree, commencing on February 1, 2002;

S. "State Past Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the State has paid in connection with the WESTCHESTER Oil Spill, through January 31, 2002;

T. "Trustees" means the Federal Trustees and State Trustees; and

U. "United States" means the United States of America.

### III. JURISDICTION AND VENUE

2. For purposes of entry and enforcement of this Consent Decree only, the Parties agree that

the Court has personal jurisdiction over the Parties and has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and also pursuant to 28 U.S.C. §§ 1331, 1345, and 1367. The Court has pendent jurisdiction over claims stated in the Complaint pursuant to State law. Venue is proper pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b); and 28 U.S.C § 1391(b). Solely for the purposes of this Consent Decree, the Parties waive all objections and defenses to the jurisdiction of this Court, to venue in this District, and to service of process.

#### IV. APPLICABILITY OF CONSENT DECREE

3. The provisions of this Consent Decree shall apply to and be binding on the United States; the State; and the Settling Defendants, their directors, employees, agents, predecessors, subsidiaries, affiliates, parents, successors, and assigns. No change in ownership, corporate or partnership status relating to the Settling Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in any way alter the responsibilities of the Settling Defendants under this Consent Decree.

#### V. NATURAL RESOURCE DAMAGE RESTORATION PROJECTS

4. Restoration Projects. The Settling Defendants shall complete the Splay Marsh Restoration Project and the Boat Dock Restoration Project, as each is defined, described, and scheduled for completion in Attachments A and B, which are hereby incorporated into this Consent Decree.

5. Project Coordinators. No later than 30 days after the effective date of this Consent Decree, Settling Defendants and the Trustees shall notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators. If a Project Coordinator initially designated is changed, the identity of the successor will be given to the

other Parties in writing. The Settling Defendants' Project Coordinator shall be subject to the approval of the Trustees, which shall not be arbitrarily or capriciously withheld, and shall have the technical expertise sufficient to adequately oversee all aspects of the Restoration Projects.

6. Trustee Council. The Trustees shall form a Trustee Council, which shall oversee the implementation of the Restoration Projects specified in this Consent Decree. The Trustee Council shall consist of a Project Coordinator designated by each Trustee. The Trustee Council shall act on behalf of the Trustees on all matters related to the Restoration Projects under the terms of this Consent Decree, including, but not limited to the following:

A. reviewing and approving all work plans and specifications, including performance criteria, for use in implementing and monitoring the Restoration Projects;

B. overseeing the implementation of the Restoration Projects;

C. identifying and determining appropriate additional or corrective actions to ensure that the performance criteria associated with the Restoration Projects will be met;

D. providing Settling Defendants with a "Construction Completion Certificate" upon the satisfactory construction of each Restoration Project, as provided in Paragraph 7(E);

E. overseeing the monitoring of the Splay Marsh Restoration Project by Settling Defendants after the date of the Construction Completion Certificate and identifying any corrective actions or other additional activities it deems appropriate;

F. providing Settling Defendants with a "Splay Marsh Project Completion Certificate" certifying in writing the satisfactory completion of the Splay Marsh Restoration Project, after determining that all performance criteria have been achieved, as provided in Paragraph 7 below and Attachment B; and

G. performing duties associated with the formal dispute resolution process, whenever necessary, as described in Paragraph 28.

7. Project Work Plan. No later than 90 days after the effective date of this Consent Decree, or, if applicable, the date of the Trustee Council's identification of additional activities pursuant to Paragraph 8(C) below, the Settling Defendants shall submit to the Trustee Council for review a detailed Draft Work Plan for construction of each of the Restoration Projects.

A. Each Draft Work Plan shall: (1) comply with all aspects of the descriptions and specifications of the Restoration Projects as set forth in this Consent Decree, including Attachments A and B; (2) identify and fully comply with all Federal, State, or local permits or other legal requirements needed prior to construction of the Restoration Projects, including, but not limited to, permits required by the U.S. Army Corps of Engineers and the Louisiana Department of Natural Resources; and (3) set forth a detailed schedule for construction of the Restoration Projects, including both a proposed date to begin construction and an anticipated date of completion for each Restoration Project.

B. For the Draft Work Plan associated with the Splay Marsh Restoration Project, such Draft Work Plan shall also (1) propose a detailed Three-Year Splay Marsh Monitoring Plan that complies fully with all required permits and with the performance criteria and monitoring parameters specified in Attachments A and B, in accordance with which Settling Defendants shall monitor and report on the performance of the Splay Marsh Restoration Project over the three-year period that follows the Construction Completion Certification Date; and (2) propose specific criteria for determining completion of the Splay Marsh Restoration Project that complies fully with any required permit and with the performance criteria and monitoring parameters

specified in Attachments A and B.

C. Following receipt of the Draft Work Plan, the Trustee Council will act to approve the Draft Work Plan or to disapprove such Plan with comments. In the event of disapproval, the Settling Defendants will have 30 days following receipt of the Trustee Council's comments to revise and resubmit the Draft Work Plan for approval. This process will be repeated until the Draft Work Plan is approved by the Trustee Council or until dispute resolution is invoked pursuant to Section XIII of this Consent Decree. Upon approval by the Trustee Council, the Draft Work Plan shall become the Final Work Plan and shall be implemented by the Settling Defendants according to the construction schedule identified therein.

D. All federal, state, and local permits, rights-of-way, and other documents or legal requirements necessary to implement the Restoration Projects shall be obtained by the Settling Defendants at their expense, and the Settling Defendants shall comply with all applicable Federal, State, and local laws in implementing the Restoration Projects including, but not limited to, permits required by the LDNR.

E. The Settling Defendants shall notify the Trustee Council in writing within 15 days of completing construction of each Restoration Project. The Settling Defendants shall provide a report signed by a registered professional engineer and the Settling Defendants' Project Coordinator stating that the Restoration Project has been constructed in full satisfaction of the requirements identified in the Consent Decree, including Attachment A, and the Final Work Plan. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendants or the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware

that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The Trustee Council or its designees shall inspect the completed Restoration Project within 60 days of receipt of such notice and, upon finding that construction of the Restoration Project is in full compliance with the Consent Decree and the Final Work Plan, the Trustee Council shall provide the Settling Defendants with a dated written statement certifying construction is complete (“Construction Completion Certificate”) for each Restoration Project. The date of such statement for the Splay Marsh Restoration Project shall constitute the “Construction Completion Certification Date” for the purposes of Paragraph 8.

F. If the Trustee Council determines that the Restoration Project has not been completed in accordance with the Consent Decree and the Final Work Plan, the Trustee Council will notify the Settling Defendants in writing of the activities that must be undertaken by the Settling Defendants pursuant to the Consent Decree to complete the Restoration Project, and shall provide the Settling Defendants a schedule for completion of such remaining activities. The Trustee Council will also schedule a meeting with the Settling Defendants to discuss any deficiencies with the Restoration Projects. Settling Defendants shall perform all activities described in the Trustee Council’s notice in accordance with the schedule, subject only to the dispute resolution procedures set forth in Section XIII below.

8. Splay Marsh Restoration Project Monitoring.

A. Within 30 days of the Construction Completion Certificate Date for the Splay Marsh Restoration Project, the Settling Defendants shall initiate the Three-Year Splay Marsh Monitoring Plan, as approved in the Final Work Plan, and submit Monitoring Reports to the

Trustee Council as required therein.

B. If, upon completion of the Three-Year Splay Marsh Monitoring Plan, the Trustee Council determines that all specified performance criteria in the Final Work Plan have been achieved, the Trustee Council shall provide the Settling Defendants with a written statement certifying satisfactory completion of the Splay Marsh Restoration Project ("Splay Marsh Project Completion Certificate").

C. If, upon completion of the Three-Year Splay Marsh Monitoring Plan, the Trustee Council determines that all specified performance criteria in the Final Work Plan have not been achieved,

i. The Trustee Council, in consultation with the Settling Defendants, will determine what additional activities or corrective actions may be necessary or appropriate to achieve the performance criteria; and

ii. The Settling Defendants shall submit a work plan for conducting such activities or corrective actions considered in Paragraph 8(C)(i) to the Trustee Council. The Trustee Council shall review this work plan as provided in Paragraph 7(C). Upon approval by the Trustee Council, the Settling Defendants shall implement the work plan according to the schedule identified therein.

iii. When the Settling Defendants' have completed the activities or corrective actions identified in the work plan to the satisfaction of the Trustee Council, the Settling Defendants shall notify the Trustee Council of their completion of such activities in accordance with the procedures outlined in Paragraph 7(E).

D. Following receipt of the notification provided for in paragraph 8(C)(iii), the

Trustee Council shall evaluate whether the performance criteria in the Final Work Plan have been achieved. If the Trustee Council determines that the performance criteria have been achieved, then it shall so certify as provided in Paragraph 8(B). If the Trustee Council determines that the performance criteria have not been achieved, it shall follow the procedures specified in Paragraph 8(C) to determine what additional actions are required to achieve the performance criteria.

9. Access. The Trustees and their designated representatives shall be given access at all reasonable times to the locations (including vessels) being used by the Settling Defendants to implement the Restoration Projects, as well as all non-privileged documents relating to the Restoration Projects, for the purpose of overseeing and/or monitoring the implementation of the Restoration Projects. The Trustees may designate other representatives, including, but not limited to, Federal and State employees, and Federal and State contractors and consultants, to observe, monitor, and assess the progress of the Restoration Projects.

#### VI. USE OF CONTRACTORS BY SETTLING DEFENDANTS

10. All contractors retained by the Settling Defendants, including, without limitation, general contractors and subcontractors that will implement any significant aspect of the Restoration Projects, shall be retained or used subject to the approval of the Trustee Council. No fewer than 30 days prior to using any such contractor, the Settling Defendants shall notify the Trustee Council in writing of the name, title, and qualifications thereof. The Trustee Council will issue a notice of disapproval or an authorization to proceed with respect to each proposed contractor.

11. If the Trustee Council disapproves of a proposed contractor, the Trustee Council will notify Settling Defendants, in writing, setting forth the reason for the disapproval. The Trustee

Council shall not arbitrarily or capriciously disapprove a proposed contractor. If the Trustee Council disapproves a proposed contractor, the Settling Defendants shall submit to the Trustee Council a list of alternative contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of the Trustee Council's disapproval. The Trustee Council will provide written notice of the names of any contractors that it disapproves, and an authorization to proceed with respect to any of the other contractors. The Settling Defendants may select any contractor from that list that is not disapproved and shall notify the Trustee Council of the name thereof within 21 days of the Trustee Council's authorization to proceed.

12. The Settling Defendants shall provide a copy of this Consent Decree to all contractors hired to perform the Restoration Projects required by this Consent Decree, and to each person representing the Settling Defendants with respect to the Restoration Projects, and shall condition all contracts entered into hereunder upon performance of the Restoration Projects in conformity with the terms of the Consent Decree. The Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Restoration Projects required by the Consent Decree. The Settling Defendants shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Restoration Projects contemplated herein in accordance with this Consent Decree.

## VII. COMPLIANCE RESPONSIBILITY

13. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or State statute or regulation. The United States and the State do not, by their consent to this Consent Decree, warrant or aver in any manner that the Settling Defendants'

compliance with this Consent Decree will constitute or result in compliance with the requirements of any Federal, State, or local laws or regulations. Nothing in this Consent Decree shall be construed to affect or limit in any way the obligation of the Settling Defendants to comply with all Federal, State, and local laws and regulations governing any activity required by this Consent Decree including, but not limited to, the LDNR permit.

14. Notwithstanding any action by the Plaintiffs, including, without limitation, their issuance of the Restoration Plan or the review and approval of any design, plan, report, and other information or action formulated by the Settling Defendants under this Consent Decree, the Settling Defendants are and shall remain solely responsible for compliance with all terms and requirements of this Consent Decree, including those related to performance criteria, and the requirements of all Federal, State, and local laws and regulations.

15. The Plaintiffs, individually or jointly, may take any and all legal or administrative enforcement actions appropriate to enforce the terms of this Consent Decree. In the event that the Plaintiffs take legal or administrative actions to enforce this Consent Decree and such action is successful, the Settling Defendants must pay all reasonable costs incurred by the United States and the State related to this action including, but not limited to, enforcement costs, attorneys fees and Interest accruing on any unpaid balance.

#### VIII. PAST COSTS REIMBURSEMENT

16. To date, the U.S. Coast Guard and the Trustees have expended time, funds and resources in responding to the discharge of oil due to the WESTCHESTER Oil Spill, and assessing damages for the natural resource injuries and losses that resulted therefrom. The Settling Defendants shall reimburse the U.S. Coast Guard and each Trustee for its past costs within 30

days of entry of this Consent Decree in the amounts noted below. In each case, the Past Cost payment shall be paid by Fedwire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedure, referencing USAO File Number \_\_\_\_\_, and DOJ case number 90-5-1-1-07673. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Louisiana. As applicable, each Trustee will provide notice to Settling Defendants of receipt of payment for all payments received from the Settling Defendants under this Decree.

A. The Settling Defendants shall pay \$4,174.91 for Federal Past Costs incurred by DOI. Referencing account number 14X5198 (NRDAR), and Westchester Oil Spill, Plaquemines Parish, Louisiana, the Settling Defendants shall also send notice that such payment has been made to the DOJ and DOI persons listed in Section X (Notice), as well as to:

U.S. Department of the Interior  
Natural Resource Damage Assessment and Restoration Program  
Attention: Restoration Fund Manager  
1849 C Street, NW  
Mail Stop 4449  
Washington, DC 20240; and

B. The Settling Defendants shall pay \$310,023.32 for Federal Past Costs incurred by NOAA. Referencing the "WESTCHESTER Oil Spill Natural Resource Restoration Settlement," the Settling Defendants shall also send notice that such payment has been made to the DOJ and NOAA persons listed in Section X (Notice), as well as to:

NOAA/NOS/OR&R  
ATTN: Kathy Salter, DARRF Manager  
1305 East West Highway  
SSMC4, Room 9331  
Silver Spring, MD 20910-3281, and

C. Prior to the lodging of this Consent Decree, the Settling Defendants paid to the U.S. Coast Guard the sum of \$563,223.00 in Federal Past Costs, in reimbursement of removal costs expended from the Fund on the Westchester Oil Spill.

D. The Settling Defendants shall pay \$56,583.43 for State Past Costs incurred by the State Trustees. The State Past Costs shall be paid by separate, certified checks in the amounts noted below and made payable to each State Trustee as specified below. The Settling Defendants shall also send notice that such payment has been made to LDNR, LDWF, LDEQ, and LOSCO, to the persons listed in Section X (Notice) below. All checks are to be mailed to LOSCO, referencing "M/V WESTCHESTER LA00\_1128 Oil Spill," at the following address:

Louisiana Oil Spill Coordinators' Office  
Governor's Office/Oil Spill, P.O. Box 94095  
Baton Rouge, LA 70804.

- i. As to LDNR: a check for \$1,333.49 payable to the Louisiana Department of Natural Resources; Attention: Robert D. Harper, Undersecretary;
- ii. As to LDWF: a check for \$13,593.82 payable to the Louisiana Department of Wildlife and Fisheries; Attention: James Patton, Undersecretary, Office of Management and Finance (\$7,074.38 applied toward response costs and \$6,519.44 applied toward NRDA costs);
- iii. As to LDEQ: a check for \$23,717.41 payable to the Louisiana Department of Environmental Quality; Attention: Darryl Serio, Chief Fiscal Director, Office of Management and Finance (\$18,248.83 applied toward response costs and \$5,468.58 applied toward NRDA costs); and
- iv. As to LOSCO: a check for \$17,938.71 payable to the Oil Spill Coordinator's Office, Attention: Karolien Debusschere, Deputy Oil Spill Coordinator (\$7,513.28 applied toward

response costs and \$10,425.43 applied toward NRDA costs).

E. In the event that payments required by this Paragraph are not made within thirty (30) days of the entry of this Consent Decree by the Court, Interest on the unpaid balance shall be paid commencing on the thirty-first (31<sup>st</sup>) day after entry of this Consent Decree and accruing through the date of payment. Payments of Interest shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV. The Settling Defendants shall make all payments of Interest required by this Paragraph in the manner described in this Section.

F. Funds collected by the Trustees pursuant to this Section shall be used in accordance with 33 U.S.C. § 2706(f). Funds collected by the U.S. Coast Guard pursuant to this Section shall be deposited into the Oil Spill Liability Trust Fund.

#### IX. FUTURE COSTS PAYMENTS

17. A. As a result of the WESTCHESTER Oil Spill, the Trustees have incurred and will continue to incur administrative and other costs associated with the natural resource damage assessment, as well as oversight and monitoring of the Settling Defendants' implementation of the Restoration Projects.

B. Federal Future Costs. The Settling Defendants shall pay each Federal Trustee the amount of its estimated Federal Future Costs within 30 days of entry of this Consent Decree. Payment of the Federal Future Costs shall be made in the same manner and with the same Interest provisions as described in Paragraph 16. The Federal Trustees estimate their Federal Trustees' Future Costs as follows:

i. For NOAA: \$66,434

ii. For DOI: \$10,000

C. In the event that the Federal Future Costs exceed the estimated future costs identified above, the Settling Defendants shall pay each Federal Trustee for all amounts in excess of its estimated costs. The Federal Trustees will individually and periodically submit a bill and cost summary with supporting documentation to the Settling Defendants. The Settling Defendants shall pay the costs as indicated by the Federal Trustees within thirty (30) days of receipt of each Federal Trustee's bill and cost summary. These costs shall be paid in the same manner as described in Paragraph 16 above. In the event that payments required by this Paragraph are not made within thirty (30) days, Interest on the unpaid balance shall be paid commencing on the thirty-first (31<sup>st</sup>) day after the Settling Defendants' receipt of such bill and cost summary, and shall accrue through the date of payment. Disputes concerning the sufficiency of the supporting cost documentation provided by a Federal Trustee shall not defer payment obligations.

D. State Future Costs. The State Trustees will individually and periodically submit a bill and cost summary with supporting documentation to the Settling Defendants. The Settling Defendants shall pay the State Future Costs as directed by the State Trustees within thirty (30) days of receipt of the Trustees' bill and cost summary. These individual costs shall be paid in the same manner as described in Paragraph 16, above. In the event that payments required by this Paragraph are not made within thirty (30) days, Interest on the unpaid balance shall be paid commencing on the thirty-first (31<sup>st</sup>) day after the Settling Defendants' receipt of such bill and cost summary, and accruing through the date of payment. Disputes concerning the sufficiency of

the supporting cost documentation provided by the State Trustee shall not defer payment obligations.

E. Payments of Interest made pursuant to this Section shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XIV. The Settling Defendants shall make all payments of Interest required by this Section in the manner described in paragraph 16.

#### X. NOTICE

18. Whenever under the terms of this Consent Decree notice is required to be given by one Party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by any Party must be made in writing to the other Parties. All notices shall be sent by first-class mail.

For DOJ:

Chief, Environmental and Enforcement Section  
Environment and Natural Resource Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611  
DJ # 90-5-1-1-07673

As to the Trustees:

For the Trustee Council:

Louisiana Oil Spill Coordinator's Office – Office of the Governor  
Dr. Karolien Debusschere  
P.O. Box 94095  
Baton Rouge, LA 70804

For NOAA: Tom Moore  
NOAA  
9721 Executive Center Dr. N., Suite 114  
St. Petersburg, FL 33702  
Tel. (727) 570-5391

Jason Forman, Esq.  
NOAA Office of General Counsel  
1315 East-West Highway, Room 15107  
Silver Spring, MD 20910  
Tel. (301) 713-1217

For DOI: Buddy Goatcher  
Ecological Services  
U.S. Fish and Wildlife Service  
646 Cajundome Blvd., Suite 400  
Lafayette, LA 70506  
Tel. (337) 291-3125

Patricia Cortelyou-Hamilton, Esq.  
Office of Regional Solicitor  
U.S. Department of the Interior  
75 Spring Street, Room 304  
Atlanta, GA 30303

For LOSCO:  
Dr. Karolien Debusschere  
Deputy Coordinator, LOSCO  
Governor's Office / Oil Spill  
P.O. Box 94095  
Baton Rouge, LA 70804

Michael Wascom  
Special Counsel, LOSCO  
Department of Environmental Studies  
42 Atkinson Hall  
Louisiana State University  
Baton Rouge, LA 70803

For LDWF:  
Jim Hanifen  
Louisiana Department of Wildlife and Fisheries  
P.O. Box 98000  
Baton Rouge, LA 70898-9000

For LDNR:

Dr. Terry Howey  
Louisiana Department of Natural Resources  
P.O. Box 94396  
Baton Rouge, LA 70804-9396

For LDEQ:

John de Mond  
LDEQ/OEC/Enforcement  
P.O. Box 82215  
Baton Rouge, LA 70884-2215

Ollie Casewell Smith, 3rd  
Attorney, LDEQ  
P.O. Box 4302  
Baton Rouge, LA 70821-4302

As to the Settling Defendants:

Charles F. Lozes  
Terriberry, Carroll & Yacey, LLP,  
3100 Energy Center  
1100 Poydras Street  
New Orleans, LA 70163-3100

#### XI. INDEMNIFICATION

19. A. The United States and the State do not assume any liability by entering into this agreement. The Settling Defendants shall indemnify, save and hold harmless the United States and the State and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, (a) negligent or other wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any person acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree; or (b) any contract, agreement, or arrangement between the Settling Defendants and any person for performance of

the Restoration Projects including, but not limited to, claims on account of construction delays.

B. Further, the Settling Defendants agree to reimburse the United States and the State for all costs each incurs, including but not limited to attorneys fees and other expenses of litigation and settlement, as a result of claims made against the United States or the State, based on negligent or other wrongful acts or omissions of the Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

20. The United States and the State shall give the Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 19 and shall notify the Settling Defendants prior to settling such claim.

21. The Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State arising from or on account of any contract, agreement, or arrangement between the Settling Defendants and any person for performance of constructing the Restoration Projects, including, but not limited to, claims on account of construction delays.

## **XII. FORCE MAJEURE**

22. "Force majeure" for the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of the Settling Defendants'

contractors, or of any entity controlled by the Settling Defendants or controlling the Settling Defendants, that delays or prevents the performance of any obligation under this Consent Decree, despite the Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using the best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (1) as it is occurring and (2) following the potential force majeure, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to (a) make payments required by Sections VIII and IX (Past Costs Reimbursement and Future Costs Payments), or (b) implement the Restoration Projects or otherwise satisfy the requirements of the approved Final Work Plan.

23. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure, the Settling Defendants shall orally notify the Trustees within 48 hours of the time that the Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, the Settling Defendants shall provide in writing to the Trustees a detailed description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay or the effect thereof; a schedule for implementation of any measures to be taken to prevent or mitigate the delay; the Settling Defendants' rationale for attributing such a delay to a force majeure if they intend to assert such a claim; and state whether, in the opinion of the Settling Defendants, such circumstances may cause or contribute to an endangerment to public health or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure

to comply with the above requirements shall preclude the Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Settling Defendants shall be deemed to know of any circumstance that was known by, or should have been known by, the Settling Defendants, the Settling Defendants' contractors, or any entity controlled by the Settling Defendants or controlling the Settling Defendants.

24. If the Trustees agree that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by the Trustees for such time as necessary to complete the obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, by itself, extend the time for performance of any other obligation. If the Trustees do not agree that the delay or anticipated delay has been or will be caused by a force majeure, the Trustees will notify the Settling Defendants in writing of their decision. If the Trustees agree that the delay is attributable to a force majeure, the Trustees will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

25. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), they shall do so no later than 15 days after receipt of the Trustees' notice, as described in Paragraph 24. In any such proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were

exercised to avoid and mitigate the effects of the delay, and that the Settling Defendants complied with the requirements of Paragraphs 22 and 23, above. If the Settling Defendants carry this burden, the delay at issue shall not be deemed to be a violation by the Settling Defendants of the affected obligation of this Consent Decree identified to the Trustees and the Court.

### XIII. DISPUTE RESOLUTION

26. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedure of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

27. Informal Dispute Resolution. If, in the opinion of either the Trustees or the Settling Defendants, there is a dispute which arises under or with respect to this Consent Decree, that Party shall send written notice to the other Parties to the dispute outlining the nature of the dispute and requesting negotiations to resolve the dispute. The Parties shall endeavor to resolve the dispute through good faith negotiations. The period for informal negotiations shall not exceed 30 days from the date the notice is sent, unless this time period is modified by written agreement of the Parties.

28. Formal Dispute Resolution.

A. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by the Plaintiffs, individually or jointly, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the Settling Defendants invoke the formal dispute resolution procedures of

this Section by serving the Plaintiff(s) with a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Settling Defendants.

B. Within 60 days after receipt of Settling Defendants' Statement of Position, the Plaintiff(s) will serve on the Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by the Plaintiff(s). Within 15 days after receipt of the this Statement of Position, Settling Defendants may submit a Reply.

C. An administrative record of the dispute shall be maintained by the Plaintiff(s) and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, the Plaintiff(s) may allow submission of supplemental statements of position by the Parties to the dispute.

D. The Plaintiff(s) will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 28(C). This decision shall be binding on the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 28(E).

E. Any administrative decision made by the Plaintiff(s) pursuant to this paragraph shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of the Plaintiff(s)' decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree.

The Plaintiff(s) may file a response to the Settling Defendants' motion.

F. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Plaintiff(s) is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the decision of the Plaintiff(s) shall be on the administrative record compiled pursuant to Paragraph 28(C).

29. The invocation of informal or formal dispute resolution procedures pursuant to prior Paragraphs shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree that is not directly in dispute, unless the Trustees or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

#### XIV. STIPULATED PENALTIES

30. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 31 to 33 to the United States and the State for the Settling Defendants' failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XII (Force Majeure). "Compliance" by the Settling Defendants shall include the timely completion of the payments and activities identified in Paragraph 31 within the time schedules established by and approved pursuant to the requirements of the Consent Decree, including Attachment A, attached hereto, and any Work Plans or other documents approved by the Trustees

pursuant to this Consent Decree.

31. The following stipulated penalties shall accrue per violation per day for the Settling Defendants' failure to comply with the time schedules established for the following implementation requirements:

A. Failure to timely submit any Draft or Revised Work Plan required under Paragraphs 7 or 8:

| <u>Penalty per Violation<br/>per Day</u> | <u>Period of Noncompliance</u>               |
|------------------------------------------|----------------------------------------------|
| \$ 250                                   | 1 <sup>st</sup> through 7 <sup>th</sup> day  |
| \$ 500                                   | 8 <sup>th</sup> through 30 <sup>th</sup> day |
| \$1,000                                  | 31 <sup>st</sup> day and beyond              |

B. Failure to comply with schedules approved under Paragraphs 7 or 8, or to implement any component of a Final Work Plan:

| <u>Penalty per Violation<br/>per Day</u> | <u>Period of Noncompliance</u>               |
|------------------------------------------|----------------------------------------------|
| \$ 500                                   | 1 <sup>st</sup> through 7 <sup>th</sup> day  |
| \$750                                    | 8 <sup>th</sup> through 30 <sup>th</sup> day |
| \$1,250                                  | 31 <sup>st</sup> day and beyond              |

C. Failure to make the payments required by Paragraphs 16 or 17 in a timely manner:

| <u>Penalty per Violation<br/>per Day</u> | <u>Period of Noncompliance</u>               |
|------------------------------------------|----------------------------------------------|
| \$ 500                                   | 1 <sup>st</sup> through 7 <sup>th</sup> day  |
| \$750                                    | 8 <sup>th</sup> through 30 <sup>th</sup> day |
| \$1,250                                  | 31 <sup>st</sup> day and beyond              |

32. All penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

33. Following the determination by the Plaintiffs, individually or jointly, that the Settling

Defendants have failed to comply with one of the requirements of this Consent Decree listed above, the Plaintiff(s) may give the Settling Defendants written notification of the same and describe the noncompliance. The Plaintiffs may send the Settling Defendants a written demand for the payment of penalties. Penalties shall accrue and are due as provided in this Section regardless of whether the Plaintiffs have notified the Settling Defendants of a violation.

34. All penalties due under this Section shall be due and payable within 30 days of the Settling Defendants' receipt of a demand for payment from the Plaintiff(s), unless the Settling Defendants invoke dispute resolution under Section XIII of this Consent Decree, in which case stipulated penalties shall be due according to Paragraph 29. Stipulated penalties shall be paid as follows: 50% to the United States and 50% to the State.

A. All payments to the United States under this Section shall be paid by certified check made payable to "U.S. Department of Justice." This payment shall be mailed to the U.S. Attorney's Office, Eastern District of Louisiana, 501 Magazine Street, New Orleans, Louisiana 70130, referencing United States and the State of Louisiana v. Marine Oil Trader 3, Ltd., and ERMIS Maritime Corp., WESTCHESTER Oil Spill, USAO File Number: \_\_\_\_\_, DOJ Case Number: 90-5-1-1-07673, and the name and address of the party making payment. Copies of the check and notice shall be sent to the Parties as specified in Section X (Notice).

B. All payments to the State under this Section shall be paid by certified check made payable to the Oil Spill Coordinator's Office; Attention: Roland J. Guidry, Oil Spill Coordinator, P.O. Box 94095, Baton Rouge, LA 70804.

35. In the event the Settling Defendants fail to pay stipulated penalties when due, the United States and/or the State may institute a legal proceeding to collect such penalties, as well as

Interest accruing on any unpaid balance, as provided by law.

36. Penalties shall continue to accrue as provided in this Section during any dispute resolution period, but need not be paid until the following:

A. If the dispute is resolved by agreement, accrued penalties agreed to be owed shall be paid to the United States and the State within 25 days of the agreement;

B. If the dispute is appealed to this Court and the Plaintiff(s) prevail in whole or in part, the Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the United States and the State within 60 days of receipt of the Court's decision or order, except as provided by Paragraph 36(C) below;

C. If the District Court's decision is appealed by any Party, the Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States and the State, or the Settling Defendants to the extent that they prevail.

37. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the Settling Defendants' violation of this Consent Decree.

38. Notwithstanding any other provision of this Section, the United States and the State, in their unreviewable discretion, may waive any portion of stipulated penalties owed to them that have accrued, pursuant to this Consent Decree.

## XV. COVENANT NOT TO SUE BY PLAINTIFFS

39. A. In consideration of the payments that will be made by the Settling Defendants and the successful completion of the Restoration Projects by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 40, the United States covenants not to sue or take administrative action against the Settling Defendants pursuant to Section 1002(b)(1) or 1002(b)(2) of OPA, 33 U.S.C. §§ 2702(b)(1) or 2702(b)(2), to recover the removal costs or natural resource damages due to the WESTCHESTER Oil Spill described in this Consent Decree. This covenant not to sue shall take effect upon the date of entry of this Consent Decree by the Court, except that the covenant not to sue shall be conditioned upon the payment of costs required by Sections VIII, IX, and XIV and upon the successful performance by the Settling Defendants of their obligations to complete the Restoration Projects. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

B. In consideration of the payments that will be made by the Settling Defendants and the successful completion of the Restoration Projects by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 40, the State covenants not to sue or take administrative action against the Settling Defendants pursuant to Sections 1002(b)(1) or 1002(b)(2) of OPA, 33 U.S.C. §§ 2702(b)(1) or 2702(b)(2), and Sections 2480, 2488, or 2489 of OSPRA, La. Rev. Stat. 30:2480, 2488, or 2489, for any and all civil claims for removal costs or natural resource damages due to the WESTCHESTER Oil Spill described in this Consent Decree. This covenant not to sue shall take effect upon the date of entry of this Consent Decree by the Court, except that the covenant not to sue shall be conditioned upon the payment of costs required by Sections VIII, IX, and XIV upon the successful performance by the

Settling Defendants of their obligations to complete the Restoration Projects. This covenant not to sue extends only to the Settling Defendants and does not extend to any other person.

**XVI. RESERVATION OF RIGHTS BY PLAINTIFFS**

40. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights against the Settling Defendants with respect to all matters other than those expressly specified in the covenants not to sue set forth in Paragraph 39, including, but not limited to, the following:

A. claims based on a failure of the Settling Defendants to meet a requirement of this Consent Decree;

B. any and all criminal liability;

C. violation of any Federal or State law during the implementation of Restoration Projects or monitoring of such projects;

D. past, present, or future releases, discharges, or spills of oil or hazardous substances, other than the WESTCHESTER Oil Spill described in this Consent Decree;

E. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund to any person in connection with the WESTCHESTER Oil Spill; and

F. reimbursements under La. Rev. Stat. 30:2489 for any amounts paid or to be paid by the Louisiana Oil Spill Contingency Fund (set up by La. Rev. Stat. 30:2483) to any person in connection with the WESTCHESTER Oil Spill, including amounts paid by the Louisiana Oil Spill Contingency Fund to the State Trustees in order to reimburse assessment costs incurred by the State Trustees.

41. The failure of any of the Plaintiffs to insist upon strict and prompt performance of any provision of this Consent Decree shall not operate as a waiver of any requirement of this Consent Decree or of the Trustees' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by any of the Trustees to enforce such a provision.

42. With regard to State property interests, the State of Louisiana reserves full rights, title, and interest in state-owned land.

#### XVII. COVENANTS BY SETTLING DEFENDANTS

43. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the Plaintiffs, their employees, agents, experts, or contractors, with respect to the WESTCHESTER Oil Spill including, but not limited to the following:

A. any claims against the Fund or the Louisiana Oil Spill Contingency Fund relating to the WESTCHESTER Oil Spill;

B. any claims arising out of activities related to the Restoration Projects, including without limitation, claims based on the Trustees' selection of the Restoration Projects, oversight of the Restoration Projects, and/or approval of plans for such activities.

44. The Settling Defendants hereby covenant not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

45. Notwithstanding any other provision of this Consent Decree, this Consent Decree is without prejudice to all rights of the Settling Defendants with respect to all matters other than those expressly specified in the covenants set forth in Paragraph 43 and 44. In the event that the United States or the State exercises its rights pursuant to Paragraph 40, and except as provided in Paragraph 47, the Settling Defendants reserve the right to assert any defenses that they may have

with respect to the matters raised by the United States or the State pursuant to Paragraph 40.

#### XVIII. EFFECT OF SETTLEMENT

46. Nothing in this Consent Decree shall be construed to create any right in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right of contribution), defenses, claims, demands, and causes of action which each party may have with respect to the WESTCHESTER Oil Spill against any person not a Party hereto.

47. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs with respect to the WESTCHESTER Oil Spill, Settling Defendants shall not assert, and may not maintain any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon the contention that the claims raised by the Plaintiffs in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in Section XV (Covenant Not to Sue by Plaintiffs).

#### XIX. CERTIFICATION

48. The Settling Defendants certify that, to the best of their knowledge and belief, the Settling Defendants have fully and accurately disclosed to the Plaintiffs all information requested by the Plaintiffs in the possession of the Settling Defendants' officers, employees, contractors and agents, that relates in any way to the discharge of oil due to the WESTCHESTER Oil Spill.

49. Each undersigned representative of a Party to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

## XX. VOIDABILITY

50. If for any reason the District Court should decline to approve entry of this Consent Decree in the form presented, or if the United States or the State withdraws its consent pursuant to Paragraph 54, this Consent Decree and the settlement embodied herein shall be voidable by written notice to the other Parties at the sole discretion of any Party to this Consent Decree, and the terms hereof may not be used as evidence in any litigation.

## XXI. COMPLIANCE WITH OTHER LAWS

51. This Consent Decree shall not be construed in any way to relieve the Settling Defendants or any other person or entity from the obligation to comply with any Federal, State, or local law.

## XXII. RETENTION OF JURISDICTION

52. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or material modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

## XXIII. MODIFICATION

53. Any modification to the Consent Decree, including the attachments thereto, that does not materially alter a Restoration Project may be made by written agreement between the Plaintiffs and the Settling Defendants, or in accordance with the dispute resolution process, as provided in Section XIII (Dispute Resolution). Any modification that materially alters a Restoration Project or payments required in Sections VIII and IX must be approved by the Court.

#### XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

54. The Parties agree and acknowledge that final approval by the United States and the State and entry of this Consent Decree is subject to a thirty-day (30) period for public notice and comment in accordance with U.S. Department of Justice policy. The United States and the State reserve the right to withdraw or withhold their consent if comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendants consent to the entry of this Consent Decree without further notice.

#### XXV. TERMINATION

55. Any Party may apply to the Court to terminate this Consent Decree after: (a) the Settling Defendants have paid all costs as provided in Section VIII and IX, and all penalties due pursuant to Section XIV; (b) the Trustees have issued Construction Completion Certificates for each Restoration Project, pursuant to Paragraph 7(E); and (c) the Trustees have issued the Splay Marsh Project Completion Certificate, pursuant to Paragraph 8(B). Termination of this Consent Decree under this Paragraph shall not affect the covenants, reservations, and effects of settlement set forth in Section XV (Covenants Not to Sue By Plaintiffs); Section XVI (Reservation of Rights by Plaintiffs); Section XVII (Covenants by Settling Defendants); and Section XVIII (Effect of Settlement).

#### XXVI. EFFECTIVE DATE

56. This Consent Decree shall be effective upon the date of its entry by the Court.

#### XXVII. SIGNATORIES/SERVICE

57. The Settling Defendants shall identify, on the attached signature page, the name,

address and telephone number of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable rules of this Court, including, but not limited to, service of a summons.

58. This Consent Decree may be executed in any number of counterparts and, as executed, shall constitute one agreement, binding on all of the Parties hereto, even though all of the Parties do not sign the original or the same counterpart.

#### XXVIII. APPENDICES

59. The following appendices are attached to and incorporated into this Consent Decree:

“Attachment A” is the Damage Assessment/Restoration Plan and Environmental Assessment.

“Attachment B” is the Statement of Work.

#### XXIX. FINAL JUDGMENT

60. This Consent Decree and its Attachments constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

61. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR THE PLAINTIFF UNITED STATES:

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

BY:

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BRUCE GELBER  
Chief  
Environmental Enforcement Section  
U.S. Department of Justice

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FOR THE PLAINTIFF STATE OF LOUISIANA  
OIL SPILL COORDINATOR'S OFFICE

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FOR THE PLAINTIFF STATE OF LOUISIANA  
DEPARTMENT OF NATURAL RESOURCES:

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JACK C. CALDWELL  
Secretary  
P.O. Box 94396  
Baton Rouge, LA 70898-9396

FOR THE DEFENDANT MARINE OIL TRADER J,  
LTD:

06 April 2003  
Date

Signature: \_\_\_\_\_  
Name (print): Angeliki Kakamouki  
Title: Vice President / Secretary / Director  
Address: 34, Nikis Street  
10557 Athens, Greece  
\_\_\_\_\_  
\_\_\_\_\_

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): C.F. Lozes  
Title: Attorney  
Address: 3100 Energy Centre  
New Orleans, LA. 70163-3100  
\_\_\_\_\_  
Ph. Number: 504 523 6451

FOR THE DEFENDANT ERMIS MARITIME CORP.:

6th April 2003  
Date

Signature: \_\_\_\_\_  
Name (print): Dimitrios Louskos  
Title: Vice President / Secretary / Director  
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Greece

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