

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

Plaintiff,

v.

BOUCHARD TRANSPORTATION  
COMPANY, INC.,

TUG EVENING TIDE CORPORATION, and

B. NO. 120 CORPORATION,

Defendants.

Civil Action No.

COMONWEALTH OF MASSACHUSETTS

Plaintiff,

v.

BOUCHARD TRANSPORTATION  
COMPANY, INC., et al.,

**CONSENT DECREE**

STATE OF RHODE ISLAND and  
PROVIDENCE PLANTATIONS,

Plaintiffs,

v.

BOUCHARD TRANSPORTATION  
COMPANY, INC., et al.,

Defendants.

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## **I. BACKGROUND**

A. The United States of America (“United States”), by the Attorney General, on behalf of the United States Department of the Interior (“DOI”) and the United States Department of Commerce, National Oceanic and Atmospheric Administration (“NOAA”), has filed a complaint against Bouchard Transportation Co., Inc., Tug Evening Tide Corp., and B. No. 120 Corp. (“Defendants”) in this Court alleging that the Defendants are liable to the United States under Section 1002(a) and (b) of the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2702 (a) and (b), for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from an oil spill that occurred in the vicinity of Buzzards Bay, off the shores of the Commonwealth of Massachusetts and the State of Rhode Island and Providence Plantations, on April 27, 2003 (the “Oil Spill”).

B. The Commonwealth of Massachusetts (“Commonwealth” or “Massachusetts”) has also filed a complaint on behalf of the Secretary for the Executive Office of Energy and Environmental Affairs against the Defendants in this Court alleging that the Defendants are liable to the Commonwealth under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), and Section 5(a)(ii) of the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, § 5(a)(ii), for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from the Oil Spill.

C. The State of Rhode Island and Providence Plantations (“State” or “Rhode Island”) has also filed a complaint against the Defendants in the United States District Court for the District of Rhode Island (the “Rhode Island Action”) alleging that the Defendants are liable to

the State under Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702 (a) and (b), and Rhode Island Gen. Laws Section 46-12.5.7, for damages for injury to, destruction of, loss of, or loss of use of, certain Natural Resources, including the reasonable cost of assessing the damages, resulting from the Oil Spill.

D. Rhode Island intends to file a motion pursuant to 28 U.S.C. § 1404(a), or otherwise, to transfer the Rhode Island Action from the United States District Court for the District of Rhode Island to the United States District Court for the District of Massachusetts, as to which the Parties do not object.

E. The Plaintiffs intend to file a joint motion to consolidate the separate actions noted above in the United States District Court for the District of Massachusetts, as to which the Defendants do not object.

F. The complaints allege that the Oil Spill occurred when the tugboat Evening Tide, owned and/or operated by the Defendant Tug Evening Tide Corp., a wholly-owned subsidiary of Defendant Bouchard Transportation Co., Inc., was towing the unmanned tank barge, Bouchard No. 120, owned and/or operated by B. No. 120 Corp., also a wholly-owned subsidiary of Defendant Bouchard Transportation Co., Inc., in the vicinity of Buzzards Bay. The complaints further allege that: (1) up to 98,000 gallons of oil were spilled or leaked as a result of the incident; (2) the Oil Spill caused injury to, destruction of, loss of, or loss of use of, certain Natural Resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the Commonwealth, and the State; and (3) the United States, the Commonwealth, and the State have incurred costs in assessing the nature and extent of these injuries.

G. The United States, the Commonwealth, and the State share trusteeship of the Natural Resources alleged in the complaints to be injured and are coordinating assessment and restoration efforts.

H. The Parties agree and this Court finds that settlement of this matter without further litigation is in the public interest and that the entry of this Consent Decree is the most appropriate means of resolving these matters.

I. The Parties agree and this Court, by entering this Consent Decree, finds that: (1) this Consent Decree has been negotiated by the Parties in good faith, following the Defendants' participation in a cooperative natural resource damage assessment with the Trustees, pursuant to the Memorandum of Agreement entered into by the Trustees and Bouchard Transportation Co., Inc. on October 12, 2006 ("Trustee and RP Memorandum of Agreement") that is available in the administrative record for this matter; (2) settlement of this matter will avoid prolonged and complicated litigation; and (3) this Consent Decree is fair, reasonable, and in the public interest.

J. The Defendants do not admit any liability arising out of the transactions or occurrences alleged in this action.

NOW, THEREFORE it is Adjudged, Ordered and Decreed:

## **II. JURISDICTION**

1. The Parties agree and this Court concludes that it has jurisdiction over the subject matter of this action pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. §§ 1331 and 1345. Venue lies in this District pursuant to Section 1017(b) of OPA, 33 U.S.C. § 2717(b), and 28 U.S.C. 1391(b). This Court has pendent jurisdiction over the state law claims. This Court has, and the Defendants consent to, the Court's personal jurisdiction over them in

connection with this action. Solely for the purposes of this Consent Decree and the underlying complaints, the Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree.

### **III. PARTIES BOUND**

2. This Consent Decree applies to and is binding upon: the United States, on behalf of NOAA and DOI, as designated federal trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Oil Spill; the Commonwealth, on behalf of the Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA), and the State, on behalf of the Rhode Island Department of Environmental Management (RIDEM), as designated state trustees for Natural Resources, including those Natural Resources at, in the vicinity of, or affected by the Oil Spill; and, the Defendants, including, without limitation, their successors and assigns, or other entities or persons otherwise bound by law. Any change in ownership or corporate status of the Defendants including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Defendants' or their successors' and assigns' rights or responsibilities under this Consent Decree. In any action to enforce this Consent Decree, the Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in OPA or in the regulations promulgated by NOAA under OPA, 15 C.F.R.

Part 990, shall have the meaning assigned to them in OPA or in such regulations, as applicable.

Whenever the following terms are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the definition specified hereinafter shall apply.

a. “Aquatic Resources” shall mean: aquatic habitats in certain intertidal sediment areas (other than those intertidal habitats addressed as “Shoreline Resources”), the water column, and subtidal sediment areas; any and all living organisms that reside in or utilize those aquatic habitats; and the services provided by those habitats and living organisms.

References to Aquatic Resources shall include Aquatic Resources of Ram Island, except when otherwise noted.

b. “Bouchard B.120 Oil Spill Restoration Account” shall mean a separate project numbered account to be established within DOI’s Natural Resource Damage Assessment and Restoration Fund (“DOI NRDAR Fund”), which will be funded by the Defendants in accordance with Section VI (Payments by Defendants) of this Consent Decree and jointly administered by the Trustees in accordance with Section VIII (Bouchard B. 120 Oil Spill Restoration Account) of this Consent Decree and the Trustee Memorandum of Agreement, identified in paragraph bb of this Section.

c. “Commonwealth” shall mean the Commonwealth of Massachusetts.

d. “Consent Decree” shall mean this Decree and appendices attached hereto.

In the event of a conflict between this Consent Decree and any appendix, this Consent Decree shall control.

e. “Costs of Assessment” shall mean all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), Section

5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1 et seq., incurred by the Trustees on or before December 31, 2009, including, but not limited to, direct, indirect, and administrative costs in assessing the alleged injury to, destruction of, loss of, or loss of use of, all Natural Resources at or in connection with the Oil Spill (not just Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers) and/or directly or indirectly related to negotiating this Consent Decree, and all Trustee costs of approving this Consent Decree.

f. “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.

g. “Defendants” shall mean Bouchard Transportation Co., Inc., Tug Evening Tide Corp., and B. No. 120 Corp.

h. “DOI” shall mean the United States Department of the Interior.

i. “EOEEA” shall mean the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts.

j. “Fund” shall mean the Oil Spill Liability Trust Fund established pursuant to 26 U.S.C. §§ 4611 and 9509.

k. “Interest,” as that term is used in Section VI (Payments by Defendants) of this Consent Decree, shall mean interest at the rate provided in 28 U.S.C. § 1961. Interest shall be simple interest calculated on a daily basis.



l. “M.G.L. c. 21E” shall mean the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass. Gen. Laws ch. 21E, §§ 1-19.

m. “Natural Resources” shall have the meaning provided in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

n. “Natural Resource Damages” shall mean the damages described at Section 1002(b)(2)(A) of OPA, 33 U.S.C. § 2702(b)(2)(A), Section 5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1-7.

o. “NOAA” shall mean the National Oceanic and Atmospheric Administration.

p. “Oil Spill” shall mean the oil spill that occurred on April 27, 2003, when the tugboat Evening Tide was towing the unmanned tank barge, Bouchard No. 120, in the vicinity of Buzzards Bay off the shores of the Commonwealth of Massachusetts and the State of Rhode Island.

q. “OPA” shall mean the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, 33 U.S.C. §§ 2701-2761.

r. “Parties” shall mean the Plaintiffs and the Defendants.

s. “Piping Plovers” shall mean a small North American shorebird, *Charadrius melodus*, that breeds on beaches along the Atlantic Coast, including beaches in the Commonwealth of Massachusetts and the State of Rhode Island. The Atlantic Coast Piping Plover population is designated as threatened under the Endangered Species Act of 1973, as amended, the Massachusetts Endangered Species Act, Mass. Gen. Laws ch. 131A, §§ 1-6, and

Chapter 20-37 of the Rhode Island Gen. Laws, relating to Endangered Species of Animals and Plants.

t. “Plaintiffs” shall mean the United States, the Commonwealth of Massachusetts, and the State of Rhode Island.

u. “Ram Island” shall mean the island located in Buzzards Bay off the coast of Massachusetts, approximately one-half mile south of Antassawamock, in the Town of Mattapoisett. The island, approximately three acres in size, is owned by the Commonwealth of Massachusetts, Division of Fisheries and Wildlife and managed as a Wildlife Sanctuary.

v. “Recreational Resources” shall mean the human use of Natural Resources by all members of the public for recreational activities and includes shellfishing, general shoreline use, and boating as determined by the Trustees in the Bouchard B-120 Oil Spill Buzzards Bay, Massachusetts Lost Use Valuation Report, dated March 31, 2009 (cooperatively prepared by the Bouchard B-120 Oil Spill Lost Use Technical Working Group).

w. “Restoration Plan(s)” shall mean a plan or plans developed by the Trustees in accordance with OPA and its underlying regulations at 15 C.F.R. §§ 990.53 – 990.56.

x. “RIDEM” shall mean the State of Rhode Island, Department of Environmental Management.

y. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

z. “Shoreline Resources” shall mean: intertidal habitats including marshes, sand beaches, and coarse substrates (except those intertidal habitats addressed as “Aquatic Resources”); any and all non-avian living organisms that reside in or utilize those intertidal

habitats (“non-avian intertidal organisms”); and the services provided by those intertidal habitats and non-avian intertidal organisms. References to Shoreline Resources shall include Shoreline Resources of Ram Island, except when otherwise noted.

aa. “State” shall mean the State of Rhode Island and Providence Plantations.

bb. “Trustee Memorandum of Agreement” shall mean the Memorandum of Agreement entered into by the Trustees, as well as any amendments thereof. A copy of the Memorandum of Agreement is attached hereto as Appendix A.

cc. “Trustees” shall mean the designated federal and state officials, and their designees, who act on behalf of the public as trustees for the Natural Resources, including those at, in the vicinity of, or affected by the Oil Spill: DOI, represented by the United States Fish and Wildlife Service (“USFWS”), and NOAA are the federal trustees for Natural Resources related hereto; the Secretary of EOEEA, and the Director of RIDEM are the state trustees for Natural Resources related hereto.

dd. “United States” shall mean the United States of America, on behalf of the DOI and NOAA, including all agencies, bureaus, administrations or departments of DOI and NOAA.

ee. “Unpaid Costs of Assessment” shall mean all Costs of Assessment, as defined in paragraph e, that the Trustees have not received from the Defendants as of the date of lodging of this Consent Decree including, but not limited to, Costs of Assessment disputed by the Defendants and Costs of Assessment for which a request for payment has not been submitted to the Defendants by such date.

ff. “Unreimbursed Costs of Assessment” shall mean all costs within the meaning of Sections 1002(b)(2)(A) and 1006(d)(1)(C) of OPA, 33 U.S.C. §§ 2702(b)(2)(A), 2706 (d)(1)(C), Section 5(a)(ii) of M.G.L. c. 21E, and Rhode Island Gen. Laws Section 46-12.5.1 et seq., incurred by the Trustees after December 31, 2009, including, but not limited to: (i) direct, indirect, and administrative costs, in assessing the alleged injury to, destruction of, loss of, or loss of use of all Natural Resources at or in connection with the Oil Spill and/or directly or indirectly related to negotiating this Consent Decree, and all Trustee costs of approving this Consent Decree; and (ii) costs directly or indirectly related to negotiating and approving any subsequent Consent Decree(s) concerning alleged injury to, destruction of, loss of, or loss of use of, Natural Resources at or in connection with the Oil Spill, except that Unreimbursed Costs of Assessment shall not include any and all assessment costs necessary to prepare and implement a Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, as all such assessment costs are included in the amounts to be paid to the Trustees pursuant to Paragraph 6.a below.

gg. “Wildlife Resources” shall mean: animal species except for Piping Plovers; the habitats and other living organisms that support those species; and the ecological services provided by those species, habitats, and other living organisms.

## **V. GENERAL PROVISIONS**

4. The Parties are entering into this Consent Decree to resolve certain claims of the United States, the Commonwealth, and the State against the Defendants attributable to the Oil Spill, based on the Defendants’ agreement to: (a) reimburse the Trustees for the Costs of Assessment of damages to Natural Resources resulting from the Oil Spill incurred by the

Trustees; and (b) provide compensation for alleged injury to Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, including any assessment costs necessary to prepare and implement a Restoration Plan(s) for such resources, to the extent provided in Paragraph 6.a below, but not for alleged injury to Wildlife Resources, and/or other potential non-Piping Plover, non-Recreational, non-Aquatic, and non-Shoreline Natural Resource injuries resulting from the Oil Spill, which will be addressed separately in the future.

## **VI. PAYMENTS BY DEFENDANTS**

5. Acknowledgment of paid Costs of Assessment dating from April 27, 2003 through December 31, 2009.

a. NOAA acknowledges its receipt of payment from the Defendants in the amount of \$ 298,312 in partial reimbursement of NOAA's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

b. DOI acknowledges its receipt of payment from the Defendants in the amount of \$ 989,812.23 in partial reimbursement of DOI's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

c. The Commonwealth acknowledges its receipt of payment from the Defendants in the amount of \$ 285,405.89 in reimbursement of the Commonwealth's Costs of Assessment which have arisen from the Oil Spill.

d. The State acknowledges its receipt of payment from the Defendants in the amount of \$ 0 in reimbursement of the State's Costs of Assessment which have arisen from the Oil Spill and reserves all rights regarding the Unpaid Costs of Assessment.

6. Payment of the Plaintiffs' Claims for Injury to Aquatic Resources, Shoreline Resources, Recreational Resources and Piping Plovers.

a. Within thirty (30) days of the effective date of this Consent Decree, the Defendants shall pay \$6,076,393 plus Interest as provided in Paragraph 7 (if any), to DOI on behalf of the Plaintiffs, as follows:

i. Defendants shall pay \$1,522,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Aquatic Resources and Shoreline Resources (except Ram Island Shoreline Resources) alleged to have arisen from the Oil Spill;

ii. Defendants shall pay \$534,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Ram Island Shoreline Resources alleged to have arisen from the Oil Spill;

iii. Defendants shall pay \$3,305,393 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Recreational Resources alleged to have arisen from the Oil Spill; and

iv. Defendants shall pay \$715,000 to DOI on behalf of the Plaintiffs, as monetary compensation for injury to Piping Plovers alleged to have arisen from the Oil Spill.

b. The funds paid pursuant to Paragraph a shall be used jointly by the Trustees in accordance with Section VIII (Bouchard B.120 Oil Spill Restoration Account) of this Consent Decree and the Trustee Memorandum of Agreement. The Defendants shall transfer these funds to the Bouchard B.120 Oil Spill Restoration Account via an Electronic Funds Transfer ("EFT") through the U.S. Treasury's Automated Clearing House (ACH)/Remittance Express program in accordance with instructions to be provided by DOI within 15 days of the

date of the entry of the Consent Decree. Payment shall be deemed to have been made upon receipt of these funds by EFT. A copy of the paperwork documenting the EFT and any accompanying correspondence shall be sent by the Defendants to the persons listed in Section XIII (Notices) of this Consent Decree for notices to the Trustees, as well as to:

Natural Resource Damage Assessment and Restoration Program  
Attn: Restoration Fund Manager  
Mail Stop 4449  
1849 C Street, N.W.  
Washington, D.C. 20240

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

Notices shall reference the DOJ Case Number (#90-5-1-1-08159), spill name, location, and name of paying responsible party.

c. Because the jurisdiction, trusteeships, and restoration goals of the Trustees for injured Natural Resources may overlap, monies paid to DOI on behalf of all of the Plaintiffs and placed in the DOI NARDAR Fund pursuant to this paragraph shall be jointly administered, in accordance with the Trustee Memorandum of Agreement, as agreed by the Plaintiffs.

d. The Defendants are jointly and severally liable for such payment.

7. Interest.

a. In addition to the payment to be made pursuant to Paragraph 6, Defendants shall pay Interest on the amount due pursuant to that Paragraph, as set forth herein. Interest shall be calculated as follows:

i. if the Defendants execute and return this Consent Decree to the

United States, with copies to the Commonwealth and the State, within thirty (30) days of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, no Interest shall accrue;

ii. if the Defendants execute and return this Consent Decree to the United States, with copies to the Commonwealth and the State within thirty (30) days of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, but payment is not timely, Interest shall be calculated from the date thirty (30) days after the effective date of this Consent Decree until the date of payment; and

iii. if the Defendants execute and return this Consent Decree to the United States, with copies to the Commonwealth and the State, more than thirty (30) days from the date of the Defendants' receipt of this Consent Decree by certified mail, as determined by the date of the signature provided by the Defendants' authorized representative or agent acknowledging receipt of the document, Interest shall be calculated from the date thirty (30) days after the Defendant's receipt of this Consent Decree until the date of payment.

b. Interest on any unpaid balance due under Paragraph 6 shall be paid to the DOI in the manner set forth in Paragraph 6. The Defendants are jointly and severally liable for any such interest payment.

c. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Consent Decree.



## **VII. STIPULATED PENALTIES**

### **8. Assessment of Stipulated Penalties.**

The Defendants shall pay a stipulated penalty to the United States, the Commonwealth, and the State for failure to make any payment in Paragraphs 6 or 7, at the rate of two thousand dollars (\$2,000) per day for each day of non-compliance up to the first thirty (30) days of non-compliance. After thirty (30) days of failure to make any payment in Paragraphs 6 or 7, the Defendants shall pay a stipulated penalty to the United States, the Commonwealth, and the State at the rate of four thousand dollars (\$4,000) per day for each day of non-compliance after the first thirty (30) days of non-compliance.

a. Stipulated penalties shall begin to accrue on the day after payment is due and continue to accrue until the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

b. Any stipulated penalty payments shall be divided equally among the United States, the Commonwealth, and the State.

c. The Defendants are jointly and severally liable for payment of such stipulated penalties.

d. The United States, the Commonwealth, and/or the State may give the Defendants written notification that they have failed to make a payment as required by Paragraphs 6 or 7. Such notice shall describe the noncompliance and make a demand for the payment of the stipulated penalties. However, stipulated penalties shall accrue as provided in Paragraph 8.a regardless of whether the Defendants have been notified of a violation. The Defendants shall pay stipulated penalties within thirty (30) days of receipt of written demand

for such stipulated penalties by certified mail, as determined by the date of the required signature by the Defendants' authorized representative or agent acknowledging receipt of the written demand.

e. If the Defendants fail to pay stipulated penalties when due, the United States, the Commonwealth, and/or the State may institute proceedings to collect the stipulated penalties, as well as Interest as provided in Paragraph 8.f below.

f. Interest on Stipulated Penalties.

The Defendants shall pay Interest on the unpaid balance of any stipulated penalties due, which shall begin to accrue on the date thirty (30) days past the demand therefor. The Interest on the unpaid balance of stipulated penalties due pursuant to Paragraph 8.a shall be divided equally among the United States, the Commonwealth, and the State. The Defendants are jointly and severally liable for such interest payments.

g. Notwithstanding any other provision of this Section, the United States, the Commonwealth, and/or the State may, in their unreviewable discretion, waive any portion of its share of the stipulated penalties that have accrued pursuant to this Consent Decree.

h. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States, the Commonwealth, and/or the State to seek any other remedies or sanctions available by virtue of Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based.

9. Payment Instructions for Stipulated Penalties.

Any stipulated penalty payment shall be accompanied by a reference to this Consent Decree, be identified as "Stipulated Penalties," and reference "the Bouchard B.120 Oil Spill." Notice of

payment of a stipulated penalty shall be made to the Trustees in the manner specified in Section XIII (Notices).

a. Stipulated penalty payments to the United States shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Massachusetts. At the time of payment, Defendants shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree, and shall reference the case name, civil action number, DOJ Case Number (#90-5-1-1-08159), and the violations for which the stipulated penalties are being paid to the United States, in accordance with Section XIII of this Decree (Notices).

b. Stipulated penalty payments to the Commonwealth shall be made by certified check made payable to the Commonwealth of Massachusetts and sent to:

Executive Office of Energy and Environmental Affairs  
Attn: Chief Financial Officer  
100 Cambridge Street, Suite 900  
Boston, MA 02114

Copies of the check shall be sent to:

MA Department of Environmental Protection  
Bureau of Waste Site Cleanup  
NRD Program  
One Winter Street, 8<sup>th</sup> Floor  
Boston, MA 02108 (Attn: Karen Pelto)

Office of the Attorney General  
Environmental Protection Division  
One Ashburton Place  
Boston, MA 02108 (Attn: Seth Schofield)

Payments made pursuant to this Paragraph shall be credited to the Natural Resource Damages Trust (established by 1998 Mass. Acts ch. 194, sec. 317, as amended by 2004 Mass. Acts ch. 149, sec. 222). The Defendants shall note the following on the face of the check: Natural Resources Damages Trust, Account Number, 2000-6020.

c. Stipulated penalty payments to the State shall be made by certified check made payable to the RI Department of Environmental Management, OSPAR FUND, and sent to the Department of Environmental Management, 235 Promenade Street, Providence, RI 02908 (Attn: Mary E. Kay).

#### **VIII. BOUCHARD B.120 OIL SPILL RESTORATION ACCOUNT**

10. At no further cost to the Defendants, except as provided by Paragraph 15.g below, the Trustees will prepare a Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers and jointly, as provided in the Trustee Memorandum of Agreement, approve expenditures from the Bouchard B.120 Oil Spill Restoration Account consistent with the Restoration Plan(s) for the resources identified in this paragraph and pursuant to the terms of the Trustee Memorandum of Agreement. If the funds in the Bouchard B.120 Oil Spill Restoration Account are not sufficient to complete the activities in the Restoration Plan(s) for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, neither the Defendants nor the Trustees shall be required to expend additional funds to complete the activities in the Restoration Plan(s).

11. All funds for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers in the Bouchard B.120 Oil Spill Restoration Account, including any interest or return on investment thereon, shall be held in the Bouchard B.120 Oil Spill Restoration

Account solely for use by the Trustees to jointly plan, implement, oversee, or monitor the restoration of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers in accordance with the Restoration Plan(s) prepared pursuant to Paragraph 10. DOI shall, in accordance with law, pursuant to the terms of the Trustees' Memorandum of Agreement, and for the benefit of the Trustees, manage and invest the funds in the Bouchard B.120 Oil Spill Restoration Account on behalf of the Trustees. Upon receipt of the funds for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers DOI will establish a distinct and project specific account number within the DOI NRDAR Fund to allow the funds to be maintained as a segregated account within the DOI Natural Resource Damage Assessment and Restoration Fund. DOI shall not make any charge against the Bouchard B.120 Oil Spill Restoration Account for investment, management, or any other services provided with respect to operation of the account.

#### **IX. COVENANT NOT TO SUE BY PLAINTIFFS**

12. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the United States covenants not to sue or take administrative action against the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the United States of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

13. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the Commonwealth covenants not to sue the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b) and M.G.L. c. 21E § 5(a)(ii), for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment, if any) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the Commonwealth of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

14. In consideration of the payments and actions that have been and will be made by the Defendants under this Consent Decree, the State covenants not to sue the Defendants pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b) and Rhode Island Gen. Laws Section 46-12.5.7, for (1) Costs of Assessment (except with respect to the Unpaid Costs of Assessment) and (2) damages for injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, related to the Oil Spill. This covenant not to sue is conditioned upon receipt by the State of all payments required by Section VI (Payments by Defendants) and, as applicable, Section VII (Stipulated Penalties) of this Consent Decree.

15. Reservations of rights. Notwithstanding any other provision of this Consent Decree, the United States, the Commonwealth, and the State reserve, and this Consent Decree is without prejudice to, all rights against the Defendants with respect to all matters other than those

expressly specified in the covenants not to sue set forth in Paragraphs 12, 13, and 14 of this Section, including, but not limited to:

- a. claims against the Defendants for their failure to meet a requirement of this Consent Decree;
- b. claims against the Defendants for damages, including assessment costs, under OPA and any other applicable law, for injury to, destruction of, loss of, or loss of use of, Natural Resources that are not related to the Oil Spill;
- c. any criminal liability;
- d. subrogated claims under Section 1015 of OPA, 33 U.S.C. § 2715, for any amounts paid or to be paid by the Fund in connection with the Oil Spill;
- e. claims, other than claims for Natural Resource Damages related to the Oil Spill, against the Defendants that the Commonwealth, the State, or the United States on behalf of the United States Environmental Protection Agency, and/or the United States Coast Guard, may have under any applicable law;
- f. claims against the Defendants for injuries to Natural Resources other than those for Aquatic Resources, Shoreline Resources, Recreational Resources, and Piping Plovers, including but not limited to, injuries to Wildlife Resources; and
- g. claims against the Defendants for Unreimbursed Costs of Assessment and Unpaid Costs of Assessment.
- h. Special Reservations Regarding Natural Resource Damages.

Notwithstanding any other provision of this Consent Decree, the United States, the Commonwealth, and the State reserve the right to institute proceedings against the Defendants in

this action or in a new action seeking recovery of Natural Resource Damages for Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers, based on:

i. conditions caused by the Oil Spill, unknown by the Trustees as of the date of the lodging of this Consent Decree, that cause new or additional injury to, destruction of, loss of, or loss of use of such Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers; or

ii. information received by the Trustees after the date of lodging of this Consent Decree indicating that the Oil Spill has resulted in new or significant additional injury to, destruction of, loss of, or loss of use of, such Aquatic Resources, Shoreline Resources, Recreational Resources, and/or Piping Plovers which injury is of a type that was unknown or a magnitude greater than was known by the Trustees as of the date of lodging of this Consent Decree.

#### **X. COVENANT BY THE DEFENDANTS**

16. The Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, the Commonwealth, or the State, and their employees, agents, contractors, departments, agencies, administrations and bureaus, related to Natural Resource Damages arising from the Oil Spill, including, without limitation, any potential or pending claims against the Fund relating to the Oil Spill.

17. The Defendants further agree that in any subsequent administrative or judicial proceeding initiated by the United States, the Commonwealth, or the State for: injunctive relief; recovery of Unreimbursed Costs of Assessment or Unpaid Costs of Assessment; or other relief relating to the Oil Spill, Defendants shall not assert, and may not maintain, any defense or claim



based upon the principles of waiver, res judicata, statute of limitations, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine, or other defenses with respect to claims for injury to Natural Resources, including claims brought under Paragraph 15.h and claims for destruction of, loss of, or loss of use of, Wildlife Resources, based upon any contention that the claims raised by the United States, the Commonwealth, or the State 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 covenants not to sue set forth in Section IX (Covenant Not To Sue by Plaintiffs) or Paragraph 16 of this Section X. The time between the lodging of this Consent Decree and the date of completion of the Natural Resource Damage assessment under Section 1006(c) of OPA, 33 U.S.C. § 2706(c), shall not be counted in relation to the computation of any applicable statute of limitations.

#### **XI. EFFECT OF SETTLEMENT**

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. In addition, nothing in this Consent Decree shall limit, enlarge, or otherwise affect, the private rights or claims of any person not a Party to this Consent Decree, except as may be determined otherwise by a court of competent jurisdiction. 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 Oil Spill against any person not a Party hereto. The Trustees, who are authorized to act on behalf of the public with respect to Natural Resources, are entering into this Consent Decree solely to settle all claims relating to injury to, destruction of, loss of, or loss of use of Aquatic Resources, Shoreline Resources, Recreational Resources, and

Piping Plovers resulting from the Oil Spill that arise under or may be brought pursuant to Section 1002(a) and (b) of OPA, 33 U.S.C. § 2702(a) and (b), M.G.L. c. 21E, § 5(a)(ii), and Rhode Island Gen. Laws Section 46-12.5.7, to the extent specified in Paragraphs 12, 13, and 14 above (Covenant Not to Sue by Plaintiffs).

19. This Consent Decree shall not bar any action by the United States, the Commonwealth, or the State with respect to any matters other than those expressly specified in the covenants not to sue set forth in Paragraphs 12, 13, and 14 of Section IX.

20. This Consent Decree shall not preclude the United States, the Commonwealth, or the State from instituting a separate or ancillary action to enforce the terms of this Consent Decree.

## **XII. MODIFICATION**

21. a. Material Modifications. Material modifications to the Consent Decree may be made only by written approval of the Parties and the approval of the Court.

b. Non-Material Modifications. Non-material modifications of the Consent Decree may be made only by written approval of the Parties, and will become effective upon their filing with the Court.

c. Modifications to the Trustee Memorandum of Agreement. Notwithstanding Paragraph 21.a, any modifications to the Trustee Memorandum of Agreement may be made only in accordance with the terms of that agreement.

## **XIII. NOTICES**

22. 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 and

facsimile numbers 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. Any correspondence submitted to the Plaintiffs shall include a reference to the case caption and civil action number of this action. All notices shall be sent by first-class mail and facsimile.

As to the United States:

Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Facsimile: (202) 514-0097

Branden Blum  
United States Department of Commerce  
NOAA Office of General Counsel  
1315 East-West Highway  
Silver Spring, MD 20910  
Facsimile: (301) 713-1229

Mark Barash  
United States Department of the Interior  
Office of the Solicitor  
One Gateway Center  
Suite 612  
Newton, MA 02458  
Facsimile: (617) 527-6848

As to the Commonwealth:

Matthew Brock  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
1 Ashburton Place, 18th Flr.  
Boston, MA 02108  
Facsimile: (617) 727-9665

Margaret Callanan  
Deputy General Counsel  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street  
Boston, MA 02114  
Facsimile: (617) 262-1095

As to the State:

Mary E. Kay  
State of Rhode Island  
Department of Environmental Management  
Office of Legal Services  
235 Promenade Street  
Providence, Rhode Island 02908  
Facsimile: (410) 222-3378

As to Bouchard Transportation Co., Inc.:

Austin P. Olney  
Dewey & LeBoeuf LLP  
260 Franklin Street  
Boston, MA 02110  
Fax: (617) 439-0341

Andrew N. Davis  
Dewey & LeBoeuf LLP  
225 Asylum Street  
Hartford, CT 06103  
Fax: (617) 897-9026

**XIV. RETENTION OF JURISDICTION**

23. 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. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce this Consent Decree.

**XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

24. a. This Consent Decree shall be lodged with the Court and subject to public notice and comment in accordance Section 1006(c)(5) of OPA, 33 U.S.C. § 2706(c)(5) and 28 C.F.R. § 50.7.

b. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received regarding the Consent Decree disclose facts or considerations which indicate the Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the Commonwealth's and/or the State's withdrawal from this Consent Decree, the United States reserves its right to withdraw from this Consent Decree.

c. The Commonwealth and/or the State reserve the right to withdraw or withhold their consent to the Consent Decree if comments received regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. In addition, in the event of the United States' withdrawal from this

Consent Decree, the Commonwealth and/or the State reserve their right to withdraw from this Consent Decree.

d. The Defendants consent to the entry of this Consent Decree without further notice, and agree not to withdraw or oppose entry of the Consent Decree or to challenge any provision of the Consent Decree.

25. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVI. FINAL JUDGMENT**

26. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties for only the Natural Resource Damages settled herein. The Court finds that there is no just reason for delay and therefore enters this as a final judgment under Fed. R. Civ. P. 54 and 58.

#### **XVII. ACTIONS OF TRUSTEES**

27. All actions taken by the Trustees pursuant to this Consent Decree shall be in accordance with the terms of their Trustee Memorandum of Agreement, attached hereto at Appendix A.

#### **XVIII. APPENDICES**

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

Appendix A is the Trustee Memorandum of Agreement into which the Trustees have entered.

**XIX. EFFECTIVE DATE**

29. The effective date of this Consent Decree shall be the date this Consent Decree is entered by the Court.

**XX. COSTS AND ATTORNEYS FEES**

30. a. If the Defendants fail to make any payment required under Section VI of this Consent Decree when due, including stipulated penalties under Section VII, and the United States, the Commonwealth, and/or the State file(s) with the Court either a motion to enforce this Consent Decree, a complaint, or any other application for such payment, and: (1) the United States, the Commonwealth, and/or the State thereafter receives a payment; or (2) an order is issued directing payment of any portion of the amount sought by the United States, the Commonwealth, and/or the State; or (3) the action is settled in a manner in which the United States, the Commonwealth, and/or the State receive(s) any portion of the amount sought, the Defendants shall reimburse the United States, the Commonwealth, and/or the State for all costs arising from such motion, complaint or application, including but not limited to costs of attorney time.

b. The Trustees will use best efforts to coordinate among each other in any action to enforce this Consent Decree.

c. The Defendants are entitled to assert any arguments or defenses available to them by law in an effort to mitigate such costs or fees.

**XXI. SIGNATORIES/SERVICE**

31. The undersigned representative of the Defendants 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 parties to this document.

32. The Defendants shall identify on the attached signature page the name, address, telephone number and facsimile number of an agent who is authorized to accept service of process, if served by both mail and facsimile, on behalf of such Defendants with respect to all matters arising under or relating to this Consent Decree. The Defendants hereby agree to accept service in this manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2010.

---

UNITED STATES DISTRICT JUDGE  
District of Massachusetts



THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States et al. v. Bouchard Transportation Co., Inc., et al., relating to the Bouchard B.120 Oil Spill.

FOR THE UNITED STATES:

11/10/10  
Dated:

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

11/12/10  
Dated:

BRIAN G. DONOHUE  
Senior Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

CARMEN M. ORTIZ  
United States Attorney  
District of Massachusetts

GEORGE B. HENDERSON, II  
Assistant United States Attorney  
Office of the United States Attorney  
John Joseph Moakley  
United States Federal Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3272

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States et al. v. Bouchard Transportation Co., Inc. et al., relating to the Bouchard B.120 Oil Spill.

FOR THE COMMONWEALTH of MASSACHUSETTS:

MARTHA COAKLEY  
ATTORNEY GENERAL

10/27/2010  
Dated:

MATTHEW BROCK, BBO No.553226  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Flr.  
Boston, MA 02108  
(617) 727-2200

October 27, 2010  
Dated:

SETH SCHOFIELD/BBO No. 661210  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place, 18<sup>th</sup> Flr.  
Boston, MA 02108  
(617) 727-2200 x 2436

IAN A. BOWLES  
SECRETARY OF ENERGY  
AND ENVIRONMENTAL AFFAIRS

October 27, 2010  
Dated:

IAN A. BOWLES  
Secretary of Energy and Environmental Affairs  
100 Cambridge Street  
Suite 900  
Boston, MA 02114

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. Bouchard Transportation Co., Inc. et al., relating to the Bouchard B.120 Oil Spill.

FOR THE STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT:

October 26, 2010  
Dated:

\_\_\_\_\_  
MARY E. KAY  
Acting Executive Counsel  
Rhode Island Department of Environmental  
Management  
235 Promenade Street  
Providence, Rhode Island 02908  
(401) 222-6607

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. Bouchard Transportation Co., Inc. et al., relating to the Bouchard B.120 Oil Spill.

FOR BOUCHARD TRANSPORTATION CO., INC.:

September 13, 2010  
Dated:

Name: Austin P. Olney, Esq.  
Title: Attorney For Bouchard Transportation  
Address: Dewey & LeBoeuf LLP  
260 Franklin Street  
Boston, MA 02110

Agent authorized to accept service on behalf of Bouchard Transportation Co., Inc.:

Name: Austin P. Olney  
Address: 260 Franklin Street  
Boston, MA 02110  
Telephone number: 617-748-6875  
Facsimile Number: 617-897-9075

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. Bouchard Transportation Co., Inc. et al., relating to the Bouchard B.120 Oil Spill.

FOR TUG EVENING TIDE CORP.:

September 13, 2010  
Dated:

Name: Austin P. Olney, Esq.  
Title: Attorney For Tug Evening Tide Corp.  
Address: Dewey & LeBoeuf LLP  
260 Franklin Street  
Boston, MA 02110

Agent authorized to accept service on behalf of Tug Evening Tide Corp.:

Name: Austin P. Olney, Esq.  
Address: 260 Franklin Street  
Boston, MA 02110  
Telephone number: 617-748-6875  
Facsimile Number: 617-897-9075

THE UNDERSIGNED PARTY enters into this consent decree in the matter of United States, et al. v. Bouchard Transportation Co., Inc. et al., relating to the Bouchard B.120 Oil Spill.

FOR B. NO. 120 CORP.:

September 13, 2010  
Dated:

Name: Austin P. Olney, Esq.  
Title: Attorney for B. No. 120 Corp.  
Address: Dewey & LeBoeuf LLP  
260 Franklin Street  
Boston, MA 02110

Agent authorized to accept service on behalf of B. No. 120 Corp.:

Name: Austin P. Olney, Esq.  
Address: 260 Franklin Street  
Boston, MA 02110  
Telephone number: 617-748-6875  
Facsimile Number: 617-897-9075

**APPENDIX A**

**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**



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## 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**

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

**Date**

4/25/08

**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**

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

4/19/10

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